



EUROPEAN COMMISSION
DIRECTORATE-GENERAL JUSTICE and CONSUMERS

Director-General

Brussels,
JUST/C3/FS/ks (2017)2482357

**By registered letter with
acknowledgment of receipt**

Mr Paul-Olivier Dehaye
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Switzerland

Advance copy by email:
ask+request-4057-b8859d29@asktheeu.org

Subject: Your application for access to documents - Ref GestDem No 2017/1375

Dear Sir,

We refer to your e-mail dated 3 March 2017, registered under the above mentioned reference number, in which you make a request for access to documents.

Your application for access to any document the Article 29 Working Party holds to any document the Working Party 29 has received in response to its request for comments to the "Guidelines on data portability" concerns the following documents:

Document 1 - Libor Manda

Document 2 - Cozyccloud

Document 3 - Estonian Association of Information Technology and Telecommunications

Document 4 - VBO/FEB

Document 5 - European Banking Federation (EBF)

Document 6 - BIPAR

Document 7 - European Data Coalition (EDC)

Document 8 - EuroCommerce

Document 9 - EORTC

Document 10 - Private individual 01

Document 11 - Walgreens Boots Alliance

Document 12 - DigitalEurope

Document 13 - Czech Banking Association

Document 14 - SAFRAN

Document 15 - International Pharmaceutical Privacy Consortium (IPPC)

Document 16 - REXEL

Document 17 - Caixa Bank

Document 18 - COCIR

Document 19 - Centre for Information Policy Leadership (CIPL)

Document 20 - Business Europe

Document 21 - American Chamber of Commerce Ireland

Document 22 - AmCham EU

Document 23 - Deutsche Telekom

Document 24 - Ecommerce Europe

Document 25 - FEDMA

Document 26 - EMEA

Document 27 - Private individual 02

Document 28 - Enterprise Study

Document 29 - World Employment Confederation-Europe (WEC)

Document 30 - VVO

Document 31 - U.S. Chamber of Commerce

Document 32 - Private individual 03

Document 33 - Telefonica

Document 34 - Sopra Steria

Document 35 - SNCD

Document 36 - SIIA

Document 37 - Bayview Insight Management

Document 38 - Private individual 04

Document 39 - McCann FitzGerald

Document 40 - Private individual 05

Document 41 - Lewiatan

Document 42 - Private individual 06

Document 43 - Interactive Advertising Bureau (IAB)

Document 44 - Private individual 07

Document 45 - Private individuals 08

Document 46 - FiCom

Document 47 - FENCA

Document 48 – ETNO/Time Lex

Document 49 - EACB

Document 50 - Dutch Banking Association

Document 51 - Direct Marketing Association (DMA)

Document 52 - Danish Insurance Association

Document 53 - Confederation of CZ Industry

Document 54 - GSMA.

Document 55 - Bitkom

Document 56 - BDIU

Document 57 - BBA AFME

Document 58 - Private individual 09

Document 59 - Assoprivacy

Document 60 - ASML

Document 61 - Agoria

Document 62 - ADRP

Document 63 - MEDEF

Document 64 - JISC

Document 65 - Insurance Europe

Document 66 - EFPIA

Document 67 - WKO

Document 68 - Private individual 10

Document 69 - Private individual 11

Document 70 - Private individual 12

Document 71 - Private individual 13

Document 72 - Private individual 14

Document 73 - Private individual 15

Document 74 - French Banking Federation

Document 75 - BBVA

Document 76 - Rakuten

Document 77 - Blue Media

Document 78 - T Mobile

Document 79 - SABI

Document 80 - Private individuals 16

Since the documents concerned originate from third parties, the originators of the documents have been consulted.

Having examined the documents requested under the provisions of Regulation (EC) No 1049/2001 regarding public access to documents, I have come to the conclusion that some of the documents may be disclosed in full, and some of the documents may be disclosed partially.

In relation to other documents, I regret to inform you that your application cannot be granted.

