



EUROPEAN COMMISSION
DIRECTORATE-GENERAL FOR COMMUNICATIONS NETWORKS, CONTENT AND
TECHNOLOGY

The Director-General

Brussels,
CONNECT/R4

Mr Thomas Spekschoor
Wetstraat 155 box 92
1040 Brussels
Belgium

Advance copy via email:
ask+request-6970-c955d958@asktheeu.org

REGISTERED LETTER WITH ACKNOWLEDGEMENT OF RECEIPT

Subject: Your application for access to documents- Ref GestDem 2019/3386

Dear Mr Spekschoor,

We refer to your e-mail dated 13 June 2019 wherein you submit a request for access to documents, registered on the same date under the abovementioned reference number. We also refer to our holding reply, dated 4 July 2019, our reference Ares(2019)4264006, whereby we informed you that the time limit for handling your application was extended by 15 working days pursuant to Article 7(3) of Regulation (EC) No 1049/2001 on public access to documents (hereinafter 'Regulation 1049/2001').

1. SCOPE OF YOUR APPLICATION

You requested access to:

'documents which contain the following information:

All communication from 2016 until now between the European Commission and Facebook on disinformation or fake news on Facebook platforms, including, but not limited to, letters to Facebook to ask for participation in the 'High level group on fake news and online disinformation', letters from Facebook to ask for participation in this High level group, letters or emails from the European Commission to Facebook about their attempts to fight disinformation on their platform, etc.'

Since your application concerned more than 100 documents (email exchanges and additional documents) on 12 July 2019 we sent you a fair solution proposal, registered

under reference Ares(2019)4523679. In this proposal we described the categories of the documents we have identified as falling within the scope of the request, we provided you with an estimated number of the identified documents per category and we invited you to narrow the scope of your request to a maximum of 20 documents relating to the topics you are interested in. In fact, according to our estimates this number of documents could possibly be dealt with within the remaining days from the extended deadline of 30 working days counting from the date of registration of your application (13 June 2019).

By your email, dated 17 July 2019, our reference Ares(2019)4671905, you agreed to limit the scope of your request to the following categories of documents:

-Minutes and reports form meetings between the Commission services and Facebook ('category 1')

-Email exchanges between Commission services and Facebook related to the Multi-stakeholder Forum on disinformation aiming to elaborate a Code of Practice ('category 2')

-Email exchanges between Commission services and Facebook on fake news ('category 3').

Please note that for these categories we have identified three documents falling within 'category 1', three documents falling within 'category 2' and more than 40 documents (email exchanges and additional documents) falling within 'category 3'. The total number of the documents identified as falling within the abovementioned categories therefore exceeds the number of 20 documents, which can be dealt with within the statutory time limit (15+15 working days).

We are therefore obliged to further restrict the scope to what we could achieve within the given timeframe, which is 20 documents, as already indicated to you in our fair solution proposal.

Under these circumstances, we will be in position to fulfil your request as regards the documents falling within 'category 1' and 'category 2', in total six documents. We regret to inform you that due to time constrains your request for access to documents falling within 'category 3' can only be partially fulfilled by providing 14 documents.

2. DOCUMENTS FALLING WITHIN THE SCOPE OF THE REQUEST

The following documents fall within the scope of the request after having been restricted as set out above:

Category 1:

- Minutes of the meeting with Facebook, 4 April 2017 (Document No 1)
- Minutes of the meeting with Facebook on Fake news and media literacy, 24 April 2017 (Document No 2)
- BTO of the meeting between Cabinet Gabriel and Facebook, 11 April 2018 (Document No 3)

Category 2:

- Email exchanges between 16 December 2016 and 16 January 2017 '*Facebook and fake news*' (Document No 4)
- Email exchanges (30 January 2017) '*Fake news follow-up*' (Document No 5)
- Email exchange between 27 March 2018 and 3 April 2018 '*Facebook News Feed*' (Document No 6)

