



EUROPEAN COMMISSION
DIRECTORATE-GENERAL FOR COMMUNICATIONS NETWORKS, CONTENT AND
TECHNOLOGY

The Director-General

Brussels
CNECT.R.4

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Subject: Your application for access to documents – EASE 2024/1030

Dear Mr Ryan,

We refer to your request for access to documents pursuant to Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents (hereinafter ‘Regulation 1049/2001’), registered on 22 February 2024 under the abovementioned reference number. We also refer to our holding reply, dated 14 March 2024, our reference Ares(2024)1976138, whereby we informed you that the time limit for handling your application was extended by 15 working days pursuant to Article 7(3) of Regulation 1049/2001.

1. SCOPE OF YOUR APPLICATION

Your application reads as follows:

‘Dear Communications Networks, Content and Technology,

Under the right of access to documents in the EU treaties, as developed in Regulation 1049/2001, I am requesting documents which contain the following information:

Commission decision initiating proceedings pursuant to Article 66(1) of Regulation (EU) 2022/2065 against TikTok.’

2. DOCUMENTS FALLING WITHIN THE SCOPE OF THE REQUEST

We have identified the following document as falling within the scope of your application:

- Commission Decision C(2024)1158 pursuant to Regulation (EU) 2022/2065 ⁽¹⁾ - Opening Decision for TikTok (**Document 1**)

3. ASSESSMENT UNDER REGULATION 1049/2001

Following an examination of the identified document under the provisions of Regulation 1049/2001, we regret to inform you that access to the concerned document cannot be granted as disclosure is prevented by exceptions to the right of access laid down in Article 4 of Regulation 1049/2001.

(i) Protection of commercial interests

Article 4(2) first indent of Regulation 1049/2001 provides that 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.

This provision must be interpreted in light of Article 339 of the Treaty of the Functioning of the European Union (TFEU), which requires staff members of the EU institutions to refrain from disclosing information of the kind covered by the obligation of professional secrecy, in particular information about undertakings, their business relations or their cost components.

Document 1 is covered by the abovementioned exception as it contains sensitive business information relating to the concerned company's activities, positions, strategies and views. DG CONNECT and the company involved are going to prepare a public version of the decision that does not contain any business secrets or other confidential information. Given that the non-confidential version is not yet available, disclosure would at this stage undermine the company's commercial interests. Therefore, access to this document cannot be granted as its disclosure is prevented by the exception to the right of access laid down in Article 4(2), first indent of Regulation 1049/2001.

(ii) Protection of the decision-making process

The first subparagraph of Article 4(3) of Regulation 1049/2001 provides that '[a]ccess to a document, drawn up by an institution for internal use or received by an institution, which relates to a matter where the decision has not been taken by the institution, shall be refused if disclosure of the document would seriously undermine the institution's decision-making process, unless there is an overriding public interest in disclosure.'

Document 1 is covered by the abovementioned exception of the first subparagraph of Article 4(3) since it contains sensitive business information, the disclosure of which would seriously undermine the procedure to establish the non-confidential public version of this document. The risk of disclosing sensitive information regarding the concerned company before establishing a version that does not contain any business secrets or other

⁽¹⁾ Regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 October 2022 on a Single Market for Digital Services and amending Directive 2000/31/EC ('Digital Services Act')

confidential information would impair frank and outright deliberations with the concerned company on that matter. Disclosure of Document 1 would therefore seriously undermine the protection of the exception laid out in Article 4(3) first subparagraph. This risk is also reasonably foreseeable and not purely hypothetical.

In light of the foregoing, the disclosure of Document 1 has to be refused completely based on the abovementioned exceptions of Article 4 of Regulation 1049/2001. We have considered whether partial access could be granted to this document. However, partial access is not possible considering that this document is covered in its entirety by the abovementioned exceptions of Article 4 of Regulation 1049/2001.

The Commission will publish the non-confidential version of the decision in due course on the following website:

<https://digital-strategy.ec.europa.eu/en/policies/list-designated-vlops-and-vloses#ecl-inpage-tiktok>

4. OVERRIDING PUBLIC INTEREST IN DISCLOSURE

The exceptions laid down in Article 4(2) and Article 4(3) of Regulation 1049/2001 apply, unless there is an overriding public interest in the disclosure of documents. Such an interest must, firstly, be a public interest and, secondly, outweigh the harm caused by disclosure. We have examined whether there could be an overriding public interest in the disclosure of the document which is being withheld but we have not been able to identify such an interest.

5. 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 confirmatory application should be addressed within 15 working days upon receipt of this letter to the Secretariat-General of the Commission **by asking for a review via your portal ⁽¹⁾ account** (available only for initial requests submitted via the portal account),

or **via the following address:**

European Commission
Secretariat-General
Transparency, Document Management & Access to Documents (SG.C.1)
BERL 7/076
B-1049 Bruxelles,

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

⁽¹⁾ <https://www.ec.europa.eu/transparency/documents-request>

Yours faithfully,

Electronically signed

Roberto Viola