



EUROPEAN COMMISSION
DIRECTORATE-GENERAL FOR COMMUNICATIONS NETWORKS, CONTENT AND
TECHNOLOGY

The Director-General

Brussels, 21st December 2022
CNECT.R.4.001

Mr Maximilian Henning
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9726 CW Groningen
Netherlands

Only per email:
[ask+request-11901-
2c03568e@asktheeu.org](mailto:ask+request-11901-2c03568e@asktheeu.org)

Subject: Your application for access to documents – EASE 2022/5600

Dear Mr Henning,

We refer to your email of 30 September 2022 in which you make a request for access to documents pursuant to Regulation (EC) No 1049/2001 regarding public access to European Parliament, Council and Commission documents (hereinafter ‘Regulation 1049/2001’), registered on 3 October 2022 under the above-mentioned reference number. We also refer to our email, dated 24 October 2022, our reference Ares(2022)7367939, whereby we informed you that the time limit for handling your application was extended by 15 working days pursuant to Article 7(3) Regulation 1049/2001.

We apologize for the delay in our response.

1. SCOPE OF YOUR APPLICATION

Your application reads as follows:

‘Under the right of access to documents in the EU treaties, as developed in Regulation 1049/2001, I am requesting documents which contain the following information:

All minutes, agendas, summaries, notes or memos issued before or after; documents prepared for, issued in preparation for, or exchanged during; as well as all correspondence including attachments by either of the meeting parties related to the 07.09.2022 meeting between Filomena Chirico and Spotify’

2. DOCUMENTS FALLING WITHIN THE SCOPE OF THE REQUEST

The following documents have been identified as falling within the scope of your request:

- Back to Office Report (BTO) of meeting between Spotify and CAB Breton, 7 September 2022, Ares(2022)6210683, (**'Document 1'**);
- Briefing note of meeting between Commissioner Breton and Spotify, 7 September 2022, Ares(2022)6532296, (**'Document 2'**);
- Email, Meeting 7 September, dated 21 September 2022, Ares(2022)6541171, (**'Document 3'**);
- Letter from Spotify, attachment to the email of 21 September 2022, Ares(2022)6541171, (**'Document 4'**);
- Email, Meeting request with Commissioner Breton, dated 9 May 2022, (**'Document 5'**);
- Letter from Spotify, attachment to the email of 9 May 2022, Ares(2022)3542510, (**'Document 6'**).

3. ASSESSMENT UNDER REGULATION 1049/2001

Following an examination of the identified documents under the provisions of Regulation 1049/2001, we have arrived at the conclusion that partial access can be granted to two documents and access must be refused to four documents as their full disclosure is prevented by exceptions to the right of access laid down in Article 4 of Regulation 1049/2001.

A. Partial disclosure

(i) *Protection of privacy and integrity of individuals*

Full disclosure of Documents 1 and 2 is prevented by the exception concerning the protection of privacy and integrity of the individual outlined in Article 4(1)(b) Regulation 1049/2001, since they contain the following personal data:

- Names and contact details of Commission staff members not pertaining to the senior management;
- Names, functions, CV and contact details of other natural persons.

Article 9(1)(b) of the Data Protection Regulation¹ does not allow the transmission of these personal data, except if you prove that it is necessary to have the data transmitted to you for a specific purpose in the public interest and where there is no reason to assume that the legitimate interests of the data subject might be prejudiced. In your request, you do not express any particular interest to have access to these personal data nor do you put forward any arguments to establish the necessity to have the data transmitted for a specific purpose in the public interest.

¹ 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, OJ L 295, 21.11.2018, p. 39.

Consequently, we conclude that, pursuant to Article 4(1)(b) Regulation 1049/2001, access cannot be granted to the personal data contained in the requested documents, as 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.

(ii) *Protection of commercial interest*

Article 4(2) first indent of Regulation 1049/2001 provides that *‘the institutions shall refuse access to a document where disclosure would undermine the protection of commercial interests of a natural or legal person, including intellectual property, unless there is an overriding public interest in disclosure.’*

This provision must be interpreted in light of Article 339 of the Treaty of the Functioning of the European Union (TFEU), which requires staff members of the EU institutions to refrain from disclosing information of the kind covered by the obligation of professional secrecy, in particular information about undertakings, their business relations or their cost components.

