



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

Resources and Support  
**Compliance and Planning**

Brussels, 10 November 2023  
CNECT.R.4.001

Ms Margarida Da Silva

***By email:***

[ask+request-12946-  
7c471894@asktheeu.org](mailto:ask+request-12946-7c471894@asktheeu.org)

**Subject: Your application for access to documents – EASE 2023/2602**

Dear Ms Da Silva,

We refer to your email dated 4/05/2023 wherein you make a request for access to documents pursuant to Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents (hereinafter ‘Regulation 1049/2001’), registered under the abovementioned reference number. We also refer to our holding reply, dated 30/05/2023, whereby we informed you that the time limit for handling your application was extended by 15 working days pursuant to Article 7(3) of Regulation 1049/2001.

**1. SCOPE OF YOUR APPLICATION**

Your application reads as follows:

“.... documents which contain the following information:  
- minutes and any other reports of meetings held by DG CNECT and OpenAI.  
- all correspondence (i.e. any emails, correspondence, or telephone call notes between DG CNECT and Open AI. ....”

**2. DOCUMENTS FALLING WITHIN THE SCOPE OF THE REQUEST**

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

- BTO - Meeting, Open AI, San Francisco – reg number Ares(2023)2846364  
**(Document 1)**

- BTO – Meeting between Roberto Viola and Open AI, 31 March 2023 Reg. number: Ares(2023)2474974 (**Document 2**)
- BTO – meeting with OpenAI.16.06.22 - Reg. number: Ares(2022)4413214 (**Document 3**)
- BTO – meeting with OpenAI. 13.04.22 Reg. number: Ares(2022)4440393 (**Document 4**)
- Feedback for requirements for AI – Open public consultation - Reg. number: Ares(2021)4923889 (**Document 5**)
- Feedback to open public consultation about AI white paper Reg. number: Ares(2020)2315729 (**Document 6**)
- Meeting request from OpenAI\_31/3/2023 number: Ares(2023)1351889 (**Document 7**)
- Meeting with Open AI and A2\_13.04.24 Reg. number: Ares(2022)3757369 (**Document 8**)
- Director General Viola: request for Meeting with Open AI 22.02.23 Reg. number: Ares(2023)1317290 (**Document 9**)

### **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 partial access can be granted to eight documents and access must be refused to one document. Full and partial disclosure is prevented by exceptions to the right of access laid down in Article 4 of Regulation 1049/2001. Please note that parts of Document 1 have been also redacted as being outside the scope of the request.

#### **A. Partial Access**

##### *(i) Protection of privacy and integrity of the individual*

Disclosure of parts of Documents 1 - 8 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, functions, contact of Commission staff members not pertaining to the senior management
- Names, initials, functions, contact of other natural persons.

Article 9(1)(b) of the Data Protection Regulation<sup>1</sup> 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.

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<sup>1</sup> 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.

Consequently, I 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 interests*

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 Documents 2 and 3 are covered by the abovementioned exception as they contain confidential and business sensitive information relating to the concerned third party's activities, positions, strategies and views.

Parts of Document 7 and 8 originate from a third party and contain business information relating to the third party's positions, views, strategies and activities. After assessment we have come to the conclusion that a disclosure of these parts could undermine the commercial interests of the third party.

Disclosure of the abovementioned parts of Documents 2, 3, 7 and 8 would seriously affect the third party's relations and position in the market and would undermine its commercial interests. Therefore, we have blanked out the relevant parts as their disclosure is prevented by the exception to the right of access laid down in Article 4(2), first indent of Regulation 1049/2001.

*(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 Document 4 are covered by the abovementioned exception of the first subparagraph of Article 4(3) since they contain sensitive information with regard to an ongoing legislative procedure relating to the AI Act. They also contain considerations, reflections and views of the Commission services and of other parties. The content of these parts are 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 while the decision-making process on the issue at question is still ongoing would deter them from freely expressing their opinions and having frank, internal discussions. Speculations and misinterpretations of the

public on the views, positions, considerations put forward during the ongoing decision-making process would affect the exploration of different policy options and unduly restrict the Commission's internal space to think, exposing the Commission to external pressure.

Disclosure of these parts of Document 4 would therefore seriously undermine the ongoing decision-making process. This risk is also reasonably foreseeable and not purely hypothetical

Consequently, the above-mentioned parts of Document 4 have been blanked out as its disclosure is prevented by the exceptions of Article 4(3) of Regulation 1049/2001.

## **B. Non-disclosure**

We regret to inform you that access to Document 9 cannot be granted as disclosure is prevented by exceptions to the right of access laid down in Article 4 of Regulation 1049/2001.

Disclosure of Document 9 is prevented by the exception of Article 4(2) first indent of Regulation 1049/2001 with regard to the protection of commercial interests of a natural or legal person, including intellectual property. Document 9 originates from a third party and contains business information relating to the third party's positions, views, strategies and activities. After assessment we have come to the conclusion that a disclosure could undermine the commercial interests of the third party. Therefore, access to these documents cannot be granted as their disclosure is prevented by the exception to the right of access laid down in Article 4(2), first indent of Regulation 1049/2001.

Moreover, parts of Document 9 contain personal data, in particular the names, functions, and contact details of Commission staff members not pertaining to the senior management and names, functions and contact details of other natural persons, thus their disclosure is prevented by the exception of Article 4(1)(b) of Regulation 1049/2001 for the reasons set out in Section 3A(i).

We have considered whether partial access could be granted to Document 9. However, partial access is not possible considering that this document is covered in its entirety by the abovementioned exceptions of Article 4 of Regulation 1049/2001.

## **4. OVERRIDING PUBLIC INTEREST IN DISCLOSURE**

The exceptions laid down in Article 4(2) and Article 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 parts of the documents which are being withheld 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 - 4 and the parts of Documents 7 and 8 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 - 4 were drawn up for internal use under the responsibility of the relevant services of DG CONNECT. They solely reflect the services' interpretation of the interventions made and do not set out any official position of the third parties to which the documents refer, which were not consulted on their content. They do not reflect the position of the Commission and cannot be quoted as such.

Documents 5 and 6 reproduce positions originating from third parties. Please note that they are 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 1049/2001, you are entitled to make a confirmatory application requesting the Commission to review this position.

Such 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 portal<sup>[1]</sup> account** (available only for initial requests submitted via the portal account),

**or via 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)

Yours faithfully,

Electronically signed

Roberto Viola

Enclosures: 8

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<sup>[1]</sup> <https://www.ec.europa.eu/transparency/documents-request>