



EUROPEAN COMMISSION
DIRECTORATE-GENERAL JUSTICE AND CONSUMERS

The Director General

Brussels,
JUST/01/AC
Ms Kayali
Politico
Rue de la Loi 62
1040 Bruxelles
Belgium

Registered letter with acknowledgement of receipt

Advanced copy to e-mail: ask+request-6572-0c48ff6f@asktheeu.org

Subject: Your applications for access to documents – GESTDEM n. 2019/1475 and 2019/1479

Dear Ms Kayali,

We refer to your e-mails sent to the European Commission on 8 March 2019 and 2 April 2019 in which you present an access to document request to DG JUST.

Your requests cover a period between November 2014 and 8 March 2019 and concern:

- *List of lobby meetings held with your DG, with Microsoft or its intermediaries. The list should include: date, individuals attending + organisational affiliation, the issues discussed,*
- *Minutes and other reports of these meetings*
- *All correspondence including attachments (i.e. any emails, correspondence or telephone call notes) between your DG (including the Commissioner and the Cabinet) and Amazon or any intermediaries representing its interests.*
- *All documents prepared for the meetings and exchanged in the course of the meetings between both parties.*

Furthermore

- List of lobby meetings held with your DG, with Amazon or its intermediaries. The list should include: date, individuals attending + organisational affiliation, the issues discussed,

- Minutes and other reports of these meetings

- All correspondence including attachments (i.e. any emails, correspondence or telephone call notes) between your DG (including the Commissioner and the Cabinet) and Amazon or any intermediaries representing its interests.

- All documents prepared for the meetings and exchanged in the course of the meetings between both parties.

In the letter of 26 March 2019 addressed to you by the Secretariat General of the Commission, it was indicated that a search in the document management systems of the European Commission for ‘intermediaries’ of the companies you are interested in is not precise enough to yield results. You therefore agreed on 2 April 2019 to limit your request in this respect.

I would like to point out that DG JUST has received a number of very similar requests for access to documents submitted by you but also by other applicants concerning lobby meetings held within the European Commission with Amazon, Google, Microsoft or Facebook or persons representing their interests. Although the applicants are different entities, the requests are almost identical and were made at the same time. Their handling represent a considerable investment in terms of resources by the same departments of DG JUST within the same period.

As stated by the EU Courts, the European Commission needs to respect the principle of proportionality and ensure that the interest of the applicant for access is balanced against the workload resulting from the processing of the application for access in order to safeguard the interests of good administration.

The work needed to deal with your applications has entailed multiple searches for documents, which have been undertaken simultaneously by my services and by Ms Jourova Cabinet.

- Search for documents relating to meetings with Google, Facebook, Microsoft and Amazon both at the level of the Directorate-General or the service concerned and at the level of the Commissioner and his Cabinet in several document management systems of the Commission;
- Retrieval of the documents falling under the scope of your requests;
- Scanning of the documents which are not in pdf format;
- Preliminary assessment of the content of the documents in light of the exceptions of Article 4 of Regulation EC (No) 1049/2001;
- Assessment of the further procedural steps to undertake, for example whether third party consultations should be made;
- (possibly) third-party consultations under Article 4(4) of Regulation 1049/2001 and (possibly) a further dialogue with the third party originators of documents falling within the scope of your request;

- Final assessment of the documents in light of the comments received, including of the possibility of granting (partial) access;
- Redactions of the relevant parts falling under exceptions of Regulation EC (No) 1049/2001);
- Preparation of the draft reply for each of your requests by each of the services concerned;
- (possible) Consultation of the Legal Service ;
- Finalisation of the replies at administrative level and formal approvals of the draft decisions;
- Final check of the documents to be (partially) released (if applicable) (scanning of the redacted versions, administrative treatment) and dispatch of the replies.

The handling of the simultaneous requests cannot be expected to be completed within the normal time limits set out in Article 7 of Regulation 1049/2001 for all the documents you are looking for.

The Secretariat General of the Commission considering that your request had a wide scope has already proposed a fair solution according to Article 6(3) of Regulation (EC) No 1049/2001. In accordance with the case law of the EU Courts, a fair solution can only concern the content or the number of documents applied for, not the deadline for replying.¹ It proposed to narrow down the scope of your request, so as to reduce it to a more manageable number, i.e.:

- Restrict the temporary scope of your wide-scoped request to a period of your choice not exceeding six months and limit its scope only to the meetings published in the Transparency Register;
- Limit the number of your seemingly separate requests to 10 requests of your choice;
- Limit the scope of your requests to 20 meetings of your choice published in the Transparency Register for each one of the companies you are interested in (Google, and Microsoft).

You have rejected the options proposed by the Secretariat General.

After your reply, DG JUST has reassessed its capacity to handle the simultaneous requested in the time prescribed by the Regulation and determined that given the activities which must be carried out to satisfy the request it could only handle documents related to the meetings which took place between Commissioner Jourova and or members of her Cabinet with the four companies indicated in the simultaneous request, including yours, in the year preceding the request.

