



EUROPEAN COMMISSION
DIRECTORATE-GENERAL
ENVIRONMENT

The Director-General

Brussels, 22 MAI 2012
ENV.A.2/SG/ym/Ares(2012)

Dear Mr Latimer,

Subject: Request for access to documents in case C-301/10, Commission v. United Kingdom. Reference GestDem No 2012/2114

I refer to your e-mail of 20 April 2012 in which you make a request for access to documents registered on 25 April 2012 under the above mentioned reference number.

Your application concerns a document submitted to the Court of Justice by the United Kingdom as part of its written pleadings in case C-301/10, Commission v. United Kingdom. This is the document referred to by Advocate General Mengozzi in his Opinion of 26 January 2012 as the "study carried out in 2010" by the United Kingdom authorities and presented by them in evidence before the Court. I understand that you are the complainant linked to one of the two cases concerned by this infringement case in so far as it relates to the situation in Whitburn.

The document requested was submitted by the United Kingdom as an Annex to its Defence and is thus directly related to the court proceedings referred to above. Given that the Court of Justice has still to pronounce on this case having taken into account the Opinion of the Advocate General, access cannot be given at this stage. This conclusion follows on from Article 4(2) of Regulation 1049/2001¹ regarding public access to European Parliament, Council and Commission documents which provides that that the institutions shall refuse access to a document where disclosure would undermine the protection of court proceedings and legal advice, unless there is an overriding public interest in disclosure. In addition, there is a ruling on the rights of access to documents requested by third parties with regard to cases before the Court of Justice in joined cases C-514/07P Sweden v. Commission, C-528/07P Association de la Presse Internationale (API) v. Commission and C-530/07P Commission v. AP where the Court gave judgment on 21 September 2010. The key provisions of the judgment are to be found in paragraphs 77, 79, 92 and 94 where the Court explains that Regulation (EC) No. 1049/2001 regarding public access to documents does not apply to pleadings and supporting documents submitted to the Court for judgment and remain confidential to those

¹ OJ L145, 31.05.2001, page 43.

Mr Robert Latimer
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proceedings. You are of course entitled to direct your request directly to the Court of Justice.

Having carefully examined your request in the light of Article 4(2) of Regulation 1049/2001, I have been unable to identify in this particular case the existence of an overriding public interest which could justify the disclosure of the requested document.

I have also examined the possibility of granting partial access to the requested document in accordance with Article 4(6) of Regulation 1049/2001. Partial access is, however, not possible in this instance as the document in question at this stage of the proceedings is covered in its entirety by the exception under second indent of Article 4(2).


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-5
BERL 5/327
B-1049 Bruxelles

Or by e-mail to: sg-acc-doc@ec.europa.eu

The Secretary General will inform you of the outcome within 15 working days of receiving your application, either allowing access to the documents requested or confirming refusal. If the latter is the case, she will provide details of further redress procedures.

Yours sincerely,


Karl Falkenberg



EUROPEAN COMMISSION
SECRETARIAT-GENERAL

The Secretary General

Brussels, 19.07.2012
SG.B.5/JMLC/rc - sg.dsg1.b.5(2012) 1033950

Mr Robert LATIMER

by e-mail only: Robert@latimers.com

Subject: Confirmatory application for access to documents under Regulation (EC) No 1049/2001 - GestDem 2012/2114

Dear Mr Latimer,

I refer to your letter of 29 May 2012, in 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 documents¹ (hereafter: Regulation 1049/2001).

1. SCOPE OF YOUR REQUEST

In your confirmatory application, you request a review of the position taken by the Director-General Environment (hereafter: DG ENV) on 22 May 2012, in his reply to your initial application of 22 April 2012. In your initial application, you requested access to the document submitted by the British authorities to the Court of Justice as part of its written pleadings in case C-301/10 *Commission v. United Kingdom*.

This is the document referred to by advocate general Mengozzi in his opinion of 26 January 2012 as the "study carried out in 2010" by the United Kingdom authorities and presented by them as evidence before the Court.

I understand that you are the complainant linked to one of the two cases concerned by this infringement case in so far as it relates to the situation in Whitburn.

2. EXAMINATION AND CONCLUSIONS

Having examined your request, I have come to the conclusion that the initial refusal by DG ENV has to be confirmed for the reasons set out below.

¹ OJ L145, 31.05.2001, p. 43.

The Commission considers that the above-identified document, which was submitted to the Court by the United Kingdom – another party than the Commission - in the proceedings of case C-301/10, does not fall within the scope of Regulation 1049/2001. In fact, Regulation 1049/2001 is based on Article 255 of the Treaty establishing the European Community (TEC), which has been replaced by Article 15 of the Treaty on the Functioning of the European Union (TFEU). Whilst Article 15(3) TFEU extends the right of access to the documents of the Union institutions, bodies, offices and agencies, its fourth paragraph provides that "*The Court of Justice of the European Union [...] shall be subject to this paragraph only when exercising [its] administrative tasks.*"

It is therefore clear, that even after the adaptation of Regulation 1049/2001 to the Treaty of Lisbon, documents submitted to the General Court by applicants, will not fall under the scope of the regime for public access to documents. The Commission itself has received copies of these pleadings only by virtue of its quality as defendant in the above-mentioned cases pursuant to Articles 20 and 23 of the Protocol on the Statute of the Court of Justice and Article 103 of the Rules of Procedure of the Court of Justice.

Furthermore, as the Court has stated in its recent judgment in Joined Cases C-514/07P, C-528/07P and C-532/07P "[...], *the Rules of Procedure of EU Courts provide for procedural documents to be served only on the parties to the proceedings [...]. It is clear, therefore, that neither the Statute of the Court of Justice nor the above Rules of Procedure provide for any third-party right of access to pleadings submitted to the Court in court proceedings*".

If submissions to the Court from other parties than the Commission would be subject of Regulation 1049/2001, this would circumvent the purpose of the rule enshrined in Article 15 TFEU and the Protocol on the Statute of the Court of Justice, which is an integral part of the Treaty.

In the light of the above, the Commission must conclude that, as far as court proceedings are concerned, the scope of Regulation 1049/2001 is limited to the institution's own submissions, whereas submissions lodged by other parties do not fall within its scope. Therefore, access to the requested document has to be refused.

3. MEANS OF REDRESS

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,



Catherine Day