



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

The Director-General

Brussels
CNECT.R.4

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Belgique

Advance copy via email:

[ask+request-10572-
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Registered letter with acknowledgement of receipt

Subject: Your request for access to documents - GestDem 2022/0545

Dear Ms Hirst,

We refer to your email of 20 January 2022 in which you make a 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'), registered on 24 January 2022 under the above-mentioned reference number.

1. SCOPE OF YOUR APPLICATION

By your application to the Directorate-General for Internal Market, Industry, Entrepreneurship and SMEs (DG GROW) which was attributed to the Directorate-General for Communications Networks, Content and Technology (DG CONNECT), you request access to the following:

'[...] Referring to Regulation (EC) No 1049/2001 on public access to EU documents and to the 'Aarhus Convention' I would herewith like to ask for access to the following:

All documents—including but not limited to correspondence, emails, minutes, notes (hand written or electronic), audio or video recordings, verbatim reports, operational conclusions, lines to take, briefings, and presentations—related to the meeting on 2022-01-11 between Filomena Chirico and Google. [...]

2. DOCUMENTS FALLING WITHIN THE SCOPE OF THE REQUEST

The following documents have been identified as falling within the scope of your request:

- Back to Office Report (BTO) - Meeting between Google and Cabinet Breton - 11 January 2022, 17:00-17:30 – Ares(2022)740263 (**Document 1**)
- Email – Meeting request – 4 November 2021 – Ares(2021)6796540 (**Document 2**)

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 partial access can be granted to both documents identified. Full disclosure is prevented by exceptions to the right of access laid down in Article 4 of Regulation 1049/2001. Please also note that parts of Document 2 have been redacted as falling outside the scope of the request.

(i) Protection of privacy and integrity of individuals

Full disclosure of Documents 1 and 2 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 Regulation¹ 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.

(ii) Protection of the decision-making process

The first subparagraph of Article 4(3) of Regulation 1049/2001 provides that '[a]ccess to a document, drawn up by an institution for internal use or received by the an institution, which relates to a matter where the decision has not been taken by the institution, shall be

¹ 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.

refused if disclosure of the document would seriously undermine the institution's decision-making process, unless there is an overriding public interest in disclosure.'

Parts of Document 1 contain preliminary views and reflections of the Commission services and other actors regarding the Digital Services Act package. Document 1 was drawn up by the Commission for internal use and the abovementioned parts are subject to ongoing discussions and deliberations, including in inter-institutional negotiations. The Commission services must be free to explore all possible options in the run-up to ongoing legislative procedures. The risk of disclosing sensitive information regarding the Commission services' preliminary views before and during inter-institutional negotiations on the legislative proposals at question would deter the Commission from freely expressing their opinions and having frank discussions. Speculations and misinterpretations of the public on the views and reflections put forward in the ongoing decision-making processes would affect the exploration of different policy options and unduly restrict the Commission's internal space to think, exposing the Commission to external pressure before and during inter-institutional negotiations. The risk of disclosure of these preliminary views and reflections would therefore seriously undermine the ongoing decision-making processes. This risk is also reasonably foreseeable and not purely hypothetical.

Consequently, the above-mentioned parts of Document 1 have been blanked out.

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 which are being withheld but we have not been able to identify such an interest.

5. REUSE OF DOCUMENTS

You may reuse public documents 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 disclosed Document 1 originating from the Commission 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 documents. Please note that the Commission does not assume liability stemming from the reuse.

Please note that Document 1 was drawn up for internal use under the responsibility of the relevant services of DG CONNECT. It 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. It does not reflect the position of the Commission and cannot be quoted as such.

Document 2 originates from a third party. Please note that it is 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

document without the agreement of the originator, who may hold an intellectual property right on it. The European Commission does not assume any responsibility from its 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: (2)