



EUROPEAN COMMISSION  
DIRECTORATE-GENERAL FOR HEALTH AND FOOD SAFETY

The Director-General

04.08.2019

Brussels,  
SANTE/E2/GC/km (2019) 6060071

*Ares 2019 5557486*  
**By registered mail with  
acknowledgment of receipt**

Ms Vicky Cann  
CEO  
Rue d'Edimbourg 26  
B-1050 Bruxelles

**Advance copy by e-mail:**  
*ask+request-7154-796c1f11@asktheeu.org*

Dear Ms Cann,

**Subject: Request for access to documents under Regulation (EC) No 1049/2001  
– Ref. GestDem No 2019/4312**

We refer to your e-mail of 22 July 2019 in which you make a request for access to documents, registered on 24 July 2019 under the above mentioned reference number.

We also refer to our letter of 31 July 2019 (Ares(2019)5000776) extending the time limit to respond to your request.

**1. Scope of your request**

In your application, you request on the basis of Regulation (EC) N° 1049/2001 access to:

‘a list of all lobby meetings held by DG Sante, since 17 April 2019, where the proposed ban on food additive E171 by the French Government was discussed. The list should include the names of the individuals and organisations attending; the date; and any agendas / minutes / notes produced. I would additionally like to receive any third party position papers, emails, or other correspondence which relates to discussions around the French Government's ban on E171. This request should include all meetings of SCOPAFF’.

**2. Identification and assessment of the relevant documents**

We have identified 27 documents falling under the scope of your request (see attached list).

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

- Full access can be granted to documents N° 25, 26 and 27
- Partial access can be granted to documents N° 1 to 22 and 24
- No access can be granted to document N° 23

You will find in annex to this letter the above-listed documents to which partial access can be granted, redacted of the parts which cannot be disclosed as a result of the assessment carried out on their content on the basis of this Regulation. Documents N° 25 and 26 have been published and are therefore publicly accessible at the following link:  
[https://ec.europa.eu/food/safety/reg\\_com/toxic\\_en](https://ec.europa.eu/food/safety/reg_com/toxic_en).

The documents disclosed which originate from third parties are disclosed for information only and cannot be re-used without the prior written agreement of the originators, who hold a copyright on them. They do not reflect the position of the Commission and cannot be quoted as such.

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### **3. Reasons for (partial) refusal**

- *Protection of international relations - Article 4(1)(a), 3<sup>rd</sup> indent, of Regulation (EC) No 1049/2001.*

Document N° 23 originates from the Mission of the United States of America to the EU. Since this document originates from a third party, the originator of the document has been consulted in the view of assessing whether an exception under Article 4 of the Regulation (EC) No 1049/2001 is applicable.

The author of the document has objected to the disclosure of the document on the basis that the public disclosure of this letter would inhibit the free exchange of views between the US and the EU institutions (protection of public interest as regards international relations).

The disclosure of this document is therefore covered by the exception of Article 4(1)(a), third indent, of Regulation (EC) No 1049/2001. Therefore the access to document N° 23 cannot be granted.

- *Protection of personal data - Article 4(1)(b) of Regulation (EC) No 1049/2001.*

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').

Documents N° 1 to 22 and 24 contain personal data, such as the names, email addresses, phone/fax numbers, function titles and signatures of non-senior management Commission staff, European Food Safety Authority, Members States and third party staff.

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

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>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 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.

As to the handwritten signatures of Commission staff and representatives of third parties and Member States’ authorities, which are biometric data, there is a risk that their disclosure would prejudice the legitimate interests of the persons concerned.

Consequently, we 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

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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, ECLI:EU:C:2017:994, paragraphs 33 to 35.

<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.

interests of the individuals concerned would not be prejudiced by disclosure of the personal data concerned.

#### **4. 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  
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 sincerely,

A handwritten signature in blue ink, consisting of several vertical strokes followed by a horizontal line.

Anne Bucher

Encl.: - List of Documents identified under point 2  
- Documents that can be fully or partially disclosed