



EUROPEAN COMMISSION

Brussels, 20.7.2021

C(2021) 5580 final

Ms Roelie Post  
Willem de Zwijgerstraat 51  
1000 Brussels  
Belgium

**DECISION OF THE EUROPEAN COMMISSION PURSUANT TO ARTICLE 4 OF THE  
IMPLEMENTING RULES TO REGULATION (EC) No 1049/2001<sup>1</sup>**

**Subject: Your confirmatory application for access to documents – GESTDEM  
2021/3220**

Dear Ms Post,

I am writing in reference to your email of 19 June 2021, registered on 21 June 2021, by which you lodge a confirmatory application in accordance with Article 7(2) of Regulation (EC) No 1049/2001 regarding public access to European Parliament, Council and Commission documents<sup>2</sup> (hereafter ‘Regulation (EC) No 1049/2001’).

Through your initial application of 16 May 2021, you requested access to, I quote, ‘access to all data regarding documents / correspondence of Mr. Timmermans and his Cabinet (including social media and SMS / Whatsapp) about me. Period: 2015 – present.’

By letter of 17 June 2021, the European Commission’s Secretariat-General informed you that the European Commission does not hold any documents that would correspond to the description given in your application.

In your confirmatory application, you question the absence of any documents. You state that, I quote, ‘It can not be true that VP Timmermans and his Cabinet cannot identify any documents/correspondence/communication related to my situation in the period 2015 – now.’

Against this background, the European Commission has carried out a renewed search for the documents requested. Following this renewed search, I confirm that the European

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<sup>1</sup> OJ L 345, 29.12.2001, p. 94.

<sup>2</sup> OJ L145, 31.05.2001, p. 43.

Commission does not hold any documents that would correspond to the description given in your application.

Indeed, as specified in Article 2(3) of Regulation (EC) No 1049/2001, the right of access as defined in that regulation applies only to existing documents in the possession of the institution.

The General Court held in Case T-468/16 (*Verein Deutsche Sprache v Commission*) that there exists a presumption of lawfulness attached to the declaration by the institution asserting that documents do not exist<sup>3</sup>. This presumption continues to apply, unless the applicant can rebut it by relevant and consistent evidence<sup>4</sup>. The Court of Justice, ruling on an appeal in Case C-440/18 P, has confirmed these conclusions<sup>5</sup>.

In your confirmatory application, you do not provide evidence that the institution is in possession of documents corresponding to the description provided in your application. The General Court held in Case T-468/16 (*Verein Deutsche Sprache v Commission*) that a mere suspicion that there must be more documents does not suffice to put in question the presumption of legality of the institution's statement<sup>6</sup>.

Moreover, please note that according to Article 3(a) of Regulation 1049/2001, a 'document' shall mean any content whatever its medium concerning a matter relating to the policies, activities and decisions falling within the institution's sphere of responsibility.

However, the institution is not obliged to preserve each and every document.

In accordance with Article 7(1) of Commission Decision of 6.7.2020 on records management and archives<sup>7</sup>, '[d]ocuments shall be registered if they contain important information which is not short-lived or if they may involve action or follow-up by the Commission or one of its departments'.

A text message or another type of instant messaging is by its nature a short-lived document which does not contain in principle important information concerning matters relating to policies, activities and decisions of the Commission and therefore it does not normally qualify as a document fulfilling the registration criteria. In this respect, the Commission record-keeping policy would in principle exclude instant messaging. This means that text messages would only exceptionally qualify as a document that should be registered, only if they contain important information which is not short-lived or if they may involve action or follow-up by the Commission or one of its departments in accordance with the document registration rules.

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<sup>3</sup> Judgment of the General Court of 23 April 2018, *Verein Deutsche Sprache v Commission*, T-468/16, EU:T:2018:207, paragraphs 35-36.

<sup>4</sup> *Ibid.*

<sup>5</sup> Order of the Court of Justice of 30 January 2019, *Verein Deutsche Sprache v Commission*, C-440/18 P, EU:T:2018:207, paragraph 14.

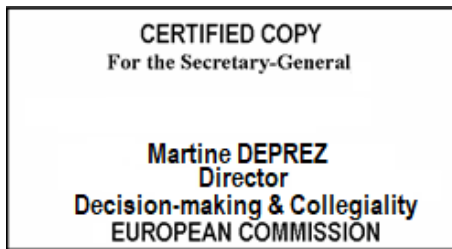
<sup>6</sup> Judgment of the General Court of 23 April 2018, *Verein Deutsche Sprache v Commission*, T-468/16, EU:T:2018:207, paragraph 37.

<sup>7</sup> [https://ec.europa.eu/info/sites/info/files/c\\_2020\\_4482\\_en.pdf](https://ec.europa.eu/info/sites/info/files/c_2020_4482_en.pdf).

Given that the European Commission does not hold any documents falling within the scope of your application, it is not in a position to fulfil your request.

Finally, I draw your attention to the means of redress available against this decision. You may either bring proceedings before the General Court or file a complaint with the European Ombudsman under the conditions specified respectively in Articles 263 and 228 of the Treaty on the Functioning of the European Union.

Yours sincerely,



*For the Commission*  
*Ilze JUHANSONE*  
*Secretary-General*