



EUROPEAN COMMISSION

Directorate-General for Internal Market, Industry, Entrepreneurship and SMEs

Director-General

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***By registered letter with  
acknowledgment of receipt***

Ms Vicky Cann  
CEO  
Rue d'Edimbourg 26  
1050 Brussels

***Advance copy by email:***  
[ask+request-6498-  
728d761c@asktheeu.org](mailto:ask+request-6498-728d761c@asktheeu.org)

**Subject: Your application for access to documents - Ref GestDem No  
2019/1311 – second reply**

Dear Ms Cann,

We refer to your e-mail dated 6 March 2019 in which you make a request for access to documents, registered on 7 March under the above-mentioned reference number.

## **1. SCOPE OF YOUR REQUEST**

Your e-mail requested access to documents as follows:

*“Details of all lobbying on the topic of Important Projects of Common European Interest, since 13 September 2017 when the Commission published its communication “Investing in a smart, innovative and sustainable Industry: A renewed EU Industrial Policy Strategy”.*

On 24 April 2019 you received the first reply, which mentioned “Concerning meetings and correspondence with industry representatives relating to your request, any additional list of documents will be sent as soon as possible, as more time is needed to identify potentially relevant documents and any confidential information”.

We have now identified nine additional documents falling under the scope of the request. These documents are listed in the enclosed document register.

## **2. DISCLOSURE AND PARTIAL DISCLOSURE OF THE DOCUMENTS**

Having examined the documents requested under the provisions of Regulation (EC) No 1049/2001 regarding public access to documents, I have come to the conclusion that

eight documents (1-8) may be disclosed, and one document (9) may be partially disclosed.

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 documents. Please note that the Commission does not assume liability stemming from the reuse.

The documents were drawn up for internal use under the responsibility of the relevant service of the Directorate-General for Internal Market, Industry, Entrepreneurship and SMEs. They solely reflect the service's interpretation of the interventions made and do not set out any official position of the third parties to which the documents refer. They do not reflect the position of the Commission and cannot be quoted as such.

A paragraph in document 9 has been redacted as its disclosure is prevented by exception to the right of access laid down in Article 4 of Regulation (EC) 1049/2001.

Article 4(2), first indent, of Regulation (EC) 1049/2001 provides that "*[t]he institutions shall refuse access to a document where disclosure would undermine the protection of [...] commercial interests of a natural or legal person, including intellectual property, unless there is an overriding public interest in disclosure*".

The redacted part of document 9 contains commercially sensitive business information of the company concerned, the disclosure of which might undermine the commercial interests of the company.

As per Article 4(2), first indent, of Regulation (EC) 1049/2001, the protection of commercial interests' exception applies unless there is an overriding public interest in disclosure of the documents requested. In your initial application, you did not bring forward any arguments to justify the existence of an overriding public interest in releasing the redacted part of the document.

In accordance with Article 7(2) of Regulation (EC) 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  
Secretariat-General  
Transparency, Document Management & Access to Documents (SG.C.1)  
BERL 7/076  
B-1049 Bruxelles,  
or by email to: [sg-acc-doc@ec.europa.eu](mailto:sg-acc-doc@ec.europa.eu)

### **3. PROTECTION OF PERSONAL DATA**

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 European Union legislation regarding the protection of personal data.

The applicable legislation in this field is 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 ('Regulation 2018/1725').

The documents to which you request access contain personal data, in particular names, functions and contact details of Commission staff and stakeholders' representatives.

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 data<sup>1</sup>.

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.<sup>2</sup>

In its judgment in Case C-28/08 P (Bavarian Lager)<sup>3</sup>, the Court of Justice ruled that when a request is made for access to documents containing personal data, the Data Protection Regulation becomes fully applicable<sup>4</sup>.

Pursuant to Article 9(1)(b) of Regulation 2018/1725, 'personal data shall only be transmitted to recipients established in the Union other than Union institutions and bodies 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.

According to Article 9(1)(b) of Regulation 2018/1725, the European Commission has to examine the further conditions for a lawful processing of personal data only if the first condition is fulfilled, namely if the recipient has established that it is necessary to have the data transmitted for a specific purpose in the public interest. It is only in this case that the European Commission has to examine whether there is a reason to assume that the data

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<sup>1</sup> Judgment of the Court of Justice of the European Union of 20 December 2017 in Case C-434/16, *Peter Nowak v Data Protection Commissioner*, request for a preliminary ruling, paragraphs 33-35, ECLI:EU:C:2017:994.

<sup>2</sup> 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.

<sup>3</sup> Judgment of 29 June 2010 in Case C-28/08 P, *European Commission v The Bavarian Lager Co. Ltd.*, EU:C:2010:378, paragraph 59.

<sup>4</sup> Whereas this judgment specifically related to 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, the principles set out therein are also applicable under the new data protection regime established by Regulation 2018/1725.

subject's legitimate interests might be prejudiced and, in the affirmative, establish the proportionality of the transmission of the personal data for that specific purpose after having demonstrably weighed the various competing interests.

In your request, you do not put forward any arguments to establish the necessity to have the 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.'

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 documents, as there is a real and non-hypothetical risk that such public disclosure would harm their privacy and subject them to unsolicited external contacts.

Consequently, I conclude that, pursuant to Article 4(1)(b) of Regulation (EC) No 1049/2001, 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.

In case you would 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 (EC) No 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 Secretariat-General of the Commission at the following address:

European Commission  
Secretariat-General  
Transparency, Document Management & Access to Documents (SG.C.1)  
BERL 7/076  
B-1049 Bruxelles,  
or by email to: [sg-acc-doc@ec.europa.eu](mailto:sg-acc-doc@ec.europa.eu)

Yours faithfully,



Timo Pesonen