

To: Alexander Fanta ask+request-6948-638f12e2@asktheeu.org

Brussels, 19 July 2019

Subject: Your application for access to documents – Ref No 2019-19

Dear Mr. Fanta

We refer to your e-mail dated 03/06/2019 in which you make a request for access to documents, registered on 07/06/2019 under reference number 2019/19.

In accordance with article 7(8) of Regulation 1049/2001, a 15-working day extension of the initial deadline was submitted to you on 01/07/2019. Thus, the final deadline for replying to the initial request is 22 July 2019.

You requested access to documents containing the following information:

“- The full "mission report" of the EDPB mission to San Francisco, Silicon Valley and Napa Valley (US) from November 6-12, 2018 and all meeting minutes and other documents related to the mission

- Board meeting minutes, reports and all other e-mails and documents, including the entry to the Common Market Information System, relating to Facebook's "be on the lookout" internal information system, as referred to the EDPB by the Hamburg DPA."

With regard to your request on documents containing information related to Facebook's "be on the lookout" internal information system, we regret to inform you that the EDPB does not possess any document containing the request information.

Please note that in accordance with Article 2(3) of Regulation (EC) No 1049/2001, the right of access under this regulation applies only to existing documents in the possession of the EDPB. Therefore, the EDPB is not in a position to fulfil your request in that regard.

Regarding the request for documents related to the EDPB mission to San Francisco, Silicon Valley and Napa Valley from November 6-12, 2018, we have identified 42 documents containing information that falls within the scope of your request.

To facilitate our assessment and your consultation of the files, the titles of the files have been adequately numbered. We will refer to the numbers of each single file in our assessment below.

You may reuse the documents requested free of charge for non-commercial and commercial purposes provided that the source is acknowledged and that you do not distort the original

meaning or message of the document/documents. Please note that neither the EDPB, nor its Secretariat assume liability stemming from the reuse.

1. Full disclosure

The following document can be fully disclosed: Document 3, 5, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28.

2. Full non-disclosure

Having examined the documents requested under the provisions of Regulation (EC) No 1049/2001 regarding public access to documents, we have come to the conclusion that the documents mentioned below cannot be disclosed. Their disclosure is prevented by the following exceptions to the right of access laid down in Article 4 of the Regulation, namely:

1. **Exception 4(1)(b) (“Privacy and integrity of the individual”)**. The following documents to which you request access contain personal data, in particular names and contact details of data subjects, as well as other personal information. 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 EU legislation regarding the protection of personal data. The applicable legislation in this field is Regulation (EU) 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. When access is requested to documents containing personal data, Regulation 2018/1725 becomes fully applicable¹. According to Article 10(1)(b) of this Regulation, personal data shall only be transferred to recipients if they establish the necessity of having the data transferred to them for a specific purpose in the public interest and the controller considers it proportionate. 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. Please, note that the personal data redacted concern staff members and other private persons. This exception applies to 7 documents of the total number of documents identified.

- **Exception 4(3), 2nd paragraph:** The documents which you seek to obtain contain discussions, views and/or opinions of the EDPB members and/or of its Secretariat concerning decisions that have already been taken. This includes several preparatory documents. The disclosure of such documents would create confusion with regard to the EDPB members’ views, and would curtail the Members “space to think”, by preventing them from freely discussing their opinions and views on the matter. The disclosure of these opinions will also have consequences in forthcoming discussions, since specific

¹ Judgment of the Court of Justice of the European Union of 29 June 2010 in Case C-28/08 P, *Commission/The Bavarian Lager Co. Ltd*, ECR 2010 I-06055. This case concerns the previous 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.

discussions/opinions/views of the EDPB are subject to updates and revisions and can thus be reopened at any time. This exception applies to 8 documents of the total number of documents identified.

We have considered whether partial access could be granted to the documents requested. However, the document(s) are either entirely covered by the exception(s), or the expungement of the information falling under the exception(s) is so significant that it renders the document irrelevant, which is why they are not provided.

Finally, we have examined whether there could be an overriding public interest in disclosing these documents, but we have not been able to identify such an interest. For these reasons, access to these documents is denied.

3. Partial disclosure

Having examined the documents requested under the provisions of Regulation (EC) No 1049/2001 regarding public access to documents, alongside the scope of your request, I have come to the conclusion that the following documents may be partially disclosed. Some parts of the documents have been redacted as the information either falls outside the scope of your request or its disclosure is prevented by the following exceptions to the right of access laid down in Article 4 of Regulation 1049/2001:

Documents falling partially outside the scope of the request:

- Document 2

Exceptions applicable under Article 4 Regulation 1049/2001:

1. **Exception 4(1)(b) (“Privacy and integrity of the individual”).** The following documents to which you request access contain personal data, in particular names, e-mail addresses and contact details of data subjects, as well as other personal information. 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 EU legislation regarding the protection of personal data. The applicable legislation in this field is Regulation (EU) 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. When access is requested to documents containing personal data, Regulation 2018/1725 becomes fully applicable². According to Article 10(1)(b) of this Regulation, personal data shall only be transferred to recipients if they establish the necessity of having the data transferred to them for a specific purpose in the public interest and the controller considers it proportionate. We

² Judgment of the Court of Justice of the European Union of 29 June 2010 in Case C-28/08 P, *Commission/The Bavarian Lager Co. Ltd*, ECR 2010 I-06055. This case concerns the previous 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.

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 a version of the documents requested in which these personal data have been redacted. Please, note that the personal data redacted concern staff members and other private persons, whereas the full names of those holding publicly known positions have been kept.

In addition, all metadata containing direct or indirect identifiers that would allow for an identification of a specific data subject was removed for the entirety of documents assessed in accordance with the exception mentioned above.

This exception applies to the following documents:

- Documents 1, 2, 4, 6, 7, 8, 9, 10

2. Exception 4(3), 1st paragraph. The disclosure of the redacted parts would seriously undermine the decision-making process of the EDPB as they relate to a matter where a decision has not been taken by the Board and contain discussions, views and/or opinions of the EDPB members, of members of its Secretariat or of third parties. The disclosure of said discussions, views and/or opinions would prevent the involved parties of contributing for internal discussions in an unrestrained and uncensored manner, thus seriously impairing the quality of the discussions and, ultimately, of the decision-making process of the EDPB.

This exception applies to the following document:

- Document 1.

The exceptions laid down in Article 4(3) of Regulation 1049/2001 apply unless there is an overriding public interest in disclosure of the documents. We have not been able to identify such an interest.

In accordance with Article 7(2) of Regulation 1049/2001, you are entitled to make a confirmatory application requesting the European Data Protection Board to review this position.

Such a confirmatory application should be addressed within 15 working days upon receipt of this letter to the following email address: edpb@edpb.europa.eu. Please make reference to the case number of your request in the subject.

Yours faithfully,

Ventsislav Karadjov

Vice-Chair of the EDPB

Secretariat of the European Data Protection Board

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