



EUROPEAN COMMISSION

Directorate-General for Communications Networks, Content and Technology

Director-General

Brussels,
CONNECT/R4

Mr Alexander Fanta
Netzpolitik.org
Rue de la Loi 155
1040 Bruxelles
Belgium

Advance copy via email:

[ask+request-6864-
fca30a50@asktheu.org](mailto:ask+request-6864-fca30a50@asktheu.org)

REGISTERED LETTER WITH ACKNOWLEDGEMENT OF RECEIPT

Subject: Your application for access to documents GestDem 2019/2572

Dear Mr Fanta,

We refer to your application for access to documents submitted under Article 2(1) of Regulation 1049/2001 on public access to documents (hereinafter, 'Regulation 1049/2001') received on 30 April 2019 and registered on the same date under the above-mentioned reference number. We also refer to our email dated 23/05/2019 ([our reference, Ares\(2019\)3373386](#)), whereby we informed you that the time limit for handling your application was extended by 15 working days pursuant to Article 7(3) of Regulation 1049/2001.

1. SCOPE OF YOUR APPLICATION

In your application, you requested access to correspondence, meeting minutes and all other documents relating to meetings of DG CONNECT with Airbus since the start of 2019.

2. DOCUMENTS FALLING WITHIN THE SCOPE OF THE REQUEST

We have identified two documents as falling within the scope of your application:

- (a) **Document 1** – Briefing for meeting with Airbus held on 08/03/2019;
- (b) **Document 2** – Back to office report for meeting with Airbus held on 08/03/2019.

3. ASSESSMENT UNDER REGULATION 1049/2001

Having examined the documents falling within the scope of your request under the provisions of Regulation 1049/2001, we have arrived at the conclusion that both documents can be partially disclosed in view of applicable exceptions under Article 4 of Regulation 1049/2001.

(i) *Protection of personal data*

Both documents for which you have requested access contain personal data, in particular names, functions and contact details.

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 (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/EC¹ (hereinafter, ‘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 data.² Please note in this respect that the names, signatures, functions, telephone numbers and/or initials pertaining to staff numbers of an institution are to be considered personal data³.

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.

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

¹ Official Journal L 205 of 21.11.2018, p. 39.

² 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](#).

³ 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](#).

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 document, 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, we 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.

(ii) *Protection of commercial interests*

Article 4(2), first indent of Regulation 1049/2001 stipulates that “[t]he 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.”

Following an examination of both documents requested, we have come to the conclusion that these contain commercially sensitive information belonging to the companies which were present at the meeting held on 08/03/2019 namely Airbus and the European Space Agency (hereinafter, ‘ESA’). In particular, some parts of these documents contain information concerning Airbus’ and ESA’s expertise, their views and positions in relation to a number of EU laws and policies, and other commercially sensitive information. Disclosure of this information could seriously affect the commercial interests of the third parties involved. We consider that there is a real and non-hypothetical risk that public access to the above-mentioned documents would undermine the commercial interests of the third parties concerned.

The exceptions laid down under Article 4(2) of Regulation 1049/2001 apply unless there is an overriding public interest in disclosure of the documents. 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 disclosing the aforementioned parts of the requested documents but we have not been able to identify such an interest.

(iii) *Conclusion*

In light of the foregoing, we are disclosing a version of the documents requested with redactions on the basis of the outlined exceptions under Regulation 1049/2001. Such data has been specifically marked as personal data or commercially sensitive data.

Please note that **document 1** is an internal, preparatory document for meetings, which does not reflect the position of the Commission and cannot be quoted as such.

Document 2 was drawn up for internal use under the responsibility of the relevant services of DG CONNECT. It solely reflects the services' interpretation of the interventions made and does not set out any official position of the third party to which the document refers, which was not consulted on its content. It does not reflect the position of the Commission and cannot be quoted as such.

Both documents were produced by the Commission. 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.

4. POSSIBILITY OF CONFIRMATORY APPLICATION

In accordance with Article 7(2) of Regulation 1049/2001, you are entitled to make a confirmatory application requesting the Commission to review the above positions.

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

Enclosures: 2