



EUROPEAN COMMISSION

DIRECTORATE-GENERAL FOR INTERNAL MARKET, INDUSTRY, ENTREPRENEURSHIP
AND SMEs

Strategic Planning and Delivery

Brussels,
GROW.03/MS/as/grow.03(2019)3216922

By registered letter with
acknowledgment of receipt

Rue de la Loi, 62
1040 Bruxelles

Advance copy by email:
ask+request- 6500-
431dbf9c@asktheu.org

Dear Ms Kayali,

Subject: Your application for access to documents – Ref GestDem No 2019/1387 and Ref GestDem No 2019/1323

We refer to your e-mail dated 07/03/2019 in which you make a request for access to documents, registered on 11/03/2019 under the above-mentioned reference number.

Please note that this letter also covers your request for access to documents, sent via email of 07/03/2019 and registered on 08/03/2019 under reference GestDem No 2019/1323.

Your application concerns the following documents:

“a list of lobby meetings held by DG Internal Market, Industry, Entrepreneurship and SMEs with Amazon or its intermediaries between November 2014 and March 2019. The list should include: date, individuals attending and organisational affiliation, the issues discussed; minutes and other reports of these meetings; all correspondence including attachments (i.e. any emails, correspondence or telephone call notes) between this DG (including the Commissioner and the Cabinet) and Amazon or any intermediaries representing its interests; all documents prepared for the purpose of the meeting and/or exchanged during the course of the meeting”.

Having examined your request under the provision of Regulation (EC) No 1049/2001 regarding public access to documents, we have identified 19 documents falling in the scope of your request (see attached enclosures).

These documents contain personal data, in particular the names of Commission staff members and of representatives of Amazon, which have been withdrawn.

Please note in this respect that the names, signatures, functions, telephone numbers and/or initials pertaining to staff members of an institution are to be considered personal data¹.

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 European Union legislation regarding the protection of personal data.

The applicable legislation in this field is 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/EC² ('Regulation 2018/1725').

Indeed, Article 3(1) of Regulation 2018/1725 provides that personal data 'means any information relating to an identified or identifiable natural person [...]'. The Court of Justice has specified that any information, which by reason of its content, purpose or effect, is linked to a particular person is to be considered as personal data³.

In its judgment in Case C-28/08 P (*Bavarian Lager*)⁴, the Court of Justice ruled that when a request is made for access to documents containing personal data, the Data Protection Regulation becomes fully applicable⁵

Pursuant to Article 9(1)(b) of Regulation 2018/1725, 'personal data shall only be transmitted to recipients established in the Union other than Union institutions and bodies if '[t]he recipient establishes that it is necessary to have the data transmitted for a specific purpose in the public interest and the controller, where there is any reason to assume that the data subject's legitimate interests might be prejudiced, establishes that it is proportionate to transmit the personal data for that specific purpose after having demonstrably weighed the various competing interests'. Only if these conditions are fulfilled and the processing constitutes lawful processing in accordance with the requirements of Article 5 of Regulation 2018/1725, can the transmission of personal data occur.

Only if these conditions are fulfilled and the processing constitutes lawful processing in accordance with the requirements of Article 5 of Regulation 2018/1725, can the transmission of personal data occur.

¹ Judgment of the General Court of 19 September 2018 in case T-39/17, *Port de Brest v Commission*, paragraphs 43-44, ECLI:EU:T:2018:560.

² Official Journal L 205 of 21.11.2018, p. 39.

³ Judgment of the Court of Justice of the European Union of 20 December 2017 in Case C-434/16, *Peter Nowak v Data Protection Commissioner*, request for a preliminary ruling, paragraphs 33-35, ECLI:EU:C:2017:994.

⁴ Judgment of 29 June 2010 in Case C-28/08 P, *European Commission v The Bavarian Lager Co. Ltd*, EU:C:2010:378, paragraph 59.

⁵ Whereas this judgment specifically related to 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, the principles set out therein are also applicable under the new data protection regime established by Regulation 2018/1725.

According to Article 9(1)(b) of Regulation 2018/1725, the European Commission has to examine the further conditions for a lawful processing of personal data only if the first condition is fulfilled, namely if the recipient has established that it is necessary to have the data transmitted for a specific purpose in the public interest. It is only in this case that the European Commission has to examine whether there is a reason to assume that the data subject's legitimate interests might be prejudiced and, in the affirmative, establish the proportionality of the transmission of the personal data for that specific purpose after having demonstrably weighed the various competing interests.

In your request, you do not put forward any arguments to establish the necessity to have the data transmitted for a specific purpose in the public interest. Therefore, the European Commission does not have to examine whether there is a reason to assume that the data subject's legitimate interests might be prejudiced.

Notwithstanding the above, please note that there are reasons to assume that the legitimate interests of the data subjects concerned would be prejudiced by disclosure of the personal data reflected in the documents, as there is a real and non-hypothetical risk that such public disclosure would harm their privacy and subject them to unsolicited external contacts.

Consequently, I conclude that, pursuant to Article 4(1)(b) of Regulation (EC) No 1049/2001, access cannot be granted to the personal data, 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.

As to the hand-written signatures, which are biometric data, there is a risk that their disclosure would prejudice the legitimate interests of the persons concerned.

In case you would disagree with the assessment that the redacted data are personal data which can only be disclosed if such disclosure is legitimate under the applicable rules on the protection of personal data, you are entitled, in accordance with Article 7(2) of Regulation (EC) No 1049/2001, to submit 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
Unit C.1. 'Transparency, Document Management and Access to Documents'
BERL 7/076

B-1049 Bruxelles, or by email to: sg-acc-doc@ec.europa.eu

Yours sincerely,

(eSigned)

Matthias SCHMIDT- GERDTS
Head of Unit

Enclosure: 19 documents partially disclosed