



EUROPEAN COMMISSION
DIRECTORATE-GENERAL FOR HEALTH AND FOOD SAFETY

Director General

20. 07. 2018

Brussels,
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Ares 2018 3873336

By registered letter with acknowledgment of receipt

Da Silva Margarita
Corporate Europe Observatory
Rue d'Edimbourg 26, Bruxelles
Belgium

Advance copy by email: ask+request-5488-e84a2204@asktheeu.org

Dear Madam,

Subject: Your application for access to documents – Ref GestDem 2018/2437

We refer to your email dated 30 April 2018 in which you make a request for access to documents, registered on the same date under the above mentioned reference number.

1. Scope of your request

In your request, you asked on the basis of Regulation (EC) No 1049/2001¹ access to:

" a list of lobby meetings held by DG SANTE with Facebook or its intermediaries. The list should include: date, individuals attending + organisational affiliation, the issues discussed; - minutes and other reports of these meetings; - all correspondence (i.e. any emails, correspondence or telephone call notes) between DG SANTE (including the Commissioner and the Cabinet) and Facebook or any intermediaries representing its interests".

2. Identification and assessment of the concerned documents

We have identified the following 3 documents falling under the scope of your request:

1. Letter from DG SANTE to Facebook of 5 January 2017 (Ares(2017)53904)
2. Letter from DG SANTE to Facebook of 8 August 2017 (Ares(2018)4274782)

¹ Regulation (EC) No 1049/2001 regarding public access to European Parliament, Council and Commission documents (OJ L 145, 31.5.2001, p. 43).

3. Email correspondence with Facebook from March 20, 2017 to March 5 2018 (Ares(2018)2634575)

Having examined the documents, we have come to the conclusion that they may be only partially disclosed as their full disclosure is prevented by two of the exceptions to the right of access laid down in Article 4 of Regulation (EC) No 1049/2001.

3. Reasons for refusal

- *Protection of the privacy and integrity of the individual- Article 4(1)(b) of Regulation (EC) No 1049/2001.*

Documents n° 1, 2 and 3 to which you have requested access contain personal data such as names, surnames, emails and telephone numbers both of Commission staff and Facebook representatives. 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 data².

When access is requested to documents containing personal data, Regulation (EC) No 45/2001 becomes fully applicable³. 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/or 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.

- *Purpose of inspections, investigations and audits, Article 4(2) third indent of Regulation (EC) No 1049/2001*

Document n° 3 contains email correspondence between DG SANTE and Facebook. In the email dated December 18, 2017 Facebook has provided the Commission with a single contact point (SCP) for food control authorities of the MS which could be used by the latter in case a product non-compliant with EU or national agri-food legislation is offered for sale via Facebook.

The SCP (which is a specific email address) is exclusively reserved for control authorities for the purpose of investigations and audits. As a consequence, this information is covered by the exception of Article 4(2) third indent of Regulation (EC) No 1049/2001.

² Official Journal L 8 of 12.1.2001, p. 1.

³ Judgment of the Court of Justice of the EU of 29 June 2010 in case C-28/08 P, Commission/The Bavarian Lager Co. Ltd, ECR 2010 I-06055.

4. Overriding public interest

The exceptions to the right of access provided for in Article 4(2) first and third indent of Regulation (EC) No 1049/2001 must be waived if there is an overriding public interest in disclosing the requested documents. In your application, you did not submit any grounds concerning a public interest on the basis of which the interests protected in Regulation (EC) No 1049/2001 would have to be overridden, and we could not identify any such ground either. In these circumstances, we have to conclude that there is no evidence of an overriding public interest in disclosure, in the sense of Regulation (EC) No 1049/2001.

5. 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 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-4
BERL 5/282
B-1049 Brussels

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

Yours sincerely,



Xavier Prats Monné