



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

The Director-General

Brussels
CNECT.R.4

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REGISTERED LETTER WITH ACKNOWLEDGEMENT OF RECEIPT

Subject: Your request for access to documents - GestDem 2021/0606

Dear Mr Stolton,

We refer to your request for access to documents pursuant to Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents (hereinafter 'Regulation 1049/2001') that you introduced on 9 February 2021 via email and which was registered on the same day under the above-mentioned reference number. We also refer to our holding reply, dated 2 March 2021, our reference Ares(2021)1577647, 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 1049/2001.

1. SCOPE OF YOUR APPLICATION

By your application, you request access to the following:

'Dear Communications Networks, Content and Technology,

Under the right of access to documents in the EU treaties, as developed in Regulation 1049/2001, I am requesting documents that contains the following information:

- All documentation (including but not limited to: general communications of any nature, written material of any kind, email correspondences, attendance lists, agendas, background papers, briefing papers, transcriptions of meetings, any written material whatsoever) containing references to the 'PhotoDNA' software. [...]

Given the wide-scope of your request, we contacted you on 22 February 2021 with a view to finding a fair solution based on Article 6(3) of Regulation 1049/2001 (our reference, Ares(2021)1412820). In order to help you narrow down the scope of the request, we provided you with the categories of the approximately 170 documents with references to the PhotoDNA software that had been identified at that stage. We indicated the steps that the handling of your application would entail and we concluded that

according to our estimates a maximum of 20 documents could possibly be dealt with within 30 working days counting from the date of registration of your application. You have not replied to our invitation to propose a fair solution.

In line with the principles of sound financial management and good administration to which the Commission is bound to, pursuant to Article 310(5) of the Treaty on the functioning of the European Union, we are obliged to balance your interest in access against the workload resulting from the processing of your application. This is in line with the case law of the EU courts¹.

We have therefore, as announced in our email of 22 February 2021, and taking into account the categories of documents communicated therein, proceeded with the unilateral restriction of the scope of your application to the documents identified under point 2. It is what could be achieved, taking into account the Commission's resources and the global workload of the concerned staff during the same period, within the given timeframe.

2. DOCUMENTS FALLING WITHIN THE SCOPE OF THE REQUEST

The following documents fall within the scope of the request after having been restricted:

- Email of 14 December 2018 from INHOPE to DG CONNECT (**Document 1**) and attachment on additional info on ePrivacy regulation (**Document 2**)
- Children and technologies - AI - Summary of paper on AI and content moderation (**Document 3**)
- EOKM Annual report 2019 (**Document 4**)
- Article - Reining in online abuses (**Document 5**)
- Back to Office report - Online meeting with Facebook on CSAM (**Document 6**)
- Comments on the 2021-2024 Roadmap for an EU strategy on the rights of the child (**Document 7**)
- Note to Cabinet Breton (**Document 8**)
- Briefing for Cabinet Gabriel for a discussion with Microsoft on 21 January 2019 (**Document 9**)
- Study on the implementation of the new provisions in the revised Audiovisual Media Services Directive (AVMSD) (**Document 10**)
- Letter EDRi of 27 October 2020 (**Document 11**)
- EPRS Study of February 2021 (**Document 12**)
- Agenda Intergroup Expert Meeting on EU legislation on the fight against CSAM of 15 October 2020 (**Document 13**)
- Notes Intergroup Expert Meeting on EU legislation on the fight against CSAM of 15 October 2020 (**Document 14**)
- Letter to Vice President Ansip of 30 November 2018 (**Document 15**)
- CSAM – Meeting with Facebook/WhatsApp on 8 October 2020 – Minutes (**Document 16**)

3. ASSESSMENT UNDER REGULATION 1049/2001

Following an examination of the identified documents under the provisions of Regulation 1049/2001, we have arrived at the conclusion that full access can be granted to six

¹ Judgment of the Court of Justice of 2 October 2014 in case C-127/13, Strack v Commission, paragraphs 27-28.

documents. Partial access can be granted to eight documents and access is denied for two documents as disclosure of these parts is prevented by exceptions to the right of access laid down in Article 4 of Regulation 1049/2001.

