



Brussels

By registered letter with acknowledgment of receipt

Nina Holland
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Rue d'Edimbourg 26
1050 Brussels
BELGIUM

Advance copy by e-mail
nina.holland@corporateeurope.org

Dear Ms Holland,

Subject: Your application for access to documents – Ref GestDem No 2019/3765

We refer to your email dated 28/06/2019 in which you make a request for access to documents, registered on 01/07/2019 under the above-mentioned reference number.

1. Scope of your request

Your request concerns the following: *“I am requesting from the European Commission: DG GROW, DG Agriculture, DG Trade (Commissioners, cabinet and officials) as well as the Secretary General and Secretariat-General, all documents which contain the following information; Any documents since 01 February 2018, including briefings, reports, correspondence (email or other), as well as attachments, and a list of meetings (also since 01 February 2018) with detailed minutes and any other reports of such meetings, concerning new plant breeding methods (also called New GM techniques) or one specific such method (such as CRISPR). By new plant breeding methods, I mean all new techniques currently under debate, including those that were subject of the EC New Techniques Working Group report (2012) and the subject of various reports by the JRC, and including all genome editing techniques”.*

I consider your request to cover documents held up to the date of your application, i.e. 28 June 2019.

Please note that due to its wide scope, your request has been attributed to several Directorates-General of the Commission¹. This reply relates only to the documents held

¹ GestDem 2019/3758 to the Directorate-General for Internal Market, Industry, Entrepreneurship and SMEs (DG GROW); GestDem 2019/3761 to the Directorate-General for Agriculture and Rural Development (DG AGRI); GestDem 2019/3762 to the Directorate-General for Trade (DG TRADE) and GestDem 2019/3765 to the Secretariat-General.

by the Secretariat-General. You will receive the replies from the other respective Directorates-General in due course, or have already received them.

2. Identification and assessment of the concerned documents

Your application concerns the documents listed in the Annex.

With reference to the part of your request concerning "a *list of meetings*", please note that no such document exists. It is nevertheless noteworthy that in accordance with the Commission's transparency commitment², Members of the Commission, members of their cabinets and Directors-General publish on the Europa website the dates, locations, names of the organisations and self-employed individuals met and the topics of discussion, within two weeks of each meeting, since 1 December 2014. Therefore, I would refer you to the relevant transparency webpages of the European Commission³.

Having examined the documents requested under the provisions of Regulation 1049/2001, we have come to the conclusion that:

- Full access is granted to documents 2, 5b, 5c, 6c, 6d, 8b, 8d, 8e, 9b, 9d and 9e.
- Full access, with the exception of the redaction of personal data, in accordance with Article 4(1)(b) of Regulation 1049/2001 (protection of privacy and the integrity of the individual), is granted to documents 3a, 5a, 6a, 6b, 7, 8a, 8c, 9a, 9c and 9f.
- Full access, with the exception of the redaction of personal data, in accordance with Article 4(1)(b) of Regulation 1049/2001 (protection of privacy and the integrity of the individual), is granted to the parts of documents 1, 3b and 4 that relate to the scope of your request (i.e. so-called 'new breeding techniques').

We enclose a copy or a link to access the documents requested. Identical documents (more info in the Annex) are sent to you only once. You may reuse Commission documents 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.

Please also note that documents 1 and 4 are minutes of meetings that were drawn up for internal use under the responsibility of the relevant services of the Commission. They solely reflect the services' interpretation of the interventions made and do not set out any official position of the third parties to which the documents refer. They do not reflect the position of the Commission and cannot be quoted as such.

Finally, please note that document 2 was received by the Commission from the General Secretariat of the Council of the EU. It is disclosed for information only and cannot be re-used without the agreement of the General Secretariat of the Council. It does not reflect the position of the Commission and cannot be quoted as such.

The reasons for the redactions in the disclosed documents are set out below.

² Commission Decision 2014/839/EU, Euratom of 25 November 2014 on the publication of information on meetings held between Members of the Commission and organisations or self-employed individuals, OJ L 343, 28.11.2014, p. 22–24.

³ For example, for the Commission's Secretary-General, see: <http://ec.europa.eu/transparencyinitiative/meetings/meeting.do?host=394df231-6f63-43a1-ac2f-a5c6c2aea0b7>

3. Out of scope

Document 1 contains a Note to the Members of the Commission reporting on the meeting of the European Parliament's Committee on the Environment, Public Health and Food Safety of 16-17 May 2018 that covered a series of issues.

Document 3b contains a Steering Note in preparation of the meeting of the "agriculture and fisheries" Council of 14 May 2019 that covered a series of issues. Document 4 contains a Note to the Members of the Commission reporting on all the issues covered in the above-mentioned meeting of the "agriculture and fisheries" Council of 14 May 2019.

The parts of these documents not related to new breeding techniques are considered not to fall within the scope of your request and are therefore not disclosed to you.

4. Protection of personal data

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 (EC) No 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/EC⁴ ('Regulation 2018/1725').

Documents 1, 3a, 3b, 4, 5a, 6a, 6b, 7, 8a, 8c, 9a, 9c and 9f to which you request access contain personal data, in particular the names, date of birth, initials, positions, phone numbers, address (physical and email), and signature of Commission staff or third parties.

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 data⁵. 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 data⁶.

In its judgment in Case C-28/08 P (*Bavarian Lager*)⁷, the Court of Justice ruled that when a request is made for access to documents containing personal data, the Data Protection Regulation becomes fully applicable⁸.

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

⁴ OJ L 205 of 21.11.2018, p. 39.

⁵ 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.

⁶ 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.

⁷ 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.

⁸ 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.

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, for example, subject them to unsolicited external contacts.

Consequently, I conclude that, pursuant to Article 4(1)(b) of Regulation 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.

5. Means of redress

In accordance with Article 7(2) of Regulation 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 Bruxelles

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

Yours sincerely,



John WATSON