



EUROPEAN COMMISSION
DIRECTORATE-GENERAL FOR HEALTH AND FOOD SAFETY

Director-General

Brussels,
SANTE/DDG1.B3/IMG/MD/aj

***By registered letter
with acknowledgment of
receipt¹***

Alexander FANTA
Rue de la Loi 155
1040 Bruxelles
Belgium

By email only:
***[ask+request-8506-
74457bbc@asktheeu.org](mailto:ask+request-8506-74457bbc@asktheeu.org)***

Subject: Your application for access to documents – GESTDEM 2020/5185

Dear Mr. Fanta,

We refer to your email of 2 September 2020 in which you make a request for access to documents, registered on the same date under the above-mentioned reference number.

We also refer to our email of 9 September 2020 extending the time limit to respond to your request according to Article 7(3) of Regulation (EC) No 1049/2001.

Furthermore, we refer to our email of 9 October 2020 requesting to narrow down the scope of your request according to Article 6(3) of Regulation (EC) No 1049/2001.

1. Scope of your request

In your request, you ask, on the basis of Regulation (EC) No 1049/2001², access to:

- All documents (including memos, minutes, e-mail, contracts, etc.) related to the agreement between the Commission, SAP and T-Systems on 31 July, 2020 on the development and deployment of a software platform for the cross-border exchange of coronavirus warnings (interoperability gateway for contact tracing apps)

¹ According to standard operational procedure, the reply is usually also sent to you by registered post. Please note, however, that due to the extraordinary health and security measures currently in force during the COVID-19 epidemics, which include the requirement for all Commission non-critical staff to telework, we are unfortunately not in a position to follow this procedure until further notice. We would therefore appreciate if you could confirm receipt of the present e-mail.

² Regulation (EC) No 1049/2001 regarding public access to European Parliament, Council and Commission documents (OJ L 145, 31.5.2001, p. 43).

- All internal documents of the Commission (e.g. working group meeting minutes, memos, e-mails, etc.) and exchanges with member states and external stakeholders (i.e. Google, Apple, etc.) on the interoperability of contact tracing apps

We consider your request to cover documents held up to the date of your initial application, i.e. 2 September 2020.

The scope of your request was further clarified - in our fair solution proposal of 2 October 2020 (Ares(2020)5179786), to which we have not received any reply within the set deadline - and reduced to the following categories:

- 1. Contract between the Commission and SAP/T-Systems of 31 July 2020 and accompanying documents;*
- 2. Documents received by the Commission (DG SANTE) from SAP/T-Systems related to the contract of 31 July 2020;*
- 3. Minutes and summaries of meetings between the Commission services related to the contract of 31 July 2020;*
- 4. Minutes and summaries of meetings between the Commission and Apple and Google related to the interoperability of contact tracing applications.*

Please note that due to the wide scope of your request, covering also areas falling under the responsibility of other Directorates-General, parts of your request have been attributed to other Directorates-General. This reply relates only to the documents held by the Directorate-General for Health and Food Safety. You will receive the replies from the other respective Directorates-General in due course.

2. Identification and assessment of relevant documents

On the basis of the categories suggested in our fair solution proposal, we have identified 63 documents that fall within the scope of your request.

You will find attached a table listing the identified documents and summarising the outcome of the assessment carried out on the basis of Regulation (EC) No 1049/2001.

Having examined the documents requested under the provisions of Regulation (EC) No 1049/2001 regarding public access to documents and considered the opinion of the relevant third parties, we have come to the conclusion that:

- Full access can be granted to the following documents: No 13e, 20a, 20b, 20c, 20d, 20e, 20f, 20g, 20h, 20i, 20j, 20k, 20l, 20m, 20n, 20o, 21a, 21b, 21c, 21d, 21e, 21f;
- Partial access can be granted to the following documents as their full disclosure is prevented by one or several exceptions to the right of access laid down in Article 4 of the Regulation: No 1a, 2, 3a, 3b, 4, 10a, 10b, 12, 23a, 23e, 23f, 23g;
- No access can be granted to the following documents as their disclosure is prevented by an exception to the right of access laid down in Article 4 of the Regulation: No 5a, 5b, 6, 7a, 7b, 8a, 8b, 8c, 8d, 9a, 9b, 9c, 9d, 11, 13a, 13b, 13c, 14, 16a, 16b, 16c, 16d, 16e, 17, 18a, 18b, 23b, 23c, 23d.

We enclose a copy of the documents listed under the first two bullet points redacted of the parts which cannot be disclosed as further explained below.

You may reuse public documents, which have been produced by the European Commission or by public and private entities on its behalf based on the [Commission Decision on the reuse of Commission documents](#). You may reuse the documents disclosed free of charge and 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 documents. Please note that the Commission does not assume liability stemming from the reuse.

Please note that documents originating from third parties cannot be re-used without the agreement of the originators, who hold a copyright on it. They do not reflect the position of the Commission and cannot be quoted as such.

3. Partial disclosure of documents

3.1. Protection of the privacy and integrity of the individual, in particular in accordance with Community legislation regarding the protection of personal data - Article 4(1)(b) of Regulation (EC) No 1049/2001

With regard to the documents No 1a, 2, 3a, 3b, 4, 10a, 10b, 12, 23a, 23e, 23f, 23g, a complete disclosure of the identified documents is prevented by the exception concerning the protection of privacy and the integrity of the individual outlined in Article 4(1)(b) of Regulation (EC) No 1049/2001, because they contain the following personal data:

- the names/initials and contact information of Commission staff members not pertaining to the senior management;
- the names/initials and contact details of other natural persons;
- other information relating to an identified or identifiable natural person.

