



EUROPEAN COMMISSION
DIRECTORATE-GENERAL FOR HEALTH AND FOOD SAFETY

Director-General

Brussels,
SANTE E3/JMC/gk-E4/LC
sante.ddg2.e.3(2017)4317988

***By registered letter with
acknowledgment of receipt***

***Advance copy by e-mail to
[ask+request-3629-
ef6b0b1b@asktheeu.org](mailto:ask+request-3629-ef6b0b1b@asktheeu.org)***

Dear Ms Douo,

Subject: Your application for access to documents – Ref GestDem 2016/7142

We refer to your email dated 16 December 2016 and registered on 19 December 2016 in which you make a request for access to documents.

In your application, you requested access to

"documents which contain all correspondence (including emails), agendas, minutes of meetings and any other reports of such meetings between officials/representatives/Commissioner/cabinet member of DG SANTE and the following companies over the past year [2016]: Dow Chemicals, DuPont, Syngenta, Bayer, Monsanto".

By letter of 17 February 2017 (Ares(2017)879081) we proposed a fair solution for handling the disclosure of the documents falling under the scope of your application, asking you to narrow down the scope of your request and to identify the topics in which you are interested.

On 31 May 2017, from the 278 documents we initially identified as falling under the scope of your request, you requested access to 97 documents. Those documents are listed in Annex A to this letter.

Myriam Douo
Friends of the Earth Europe
Mundo B Building
Rue d'Edimbourg 26
1050 Brussels
Belgium

Please note that document No 37 in list 1, documents No 18 and 19 in list 2, document No 4 in list 3, documents No 10, 118, 140, 173, 174 and 175 in list 4 and documents No 2, 3 and 4 in list 5 are the same documents as other documents included in Annex A and they are not disclosed as part of this request in order to avoid unnecessary repetitions. Document No 141 in list 4 falls outside the scope of your request. Therefore, the final number of documents to be considered as falling under your request is 86.

Having examined these documents under the provisions of Regulation (EC) No 1049/2001 regarding public access to documents, we have come to the following conclusion: 2 documents can be fully disclosed (document No 31.2 in list 1 of Annex A and document No 19 in list 4); 83 documents can be partially disclosed (documents No 1, 10, 10.1, 11, 12, 14, 15, 16, 17, 18, 18.1, 18.2, 19, 21, 22, 23, 24, 28, 29, 30, 31, 31.1, 35, 35.1, 36, 36.1, 38, 46, 46.1 of list 1; documents No 6, 7, 8, 9, 10, 17, 20, 21, 22, 23, 24, 25, 26, 26.1, 28, 28.1, 29, 29.1, 30, 31, 32, 33, 34 of list 2; documents No 1 and 2 of list 3; documents No 8, 12, 16, 16.1, 17, 17.1, 18, 19, 20, 22, 25, 26, 27, 28, 46, 52, 55, 55.1, 56, 56.1, 74, 86, 91, 106, 124, 133, 133.1, 138 and 143 in list 4; and document No 1 in list 5 of Annex A), and disclosure of 1 document must be refused (document No 28.1 in list 4 of Annex A).

You will find attached the disclosed documents, which are numbered according to the table in Annex A.

Justifications for partial disclosure

Article 4(1)(b) of Regulation (EC) No 1049/2001 – Protection of privacy and the integrity of the individual

In all the documents which are partially disclosed, personal data have been blanked out. Pursuant to Article 4(1)(b) of Regulation (EC) No 1049/2001, access to a document or parts of it must be refused if 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 applicable.²

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.

We consider that, with the information available, the necessity of disclosing the aforementioned personal data to you has not been established and that it cannot be assumed that such disclosure would not prejudice the legitimate rights of the persons concerned. Therefore, we are disclosing the documents requested expunged from these personal data.

¹ Official Journal L 8 of 12.1.2001, p. 1.

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

Article 4(3) of Regulation (EC) No 1049/2001 – Protection of the decision-making process – Documents drawn up for internal use relating to a matter where a decision has not been taken (Article 4(3) first subparagraph)

Having examined documents No 29 in list 1 and documents No 8, 12 and 28.1 in list 4 of Annex A under the provisions of Regulation (EC) No 1049/2001, we came to the conclusion that the disclosure of some their parts would undermine the protection of the decision-making process of the Commission guaranteed by Article 4(3), first subparagraph, of Regulation (EC) No 1049/2001.

