Dear Ms Kayali,

Subject: Your application for access to documents – Ref GestDem No 2019/1407

We refer to your two e-mails dated 08/03/2019 in which you make a request for access to documents, registered on 11/03/2019 under the above-mentioned reference number. We also refer to our letter of 01/04/2019 extending the time limit for responding to your request pursuant to Article 7(3) of Regulation (EC) No 1049/2001.

1. Scope of the request

In your initial email of 8/03/2019, you request access to:

For the period between November 2014 and March 2019:

- List of lobby meetings held with Health and Food Safety, with Amazon or its intermediaries. The list should include: date, individuals attending + organisational affiliation, the issues discussed,
- Minutes and other reports of these meetings
- All correspondence including attachments (i.e. any emails, correspondence or telephone call notes) between DG Grow (including the Commissioner and the Cabinet) and Amazon or any intermediaries representing its interests.
- All documents prepared for the meetings and exchanged in the course of the meetings between both parties.

In a second email (also dated 08/03/2019) that followed the first one, you clarified the third paragraph of your request by specifying that you wanted to have access to:

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All correspondence including attachments (i.e. any emails, correspondence or telephone call notes) between *DG Health and Food Safety* (including the Commissioner and the Cabinet) and Amazon or any intermediaries representing its interests.

2. Identification and assessment of documents

We have identified four documents falling within the scope of the request. You will find attached a table listing the identified documents and summarising the outcome of the assessment carried out on the basis of Regulation (EC) No 1049/2001.

Since all the documents originate or include correspondence from third parties, the originators of the documents have been consulted, in accordance with Article 4(4) of Regulation (EC) No 1049/2001, in order to assess whether an exception of Article 4 to the right of access to documents is applicable to any of these documents.

Having examined the documents requested under the provisions of Regulation (EC) No 1049/2001 regarding public access to documents, and considered the opinion of the third parties, we have come to the conclusion that:

- documents No 1, 3 and 4 may be partially disclosed, as their full disclosure is prevented by an exception to the right of access laid down in Article 4 of this Regulation.
- document No 2 cannot be disclosed, as its disclosure is prevented by an exception to the right of access laid down in Article 4 of this Regulation.

Your will in annex to this letter documents No 1, 3 and 4.

You may reuse the documents requested free of charge for non-commercial and commercial purposes provided that the source is acknowledged, that you do not distort the original meaning or message of the documents. These documents were received by the Commission from Amazon or include correspondence with it. They are disclosed for information only and cannot be re-used without the agreement of the originator, who holds a copyright on it. They do not reflect the position of the Commission and cannot be quoted as such.

3. Reasons for (partial) refusal

Protection of the commercial interests of a legal person - Article 4(2), first indent, of Regulation (EC) No 1049/2001

Since document No 2 originates from a third party (Amazon), the latter has been consulted, in accordance with Article 4(4) of Regulation (EC) No 1049/2001, in order to assess whether an exception under Article 4 of this Regulation is applicable.

Amazon has objected to the full disclosure of this document invoking that they consulted the Commission relying on the confidentiality of the consultation made. The subject of the consultation relates to business information about the company which, if made public, could affect its competitive position on the market.

Therefore, having considered the opinion of the third party, we consider that the exception laid down in Article 4(2), first indent, of Regulation (EC) 1049/2001 applies to the concerned document. We have considered whether partial access could be granted to
the document requested, in accordance with Article 4(6) of Regulation (EC) No 1049/2001. However, it follows from the assessment made above that this document is entirely covered by the exception laid down in Article 4(2), first indent, of that Regulation.

**Protection of the privacy and integrity of the individual, in particular in accordance with Community legislation regarding the protection of personal data - Article 4(1)(b) of Regulation (EC) No 1049/2001**

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 (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/EC2.

Non-confidential parts of the documents 1, 3 and 4 to which you have requested access contain personal data of the Commission staff and the company representatives, in particular names, functions, telephone and fax numbers, email addresses and signatures.

Indeed, Article 3(1) of Regulation (EU) 2018/1725 provides that personal data ‘means any information relating to an identified or identifiable natural person [...]’. The Court of Justice has specified that any information, which by reason of its content, purpose or effect, is linked to a particular person is to be considered as personal data3.

In its judgment in Case C-28/08 P (Bavarian Lager)4, the Court of Justice ruled that when a request is made for access to documents containing personal data, the Data Protection Regulation becomes fully applicable5.

Pursuant to Article 9(1)(b) of Regulation (EU) 2018/1725, ‘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’.

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5 Whereas this judgment specifically related to 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, the principles set out therein are also applicable under the new data protection regime established by Regulation 2018/1725.
Only if these conditions are fulfilled and the processing constitutes lawful processing in accordance with the requirements of Article 5 of Regulation (EU) 2018/1725, can the transmission of personal data occur.

According to Article 9(1)(b) of Regulation (EU) 2018/1725, the European Commission has to examine the further conditions for a lawful processing of personal data only if the first condition is fulfilled, namely if the recipient has established that it is necessary to have the data transmitted for a specific purpose in the public interest. It is only in this case that the European Commission has to examine whether there is a reason to assume that the data subject’s legitimate interests might be prejudiced and, in the affirmative, establish the proportionality of the transmission of the personal data for that specific purpose after having demonstrably weighed the various competing interests.

In your application, you do not put forward any arguments to establish the necessity to have the data transmitted for a specific purpose in the public interest. Therefore, the European Commission does not have to examine whether there is a reason to assume that the data subject’s legitimate interests might be prejudiced.

Notwithstanding the above, please note that there are reasons to assume that the legitimate interests of the data subjects concerned would be prejudiced by disclosure of the personal data reflected in the documents, as there is a real and non-hypothetical risk that such public disclosure would harm their privacy and subject them to unsolicited external contacts.

As to the signatures which are biometric data, there is a risk that their disclosure would prejudice the legitimate interests of the persons concerned.

Consequently, we conclude that, pursuant to Article 4(1)(b) of Regulation (EC) No 1049/2001, access cannot be granted to the personal data, 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.

Therefore, we are disclosing the documents listed above expunged from these personal data.

4. Overriding public interest

The exceptions 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 document. 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.

5. Means of redress

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

European Commission
Secretariat-General
Transparency, Document Management & Access to Documents (SG.C.1)
BERL 7/076
B-1049 Brussels
or by email to: sg-acc-doc@ec.europa.eu

Yours sincerely,

[Signature]
Anne BUCHER