



EUROPEAN COMMISSION
DIRECTORATE-GENERAL FOR HEALTH AND FOOD SAFETY

The Director-General

Brussels, 30. 09. 2019
SANTE/E2/GC/km (2019) 6611374
Ares (2019) 6057524

***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: Your application for access to documents – Ref GestDem 2019/5260

We refer to your email dated 11 September 2019 in which you make a request for access to documents, registered on the same date under the above-mentioned reference number.

1. Scope of your request

On the basis of Regulation (EC) 1049/2001, you requested access to:

- a) Letters dated 26 October 2018 and 1 February 2019, which are mentioned in Document 16 (Joint letter from Food Supplements Europe, FoodDrinkEurope and EU Specialty Food Ingredients on the French ban on the placing on the market of all foodstuffs containing Titanium dioxide (TiO₂, E171) of 8 May 2019 - Ares(2019)3071816)) belonging to your previous request for access to documents (GestDem No 2019/4312);
- b) Notes of a telephone conversation referred to in Document 18 (letter from Food Supplements Europe entitled "TiO₂ - E171 Economic impact assessment" of 29 July 2019 - Ares(2019)4954919)) belonging also to your previous request for access to documents (GestDem No 2019/4312).

2. Identification and assessment of the relevant documents

For what concerns part a) of your request, we have identified two documents falling within the scope of your request:

1. Letter from Food Supplements Europe on the potential ban of the food additive titanium dioxide in France dated 26 October 2018 (Ares(2019)5804886);
2. Letter from Food Supplements Europe, FoodDrinkEurope, EU Specialty Food Ingredients on the potential ban of the food additive titanium dioxide (TiO₂, E 171) in France dated 1 February 2019 (Ares(2019)681156).

Having examined the requested documents under the provisions of Regulation (EC) No 1049/2001 regarding public access to documents and having considered the opinion of the third party, we have come to the conclusion that partial access can be granted to documents No 1 and 2.

Please also note that these documents were received by the Commission from third parties. They are disclosed for information only and cannot be re-used without the 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.

For what concerns part b) of your request, the Commission, as explained under Section 4 of this letter, holds no documents corresponding to the description given in your request.

3. Reason for (partial) refusal

Protection of the privacy and integrity of the individual, in particular in accordance with Community legislation regarding the 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 Community 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/EC¹.

Documents 1 and 2 contain personal data, such as the names, email addresses, phone/fax numbers, function titles and signatures of non-senior management Commission staff and third party staff.

Indeed, Article 3(1) of Regulation (EU) 2018/1725 provides that personal data ‘means any information relating to an identified or identifiable natural person [...]’. The Court of Justice

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

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.

In its judgment in Case C-28/08 P (Bavarian Lager)³, the Court of Justice ruled that when a request is made for access to documents containing personal data, the Data Protection Regulation becomes fully applicable⁴.

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

According to Article 9(1)(b) of Regulation (EU) 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.

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

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. ECLI:EU:T:2018:560, paragraphs 33 to 35.

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

⁴ 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.

Therefore, we are disclosing the documents related to your request expunged from this personal data.

4. No documents held

For what concerns part b) of your request, we regret to inform you that no notes were made relating to the telephone conversation referred to in the letter from Food Supplements Europe of 29 July 2019 - Document 18 of your previous request for access to documents (GestDem No 2019/4312).

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 request, are held by the Commission, the Commission is not in a position to fulfil this part of your request.

5. 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 Brussels
or by email to: sg-acc-doc@ec.europa.eu

Yours sincerely,



Anne Bucher

Enclosure: Documents as identified under paragraph two of this letter