



EUROPEAN COMMISSION

Secretariat-General

The Secretary-General

13 JAN. 2015

Brussels,

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By registered mail
with acknowledgment of receipt

Mr Arun DOHLE
Reimserstrasse 47
D – 52074 Aachen

Copy by email to: ask+request-1350-122e196b@asktheeu.org

Subject: Your confirmatory application for access to documents
– Gestdem 2014/2552

Dear Mr Dohle,

I am writing in reference to your email of 26 November 2014, registered on 2 December 2014, by which you lodge a confirmatory application in accordance with Article 7(2) of Regulation (EC) 1049/2001 regarding public access to European Parliament, Council and Commission documents¹ (hereafter Regulation 1049/2001).

In your initial application of 20 May 2014, you requested access to:

any letters received from members of Euradopt by the respective Commissioners and/or Commissioner Olli Rehn, Franco Frattini, Jacques Barrot and President Barroso. Including responses given, related internal notes and phone logs. Period 2005 - 2009. Euradopt Members and respective Commissioner:

- AMARNA -Belgian Commissioner
- Sourires d'Enfants - French Commissioners
- AC International Child Support - Danish Commissioner
- DanAdopt - Danish Commissioner
- Interpedia - Finnish Commissioner
- Save the Children Finland Pelastakaa Lapset - Finnish Commissioner
- Paidia 87bis - French Commissioners
- Protestant Adoption Center (Evangelischer Verein für Adoptions- und Pflegekindervermittlung Rheinland e. V.) - German Commissioner

¹ Official Journal L145, 31.05.2001 p.43

- *PARENTS-CHILD-BRIDGE (Diakonische Werk- Eltern-Kind-Brücke e.V.)- German Commissioner*
- *Family For You - Austrian Commissioner*
- *Amici dei Bambini - Italian Commissioner*
- *CIAI - Italian Commissioner*
- *Wereldkinderen (Netherlands Intercountry Child Welfare Organisation)- Dutch Commissioner*
- *Kind en Toekomst (Child and Future) - Dutch Commissioner*
- *Meiling - Dutch Commissioner*
- *Adoptionscentrum - Swedish Commissioner*
- *FFIA(Familjeföreningen för Internationell Adoption) - Swedish Commissioner*
- *Swedish Friends of Children (Barnens Vänner) - Swedish Commissioner.*

By email of 26 May 2014, the Secretariat-General of the Commission informed you that your request had been split into two separate files, dealt with under two distinct Gestdem references:

- reference Gestdem 2014/2553 for documents concerning President Barroso; and
- reference Gestdem 2014/2552 for documents concerning other Commissioners.

As regards the first part of your request, dealt with under reference Gestdem 2014/2553, the Secretariat-General informed you by letter of 16 July 2014 that no documents were identified as falling under your request.

As regards the second part of your request, dealt with under reference Gestdem 2014/2552, the Commission has identified the following documents as falling under the scope of your request:

- (1) Letter from Danadopt to Commissioner Fischer Boel arrived on 16 February 2007;
- (2) Reply from Commissioner Fischer Boel of 2 March 2007;
- (3) Note of transmission from CAB Fischer Boel to CAB Frattini of 2 March 2007;
- (4) Letter from Adoptionscentrum to Commissioner Wallstroem of 8 January 2007;
- (5) E-mail from Wereldkinderen to Commissioner Kroes of 2 December 2007;
- (6) E-mail from Amici dei Bambini to Commissioner Frattini of 22 November 2005;
- (7) Letter from Amici dei bambini to Commissioner Frattini of 18 January 2006;
- (8) Reply from Commissioner Frattini of 16 February 2006;
- (9) E-mail from Amici dei Bambini to Commissioner Frattini of 23 February 2006;
- (10) E-mail from Amici dei Bambini to Commissioner Frattini of 22 March 2006;
- (11) Letter from Amici dei Bambini to Commissioner Frattini arrived on 16 June 2006;
- (12) Reply of DG JLS on behalf of Commissioner Frattini of 28 August 2006;
- (13) E-mail from Amici dei Bambini to Commissioner Frattini of 19 September 2006;
- (14) Letter from Amici dei Bambini to Commissioner Frattini 10 October 2006;
- (15) Letter from Amici dei Bambini to Commissioner Frattini of 2 February 2007;
- (16) Reply from Commissioner Frattini of 14 March 2007.

