



DELPHINE HAROU
HEAD OF UNIT SUPERVISION & ENFORCEMENT

Mr James WOOD
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Brussels, 22 January 2019
DH/AP/sn/D(2019)0133 C 2018-1063

Subject: Your request for access to documents under Regulation (EC) 1049/2001

Dear Mr Wood,

On 11 December 2018 you sent an access to documents request to the EDPS on the basis of Regulation (EC) 1049/2001, which was registered on the same day.

You request *any correspondence between our office and companies or government officials of the United States of America relating to any consultations during the policy formation of the General Data Protection Regulation 2016/679.*

For the purpose of defining the scope of your request, we have taken into account key dates relating to the General Data Protection Regulation, from its proposal to its adoption. The European Commission proposed the reform of the Data Protection Directive¹ in January 2012. The final text of the General Data Protection Regulation was adopted by the Council of European Union and the European Parliament in April 2016. We understand the *policy formation* period of your request to correspond to the period between January 2012 and April 2016.

Concerning the subject matter of your request, we have identified the following email correspondence between U.S. companies or the government and EDPS, all relating to requests for meetings with the EDPS:

1. Email thread; Meeting request- U.S. Ambassador, 20-23 January 2012
2. Email thread and attachments; European- American Business Council: Meeting Request for 6-9 February, 20-23 January 2012 and 8 February 2012
3. Email; Request of meeting AT&T 27-29 March, 14 March 2012

¹ Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data, available at <https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX%3A31995L0046>.

4. Email; Adobe Meeting Request, 26 April 2012
5. Email thread; Request for a meeting (Software & Information Industry Association), 4-5 June 2012
6. Email; AmCham EU request for a meeting to discuss data protection, 29 June 2012
7. Email thread; Meeting request with Adobe Systems, Washington D.C., 3-5 July 2012
8. Email and attachment; AmCham EU Position paper on the General Data Protection Regulation and AmCham EU Position paper on Data Protection 20120711.pdf, 13 July 2012
9. Email; Meeting request (Symantec), 17 January 2013
10. Email thread; Meeting with Apple's Privacy Team, 21-27 February 2013
11. Email tread; Requesting Meeting with Giovanni Buttarelli, 14-25 June 2013
12. Email thread; Meeting request: Hewlett- Packard (21 or 22 January), 8-9 January 2015
13. Email thread and attachment; Meeting Request: General Electric- Brussels, 5-27 January 2015
14. Email and attachments; GE-- thank you, 4 March 2015
15. Email thread; Meeting request General Electric, 14-24 September 2015
16. Email; Request of meeting- Google- 18/19 February 2006, 8 January 2016
17. Email thread; Meeting request: Hewlett Packard Enterprise, 10 November 2015 to 22 January 2016

As regards the attachment in document 8, please be informed that you can find it online at the following link:

http://www.amchameu.eu/sites/default/files/position_papers/file_20120712_113654_rFNGM0.pdf.

Since all the listed documents originate from third parties, the EDPS consulted them in accordance with Article 4(4) of Regulation (EC) 1049/2001. This was done in view to assess whether any of the exceptions in Article 4(1) or 4(2) of the same Regulation would be applicable.²

As regards documents 9, 10, 13 and 16, the third parties have informed us that partial access is granted to the documents originating from them, on the basis of Article 4(1)(b), in order to protect the privacy and integrity of the individuals involved.

The EDPS has decided to grant partial access to all the documents covered by the request (1 to 17) with the exception of the personal data³ (such as names, email addresses and phone numbers) of the EDPS staff, below Heads of Units, Director, Assistant to the Supervisor and Supervisor, as well as the personal data (such as names, email addresses, phone numbers and job positions) of third parties.

As regards document 17, the *private* phone number of the Assistant to the Supervisor, Mr Wiewiorowski, is also redacted.

² 4(1) - the institutions shall refuse access to a document where disclosure would undermine the protection of (a) the public interest as regards public security, defence and military matters, international relations, the financial, monetary or economic policy of the Union or a Member State; or (b) privacy and the integrity of the individual. 4(2) - documents where disclosure would undermine the protection of commercial interests of a natural or legal person, including intellectual property, court proceedings and legal advice, the purpose of inspections, investigations and audits, unless there is an overriding public interest in disclosure.

