



EUROPEAN COMMISSION
DIRECTORATE-GENERAL JUSTICE AND CONSUMERS

Director-General

Brussels,
JUST.01.002/Ares(2022)195144

Ms Naomi HIRST

By e-mail:
[ask+request-10326-
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Subject: Your application for access to documents – GESTDEM 2021/7965

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 2021-09-07 between Geneviève Tuts and Apple Inc.”

Your application concerns the following documents:

- dinner invitation (03/08/2021);
- briefing for the meeting between Apple and Geneviève Tuts, Head of Cabinet of Commissioner Reynders, which took place on 07/09/2021.

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 (pages 3 and 4)

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 its international partners. Parts of the document would reveal the strategic interests and priorities of third countries with whom the European Commission is engaging to build convergence in the area of data protection at regional and global level. Public disclosure of such information, which is expected to be handled in a confidential manner, would affect the atmosphere of mutual trust in this context. This also applies to the relations with 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 institution's decision-making process (pages 3 and 4)

What is more, we would like to note that some parts of pages 3-4 of the briefing were drafted for internal use for reflections/deliberations/consultations on which a decision has been taken already but the full disclosure of them would seriously undermine the Commission's decision-making process in the ongoing interinstitutional discussions on transatlantic data flows/Schrems II, cybercrime and child sexual abuse. They would reveal views, policy options and negotiation positions which are currently under consideration; the Commission's services must be free from external pressure to explore

all possible options in preparation of a decision. Therefore the exception laid down in Article 4(3) second subparagraph of Regulation (EC) No 1049/2001 applies to them and they cannot be released fully.

The exceptions laid down in Article 4(2) and 4(3) of Regulation (EC) No 1049/2001 apply unless there is an overriding public interest in disclosure of the document. We have examined whether there could be an overriding public interest in disclosure, but we have not been able to identify such an interest.

The briefing was drawn up for internal use under the responsibility of the relevant services of the Directorate-General for Justice and Consumers. It solely reflects the services' 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 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 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

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.

Yours faithfully,

(e-signed)
Ana GALLEGO TORRES