Parts of Documents 1 and 2 contain information relating to the concerned legal entity’s activities, views, positions and other commercial interests, including intellectual property. There is a real and non-hypothetical risk that disclosure of these parts of the above-mentioned documents could undermine and seriously affect the commercial interests of the company at question.

Consequently, the above-mentioned parts have been blanked out.

(iii) *Protection of the decision-making process*

The first subparagraph of Article 4(3) of Regulation 1049/2001 provides that *‘[a]ccess to a document, drawn up by an institution for internal use or received by an institution, which relates to a matter where the decision has not been taken by the institution, shall be refused if disclosure of the document would seriously undermine the institution’s decision-making process, unless there is an overriding public interest in disclosure.’*

Parts of Document 2 are covered by the abovementioned exception as it contains preliminary views and reflections of the Commission services regarding the Digital Services Act package and the Artificial Intelligence Act. Document 2 was drawn up for internal use and the abovementioned parts are subject to ongoing discussions and deliberations.

The Commission services must be free to explore all possible options with regard to ongoing initiatives and policy processes. The risk of disclosing information regarding the Commission services’ preliminary views would deter the Commission from freely expressing its views and conducting frank internal discussions. Speculations and misinterpretations of the public on the views and reflections put forward in these ongoing decision-making processes would affect the exploration of different policy options and unduly restrict the Commission’s internal space to think, exposing the Commission and the co-legislators to external pressure during the ongoing legislative decision-making processes. The risk of disclosure of such information before the adoption of the act would therefore seriously undermine the ongoing decision-making processes. That risk is also reasonably foreseeable and not purely hypothetical.

Consequently, the above-mentioned parts of Document 2 have been blanked out.

B. Non-disclosure

We regret to inform you that access to Documents 3-6 cannot be granted. Disclosure of the documents is prevented by the exception concerning protection of commercial interest of a natural or legal person, including intellectual property, outlined in Article 4(2) first incident of Regulation 1049/2001, for reasons set out in Section A(ii).

Documents 3-6 originate with a third party. We could not obtain the views of the concerned third party about a potential disclosure within a given timeframe. After assessment, we have concluded that a disclosure of Documents 3-6 could undermine the commercial interest of the third party.

The documents contain sensitive information related to the third party' activities, views and positions. There is a real and non-hypothetical risk that disclosure of these documents would undermine and seriously affect the commercial interests of this third party.

In addition, parts of Documents 3-6 contain personal data, in particular the names and functions of Commission staff members not pertaining to the senior management as well as the names, functions, contact details, handwritten signatures of other natural persons. Thus, their disclosure is prevented by the exception of Article 4(1)(b) of Regulation 1049/2001 for the reasons set out in Section A (iii). Moreover, part of Document 7 fall outside the scope of the request.

We have considered whether partial access could be granted to the documents to which access is refused. However, partial access is not possible considering that these documents are covered in their entirety by the abovementioned exceptions of Article 4 of Regulation 1049/2001.

In light of the foregoing considerations, access to Documents 3-6 must be refused completely.

4. OVERRIDING PUBLIC INTEREST IN DISCLOSURE

The exceptions laid down in Articles 4(2) and 4(3) of Regulation 1049/2001 apply, unless there is an overriding public interest in the disclosure of documents. Such an interest must, firstly, be a public interest and, secondly, outweigh the harm caused by disclosure. We have examined whether there could be an overriding public interest in the disclosure of the aforementioned documents but we have not been able to identify such an interest.

5. REUSE OF DOCUMENTS

You may reuse public documents which have been produced by the European Commission or by public and private entities on its behalf based on the [Commission Decision on the reuse of the Commission documents](#). You may reuse Documents 1 and 2 originating from the Commission free of charge and 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.

Please note that Documents 1 and 2 were drawn up for internal use under the responsibility of the relevant services of DG CONNECT. They solely reflect the service's interpretation of the interventions made and do not set out any official position of the third parties to which the abovementioned documents refer. They do not reflect the position of the Commission and cannot be quoted as such

6. CONFIRMATORY APPLICATION

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 Secretariat-General of the Commission at the following address:

European Commission
Secretariat-General
Transparency, Document Management & Access to Documents (SG.C.1)
BERL 7/076
B-1049 Bruxelles or by email to: sg-acc-doc@ec.europa.eu

Yours faithfully,

Roberto Viola

Enclosure: (2)