



EUROPEAN COMMISSION
DIRECTORATE-GENERAL FOR COMMUNICATIONS NETWORKS, CONTENT AND TECHNOLOGY

The Director- General

Brussels,
DG CONNECT/R4

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REGISTERED LETTER WITH ACKNOWLEDGEMENT OF RECEIPT

Subject: Your applications for access to documents- GestDem 2020/0502 and 2020/0504

Dear Mr Stolton,

We refer to your emails, dated 21 January 2020 wherein you make two requests 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 (hereinafter 'Regulation 1049/2001'), registered under the abovementioned reference numbers. We also refer to our holding replies, dated 11 February 2020, our references Ares(2020)871077 and Ares(2020)871228, 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 APPLICATIONS

By way of your application **GestDem 2020/0502**, you requested access to the following:

- Detailed minutes of the meeting held on January 20th 2020 between Google's Sundar Pichai and Commission Vice-President Vestager. You also requested a list of the individuals present, as well as a breakdown of the issues discussed.
- Detailed minutes of the meeting held on January 20th 2020 between Google's Sundar Pichai and Commission Vice-President Timmermans. You also requested a list of the individuals present, as well as a breakdown of the issues discussed.
- Detailed minutes of any meeting held in the month of January 2020 between any officials from Google and any representatives of the European Commission.
- All correspondence (i.e. any emails, correspondence, telephone call notes, and/or text messages including WhatsApp exchanges) between any Commission officials or representatives and Mr. Pichai or a representative of his, over the past year.

By way of your application **GestDem 2020/0504**, you requested access to the following:

- Detailed minutes of the meeting held on January 20th 2020 between Microsoft's Brad Smith and Commission Vice-President Vestager. You also requested a list of the individuals present, as well as a breakdown of the issues discussed.
- Detailed minutes of the meeting held on January 20th 2020 between Microsoft's Brad Smith and Commission Vice-President Jourova. You also requested a list of the individuals present, as well as a breakdown of the issues discussed.
- Detailed minutes of the meeting held on January 20th 2020 between Microsoft's Brad Smith and Commissioner Reynders. You also requested a list of the individuals present, as well as a breakdown of the issues discussed.
- Detailed minutes of any meeting held in the month of January 2020 between any officials from Microsoft and any representatives of the European Commission.
- All correspondence (i.e. any emails, correspondence, telephone call notes, and/or text messages including WhatsApp exchanges) between any Commission officials or representatives and Mr. Smith or a representative of his, over the past year.

As you have been informed, both requests were split between Secretariat-General (SG) and Directorate-General for Communications Networks, Content and Technology (DG CONNECT)¹. This reply relates only to the documents held by DG CONNECT. You will receive the reply from the Secretariat-General in due course.

Please note that with regard to the last two points of both requests we consider them to cover the period up to the date of your applications, i.e. 21 January 2020. In particular, we understand that they concern meetings with Google and Microsoft held between 1-21 January 2020 and correspondence between 21 January 2019 and 21 January 2020.

¹ GestDem 2020/414 and GestDem 2020/0415- SG, GestDem 2020/0502 and GestDem 2020/0504- DG CONNECT.

2. DOCUMENTS FALLING WITHIN THE SCOPE OF THE REQUESTS

We have identified the following documents as falling within the scope of the requests:

A. GestDem 2020/0502

- Back to Office Report (BTO) of a meeting held between DG CONNECT and Google on 16 January 2020 (**Document 1**)
- Letter to Google dated 11 March 2019 (**Document 2**)
- Email exchanges between 15 November 2019 and 11 December 2019 concerning a request for a meeting between Commissioner Breton and Google (**Document 3**)
- Email exchanges between 15 November 2019 and 15 January 2020 concerning the request for a meeting between Commissioner Breton and Google (**Document 4**)
- Google's Letter to Commissioner Breton dated 19 December 2019 (**Document 5**)
- Google's email dated 14 January 2020 (**Document 6**)

Please note that the meeting with Commissioner Breton to which Documents 3-5 refer did not take place.

B. GestDem 2020/0504

- Microsoft's email dated 6 December 2019 concerning a request for a meeting with Commissioner Breton (**Document 7**)

Please note that the meeting to which Document 7 refers did not take place.

3. ASSESSMENT UNDER REGULATION 1049/2001

Following an examination of the identified documents under the provisions of Regulation 1049/2001 regarding public access to documents and taking into account the opinion of the third parties, we have arrived at the conclusion that they may be partially disclosed. Some parts of the documents have been blanked out as their disclosure is prevented by exceptions to the right of access laid down in Article 4 of this Regulation. Some parts of the documents have been also blanked out as these parts are outside the scope of your request.

(i) Protection of privacy and integrity of individuals

A full disclosure of the identified documents is prevented by the exception concerning the protection of privacy and integrity of the individual outlined in Article 4(1)(b) Regulation 1049/2001, because they contain the following personal data:

-the names, functions and contact information of Commission staff members not pertaining to the senior management

-the names, functions and contact details of other natural persons.

- handwritten signatures of natural persons;

Article 9(1)(b) of the Data Protection Regulation² does not allow the transmission of these personal data, except if you prove that it is necessary to have the data transmitted to you for a specific purpose in the public interest and where there is no reason to assume that the legitimate interests of the data subject might be prejudiced. In your request, you do not express any particular interest to have access to these personal data nor do you put forward any arguments to establish the necessity to have the data transmitted for a specific purpose in the public interest.

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

(ii) Protection of commercial interests

Article 4(2) first indent of Regulation 1049/2001 provides that the institutions shall refuse access to a document where disclosure would undermine the protection of commercial interests of a natural or legal person, including intellectual property, unless there is an overriding public interest in disclosure.

This provision must be interpreted in light of Article 339 of the Treaty of the Functioning of the European Union (TFEU), which requires staff members of the EU institutions to refrain from disclosing information of the kind covered by the obligation of professional secrecy, in particular information about undertakings, their business relations or their cost components.

Part of Document 1 contains sensitive information relating to the third party's activities and positions. Disclosure of this part of the document would seriously undermine the third party's commercial interests.

Consequently, the above-mentioned part of Document 1 has been blanked out.

4. OVERRIDING PUBLIC INTEREST IN DISCLOSURE

The exceptions laid down in Article 4(2) of Regulation 1049/2001 apply, unless there is an overriding public interest in the disclosure of documents. Such an interest must, firstly, be a public interest and, secondly, outweigh the harm caused by disclosure. We have examined whether there could be an overriding public interest in the disclosure of the aforementioned part of Document 1 but we have not been able to identify such an interest.

²Regulation (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, OJ L 295, 21.11.2018, p. 39.

5. REUSE OF DOCUMENTS

Document 1 was drawn up for internal use under the responsibility of the relevant service of DG CONNECT. It solely reflects the author's interpretation of the interventions made and do not set out any official position of the third parties to which the document refers, which were not consulted on the content. It does not reflect the position of the European Commission and cannot be quoted as such.

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6. CONFIRMATORY APPLICATION

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 Secretariat-General of the Commission at the following address:

European Commission
Secretariat-General
Transparency, Document Management & Access to Documents (SG.C.1)
BERL 7/076
B-1049 Bruxelles

or by email to: sg-acc-doc@ec.europa.eu

Yours sincerely,

(e-Signed)
Roberto Viola

Enclosures: (7)

