



EUROPEAN COMMISSION
DIRECTORATE-GENERAL FOR HEALTH AND FOOD SAFETY

The Director-General

Brussels,
SANTE/AB

*By registered mail with
acknowledgment of receipt*

Mr Alexander FANTA
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Schönhauser Allee 6-7
10119 Berlin
GERMANY

Advance copy by email:
a.fanta.wkaf6c5fck@fragdenstaat.de

Dear Mr Fanta,

Subject: Your application for access to documents – Ref GestDem 2019/3974

We refer to your email dated 9 July 2019 in which you make a request for access to documents, registered on the 10 July 2019 under the above-mentioned reference number.

We also refer to our clarification request, sent on 17 July 2019, in which we asked you to specify the timeframe for your request.

1. Scope of your request

On the basis of Regulation (EC) No 1049/2001¹, you requested access to:

- ‘- a list of lobby meetings held by the Directorate-General with Google or its intermediaries. The list should include: date, individuals attending + organisational affiliation, the issues discussed;
- minutes and other reports of these meetings;
- all correspondence including attachments (i.e. any emails, correspondence or telephone call notes) between the Directorate-General and Google or any intermediaries representing its interests.
- All documents prepared for the purpose of the meeting and/or exchanged during the course of the meeting’

We take note of the fact that you already replied on 16 July 2019 to a similar request for clarifications concerning another access to documents request you submitted (about

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

interactions with Facebook) registered under the reference number Gestdem No 2019/3975 indicating as relevant timeframe for your request “from November 2014 up to the present”.

In light of these elements, we understand that the scope of your request covers the time from November 2014 to the date of your request.

2. Identification and assessment of the relevant documents

We have identified 58 documents falling under the scope of your request. You will find attached a table listing the identified documents and summarising the outcome of the assessment carried out on the basis of Regulation (EC) No 1049/2001.

Since documents No 2 to 8, 10, 12, 14 to 20, 23, 26 to 28, 30, 31, 33, 34, 35a, 36a, 37a, 38a, 38b, 39a, 39b, 41a, 42a, 42b, 43a, 44a, 55a, 56a and 57 originate from a third party, in accordance with Art. 4(4) of Regulation (EC) 1049/2001, the originators of the documents have been consulted in order to assess whether an exception of Article 4 applies to these documents.

Having examined all the documents under the provisions of Regulation (EC) No 1049/2001 regarding public access to documents and considered the opinion of the third parties, we have come to the conclusion that:

- a) Full access can be granted to document No 6;
- b) Partial access can be granted to documents No 1, 2, 3, 4, 11, 12, 13, 14, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33 and 34, 35, 35a, 36, 36a, 37, 37a, 38, 39, 39a, 39b, 40, 41, 41a, 42, 42a, 42b, 43, 44, 44a, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 55a, 56, 56a and 58. Full disclosure is prevented by one of the exceptions to the right of access laid down in Article 4 of Regulation (EC) No 1049/2001;
- c) No access can be granted to documents No 5, 7, 8, 9, 10, 15, 16, 17, 38a, 38b, 43a and 57 as their disclosure is prevented by the exceptions to the right of access laid down in Article 4 of Regulation (EC) No 1049/2001.

We enclose a copy of the documents under a) and b) above, redacted of the parts which cannot be disclosed as covered by one of the exceptions to the right of access laid down in Article 4 of Regulation (EC) No 1049/2001.

You may reuse the documents requested free of charge for non-commercial and commercial purposes provided that the source is acknowledged and that you do not distort the original meaning or message of the documents. Please note that the Commission does not assume liability stemming from the reuse.

Documents originating from third parties cannot be re-used without the agreement of the originators. They do not reflect the position of the Commission and cannot be quoted as such.

3. Reasons for partial refusal

Protection of the privacy and integrity of the individual - Article 4(1)(b) of Regulation (EC) No 1049/2001

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 EU legislation regarding the protection of personal data.

The applicable legislation in this field is Regulation (EU) 2018/1725².

Non-confidential parts of documents listed under point b) above contain personal data of the Commission staff and the company representatives, in particular their names, functions, telephone and fax numbers, email addresses and signatures.

Indeed, Article 3(1) of Regulation (EU) 2018/1725 provides that personal data ‘means any information relating to an identified or identifiable natural person [...]’. The Court of Justice has specified that any information, which by reason of its content, purpose or effect, is linked to a particular person is to be considered as personal data.³

Please note in this respect that the names, signatures, functions, telephone numbers and/or initials pertaining to staff members of an institution are to be considered personal data.⁴

In its judgment in Case C-28/08 P (Bavarian Lager)⁵, the Court of Justice ruled that when a request is made for access to documents containing personal data, the Data Protection Regulation becomes fully applicable⁶.

Pursuant to Article 9(1)(b) of Regulation (EU) 2018/1725, ‘personal data shall only be transmitted to recipients established in the Union other than Union institutions and bodies if ‘[t]he recipient establishes that it is necessary to have the data transmitted for a specific purpose in the public interest and the controller. Where there is any reason to assume that the data subject’s legitimate interests might be prejudiced, it is proportionate to transmit the personal data for that specific purpose after having demonstrably weighed the various competing interests’.

Only if these conditions are fulfilled and the processing constitutes lawful processing in accordance with the requirements of Article 5 of Regulation (EU) 2018/1725, can the transmission of personal data occur.

² Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC

³ Judgment of the Court of Justice of the European Union of 20 December 2017 in Case C-434/16, *Peter Nowak v Data Protection Commissioner*, request for a preliminary ruling, ECLI:EU:C:2017:994, paragraphs 33 to 35.

⁴ Judgment of the General Court of 19 September 2018 in case [T-39/17](#), *Port de Brest v Commission*, ECLI:EU:T:2018:560, paragraphs 43 to 44.

⁵ Judgment of 29 June 2010 in Case C-28/08 P, *European Commission v The Bavarian Lager Co. Ltd*, EU:C:2010:378, paragraph 59.

⁶ Whereas this judgment specifically related to 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, the principles set out therein are also applicable under the new data protection regime established by Regulation 2018/1725.

According to Article 9(1)(b) of Regulation (EU) 2018/1725, the European Commission has to examine the further conditions for a lawful processing of personal data only if the first condition is fulfilled, namely if the recipient has established that it is necessary to have the data transmitted for a specific purpose in the public interest. It is only in this case that the European Commission has to examine whether there is a reason to assume that the data subject's legitimate interests might be prejudiced and, in the affirmative, establish the proportionality of the transmission of the personal data for that specific purpose after having demonstrably weighed the various competing interests.

In your request, you do not put forward any arguments to establish the necessity to have the data transmitted for a specific purpose in the public interest. Therefore, the European Commission does not have to examine whether there is a reason to assume that the data subject's legitimate interests might be prejudiced.

Notwithstanding the above, please note that there are reasons to assume that the legitimate interests of the data subjects concerned would be prejudiced by disclosure of the personal data reflected in the documents, as there is a real and non-hypothetical risk that public disclosure would harm their privacy and subject them to unsolicited external contacts.

Consequently, we conclude that, pursuant to Article 4(1)(b) of Regulation (EC) No 1049/2001 - no access can be granted to the personal data. The need to obtain access thereto for a purpose in the public interest, has not been substantiated and there is no reason to think that the legitimate interests of the individuals concerned would not be prejudiced by disclosure of the personal data concerned.

As to the handwritten signatures of the official invitations letters, which are biometric data, there is a risk that their disclosure would prejudice the legitimate interests of the persons concerned and cannot be disclosed.

In accordance with the above mentioned, partial access is granted to the requested documents, expunged of personal data.

4. Reasons for non-disclosure

As mentioned above, some of the documents concerned by this request originate from a third party. The third party was consulted in order to assess whether one of the exceptions of Article 4 of Regulation (EC) 1049/2001 applies to these documents.

The third party has objected to the disclosure of **documents listed under point c) of section 2** invoking the exceptions established in Article 4(2) of Regulation (ec) no 1049/2001.

Having examined the above-mentioned documents under the provisions of Regulation (EC) No 1049/2001, and having considered the opinion of the third party, we concluded that the exceptions laid down in Article 4(2), first, second and third indent of Regulation (EC) No 1049/2001 apply to the concerned documents.

Protection of the purpose of inspections, investigations and audits - Article 4(2), third indent, of Regulation (EC) No 1049/2001

As mentioned in the preceding paragraph, the author of the documents objected to the disclosure of some of the documents listed under point c) of section 2 related to ongoing antitrust investigations recalling case-law⁷, according to which the disclosure of such

⁷ Judgment of 28 March 2017, Deutsche Telekom AG v Commission, T-210/15

documents would adversely affect the protection of the purpose of investigations. Therefore, the exception laid down in Article 4(2), third indent, of Regulation (EC) No 1049/2001 shall apply.

Protection of court proceedings and legal advice – Article 4(2), second indent, of Regulation (EC) No 1049/2001

Furthermore, the author of the documents objected to the disclosure of some of the above-mentioned documents by referring to the existence of ongoing court proceedings. Indeed, the disclosure of some of the above-mentioned documents would undermine the protection of court proceedings. The exception laid down in Article 4(2), second indent, of Regulation (EC) No 1049/2001, shall therefore apply.

Protection of the commercial interests of a legal person - Article 4(2), first indent, of Regulation (EC) No 1049/2001

Finally and in light of the consultation with the originators of the documents, the Commission takes the position that the documents in question contain commercial information pertaining to the company, disclosure of which could undermine the protection of the company's commercial interests. Therefore, the exception laid down in Article 4(2), second indent, of Regulation (EC) No 1049/2001 shall apply.

Partial access

We have considered whether partial access could be granted to the documents listed under point c) of section 2 in accordance with Article 4(6) of the Regulation. However, it follows from the assessment made above that these documents are entirely covered by the exceptions above.

5. Overriding public interest

The exceptions to the right of access provided for in Article 4(2) of Regulation (EC) No 1049/2001 must be waived if there is an overriding public interest in disclosing the requested document. In your application, you did not submit any grounds concerning a public interest on the basis of which the interests protected in Regulation (EC) No 1049/2001 would have to be overridden, and we could not identify any such ground either. In these circumstances, we have to conclude that there is no evidence of an overriding public interest in disclosure, in the sense of Regulation (EC) No 1049/2001.

6. Means of redress

In accordance with Article 7(2) of Regulation (EC) No 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, Document Management & Access to Documents (SG.C.1)
BERL 7/076
B-1049 Brussels
or by email to: sg-acc-doc@ec.europa.eu

Yours sincerely,

Anne Bucher

List of documents;

Documents that can be partially disclosed listed under Section 2 (only enclosed to the electronic version of this letter).