

EUROPEAN COMMISSION  
DIRECTORATE-GENERAL MIGRATION and HOME AFFAIRS

The Director General

Brussels, 19 February 2016  
HOME/D1 (2016) 937203

*By registered letter with acknowledgment of receipt*

Ms Kirsten Fiedler  
Managing Director  
European Digital Rights  
Rue Belliard 20  
B - 1040 Brussels

*Advance copy by email:*

ask+request-1929-21e813ab@asktheeu.org  
kirsten.fiedler@edri.org

**Subject: Your applications for access to documents – Ref Gestdem No 2015/6363 and 2016/0095**

Dear Mrs Fiedler,

1. We refer to your applications for access to documents, Gestdem No 2015/6363, dated 07/12/2015, and 2016/0095, dated 08/01/2016, both referring to the same subject: EU Internet Forum.
2. We informed you in our mail dated 21/12/2015 that we were not in a position to complete within the time limit of 15 working days the handling of your request for access to documents Gestdem 2015/6363 and by mail dated 27/01/2016 for your request for access to documents Gestdem 2016/0095. We also informed you in our mail dated 27/01/2016 that both requests Gestdem 2015/6363 and Gestdem 2016/0095 were jointly being handled with a view to sending you one reply to both. This letter provides you our answer to both your requests.
3. In your applications, you requested the following documents:

→ **Gestdem 2015/6363**

- 1) *All relevant documents in relation to the launch of the EU Internet Forum*
- 2) *The list of participants*
- 3) *The minutes of the meeting*
- 4) *Documents relating to the costs involved*
- 5) *The dates of upcoming meetings*

→ Gestdem 2015/0095

- 6) *Documents (such as goals, guidelines or codes of conduct etc.) that have been proposed, discussed or agreed by the participants during, or on in the preparation of, the meeting of the EU Internet Forum on 3 December.*
4. We understand that to be the same documents as already forming part of your request under point 1.
  5. With regards to your request for access to '*All relevant documents in relation to the launch of the EU Internet Forum*' (points 1 and 6), we have identified a number of documents which are listed below:
    - Agenda (document 1a);
    - Annotated agenda (document 1b);
    - Set of objectives and actions to steer discussions based on comments from the different stakeholders (document 1c);
    - Explanation of the proposed position on the proposed objectives and actions (document 1d);
    - Opening speech for Commissioner Avramopoulos (document 1e)
    - Closing speech for Commissioner Avramopoulos (document 1f)
    - Paper entitled 'Implementing the European Agenda on Security: The EU Internet Forum, a background paper issued at the meeting (document 1g).
  6. Under point 2 of your request, we have identified a "list of participants".
  7. Under point 3 of your request, we have identified the minutes of the meeting.
  8. As regards the request for documents relating to the costs involved (point 4), we inform you that we do not yet have this information (see below).
  9. As regards your request for dates of upcoming meetings (point 5) we would like to clarify that there is no document which would contain such information (for further information please see below).
  10. Having examined the documents requested under the provisions of Regulation (EC) No 1049/2001 regarding public access to documents ("Regulation 1049/2001"), I am happy to inform you that I can give you full access to documents 1a, 1e, 1f and 1g.
  11. Having examined the documents 1b, 1c, and 1d requested under the provisions of Regulation (EC) No 1049/2001 regarding public access to documents, I regret to inform you that your application cannot be granted, as disclosure is prevented by exceptions to the right of access laid down in Article 4 of this Regulation.
  12. The documents which you seek to obtain reveal preliminary positions, informs about challenges and possible future action, provides appraisal on the scope and necessity of possible follow up actions under the EU Internet Forum and how to overcome obstacles in achieving policy objectives. Such information cannot be revealed at the risk of undermining the possibility of Commission officials to inform senior officials in an open and transparent manner. Disclosing these documents would therefore seriously undermine the institution's

decision-making process and falls under the exception meaning of Article 4 (3) of Regulation 1049/2001.

13. For these documents, I am also of the opinion that external stakeholders of the EU Internet Forum (whose views are reflected in some of these documents) have legitimate expectations that their views are treated in confidence and not disclosed. References to potential shortcomings or individual stakeholders' positions and views would undermine the relationship of mutual trust which is essential for the further work in this sensitive area closely linked to matters of public security, protected under Article 4 (1) a) first indent of Regulation 1049/2001.
14. Furthermore, some of the information revealed by the companies in the course of the discussion could affect their commercial interests within the meaning of Article 4(2) first bullet point of Regulation 1049/2001.
15. I have considered whether partial access could be granted to the documents requested. For the same reasons explained above, I am of the opinion that the public interest is best served by refusing access.
16. The exceptions laid down in Article 4(2) and 4(3) of Regulation 1049/2001 apply unless there is an overriding public interest in disclosure of the documents. In view of the sensitivity of the matters dealt with during the meetings and the urgent need for getting results with stakeholders involved in view of tackling security threats, I am of the opinion that no such overriding public interest exists in this case.
17. With regards to the list of attendees for the meeting on the 3rd December (point 2), I am of the opinion that I can give you partial access. This list refers to ministers, senior officials and industry representatives. Representatives from the internet industry included those from Twitter, Ask.fm, Facebook, Google and Microsoft. In addition to Commission attendees, representatives from the Counter Terrorism Co-ordinator's Office and Europol were also represented.
18. We have released the names of ministers and ambassadors; however, 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 legislation regarding the protection of personal data. The applicable legislation in this field is 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<sup>1</sup>. When access is requested to documents containing personal data, Regulation (EC) No 45/2001 becomes fully applicable<sup>2</sup>.
19. According to Article 8(b) of this Regulation, personal data shall only be transferred to recipients if they establish the necessity of having the data transferred to them and if there is no reason to assume that the legitimate rights of the persons concerned might be prejudiced.
20. We consider that, with the information available, the necessity of disclosing the aforementioned personal data to you has not been established and/or that it cannot be assumed that such disclosure would not prejudice the legitimate rights of the persons

