

EUROPEAN COMMISSION  
DIRECTORATE-GENERAL MIGRATION and HOME AFFAIRS

The Director General

Brussels, 22 01. 2016  
Home.d.3(2016)180081

*By registered letter with acknowledgment of receipt*

Bits of Freedom  
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1013 LH AMSTERDAM  
Netherlands

*Advance copy by email : [ask+request-2220-5f3935e8@asktheeu.org](mailto:ask+request-2220-5f3935e8@asktheeu.org)*

Dear Sir,

**Subject: Your application for access to documents – Ref GestDem No 2015/4828**

We refer to your e-mail dated 11/09/2015 in which you make a request for access to documents, registered on 14/09/2015 under the above mentioned reference number.

You request access to documents which contain information about the infringement proceedings from 2011 against the member states which had not implemented yet the Data Retention Directive (2006/24/EC): Czech Republic (infringement procedure 2011/1143), Germany (infringement procedure 2011/2091), Romania (infringement procedure 2011/2089) and Sweden (infringement procedure 2007/1181).

Given that your application concerns a large number of documents originating from different services and third parties we were providing you the documents requested by sets, as soon as they were processed.

On 20 November 2015 we sent you the first set of 60 documents. On the 2 December 2015 we sent you the second set of 54 documents. The letter containing this second set of documents was not collected from the post office and was returned to us on 5 January 2016. The present letter concerns the third and the last set of 32 documents related to your request (list in annexes 2 and 3). The 23 documents to which access is granted as well as the second set of 54 documents that were already sent to you on 2 December 2015 (list in annex 1) will be sent to you by registered mail today.

Since some of the documents concerned originate from third parties, the originators of the documents have been consulted.

Following an examination of the documents requested under the provisions of Regulation (EC) No 1049/2001 regarding public access to documents and taking into account the opinion of the third parties, I regret to inform you that your application cannot be granted to the 9 documents originating from the authorities of the Czech Republic (list in annex 3), as disclosure is prevented by exceptions to the right of access laid down in Article 4 of this Regulation.

The authorities of the Czech Republic objected to disclosure of the documents that they sent to the Commission and have motivated their position by the protection of the purpose of inspections, investigations and audits in line with Article 4.2, third indent of the Regulation (EC) No 1049/2001.

The Commission decided to follow the opinion of the authorities of the Czech Republic and not to disclose the documents originating from them.

We have considered whether partial access could be granted to these documents. The authorities of the Czech Republic expressed the view that the documents should not be disclosed in their entirety. The Commission decided to follow the opinion of the originator of the documents.

The exceptions laid down in Article 4(2) of Regulation 1049/2001 apply unless there is an overriding public interest in disclosure of the documents. We consider that in this particular case, the prevailing interest is the interest in protecting the mutual trust between the Commission and the Member States authorities, which is necessary for achieving the purpose of the investigation concerned. Consequently, we consider that, in the present case, there is no public interest that would outweigh the interest protected by the exception of Article 4(2), third indent of Regulation 1049/2001.

Regarding the remaining documents, originating either from the Commission or from the other Member States concerned, the Commission decided to disclose them. However, some of the documents to which you have requested access contain personal data.

Pursuant to Article 4(1) (b) of Regulation (EC) No 1049/2001, access to a document has to be refused if its disclosure would undermine the protection of privacy and the 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 45/2001 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<sup>1</sup>.

When access is requested to documents containing personal data, Regulation (EC) No 45/2001 becomes fully applicable<sup>2</sup>. 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.

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<sup>1</sup> Official Journal L 8 of 12.1.2001, p. 1

<sup>2</sup> Judgment of the Court of Justice of the EU of 29 June 2010 in case 28/08 P, Commission/The Bavarian Lager Co. Ltd, ECR 2010 I-06055.

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. Therefore, we are disclosing the documents requested expunged from this personal data.

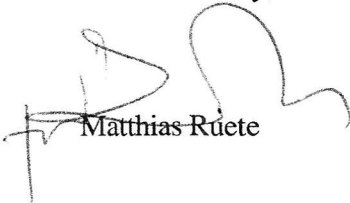
If you wish to receive these personal data, we invite you to provide us with arguments showing the need for having these personal data transferred to you and the absence of adverse effects to the legitimate rights of the persons whose personal data should be disclosed.

In accordance with Article 7(2) of Regulation 1049/2001, you are entitled to make a confirmatory application requesting the Commission to review this position.

