



EUROPEAN COMMISSION
DIRECTORATE-GENERAL FOR HEALTH AND FOOD SAFETY

The Director-General

Brussels,
SANTE/AB

By registered letter with acknowledgment of receipt

Mr Alexander FANTA
Netzpolitik.org
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1000 Brussels
BELGIUM

Advance copy by email:
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Dear Mr Fanta,

Subject: Your application for access to documents – Ref GestDem No 2019/4213

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 dated 8 August 2019 extending the time limit for responding to your request pursuant to Article 7(3) of Regulation (EC) No 1049/2001 (or “the Regulation”).

1. Scope of your request

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

- list of lobby meetings this Directorate-General held with Amazon 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 this Directorate-General (including the Commissioner and the Cabinet) and Amazon 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 nine 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 documents No 1 to 5 originate from a third party or include correspondence originated with the third party, in accordance with Art. 4(4) of Regulation (EC) 1049/2001, the originators of the documents have been consulted in order to assess whether an exception established in Article 4 applies to these documents.

Having examined all the documents under the provisions of Regulation (EC) No 1049/2001 and considered the opinion of the third party, we have come to following conclusion:

- documents No 1 and documents No 3 to 9 may be partially disclosed (their full disclosure being prevented by an exception to the right of access laid down in Article 4 of the Regulation);
- document No 2 cannot be disclosed, its disclosure being prevented by an exception to the right of access laid down in Article 4 of the Regulation.

We enclose a copy of the documents 1 and 3 to 9 redacted of the parts which cannot be disclosed.

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, who hold a copyright on it. They do not reflect the position of the Commission and cannot be quoted as such.

3. Reasons for refusal (Document No 2)

Since document No 2 originates from a third party (Amazon), this party has been consulted, in accordance with Article 4(4) of Regulation (EC) No 1049/2001, in order to assess whether an exception under Article 4 of this Regulation is applicable.

Amazon has objected to the disclosure of this document invoking the fact that they consulted the Commission relying on the confidentiality of the consultation made. The subject of the consultation relates to business sensitive information about the company that, if made public, would likely affect its competitive position on the market.

Having considered the opinion of the third party, we came to the conclusion that the exception laid down in Article 4(2), first indent, of Regulation (EC) 1049/2001 applies to the concerned document. We have considered whether partial access could be granted, in accordance with Article 4(6) of the Regulation. However, it follows from the assessment made above, that this document is entirely covered by the exception laid down in Article 4(2), first indent.

4. Reasons for partial refusal (Documents 1 and 3 to 9)

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/EC².

Non-confidential parts of the documents 1 and 3 to 9 to which you have requested access contain personal data of the Commission staff and the company representatives, in particular names, functions, telephone and fax numbers, email addresses and signatures.

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 data³. Names, signatures, functions, telephone numbers and/or initials pertaining to staff members of an institution are to be considered personal data.⁴

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 the 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

² Official Journal L 205 of 21.11.2018, p. 39.

³ Judgment of the Court of Justice of the European Union of 20 December 2017 in Case C-434/16, *Peter Novak v Data Protection Commissioner*, request for a preliminary ruling, ECLI:EU:T:2018:560, paragraphs 33-35.

⁴ Judgment of the General Court of 19 September 2018 in case T-39/17, *Port de Brest v Commission*, ECLI:EU:T:2018:560, paragraphs 43 to 44.

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.

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 application, 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.

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

Therefore, we are disclosing the documents listed above expunged from these personal data.

5. Overriding public interest

The exceptions to the right of access provided for in Article 4(2) of Regulation (EC) No 1049/2001 must be waived if there is an overriding public interest in disclosing the requested document. In your application, you did not submit any grounds concerning a public interest on the basis of which the interests protected in Regulation (EC) No 1049/2001 would have to be overridden, and we could not identify any such ground either. In these circumstances, we have to conclude that there is no evidence of an overriding public interest in disclosure, in the sense of Regulation (EC) No 1049/2001.

6. 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 Secretariat-General of the Commission at the following address:

European Commission
Secretariat-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,



Anne BUCHER

Enclosure: List of documents; documents as specified under section two.