³ According to Article 3(1) of [Regulation \(EU\) 2018/1725](#), personal data means any information relating to an identified or identifiable natural person. The Court of Justice of the European Union specified in its judgment of 20 December 2017 in [Case C-434/16, Peter Nowak v Data Protection Commissioner](#), that any information, which *by reason of its content, purpose or effect, is linked to a particular person* is considered personal data.

The decision to partially grant access to the documents is based on Article 4(1)(b) of Regulation (EC) 1049/2001. According to this provision, access to a document is refused where its disclosure would undermine the privacy and integrity of the individual, in particular in accordance with the applicable Community legislation regarding the protection of personal data, including Article 9 of Regulation 2018/1725.⁴

Article 9(1)(b) of Regulation 2018/1725 states that 'personal data shall only be transmitted to recipients established in the Union other than Union institutions and bodies, if the recipient establishes that it is necessary to have the data transmitted for a specific purpose in the public interest and the controller, where there is any reason to assume that the data subject's legitimate interests might be prejudiced, establishes that it is proportionate to transmit the personal data for that specific purpose after having demonstrably weighed the various competing interests'.

The first condition to be fulfilled under Article 9(1)(b) of Regulation 2018/1725 is that the recipient needs to establish that it is necessary to have the data transmitted for a specific purpose in the public interest. Only then is the EDPS obliged to examine whether there is any reason to assume that the data subject's legitimate interests might be prejudiced and subsequently establish the proportionality of the transmission of the personal data, after having demonstrably weighed the various competing interests.

In your request you do not establish the reasons why it would be necessary for the personal data in question to be transmitted for a specific purpose in the public interest. Therefore, the EDPS is not obliged to examine the rest of the requirements of Article 9(1)(b) of Regulation 2018/1725.

If you would like to have access to the redacted personal data, please provide the EDPS with a legitimate justification or compelling argument to demonstrate the necessity to have the personal data transmitted for a specific purpose in the public interest.⁵

Please find attached the documents to which you have been granted partial access.

Please note that pursuant to Article 7(2) of Regulation (EC) 1049/2001, you may make a confirmatory application asking the EDPS to review this position. Such a confirmatory application should be addressed within 15 working days upon the receipt of this letter to the EDPS general email: edps@edps.europa.eu.

Yours sincerely,



Delphine HAROU
Head of Unit Supervision & Enforcement

⁴ The application of the exception of Article 4(1)(b) of Regulation (EC) 1049/2001 was considered by the Court of Justice in the [Case C-28/08 P, European Commission v The Bavarian Lager Co Ltd.](#), where the Court stated that when a request is made for access to documents containing personal data, Regulation 45/2001 becomes fully applicable. Regulation 45/2001 was repealed and replaced by Regulation (EU) 2018/1725.

⁵ In accordance with the Bavarian Lager judgment (*ibid*), paragraph 46. The principles set out in the Bavarian ruling are also applicable under the Regulation (EU) 2018/1725.

Data Protection Notice

According to Articles 15 and 16 of Regulation (EU) 2018/1725 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, please be aware that your personal data will be processed by the EDPS, where proportionate and necessary, for the purpose of answering your request. The legal base for this processing operation is Regulation (EC) 1049/2001 and Recital 5 of Decision 1247/2002/EC of the European Parliament, of the Council and of the Commission. Subject to applicable rules under EU legislation, the personal data relating to you, as provided in your request, are used solely for the purpose of replying to your request. EDPS staff members dealing with the request will have access to the case file containing your personal data on a need-to-know basis. Your personal data are not disclosed outside the EDPS. Your personal data will be stored electronically for a maximum of ten years after the closure of the case, or as long as the EDPS is under a legal obligation to do so. You have the right to access your personal data held by the EDPS and to obtain the rectification thereof, if necessary. Any such request should be addressed to the EDPS at edps@edps.europa.eu. You may contact the data protection officer of the EDPS (EDPS-DPO@edps.europa.eu), if you have any remarks or complaints regarding the way we process your personal data.