Such a confirmatory application should be addressed within 15 working days upon receipt of this letter to the Secretary-General of the Commission at the following address:

European Commission  
Secretary-General  
Transparency unit SG-B-4  
BERL 5/327  
B-1049 Bruxelles  
or by email to: [sg-acc-doc@ec.europa.eu](mailto:sg-acc-doc@ec.europa.eu)

Yours sincerely,



Matthias Ruete

- Annexes:
1. List of documents sent on 2 December 2015
  2. List of documents sent in attachment to the present letter
  3. List of documents originating from the authorities of the Czech Republic to which access is refused.

ANNEX 1

Nr	Type of doc	Title	Date	Originator	Nr of pages
1	letter	Letter of Formal Notice to Sweden	27.11.2007	COM	5
2	letter	Reasoned Opinion to Sweden	23.09.2008	COM	5
3	internal note	Note to Commissioner Malmström on the ECJ ruling of 4 February 2010 against Sweden with 3 annexes	04.02.2010	COM	10
4	letter	Letter to the Permanent Representative of Sweden to the EU	15.03.2010	COM	2
5	internal note	Note from DG JLS to Legal Service on a Letter of Formal Notice	02.06.2010	COM	1
6	draft letter	Draft Letter of Formal Notice	02.06.2010	COM	3
7	letter	Letter of Formal Notice to Sweden	28.06.2010	COM	4
8	letter	Letter to the Permanent Representative of Sweden to the EU	11.03.2011	COM	1
9	internal note	Note from DG HOME to the Legal Service on the statement of defence	28.09.2011	COM	6
10	internal document	Internal overview document on the state of play of the infringement case (NIF fiche)	06.09.2008	COM	1
11	internal document	Internal overview document on the state of play of the infringement case (NIF fiche)	16.09.2008	COM	1
12	internal document	Internal overview document on the state of play of the infringement case (NIF fiche)	19.09.2008	COM	1
13	internal document	Internal overview document on the state of play of the infringement case (NIF fiche)	24.03.2009	COM	1
14	internal document	Internal overview document on the state of play of the infringement case (NIF fiche)	07.04.2009	COM	1
15	internal document	Internal overview document on the state of play of the infringement case (NIF fiche)	14.04.2009	COM	1
16	internal document	Internal overview document on the state of play of the infringement case (NIF fiche)	12.02.2010	COM	1
17	internal	Internal overview document on the	02.06.2010	COM	1

	document	state of play of the infringement case (NIF fiche)			
18	internal document	Internal overview document on the state of play of the infringement case (NIF fiche)	11.06.2010	COM	1
19	internal document	Internal overview document on the state of play of the infringement case (NIF fiche)	21.06.2010	COM	1
20	internal document	Internal overview document on the state of play of the infringement case (NIF fiche)	24.06.2010	COM	1
21	internal document	Internal overview document on the state of play of the infringement case (NIF fiche)	11.11.2010	COM	1
22	internal document	Internal overview document on the state of play of the infringement case (NIF fiche)	12.11.2010	COM	1
23	internal document	Internal overview document on the state of play of the infringement case (NIF fiche)	01.12.2010	COM	1
24	internal document	Internal overview document on the state of play of the infringement case (NIF fiche)	31.01.2011	COM	1
25	internal document	Internal overview document on the state of play of the infringement case (NIF fiche)	25.03.2011	COM	1
26	internal document	Internal overview document on the state of play of the infringement case (NIF fiche)	04.04.2011	COM	1
27	internal document	Internal overview document on the state of play of the infringement case (NIF fiche)	06.04.2011	COM	1
28	internal document	Note from DG HOME to Director General of Legal Service on infringement proceedings against Sweden	19.04.2012	COM	1
29	letter	Lump sum recovery notification letter	19.07.2013	COM	2
30	internal document	Note from DG HOME for the attention of Secretary General	19.07.2013	COM	1
31	letter	Acknowledgment of receipt of lump sum recovery letter	29.07.2013	COM	1
32	internal document	closure note DG HOME to LS	17.10.2013	COM	1
33	internal document	Internal overview document on the state of play of the infringement case (NIF fiche)	22.10.2013	COM	1
34	internal note	Note analysing the judgment of the Constitutional Court of the Czech Republic of 22 March 2011	10.06.2011	COM	5
35	meeting report	Meeting with the Czech Ministry of Industry and Trade, Prague 15 June	16.06.2011	COM	2