As for the list of these meetings, information on participants and topics discussed, I refer to the letter of the Secretariat General of 26 April 2019, which included a full list of meetings held by the Commissioner and its Cabinet members.

In this context, this is the list of documents processed by DG JUST in order to determine whether they could be disclosed or not. You can see from the list that a number of documents are partially released, for the reasons explained in the next sections of the letter.

¹ Judgment of the Court of Justice of 2 October 2014, *Guido Strack v Commission*, C-127/13 (hereafter '*Guido Strack v Commission*'), EU:C:2014:2250, paragraphs 26-28.

<i>Meeting</i>	<i>documents</i>	<i>reference</i>	<i>Disclosure</i>
<i>Meeting of the Commissioner of 4/3/2019 with Microsoft</i>	1. Briefing		<i>Article 4(1)(b), data protection</i>
	2. Report of the meeting		<i>Article 4(1)(b), data protection</i>
<i>Meeting of 21 January 2019</i>	3. Briefing		<i>Article 4(1)(b), data protection</i>
	4. Report of the meeting		<i>Article 4(1)(b), data protection Article 4(1)(a) international relations Article 4(2) commercial interests</i>
<i>Meeting of 26 October 2018 with Microsoft</i>	5. Meeting request		<i>Article 4(1)(b), data protection</i>
<i>Meeting of 17 September 2018 with Microsoft</i>	6. Briefing to MS Nikolay and Daniel Braun		<i>Article 4(1)(b), data protection</i>
	7. Report of the meeting	<i>Ares(2018)6548005</i>	<i>Article 4(1)(b), data protection</i>
<i>Meeting of 11 July 2018 with Amazon</i>	8. Briefing	<i>Ares(2018) 4985022</i>	<i>Article 4(1)(b), data protection Article 4(3) decision making process</i>
	9. Report of the meeting	<i>Ares(2018)3706633</i>	<i>Article 4(1)(b), data protection Article 4(3) decision making process</i>
<i>Meeting of 25 June 2018 with Amazon</i>	<i>Public event</i>	<i>No specific document prepared or received</i>	
<i>Meeting of 11 April 2018</i>	10. meeting request		<i>Article 4(1)(b), data protection</i>

Since some of the documents concerned originate from third parties, the originators of the documents have been consulted and the final assessment on the disclosure of the documents requested has to take into account their position.

All briefings have been prepared for internal use and aimed at providing a factual, political and legal picture of the files that the Commissioner and her Cabinet members had to discuss with stakeholders. Their content includes therefore staff opinions and assumptions on the position of those stakeholders and of the Member States or third countries on a given topic.

Having examined the document requested under the provisions of Regulation (EC) No 1049/2001 regarding public access to documents, I would like to inform you that your application can be partially granted for all documents.

1. REDACTION BASED ON ARTICLE 4(2) FIRST INDENT – COMMERCIAL INTERESTS

Following an examination of the documents requested under the provisions of Regulation (EC) No 1049/2001 regarding public access to documents and taking into account the opinion of the third parties, I regret to inform you that your application cannot be fully granted, as disclosure is prevented by exceptions to the right of access laid down in Article 4 of this Regulation.

Concerning document n. 4, disclosure of certain parts of the document contains commercially sensitive business information of the company. Access to those parts would therefore undermine interests protected under Article 4(2) first indent of Regulation (EC) 1049/2001.²

We have examined whether there could be an overriding public interest in disclosure, but we consider that you have not been able to identify such an interest.

2. INTERNATIONAL RELATIONS

Concerning document n. 4, a paragraph has been redacted on the basis of the exception to disclosure set in Article 4(1)(a) third indent of Regulation 1049/2001, as we consider that its disclosure undermines the international relations with a third country.

Making available the redacted parts to the public would seriously prejudice the relations between the European Commission and the United States government in their ongoing dialogue on the protection of privacy in the context of transatlantic data transfers, and the mutual confidence between them. Establishing and protecting an atmosphere of mutual trust with the United States is a very delicate exercise and any harm to that trust cannot easily be repaired and thus can have a serious adverse effect on any ongoing dialogue as well as future cooperation.

² Article 4(2), first indent of Regulation 1049/2001 stipulates that '[t]he 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.'

3. REDACTION BASED ON ARTICLE 4(3) – DECISION MAKING PROCESS

Finally, full disclosure of documents n. 8 and 9 would undermine the decision-making process of the Commission, as it would reveal the preparatory work for the negotiation strategy for the adoption of the "new deal for consumers" package, currently under discussion in European Parliament and Council.

Article (4)3 indicates that

" 3. 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."

Access to a document containing opinions for internal use as part of deliberations and preliminary consultations within the institution concerned shall be refused even after the decision has been taken if disclosure of the document would seriously undermine the institution's decision-making process, unless there is an overriding public interest in disclosure."

