



## EUROPEAN COMMISSION

Directorate-General for Internal Market, Industry, Entrepreneurship and SMEs  
Innovation and Advanced Manufacturing  
**Intellectual Property and Fight Against Counterfeiting**

Head of Unit

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Dear Ms Tansey,

**Subject: Your application for access to documents – Ref GestDem N° 2018/5803**

We refer to your e-mail of 12 October 2018 in which you make a request for access to documents, registered on 6 November 2018 under the above mentioned reference number.

You request access to *"a list of meetings of DG GROW officials and/or representatives (including the Commissioner and her Cabinet) and representatives of individual companies and/or industry federations (such as, but not limited to, EFPIA and/or its member companies); consultancies or law firms acting for companies/industry groups; and/or, patients groups, at which a manufacturing waiver for Supplementary Protection Certificates (SPCs) was discussed (since June 2016);*

*(ii) minutes and other reports of these meetings;*

*(iii) all correspondence (including emails) between DG GROW officials and/or representatives (including the Commissioner and her Cabinet) and representatives of companies and/or industry associations (including consultancies/law firms acting on their behalf), or patients groups, in which a manufacturing waiver for Supplementary Protection Certificates (SPCs) was discussed (since June 2016)."*

Please note that we have identified 29 that match the scope of your request. These documents are listed in the document register enclosed with this letter.

Some of the documents identified were received by the Commission from third parties. They are disclosed for information only and cannot be re-used without the agreement of the

originator. In addition, please note that the documents do not reflect the position of the Commission and cannot be quoted as such.

In addition, please note that some of the documents identified contain personal data that need to be redacted.

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 European Union legislation regarding the protection of personal data.

The applicable legislation in this field is Regulation (EC) No 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 ('Regulation 2018/1725').

Indeed, Article 3(1) of Regulation 2018/1725 provides that personal data 'means any information relating to an identified or identifiable natural person [...]'. The Court of Justice has specified that any information, which by reason of its content, purpose or effect, is linked to a particular person is to be considered as personal data.<sup>1</sup>

Please note in this respect that the names, signatures, functions, telephone numbers and/or initials pertaining to staff members of an institution are to be considered personal data.

In its judgment in Case C-28/08 P (Bavarian Lager) , the Court of Justice ruled that when a request is made for access to documents containing personal data, the Data Protection Regulation becomes fully applicable

Pursuant to Article 9(1)(b) of Regulation 2018/1725, 'personal data shall only be transmitted to recipients established in the Union other than Union institutions and bodies if '[t]he recipient establishes that it is necessary to have the data transmitted for a specific purpose in the public interest and the controller, where there is any reason to assume that the data subject's legitimate interests might be prejudiced, establishes that it is proportionate to transmit the personal data for that specific purpose after having demonstrably weighed the various competing interests'.

Only if these conditions are fulfilled and the processing constitutes lawful processing in accordance with the requirements of Article 5 of Regulation 2018/1725, can the transmission of personal data occur.

According to Article 9(1)(b) of Regulation 2018/1725, the European Commission has to examine the further conditions for a lawful processing of personal data only if the first condition is fulfilled, namely if the recipient has established that it is necessary to have the data transmitted for a specific purpose in the public interest. It is only in this case that the European Commission has to examine whether there is a reason to assume that the data subject's legitimate interests might be prejudiced and, in the affirmative, establish the proportionality of the transmission of the personal data for that specific purpose after having demonstrably weighed the various competing interests.

In your request, you do not put forward any arguments to establish the necessity to have the data transmitted for a specific purpose in the public interest. Therefore, the European Commission does not have to examine whether there is a reason to assume that the data subject's legitimate interests might be prejudiced.

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<sup>1</sup> Judgment of the Court of Justice of the European Union of 20 December 2017 in Case C-434/16, *Peter Nowak v Data Protection Commissioner*, request for a preliminary ruling, paragraphs 33-35, [ECLI:EU:C:2017:994](https://eur-lex.europa.eu/eli/jud_2017/994).

Notwithstanding the above, please note that there are reasons to assume that the legitimate interests of the data subjects concerned would be prejudiced by disclosure of the personal data reflected in the documents, as there is a real and non-hypothetical risk that such public disclosure would harm their privacy and subject them to unsolicited external contacts.

Consequently, I conclude that, pursuant to Article 4(1)(b) of Regulation 1049/2001, access cannot be granted to the personal data, 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.

In case you would disagree with the assessment that the redacted data are personal data which can only be disclosed if such disclosure is legitimate under the applicable rules on the protection of personal data, you are entitled, in accordance with Article 7(2) of Regulation 1049/2001, to submit 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

Unit C.1. 'Transparency, Document Management and Access to Documents'

BERL 7/076

B-1049 Bruxelles, or by email to: [sg-acc-doc@ec.europa.eu](mailto:sg-acc-doc@ec.europa.eu)

Yours faithfully,

Amaryllis Verhoeven  
Head of Unit