



EUROPEAN COMMISSION  
DIRECTORATE-GENERAL JUSTICE AND CONSUMERS

Director-General

Brussels,  
JUST.01.002/Ares(2022)208361

Ms Naomi HIRST

By e-mail:  
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**Subject: Your application for access to documents – GESTDEM 2021/7966**

Dear Ms HIRST,

We refer to your e-mail of 03/12/2021 in which you make a request for access to documents, registered on 07/12/2021 under the above mentioned reference number.

You request access to:

*“All documents—including but not limited to correspondence, emails, minutes, notes (hand written or electronic), audio or video recordings, verbatim reports, operational conclusions, lines to take, briefings, and presentations—related to the meeting on 2021-12-01 between Didier Reynders and Google.”*

Your application concerns the following documents:

- Minutes of the meeting with Google and Commissioner Reynders 01/12/2021 (reference number Ares(2021)7588752);
- briefing for the meeting between Google and Commissioner Reynders which took place on 01/12/2021.

Having examined the documents requested under the provisions of Regulation (EC) No 1049/2001 regarding public access to documents, we regret to inform you that full disclosure of the identified documents is prevented by exceptions to the right of access laid down in Article 4 of this Regulation.

**Protection of privacy and the integrity of the individual**

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.

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, we 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.

### **Protection of the public interest as regards international relations (page 20 of the briefing)**

Article 4(1)(a), third indent, of Regulation (EC) No 1049/2001 provides that the *'institutions shall refuse access to a document where disclosure would undermine the protection of [...] the public interest as regards [...] international relations [...]'*.

We consider that making the redacted parts public would seriously prejudice the mutual trust between the European Union and the United States, both as regards the ongoing talks on a new transatlantic data transfer framework after the invalidation of the EU-U.S. Privacy Shield by the Court of Justice of the European Union and other transatlantic files. After the invalidation of the European Commission's adequacy decision 2016/1250 regarding the EU-U.S. Privacy Shield, the European Commission and the U.S. Department of Commerce are in negotiations on a strengthened transatlantic data transfer framework to comply with the judgement of the Court of Justice. In light of these ongoing talks, it is important to protect the credibility of the European Commission as a negotiating partner. Establishing and protecting an atmosphere of mutual trust is a delicate exercise and any breach of that trust can have a serious adverse effect on the ongoing talks as well as future cooperation.

### **Protection of the commercial interests of a natural or legal person**

With regard to the **page 26 of the briefing** we would like to note that it contains commercially sensitive business information of the company that submitted it. Disclosure of the content would undermine the protection of the commercial interests of the company that submitted it, as putting this information in the public domain would affect its competitive position on the market. Therefore the exception laid down in Article 4(2) first indent of Regulation (EC) No 1049/2001 applies to this document.

**Protection of the purpose of inspections, investigations or audits (pages 1, 4 of the briefing)**

It follows from the case-law of the General Court that the exception in Article 4(2), third indent, of Regulation 1049/2001 applies if disclosure of the documents in question may endanger the completion of inspections, investigations or audits (*Judgment of 6 July 2006, Franchet and Byk v Commission, T-391/03 and T-70/04, paragraphs 109 and 110*). The exception may also be invoked with respect to investigations carried out by national authorities (*Judgment of the General Court of 12 May 2005 in case T-623/13, Unión de Almacenistas de Hierros de España v Commission, paragraph. 44*). In this case, some of the redacted parts contain information about ongoing investigations by national data protection authorities and related discussions at the level of the European Data Protection Board, which are treated as confidential by the Board in accordance with Article 76(1) of Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation). There is a foreseeable risk that making the information public would interfere with the task of national data protection authorities to independently and effectively investigate and enforce compliance with the General Data Protection Regulation, as it would expose the authorities and the European Data Protection Board to the foreseeable risk of coming under outside pressures. Moreover, disclosing the information would seriously affect the climate of mutual trust between the Commission and the European Data Protection Board.

The exceptions laid down in Article 4(2) of Regulation 1049/2001 must be waived if there is an overriding public interest in disclosure. Such an interest must, firstly, be public and, secondly, outweigh the harm caused by disclosure. In your request, you do not put forward any reasoning pointing to an overriding public interest in disclosing the document request, nor have we been able to identify any public interest capable of overriding the public and private interests protected by Article 4(2) of Regulation 1049/2001.

These documents were drawn up for internal use under the responsibility of the DG JUST. It solely reflects DG JUST interpretation of the interventions made and does not set out any official position of the third parties 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

In case you would disagree with this position, you are entitled, in accordance with Article 7(2) of Regulation (EC) No 1049/2001, to submit 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](mailto:sg-acc-doc@ec.europa.eu)

According to standard operational procedure, the reply to a request for access to documents is usually sent by registered post. Please note, however, that due to the extraordinary health and security measures currently in force during the COVID-19 pandemic, 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 by replying to [JUST-ACCES-DOCUMENTS@ec.europa.eu](mailto:JUST-ACCES-DOCUMENTS@ec.europa.eu).

Yours faithfully,

*(e-signed)*  
Ana GALLEGO TORRES