

To: Mark Scott ask+request-6812-573efcef@asktheeu.org

Brussels, 05 June 2018

Subject: Your application for access to documents – Ref No 2019-11

Dear Mr. Scott

We refer to your e-mail dated 15/04/2019 in which you make a request for access to documents, registered on 17/04/2019 under reference number 2019/11.

In accordance with article 7(8) of Regulation 1049/2001, a 15-working day extension of the initial deadline was submitted to you on 14/05/2019. Thus, the final deadline for replying to the initial request is 06/06/2019.

You requested access to documents containing the following information:

“1) Documents related to the cross-border cases started under GDPR, including which national data protection board is leading each case under the one-stop-shop regime, and which companies are subject to these investigations.

2) Documents related to the minutes of the regular meetings of the European Data Protection Board, with particular reference to steps taken around cross-border investigations.

3) Documents related to the involvement of the UK's Information Commissioner's Office in the EDPB following the UK's departure from the European Union.”

We have identified 155 documents that fall within the scope of your request.

You may reuse the documents requested free of charge for non-commercial and commercial purposes provided that the source is acknowledged and that you do not distort the original meaning or message of the document/documents. Please note that neither the EDPB, nor its Secretariat assume liability stemming from the reuse.

To facilitate our assessment and your consultation of the files, the titles of the files have been adequately numbered. We will refer to the numbers of each single file in our assessment below. Please be aware that, when a document is provided in the original language and in English, we have given it the same number, with the addition of “a” and “b”.

1. Full disclosure

The following documents can be fully disclosed: Document 8 and 83.

2. Full non-disclosure

Secretariat of the European Data Protection Board

rue Wiertz, 60
1047 Brussels

Having examined the documents requested under the provisions of Regulation (EC) No 1049/2001 regarding public access to documents, we have come to the conclusion that the documents mentioned below cannot be disclosed. Their disclosure is prevented by the following exceptions to the right of access laid down in Article 4 of the Regulation, namely:

-Exception 4(3), 1st paragraph: The documents which you seek to obtain refer to internal discussions and opinions related to a matter for which a decision has not been taken yet. This includes discussions, views and internal opinions related to ongoing procedures and for which decisions will still be needed in the future. The documents are thus at a very preliminary stage of discussion and any disclosure would constrain the ongoing discussions and seriously limit the necessary decision-making space required by the EDPB. The EDPB must be free to explore all possible options in preparation of a decision regarding a specific matter, without being subject to external pressure. Furthermore, public disclosure of such documents at this stage would seriously impair the quality of the decision-making process, given the confusion which might result from incorrect or unfinished records of the internal deliberations concerned, which still require approval at the Plenary. This exception applies to 34 documents of the total number of documents identified.

- Exception 4(3), 2nd paragraph: The documents which you seek to obtain contain discussions, views and/or opinions of the EDPB members and/or of its Secretariat concerning decisions that have already been taken. This includes several draft versions of documents adopted by the EDPB. The exception also applies to documents whose disclosure would undermine the decision-making process of the EDPB, in particular as it would curtail the Members "space to think", by preventing them from freely submitting their uncensored views on the matter, and freely discussing the issues at stake, also in light of their national situations. The disclosure of these opinions will also have consequences in forthcoming discussions, since specific discussions/opinions/views of the EDPB are subject to updates and revisions and can thus be reopened at any time. This exception applies to 9 documents of the total number of documents identified.

-Exception 4.2.3rd intent ("purpose of investigations"): The documents you seek to obtain refer to closed investigations. These documents contain information obtained during the course of an investigation(s) which is not meant to be published as well as information related to the working methods of the EDPB members with regard to the cooperation mechanism. Disclosure of that information would undermine the purpose and result of such investigations, and also of future investigations carried out by the EDPB members. Furthermore, these documents contain information that could lead to the identification of companies / individuals subject to investigation(s), which could result, in cases where such information is not foreseen for public disclosure, in an additional sanction to said elements, as well as serious damages to the credibility of the EDPB's decision-making procedure in this context. This exception applies to 27 documents of the total number of documents identified.

We have considered whether partial access could be granted to the documents requested. However, the document(s) are either entirely covered by the exception(s), or the expungement of the information falling under the exception(s) is so significant that it renders the document irrelevant, which is why they are not provided.

Finally, we have examined whether there could be an overriding public interest in disclosing these documents, but we have not been able to identify such an interest. For these reasons, access to these documents is denied.

3. Partial disclosure

Having examined the documents requested under the provisions of Regulation (EC) No 1049/2001 regarding public access to documents, alongside the scope of your request, I have come to the conclusion that full disclosure of the documents cannot be granted. Some parts of the documents have been redacted as the information either falls outside the scope of your request or its disclosure is prevented by the following exceptions to the right of access laid down in Article 4 of Regulation 1049/2001:

Documents falling partially outside the scope of the request:

- Documents 33, 36.

Exceptions applicable under Article 4 Regulation 1049/2001:

1. **Exception 4(1)(a), 3rd indent (“International relations”)**. Disclosure of the redacted parts would reveal the positions taken by the EDPB and other parties in international discussions, which would undermine the protection of international relations.

