



EUROPEAN COMMISSION
DIRECTORATE-GENERAL FOR HEALTH AND FOOD SAFETY

The Director-General

Brussels,
SANTE/E2/RP/af (2018)6734648

***By registered letter with acknowledgment
of receipt***

Mr Pablo Cano
Plaça Letamendi 1, sobreàtic
08031 Barcelona
Spain

Advance copy by email:
ask+request-5988-58fd5f45@askthecu.org

Dear Mr Cano,

Subject: Your application for access to documents – Ref GestDem 2018/5480

We refer to your email dated 5/10/2018 in which you make a request for access to documents, registered on 19/10/2018 under the above-mentioned reference number.

We also refer to our letter of 24/10/2018 (Ref. Ares(2018)5455216) requesting clarification on the scope of your request.

1. Scope of your request

In your request, you ask on the basis of Regulation (EC) No 1049/2001¹ access to:

"1 - any communication with member states or industry stakeholders in relation to CBD-containing edible products.

2 - any information related to the member states or the EU institutions' position in regards to edible products currently on the market that contain CBD.

3 - any plan to develop a common EU position in regards to CBD products".

In your response dated 5/11/2018 to the Commission's clarification, you requested "...to receive any document produced during the last 5 years. In relation to your second comment, we were trying to distinguish between internal communications and publicly-available documents...".

¹ Regulation (EC) No 1049/2001 regarding public access to European Parliament, Council and Commission documents (OJ L 145, 31.5.2001, p. 43).

2. Identification and assessment of the relevant documents

As regards points 1 and 2 of your request and clarification, we have identified 21 documents falling under the scope of this part of your application.

You will find attached a table listing the identified documents and summarising the outcome of the assessment carried out on the basis of Regulation (EC) No 1049/2001.

Having examined these documents under the provisions of Regulation (EC) No 1049/2001 regarding public access to documents, we came to the conclusion that:

- Full access can be granted to the documents No 9 and 16 indicated with Yes in the table.
- Partial access can be granted to documents No 1, 2, 3, 4, 5, 6, 7, 8, 10, 11, 12, 13, 14, 15, 17, 18, 19, 20 and 21 indicated with Partial in the table.

You will find in annex to this letter all documents that are indicated with “Yes” and “Partial”.

You may reuse the documents requested free of charge for non-commercial and commercial purposes provided that the source is acknowledged, 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. Documents originating from third parties cannot be re-used without the agreement of the originators. They do not reflect the position of the Commission and cannot be quoted as such.

3. Reasons for refusal

Protection of the commercial interests of a legal person - Article 4(2), first indent, of Regulation (EC) No 1049/2001

Document No 2 is a presentation made by a company at the Governmental Experts Working Group meeting on novel foods held on 3 November 2014.

Documents No 20 and 21 are presentations made by the European Industrial Hemp Association and Cannabis Trade Association UK at the Governmental Experts Working Group meeting on novel foods held on 16 October 2018.

Since these documents originate from third parties, the originators of the documents have been consulted in the view of assessing whether an exception under Article 4 of the Regulation (EC) No 1049/2001 is applicable.

The authors of the documents have objected to the full disclosure of the documents and have motivated this by invoking the following argument that putting the name of the commercial product, laboratory reports and unpublished studies in the public domain would affect their competitive position on the market.

As a consequence of the assessment made by the third parties, we have considered that the exception of Article 4(2), first indent, of Regulation (EC) No 1049/2001, applies partially to these documents, which are disclosed expunged from those parts containing the confidential data.

- *Protection of the privacy and integrity of the individual, in particular in accordance with Community legislation regarding the protection of personal data - Article 4(1)(b) of Regulation (EC) No 1049/2001*

All documents except documents No 9 and 16 to which you have requested access contain personal data such as names and surnames of Commission and Member States competent staff, and from the stakeholders concerned. 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 data.

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

According to Article 8(b) of this 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, we are disclosing the documents requested expunged from this personal data.

4. Out of the scope

The documents No 1, 2, 3, 4, 5, 6, 7, 8, 10, 11, 12, 13, 14, 15, 17, 18 and 19 contain information that is not related to CBD-containing edible products. Therefore, those parts of the documents have been redacted, as they fall outside the scope of your request.

5. Overriding public interest

The exceptions to the right of access provided for in Article 4(2) of Regulation (EC) No 1049/2001 must be waived if there is an overriding public interest in disclosing the requested document. In your application, you did not submit any grounds concerning a public interest on the basis of which the interests protected in Regulation (EC) No 1049/2001 would have to be overridden, and we could not identify any such ground either. In these circumstances, we have to conclude that there is no evidence of an overriding public interest in disclosure, in the sense of Regulation (EC) No 1049/2001.

6. Devoid of purpose

As regards point 3 of your request, we regret to inform you that the Commission does not hold any documents that would correspond to the description given in your application.

As specified in Article 2(3) of Regulation (EC) No 1049/2001, the right of access as defined in that regulation applies only to existing documents in the possession of the institution.

Given that no such documents, corresponding to the description given in your application, are held by the Commission, the Commission is not in a position to handle your request.

7. Means of redress

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 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,



Anne Bucher

Encl: Annex 1 – list of documents;

Documents that can be fully/partly disclosed under GestDem 2018/5480

