

EUROPEAN COMMISSION
DIRECTORATE-GENERAL JUSTICE and CONSUMERS

Acting Director General

Brussels, **18 MAI 2015**
DG JUST/01/MJA/zh ARES (2015)

MR DANIEL DELANEY
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

By registered letter with acknowledgment of receipt

Subject: Your application for access to documents – Ref GestDem No 2015/1975

Dear Sir,

We refer to your e-mail dated 24/03/2015 in which you make a request for access to documents, registered on 25/03/2015 under the above-mentioned reference number.

The following documents fall under the scope of your request:

- On the meetings with Google (19 January) and Microsoft (20 January):
 1. E-mail from Google requesting the meeting.
 2. E-mail from Microsoft requesting the meeting.
 3. Report of the meeting with Google.
 4. Briefing for the meeting with Google.
 5. Briefing for the meeting with Microsoft.
- On the meeting with Samsung (4 March):
 6. Briefing for the meeting.
 7. Report of the meeting (with one annex).
- On the meeting with Google (2 December):
 8. Invitation from Google.
 9. Report on the meeting.
 10. Follow-up message from Google (with two annexes).
- On the meeting with Yahoo (8 December):
 11. Meeting request from Yahoo.
- On the meeting with CDT (9 December):
 12. Meeting request from CDT.

13. Report of the meeting with CDT.

- On the meeting with HP (20 January):

14. Meeting request from HP.

- On the meeting with IBM (22 January):

15. Follow up message from IBM (with one annex).

- On the roundtable organised by the Trans-Atlantic Business Council (5 February):

16. Invitation for the roundtable.

17. Speech.

18. Briefing.

Having examined the documents requested under the provisions of Regulation (EC) No 1049/2001 regarding public access to documents, I have come to the conclusion that documents 2 and 9, the annex to document 7, document 10 (and its annexes), the annex to document 15 and document 17 can be disclosed.

Documents 1, 3, 6, 7, 8, 11, 12, 13, 14, 15 and 16 have personal data which means that they may only be partially disclosed.

Some parts of those documents have been blanked out as their disclosure is prevented by exceptions to the right of access laid down in Article 4 of the Regulation.

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 Community legislation regarding the protection of personal data. The applicable legislation in this field is 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 data¹.

When access is requested to documents containing personal data, Regulation (EC) No 45/2001 becomes fully applicable².

According to Article 8(b) of this Regulation, personal data shall only be transferred to recipients if they establish the necessity of having the data transferred to them and if there is no reason to assume that the legitimate rights of the persons concerned might be prejudiced.

I 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. Therefore, we are disclosing the document requested expunged of this personal data.

¹ OJ L 8 of 12.1.2001, p. 1

² Judgment of the Court of Justice of the EU of 29 June 2010 in case 28/08 P, Commission/The Bavarian Lager Co. Ltd, ECR 2010 I-06055.

Documents 4, 5 and 18 may be partially disclosed. Some parts of the documents have been blanked out as their disclosure is prevented by exceptions to the right of access laid down in Article 4 of Regulation 1049/2001.

Full disclosure of documents 4 and 5 would undermine the protection of on-going investigations by several Commission services related with the Digital single market strategy. Any public disclosure of this information would undermine the analysis of the facts presented and the outcome of the investigations.

Therefore the exception laid down in Article 4(2) last indent of Regulation (EC) No 1049/2001 applies.

Full disclosure of documents 4 and 5 is also prevented by the exception of Article 4(2), second indent, on legal advice as it would undermine the protection of legal advice on issues of a highly sensitive nature regarding the position of the Commission on on-going court cases.

Full disclosure of document 18 would undermine ongoing international negotiations with the USA on the Safe Harbour.

Therefore the exception laid down in Article 4(1) third indent of Regulation (EC) No 1049/2001 applies.

The exception laid down in Article 4(2) of Regulation 1049/2001 applies unless there is an overriding public interest in disclosure of the document.

I note that you have not put forward any elements capable of demonstrating the existence of an overriding public interest that would outweigh the purpose of the protection of the decision-making process.

Accordingly, I have concluded that, in this case, the protection granted by the exception outweighs any possible public interest that may exist in disclosing information on the on-going investigations and the legal advice.

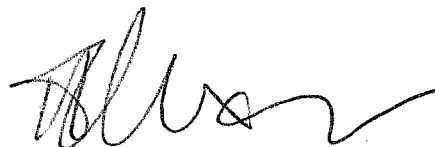
In accordance with Article 7(2) of Regulation 1049/2001, you are entitled to make a confirmatory application requesting the Commission to review this position.

Such a confirmatory application should be addressed within 15 working days upon receipt of this letter to the Secretary-General of the Commission at the following address:

European Commission
Secretary-General
Transparency unit SG-B-4
BERL 5/327
B-1049 Bruxelles

or by email to: sg-acc-doc@ec.europa.eu

Yours faithfully,



MICHOU Paraskevi