

Parma, 4 July 2017
Ref. DD/CP/mm (2017) – out -17972978

Martin Pigeon
Corporate Europe Observatory
26, rue d'Edimbourg
BE-1050 Brussels
Belgium

e-mail: ask+request-4300-6c0e677e@asktheeu.org

Re: Your request for public access to documents of 17 May 2017

Our ref: PAD 2017/038

Dear Mr Pigeon,

I refer to your request for public access to documents submitted on 17 May 2017 through Ask the EU website, by means of which you requested access to *"the following documents:*

- 1. all correspondence, including emails, between EFSA (employees and Board members) and third parties (excluding with and from Corporate Europe Observatory, PAN-Europe, ENSSER, La Via Campesina, Testbiotech, Sciences Citoyennes, Gene Watch and Greenpeace, as well as the submissions received by EFSA during its recent public consultation on the matter) related to EFSA's independence (and in particular but not exclusively EFSA's ongoing review of its independence policy) since 1st January 2016.*
- 2. all minutes of meetings between EFSA and third parties (minus Corporate Europe Observatory, Testbiotech, PAN-Europe, ENSSER, La Via Campesina, Sciences Citoyennes, Gene Watch and Greenpeace, as well as the submissions received by EFSA during its recent public consultation on the matter) related to EFSA's independence (and in particular but not exclusively EFSA's ongoing review of its independence policy) since 1st January 2016."*

We have assessed your request in accordance with Regulation (EC) No 1049/2001 on public access to documents¹ (hereinafter the "PAD Regulation") with a reply as follows.

1. Partial disclosure – 1st batch

Regarding third parties in the text of your request, we consider the following groups as falling in the scope of both points of your request: food and feed business operators, non-governmental organizations (NGOs) not listed in your request, consumer associations/organisations, citizens, students, hearing experts not members of EFSA's scientific governance bodies, lobbies, Member States organisations, the European Commission (EC), the European Parliament (EP) and other EU agencies.

¹ Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents, OJ L 145, 31.5.2001, p. 43-48, applicable to EFSA.

- a. With regard to the first point of your request, we are considering your request as covering correspondence (e-mails or other) with third parties relating to EFSA's independence policy and its review, since 1 January 2016 until the date of your request, i.e. 17 May 2017.

Please be informed that we are still consulting third parties regarding correspondence falling in the scope of the first point of your request. We have excluded from the correspondence requested, exchanges with third parties on individual cases and how internal rules are applied to those cases, but have considered exchanges on the general implementation of the Independence Policy and its review.

Please also note that in line with your demand, we excluded from the scope of this request the comments received during the commenting period in the framework of the public consultation on EFSA's draft Policy on independence since all the comments have been published on EFSA's website.² We however included in the scope of the request comments collected after the commenting period since they were not considered in the context of the public consultation.

We are pleased to provide you with a first set of documents identified so far constituting the correspondence between EFSA and third parties as follows:

- Letters from EFSA addressed to a Member of the EP (MEP);
- Comments received after the deadline for submitting comments in the framework of the public consultation on EFSA's draft Policy on Independence;
- E-mails from citizens;
- Correspondence exchanged with journalists.

Please note that personal data (i.e. names of individuals and other personal data) present in all the documents disclosed to you have been masked in accordance with Article 4(1)(b) of the PAD Regulation and Article 8(b) of the Data Protection Regulation (EC) No 45/2001. In line with the settled case law of the Union Courts³, EFSA will only be able to balance the interests at stake and to consider the disclosure of personal data after you have provided an express and legitimate justification and convincing arguments in order to demonstrate the necessity of having personal data transferred to you.

- b. With regard to the second point of your request, we have identified and assessed meetings between EFSA and third parties, as defined above, relating to the EFSA's independence policy and its review with the following outcome:

We are pleased to provide you with the action points of the DG SANTE/EFSA Management bilateral meeting that took place on 3 May 2017. Please note that we have masked information falling outside the scope of your request for documents containing information on EFSA's Independence Policy and its review.

Regarding meetings with third parties, please be informed that during the time period indicated in your access request, no meetings were held with industry and NGOs specifically on the subject matter of EFSA's independence policy and the review thereof. The following meetings took place: 3rd Roundtable with industry associations meeting⁴, 4th Roundtable with industry associations meeting⁵, 8th Roundtable with environmental and health non-governmental organisations (NGOs) and advocacy groups⁶, a meeting with environmental NGOs on pesticides and bee health.

² <https://www.efsa.europa.eu/it/corporate/pub/outcomeconsultationindependence>.

³ See Judgment in Case C-28/08 P, European Commission v The Bavarian Lager Co. Ltd., EU:C:2010:378.

⁴ <http://www.efsa.europa.eu/en/events/event/160627a>.

⁵ <http://www.efsa.europa.eu/en/events/event/170622>.

⁶ <http://www.efsa.europa.eu/en/events/event/160621a>.

As apparent from letters disclosed to you, meetings held with MEPs on the budgetary discharge procedure extended to discussions on the review of the EFSA's Independence policy. Please note however that no minutes of these MEP meetings have been produced⁷.

We hope you will find the disclosed document useful. I must remind you that all persons reproducing, redistributing, exploiting or making commercial use of this information are expected to adhere to the terms and conditions asserted by the copyright holder.

We are undertaking third-party consultations in accordance with Article 4(4) of the PAD Regulation on remaining documents within the scope of your access request which unfortunately are time consuming. For this reason EFSA would like to confer with you to find a fair solution in application of Article 6(3) of the PAD Regulation. EFSA proposes to provide you with replies in batches along the process of finalisation of the consultations and following a case-by-case assessment of the documents within the scope of your request.

EFSA will provide you with a second batch of documents in complement to the present disclosure by **26 July 2017** at the latest.

2. Confirmatory application

To exercise your right to appeal against this decision of partial disclosure by a confirmatory application, you may write to EFSA at the address below. You have fifteen working days from receipt of this letter to appeal. Beyond this deadline, your initial request will be considered as fully satisfied. In case you submit a confirmatory application, EFSA will inform you of the outcome of this re-examination of your request within fifteen working days of receipt, either by granting you access to the documents or by confirming the refusal. In the latter case, you will also be informed of any further appeal routes available. Please note that you can also exercise your right to appeal against this decision after the final reply to all the points of your request will be sent to you (final batch).

Further correspondence must be sent to:

EFSA
Dirk Detken, Head of the Legal and Assurance Services
Via Carlo Magno, 1/A
43126 Parma
Italia
e-mail: EFSA.public.access.to.documents@efsa.europa.eu.

Yours sincerely,

Dirk Detken

Cc: V. Villamar, J. Ramsay (EFSA)

Encl: 1

⁷ You can find information on the discharge procedure at the following webpage: <http://www.europarl.europa.eu/committees/en/cont/discharge-2015.html?action=2&tab=Agencies/JU%27s>.