



EUROPEAN COMMISSION
HEALTH AND CONSUMERS DIRECTORATE-GENERAL

Director-General

Brussels,
SANCO D4/AM/mp ARES(2014)

Dear Mr McLaren

Subject: Your application for access to documents – Ref GestDem No 2014/863

We refer to your e-mail dated 17/02/2014 in which you make a request for access to documents, registered on 17/02/2014 under the above mentioned reference number. We further refer to our holding reply of 07/03/2014 as well as our e-mail messages of 01/04/2014 and 15/04/2014 extending the deadline for reply to 30/04/2014.

Your application concerns: *"Correspondence between World Health Organisation & The EU Commission on the subject of nicotine containing products (as defined in COM (2012) 788) and electronic cigarettes between January 2012 and February 2014 & quot"*.

We have identified the documents concerned (see Annex I) and consulted the WHO, in accordance with Article 4(4) of Regulation (EC) No 1049/2001 on public access to documents.

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 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 data¹.

Mr Neil McLaren
ask+request-1197-e6800d95@asktheeu.org

¹ OJ L 8 of 12.1.2001, p. 1

When access is requested to documents containing personal data, Regulation (EC) No 45/2001 becomes fully applicable². 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.

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.

Please note that your request would - in our view - normally fall under the exception of Article 4(1)(a) of Regulation (EC) N° 1049/2001 (protection of international relations), but in agreement with WHO we are exceptionally willing to accommodate your request. This does not create legitimate expectations for future/similar requests.

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,
For the Deputy Director General
Deputy Director Gen

Paola Testori Coggi

Enclosure: Annex I: list of documents + 9 annexes mentioned in the list

² 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