Category 3:

- Agenda of the first meeting of the Multistakeholder Forum on Disinformation (Document No 7)
- Agenda of the second meeting of the Multistakeholder Forum on Disinformation (Document No 8)
- Draft agenda of the third meeting of the Multistakeholder Forum on Disinformation (Document No 9)
- Agenda of the fourth meeting of the Multistakeholder Forum on Disinformation (Document No 10)
- Email of 28 May 2018 '*Facebook representatives at Disinformation Forum tomorrow*' (Document No 11)
- Email of 1 June 2018 '*Member list*' (Document No 12) and attached list of Members of the Multistakeholder Forum on Disinformation (Document No 13)
- Emails of 5 and 7 June 2018 '*Multistakeholder Forum on disinformation- Date for next meeting*' (Document No 14)
- Email of 10 June 2018, '*Multistakeholder Forum on disinformation- Update from the WG and request for feedback and information*' (Document No 15)
- Email of 13 July 2018, '*Multistakeholder Forum on disinformation- Third meeting- Draft Agenda*' (Document No 16)
- Email of 31 August 2018 '*Next steps and milestones re:Cop on disinformation*' (Document No 17)
- Email of 6 September 2018 '*Next FORDIS meeting-17 September 2018-Avenue de Beaulieu*' (Document No 18)
- Email of 10 September 2018 '*Draft opinion from the SB-what next*' (Document No 19)
- Email of 25 September 2018 '*Online Disinformation-Next steps*' (Document No 20)

Please note that the minutes of the meetings of the Multistakeholder Forum on Disinformation, the Vademecum, the draft Code of Practice and other relevant information are also publicly available online via the following link:

<https://ec.europa.eu/digital-single-market/en/news/meeting-multistakeholder-forum-disinformation>

3. ASSESSMENT UNDER REGULATION 1049/2001

Having assessed the identified documents under the provisions of Regulation 1049/2001, we have arrived at the conclusion that full disclosure can be granted for four documents. Partial access can be granted to all other documents.

A. Full disclosure

Documents No 7, 8, 9 and 10 are fully disclosed.

B. Partial access with personal data redacted

Parts of documents No 1-6 and 11-20 contain personal data, in particular names, initials, contact details, email addresses, functions of the third parties and of the staff members of the European Commission who do not hold any senior management position. Pursuant to Article 4(1)(b) Regulation 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 (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 data². 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 data³.

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,

¹ Official Journal L 205 of 21.11.2018, p. 39.

² 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

³ 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

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.

Consequently, I conclude that access cannot be granted to the abovementioned 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.

C. Partial access based on Article 4(2) first indent of Regulation 1049/2001 (Protection of commercial interests)

Article 4(2) first indent of Regulation 1049/2001 provides that the 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.

Parts of the Document No 1, contain sensitive commercial information. In particular, these parts contain confidential comments, which were made by Facebook during a non-public meeting with Commission services. Disclosure of these passages could affect Facebook's business decisions and relations and harm the commercial interests of this company.

4. OVERRIDING PUBLIC INTEREST IN DISCLOSURE

The exceptions laid down in Article 4(2) of Regulation 1049/2001 apply unless there is an overriding public interest in disclosure of the documents. Such an interest must, firstly, be a public interest and, secondly, outweigh the harm caused by disclosure. We have examined whether there could be an overriding public interest in disclosure but we have not been able to identify such interest.

5. REUSE OF DOCUMENTS

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

6. CONFIRMATORY APPLICATION

In accordance with Article 7(2) of Regulation 1049/2001, you are entitled to make a confirmatory application requesting the Commission to review the above positions.

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
Unit C.1. 'Transparency, Document Management and Access to Documents'
BERL 7/076
B-1049 Bruxelles, or by email to: sg-acc-doc@ec.europa.eu

Yours sincerely,

(e-Signed)
Roberto Viola

Enclosures: (20)