

To: Heiko Roth - [ask+request-10667-84ef2c9f@asktheeu.org](mailto:ask+request-10667-84ef2c9f@asktheeu.org)

Sent by email only

Brussels, 12 May 2022

**Subject: Your application for access to documents – Ref No 2022-32**

Dear Mr. Roth,

We refer to your e-mail dated 29/01/2022 in which you made a request for access to documents. As you made a large number of requests during a short period, you were informed by email on 17, as well as on 26 February 2022, that these requests would be dealt with consecutively, in the order received (as you have not indicated any other preference), as the EDPB Secretariat does not have the resources to handle all of your requests at the same time (also taking into account other requests for access to documents submitted by other applicants), within the legal deadlines foreseen in Regulation 1049/2001.

This specific one was registered on 20/04/2022 under reference number 2022/32.

You requested access to documents containing the following information:

*"1 Context of the Request*

*In an opinion of a German data protection supervisory authority, reference is made to the following circumstance (free translation from German):*

*"The interpretation of Art. 48 of the GDPR is the responsibility of the the International Data Traffic Working Group or the Security Working Group, insofar as topics are discussed there that fall within the remit of the the responsibility of the BTLE subgroup. (The BTLE subgroup has developed corresponding guidelines on Art. 48 of the GDPR with the participation of the International Transfer Subgroup in its work plan). "*

Quelle: [https://fragdenstaat.de/anfrage/gutachten-und-andere-hintergrundinformationen-zu-datenschutz-ist-chefsache-leitfaden-fur-kleine-und-mittlere-unternehmen/664602/anhang/anlage-2-330-441\\_geschwaerzt.pdf](https://fragdenstaat.de/anfrage/gutachten-und-andere-hintergrundinformationen-zu-datenschutz-ist-chefsache-leitfaden-fur-kleine-und-mittlere-unternehmen/664602/anhang/anlage-2-330-441_geschwaerzt.pdf), p. 2.

*2 My Request*

*2.1 All documents (e.g. statements, expert opinions, press reports, guidelines) related to the development of the above mentioned Guidelines on Art. 48 GDPR.*

*2.2 An indication of what the current progress is in the development of the above-mentioned Guidelines on Art. 48 GDPR."*

You were informed by email on 20/04/2022 that as regards point 2.2 of your request ("An indication of what the current progress is in the development of the above-mentioned Guidelines on Art. 48 GDPR") this has been categorised as a request for information, which falls under a different scope than that for requests of access to documents. As such, it was transferred to our team dealing with requests for information, who have already provided you with a reply.

### **Assessment**

We have identified 2 documents that fall within the scope of your request.

To facilitate our assessment and your consultation of the files, the titles of each file has been adequately numbered. We will refer to the numbers of each single file in our assessment below.

### **1. Full non-disclosure**

Having examined the document requested under the provisions of Regulation (EC) No 1049/2001 regarding public access to documents, we have come to the conclusion that the document mentioned below cannot be disclosed. Its disclosure is prevented by the following exception to the right of access laid down in Article 4 of the Regulation, namely:

**1. Exception 4(1)(b) ("Privacy and integrity of the individual").** The document to which you request access contain personal data, in particular names of data subjects. 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) 2018/1725 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. When access is requested to documents containing personal data, Regulation 2018/1725 becomes fully applicable<sup>1</sup>. According to Article 9(1)(b) of this Regulation, personal data shall only be transferred to recipients if they establish the necessity of having the data transferred to them for a specific purpose in the public interest and the controller considers it proportionate. We consider that, with the information available, the necessity of disclosing the aforementioned personal data to you has not been established and/or that it cannot be assumed that such disclosure would not prejudice the legitimate rights of the persons concerned.

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<sup>1</sup> Judgment of the Court of Justice of the European Union of 29 June 2010 in Case C-28/08 P, *Commission/The Bavarian Lager Co. Ltd*, ECR 2010 I-06055. This case concerns the previous 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.



This exception applies to the following documents:

Document: 2

**2. Exception 4(3), 1st paragraph.** The disclosure of this document would seriously undermine the decision-making process of the EDPB as it relates to a matter where decisions have not been taken by the Board and contain discussions, views and/or opinions of the EDPB members. The disclosure of said discussions, views and/or opinions would prevent the involved parties from contributing to internal discussions in an unrestrained and uncensored manner, thus seriously impairing the quality of the discussions and, ultimately, of the decision-making process of the EDPB. Furthermore, due to the ongoing discussions regarding this document, its disclosure can lead the public to consider it, and the opinions they contain, as final, which is bound to create confusion about any final views adopted by the Board as a whole. The document concerned is a draft table of contents for the draft Article 48 guidelines which is still under discussion at expert subgroup level. The document is therefore still subject to change.

This exception applies to the following document:

Document: 2

Please note that the application of the exception under Article 4 (3) 1st paragraph is the one leading to the full non-disclosure of documents also covered by the exception under Article 4 (1) (b). The application of Article 4 (1) (b) alone would have led to a partial disclosure of those documents (redacting all the personal data).

We have considered whether partial access could be granted to the documents requested. However, the document(s) are either entirely covered by the exception(s), or the expungement of the information falling under the exception(s) is so significant that it renders the documents irrelevant, which is why they are not provided.

Finally, we have examined whether there could be an overriding public interest in disclosing these documents, but we have not been able to identify such an interest. For these reasons, access to these documents is denied.

## **2. Partial disclosure**

Having examined the document requested under the provisions of Regulation (EC) No 1049/2001 regarding public access to documents, alongside the scope of your request, we have come to the conclusion that full disclosure of the document mentioned below cannot be granted, as some parts are out of scope of your request. The part in scope of your request has been fully disclosed.

Please note that this document has already been partially disclosed in the context of a previous access to documents request. You are therefore receiving the version of this document as it was previously disclosed. This may mean that some of the unredacted information in this document may not be relevant to your specific request.

Document which is partially disclosed:

Document: 1

Secretariat of the European Data Protection Board

rue Wiertz, 60  
1047 Brussels

## Disclaimer


You may reuse the document 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 document/documents. Please note that neither the EDPB, nor its Secretariat assume liability stemming from the reuse.

## Means of redress

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

Such a confirmatory application should be addressed within 15 working days upon receipt of this letter to the following email address: [edpb@edpb.europa.eu](mailto:edpb@edpb.europa.eu). Please make reference to the case number of your request in the subject.

Yours sincerely,



Ventsislav Karadjov  
Vice-Chair of the EDPB