



EUROPEAN COMMISSION
DIRECTORATE-GENERAL FOR MIGRATION AND HOME AFFAIRS

The Director-General

Brussels,
HOME/

**By registered letter with
acknowledgment of receipt**

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

Advance copy by email:
a.fanta.bvfyb34rua@fragdenstaat.de

Subject: Your application for access to documents – ref. GestDem n°2019/4206

Dear Mr Fanta,

We refer to your letter 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.

Your request reads as follows:

- *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 timeframe.*

We refer to the definition of a “lobby meeting” for defining the scope of your request, by reference to the definition given in Article 2 of the Commission decision on the publication of information on meetings held between Directors-General of the Commission and organisations or self-employed individuals (2014/838/EU, Euratom) and the Commission decision on the publication of information on meetings held between Members of the Commission and organisations or self-employed individuals (2014/839/EU, Euratom).

As a result, we have identified the following meetings:

- Meeting on 27 July 2017: Meeting with Microsoft representative and Commissioner King
- Meeting on 25 May 2016: Meeting with Microsoft representatives and Commissioner's Avramopoulos Cabinet
- Meeting on 27 May 2019, Meeting with Microsoft Corporation and Commissioner's King Cabinet

For the above-mentioned meetings, we have found the following documents:

- Summary of the meeting on 25 May 2016 between Cabinet Avramopoulos and Microsoft (Ares(2019)4087032)
- Briefing for the meeting on 25 May 2016 between Cabinet Avramopoulos and Microsoft, and cover message (Ares(2019)4109005)
- Report on meeting with Microsoft (27 May 2019) (Ares(2019)5349000)

In addition, we have identified the following documents as relevant to your request:

- Briefing of a meeting on e-evidence framework principles between CAB Avramopoulos and Microsoft on 30 June 2017, and cover message (Ares(2019)4087240)
- Microsoft - 10/04/2017 - Support for Institute for Strategic Dialogue (ISD) Microsoft partners with NGOs to discourage online radicalization to violence, and cover message (Ares(2017)1915147)
- Reply message to Microsoft - 10/04/2017 - Support for Institute for Strategic Dialogue (ISD) Microsoft partners with NGOs to discourage online radicalization to violence (Ares(2017)1966365)

Since some of the documents concerned originate from a third party, the originator of the documents has been consulted.

We enclose a copy of the documents requested. You may reuse the documents requested free of charge for non-commercial and commercial purposes provided that the source is acknowledged, that you do not distort the original meaning or message of the document/documents. Please note that the Commission does not assume liability stemming from the reuse.

Pursuant to Article 4(1)(b) of Regulation (EC) n°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) n°45/2001 and Decision n°1247/2002/EC¹ ('Regulation 2018/1725').

The documents to which you request access contain personal data, in particular names of Commission and Microsoft staff members who are not in a management position².

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

² 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](#).

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 data.³

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.

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) n°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.

³ 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](#).

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.

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, you are entitled, in accordance with Article 7(2) of Regulation (EC) n°1049/2001, to submit 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 Brussels or by email to: sg-acc-doc@ec.europa.eu.

Yours sincerely,

Paraskevi MICHOU

[e-signed]

Enclosures: 10