To: Nicolas Lee - ask+request-13106-e909d347@asktheeu.org>

Brussels, 13 July 2023

Subject: Your application for access to documents – Ref No 2023-23

Dear Mr Lee,

We refer to your e-mail dated 09/06/2023 in which you make a request for access to documents Regulation (EC) No 1049/2001. We have registered this request on 05/07/2023 as agreed in your e-mail of 16/06/23. The deadline to reply is therefore 25/07/2023.

Assessment

We have identified 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 documents can be fully disclosed:

Documents: 2,3,6

Please note document 2 is a machine translation of the Belgian supervisory authority’s decision. The EDPB is not responsible for any errors in the translation. As regards documents 3 and 6, these are already in public domain.

2. Partial disclosure

Having examined the documents requested under the provisions of Regulation (EC) No 1049/2001, alongside the scope of your request and following consultations with the third parties concerned, we have come to the conclusion that disclosure of the documents mentioned below...

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cannot be granted in their entirety. Disclosure of some information in the documents is prevented by the following exception to the right of access laid down in Article 4 of Regulation (EC) No 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 signatures 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\(^2\). When access is requested to documents containing personal data, Regulation (EU) 2018/1725 becomes fully applicable\(^3\). 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 to date, 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.

This exception applies to the following documents:

Documents: 1, 5

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 the documents assessed, in accordance with the exception mentioned above.

3. 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, as the information in the document is prevented by the following exception to the right of access laid down in Article 4 of the Regulation 1049/2001:

1) 2. Exception 4(3) 1st paragraph (“disclosure would seriously undermine the institution’s decision-making process”). The disclosure of the requested document would seriously undermine the decision-making process of the EDPB as it relates to a matter where a decision has not been yet taken by the EDPB and contains views and/or opinions of the EDPB members. The disclosure of said views and/or opinions would prevent the involved parties of contributing for internal discussions in an unrestrained and uncensored manner, thus seriously impairing the

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\(^2\) 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.

\(^3\) 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.
quality of the discussions and, ultimately, of the decision-making process of the EDPB. The document concerned is an internal document regarding the drafting of guidance on Article 48 GDPR, which contains one reference to Article 96 GDPR.

This exception applies to the following document:

Document: 4

We have considered whether partial access could be granted to the document requested. However, the document or parts thereof falling within the scope of your request are either entirely covered by the exception, or the expungement of the information falling under the exception is so significant that it renders the document irrelevant, which is why it is not provided.

Finally, we have examined whether there could be an overriding public interest in disclosing this document, but we have not been able to identify such an interest. For these reasons, access to the requested document cannot be granted.

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 (EC) No 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 sincerely,

Irene Loizidou-Nicolaidou
Vice-Chair of the EDPB