



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

The Director-General

Brussels
CNECT.R.4

Mr Maximilian Henning
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Only per email:
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Subject: Your application for access to documents – EASE 2023/1235

Dear Mr Henning,

We refer to your email of 22 February 2023 in which you make a request for access to documents pursuant to Regulation (EC) No 1049/2001 regarding public access to European Parliament, Council and Commission documents (hereinafter ‘Regulation 1049/2001’), which was registered on the same day under the above-mentioned reference number. We also refer to our email, dated 15 March, our reference Ares(2023)1885197, whereby we informed you that the time limit for handling your application was extended by 15 working days pursuant to Article 7(3) Regulation 1049/2001.

1. SCOPE OF YOUR APPLICATION

Your application reads as follows:

‘Under the right of access to documents in the EU treaties, as developed in Regulation 1049/2001, I am requesting documents which contain the following information:

All minutes, agendas, summaries, notes or memos issued before or after; documents prepared for, issued in preparation for, or exchanged during; as well as all correspondence including attachments by either of the meeting parties related to

- the 19.01.2023 meeting between TikTok and Eleonora Ocello*
- the 31.01.2023 meeting between Twitter and Eleonora Ocello.’*

2. DOCUMENTS FALLING WITHIN THE SCOPE OF THE REQUEST

We have identified the following documents as falling within the scope of your application:

- Readout of video call between the EU Commissioner Thierry Breton and Twitter, 31 January 2023, Ares(2023)1103437, (**'Document 1'**);
- Readout of meeting between EU Commissioner Thierry Breton and TikTok, 19 January 2023, Ares(2023)1564322, (**'Document 2'**);
- Email, Tiktok CEO visit to Brussels/meeting with Commissioner Breton, dated 19 December 2022, Ares(2023)1718127, (**'Document 3'**);
- Briefing, Meeting with TikTok's CEO, Ares(2023)1716932, (**'Document 4'**);
- Briefing, Meeting with TikTok's CEO, Additional input, Ares 2023(1716932, (**'Document 5'**);
- Input to Briefing, Meeting with TikTok's CEO, Ares(2023)997273, (**'Document 6'**);
- Briefing for the meeting between Commissioner Breton & CEO Elon Musk on 31 January 2023, Ares(2023)1377859, (**'Document 7'**).

3. ASSESSMENT UNDER REGULATION 1049/2001

Following an examination of the identified documents under the provisions of Regulation 1049/2001, we have arrived at the conclusion that full access can be granted to two documents, partial access can be granted to four documents and access must be refused to one document as its full disclosure is prevented by exceptions to the right of access laid down in Article 4 of Regulation 1049/2001.

Please note that parts of Documents 1 and 2 have also been redacted as being out of scope of the request.

A. Full disclosure

Full access can be granted to Documents 1 and 2. Please find them enclosed to this letter.

B. Partial disclosure

(i) *Protection of privacy and integrity of individuals*

Full disclosure of Documents 3 and 4 is prevented by the exception concerning the protection of privacy and integrity of the individual outlined in Article 4(1)(b) Regulation 1049/2001, since they contain the following personal data:

- Names and contact details of Commission staff members not pertaining to the senior management;
- Names, functions and contact details of other natural persons.

Article 9(1)(b) of the Data Protection Regulation¹ does not allow the transmission of these personal data, except if you prove that it is necessary to have the data transmitted to you

¹ 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, OJ L 295, 21.11.2018, p. 39.

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) Regulation 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.

(ii) *Protection of commercial interest*

Article 4(2) first indent of Regulation 1049/2001 provides that ‘*the institutions shall refuse access to a document where disclosure would undermine the protection of commercial interests of a natural or legal person, including intellectual property, unless there is an overriding public interest in disclosure.*’

This provision must be interpreted in light of Article 339 of the Treaty of the Functioning of the European Union (TFEU), which requires staff members of the EU institutions to refrain from disclosing information of the kind covered by the obligation of professional secrecy, in particular information about undertakings, their business relations or their cost components.

