

To: Alexander Fanta ask+request-7241-7712a36a@asktheeu.org

Brussels, 20 September 2019

Subject: Your application for access to documents – Ref No 2019-31

Dear Mr. Fanta,

We refer to your email of 26 August 2019 with which you made a request for access to documents on the basis of Regulation (EC) 1049/2001 regarding public access to documents, which was registered on 30 August 2019 under reference number 2019/31.

You request all drafts and other documents related to new guidelines on facial recognition considered by the Board, as discussed in an article published by Politico on July 9, 2019¹, as well as the minutes of the July 9, 2019 meeting of the EDPB.

We regret to inform you that the EDPB does not hold any documents that fall under the scope of the first part of your request. Indeed, the EDPB has not issued any guidelines on facial recognition. Please be advised, however, that you can find some information relating to facial recognition and the processing of biometric data in general in the ‘Guidelines 3/2019 on processing of personal data through video devices’². Please be informed that the text of these guidelines was adopted on 10 July 2019 and that the published version is open for public consultation.

Please note that according to Article 2(3) of Regulation (EC) 1049/2001, the right of access under this regulation applies only to existing documents in the possession of the institution.

Concerning the subject matter of the second part of your request, we have identified one document, the draft minutes of the 9 July 2019 meeting of the EDPB.

Having examined the requested document under the provisions of Regulation (EC) 1049/2001, we have come to the conclusion that the requested document cannot be disclosed. The decision to deny disclosure is based on Article 4(3) second subparagraph of the Regulation. According to this provision, access to a document containing opinions for internal use as part of deliberations and preliminary consultations within the institution shall be refused if the disclosure of the document would seriously undermine the institution’s decision-making process.

¹ <https://www.politico.eu/article/europe-facial-recognition-facebook-privacy-data-protection/>

² See https://edpb.europa.eu/sites/edpb/files/consultation/edpb_guidelines_201903_videosurveillance.pdf, Chapter 5.

The exception provided under Article 4(3) second subparagraph of Regulation 1049/2001 applies to documents whose disclosure would undermine the decision-making process of the EDPB. The document that you seek to obtain is in draft stage. Public disclosure of such document would create confusion which might result from incorrect or unfinished records of the internal deliberations concerned. Thus, disclosure of the document in question could create confusion about the discussions that took place during the meeting, which should also be seen in light of the fact that specific discussions, opinions and views of the EDPB are subject to updates and/or revisions and can be revisited and reviewed at any time. Additionally, disclosure would curtail the EDPB members' "space to think", by preventing them from freely submitting their uncensored views on the matters under discussion, as well as by freely discussing the issues at stake. For this same reason, disclosure of these views and opinions could possibly also negatively affect forthcoming discussions.

We have considered whether partial access could be granted to the document requested. However, the document is entirely covered by the exception.

Finally, we have examined whether there could be an overriding public interest in disclosing the document, but we have not been able to identify such an interest. For these reasons, access to the requested document is denied.

In accordance with Article 7(2) of Regulation 1049/2001, you are entitled to make a confirmatory application requesting the European Data Protection Board to review this position.

Such a confirmatory application should be addressed within 15 working days upon receipt of this letter to the following email address: edpb@edpb.europa.eu. Please make reference to the case number of your request in the subject.

Yours faithfully,



Ventsislav Karadjov

Vice-Chair of the EDPB