



Ms Rachael TACKETT

by e-mail only:

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Brussels, 03 April 2017

SLx/ALS/sn/D(2017)0770 C 2017-0202

Please use [edps@edps.europa.eu](mailto:edps@edps.europa.eu) for all correspondence

**Subject: Your request for access to documents under Regulation (EC) 1049/2001**

Dear Ms Tackett,

On 18 February 2017, you sent an access to documents request to the EDPS on the basis of Regulation (EC) No 1049/2001 ('the Regulation'). Your request concerns all reports, correspondence and memorandum on the Privacy Shield framework from 1 October 2015 to the present.

On 28 February 2017 we sent you links to the documents identified as publicly available. By email of 10 March 2017 we informed you that, due to the large number of documents and to the fact that several third parties had been consulted, the deadline was extended by 15 working days on the basis of Article 7(3) of the Regulation (3 April 2017).

As regards the documents originating from third parties (Article 29 Working Party, the European Commission and two external contacts), the EDPS consulted them in accordance with Article 4(4) of Regulation (EC) No 1049/2001. This was done with a view to assess whether any of the exceptions in Article 4(1), 4(2) or 4(3) would be applicable.<sup>1</sup>

Concerning the subject matter of your request, we have identified documents relating to following subjects/areas, which will be elaborated further below:

- EDPS Opinion on the Privacy Shield draft adequacy decision (documents No. 1-4)
- Ongoing legal challenges to the Commission decision on Privacy Shield (document No. 5)
- External correspondence (documents No. 6-11)
- Article 29 Working Party documents (documents No. 12-16).

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<sup>1</sup>4(1) - the institutions shall refuse access to a document where disclosure would undermine the protection of (a) the public interest as regards public security, defence and military matters, international relations, the financial, monetary or economic policy of the Union or a Member State; or (b) privacy and the integrity of the individual.  
4(2) - documents where disclosure would undermine the protection of commercial interests of a natural or legal person, including intellectual property, court proceedings and legal advice, the purpose of inspections, investigations and audits, unless there is an overriding public interest in disclosure.  
4(3) - internal decision-making for on-going procedures and space to think.

We have identified the following documents falling within the scope of your request:

1. Drafts of EDPS Opinion 4/2016
2. Outline
3. Letters to the European Parliament, the European Commission and the Council of the European Union
4. Internal Memo
5. Internal correspondence + memo
6. Email 7 April 2016 (attachment sent to you 28 February 2017)
7. Email correspondence 19 December 2016-10 January 2017
8. Email 12 January 2017 + attachment
9. Email 18 January 2017 + attachment
10. Email 9 February 2017
11. Letter DG JUST with the draft Commission Implementing decision
12. Minutes of the 104<sup>th</sup> Article 29 Working Party
13. Minutes of the 106<sup>th</sup> Article 29 Working Party
14. Minutes of the 107<sup>th</sup> Article 29 Working Party
15. Info-notes for Article 29 WP plenary on EU-U.S. Privacy Shield
16. Correspondence between the U.S. Department of State and Article 29 Working Party

## **Analysis**

### *Documents originating from EDPS*

The EDPS has decided to grant access to documents 1-4 with the exception of names and initials of the EDPS staff (below Head of Unit/Sector) and personal information of external persons. The decision to partially grant access to the document is based on Article 4(1)(b) of Regulation (EC) No 1049/2001. According to this provision, access to a document is refused where disclosure would undermine the privacy and integrity of the individual, in particular in accordance with Community legislation regarding the protection of personal data, including Article 8 of Regulation (EC) No 45/2001.

If you would like to request access to the redacted personal data please provide the EDPS with a legitimate justification or compelling argument to demonstrate the necessity for the personal data to be disclosed<sup>2</sup> (see below for information about the confirmatory application).

Regarding document 5, we regret to inform you that access is denied in line with Article 4(2) second indent. According to this article, access is refused if disclosure would undermine court proceedings and *legal advice*. EDPS considers that the disclosure of the documents would undermine the EDPS possibility to internally assess and give frank, objective and comprehensive advice on a legal matter.

### *Documents originating from third parties*

Since documents 6-16 were originating from third parties, we have consulted them in accordance with Article 4(4) of Regulation 1049/2001 with the following outcome:

In relation to documents 6-10, access is granted with the exception of names and email addresses. The attachments of document 8 and 9 are publicly available on the following links:  
<https://www.dni.gov/files/documents/icotr/RawSIGINTGuidelines-as-approved-redacted.pdf>  
<https://www.cia.gov/about-cia/privacy-and-civil-liberties/CIA-AG-Guidelines-Signed.pdf>

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<sup>2</sup> In accordance with Article 8(b) of Regulation 45/2001 as interpreted by the Court of Justice in Case C-28/08 P *Bavarian Lager*.

Regarding document 11, DG JUST have informed us that the draft implementing decision is publicly available on the following link:

[http://ec.europa.eu/justice/data-protection/files/privacy-shield-adequacy-decision\\_en.pdf](http://ec.europa.eu/justice/data-protection/files/privacy-shield-adequacy-decision_en.pdf)

Concerning documents 12-14, access is granted to those parts of the minutes covered by the scope of your request.

As regards documents 15-16, the Secretariat of Article 29 Working Party have not been able to provide their answer within the deadline of this request. The EDPS will therefore get back to you in relation to these documents when we receive their reply.

Please note that pursuant to Article 7(2) of Regulation 1049/2001, you may make a confirmatory application asking the EDPS to reconsider his position as regards to the refusal or partial refusal of your request. Such a confirmatory application should be addressed within 15 working days upon receipt of this letter to the EDPS general e-mail: [edps@edps.europa.eu](mailto:edps@edps.europa.eu)

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'S. Louveaux', is positioned above the printed name.

Sophie LOUVEAUX  
Head of Unit Policy & Consultation