



EDPS
EUROPEAN DATA PROTECTION SUPERVISOR

LEONARDO CERVERA NAVAS
DIRECTOR

Ms Nicole MAES

by email only:

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Brussels, 14 June 2021
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Please use edps@edps.europa.eu for all
correspondence

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

Dear Ms Maes,

On 2 December 2020, you sent an access to documents request to the European Data Protection Supervisor ("EDPS") on the basis of Regulation (EC) 1049/2001, which was registered on the same day.

Your request concerned the following:

"a) the mapping exercise that the EDPS has carried out following the Schrems II judgment, including any related report detailing the outcome (the EDPS published a strategy document requiring EU institutions to carry out such exercise . I expect that the EDPS must have done one for itself).

b) If the EDPS uses any of the following tools: Microsoft Office365, Microsoft Teams, Zoom, Cisco Webex, Skype, I request any privacy assessment or similar document (including DPIA) done by the EDPS in view of adopting the use of such tools. Kindly note that I do not want generic guidelines. Instead I seek specifically any privacy assessment that relates to the internal use by the EDPS of any of the tools I listed.

For both categories of documents you can redact any personal data and any information that would imperil the security of your IT systems."

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By letter of 14 January 2020, we informed you that the EDPS could not provide you with access to the documents related to your request of access to documents linked to EDPS mapping exercise and DPIA as they fall within the exceptions of art. 4(3) of Regulation 1049/2001.

On 22 January 2021, you submitted a confirmatory application, reiterating your request for access to the documents listed above, by arguing that (i) *“the report that yourself confirmed exists must be considered as final; hence it cannot fall under the exception of art. 4(3)”*, (ii) EDPS did not provide the status or information if any other document exists at all, (iii) *“the exceptions of art. 4(3) of Regulation 1049/2001 cannot apply”* as EDPS *“did not provide any argument or explanation at all on why disclosure would seriously undermine the decision making process”* and (iv) existence of *“overriding public interest for disclosure”*.

By letter of 08 February 2021, we informed you that the EDPS confirmed its position and could not provide you with access to the requested documents, as they are part of ongoing procedure, where the decision is not yet taken by EDPS and thus fall within the exceptions of art. 4(3) of Regulation 1049/2001.

On 12 February 2021, the European Ombudsman (“EO”) informed us that following your complaint before this institution, it had opened an inquiry regarding the EDPS’s decision to refuse access under Regulation 1049/2001. Following several meetings and exchanges of communications, by letter from 26 April 2021 the EO informed us that considered *“it reasonable for the EDPS to conclude that disclosure of the report on the EDPS mapping exercise is likely to undermine the purpose of the ongoing investigation, as protected by Article 4(2), third indent, of Regulation 1049/2001. I note - and welcome - that the EDPS committed during the meeting with my inquiry team to reconsider partial or, if possible, full disclosure of the document at a later stage.”*

With the same letter, the EO proposed *“that the EDPS now reviews its position on the second part of the complainant’s public access request, taking into account my above observations, with a view to granting the widest possible public access to the identified documents.”*

Having in mind the EDPS’s commitment to transparency and following the proposal from the EO, the EDPS has decided to review its Confirmatory Response by re-examining specifically the requested documents in order to assess whether at least partial disclosure is possible. You will find hereafter the EDPS’s renewed analysis and response to your confirmatory request dated 22 January 2021.

Pursuant to our renewed analysis of the documents you requested in your initial request of 2 December 2020, the EDPS has concluded the following:

1) The exception of Article 4(2), third indent, of Regulation 1049/2001 (disclosure would undermine the protection of the purpose of inspections, investigations and audits) still applies to the documents falling within the scope of the first part of your request. In particular, disclosure at this point in time of the mapping exercise relating to the implementation of the Schrems II judgment may endanger the completion of the exercise by

hindering cooperation on the part of the supervised European Institutions and bodies subject to it. We note that the CJEU has clarified that the concept of "investigation" is likely to also cover the activity aimed at ascertaining facts in order to assess a given situation¹. In that context, the EDPS, using its investigatory powers may gather and analyse information relating to the implementation of data protection requirements by the supervised institutions and bodies.