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		2011			
36	letter	Letter to the Czech Ministry of Industry and Trade	24.08.2011	COM	2
37	letter	Letter of Formal Notice to the Czech Republic	25.11.2011	COM	4
38	note	Note on infringement proceedings against the Czech Republic for non-compliance with DRD	17.02.2012	COM	1
39	letter	Request for the registration of a detected presumed infringement	14.10.2011	COM	1
40	letter	Reasoned Opinion – Infringement 2011/1143	17.02.2012	COM	6
41	letter	Reasoned Opinion to the Czech Republic	19.03.2012	COM	6
42	internal document	Internal overview document on the state of play of the infringement case (NIF fiche)	24.07.2012	COM	2
43	internal document	Note from DG HOME to DG LS on closure of the case	21.01.2013	COM	2
44	internal document	Internal overview document on the state of play of the infringement case (NIF fiche)	18.01.2013	COM	1
45	e-mail	Transposition of directive 2006/24/EC	19.10.2011	COM	2
46	e-mail	CZ infringement case	29.11.2011	COM	1
47	letter	Letter to the Commission	23.06.2010	DE	4
48	informal document	Key points concerning the storage of traffic data and the granting of internet inventory data requests	17.02.2011	DE	6
49	letter	Reply to the Letter of Formal Notice	15.08.2011	DE	15
50	annex to letter	Annex to the reply to the Letter of Formal Notice (Table – Article 2)	15.08.2011	DE	2
51	annex to letter	Annex to the reply to the Letter of Formal Notice (letter of 25.03.2009)	15.08.2011	DE	3
52	letter	Letter to the Commission	23.12.2011	DE	39
53	letter	Letter from the German Minister of Justice to the Commissioner	14.03.2012	DE	3
54	letter	Letter to the Commission	25.04.2012	DE	2

## ANNEX 2

	Nr	Type of doc	Title	Date	Originator	Nr of pages
✓	1	letter	Reply to Letter of Formal Notice with annexes	25.01.2008	SE	710
✓	2	letter	Reply to the Reasoned Opinion	21.11.2008	SE	3
✓	3	letter	Letter to DG JLS	06.04.2010	SE	3
✓	4	letter	Reply to the Letter of Formal Notice	27.08.2010	SE	4
✓	5	letter	Second version of the reply to the Letter of Formal Notice	08.09.2010	SE	4
✓	6	letter	Letter to the European Commission	23.11.2010	SE	120
✓	7	letter	Letter to the European Commission	21.01.2011	SE	1
✓	8	letter	Letter to DG HOME	25.03.2011	SE	1
✓	9	memorandum	Memorandum on the transposition of the Data Retention Directive in Sweden	04.04.2011	SE	1
✓	10	letter	Notification of national measures to fulfil Sweden's obligations in the European Union with 3 annexes	03.04.2012	SE	11
✓	11	letter	Transposition table	03.04.2012	SE	2
✓	12	letter	Transposition of the Directive 2006/24/EC	22.03.2012	SE	1
✓	13	letter	Letter from the Romanian Ministry for Communication and Information Society to DG JLS	30.03.2010	RO	6
✓	14	letter	Letter from the Romanian Ministry for Communication and Information Society to DG HOME	10.01.2011	RO	2
✓	15	letter	Reply to the Letter of Formal Notice	16.08.2011	RO	9
✓	16	informal document	Replies handed over at the meeting with the Romanian JAI Counsellor on 29.09.2011	29.09.2011	RO	1
✓	17	letter	Reply to the Reasoned Opinion	29.12.2011	RO	11
✓	18	letter	letter from the Romanian Permanent Representation to Commissioner	18.05.2012	RO	1

✓	19	letter	letter from the Romanian Ministry of Interior to Commissioner	17.05.2012	RO	2
✓	20	letter	letter from Romanian Ministry of European Affairs to Commissioner	26.04.2012	RO	2
✓	21	report	adopted proposals to legislative proposal RO	22.05.2012	RO	11
✓	22	letter	letter from the Romanian Ministry for European Affairs to Commissioner	22.05.2012	RO	1
✓	23	e-mail	data retention	21.01.2013	RO	2

### ANNEX 3

Nr	Type of doc	Title	Date	Originator	Nr of pages
1	letter	Letter to the Director General of DG HOME	20.06.2011	CZ	2
2	letter	Letter to the Director General of DG HOME	23.09.2011	CZ	2
3	e-mail	e-mail on partial transposition of DRD Directive	03.06.2011	CZ	1
4	letter	Czech reply to the letter of formal notice	19.01.2012	CZ	1
5	annex	annex to the letter of formal notice	19.01.2012	CZ	5
6	letter	letter from Czech Ministry of Foreign Affairs to Commissioner	24.04.2012	CZ	1
7	letter	Czech answer to the Reasoned Opinion	25.05.2012	CZ	3
8	letter	notification of transposing law	22.08.2012	CZ	2
9	letter	notification of transposing decree	01.11.2012	CZ	1