



EUROPEAN COMMISSION

Directorate-General for Communications Networks, Content and Technology

Director-General

Brussels,
CONNECT/R4

Ms Vicky Cann
CEO
Rue d'Edimbourg 26
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Advance copy via email:
ask+request-4623-bbdc88ed@asktheeu.org

REGISTERED LETTER WITH ACKNOWLEDGEMENT OF RECEIPT

Subject: Your application for access to a document- Ref GestDem 2018/5806

Dear Ms Cann,

We refer to your e-mail dated 6/11/2018 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 7/11/2018 under the above-mentioned reference number.

In your application you refer to our response of your previous request GestDem 2017/5188 and you request a further document which was mentioned in the earlier response. Specifically, you ask for the "mission letter" which was mentioned in an email that was provided as 'Annex I' to the response for the request GestDem 2017/5188.

Since the document concerned originates from a third party, the originator of the document has been consulted.

Following an examination of the document requested under the provisions of Regulation 1049/2001 regarding public access to documents and taking into account the opinion of the third party, I regret to inform you that your application cannot be granted, as disclosure is prevented by the exception to the right of access laid down in Article 4(2) first indent of Regulation 1049/2001.

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.

The document which you seek to obtain contains commercially sensitive information. Its disclosure would divulge know-how of the third party on executing studies to the public and thus undermine the competitive position and the commercial interests of the company. We therefore refuse access on the basis of Article 4(2) first indent of Regulation 1049/2001.

The exception laid down in Article 4(2), first indent, of Regulation 1049/2001 applies unless there is an overriding public interest in disclosure of the document. 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 disclosure but we have not been able to identify such an interest.

We have also considered whether partial access could be granted to the document requested. However, partial access is not possible considering that the document concerned is covered in its entirety by the exception under Article 4(2), first indent, of Regulation 1049/2001.

Furthermore, parts of the document contain also personal data, in particular the name, function and the handwritten signature of a member of the third party's staff.

Indeed, any information, which by reason of its content, purpose or effect, is linked to a particular person is to be considered as personal data¹.

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 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 data (hereinafter "Regulation 45/2001")².

When access is requested to documents containing personal data, Regulation (EC) No 45/2001 becomes fully applicable³.

According to Article 8(b) of Regulation 45/2001, personal data shall be transferred to recipients only 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 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 person concerned.

¹ Judgment of the Court of Justice of the European Union of 20 December 2017 in Case C-434/16, Peter Novak v Data Protection Commissioner, request for a preliminary ruling, paragraphs 33-35, ECLI:EU:T:2018:560.

² Official Journal L8 of 12.1.2001,p.1.

³ Judgment of the Court of Justice of the European Union of 29 June 2010 in Case C-28/08 P, Commission/The Bavarian Lager Co. Ltd, ECR 2010 I-06055.

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

BERL 5/282

B-1049 Bruxelles

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

Yours sincerely,

(e-Signed)
Roberto Viola