By letter of 12 August 2014, the Directorate General for Justice (hereafter *DG JUST*) provided you with full or partial access² to documents 1-4, 6-7 and 9-15. It indicated that the remaining documents (5, 8 and 16) would be sent to you through a complementary initial reply, due to the need to conduct internal and third-party consultations.

In your confirmatory application of 26 November 2014, you state that you *have not yet received a reply related to the letters as referenced in DG Justice's letter as 5, 8 and 16*. These documents correspond to documents 5, 8 and 16 listed above. Moreover, you *asked to make [DG Justice's replies] public through the website AskTheEU*.

In response to your request, documents 8 and 16 were fully disclosed by an email sent to you on 23 September 2014. Due to technical failures of the *AskTheEU* platform³, DG JUST forwarded its reply to your personal email address on 25 September 2014.

Furthermore, by registered mail dated 25 November 2014, DG JUST granted partial access to document 5, by redacting the personal data contained therein based on the exception of Article 4(1)(b) of Regulation 1049/2001 (protection of the privacy and integrity of the individual).

In your confirmatory application, you stated the following: *"I hereby hand in a confirmatory appeal because I have not yet received a reply related to the letters as referenced in DG Justice's letter as 5, 8 and 16"*. Insofar as these documents (5, 8 and 16) have been sent to you, there is no actual need to "review" the position taken by DG JUST. In fact, you have now received access to all the documents falling under the scope of your request at the initial stage⁴.

I acknowledge that personal data have been redacted from some of the documents sent to you, but I took note of the fact that you have not expressed an interest for having access to personal data at initial or confirmatory stage.

The redacted parts concerned consist of the names and personal information related to Commission staff (document 5, 9 and 10) and names and addresses of third-party (document 13). In document 5, one paragraph and the annex are related to the personal and medical situation of a Commission staff member.

These references undoubtedly constitute personal data in the meaning of Article 2(a) of Regulation (EC) No 45/2001, as they reveal information about identified or identifiable persons. According to Article 8(b) of the Data Protection Regulation, which is fully applicable in this case, personal data shall only be transferred to recipients if the recipient establishes the necessity of having the data transferred and if there is no reason to assume

² Subject to the redaction of personal data based on the exception defined in Article 4(1)(b) of Regulation 1049/2001, pertaining to the protection of the privacy and integrity of the individual.

³ A private website – the functioning of which does not fall under the responsibility of the European Commission.

⁴ With the exception of the personal data contained therein, for which you have not expressed an interest at initial or confirmatory stage.

that the data subject's legitimate interests might be prejudiced. Those two conditions are cumulative.

As indicated above, it has not been substantiated that there is a need, or even an interest on your part, to obtain access to the respective personal data. Furthermore, it cannot be assumed, based on the information at my disposal, that the privacy and integrity of the individual concerned would not be prejudiced by the release thereof.

As regards, more specifically, to the personal and medical data relating to a Commission staff member, these are in addition covered by Article 26 of the Staff Regulations, which provides that *the personal file shall be confidential*. Release of these personal and medical data would clearly undermine the privacy and integrity of the official concerned.

Please note that Article 4(1)(b) is an absolute exception and does not provide for the possibility of the interests protected therein to be set aside by an overriding public interest in disclosure.

As regards your request to make the replies provided by DG JUST public through the *AskTheEU* website, I note that DG JUST, on 16 December 2014, resent you copies of its replies to the *AskTheEU* email address indicated by you. The Commission is not responsible for any possible technical difficulties in the functioning of the private *AskTheEU* website which may have delayed or prevented the transmission of these replies to you.

Consequently, I confirm the decision taken by DG JUST to send you all the documents, requested with the exception of the elements containing personal data. I also confirm the decision of DG JUST to have made use of your personal email address on 25 September 2014, due to the technical failure of *AskTheEU* website, and note that it resent its replies on 16 and 19 December 2014 to the *AskTheEU* email address indicated by you.

I would like to draw your attention to the means of redress available against this decision. You may, under Article 263 TFEU, bring proceedings before the European Court of Justice, or, under Article 228 TFEU, file a complaint with the European Ombudsman.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Catherine Day', with a stylized flourish at the end.

Catherine Day