



EUROPEAN COMMISSION
DIRECTORATE-GENERAL FOR INTERNAL MARKET, INDUSTRY, ENTREPRENEURSHIP
AND SMES

The Director-General

Brussels, 03/09/2019
GROW.03/LB

Mr Alexander Fanta
Rue de la Loi, 155
Brussels

a.fanta.zvwuwdfcn@fragdenstaat.de

Subject: Your application for access to documents – Ref GestDem No 2019/4220

Dear Mr Fanta,

We refer to your e-mail dated 19/07/2019 in which you make a request for access to documents, registered on 19/07/2019 under the above-mentioned reference number.

You request access to all documents related to:

“- List of lobby meetings your Directorate-General held with Microsoft or its intermediaries from November 2014 up to the present. The list should include: date, individuals attending and 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 Microsoft or any intermediaries representing its interests in that time. - All documents prepared for the meetings and exchanged in the course of the meetings between both parties in the given time frame.”

Following your reply to our clarification request, you also informed us that:

“Microsoft had at least five meetings with members of Commissioner Bienkowska's cabinet since December 2014. The main focus of my request are all documents related to those meetings, including - but not limited to - the minutes of those meetings and preparatory emails.”

After examination of your request according to the Regulation 1049/2001 on public access to documents, we have listed 8 documents to be partially disclosed:

- Email of 11 December 2014 addressed to the Cabinet of Commissioner Bieńkowska, reference Ares(2014)4163702;
- Email of 30 January 2015 addressed to Commissioner Bieńkowska, together with an annex including a letter of invitation, both documents with reference Ares(2015)381316;
- Letter addressed to Commissioner Bieńkowska on 27 September 2016, reference Ares(2016) 5787790;
- Letter addressed to Commissioner Bieńkowska on 15 February 2018, reference Ares(2018)887505;
- Briefing for a meeting between Cabinet of Commissioner Bieńkowska and Microsoft, on 6 January 2015, reference Ares(2019)5447527;
- Briefing for a meeting between Cabinet of Commissioner Bieńkowska and Microsoft on 7 September 2015, reference Ares(2019)5447935;
- Briefing for a meeting with Microsoft during Commissioner Bieńkowska's mission to the US, 19-23 September 2016, reference Ares(2016)5732156 (page 62 to 65).

Having examined the documents requested under the provisions of Regulation (EC) No 1049/2001 regarding public access to documents, I have come to the conclusion that they may be partially disclosed. In the document with reference number Ares(2016)5732156, some paragraphs have been deleted as they are out of the scope of the request. Some parts of other documents have been blanked out as their disclosure is prevented by exception to the right of access laid down in Article 4 of this Regulation.

Protection of privacy and the integrity of the individual

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 Union legislation regarding the protection of personal data.

The applicable legislation in this field is Regulation (EU) 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/EC¹ ('Regulation 2018/1725').

The documents to which you request access contain personal data, in particular names, signatures, functions and contacts of internal and external individuals.

¹ Official Journal L 205 of 21.11.2018, p. 39.

Indeed, Article 3(1) of Regulation 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 data².

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 data³.

In its judgment in Case C-28/08 P (*Bavarian Lager*)⁴, the Court of Justice ruled that when a request is made for access to documents containing personal data, the Data Protection Regulation becomes fully applicable⁵.

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 ‘[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 2018/1725, can the transmission of personal data occur.

According to Article 9(1)(b) of Regulation 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.

² 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](#).

³ Judgment of the General Court of 19 September 2018 in case T-39/17, *Port de Brest v Commission*, paragraphs 43-44, [ECLI:EU:T:2018:560](#).

⁴ 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.

⁵ 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) No 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.

As to the handwritten signatures, which are biometric data, there is a risk that their disclosure would prejudice the legitimate interests of the persons concerned.

In accordance with Article 7(2) of Regulation (EC) No 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 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 sincerely,

e-signed
Timo PESONEN