A. Full disclosure

Documents 3, 4, 5, 7, 10 and 12 are fully disclosed. Please note that documents 7, 10 and 12 are publicly available via the following links:

Document 7:

<https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12454-EU-strategy-on-the-rights-of-the-child-2021-24-/F541015>

Document 10:

<https://ec.europa.eu/digital-single-market/en/news/study-implementation-new-provisions-revised-audiovisual-media-services-directive-avmsd>

Document 12:

[http://www.europarl.europa.eu/RegData/etudes/STUD/2021/662598/EPRS_STU\(2021\)662598_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2021/662598/EPRS_STU(2021)662598_EN.pdf)

B. Partial disclosure

(i) Protection of privacy and integrity of individuals

Full disclosure of Documents 6, 8, 9, 11, 13, 14, 15 and 16 is prevented by the exception concerning the protection of privacy and integrity of the individual outlined in Article 4(1)(b) Regulation 1049/2001, since they contain the following personal data:

- The names/initials and contact information of Commission staff members not pertaining to the senior management.
- Names, functions and contact information of other natural persons;

Article 9(1)(b) of the Data Protection Regulation² does not allow the transmission of these personal data, except if you prove that it is necessary to have the data transmitted to you for a specific purpose in the public interest and where there is no reason to assume that the legitimate interests of the data subject might be prejudiced. In your request, you do not express any particular interest to have access to these personal data nor do you put forward any arguments to establish the necessity to have the data transmitted for a specific purpose in the public interest.

Consequently, I conclude that, pursuant to Article 4(1)(b) Regulation 1049/2001, access cannot be granted to the personal data contained in the requested document, 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 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, OJ L 295, 21.11.2018, p. 39.

Please note that parts of Documents 6, 8, 9 and 16 also fall outside the scope of the request and consequently have been blanked out.

C. Non-disclosure

We regret to inform you that access cannot be granted to Documents 1 and 2.

(i) 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.

This provision must be interpreted in light of Article 339 of the Treaty of the Functioning of the European Union (TFEU), which requires staff members of the EU institutions to refrain from disclosing information of the kind covered by the obligation of professional secrecy, in particular information about undertakings, their business relations or their cost components.

Please note that Documents 1 and 2 originate from a third party that has been consulted.

The author of Documents 1 and 2 has objected to their disclosure because the information contained therein is outdated. As parts of Document 1 and Document 2 in its entirety contain information relating to the concerned third parties' activities, views and positions, disclosure would undermine the third parties' commercial interests.

After applying the redactions made for personal data on the basis of Article 4(1)(b) and for the parts covered by Article 4(2) first of indent of Regulation 1049/2001 for the reasons set out above, partial access to the remaining parts of Document 1 have been rendered meaningless.

In light of the foregoing considerations, access to Documents 1 and 2 must be refused completely.

4. OVERRIDING INTEREST IN DISCLOSURE

The exceptions laid down in Article 4(2) and Article 4(3) of Regulation 1049/2001 apply, unless there is an overriding public interest in the disclosure of 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 the disclosure of the aforementioned parts of the documents but we have not been able to identify such an interest.

5. REUSE OF DOCUMENTS

You may reuse public Document 10, and the parts of Documents 3, 6, 8, 9, 14 and 16 which have been produced by the European Commission or by public and private entities on its behalf based on the [Commission Decision on the reuse of Commission documents](#). You may reuse the document disclosed free of charge and for non-commercial and commercial purposes provided that the source is acknowledged and that you do not distort the original meaning or message of the document. Please note that the Commission does not assume liability stemming from the reuse.

Please note that Document 10 concerns a study carried out by external experts. It does not reflect the position of the Commission and cannot be quoted as such.

Please note that Documents 3, 6, 8, 9, 14 and 16 were drawn up for internal use under the responsibility of the relevant services of DG CONNECT. They solely reflect the services' interpretation of the interventions made and do not set out any official position of the third parties to which the documents refer. They do not reflect the position of the Commission and cannot be quoted as such.

Documents 4, 5, 7, 11 and 15 originate from third parties. Please note that they are disclosed to you based on Regulation (EC) No 1049/2001. However, this disclosure is without prejudice to the rules on intellectual property, which may limit your right to reproduce or exploit the released documents without the agreement of the originators, who may hold an intellectual property right on them. The European Commission does not assume any responsibility from their reuse.

6. CONFIRMATORY APPLICATION

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,

Electronically signed

Roberto Viola

Enclosures: (14)