



EUROPEAN COMMISSION

Directorate-General for Internal Market, Industry, Entrepreneurship and SMEs

Director-General

Brussels, 18 OCT. 2016
GROW/A1/ALR/ts-grow.a.1(2016)6082995

By registered letter with acknowledgment of receipt

Nina Katzemich
LobbyControl e. V.
Am Justizzentrum 7
50939 Köln
Germany

Advance copy by email: ask+request-3119-ff6a7fec@asktheeu.org

Dear Mr Katzemich,

Subject: Your application for access to documents – Ref GestDem No 2016/3898

We refer to your e-mail dated 11/07/2016, in which you make a request for access to documents, which was registered on 14/07/2016 under the above mentioned reference number, after we received your reply to our request for postal address. We apologise for the delay in responding as it has taken us much longer than anticipated to identify relevant documents and assess them.

You requested access to:

"all communication, specifically all emails and written communication with or concerning any of the law firms listed below, in the past year:

Bird & Bird

Clifford Chance

Gibson Dunn

Hogan Lovells

K&L Gates

Keller and Heckman

Sidley Austin

Van Bael & Bellis

White & Case

The request refers to the Commissioner, her Cabinet, Director General and all other DG Grow officials"

Please note that, taking into account the timeframe of your application ('in the past year'), for the purpose of this request we have considered that it covers all communications between 11/07/2015 and 11/07/2016 (date of your request).

Having examined the documents requested under the provisions of Regulation (EC) No 1049/2001 regarding public access to documents, I have come to the conclusion that they may be partially disclosed (see enclosed the documents list).

As regards documents 1 to 7 of the list, since these documents and their annexes originate from a third party, the originator of the documents has been consulted and has objected to disclosure of the documents justifying its position as follows:

- the set of documents is subject to a general presumption of confidentiality as it concerns the pre-litigation stage of decisions within the meaning of article 8 of Directive 93/42/EEC;
- disclosure would undermine the purpose of the ongoing investigations and discussions with the National Competent Authorities;
- disclosure would undermine the client's commercial interests;
- disclosure would infringe the client's right to confidentiality and business secrecy.

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 party, I regret to inform you that access cannot be granted to these documents, as disclosure is prevented by exceptions to the right of access laid down in Article 4.2 first and third indent of this Regulation, since the documents which you seek to obtain:

- contain commercially sensitive business information of the company that submitted them;
- relate to an ongoing investigation regarding a possible infringement of EU law;

Access to documents 17 to 21 is denied because of ongoing infringement proceedings, whereas partial access is granted to documents 22-25 for which the third party has been consulted and has objected to disclosure of names of individuals and of the law firm for the following reasons: Art. 4(1) b (personal data protection), Art. 4(2) first indent (protection of commercial interests), Art. 4(2) second indent (protection of legal advice).

Access is also denied to documents 27 to 35 for the purposes of the protection of legal advice (Art. 4(2) second indent), since the law firm has disclosed information that is useful for the Commission services, but that could result in clients no longer using the services provided by the law firm. For the same reasons, only partial access is granted to document 26 of the list.

Access to documents 8 to 16 and 36 to 39 has been granted, subject to the redaction of personal data, namely names and contact details of individuals.

When access to documents is requested to documents containing personal data, Regulation (EC) No 45/2001 becomes fully applicable¹.

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 if there is no reason to assume that the legitimate rights of the persons concerned might be prejudiced.

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. Therefore, we are disclosing these documents with this personal data expunged.

The possibility of granting partial access in accordance with Article 4(6) of Regulation (EC) No 1049/2001 has been examined. I inform you that granting partial access to the requested documents has not been considered to be possible since the document in question is covered in its entirety by the exceptions mentioned above.

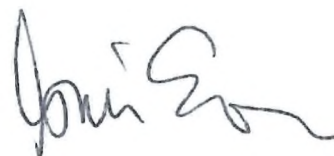
According to Regulation (EC) No 1049/2001, an exception to the right of access must be waived if there is an overriding public interest in disclosing the document concerned, which has to outweigh the interest protected by the exception to the right of access. In the present case, the services of the Commission have reached the conclusion that there appears to be no overriding public interest in its disclosure in the sense of the Regulation.

Moreover, I would like to inform you that 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.

In accordance with Article 7(2) of Regulation 1049/2001, you are entitled to make a confirmatory application requesting the Commission to review its decision to partially disclose or not to disclose documentation requested. 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 5/282
B-1049 Bruxelles
or by email to: sg-acc-doc@ec.europa.eu

Yours sincerely,



Lowri Evans

¹ Judgement of the Court of Justice of the EU of 29 June 2010 in case 28/28 P, Commission/The Bavarian Lager Co. Ltd, ECR 2010 I-06055