Parts of Document 4-6 contain sensitive information related to the third parties’ activities, views, positions, business strategies and other commercial interests, including intellectual property. There is a real and non-hypothetical risk that disclosure of these parts of the above-mentioned documents could undermine and seriously affect the commercial interests of the companies at question.

Consequently, the above-mentioned parts have been blanked out.

(iii) *Protection of the decision-making process*

The first subparagraph of Article 4(3) of Regulation 1049/2001 provides that ‘[a]ccess to a document, drawn up by an institution for internal use or received by an institution, which relates to a matter where the decision has not been taken by the institution, shall be refused if disclosure of the document would seriously undermine the institution’s decision-making process, unless there is an overriding public interest in disclosure.’

Parts of Documents 4 and 5 are covered by the abovementioned exception of the first subparagraph of Article 4(3) since they contain sensitive information with regard to the designation process of very large online platforms. These internal documents contain considerations, reflections and views of the Commission services and of other parties. The content of these documents is subject to ongoing discussions and deliberations.

The Commission services must be free to explore all possible options with regard to ongoing initiatives and policy processes. The risk of disclosing sensitive information regarding the Commission services’ preliminary views would deter the Commission from freely expressing its opinions and having frank, internal discussions. Speculations and misinterpretations of the public on the views, positions, considerations put forward in a stage of the process would affect the exploration of different options and unduly restrict

the Commission's internal space to think, exposing the Commission to external pressure. Disclosure of these documents would therefore seriously undermine the ongoing decision-making process. This risk is also reasonably foreseeable and not purely hypothetical.

Consequently, the above-mentioned parts have been blanked out.

C. Non-disclosure

We regret to inform you that access to Document 7 cannot be granted as disclosure is prevented by exception related to the protection of the ongoing decision-making process as laid down in the first subparagraph of Article 4(3) of Regulation 1049/2001, for reasons set out in Section B(iii).

Document 7 is covered by the above-mentioned exception since it contains sensitive information with regard to the pre-designation process for Twitter, which will lead to a college decision. Document 7 was drawn up for internal use and the entirety of its content is subject to ongoing discussions and deliberations. Disclosure of this document would therefore seriously undermine the ongoing decision-making process. This risk is also reasonably foreseeable and not purely hypothetical.

We have considered whether partial access could be granted to this document. However, partial access is not possible considering that the document is covered in its entirety by the abovementioned exception of Article 4 of Regulation 1049/2001.

In light of the foregoing, access to Document 7 must be completely refused

4. OVERRIDING PUBLIC INTEREST IN DISCLOSURE

The exceptions laid down in Articles 4(2) and 4(3) of Regulation 1049/2001 apply, unless there is an overriding public interest in the disclosure of documents. Such an interest must, firstly, be a public interest and, secondly, outweigh the harm caused by disclosure. We have examined whether there could be an overriding public interest in the disclosure of the aforementioned documents but we have not been able to identify such an interest.

5. REUSE OF DOCUMENTS

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 the Commission documents](#). You may reuse Documents 1, 2, 4-6 and parts of Document 3 originating from the Commission 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 1, 2 and 4-6 were drawn up for internal use under the responsibility of the relevant services of DG CONNECT. It solely reflects the service's interpretation of the interventions made and do not set out any official position of the third parties to which the abovementioned documents refer. They do not reflect the position of the Commission and cannot be quoted as such.

Parts of Document 3 originate from third parties. Please note that it is disclosed to you based on Regulation (EC) No 1049/2001. However, this disclosure is without prejudice to the rules on intellectual property, which may limit your right to reproduce or exploit the

released documents without the agreement of the originators, who may hold an intellectual property right on them. The European Commission does not assume any responsibility from their reuse.

6. CONFIRMATORY APPLICATION

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 **by asking for a review via your portal² account** (available only for initial requests submitted via the portal account), or via 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 faithfully,

Electronically signed

Roberto Viola

Enclosure: (6)

² <https://www.ec.europa.eu/transparency/documents-request>