However, we have identified two documents to which we decided to grant you full access:

1. Letter from EDPS to the heads of all Union institutions, bodies and agencies dated 2 October 2020
2. Letter from EPDS to DG ITEC dated 23 October 2020

Moreover, we would like to inform you that we plan updating the public about the developments of our investigation via our Press Office. Please follow EDPS website for relevant press releases and information.

2) With regards to the second part of your request - "*privacy assessment or similar document (including DPIA) done by the EDPS of the following tools: Microsoft Office365, Microsoft Teams, Zoom, Cisco Webex, Skype*" we have identified to following documents falling within the scope of your request:

	DOC ID	DATE	TYPE	NAME	ACCESS
1	COO.6515.100.2.431394	11/07/2019	WORD	ZOOM Assessment	FULL
2	COO.6515.100.2.396786	23/04/2020	EXCEL	VC tools v.1.2	FULL
3	COO.6515.100.2.404299	07/09/2020	EXCEL	VC tools v.1.3	FULL
4	COO.6515.100.4.396865	27/04/2020	WORD	Note to the file	FULL
5	COO.6515.100.2.405488	16/09/2020	WORD	EDPS INSPECTION TOOLS v.2	NONE
6	COO.6515.100.4.404299	07/09/2020	WORD	EDPS INSPECTION TOOLS	NONE

The EDPS would like to inform you that it has granted you access to four of the documents identified (1-4), with the exception of personal data of the staff members involved in the correspondence, in accordance with Article 4(1)(b) of Regulation 1049/2001.

The documents under part 2 of your request not disclosed by the EDPS (5 and 6) fall within the exceptions of Article 4(2), third indent, of Regulation 1049/2001 as they contain details of the working tools and methods utilized during our inspections. In this regard, the disclosure of the said documents containing information about the EDPS-s internal methodologies could compromise the effective use of the EDPS's means of investigation in the future.

Finally, please note that pursuant to Article 8(1) of the Regulation (EC) 1049/2001, you are entitled to initiate proceedings before the Court of Justice of the European Union against

¹ Judgment of the General Court of 4 October 2018 in case T-128/14, Daimler v Commission.

this Confirmatory Response of the EDPS, under the conditions laid down in, respectively, Article 228 and 263 of the Treaty on the Functioning of the European Union.

Yours sincerely,



Leonardo CERMEJA NAVAS

Cc: Ms Emily O'REILLY, European Ombudsman
Ms Rosita HICKEY, Director of Inquiries, EO

Annexes: 6 files

Data Protection Notice

According to Articles 15 and 16 of Regulation (EU) 2018/1725 (the Regulation) 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, we are processing your personal data, where proportionate and necessary, for the purpose of answering your request. The legal base for this processing operation is Regulation (EC) 1049/2001 and Article 52(4) of the Regulation (EU) 2018/1725. Subject to applicable rules under EU legislation, the personal data relating to you, as provided in your request as well as personal data that might be collected while processing your request, are used solely for the purpose of replying to your request. EDPS staff members dealing with the request will have access to the case file containing your personal data on a need-to-know basis. All access to case files is logged. Your personal data are not disclosed outside the EDPS. Your personal data will be stored electronically for a maximum of ten years after the closure of the case, or as long as the EDPS is under a legal obligation to do so. You have the right to access your personal data held by the EDPS and to relevant information concerning how we use it. You have the right to rectify your personal data. Under certain conditions, you have the right to ask that we delete your personal data or restrict its use. We will consider your request, take a decision and communicate it to you. For more information, please see Articles 14 to 21, 23 and 24 of the Regulation. Please note that in some cases restrictions under Article 25 of the Regulation may apply. Any request to exercise your rights should be addressed to the EDPS

at edps@edps.europa.eu. You may contact the data protection officer of the EDPS (EDPS-DPO@edps.europa.eu), if you have any remarks or complaints regarding the way we process your personal data. You have the right to lodge a complaint with the EDPS, as supervisory authority. Any such request should be addressed to the EDPS at edps@edps.europa.eu. You can reach the EDPS in the following ways: E-mail: edps@edps.europa.eu; EDPS postal address: European Data Protection Supervisor, Rue Wiertz 60, B-1047 Brussels, Belgium. For more information, please refer to the extended version of the data protection notice available on the EDPS website: https://edps.europa.eu/data-protection/our-work/publications/other-documents/requests-access-documents_en.