



EUROPEAN COMMISSION
DIRECTORATE-GENERAL JUSTICE and CONSUMERS

Director-General

Brussels,
JUST/C3/FS/(2017) 1971364

**By registered letter with
acknowledgment of receipt**

Mr Paul-Olivier Dehaye
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Switzerland

Advance copy by email:
ask+request-3985-cf44163c@asktheeu.org

Subject: Your application for access to documents - Ref GestDem No 2017/0950

Dear Sir,

We refer to your e-mail dated 11 February 2017, registered under the above mentioned reference number, in which you make a request for access to documents.

Your application for access to any document the Article 29 Working Party holds concerning the data portability right in the upcoming General Data Protection Regulation dated between May 2016 and 21 November 2016, and copies of any documented exchange between the Article 29 Working Party and Swiss data protection Authorities on the topic of data portability, dated between May 2016 and 11 February 2017, concerns the following documents:

Document 1 - Data portability draft v4 dated 10 May 2016

Document 2 – Subgroup TO-DO list 01 dated 18 May 2016

Document 3 – Subgroup TO-DO list 02 dated 18 May 2016

Document 4 - Data portability information note 106th plenary meeting

Document 5 - Subgroup minutes dated 20 June 2016

Document 6 - Subgroup agenda dated 23 June 2016

Document 7 - Data portability information note 107th plenary meeting

Document 8 - Draft minutes 107th plenary meeting

Document 9 - Subgroup minutes dated 04 July 2016

Document 10 - Data portability draft v6 dated 11 October 2016

Document 11 - Data portability draft linguistic suggestions dated 03 November 2016

Document 12 - Data portability draft track changes dated 18 November 2016

Document 13 - Data portability draft clean dated 18 November 2016

Document 14 - Email dated 10 May 2016

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 some of the documents may be disclosed in full, and some of the documents may be disclosed partially. Parts of the documents partially disclosed have been expunged as disclosure of such parts is prevented by exceptions to the right of access laid down in Article 4 of this Regulation.

Furthermore, some of the documents to which you have requested access contain personal data.

Documents 4, 7, 8, 10, 11, 12 and 13 can be disclosed in full, and are attached herewith.

Documents 1, 2, 3, 5, 6, 9 and 14 can be partially disclosed, and are attached herewith, redacted as necessary.

The expunged parts of **Document 1** consist of personal data, in particular, information identifying individuals. Disclosure of these parts would undermine the protection of the privacy of the individuals concerned.

The expunged parts in **Documents 2, 3, 5, 6, 9 and 14** consist of personal data, in particular, data which could identify an individual, disclosure of which would undermine the protection of the privacy of the individuals concerned, and parts which fall outside the scope of the application for access.

Pursuant to Article 4(3), 1st paragraph, of Regulation (EC) No 1049/2001, access 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, has to be refused if its disclosure would undermine the institution's decision making process, unless there is an overriding public interest in disclosure.

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 Community legislation regarding the protection of personal data. The applicable legislation in this field is 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 data¹.

When access is requested to documents containing personal data, Regulation (EC) No 45/2001 becomes fully applicable². According to Article 8(b) of this Regulation, personal

¹ OJ L 8 of 12.1.2001, p. 1

² Judgment of the Court of Justice of the EU of 29 June 2010 in case 28/08 P, Commission/The Bavarian Lager Co. Ltd, ECR 2010 I-06055.

data shall only be transferred to recipients if they establish the necessity of having the data transferred to them and 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 that it cannot be assumed that such disclosure would not prejudice the legitimate rights of the persons concerned. Therefore, we are disclosing the documents requested expunged from this personal data.

If you wish to receive these personal data, we invite you to provide us with arguments showing the need for having these personal data transferred to you and the absence of adverse effects to the legitimate rights of the persons whose personal data should be disclosed.

Pursuant to Article 4(2) (b) of Regulation (EC) No 1049/2001, access to a document has to be refused if its disclosure would undermine the protection, *inter alia*, of court proceedings and legal advice, and the purpose of inspections, investigations and audits.

The exceptions laid down in Article 4(1) and 4(2) of Regulation 1049/2001 apply unless there is an overriding public interest in disclosure of the document/documents.

Your application for access to these documents does not, on the face of it, disclose any pressing public interest.

If you disagree with the assessment that the expunged data are personal data which can only be disclosed if such disclosure is legitimate under the rules of personal data protection, you are entitled, in accordance with Article 7(2) of Regulation 1049/2001, to make a confirmatory application requesting the Commission to review this position.

As regards parts of the documents expunged for reasons other than personal data, 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-4
BERL 5/327
B-1049 Bruxelles
or by email to: sg-acc-doc@ec.europa.eu

Yours sincerely,



Tiina ASTOLA