

To: Mr Paul-Olivier Dehaye, ask+request-7512-367e54bb@asktheeu.org

Brussels, 14 February 2020

Subject: Your application for access to documents – Ref No 2020-01

Dear Mr Dehaye,

We refer to your email of 15 December 2020, as well as your clarification email of 19 December 2020, with which you made a request for access to documents on the basis of Regulation (EC) 1049/2001¹ (the Regulation). Your request was registered on 6 January 2020 under reference number 2020-01.

You request access to documents “*containing information on the requests submitted to the European Data Protection Board (EDPB) for access to documents, since January 2018, including what they were for and who they were from*”.

Concerning the subject matter of your request, we have identified 49 documents in total, ten documents from 2018 and 38 from 2019, all relating to requests for access to documents submitted to EDPB under Regulation 1049/2001. Each document corresponds to an EDPB case file. We have additionally identified a *case management* document containing all information about the cases handled under Regulation 1049/2001 by the EDPB Secretariat.

The EDPB has decided to grant partial access to the case management document. The redacted parts of this document are deemed to be falling either outside of the scope of your request or under the exception provided in Article 4(1)(b) of the Regulation (see analysis below).

The EDPB consulted one third party in accordance with Article 4(4) of the Regulation. This was done in view to assess whether any of the exceptions in Article 4(1) or 4(2) of the same Regulation would be applicable.²

As regards the requests filed under cases 8-2019, 11-2019, 13-2019, 14-2019, 15-2019, 16-2019, 17-2019, 19-2019, 20-2019, 23-2019, 24-2019, 31-2019 and 34-2019, please be advised

¹Regulation (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.

² 4(1)- The institutions shall refuse access to a document where disclosure would undermine the protection of (a) the public interest as regards public security, defence and military matters, international relations, the financial, monetary or economic policy of the Community or a Member State; or (b) privacy and the integrity of the individual, in particular in accordance with Community legislation regarding the protection of personal data.

4(2)- 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, court proceedings and legal advice, the purpose of inspections, investigations and audits, unless there is an overriding public interest in disclosure.

that these were submitted through online platforms such as asktheeu.org and fragdenstaat.de and are publicly available at the links provided in the Annex to this letter.

Regarding the remaining cases, the EDPB has decided to grant partial access to all the documents covered by the request, with the exception of personal data (such as names, email addresses, phone numbers and job positions) of staff members and/ or private individuals. However, the full names of those holding high-level management positions that are publicly known have not been redacted.

The decision to partially grant access to the documents is based on Article 4(1)(b) of the Regulation. According to this provision, access to a document is refused where its disclosure would undermine the privacy and integrity of the individual, in particular in accordance with the applicable Community legislation regarding the protection of personal data, including Article 9 of Regulation 2018/1725.³

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 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.

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

If you would like to have access to the redacted personal data, please provide the EDPB with a legitimate justification or compelling argument to demonstrate the necessity to have the personal data transmitted for a specific purpose in the public interest.⁴

Please note that 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.

³ The application of the exception of Article 4(1)(b) of Regulation 1049/2001 was considered by the Court of Justice in the Case C-28/08 P, *Commission/The Bavarian Lager Co. Ltd*, where the Court stated that when a request is made for access to documents containing personal data, Regulation 45/2001 becomes fully applicable. Regulation 45/2001 was repealed and replaced by regulation (EU) 2018/1725.

⁴ In accordance with the Bavarian Lager judgment (*ibid*), paragraph 46. The principles set out in the Bavarian ruling are also applicable under Regulation (EU) 2015/1725.

Yours faithfully,

On behalf of Ventsislav Karadjov

Vice-Chair of the EDPB

Attachment(s): Annex to the letter- list of publicly available requests.