



EUROPEAN COMMISSION
DIRECTORATE-GENERAL FOR RESEARCH & INNOVATION

Directorate B - Common Implementation Centre
B.1 - Common Legal support service
Head of Unit

Brussels,
RS/JCV

rtd.b.1.002(2019)6103342

***By registered letter with
acknowledgment of receipt***

Mr Alexander Fanta
netzpolitik.org
Rue de la Loi 155
1000 Brussels
Belgium

Advance copy by e-mail:

a.fanta.gyvbsxh9tk@fragdenstaat.de

Subject: Request for access to documents

Ref.: Your request of 18 July 2019 registered under reference GestDem 2019/4173

Dear Mr Fanta,

We refer to your e-mail dated 18 July 2019 in which you submitted an application for access to documents within the framework of Regulation (EC) No 1049/2001¹.

I. SCOPE OF THE REQUEST

Your request concerns the following:

“- List of lobby meetings your Directorate-General held with Apple 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 Apple 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”.

At the outset, we would like to clarify that we understand that the ‘lobby meetings’ in your request refer to meetings organised to discuss issues related to policy-making and implementation in the Union with organisations or self-employed individuals. Please note

¹ 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 (OJ L 145, 31.5.2001, p. 43) hereinafter referred to as “Regulation (EC) No 1049/2001”.

that those meetings are normally held by the Commissioner, Directors-General of the Commission or Members of the Cabinet. In view of that, we interpreted your request as concerning only those high level meetings. If you wish so, you may of course submit a new request for access to documents referring to meetings with Commission officials at lower levels of hierarchy within our Directorate-General. Based on the information provided by you, we have identified seven documents falling under the scope of your request (hereinafter the 'requested documents'), namely:

1. Chain of correspondence exchanged from 19/05/2016 until 23/06/2016 between the Cabinet of Commissioner Moedas and Apple, including an invitation to a presentation held by Apple.
2. Chain of correspondence exchanged from 27/09/2018 until 03/10/2018 between the Cabinet of Commissioner Moedas and the U.S. Mission to the European Union, inviting the Commissioner to a Dinner held by Apple on October 24th.
3. Email of 19/10/2018 from the U.S. Mission to the European Union to the Cabinet of Commissioner Moedas cancelling the Dinner of October 24th mentioned above.

II. EXAMINATION UNDER REGULATION (EC) No 1049/2001

We are pleased to inform you that partial access can be granted to the requested documents. We have expunged information whose disclosure is prevented by Article 4(1)(b) of Regulation (EC) No 1049/2001, namely the protection of privacy and the integrity of the individual, as explained below:

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 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 data².

The requested documents contain personal data such as names, surnames, functions, office numbers and e-mail addresses of Commission's officials not having the function of senior management staff and of the third parties identified in the documents. This information clearly constitutes personal data in the meaning of Article 3(1) of Regulation (EU) 2018/1725.

Pursuant to Article 9(1)(b) of Regulation (EU) 2018/1725³, 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'*.

² Judgment of 29 June 2010 in Case C-28/08 P, *European Commission v The Bavarian Lager Co. Ltd.*, ECLI:EU:C:2010:378, paragraphs 59 and 63. 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.

³ Regulation 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/EC, Official Journal L 205 of 21.11.2018, page 39.

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. 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.

Please note that the exception of Article 4(1)(b) has an absolute character and does not envisage the possibility of demonstrating the existence of an overriding public interest.

Therefore, personal data have been withheld from the requested documents except for the names of individuals forming part of senior management staff of the Commission.

III. DISCLAIMER AND REUSE OF THE DOCUMENTS

The requested documents were drawn up for internal use under the responsibility of the relevant service of the Commission or sent by third parties.

With regards to the disclosed documents originating from third parties, please note that these are disclosed for information only and cannot be re-used without the agreement of the originator.

The disclosed documents do not reflect the position of the Commission and cannot be quoted as such.

IV. MEANS OF REDRESS

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 Secretary-General of the Commission at the following address:

European Commission

Secretary-General

Unit C.1 – Transparency, document management & access to documents

BERL 7/076

B-1049 Brussels

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

Yours faithfully,

Reinhard Schulte

Enclosures: The requested documents expunged from personal data