



EUROPEAN COMMISSION
SECRETARIAT-GENERAL

Directorate D - Jobs, Growth & Investment
The Director

Brussels,
SG.D.3/RG

Peter Teffer
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By email only to:
[ask+request-7933-
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Subject: Your application for access to documents – GESTDEM 2020/2570

Dear Mr Teffer,

We refer to your e-mail of 5 May 2020, registered on 6 May 2020 under the above-mentioned reference number, in which you make a request for access to documents related to meetings held by the Commission President.

Your request concerns “[a]ll documents - including but not limited to minutes, (hand-written) notes, audio recordings, verbatim reports, operational conclusions, lines to take, briefings, e-mails, and presentations - related to the following video conference meetings President Von der Leyen has held with organisations and self-employed individuals. This includes the 16 March 2020 videoconference with CureVac representatives and the 25 March 2020 with CEOs, but also any other videoconferences with companies that have not been made public yet.”

Following our request for clarifications, and taking into account the fact that further video meetings held by the Commission President have been listed in the online diary of which you are aware, we limited our search to documents related to the two meetings identified in your request.

Identification and assessment of the documents concerned

With respect to the video conference of 16 March 2020, we have identified the following documents:

1. A presentation of CureVac activities.

2. A press statement published following the video meeting.

With respect to the video conference with CEOs of 25 March 2020, we have identified the following documents:

3. A press release dated 22 March 2020 (Philips).

4. A letter dated 24 March 2020 to the President of the Commission (Philips).

5. An overview of global ventilators manufacturers (Philips).

6. A cover email dated 27 March 2020 (Medtronic).

7. A letter to the President of the Commission sent with the email dated 27 March 2020 (Medtronic).

8. A cover email dated 2 April 2020 (Medtronic).

9. A letter to the President of the Commission sent with the email dated 2 April 2020 (Medtronic).

10. A cover email dated 25 March 2020 (Siemens).

11. A letter to the President of the Commission sent with the email dated 25 March 2020 (Siemens).

12. A reply by the Commissioner Breton to the letter of 25 March 2020 (Siemens).

I have the pleasure to inform you that full access can be granted to documents No 2, 3 listed above. A partial access can be granted to documents No 1, 4, 6, 7, 8, 9, 10, 11, 12. No access can be granted to document No. 5. The reasons for this decision are set out below.

You will find the expunged versions of the documents concerned enclosed with this reply.

Protection of personal data

The documents to which you have requested access contain personal data, in particular names, e-mail addresses, phone numbers. This concerns documents No 4 and 6 to 12 above.

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 (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').

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.²

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 applicable.⁴

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 personal 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.

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 Nowak v Data Protection Commissioner*, request for a preliminary ruling, paragraphs 33-35, [ECLI:EU:C:2017:994](#).

³ 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.

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.

In your request, you do not put forward any arguments to establish 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.

Consequently, I conclude that, pursuant to Article 4(1)(b) of Regulation 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.

As to the handwritten parts and signatures, which are biometric data, there is a risk that their disclosure would prejudice the legitimate interests of the persons concerned.

PROTECTION OF COMMERCIAL INTERESTS

Furthermore, documents No 1, 4, 5, 7, 9, 11, listed above, contain information about the commercial activities and markets of the companies concerned. They contain information such as market shares, planned investments, research priorities, business relations. This is commercially sensitive information, the disclosure of which would undermine their commercial interests. Please note that more detailed information as regards the content of these documents cannot be provided without revealing their content and thus rendering the invoked exception devoid of purpose.

PUBLIC INTEREST IN DISCLOSURE

The exception to the right of access provided for in Article 4(2) first indent of Regulation 1049/2001 must be waived if there is an overriding public interest in disclosing the documents concerned. For such an interest to exist it, firstly, has to be a public interest and, secondly, it has to outweigh the interest protected by the exception to the right of access.

In your request you have not put forward any arguments as to the public interest in disclosure. For my part, in the present case, there are no elements at my disposal that could indicate the existence of an overriding public interest in the sense of Regulation 1049/2001 that would outweigh the harm to the interests protected by virtue of exception in Article 4(2) first indent.

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 Secretariat-General of the Commission at the following address:

European Commission

Secretariat-General

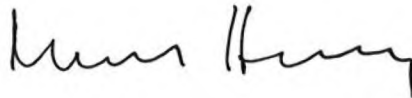
Transparency, Document Management & Access to Documents (SG.C.1)

BERL 7/076

B-1049 Bruxelles

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

Yours sincerely,



Marcel Haag

Enclosures (11)