



EUROPEAN COMMISSION  
DIRECTORATE-GENERAL FOR MIGRATION AND HOME AFFAIRS

The Director-General

Brussels,

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

Ms Laura Kayali  
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**Subject:           Your application for access to documents – Ref GestDem No 2019/1389**

Dear Ms Kayali,

We refer to your letter dated 07/03/2019 in which you make a request for access to documents, registered on 08/03/2019 under the above mentioned reference number.

You requested a list of lobby meetings between DG HOME and Microsoft or its intermediaries during the period between November 2014 and March 2019, the respective minutes and preparatory documents of these meetings, and all the correspondence exchange between DG HOME and Microsoft.

We refer to the definition of a “lobby meeting” for defining the scope of your request, by reference to the definition given in Article 2 of the Commission decision on the publication of information on meetings held between Directors-General of the Commission and organisations or self-employed individuals ([2014/838/EU, Euratom](#)) and the Commission decision on the publication of information on meetings held between Members of the Commission and organisations or self-employed individuals ([2014/839/EU, Euratom](#)):

As a result, we identified the following meetings:

- Meeting on the 27th July 2017: Meeting with Microsoft representative and Commissioner King

- Meeting on the 25th May 2016: Meeting with Microsoft representatives and Commissioner's Avramopoulos Cabinet  
- Meeting on the 30th June 2017: Meeting with Microsoft representatives and Commissioner's Avramopoulos Cabinet

For the above-mentioned meetings, the following documents were identified:

- Document 1: Summary of the meeting on the 25th May 2016 between CAB Avramopoulos and Microsoft (Ares(2019)4087032)
- Document 2: Briefing for the meeting on the 25th May 2016 between CAB Avramopoulos and Microsoft (Ares(2019)4109005)
- Document 3: Briefing of a meeting on e-evidence framework principles between CAB Avramopoulos and Microsoft on 30 June(Ares(2019)4087240)

In addition we identified the following documents as relevant for your request:

- Document 4: MICROSOFT - 10/04/2017 - Support for Institute for Strategic Dialogue (ISD) - Microsoft partners with NGOs to discourage online radicalization to violence (Ares(2017)1915147)
- Document 5: R/MICROSOFT - 10/04/2017 - Support for Institute for Strategic Dialogue (ISD) - Microsoft partners with NGOs to discourage online radicalization to violence (Ares(2017)1966365)

Since some of the documents concerned originate from a third party, the originator of the documents has been consulted.

We enclose a copy of the documents requested. You may reuse the documents requested free of charge for non-commercial and commercial purposes provided that the source is acknowledged, that you do not distort the original meaning or message of the document/documents. Please note that the Commission does not assume liability stemming from the reuse.

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<sup>1</sup> ('Regulation 2018/1725').

The documents to which you request access contain personal data in particular names of Commission and Microsoft staff members which are not in a management position.

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,

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<sup>1</sup> Official Journal L 205 of 21.11.2018, p. 39.

is linked to a particular person is to be considered as personal data.<sup>2</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>3</sup>

In its judgment in Case C-28/08 P (*Bavarian Lager*)<sup>4</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>5</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 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 in question 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

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<sup>2</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>3</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>4</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>5</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.

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 in question (in this case biometric data, in the form of a handwritten signature), 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 individual concerned would not be prejudiced by disclosure of the personal data.

For the remaining meeting covered by your request, we regret to inform you that the Commission does not hold any documents related to this meeting, since no briefings, minutes or any other documents were drafted.

As specified in Article 2(3) of Regulation (EC) No 1049/2001, the right of access as defined in that regulation applies only to existing documents in the possession of the institution. Given that no such documents, corresponding to the description given in your application, are held by the Commission, the Commission is not in a position to fulfil your request.

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 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,

*Paraskevi MICHOU*  
(e-signed)

Enclosures: 5