This exception applies to the following documents:

- Document 2, 10, 12, 15, 17, 42, 44, 45, 51, 69.

2. **Exception 4(1)(b) (“Privacy and integrity of the individual”)**. The following documents to which you request access contain personal data, in particular names and contact details of data subjects, as well as other personal information. 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 EU 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/EC. When access is requested to documents containing personal data, Regulation 2018/1725 becomes fully applicable¹. According to Article 9(1)(b) of this Regulation, personal data shall only be transferred to recipients if they establish the necessity of having the data transferred to them for a specific purpose in the public interest and the controller considers it proportionate. We consider that, with the information available, the necessity of disclosing the aforementioned personal data to

¹ 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. This case concerns the previous 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.

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 a version of the documents requested in which these personal data have been redacted. Please, note that the personal data redacted concern staff members and other private persons, whereas the full names of those holding publicly known positions have been kept.

In addition, all metadata containing direct or indirect identifiers that would allow for an identification of a specific data subject was removed for the entirety of documents assessed in accordance with the exception mentioned above.

This exception applies to the following documents:

- Document 3, 11, 12, 13, 14, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 56, 73, 75a, 75b, 76, 77, 78, 79, 80, 81a, 81b, 82.

3. Exception 4(2), third indent (“the purpose of inspections, investigations and audits”). The redacted parts in these documents make reference to ongoing, closed or envisaged investigations, as well as to information obtained in the course of an investigation, which is not meant to be published. Therefore, its disclosure would seriously undermine the protection of its purposes and results.

This exception applies to the following documents:

- Documents 1, 2, 5, 7, 10, 13, 18, 22, 26, 38, 39, 42, 58, 67, 74, 75a, 75b, 76, 77, 78, 79, 80, 81a, 81b, 82.

4. Exception 4(3), 1st paragraph. The disclosure of the redacted parts would seriously undermine the decision-making process of the EDPB as they relate to a matter where a decision has not been taken by the Board and contain discussions, views and/or opinions of the EDPB members, of members of its Secretariat or of third parties. The disclosure of said discussions, views and/or opinions would prevent the involved parties of contributing for internal discussions in an unrestrained and uncensored manner, thus seriously impairing the quality of the discussions and, ultimately, of the decision-making process of the EDPB.

Moreover, rapporteurs were redacted in order to avoid unnecessary pressure from external parties regarding the discussions and guidance provided, which would seriously undermine the decision-making process of the EDPB.

This exception applies to the following documents:

- Documents 1, 2, 3, 4, 5, 6, 7, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 26, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 47, 48, 49, 50, 51, 52, 53, 56, 57, 58, 59, 61, 62, 63, 64, 65, 66, 68, 69, 70, 71, 72, 73, 74.

5. Exception 4(3), 2nd paragraph. The redacted sections of these documents contain discussions, views and/or opinions of the EDPB members and/or of its Secretariat concerning decisions that have already been taken. Their disclosure would seriously

undermine the decision-making process of the EDPB as it would curtail the Members “space to think”, as it would prevent them from freely submitting their uncensored views on the matter, and freely discussing the issues at stake also in light of their national situations. The disclosure of these opinions will also have consequences in forthcoming discussions, since specific discussions/opinions/views of the EDPB are subject to updates and revisions and can thus be reopened at any time.

Furthermore, internal email addresses were also redacted to prevent their use by the public, since they are reserved for internal use only and its disclosure would create a disruption of the working arrangements / methods of the Board and/or its Secretariat, which would then seriously undermine the decision-making process of the EDPB.

Finally, rapporteurs were redacted in order to avoid unnecessary pressure from external parties regarding the discussions and guidance provided, which would seriously undermine the decision-making process of the EDPB.

This exception applies to the following documents:

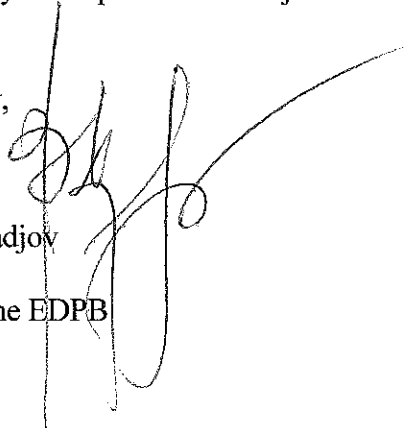
- Documents 1, 2, 3, 4, 5, 6, 7, 11, 12, 14, 15, 17, 18, 19, 24, 25, 35, 37, 38, 39, 40, 41, 42, 43, 45, 46, 47, 48, 49, 50, 51, 52, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 66, 67, 68, 69, 70, 71, 72, 73, 74.

The exceptions laid down in Articles 4(2) and 4(3) of Regulation 1049/2001 apply unless there is an overriding public interest in disclosure of the documents. We have not been able to identify such an interest.

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

Such a confirmatory application should be addressed within 15 working days upon receipt of this letter to the following email address: edpb@edpb.europa.eu. Please make reference to the case number of your request in the subject.

Yours faithfully,


Ventsislav Karadjov

Vice-Chair of the EDPB