The Commission's services must be able to continue their intelligence and mediation work with stakeholders and national authorities, which is essential to gather information and feedback on a number of provisions which are debated, in order to facilitate the elaboration of a final text which would meet the objectives of the proposed legislation, as well as the formulation of the official position of the Commission in the context of the co-decision procedure.

Anticipating the options under consideration, would compromise solutions and the possible fallback position on key issues, as decided by the College of Commissioners. It would ultimately deprive the Commission of essential negotiating tools, which enable it to fulfil its institutional role at this stage of the legislative procedure.

Therefore, the exception laid down in Article 4(3) second subparagraph of Regulation (EC) No 1049/2001 applies to this document. We have examined whether there could be an overriding public interest in disclosure, but we consider that you have not been able to identify such an interest.

4. REDACTIONS BASED ON ARTICLE 4(1)(B), DATA PROTECTION

Pursuant to Article 4(1)(b) of Regulation (EU) 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 Union legislation regarding the protection of personal data.

The applicable legislation in this field is Regulation (EU) No 2018/1725 of the European Parliament and of the Council of 23 October 2018 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, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC³ ('Regulation 2018/1725').

³ Official Journal L 205 of 21.11.2018, p. 39.

The documents to which you request access contain personal data, in particular names, e-mails, telephone numbers, signatures.

Indeed, Article 3(1) of Regulation (EU) 2018/1725 provides that personal data ‘*means any information relating to an identified or identifiable natural person [...]*’. The Court of Justice has specified that any information, which by reason of its content, purpose or effect, is linked to a particular person is to be considered as personal data.⁴

Please note in this respect that the names, signatures, functions, telephone numbers and/or initials pertaining to staff members of an institution are to be considered personal data. In its judgment in Case C-28/08 P (Bavarian Lager)⁵, the Court of Justice ruled that when a request is made for access to documents containing personal data, the Data Protection Regulation becomes fully applicable⁶.

Pursuant to Article 9(1)(b) of Regulation (EU) 2018/1725, ‘*personal data shall only be transmitted to recipients established in the Union other than Union institutions and bodies if ‘[t]he 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’*’.

Only if these conditions are fulfilled and the processing constitutes lawful processing in accordance with the requirements of Article 5 of Regulation (EU) 2018/1725, can the transmission of personal data occur.

According to Article 9(1)(b) of Regulation (EU) 2018/1725, the European Commission has to examine the further conditions for a lawful processing of personal data only if the first condition is fulfilled, namely if the recipient has established that it is necessary to have the data transmitted for a specific purpose in the public interest. It is only in this case that the European Commission has to examine whether there is a reason to assume that the data subject’s legitimate interests might be prejudiced and, in the affirmative, establish the proportionality of the transmission of the personal data for that specific purpose after having demonstrably weighed the various competing interests.

In your request, you do not put forward any arguments to establish the necessity to have the data transmitted for a specific purpose in the public interest. Therefore, the European Commission does not have to examine whether there is a reason to assume that the data subject’s legitimate interests might be prejudiced.

⁴ Judgment of the Court of Justice of the European Union of 20 December 2017 in Case C-434/16, *Peter Nowak v Data Protection Commissioner*, request for a preliminary ruling, paragraphs 33-35, [ECLI:EU:C:2017:994](https://eur-lex.europa.eu/eli/jud_2017/994).

⁵ Judgment of 29 June 2010 in Case C-28/08 P, *European Commission v The Bavarian Lager Co. Ltd*, EU:C:2010:378, paragraph 59.

⁶ Whereas this judgment specifically related to 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, the principles set out therein are also applicable under the new data protection regime established by Regulation 2018/1725.

Notwithstanding the above, please note that there are reasons to assume that the legitimate interests of the data subjects concerned would be prejudiced by disclosure of the personal data reflected in the documents, as there is a real and non-hypothetical risk that such public disclosure would harm their privacy and subject them to unsolicited external contacts.

Consequently, I conclude that, pursuant to Article 4(1)(b) of Regulation (EC) 1049/2001, access cannot be granted to the personal data, as the need to obtain access thereto for a purpose in the public interest has not been substantiated and there is no reason to think that the legitimate interests of the individuals concerned would not be prejudiced by disclosure of the personal data concerned.

5. REVIEW OF THE DECISION

In accordance with Article 7(2) of Regulation (EC) 1049/2001, you are entitled to make a confirmatory application requesting the Commission to review the position granting partial access to the requested documents, including in case you would disagree with the assessment that the redacted data are personal data, which can only be disclosed if such disclosure is legitimate under the applicable rules on the protection of personal data.

Such a confirmatory application should be addressed within 15 working days upon receipt of this letter to the Secretariat-General of the Commission at the following address:

European Commission
Secretariat-General
Unit C.1. 'Transparency, Document Management and Access to Documents'
BERL 7/076
B-1049 Bruxelles, or by email to: sg-acc-doc@ec.europa.eu

Yours faithfully,

Tiina ASTOLA
Director-General