

To: Samuel Stolton - ask+request-9954-0654db84@asktheeu.org

Brussels, 18 October 2021

Subject: Your application for access to documents – Ref No 2021-24

Dear Mr. Stolton,

We refer to your message dated 17/09/2021 submitted via the EDPB website in which you made a request for access to documents. After a further written exchange aiming at clarifying the scope of your request, your request was registered on 27/09/2021. The deadline to reply is therefore 18/10/2021.

You have requested access to “documents produced by the EDPB or correspondences held by the EDPB. These should refer specifically to the UK's new 'post-Brexit global data plans,' as outlined by the Department of Culture, Media and Sport (DCMS) on August 26, 2021: <https://www.gov.uk/government/news/uk-unveils-post-brexit-global-data-plans-to-boost-growth-increase-trade-and-improve-healthcare>

Furthermore, I am interested in documentation produced by the EDPB or correspondences held by the EDPB, that respond to DCMS's document 'Data: A new Direction,' published on September 10, 2021: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1016395/Data_Reform_Consultation_Document_Accessible_.pdf. Here, the United Kingdom is much more specific about how it intends to revise its personal data protection rules.

This leads me to my second request, regarding the UK's 'divergence' from EU data protection rules. In the above-linked document, 'Data: A New Direction' the government is specific in how it is considering modifying rules for the use of cookies online (under the scope of the ePrivacy Directive). I would like to request access to documents produced by the EDPB, or correspondences held by the EDPB, that focus on this particular and potential divergence from EU data protection rules.”

Assessment

We have identified 3 documents in the scope of your request.

For the sake of clarity, the EDPB does not hold any documents which reference either of the documents you refer to in your request, nor does it hold any documents regarding the UK's consideration to modify rules for the use of cookies online, referenced in the last part of your

request. We have, however, included in the scope documents held by the EDPB which make reference to the UK's post Brexit data plans.

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 file in our assessment below.

We have conducted the following assessment in light of Regulation 1049/2001 regarding public access to documents and the relevant case law of the Court of Justice of the European Union (CJEU):

1. Full non-disclosure

Having examined the document 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, as their disclosure is prevented by the following exceptions to the right of access laid down in Article 4 of the Regulation 1049/2001:

1. Exception 4(1)(b) ("Privacy and integrity of the individual"). The documents to which you request access contain personal data, in particular names and contact details of data subjects. 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 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.

This exception applies to the following documents:

Documents: 1, 3

2. Exception 4(3), 2nd paragraph. The documents which you seek to obtain contain discussions, views and/or opinions of the EDPB Secretariat concerning decisions that have already been taken. Notwithstanding the fact that decisions regarding these documents 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

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.

uncensored views on the matter, and freely discussing the issues at stake. The documents concerned are a chain of internal emails exchanged for the purposes of replying to the press request which has been partially disclosed in document 2 (see specific explanations on document 2 below), as well as an internal email with some short exchanges about a news item on the subject of the UK's post Brexit data plans.

This exception applies to the following documents:

Document: 1, 3

Please note that the application of the exception under Article 4 (3) 2nd paragraph is the one leading to the full non-disclosure of documents also covered by the exception under Article 4 (1) (b). The application of Article 4 (1) (b) alone would have led to a partial disclosure of those documents (redacting all the personal data).

We have considered whether partial access could be granted to the document requested. However, the document or parts thereof falling within the scope of your request are either entirely covered by this exception, or the expungement of the information falling under the exception is so significant that it renders the document irrelevant, which is why they are not provided.

The exception laid down in Article 4(3) of Regulation 1049/2001 applies unless there is an overriding public interest in disclosure of the documents. We have not been able to identify such an interest. For these reasons, access to the document is denied.

2. Partial disclosure

Having examined the document 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 document mentioned below cannot be granted, as disclosure of some of the information in the document is prevented by the following exception to the right of access laid down in Article 4 of the Regulation 1049/2001:

Exception 4(1)(b) (“Privacy and integrity of the individual”). The document to which you request access contains personal data, in particular names of data subjects. 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 applicable². According to Article 9(1)(b) of this Regulation, personal

² 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

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. We are therefore disclosing a version where this personal data has been redacted.

This exception applies to the following document:

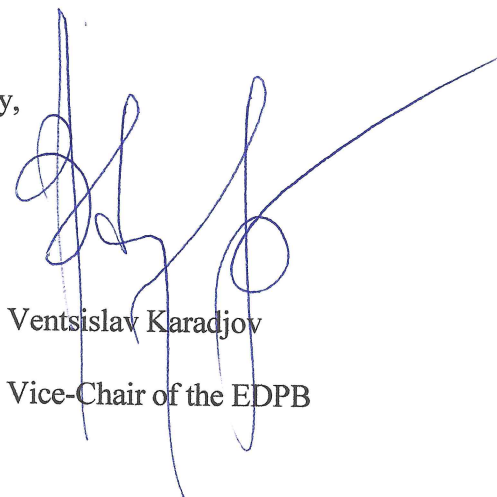
Document: 2

Means of redress

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 sincerely,


Ventsislav Karadjov
Vice-Chair of the EDPB

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.

Secretariat of the European Data Protection Board

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