



EUROPEAN COMMISSION
DIRECTORATE-GENERAL FOR HEALTH AND FOOD SAFETY

Resource management and better regulation
Better regulation

Brussels,
SANTE.A.1/CG

*By registered mail with
acknowledgment of receipt*

Mr Alexander FANTA
Netzpolitik.org
Rue de la Loi 155
1000 Brussels
BELGIUM

*Advance copy by email:
a.fanta.utanwwkba5@fragdenstaat.de*

Dear Mr Fanta,

Subject: Your application for access to documents – Ref GestDem 2019/4212

We refer to your email dated 19 July 2019 in which you make a request for access to documents, registered on the same date under the above-mentioned reference number.

We also refer to our letter date 8 August 2019 extending the time limit for responding to your request pursuant to Article 7(3) of Regulation (EC) No 1049/2001.

1. Scope of your request

On the basis of Regulation (EC) No 1049/2001¹, you requested access to:

- list of lobby meetings our 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 our 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.

¹ Regulation (EC) No 1049/2001 regarding public access to European Parliament, Council and Commission documents (OJ L 145, 31.5.2001, p. 43).

2. Identification and assessment of the relevant documents

We have identified six documents falling under the scope of your request. You will find attached a table listing the identified documents and summarising the outcome of the assessment carried out on the basis of Regulation (EC) No 1049/2001.

Since document No 4 originates from a third party, in accordance with Art. 4(4) of Regulation (EC) 1049/2001, the originator of the document has been consulted in order to assess whether one of exceptions referred to in Article 4(1) or (2) applies to these documents.

Having examined all the documents in the light of the provisions of Regulation (EC) No 1049/2001 regarding public access to documents and considered the opinion of the third party, we have come to the conclusion that full access can be granted to document No 1 and partial access can be granted documents No 2 to No 6.

We enclose a copy of the documents redacted of the parts that cannot be disclosed because covered by one of the exceptions to the right of access laid down in Article 4 of Regulation (EC) No 1049/2001.

You may reuse the documents requested free of charge for non-commercial and commercial purposes, provided that the source is acknowledged and that you do not distort the original meaning or message of the documents. Please note that the Commission does not assume liability stemming from the reuse. Documents originating from third parties cannot be re-used without the agreement of the originators. They do not reflect the position of the Commission and cannot be quoted as such.

3. Reasons for partial refusal

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 EU legislation regarding the protection of personal data’.

The applicable legislation in this field is Regulation (EU) 2018/1725².

The documents to which you request access contain personal data, in particular names, surnames, emails addresses, office numbers and phone numbers.

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.³

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.⁴

² 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/EC

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, ECLI:EU:C:2017:994, paragraphs 33 to 35.

⁴ 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.

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.

We consider that, with the information available, the necessity of disclosing the aforementioned personal data to you has not been established and that it cannot be assumed that such disclosure would not prejudice the legitimate rights of the persons concerned.

Consequently, we 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.

In accordance with the above mentioned, partial access is granted to the requested documents, expunged of personal data.

4. Means of redress

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.

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) No 1049/2001, 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, Document Management & Access to Documents (SG.C.1)
BERL 7/076
B-1049 Brussels
or by email to: sg-acc-doc@ec.europa.eu

Yours sincerely,



Carmen GARAU
Head of Unit

Enclosures: List of documents; Documents as indicated under section number two.