

15 MAR 2016

Ref. DD/CR/mm (2016) – out-15330534

Vicky Cann
Corporate Europe Observatory
(CEO)
Rue d'Edimbourg 26
BE-1050 Brussels
Belgium

e-mail: vicky@corporateeurope.org

Subject: Reply to your request for public access to documents of 2 February 2016

Ref: PAD 2016/013

Dear Ms Cann,

I refer to your e-mail submitted on 02 February 2016 by means of which you requested access to "all declarations of interest by Barbara Gallani for her future role as Head of the Communications and External Relations Department at EFSA, alongside all related documents including emails, letters, minutes of meetings which discuss the declaration(s)" in accordance with Regulation (EC) No 1049/2001¹ (hereafter referred to as 'the PAD Regulation').

Having considered your public access request with regard to the Declaration of Interests ('DoI') that Ms. Gallani has submitted to EFSA in the context of her on going recruitment, we regret to inform you that EFSA is not in the position to release this document to you, for the following reasons:

1. Exception regarding the protection of personal data

A DoI is a document containing various personal data directly related to the privacy and integrity of an individual in the sense of the exception to public disclosure in Article 4(1)(b) of the PAD Regulation. In line with the settled case law of the Union Courts², this provision shall be considered as a referral to the Data Protection Regulation (EC) No 45/2001³, in particular Article 8 thereof concerning the transfer of personal data, in this case the release of the concerned DoI in reply to your public access request. To consider such release, the cumulative conditions for the transfer of personal data provided in Article 8(b) of the Data protection Regulation shall be fulfilled.

The first condition is *the necessity* for the data transfer based on the information provided by the requester. EFSA is only able to balance the interests involved and to consider the disclosure of the DoI being personal data, based on an express and legitimate justification and convincing arguments in order to demonstrate the necessity

¹ Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents, OJ L 145, 31.5.2001, p. 43-48.

² See Judgement in Case C-28/08P, European Commission v. Bavarian Lager Co Ltd. EU:C:2010:378.

³ Regulation (EC) No 45/2001 of the 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 on the free movement of such datathe envisaged DoI and other documents. , OJ L 8, 12.1.2001, p.1-22.

of having the personal data document transferred to you. In this regard, we should add that your request does not contain any justification for transferring the DoI and related documents to you and therefore this condition is not fulfilled.

In this regard, we would like to clarify that the rationale of EFSA's procedures for collecting DoIs is to ensure the independence, impartiality and objectivity of persons recruited at/working for EFSA. EFSA is in the first place responsible to demonstrate it meets this requirement towards the EU audit and control bodies it is subject to as an agency forming part of the European Union public administration (e.g. European Court of Auditors, European Ombudsman).

2. Publication of Ms. Gallani's ADoI after recruitment

We would like to add that for high management posts within the organisation, EFSA adopted the practise to proactively publish the Annual Declarations (ADoIs) for encouraging public trust by showing that persons assuming these positions within EFSA have no conflicts of interest. Since Ms. Gallani will occupy such a high management post, her ADoI will be available on the EFSA website, as soon as her employment at EFSA effectively starts.

3. Documents relating to the DOIs assessment

For what concerns the part of your access request concerning "*documents including emails, letters, minutes of meetings which discuss the declaration(s)*", we should inform you that the following documents have been identified at EFSA:

- The reasoned opinion of the Executive Director concerning declaration of interest by recruitment candidates
- One internal e-mail message

Please find herewith attached a copy of these documents. As you may note, substantial parts have been masked therein in application of the exception referred to in above point 1, namely to protect the privacy and integrity of an individual in the sense of Article 4(1)(b) of the PAD Regulation. Please note that in accordance with the definition provided in Article 2(a) of the Data Protection Regulation (EC) No 45/2001, "*personal data shall mean any information relating to an identified or identifiable natural person [...]*". Since the public access request you have submitted relates to Ms. Gallani, all information concerning her contained in a document falling within your request, qualifies as personal data in the sense of the definition in the Data Protection Regulation and by extension falls in the exception to public disclosure for the reasons outlined in point 1 above.

4. Confirmatory Application

To exercise your right to appeal against this decision to deny access by means of a confirmatory application, you may write to EFSA at the address below. You have fifteen working days from receipt of this letter to appeal. Beyond this deadline, your initial request will be considered as satisfied. In case you submit a confirmatory application, EFSA will inform you of the outcome of the re-examination of your request within fifteen working days of receipt, either by granting you access to the documents or by confirming the refusal. In the latter case, you will also be informed of any further appeal routes available.

Further correspondence must be sent to:

EFSA - Dirk Detken, Head of the Legal and Regulatory Affairs Unit
Via Carlo Magno 1/A I - 43126 Parma
I - 43126 Parma
Italia

e-mail: efsa_public_access_to_documents@efsa.europa.eu.

Yours sincerely,



Dirk Detken

Encl.: 2