The article provides that access 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, 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.

We consider that those documents fall under this exception as they refer to decisions which have not yet been taken by the Commission.

– Document No 29 in list 1 and document No 12 in list 4 relate to the possible renewal of the approval of glyphosate and other substances. Document No 28.1 in list 4 contains the draft Commission review report on the active substance glyphosate as well as comments on that report, which relates to a decision on the possible renewal of the active substance's approval. A decision on the matter has not yet been taken by the Commission.

The draft Commission review report is a key document in the decision-making process and premature disclosure of the report and of the comments on the report would seriously undermine the decision-making process of the Commission, as it would reveal preliminary views and policy options which are currently under consideration. The Commission's services must be free to explore all possible options in preparation of a decision free from external pressure.

Therefore, the exception laid down in Article 4(3), first subparagraph, of Regulation (EC) No 1049/2001 applies to this document.

We have considered whether partial access could be granted to document No 28.1. However, the document is entirely covered by the exception.

– Document No 8 in list 4 relates to the preparatory work undertaken by the Commission concerning the adoption of Annex III of Regulation (EC) No 1107/2009 on co-formulants.

The premature disclosure of this information would seriously undermine the decision-making process of the Commission, as it would reveal preliminary views and policy options which are currently under consideration. The Commission's services must be free to explore all possible options in preparation of a decision free from external pressure.

Therefore, the exception laid down in Article 4(3), first subparagraph, of Regulation (EC) No 1049/2001 applies to this document.

The exception to the right of access provided for in Article 4(3) of Regulation (EC) No 1049/2001 must be waived if there is an overriding public interest in disclosing the requested documents. In your application, you did not submit any grounds concerning a public interest on the basis of which the interests protected in Regulation (EC) No

1049/2001 would have to be overridden, and we could not identify any such ground either. In these circumstances, we have to conclude that there is no evidence of an overriding public interest in disclosure, in the sense of Regulation (EC) No 1049/2001.

Article 4(2), first indent, of Regulation (EC) No 1049/2001 – Protection of commercial interests, including intellectual property

Having examined the document No 1 in list 1 of Annex A, in consultation with the third party in which it originated, we have come to the conclusion that its disclosure would undermine the protection of the commercial interests of the third party guaranteed by Article 4(2), first indent, of Regulation (EC) No 1049/2001.

The document contains confidential business information (trade secrets) on the imports of certain products into the EU. Such data relate to the activities and business opportunities of the company from which the information originated and its disclosure would harm the competitive position of that company, as it would provide information to competitors.

Therefore, the exception laid down in Article 4(2), first indent, of Regulation (EC) No 1049/2001 applies to the parts of the document containing the mentioned information, which have been redacted.

The exception to the right of access provided for in Article 4(2) of Regulation (EC) No 1049/2001 must be waived if there is an overriding public interest in disclosing the requested documents. In your application, you did not submit any grounds concerning a public interest on the basis of which the interests protected in Regulation (EC) No 1049/2001 would have to be overridden, and we could not identify any such ground either. In these circumstances, we have to conclude that there is no evidence of an overriding public interest in disclosure, in the sense of Regulation (EC) No 1049/2001.

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 its 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 5/282
B-1049 Bruxelles
or by e-mail to: sg-acc-doc@ec.europa.eu

Final remarks

We would also like to draw your attention to the following issues:

Firstly, please note that some of the disclosed documents emanate from third parties. They are disclosed for information only and cannot be re-used without the agreement of the originators, who hold a copyright on them. They do not reflect the position of the Commission and cannot be quoted as such.

Secondly, you may re-use the Commission documents disclosed free of charge 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 re-use.

Finally, please also note that some documents are short minutes or reports of meetings between the Commission and third parties drafted for internal purposes. These documents do not reflect the position of the Commission and cannot be quoted as reflecting the Commission's position. Moreover, these minutes and reports have been drafted by the Commission services without the input or agreement of the third parties concerned and they do not necessarily reflect accurately the positions or statements of these third parties.

Yours sincerely,

**For the Director General absent,
Martin SEYCHELL
Deputy Director General**

Xavier Prats Monné

- Annexes:
- Annex A: Table listing the documents covered by the request;
 - CD-ROM containing 86 documents fully or partially disclosed.

