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Brussels, 30 April 2020
TZ/SP/ / C 2020-0335
Please use edps@edps.europa.eu for all
correspondence

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

Dear Mr Breyer,

On 19 March 2020, 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. On 23 March 2020, the EDPS informed you about the extension of the deadline in accordance with Article 7(3) of Regulation (EC) 1049/2001.

You request *“access to the personal data breaches notifications received in 2019. I agree to you removing/anonymizing the names of natural persons.”*

The EDPS has received 95 data breach notifications in 2019. From these cases, 25 of them are closed.

1. Open cases

Regarding access to the data breach notifications on cases that are open, we regret to inform you that access is denied in line with Article 4(2) third indent of Regulation (EC) 1049/2001 relating to the protection of the purpose of inspections, investigations and audits. According to this provision, access should be refused if the disclosure of a document could possibly undermine the completion of inspections, investigations or audits.

In order for the EDPS's investigations to be effective and lead to the desired result as regards the correct application of Regulation (EU) 2018/1725, it is essential that confidentiality of such investigations in these cases is preserved. Disclosing any information and/or documents related to ongoing investigations would unduly interfere with the procedure and may undermine the rights and interests of the entities concerned. Additionally, disclosure of the information could possibly undermine the completion of these investigations.

2. Closed cases

Regarding the 25 closed cases, the EDPS has consulted the EUIs that reported the breaches in accordance with Article 4(4) of Regulation (EC) 1049/2001.

We are pleased to inform you that partial access is granted in line with your request with the exception of access to personal data in line with Article 4(1)(b) of Regulation (EC) 1049/2001 to some of these notifications, stemming from the following EUIs:

- European Chemicals Agency (ECHA): 1 document
- European Medicines Agency (EMA): 1 document
- European Commission - DG SANTE: 2 documents
- Innovation and Networks Executive Agency (INEA): 1 document
- European Commission - Paymaster's Office (PMO): 4 documents
- European Food Safety Authority (EFSA): 1 document
- Research Executive Agency (REA): 1 document
- European Commission - DG HR: 2 documents
- European Commission - DG JUST: 1 document
- European Union Intellectual Property Office (EUIPO): 2 documents
- European Asylum Support Office (EASO): 1 document
- Education, Audiovisual and Culture Executive Agency (EACA): 7 documents

If you would like to request access to the redacted personal data please provide the EDPS with a legitimate justification or compelling argument to demonstrate the necessity for the personal data to be disclosed¹ (see below for information about the confirmatory application).

In addition with the exception of personal data in line with Article 4(1)(b) of Regulation (EC) 1049/2001, partial access is granted to some of these notifications, stemming from the following EUIs based on the following specific reasons:

- Council of the European Union: except the first sentence under D18 based on 4.1.a) first indent of Regulation 1049/2001: disclosure would undermine the protection of public interest as regards public security. (2 documents)
- EUROPOL: except the name of the company based on Article 4(2) of the Management Board Decision laying down the rules for applying Regulation 1049/2001 with regard to Europol documents as the disclosure would undermine the commercial interests of a legal person. (2 documents)
- European Global Navigation Satellite System Agency (GSA): the disclosure of the information indicated in some sections would undermine the commercial interests of the GSA contractor (i.e. the data processor) which committed the data breach (exception under Article 4(2) Regulation (EC) 1049/2001). (1 document)
- European Commission - DG DEVCO: some parts have been withheld on the basis of the exception pursuant to the third indent of Article 4(1)(a) of Regulation (EC) No 1049/2001 (protection of the public interest as regards international relations). Some other parts have been blanked out not to undermine the protection of the purpose of the Commission's investigation provided for in the third indent of Article 4(2) of Regulation (EC) No 1049/2001. (2 documents)

¹ In accordance with Article 8(b) of Regulation 45/2001 (current Article 9 of Regulation 2018/1725) as interpreted by the Court of Justice in Case C-28/08 P Bavarian Lager.

- European Union Agency for Fundamental Rights (FRA): some parts have been withheld because the document has to be considered as containing opinions for internal use, as part of deliberations and preliminary consultations within the Agency in the sense of Article 4(3), second subparagraph of Regulation (EC) No 1049/2001. (1 document)
- Executive Agency for Small and Medium-sized Enterprises (EASME): some parts have been withheld because the disclosure would undermine the protection of commercial interests of a legal person, including intellectual property (exceptions based on Article 4(2) first intend of Regulation 1049/2001. Some other parts have also been withheld because the document has to be considered as containing opinions for internal use, as part of deliberations and preliminary consultations within the Agency in the sense of Article 4(3), second subparagraph of Regulation (EC) No 1049/2001. (5 documents)

Please be informed that transmission of the documents above to you may have to be done in parts, given the volume of some of the documents.

Please note that pursuant to Article 7(2) of Regulation 1049/2001, you may make a confirmatory application asking the EDPS to reconsider his position as regards to the refusal and partial refusal of your request. Such a confirmatory application should be addressed within 15 working days upon receipt of this letter to the EDPS general e-mail: edps@edps.europa.eu.

Yours sincerely,

[electronically signed]

Thomas ZERDICK, LL.M.
Head of IT Policy Unit

Annex: Data breach notifications to which partial access is given (zip file)

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 Article 52(4) of the Regulation (EU) 2018/1725. 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.