Article 9(1)(b) of the Data Protection Regulation does not allow the transmission of these personal data, except if you prove that it is necessary to have the data transmitted to you for a specific purpose in the public interest and where there is no reason to assume that the legitimate interests of the data subject might be prejudiced. In your request, you do not express any particular interest to have access to these personal data nor do you put forward any arguments to establish the necessity to have the data transmitted for a specific purpose in the public interest.

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

3.2. Protection of the commercial interests of a legal person - Article 4(2), first indent, of Regulation (EC) No 1049/2001

Documents No 1a, 2, 3a, 3b, 4, 10a, 10b, 12, 23e, 23f, 23g also contain information whose disclosure may undermine the commercial interest of a legal person, and they may include industrial information and information covered by intellectual property. Consequently, some parts of these documents have been redacted as their disclosure is prevented by exception to the right of access laid down in Article 4(2), first indent of this Regulation.

3.3 Documents containing opinions for internal use as part of deliberations and preliminary consultations within the institution concerned – Article 4(3), second subparagraph, of Regulation (EC) No 1049/2001

Documents No 1a, 2, 4, 10a, 10b, 12, 23a, 23e, 23f, 23g contain opinions for internal use as part of deliberations and preliminary consultations within the institution concerned, the disclosure of which would seriously undermine the institution's decision-making process. In particular, these documents relate to the preparations of the procurement process and potential contract negotiations including negotiation strategies and specific business and commercial considerations in that context. Disclosure of this sensitive internal information to third parties would seriously undermine future Commission's decision-making process in similar cases. Consequently, some parts of these documents have been redacted as their disclosure is prevented by exception to the right of access laid down in Article 4(3) of this Regulation.

4. Refusal of documents

4.1. Protection of the commercial interests of a legal person - Article 4(2), first indent, of Regulation (EC) No 1049/2001

Documents No 5a, 5b, 6, 7a, 7b, 8a, 8b, 8c, 8d, 9a, 9b, 9c, 9d, 11, 13a, 13b, 13c, 14, 16a, 16b, 16c, 16d, 16e, 17, 18a, 18b, 23b, 23c, 23d also contain information whose disclosure may undermine the commercial interest of a legal person, and they may include industrial information and information covered by intellectual property.

Since documents No 5a, 5b, 6, 7a, 7b, 8a, 8b, 8c, 8d, 9a, 9b, 9c, 9d, 11, 13a, 13b, 13c, 14, 16a, 16b, 16c, 16d, 16e, 17, 18a, 18b originate from a third party the latter has been consulted, in accordance with Article 4(4) of Regulation (EC) No 1049/2001, in order to assess whether an exception under Article 4 of this Regulation is applicable.

The third party has objected to the disclosure of these documents invoking the argument that putting in public domain some business sensitive information contained therein would affect its competitive position on the market. Therefore, having considered the opinion of the third party, we came to the conclusion that the exception laid down in Article 4(2), first indent, of Regulation (EC) No 1049/2001 applies to the concerned documents.

We have considered whether partial access could be granted to these documents, in accordance with Article 4(6) of the Regulation. However, it follows from the assessment made above that documents are entirely covered by the exception laid down in Article 4(2), first indent, as the remaining parts after expunging the confidential information are meaningless and illegible.

Therefore, no access can be granted to these documents.

4.2. Documents containing opinions for internal use as part of deliberations and preliminary consultations within the institution concerned – Article 4(3), second subparagraph, of Regulation (EC) No 1049/2001

In addition, documents No 23b, 23c and 23d contain opinions for internal use as part of deliberations and preliminary consultations within the institution concerned, the disclosure of which would seriously undermine the institution's decision-making process. In particular, these documents relate to the preparations of the procurement process and potential contract negotiations including negotiation strategies and specific business and commercial considerations in that context. Disclosure of this sensitive internal information to third parties would seriously undermine future Commission's decision-making process in similar cases. Consequently, Therefore, we came to the conclusion that the exception laid down in Article 4(3) of Regulation (EC) No 1049/2001 applies to the concerned documents.

We have considered whether partial access could be granted to these documents, in accordance with Article 4(6) of the Regulation. However, it follows from the assessment made above that documents are entirely covered by the exception laid down in Article 4(3), as the remaining parts after expunging the confidential information are meaningless and illegible.

Therefore, no access can be granted to these documents.

5. Overriding public interests

The exceptions to the right of access provided for in Article 4(2) of Regulation (EC) No 1049/2001 must be waived if there is an overriding public interest in disclosing the requested document. In your application, you did not submit any grounds concerning a public interest on the basis of which the interests protected in Regulation (EC) No 1049/2001 would have to be overridden, and we could not identify any such ground either. In these circumstances, we have to conclude that there is no evidence of an overriding public interest in disclosure, in the sense of Regulation (EC) No 1049/2001.

6. Means of redress

In accordance with Article 7(2) of Regulation (EC) No 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 Secretary-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,

Sandra GALLINA
Director-General

Enclosure: Attached table of documents (as mentioned in section 2).

