

EUROPEAN COMMISSION
Directorate-General for Trade

The Director General

Brussels, 18 SEP. 2014
trade.a.3.dir(2014)3307822

By registered mail:
Ms Vicky Cann
Corporate Europe Observatory
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Brussels 1050
Belgium

By e-mail:
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Subject: Your application for access to documents – Ref GestDem No 2014/3863

Dear Ms Cann,

Thank you for your request for access to documents registered on 28 August 2014 under Regulation (EC) No 1049/2001¹ regarding public access to European Parliament, Council and Commission documents ("Regulation 1049/2001").

In your application you have requested *'all speeches and other policy documents which have been authored, or contributed to, by Eoin O'Malley since he joined DG Trade in June 2010'*.

Please note, that Article 18 of Staff Regulation², provides that *'any writings or other work done by any official in the performance of his duties shall be the property of the European Union where such writings or work relate to its activities'*.

As any Commission official, Mr O'Malley is acting under direct supervision of his hierarchical manager and carries out the duties conferred to him by his superior in order to reach the Commission's objectives, as defined in Article 11 of the Staff Regulation: *'An official shall carry out his duties and conduct himself solely with the*

¹ OJ L 145, 31.5.2001, p. 43.

² Regulation No 31 (EEC), 11 (EAEC), laying down the Staff Regulations of Officials and the Conditions of Employment of Other Servants of the European Economic Community and the European Atomic Energy Community, Official Journal 45, 14.6.1962, p. 1385.

interests of the Union in mind.[...] He shall carry out the duties assigned to him objectively, impartially and in keeping with his duty of loyalty to the Union.'

The content of the documents prepared by Commission staff does not reflect their personal views but the opinion of the service concerned. These views should not be attributed to one particular staff member from whom they emanate, and even less so to those Commission staff merely contributing to their formulation.

Having examined your application under the provisions of Regulation 1049/2001, and taking into account the above-mentioned provisions of the Staff Regulations and the principles underlying these provisions, I regret to inform you that the list of documents you request is protected under Article 4(1)(b) and therefore cannot be made available to you.

Article 4(1)(b) of Regulation 1049/2001 provides that access to documents shall be refused where disclosure would undermine *the protection of privacy and integrity of the individual, in particular in accordance with Community legislation regarding the protection of personal data.*

The applicable legislation in this field is Regulation (EC) No 45/2001³ 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 ("Regulation 45/2001").

Article 2(a) of Regulation 45/2001 provides that '*personal data*' shall mean any information relating to an identified or identifiable person [...]. In this respect the Court of Justice has confirmed in case C-465/00 (*Rechnungshof*)⁴ that *there is no reason of principle to justify excluding activities of a professional [...] nature from the notion of "private life"*.

Information on the work carried out by one specific individual, which could be used for example to evaluate his performance, clearly constitutes personal data in the meaning of Article 2(a) of Regulation 45/2001.

In its *TGI* and *Bavarian Lager* judgments⁵ the Court of Justice ruled, on the one hand, that administrative activities are to be clearly distinguished from legislative procedures, for which the Court has acknowledged the existence of wider openness and, on the other hand, that the application of Regulation 1049/2001 cannot have the

³ OJ L 8 of 12.1.2001, p. 1

⁴ Judgment of the Court of 20 May 2003 in joined cases C-465/00, C-138/01 and C-139/01, preliminary rulings in proceedings between *Rechnungshof* and *Österreichischer Rundfunk*, paragraph 73.

⁵ Judgment of the Court (Grand Chamber) of 29 June 2010 in case C-139/07 P, *European Commission v Technische Glaswerke Ilmenau GmbH*, paragraphs 53-55 and 60; Judgment of the Court (Grand Chamber) of

effect of rendering the provisions of another Regulation over which it does not have primacy, ineffective.

Consequently, when access is requested to documents containing personal data, Regulation (EC) No 45/2001 becomes fully applicable⁶.

According to Article 8(b) of this Regulation, personal data shall only be transferred to recipients if they establish the necessity of having the data transferred to them and if there is no reason to assume that the legitimate rights of the persons concerned might be prejudiced.

We consider that, with the information available, the necessity of disclosing the aforementioned personal data to you has not been established and that it cannot be assumed that such disclosure would not prejudice the legitimate rights of the persons concerned.

Indeed, your request concerns a document which would enable one to identify the precise activities carried out by one identified member of the Commission's staff, and not by the institution as such. There are clear reasons to think that the release of such a document would prejudice the privacy and integrity of the individual concerned, as it would infringe the legitimate rights of the individual in the sense of Regulation 45/2001.

I would also like to point out that Article 19 of Regulation 45/2001, provides that *the data subject shall have the right not to be subject to a decision which [...] significantly affects him or her and which is based solely on automated processing of data intended to evaluate certain personal aspects relating to him or her, such as his or her performance at work, reliability or conduct, unless the decision is expressly authorised pursuant to national or Community legislation or, if necessary, by the European Data Protection Supervisor.*

It follows that the right to disclosure of documents under Regulation 1049/2001 shall not apply in contradiction to the above-mentioned guarantees offered by Regulation 45/2001, as this would result in these guarantees being deprived of their meaningful effect. Consequently, the document to which you request access cannot be released pursuant to Article 4(1)(b) of Regulation 1049/2001, as the release thereof would undermine the privacy and integrity of the individual concerned protected by that article.

29 June 2010, European Commission v the Bavarian Lager Co. Ltd., paragraphs 56-57 and 63.

⁶ Judgment of the Court of Justice of the EU of 29 June 2010 in case 28/08 P, Commission/The Bavarian Lager Co. Ltd, not yet reported

If you wish to receive these personal data, we invite you to provide us with arguments showing the need for having these personal data transferred to you and the absence of adverse effects to the legitimate rights of the persons whose personal data should be disclosed.

The possibility of granting partial access to the document requested has also been examined in accordance with Article 4.6 of the Regulation. However, it is considered that, as all parts of this document are covered by the invoked exception, no such access can be granted.

Should you wish this position to be reviewed, you should write to the Commission's Secretary-General at the address below, confirming your initial request. Following receipt of this letter you have fifteen working days to do so, after which your initial request will be deemed to have been withdrawn.

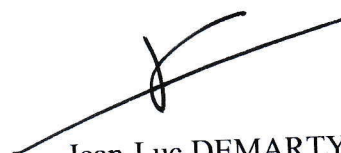
The Secretary-General will inform you of the result of this review within fifteen working days from the registration of your request, either granting you access to the documents or confirming the refusal.

European Commission
Secretary-General
Transparency unit SG-B-5
BERL 5/327
B-1049 Bruxelles
or by email to: sg-acc-doc@ec.europa.eu

If you would be interested in the Commissioners De Gucht speeches, they are publicly available on his website⁷.

Please be informed that a copy of this letter will be sent to the person concerned.

Yours sincerely,



Jean-Luc DEMARTY

⁷ http://ec.europa.eu/commission_2010-2014/degucht/headlines/speeches/