



EUROPEAN COMMISSION

DIRECTORATE-GENERAL FOR COMMUNICATIONS NETWORKS, CONTENT AND TECHNOLOGY

Resources and Support
Compliance and Planning

Brussels, 20th December 2018
CONNECT

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London, EC2A 2AP
United Kingdom

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REGISTERED LETTER WITH ACKNOWLEDGEMENT OF RECEIPT

Subject: Your application for access to documents- Ref GestDem 2018/5644

Dear Mr Ryan,

I refer to your e-mail dated 26/10/2018 in which you make a request for access to documents, registered after you provided your postal address on 29/10/2018 under the above mentioned reference number. I also refer to our holding reply sent you on 21/11/2018 (our ref. Ares(2018)5954215).

1. SCOPE OF YOUR APPLICATION

By your application you requested access to:

«Adtech lobby for the ePrivacy Regulation»

In your request, you explained further that you are interested in «[...]documents about "IAB Europe", from 8 October 2016 to the present day, 8 October 2018» and specified that «“the "IAB" in "IAB Europe" may also be spelt out as "Interactive Advertising Board"»

Furthermore, you detailed that «This request for documents includes, but is not limited to, minutes; notes, whether hand written or typed; audio recordings; verbatim reports; e-mails; correspondence, telephone calls, video calls, publications; reports; presentations; telephone calls; and policy papers. »

2. DOCUMENT FALLING WITHIN THE SCOPE OF THE REQUEST

Your application concerns the following documents:

- 1) Email from IAB Europe to European Commission with the title 'Developers Alliance / IAPP / IAB Europe roundtable in the EP on 20th June' and its attachment - 26/06/2017 (our ref. Ares(2018)6374233):
 - a. External leave-behind on ePrivacy
- 2) Email from IAB Europe to European Commission with the title: 'FW: IAB Europe European executive policy fly-in - following up' and its attachment - 29/09/2017 (our ref. Ares(2018)6374261):
 - a. Letter to Mrs D. Spanou
- 3) Email from IAB Europe to European Commission with the title 'IAB Europe meeting on Tuesday 11th October - following up' and its 2 attachments – 02/12/2016 (our ref. Ares(2018)6372141):
 - a. IAB Europe - Digital Advertising Factsheet
 - b. IAB Europe - Position paper 'Position on the review of the ePrivacy Directive'
- 4) BTO from DG CONNECT DDG Claire's Bury participation at the Digital Leaders Council of IAB Europe – 28/03/2017 (our ref. Ares(2018)6223406).
- 5) Email from IAB Europe to European Commission with the title 'IAB paper on unintended consequences of the ePrivacy Regulation proposal for European media, consumers and Europe's digital economy' and its 2 attachments – 05/04/2017 (our ref. Ares(2018)6220310):
 - a. IAB Europe's paper on unintended consequences of the ePrivacy Regulation proposal for European media, consumers and Europe's digital economy.
 - b. IAB Europe's online advertising fact sheet.
- 6) Email from IAB Europe to European Commission with the title 'FAO Vice-President Ansip & Commissioner Oettinger - Joint letter from European publishers in the light of the ePrivacy Directive revision' and its attachment – 23/11/2016 (our ref. Ares(2016)6570727):
 - a. Joint letter
- 7) Email from IAB Europe to European Commission with the title 'Letter: Publishers and advertising businesses concerned about leaked ePrivacy Regulation' and its attachment – 22/12/2016 (our ref. Ares(2016)7139331):
 - a. Letter

- 8) Email from EACA, on behalf of 12 trade associations, including IAB Europe, to European Commission with the title 'Industry statement on the ePrivacy Directive revision process' and its attachment – 22/12/2016 (our ref. Ares(2016)7141492):

a. Industry statement

3. ASSESSMENT UNDER REGULATION 2018/1725

Having examined your application in light of Regulation (EC) No. 2018/1725 regarding public access to European Parliament, Council and Commission documents (hereinafter 'Regulation 2018/1725'), we have concluded that the documents can be made partially accessible with only personal data redacted.

The documents to which you request access contain indeed personal data, including biometric data, relating to Commission staff and third parties.

The applicable legislation in this field is Regulation (EC) No 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/EC1 ('Regulation 2018/1725').

Indeed, Article 3(1) of Regulation 2018/1725 provides that personal data '*means any information relating to an identified or identifiable natural person [...]'*'. The Court of Justice has specified that any information, which by reason of its content, purpose or effect, is linked to a particular person is to be considered as personal data¹. Please note in this respect that the names, signatures, functions, telephone numbers and/or initials pertaining to staff members of an institution are to be considered personal data.²

Pursuant to Article 9(1)(b) of Regulation 2018/1725, personal data shall only be transmitted if '[t]he recipient establishes that it is necessary to have the data transmitted for a specific purpose in the public interest and the controller, where there is any reason to assume that the data subject's legitimate interests might be prejudiced, establishes that it is proportionate to transmit the personal data for that specific purpose after having demonstrably weighed the various competing interests'.

Only if these conditions are fulfilled and the processing constitutes lawful processing in accordance with the requirements of Article 5 of Regulation 2018/1725, can the transmission of personal data occur.

In your application, you do not put forward any arguments to establish the necessity to have the personal data transmitted for a specific purpose in the public interest. Therefore, the European Commission does not have to examine whether there is a reason to assume that the data subject's legitimate interests might be prejudiced.

¹ Judgment of the Court of Justice of the European Union of 20 December 2017 in Case C-434/16, Peter Novak v Data Protection Commissioner, request for a preliminary ruling, paragraphs 33-35, ECLI:EU:T:2018:560.

² Judgment of the General Court of 19 September 2018 in case T-39/17, Port de Brest v Commission, paragraphs 43-44, ECLI:EU:T:2018:560.

Notwithstanding the above, please note that there are reasons to assume that the legitimate interests of the data subjects concerned would be prejudiced by disclosure of the personal data reflected in the document, as there is a real and non-hypothetical risk that such public disclosure would harm their privacy.

Consequently, I conclude that access cannot be granted to the personal data, as the need to obtain access thereto for a purpose in the public interest has not been substantiated and there is no reason to think that the legitimate interests of the individuals concerned would not be prejudiced by disclosure of the personal data concerned.

Please note that all the identified documents except for No 4 were received by the Commission from IAB. They are disclosed for information only and cannot be re-used without the agreement of the originator, who holds a copyright on them. They do not reflect the position of the Commission and cannot be quoted as such.

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4. CONFIRMATORY APPLICATION

In case you disagree with the assessment that the redacted data are personal data, which can only be disclosed if such disclosure is legitimate under the applicable rules on the protection of personal data, you are entitled, in accordance with Article 7(2) of Regulation 1049/2001, to submit 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
Unit C.1. 'Transparency, Document Management and Access to Documents'
BERL 5/282
1049 Brussels
or by email to: sg-acc-doc@ec.europa.eu

Yours sincerely,

(e-signed)

Katleen Engelbosch