



EUROPEAN COMMISSION

Directorate-General for Communications Networks, Content and Technology

Director-General

Brussels,
CONNECT/BH

By registered letter with acknowledgment of receipt

Mr Arne Semsrott
c/o Open Knowledge Foundation
Singerstraße 109
10179 Berlin
Germany

Advance copy by email:
ask+request-3724-ae4e7a82@asktheeu.org

Subject: Your application for access to documents – Ref GestDem No 2017/308

Dear Sir,

We refer to your e-mail dated 17/01/2017 in which you make a request for access to documents (our reference: Ares(2017)286935), registered on 18/01/2017 under the above mentioned reference number.

On 08/02/2016 we informed you of an extension of the deadline for handling your request by 15 working days (our reference: Ares(2017)700720).

You request access to (i) "*any concept paper the EU Commission has prepared to counter 'Fake News' in the form of a European regulation*" and (ii) "*any correspondence by the EU Commission with Google and Facebook regarding 'Fake News'*".

Regarding the documents referred to in point (i), we understand your request to concern any concept paper by the Commission regarding potential Commission action, including by initiating Union legislation, in relation to the issue of 'fake news'.

Your application concerns the following documents:

1. Background Note on the subject of 'fake news' (registered on 17/02/2017 under reference number Ares(2017)881559);
2. DG CONNECT proposal for background note on 'fake news' (registered on 17/02/2017 under reference number Ares(2017)881373);

3. Letter from Commissioner Oettinger to the President of the Commission on online platforms (registered on 10/01/2017 under reference number Ares(2017)123266);
4. Note on online platform policy (registered on 17/02/2017 under reference number Ares(2017)881690);
5. E-mail from Google to the Commission services on the '2016 Bad ads report' (registered on 31/01/2017 under reference number Ares(2017)517901);
6. E-mail from Google to the Commission services on the issue of 'fake news' and other issues (registered on 17/02/2017 under reference number Ares(2017)881011);
7. Exchange of e-mails between Facebook and the Commission services (registered on 17/02/2017 under reference number Ares(2017)880679 and Ares(2017)881934).

Regarding access to documents 1-4

Having examined the documents requested under the provisions of Regulation (EC) No 1049/2001 ('Regulation 1049/2001') regarding public access to documents, I regret to inform you that your application to access documents 1-4 cannot be granted, as disclosure is prevented by an exception to the right of access laid down in Article 4 of this Regulation.

The documents which you seek to obtain have been drawn up by the Commission for internal use and relate to a matter where the Commission has not yet taken a decision. The documents sketch out various policy options for Commission action regarding the issue of 'fake news'.

Disclosure of the documents requested would seriously undermine the protection of the decision-making process of the Commission, as it would reveal preliminary views and policy options which are currently under consideration; the Commission's services must be free to explore all possible options in preparation of a decision free from external pressure. Therefore the exception laid down in the first subparagraph of Article 4(3) of Regulation 1049/2001 applies to documents 1-4.

We have considered whether partial access could be granted to the documents requested. Given that documents 1-4 are covered by the aforesaid exception in their entirety, it is not possible to grant partial access to them.

The exception laid down in the first subparagraph of Article 4(3) of Regulation 1049/2001 applies unless there is an overriding public interest in disclosure of the documents. We have examined whether there could be an overriding public interest in disclosure, but have not been able to identify such interest.

Regarding access to documents 5-7

Documents 5-7 (partly) originate from third parties. The originators of the documents have therefore been consulted.

Documents 5-7 contain personal data.

Pursuant to Article 4(1)(b) of Regulation 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 Union legislation regarding the protection of personal data. The applicable legislation in this field is 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 data¹.

When access is requested to documents containing personal data, Regulation (EC) No 45/2001 becomes fully applicable².

According to Article 8(b) of that Regulation, personal data shall only be transferred to recipients if they establish the necessity of having the data transferred to them and if there is no reason to assume that the legitimate rights of the persons concerned might be prejudiced.

We consider that, with the information available, the necessity of disclosing the aforementioned personal data to you has not been established and/or that it cannot be assumed that such disclosure would not prejudice the legitimate rights of the persons concerned.

Therefore, also taking into account the opinion of the third parties consulted, we are disclosing documents 5-7 expunged from this personal data.

Right to make a confirmatory application

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

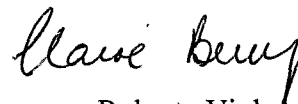
Such a confirmatory application should be addressed within 15 working days upon receipt of this letter to the Secretary-General of the Commission at the following address:

European Commission
Secretary-General
Transparency unit SG-B-4
BERL 5/282
B-1049 Bruxelles

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

Yours faithfully,

For the Director General absent
C.Bury
Deputy Director General


Roberto Viola

¹ Official Journal L 8 of 12.1.2001, p. 1

² Judgment of the Court of Justice of the EU of 29 June 2010 in case C-28/08 P, Commission/The Bavarian Lager Co. Ltd, ECR 2010 I-06055.