



EUROPEAN COMMISSION
HEALTH AND CONSUMERS DIRECTORATE-GENERAL

Director-General

Brussels,

Dear Mr McLaren,

Subject: Your application for access to documents – Ref GestDem No 2013/6192

We refer to your e-mail dated 05/12/2013 in which you make a request for access to documents, registered on 09/12/2013 under the above mentioned reference number.

Your application concerns *"both incoming and outgoing digital correspondence between SANCO representatives and both Tobacco & Pharmaceutical industry lobbyists & lawyers between July 2013 - December 2013"*.

We have identified the documents concerned (see Annex I) and consulted their authors, in accordance with Article 4(4)¹ of Regulation (EC) No 1049/2001² on public access to documents. We are now in a position to send you these documents.

Having examined the documents requested under the provisions of Regulation (EC) No 1049/2001 regarding public access to documents, I have come to the conclusion that they may be partially disclosed. Please note that some of them have been expunged of personal data pertaining to third parties and Commission officials of non-managerial posts, as indicated in Annex I.

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 Community legislation regarding the protection of personal data. The applicable legislation in this field is 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 data³.

When access is requested to documents containing personal data, Regulation (EC) No 45/2001 becomes fully applicable⁴. According to Article 8(b) of this Regulation, personal data shall only be transferred to recipients if they establish the necessity of having the data transferred to them and if there is no reason to assume that the legitimate rights of the persons concerned might be prejudiced.

Neil McLaren

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¹ According to that provision, *"As regards third-party documents, the institution shall consult the third party with a view to assessing whether an exception in paragraph 1 or 2 is applicable, unless it is clear that the document shall or shall not be disclosed."*

² OJ L14-5, 31.05.2001, page 43

³ OJ L 8 of 12.1.2001, p. 1

We consider that, with the information available, the necessity of disclosing the aforementioned personal data to you has not been established and that it cannot be assumed that such disclosure would not prejudice the legitimate rights of the persons concerned. Therefore, we are disclosing the documents requested expunged from this personal data.

In some other cases (Annexes 16b, 18, 35 and 36), (certain parts of) the documents have been blanked out in accordance with Article 4(2) first indent⁵ of this Regulation (EC) No 1049/2001:

- According to its author, the entire Annex 16b is protected, as it constitutes market data information considered of commercially sensitive nature. Its disclosure would therefore undermine the commercial interests of its owner.
- According to their authors, Annex 18 contains information relating to current and future commercial strategies, as well as to product development and ownership of commercial data. Its disclosure would undermine the author's competitive position on the market concerned vis-à-vis competitors;
- According to their author, Annexes 35 and 36 contain certain information relating to: *"potential commercial plans including possible product developments and future launches, and on the other hand, refers to future advocacy and public affairs strategies"*, the disclosure of which would undermine its competitive position vis-à-vis competitors.

We are awaiting the reply of one more third party related documents 40-41 in Annex I and will get back to you with the remaining documents as soon as possible.

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 Secretary-General of the Commission at the following address:

European Commission
Secretary-General
Transparency unit SG-B-5
BERL 5/327
B-1049 Bruxelles

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

Yours faithfully,

For the Director General absent,
Martin SEYCHELL
Deputy Director General

 Paola Testori Coggi

⁴ Judgment of the Court of Justice of the EU of 29 June 2010 in case 28/08 P, Commission/The Bavarian Lager Co. Ltd, not yet reported

⁵ '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'

Enclosure: Annex I: list of documents + 39 annexes mentioned in the list