

EUROPEAN COMMISSION
DIRECTORATE-GENERAL MIGRATION AND HOME AFFAIRS

The Director General

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*By registered letter with
acknowledgment of receipt*

Ms Kirsten Fiedler
Managing Director
European Digital Rights
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Subject: Your application for access to documents – Ref GestDem No 2015/4066

Dear Ms Fiedler,

1. We refer to your e-mail dated 3 August 2015 in which you make a request for access to documents, based on the documents received under your previous request Ref GestDem No. 2015/3658.
2. Your application requests several documents, listed here below for ease of reference:
 - 1) *A list of participants in the meeting of the EU Internet Forum on 24 July 2015;*
 - 2) *The minutes of the meeting on 24 July 2015;*
 - 3) *A list of upcoming meetings of the Forum;*
 - 4) *The minutes of the 'preparatory meetings organised in 2014' as mentioned by the European Agenda on Security*
 - 5) *The list of participants at that meeting in 2014.*
3. Having examined the documents requested under the provisions of Regulation (EC) No 1049/2001 regarding public access to documents ("Regulation 1049/2001"), I have come to the conclusion that:
 - partial access is granted to document 1;
 - full access is granted to document 2;
 - access to document 3 is not possible as this document does not exist;
 - Partial access is granted to documents 4 and 5.

4. With regards to the **list of attendees for the meeting on the 24th July 2015** (document 1), attendees to the meeting were a combination of policy officials and practitioners who work on counter terrorism from Member States. Representatives from the internet industry included those from Ask.fm, Facebook, Google and Microsoft. In addition to Commission attendees, representatives from the External Action Service and Europol were also represented.
5. 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 European legislation regarding the protection of personal data. The applicable legislation in this field is 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 (see footnote1). When access is requested to documents containing personal data, Regulation (EC) No 45/2001 becomes fully applicable (see footnote 2).
6. According to Article 8(b) of this Regulation, personal data shall only be transferred to recipients if they establish the necessity of having the data transferred to them and if there is no reason to assume that the legitimate rights of the persons concerned might be prejudiced.
7. We consider that, with the information available, the necessity of disclosing the aforementioned personal data to you has not been established and/or that 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.
8. A redacted form of the attendance list is therefore enclosed.
9. With regards to your second request, a **summary of the meeting** is attached (see document 2).
10. With regards to your request for a **list of upcoming meetings of the Forum**, as specified in Article 2(3) of Regulation 1049/2001, the right of access as defined in that regulation applies only to existing documents in the possession of the institution. Given that no such documents have been identified, the Commission is not in a position to handle your request. I can however inform you that the Forum is likely to convene in December.
11. With regards to your request for the **minutes and list of participants of the preparatory meetings organised in 2014**, I can inform you that only one such meeting took place in 2014. This refers to the ministerial meeting hosted in October 2014 by Commissioner Dimitrios Avramopoulos' predecessor, Cecilia Malmström.

¹ OJ L 8 of 12.1.2001, p. 1

² Judgment of the Court of Justice of the EU of 29 June 2010 in case 28/08 P, Commission/The Bavarian Lager Co. Ltd, ECR 2010 I-06055.

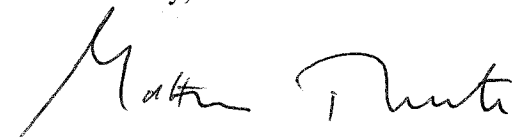
12. With regards to the **minutes of that meeting**, please see document 4 attached, partially redacted. I am of the opinion that the redacted parts of this document fall under the exceptions of Article 4(1)(a) and Article 4 (3), first subparagraph of Regulation 1049/2001.
13. Article 4(1)(a) of Regulation 1049/2001 provides that "*The institutions shall refuse access to a document where disclosure would undermine the protection of public security*". The limited redactions reflect certain positions or reflections expressed by the representatives of the Member States, Commission and internet companies on the sensitive issue of how to respond to terrorists' use of the internet and the possible ways of addressing terrorist material online. I take the view that revealing specific details, such as references to concrete projects, practices or follow-up actions on such a sensitive topic would undermine the protection of public security. There is a real and non-hypothetical risk that counter-measures could be undertaken by the terrorist organisations in order to by-pass the (planned) response of the law enforcement authorities and the major internet companies in this regard.
14. Moreover, in order to identify, support and finance the most adequate response to this challenge, the Commission is relying heavily on the co-operation of law enforcement authorities of the EU Member States and the private sector (ie the internet companies). Building such co-operation is only possible if the Commission is able to base it on mutual trust and dialogue. Therefore, the names of the persons that made comments and interventions during the ministerial dinner and the references to the organisations or companies they represented have been redacted.
15. Full disclosure would result in the public release of the position expressed by attendees who have shared important information with the Commission and with the EU Member States in confidence. Such public disclosure would clearly undermine the climate of mutual trust with the stakeholders concerned. There is thus a real and non-hypothetical risk that industry representatives will no longer be willing to co-operate with the Commission and EU Member States in this field, which would in turn greatly jeopardise the success of the Commission's response to this challenge.
16. Against this background, and in light of recent terrorist attacks and attempted attacks, I take the view that keeping such sensitive and limited data confidential is essential for the safety and security of EU citizens and for ensuring the viability and integrity of co-operation with the relevant stakeholders. Consequently, it was concluded that the redactions maintained in document 4 are justified on the basis of Article 4(1) (a) of Regulation.
17. Article 4 (3), first subparagraph of Regulation 1049/2001 provides that "*access 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.*"
18. The redacted parts of document 4 reflect policy options discussed within the Commission or between the Commission, national authorities and stakeholders about the highly sensitive issue of the ways to reduce terrorist use of the Internet and the possible public private cooperation in this field.

19. As explained above, full disclosure of these redacted parts of the document would seriously undermine the constructiveness of future discussions concerning this matter. Indeed, all the stakeholders have legitimate expectations that their preliminary ideas, plans and reflections on the possible follow-up actions are treated in confidence and not disclosed. Public release of these elements would seriously undermine the capacity of the Internet companies, Member States and the Commission to freely exchange views concerning the terrorist use of the internet in the future and to define the scope of the public-private partnership in this field. The Commission is reflecting on this file and the decision on what follow-up actions or initiatives to be undertaken is still on-going at present.
20. In light of the above, I conclude that access has to be refused to the redacted parts of document 4, as disclosure would seriously undermine the decision-making process protected by Article 4(3), first subparagraph of Regulation 1049/2001.
21. We can disclose the **list of participants** (see document 5). Some personal information was redacted for the same reasons set out in paragraph 6 to 8. We however do not redact the names of the high-level officials, such as Ministers and Ambassadors from the list of participants, as – in contrast to the meeting of the 24 July 2015 – these were high-level officials whose names are publicly known.
22. 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.
23. 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
Secretary-General
Transparency unit SG-B-4
BERL 5/327
B-1049 Bruxelles

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

Yours faithfully,



Matthias RUETE

Annexes: 4