



EUROPEAN COMMISSION

Directorate-General for Communications Networks, Content and Technology

Director-General

Brussels,

Mr. Luke Ming Flanagan
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[ask+request-5470-
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REGISTERED LETTER WITH ACKNOWLEDGEMENT OF RECEIPT

Subject: Your application for access to documents – Ref GestDem No 2018/2027

Dear Mr. Flanagan,

We refer to your email dated 09/04/2018 in which you make a request for access to documents, registered on 10/04/2018 under the above mentioned reference number.

1. SCOPE OF YOUR APPLICATION

You request access to:

- *“Any document that relates to the assessment of applications submitted to the High Level Group on Fake News and Online Disinformation*
- *Any document that relates to the selection of the members of this High Level Expert Group*
- *All communication between member states relating to this selection procedure*
- *Cover letters submitted by applicants for the High Level Group”*

2. DOCUMENT FALLING WITHIN THE SCOPE OF THE REQUEST

We consider your request to cover documents held up to the date of your initial application, i.e. 09/04/2018.

As specified in Article 2(3) of Regulation (EC) No 1049/2001 on public access to documents (hereinafter ‘Regulation 1049/2001’), the right of access applies only to existing documents in the possession of the institution.

We would like to inform you that the European Commission (hereinafter ‘the Commission’) does not hold any document that would correspond to “communications between Member States” regarding the applications and selection of experts for the High-Level Group on Fake News and Disinformation.

However, the following categories of documents have been identified as falling within the scope of your request:

1. Document n°1 - Call for applications on the website of the Register of Commission expert groups and similar entities
2. Document n°2 - Cover letters explaining the applicant's motivation
3. Document n°3 - CVs
4. Document n°4 - Classification forms
5. Document n°5 - Selection criteria forms
6. Document n°6 – Assessment grid used for the selection process
7. Document n°7 - Letters of acceptance
8. Document n°8 - Letters of rejection
9. Document n°9 – Draft list of selected applicants n°1
10. Document n°10 – Draft list of selected applicants n°2

3. ASSESSMENT OF THE DOCUMENTS UNDER REGULATION 1049/2001

Having examined the aforementioned documents under the provisions of Regulation 1049/2001, full access can be granted only to some of the documents requested, for the reasons detailed below.

a. Call for applications (document n°1)

Please find enclosed the call for applications for the selection of members of the High-Level Expert Group on Fake News. The document mentioning the selection criteria, as well as the names, nationalities, professional titles, professional profiles, gender, membership status and declarations of interests of the selected applicants are publicly available on the website of the Register for Commission expert groups and similar entities:

<http://ec.europa.eu/transparency/regexpert/index.cfm?do=groupDetail.groupDetail&groupID=3567&NewSearch=1&NewSearch=1>

You may reuse the document 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 document. Please note that the Commission does not assume liability stemming from the reuse.

b. Classification forms and selection criteria forms (documents n°4 and 5)

Please find enclosed the standard “classification form” and the “selection criteria” form (documents n°4 and 5).

These documents were filled out by all applicants for the High-Level Expert Group and thus contain personal data, as defined in Article 2 of 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 data (hereafter 'Regulation 45/2001').

Pursuant to Article 4(1)(b) of Regulation 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. Therefore, whenever access to documents containing personal data is requested, Regulation 45/2001 becomes fully applicable¹.

Article 4(1)(b) of Regulation 45/2001 provides that personal data shall be “collected for specified, explicit and legitimate purposes and not further processed in a way incompatible with those purposes”. In accordance with this requirement, a standard privacy statement, which is annexed to the call for proposal, explicitly provides the legal framework in which the applicants’ personal data are collected and processed in the context of the High-Level Group on Fake News. This document states that personal data will be processed only for the purpose of the Register of Commission Expert Groups. It also states that personal data of the rejected applicants will not be processed further.

Furthermore, according to Article 8(b) of the Regulation 45/2001, 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. These two conditions are not met with regard to the filled out forms.

All personal data would therefore have to be redacted in case of disclosure of the filled out forms. Thus, instead of enclosing a redacted version of all filled out forms, we enclose the standard, empty “selection criteria form” and the standard, empty “classification form”, for your information.

You may reuse the documents 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 document. Please note that the Commission does not assume liability stemming from the reuse.

c. Letters of acceptance, letters of rejection and draft lists of selected applicants (documents n°7, 8, 9 and 10)

We have identified the letters of acceptance and the letters of rejection as documents falling within the scope of your application (documents n°7 and 8). These standard letters were sent to all applicants for the High-Level Group.

In addition to these documents, we have identified two other documents entitled 'HLG on Fake News main and reserve lists' each of which include a draft list of selected applicants. These informal documents (undated) were established in December 2017 and discussed during internal meetings between DG Connect services and the Cabinet of Commissioner Mariya Gabriel (documents n°9 and 10). The final list, which results from the discussions, is publicly available on the website of the Register for Commission expert groups and similar entities (see link in point 3.a.).

¹ 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

However, all these documents contain personal data of either Commission staff (names, contact details or signatures) or applicants for the High-Level Group on Fake News. The above-mentioned reasoning (see 3.b.) applies to these documents, as far as personal data is concerned.

Accordingly, all personal data of Commission staff or applicants for the High-Level Group have been redacted in the enclosed documents.

Please note that documents n°9 and 10 are informal documents which do not reflect the position of the Commission and cannot be quoted as such.

d. CVs, cover letters, assessment grid (documents n°2, 3 and 6)

The categories of documents n°2, 3 and 6 contain personal data of the applicants, as well. Thus, the above-mentioned reasoning (see 3.b. and 3.c.) applies to these documents.

We consider that, with the information available, the necessity of disclosing the aforementioned personal data of the applicants has not been established and that it cannot be assumed that such disclosure would not prejudice the legitimate rights of the persons concerned. Furthermore, disclosing personal data which are not yet published in the Register of Commission expert groups would not be in line with the privacy statement.

We have considered whether partial access could be granted to the documents requested. Nevertheless, if all the personal data were to be redacted, it would make the documents meaningless. Therefore, access cannot be granted to documents n°2, 3 and 6.

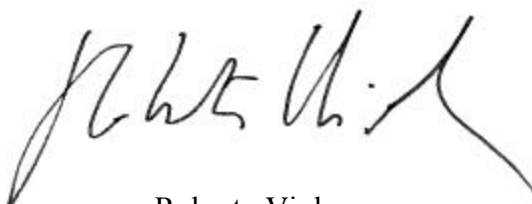
4. CONFIRMATORY APPLICATION

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

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Roberto Viola', with a stylized flourish at the end.

Roberto Viola

Enclosure(s):

1. Document n°1 - Call for applications on the website of the Register of Commission expert groups and similar entities
2. Document n°4 – Standard classification form
3. Document n°5 – Standard selection criteria form
4. Document n°7 - Letter of acceptance
5. Document n°8 - Letter of rejection
6. Document n°9 – Draft list of selected applicants n°1
7. Document n°10 - Draft list of selected applicants n°2