



EUROPEAN COMMISSION
DIRECTORATE-GENERAL MIGRATION and HOME AFFAIRS

The Director General

Brussels, 10 May 2016
Home D1/AA (2016)2478860

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 n°2016/1420

Dear Ms Fiedler,

I refer to your application for access to documents, Gestdem n°2016/1420 dated 18 March 2016 requesting documents relating to the EU Internet Forum meetings focusing on combating terrorism since January 2016.

In your application, you requested the following documents:

- 1) *All relevant documents in relation to the meetings*
- 2) *The list of participants*
- 3) *The minutes of the meetings*
- 4) *Draft codes of conduct or draft agreements communicated formally or informally to participating companies*
- 5) *Documents related to the costs involved*
- 6) *The dates of upcoming meetings and road-map circulated on 22 January*

Since December 2015, only the meeting of 22 January 2016 has taken place. A further meeting was scheduled for 22 March, but this was cancelled due to the terrorist attacks in Brussels that morning. We have no confirmed dates at this stage.

In relation to the meeting of 22 January, we have identified the following documents: an agenda (document 1), a summary of the meeting (document 2) and a list of participants (document 3 corresponding to point 2 above). There are no draft codes of conduct or draft agreements (corresponding to point 4). The only document that was discussed at the meeting of 22 January 2016 was a document called "statement of objectives" which has been the object of a previous request for access which was ultimately rejected (cf. your request Gestdem 2015/6363 and 2016/95 and the confirmatory decision C(2016) 2065 final dated 4 April 2016). There are no documents related to the costs involved (corresponding to point 5 above); there is also

no document containing information about upcoming meetings or roadmap (corresponding to point 6 above).

Having examined the documents requested under the provisions of Regulation (EC)n°1049/2001 regarding public access to documents ("Regulation 1049/2001"), I am happy to inform you that I can give you full access to the **agenda for the meeting of 22 January (document 1)**.

However, it is not possible to disclose the **summary of the meeting (document 2)**. Participants in these discussions have legitimate expectations that their views are treated in confidence and not disclosed. References to potential shortcomings or individual stakeholders' positions and views would undermine the relationship of mutual trust which is essential for the further work in this sensitive area closely linked to matters of public security, protected under Article 4 (1) a) first indent of Regulation 1049/2001.

Furthermore, some of the information revealed by the companies in the course of the discussion could affect their commercial interests within the meaning of Article 4(2) first bullet point of Regulation 1049/2001.

I have considered whether partial access could be granted to the documents requested. For the same reasons explained above, I am of the opinion that the public interest is best served by refusing access.

The exceptions laid down in Article 4(2) and 4(3) of Regulation 1049/2001 apply unless there is an overriding public interest in disclosure of the documents. In view of the sensitivity of the matters dealt with during the meetings and the urgent need for getting results with stakeholders involved in view of tackling security threats, I am of the opinion that no such overriding public interest exists in this case.

Against this background, and in light of recent terrorist attacks (most notably Brussels) 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 cooperation with the relevant stakeholders.

With regards to the **list of participants (document 3)**, I can confirm that representatives from the internet industry included those from Twitter, Ask.fm, Facebook, Google and Microsoft. In addition to Commission attendees, representatives from the Counter Terrorism Coordinator's Office and Europol were also represented.

However, pursuant to Article 4(1) (b) of Regulation (EC) No1049/2001, 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 data¹. When access is requested to documents containing personal data, Regulation (EC) No45/2001 becomes fully applicable².

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.

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.

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 not able to disclose the list of participants.

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 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 e-mail to: sg-acc-doc@ec.europa.eu

Yours sincerely,

A handwritten signature in black ink, appearing to read 'M Ruete', with a stylized initial 'M' and a cursive 'Ruete'.

Matthias Ruete

Annex: Document 1: Agenda of the meeting of 22 January 2016