



EUROPEAN COMMISSION

Directorate-General for Communications Networks, Content and Technology

Resources and Support
Compliance and Planning
Head of Unit

Brussels, 25th January 2019

CONNECT/R4

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Advance copy via email:

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REGISTERED LETTER WITH ACKNOWLEDGEMENT OF RECEIPT

Subject: Your application for access to documents- Ref GestDem 2018/6654

Dear Mr Fanta,

We refer to your e-mail, dated 10/12/2018, in which you make a request for access to documents pursuant to Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents ('Regulation 1049/2001'), registered on 11/12/2018 under the above-mentioned reference number. We also refer to our holding reply dated 11/01/2019, our reference Ares(2019)154514, whereby we informed you that the time limit for handling your application was extended by 15 working days pursuant to Article 7(3) of Regulation 1049/2001.

1. SCOPE OF YOUR APPLICATION

By your application you requested access to:

''documents which contain the following information:

- *minutes, correspondence and other documents relating to the meeting of Vivian Loonela with Huawei Technologies on September 22, 2017*
- *minutes, correspondence and other documents relating to the meeting of Carl-Christian Buhr with Huawei Technologies on September 11, 2017*

- minutes, correspondence and other documents relating to the meeting of Vice-President Andrus Ansip with Huawei Technologies on June 6, 2017''

Please note that your request has been attributed to the Secretariat-General (SG) and to Directorate-General for Communications Networks, Content and Technology (DG CNECT), as follows:

- **GestDem 2018/6618: SG**

- minutes, correspondence and other documents relating to the meeting of Vivian Loonela with Huawei Technologies on September 22, 2017

- minutes, correspondence and other documents relating to the meeting of Vice-President Andrus Ansip with Huawei Technologies on June 6, 2017

- **GestDem 2018/6654: DG CNECT**

- minutes, correspondence and other documents relating to the meeting of Carl-Christian Buhr with Huawei Technologies on September 11, 2017

This reply relates only to the access to documents request, Ref.GestDem 2018/6654, which was attributed to DG CNECT. You will receive the reply from the Secretariat-General concerning the access to documents request, Ref.GestDem 2018/6618 in due course.

2. DOCUMENTS FALLING WITHIN THE SCOPE OF YOUR REQUEST

We have identified the following document relating to the meeting of Carl-Christian Buhr with Huawei Technologies on September 11, 2017:

- Summary of meeting –Ref Ares (2017)4742170

3. ASSESSMENT UNDER REGULATION 1049/2001

Having examined the identified document, I have arrived at the conclusion that it may be partially disclosed. Parts of the document have been blanked out as their disclosure is prevented by the exceptions to the right of access laid down in Article 4 of Regulation 1049/2001.

Parts of the document contain personal data, in particular the names and functions of the third party's staff. Pursuant to Article 4(1)(b) Regulation 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/EC¹ ('Regulation 2018/1725').

¹ Official Journal L 205 of 21.11.2018, p. 39.

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 data².

In its judgment in Case C-28/08 P (*Bavarian Lager*)³, the Court of Justice ruled that when a request is made for access to documents containing personal data, the Data Protection Regulation becomes fully applicable⁴.

Pursuant to Article 9(1)(b) of Regulation 2018/1725, personal data shall only be transmitted 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.

In your application, you do not put forward any arguments to establish the necessity to have the personal 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.

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 document, as there is a real and non-hypothetical risk that such public disclosure would harm their privacy.

Consequently, I conclude that 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.

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Please note that this document was drawn up for internal use under the responsibility of the relevant Cabinet. It solely reflects the author’s interpretation of the interventions made and does not set out any official position of the third parties to which the document refers. It does not reflect the position of the Commission and cannot be quoted as such.

² Judgment of the Court of Justice of the European Union of 20 December 2017 in Case C-434/16, *Peter Novak v Data Protection Commissioner*, request for a preliminary ruling, paragraphs 33-35, ECLI:EU:T:2018:560.

³ Judgment of 29 June 2010 in Case C 28/08 P, *European Commission v The Bavarian Lager Co. Ltd*, EU:C:2010:378, paragraph 59

⁴ Whereas this judgment specifically related to 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 data, the principles set out therein are also applicable under the new data protection regime established by Regulation 2018/1725.

4. CONFIRMATORY APPLICATION

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

Yours faithfully,

(e-signed)

Katleen Engelbosch

Enclosure: (1)