Parts of the documents partially disclosed have been expunged, as disclosure of such parts is prevented by exceptions to the right of access laid down in Article 4 of this Regulation.

This includes personal data, the disclosure of which would undermine the protection of privacy and the integrity of the individual, in particular in accordance with EU legislation regarding the protection of personal data.

Documents **6, 13, 17, 18, 20, 21, 23, 24, 25, 31, 33, 39, 53, 63, 64, 66, 74, 76, 77, 78** and **79** can be disclosed in full, and are attached herewith.

Documents **3, 4, 9, 11, 12, 15, 16, 19, 22, 26, 27, 28, 29, 34, 35, 36, 37, 47, 48, 49, 50, 52, 54, 55, 56, 57, 60, 61, 62, 65, 67, 68, 69, 70, 72** and **73** can be partially disclosed, and are attached herewith, redacted as necessary.

The expunged parts of documents **3, 4, 9, 12, 15, 16, 19, 22, 26, 27, 28, 29, 34, 35, 36, 37, 47, 48, 49, 50, 52, 54, 55, 56, 57, 60, 61, 62, 65, 67, 68, 69, 72** and **73** consist of personal data, in particular, information identifying individuals. Disclosure of these parts would undermine the protection of the privacy of the individuals concerned.

The expunged parts in documents **11** and **70** consist of sensitive commercial information and intellectual property. Disclosure of these parts would undermine the protection of commercial interests including intellectual property.

Your application for access to documents **1, 2, 8, 10, 14, 30, 32, 38, 40, 41, 42, 43, 44, 45, 51, 58, 59, 71, 75** and **80** cannot be granted, and access is therefore refused.

Access to documents **1, 2, 8, 14, 30, 32, 38, 40, 41, 42, 44, 45, 51, 59** and **71** cannot be granted because the originators and co-originators did not respond when consulted.

The authors of documents **5, 7** and **46** did not respond to the consultation, but have published their comments on the following websites respectively:

http://www.ebf.eu/wp-content/uploads/2017/04/EBF_025448E-EBF-Comments-to-the-WP-29-Guidelines_Right-of-data-portabi...pdf

<http://www.europeandatacoalition.eu/wp-content/uploads/2015/06/EDC-Comments-on-the-29WP-guidelines-15.02.17.pdf>

<https://www.ficom.fi/ajankohtaista/lausunnot/comments-wp-29-guidelines-data-portability>

Access to document **58** is refused on the basis that its disclosure would undermine the protection of privacy and the integrity of the individual, as well as the protection of commercial interests including intellectual property. Documents **10, 43, 75**, and **80** consist entirely of intellectual property and access is therefore refused on the basis that their disclosure would undermine the protection of commercial interests including intellectual property.

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 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 this Regulation, personal

¹ OJ L 8 of 12.1.2001, p. 1

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

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 that it cannot be assumed that such disclosure would not prejudice the legitimate rights of the persons concerned. Therefore, we are disclosing the documents requested from which these personal data have been expunged.

If you wish to receive these personal data, we invite you to provide us with arguments showing the need for having these personal data transferred to you and the absence of adverse effects to the legitimate rights of the persons whose personal data should be disclosed.

Pursuant to Article 4(2) (b) of Regulation (EC) No 1049/2001, access to a document has to be refused if its disclosure would undermine the protection, *inter alia*, of commercial interests of a natural or legal person, including intellectual property.

The exceptions laid down in Article 4(1) and 4(2) of Regulation 1049/2001 apply unless there is an overriding public interest in disclosure of the document/documents.

Your application for access to these documents does not, on the face of it, disclose any pressing public interest.

If you disagree with the assessment that the expunged personal data can only be disclosed if such disclosure is legitimate under the rules applicable to the protection of personal data, you are entitled, in accordance with Article 7(2) of Regulation 1049/2001, to make a confirmatory application requesting the Commission to review this position.


As regards parts of the documents expunged for reasons other than personal data, 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 5/327
B-1049 Bruxelles

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

Yours sincerely,



Tiina ASTOLA