



EUROPEAN COMMISSION
DIRECTORATE-GENERAL FOR COMMUNICATIONS NETWORKS, CONTENT AND TECHNOLOGY

The Director- General

Brussels, 14th February 2020
CONNECT/R4

Mr Samuel Stolton
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International Press Centre
Boulevard Charlemagne 1, 1041 Brussels
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Advance copy via email:
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REGISTERED LETTER WITH ACKNOWLEDGEMENT OF RECEIPT

Subject: Your application for access to documents - Ref GestDem 2020/0346

Dear Mr Stolton,

We refer to your email, dated 17 January 2020 wherein you make a request for access to documents, pursuant to Regulation (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 (hereinafter 'Regulation 1049/2001'), registered on the same day under the abovementioned reference number.

1. SCOPE OF YOUR APPLICATION

By way of your application to DG CONNECT, you request documents, which contain the following information:

- (i). Detailed minutes of the meeting held on January 16th 2019 between Gen. John Shanahan, Director of the Joint Artificial Intelligence Center at the U.S. Department of Defense and DG CONNECT representatives. You also request a list of the individuals present, as well as a breakdown of the issues discussed.

(ii) Detailed minutes of any meeting held in the month of January 2019 between Gen. John Shanahan, Director of the Joint Artificial Intelligence Center at the U.S. Department of Defense and European Commission officials from other DGs.

(iii) All correspondence (i.e. any emails, correspondence, telephone call notes, and/or text messages including WhatsApp exchanges) between DG CONNECT (including Commissioners Vestager, Breton, or Jourova, and any Cabinet representatives) and Mr. Shanahan or a representative of his, over the past year.

In this regard reference is made to your email dated 19 January 2020, our reference Ares(2020)346621, to our clarification request dated 23 January 2020, our reference Ares(2020)425370 and to your reply, dated 27 January 2020, our reference, Ares(2020)496153, wherein you clarified that:

- Regarding the abovementioned points (i) and (ii) of your request you meant ‘January 2020’ and not 2019.
- With regard to point (iii) of your request you refer to all correspondence between DG CONNECT (and any relevant Commissioners, they being incumbent or not), with the office of Mr. Shanahan, over the year between 17 January 2019 and 17 January 2020.

2. DOCUMENTS FALLING WITHIN THE SCOPE OF THE REQUEST

We have identified the following document which falls within the scope of your request:

- Back to Office Report (BTO) of the meeting held by Khalil Rouhana, Deputy Director General, DG Connect and Lieutenant General Shanahan.

Please note that this meeting took place on 15 January 2020 and not on 16 January 2020, as mentioned in your application.

No other documents falling within the scope of your request have been identified.

3. ASSESSMENT UNDER REGULATION 1049/2001

Having assessed the identified document, under the provisions of Regulation 1049/2001 regarding public access to documents, I regret to inform you that access to the identified document cannot be granted as it is covered by the exception to the right of access laid down in Article 4(1)(a), third indent of Regulation 1049/2001 which refers to ‘protection of the public interest as regards international relations’.

According to settled case-law, *"the particularly sensitive and essential nature of the interests protected by Article 4(1)(a) of Regulation No 1049/2001, [...] calls for the exercise of particular care. Such a decision therefore requires a margin of appreciation"*¹. In this context, the Court of Justice has acknowledged that the institutions enjoy *"a wide discretion for the purpose of*

¹ Judgment in *Sison v Council*, C-266/05 P, EU:C:2007:75, paragraph 36.

determining whether the disclosure of documents relating to the fields covered by [the] exceptions [under Article 4(1)(a)] could undermine the public interest"²

The identified document is the back to office report of the meeting held on 15 January 2020 and it contains the positions and comments made by the participants. There is a concrete risk that the public disclosure of this report would affect the mutual trust between the EU and the USA and thus undermine their relations. As the Court recognised in Case T-301/10 in't Veld v Commission, "[...] *establishing and protecting a sphere of mutual trust in the context of international relations is a very delicate exercise*"³. Consequently, access to the abovementioned document has to be denied.

4. PARTIAL ACCESS

We have considered whether partial access could be granted to the identified document. However, partial access is not possible considering that the document concerned is covered in its entirety by the exception under Article 4(1)(a), third indent of Regulation 1049/2001.

5. 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 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
Transparency, Document Management & Access to Documents (SG.C.1)
BERL 7/076
B-1049 Bruxelles

or by email to: sg-acc-doc@ec.europa.eu

Yours sincerely,

(e-Signed)
Roberto Viola

² Judgment in Council v Sophie in't Veld, C-350/12 P, EU:C:2014:2039, paragraph 63.

³ Judgment in Sophie in't Veld v Commission, T-301/10, EU:T:2013:135, paragraph 126.