



EUROPEAN COMMISSION

LEGAL SERVICE
The Director General

Brussels, 18th November 2019

By email

Mr Fred Logue
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Subject: Request for access to documents

Ref.: Your requests of:

- 28 September 2019 registered under reference GestDem 2019/5524;
- 3 October 2019 registered under reference GestDem 2019/5643; and
- 19 October 2019 registered under reference GestDem 2019/5958.

Dear Mr Logue,

I refer to your requests for access to documents under Regulation (EC) No 1049/2001 regarding public access to European Parliament, Council and Commission documents¹, concerning *Written Observations* submitted by:

1. *Ireland in Case C-507/17, Google v CNIL*;
2. *Ireland in Case C-136/17, G.C. a.o. v CNIL*;
3. *Ireland in Case C-70/18, A a.o.*;
4. *The European Commission in Case C-279/12, Fish Legal*.

1. WRITTEN OBSERVATIONS SUBMITTED BY IRELAND (DOCUMENTS UNDER NUMBERS 1, 2 AND 3)

As regards your request concerning Case C-70/18, please note that, although the Irish Government had submitted Written Observations, this document was not notified to the Commission by the Court of Justice. Article 2(2) of Regulation No 1049/2001 states that "...[t]his Regulation shall apply to all documents held by an institution, that is to say, documents drawn up or received by it and its possession, in all areas of activity of the European Union". Since the Commission does not hold the submission made by the Irish Government, it is not in a position to deal with this part of your request.

¹ Official Journal L 145, 31.05.2001, page 43.

In accordance with Article 4(4) of Regulation (EC) No 1049/2001, the European Commission has consulted the Government of Ireland on the disclosure of its Written Observations concerning Cases C-507/17 and C-136/17.

Thus, I would like to inform you that Ireland has given its agreement to grant full access to these two documents.

Accordingly, please find enclosed a copy of the concerned documents. Please note that they were transmitted by the Court of Justice to the Commission in its capacity as participant to the Court proceedings. Access to them is granted for information only and they cannot be re-used without the agreement of the originators, who hold a copyright on them. They do not reflect the position of the Commission and cannot be quoted as such.

2. WRITTEN OBSERVATIONS SUBMITTED BY THE EUROPEAN COMMISSION (DOCUMENT UNDER NUMBER 4)

After a concrete assessment of the Commission's submission, I am pleased to inform you that full access can be granted under Regulation (EC) No 1049/2001. Please note that the handwritten signature has been deleted on the last page since it constitutes personal data covered by the exception laid down in Article 4(1) (b) of the Regulation ("*protection of personal data*"), as will be explained below.

Accordingly, please find enclosed the Commission's written observations expunged of personal data.

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3. REFUSAL OF PERSONAL DATA

As stated in point 2 above, the handwritten signature has been blanked out in the document under number 4. This information is covered by the exception provided for in Article 4 (1)(b) of Regulation (EC) No 1049/2001 ("*protection of personal data*"), in accordance with the European Union legislation regarding the protection of personal data.

According to Article 4(1)(b) of Regulation (EC) No 1049/2001 "*[t]he institutions shall refuse access to a document where disclosure would undermine the protection of: [...] (b) privacy and the integrity of the individual, in particular in accordance with Community legislation regarding the protection of personal data*".

As the Court of Justice has ruled, when access to documents containing personal data is requested, the Data Protection Regulation, i.e. Regulation (EU) 2018/1725², becomes fully applicable³.

² Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC (OJ L 205 of 21.11.2018, page 39).

³ Judgment of the Court of Justice of 29 June 2010, Case C-28/08P, *European Commission v The Bavarian Lager Co. Ltd*, ECLI:EU:C:2010:378, paragraphs 59 and 63. Whereas this judgment specifically related to Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data, the principles set out therein are also applicable under the new data protection regime established by Regulation (EU) 2018/1725.

Article 3(1) of Regulation (EU) 2018/1725 provides that personal data "*means any information relating to an identified or identifiable natural person [...]*". The Court of Justice has specified that any information, which by reason of its content, purpose or effect, is linked to a particular person is to be considered as personal data.⁴

With regard to the information relating to the institutions officials, the General Court has recognised in its judgment of 19 September 2018 that the information such as names, signatures, functions, telephone numbers and other information fall within the notion of "*private life*"⁵ regardless of whether this data is registered in the context of a professional activity and, therefore, it constitutes personal data in the meaning of Article 3(1) of Regulation (EU) 2018/1725. Accordingly, the handwritten signature has been redacted.

Pursuant to Article 9(1)(b) of Regulation (EU) 2018/1725, "*personal data shall only be transmitted to recipients established in the Union other than Union institutions and bodies if [t]he recipient establishes that it is necessary to have the data transmitted for a specific purpose in the public interest and the controller, where there is any reason to assume that the data subject's legitimate interests might be prejudiced, establishes that it is proportionate to transmit the personal data for that specific purpose after having demonstrably weighed the various competing interests*".

Only if these conditions are met and the processing constitutes lawful processing in accordance with the requirements of Article 5 of Regulation (EU) 2018/1725, can the transmission of personal data occur.

According to Article 9(1)(b) of Regulation (EU) 2018/1725, the European Commission has to examine the further conditions for a lawful processing of personal data only if the first condition is fulfilled, namely if the recipient has established that it is necessary to have the data transmitted for a specific purpose in the public interest. It is only in this case that the European Commission has to examine whether there is a reason to assume that the data subject's legitimate interests might be prejudiced and, in the affirmative, establish the proportionality of the transmission of the personal data for that specific purpose after having demonstrably weighed the various competing interests.

In your request, you do not put forward any arguments to establish the necessity to have the data transmitted for a specific purpose in the public interest. Therefore, the European Commission does not have to examine whether there is a reason to assume that the data subject's legitimate interests might be prejudiced.

Notwithstanding the above, please note that there are reasons to assume that the legitimate interests of the data subjects concerned would be prejudiced by disclosure of the personal data reflected in the documents, as there is a real and non-hypothetical risk that such public disclosure would harm their privacy.

Consequently, I conclude that, pursuant to Article 4(1)(b) of Regulation (EC) No 1049/2001, access cannot be granted to personal data, as the need to obtain access thereto for a purpose in the public interest has not been substantiated and there is no reason to think that the legitimate interests of the individuals concerned would not be prejudiced by disclosure of the personal data concerned.

⁴ Judgment of the Court of Justice of 20 December 2017, Case C-434/16, *Peter Nowak v Data Protection Commissioner*, ECLI:EU:C:2017:994, paragraphs 33-35.

⁵ Judgment of the General Court of 19 September 2018, Case T-39/17, *Port de Brest v Commission*, ECLI:EU:T:2018:560, paragraphs 37, 38 and 43.

Please note that the exception of Article 4(1)(b) has an absolute character and does not envisage the possibility of demonstrating the existence of an overriding public interest.

4. MEANS OF REDRESS

Should you wish the position regarding the refusal of personal data to be reconsidered, you should present in writing, within fifteen working days from receipt of this letter, a confirmatory application to the Commission's Secretariat-General at the address below.

European Commission
Secretariat-General
Unit C.1 “*Transparency, Document Management & Access to Documents*”
BERL 7/076
B-1049 Bruxelles
or by email to: sg-acc-doc@ec.europa.eu

Yours sincerely,



Luis ROMERO REQUENA

Attachments: 3