



EUROPEAN COMMISSION

DIRECTORATE-GENERAL
TAXATION AND CUSTOMS UNION

The Acting Director General

Brussels,
TAXUD.E.2/PK/SVDV – taxud.e.2(2020) 3566090

Mr Mathias Schindler
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(by e-mail only)

Dear Mr Schindler,

Subject: Your application for access to documents – Ref GestDem No 2020/3454

We refer to your e-mail dated 8 June 2020 in which you make a request for access to documents, registered under the above-mentioned reference number.

You make a request for access to:

“a) meeting records (drafts, memos, invitations, appointments, cancellations) involving Palantir officials and people representing Palantir and their interests;

b) correspondence (including within the [Authority name] and with the European institutions concerning Palantir technologies and / or its products and services or the regulatory environment of the EU that affects their products and services. This may include policy papers, consultation input, memoranda or any other form of information;

c) invoices, tenders, service agreements, purchases, orders, procurement documents, offers etc. concerning products and services using Palantir Technologies.”

Following your request, we have identified following documents:

- 1. Note for the file (minutes of meeting) of 6 September 2019 [Ares(2019)5640092];*
- 2. Thank you – e-mail from Palantir of 9 September 2019 and the Director-General’s reply of 11 September [Ares(2019) 5710382];*
- 3. E-mail from Palantir to the Commission dated 25 July 2019 – Palantir Technical Documents [Ares(2020)2399220];*

4. *Presentation - Why Business Intelligence Fails (when it does) – overview [Ares(2020)2399220];*
5. *Presentation -Palantir Foundry – 19/02/2019 [Ares(2020)2399220];*
6. *Presentation -Palantir Foundry for Customs [Ares(2020)2399220];*
7. *Presentation -Palantir Foundry (technical overview) [Ares(2020)2399220].*

Point a)

Documents 1-2

These documents relate to a meeting with the Director-General on 6 September 2019.

Having examined the documents requested under the provisions of Regulation (EC) N°1049/2001 regarding public access to documents, I am pleased to inform you that Commission agrees with the full disclosure of document 1 and the partial disclosure of document 2.

As concerns document 2, the redacted sentences relate to (pre-)commercial contacts of Palantir Technologies with a Member State's government agency and its disclosure would harm its commercial interests, vis-à-vis its competitors and customers. The Commission considers that disclosure of this part of the document would undermine the protection of the commercial interests of the company, in accordance with Article 4 (2), second paragraph of Regulation 1049/2001 (see below).

Point b)

Documents 3-7

These documents relate to two meetings in 2019. Note that no minutes were drafted because the meetings were purely commercial presentations and that discussions with Palantir Technologies were not pursued any further. Document 3 is an e-mail and documents 4-7 are presentations originating from Palantir Technologies ("the third party"). Under Article 4 (4) of Regulation 1049/2001, we initiated a consultation for these documents with the third party.

Having examined the documents requested under Regulation (EC) No 1049/2001 regarding public access to documents and taking into account the consultation of the originator of the documents, we consider that documents 3-4 can be fully disclosed and documents 5-7 can be partially disclosed.

Palantir Technologies invoked following arguments for the partial redaction of documents 5-7:

1. *The redacted information all pertains directly to our intellectual property, know-how, trade secrets, and commercial insights that we have developed or acquired during the course of our commercial activities. This includes screen shots and detailed descriptions of our software system which, as a software company, constitute our most important and valuable intellectual property the confidentiality and integrity of which is highly commercially sensitive.*
2. *The disclosure of this would prejudices our commercial interests for a variety of clearly foreseeable reasons. The disclosure of materials containing know-how and trade craft relevant to a technology company operating within the governmental space will undermine the value of such know-how and trade craft and erode the competitive advantage we have invested in by disseminating it freely to our competitors. In addition to which the exposure of our intellectual property (principally our software) will undermine the protections afforded to it by law by*

impinging its confidential nature and facilitating the copying, misappropriation, exploitation, and passing off of our works.

3. *For the avoidance of doubt, and in the interest of protecting the privacy of our employees, we ask that you redact all personal data in relation to Palantir staff in any of the disclosed documents.*

The Commission concurs with this position. The commercial information has been expunged as its disclosure would undermine the commercial interest of the company concerned in accordance with the first indent of Article 4(2) of Regulation 1049/2001 which reads: "*The institutions shall refuse access to a document where disclosure would undermine the protection of commercial interests of a natural or legal person, including intellectual property (...) unless there is an overriding public interest in disclosure*".

Please note further that there is no overriding public interest in disclosure of the documents which would outweigh the harm disclosure would cause to the interests protected by the invoked exception. It is considered that this risk is foreseeable and not purely hypothetical.

Point c)

No contractual actions or purchases concerning products and services have taken place with Palantir Technologies. Following the presentations given by that company, discussions were not pursued any further.

Personal data

The documents 1-3 to which you have requested access contain personal data (names, functions, phone numbers, e-mail addresses).

We consider that, with the information available, the necessity of disclosing the aforementioned personal data to you has not been established and 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 this personal data.

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 (EC) No 2018/1725¹. Pursuant to Article 9(1)(b) of Regulation 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'.

¹ Regulation (EC) No 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of individuals 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/EC, Official Journal L 205 of 21.11.2018, p. 39.

Fair use

You may reuse the documents requested 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. The Commission does not assume liability stemming from the reuse. Please note that third parties may hold an intellectual property right on their documents.

In view of the nature of the documents, we would like to stress that Commission officials draft reports for internal use. These reports are usually of value only for a limited time. These documents are intended for internal Commission use only and have not been agreed upon or discussed with any of the other participants at the meeting. Therefore, they constitute a subjective view of the contents of the meetings covered and cannot in any way be regarded as official minutes of the meeting.

Confirmatory application

In case you would disagree with the overall assessment of the documents or if you consider that the expunged data are not personal data which can only be disclosed if such disclosure is legitimate under the rules of personal data protection, you are entitled, in accordance with Article 7(2) of Regulation 1049/2001, 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
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 faithfully,

Philip KERMODE

Annexes: as stated above