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<sup>1</sup> OJ L 8 of 12.1.2001, p. 1

<sup>2</sup> Judgment of the Court of Justice of the EU of 29 June 2010 in case 28/08 P, Commission/The Bavarian Lager Co. Ltd, ECR 2010 I-06055.

concerned. Therefore, we are disclosing the documents requested expunged from this personal data. The names of ministers and ambassadors have not been redacted as these names are publicly known.

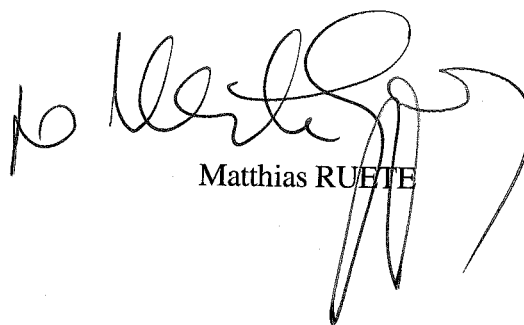
21. As regards the document under point 3 (minutes of the meeting of 3rd December 2015) only partial access can be granted. A redacted summary of the meeting is attached. I am of the opinion that the redacted parts of this document fall under the exceptions of Article 4(1)(a) and Article 4 (3), first subparagraph of Regulation 1049/2001. The limited redactions reflect certain positions or reflections expressed during an on-going consultation process by the representatives of the Member States, Europol and the internet companies on the sensitive issue of how to respond to terrorists' use of the internet and the possible ways of addressing terrorist material online. There is a real and non-hypothetical risk that counter-measures could be undertaken by the terrorist organisations in order to by-pass the (planned) response of the law enforcement authorities and the major internet companies in this regard.
22. Moreover, in order to identify, support and finance the most adequate response to this challenge, the Commission is relying heavily on the co-operation of law enforcement authorities of the EU Member States and the private sector (ie the internet companies). Building co-operation with these stakeholders is only possible if the Commission is able to base it on mutual trust and dialogue. Therefore, the references to the organisations or companies they represented have been redacted.
23. Full disclosure would result in the public release of the position expressed by attendees who have shared important information with the Commission and with the EU Ministers in confidence and on a sensitive subject. Such public disclosure would clearly undermine the climate of mutual trust with the stakeholders concerned. There is thus a real and non-hypothetical risk that industry representatives will no longer be willing to co-operate with the Commission and EU Member States in this field, which would in turn greatly jeopardise the success of the Commission's response to this challenge.
24. Against this background, and in light of recent terrorist attacks and attempted attacks, I take the view that keeping such sensitive and limited data confidential is essential for the safety and security of EU citizens and for ensuring the viability and integrity of co-operation with the relevant stakeholders. Consequently, it was concluded that the redactions maintained in document 4 are justified on the basis of Article 4(1)(a) of Regulation.
25. I have considered whether partial access could be granted to this document under point 3. For the same reasons explained above, I am however of the opinion that the public interest is best served by refusing access.
26. The exceptions laid down in Article 4(3) of Regulation 1049/2001 apply unless there is an overriding public interest in disclosure of the documents. In view of the sensitivity of the matters dealt with during the meetings and the urgent need for getting results with stakeholders involved in view of tackling security threats, I am of the opinion that no such overriding public interest exists in this case for the document under point 3.
27. With regards to the costs of the meeting referred to under point 4, I hereby inform you that the Commission signed the specific contract HOME-2015-ISFP-FW-RADX-0024 under the Framework contract HOME-2014-D1-02 with Propager to provide logistical support for the High Level Launch event, for a maximum amount of 28.060 €.
28. With regards to your request under point 5 for a list of upcoming meetings please be informed that no such document exists. We are however able to inform you that a first

follow up meeting took place on 22 January 2016 in Brussels. Dates of further meetings have not yet been agreed.

29. 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.
30. 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 unit SG-B-4  
BERL 5/327  
B-1049 Bruxelles  
or by email to: [sg-acc-doc@ec.europa.eu](mailto:sg-acc-doc@ec.europa.eu)

Yours sincerely,



Matthias RÜETE

**Annexes:**

- 1) Agenda (document 1a)
- 2) Opening speech for Commissioner Avramopoulos (document 1e)
- 3) Closing speech for Commissioner Avramopoulos (document 1f)
- 4) Paper entitled 'Implementing the European Agenda on Security: The EU Internet Forum, a background paper issued at the meeting (document 1g).
- 5) Redacted list of participants (document requested under point 2)
- 6) Redacted minutes of the meeting of 3<sup>rd</sup> December 2015 (document requested under point 3)

