

To: Samuel Stolton - ask+request-9029-932e162f@asktheeu.org

Brussels, 5 March 2021

Subject: Your application for access to documents – Ref No 2021/02

Dear Mr Stolton,

We refer to your e-mail dated 09/02/2021 in which you made a request for access to documents, registered on 12/02/2021. The deadline to reply is therefore 05/03/2021.

You requested access to: *“All documentation (including but not limited to: general communications of any nature, written material of any kind, email correspondences, attendance lists, agendas, background papers, briefing papers, transcriptions of meetings, any written material whatsoever) containing references to the 'PhotoDNA' software.”*

Assessment

We have identified a total of 6 documents that fall 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.

We have conducted the following assessment in light of Regulation 1049/2001 regarding public access to documents and the relevant case law of the Court of Justice of the European Union (CJEU):

1. Full disclosure:

The following document is already publicly available:

- Document: 4

This document has been published on the EDPB website and can be downloaded via the following link: https://edpb.europa.eu/sites/edpb/files/public_consultation_replies/2020.02_-_edpb_rtbf_search_engines_draft_guidelines_response_final.pdf

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 document mentioned below cannot be disclosed. Its disclosure is prevented by the following exception to the right of access laid down in Article 4 of the Regulation:

Exception 4(2), 1st indent („commercial interests of a natural or legal person, including intellectual property“). The document to which you request access is a commercial publication

and its disclosure would undermine the intellectual property rights of the legal person concerned. Public disclosure of this document would seriously undermine the commercial interests of the legal persons concerned, and for this reason it cannot be disclosed.

This exception applies to the following documents:

- Document: 3

We have considered whether partial access could be granted to this document. However, the document is entirely covered by the above-mentioned exceptions which is why it has not been provided.

The exceptions laid down in Article 4(2) of Regulation 1049/2001 apply unless there is an overriding public interest in disclosure of the document. We have not been able to identify such an interest.

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 full disclosure of the documents mentioned below cannot be granted, since their disclosure is prevented by the following exception to the right of access laid down in Article 4 of 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 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 9(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. Therefore, we are disclosing a version of the documents requested in which these personal data have been redacted.

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.

This exception applies to the following document:

- Document 1, 2, 5, 6.

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

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. 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 documents:

- Documents 1, 2, 5.

3. Exception 4(3), 2nd paragraph. The redacted sections of these documents contain references to internal email addresses. These have been redacted to prevent their use by the public, since they are reserved for internal use only and their disclosure would create a disruption of the working arrangements / methods of the Board and/or its Secretariat, which would then seriously undermine the decision-making process of the EDPB. Disclosure of this information would consequently seriously undermine the decision-making process of the EDPB.

This exception applies to the following documents:

- Documents 1, 5.

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.

Disclaimer

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.

Means of redress

In accordance with Article 7(2) of Regulation 1049/2001, you are entitled to make a confirmatory application requesting the EDPB 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

