



EUROPEAN COMMISSION

Brussels, 23.9.2019
C(2019) 6957 final

Ms Helen Darbshire
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**DECISION OF THE EUROPEAN COMMISSION PURSUANT TO ARTICLE 4 OF THE
IMPLEMENTING RULES TO REGULATION (EC) No 1049/2001¹**

**Subject: Your confirmatory application for access to documents under
Regulation (EC) No 1049/2001 - GESTDEM 2019/2752 and
2019/2780**

Dear Ms Darbshire,

I refer to your letter of 16 July 2019, registered on the next day, in which you submit a confirmatory application concerning the two initial applications mentioned above in accordance with Article 7(2) of Regulation (EC) No 1049/2001 regarding public access to European Parliament, Council and Commission documents² (hereafter 'Regulation (EC) No 1049/2001').

1. SCOPE OF YOUR REQUEST

In the initial application of 11 of May 2019 you made on behalf on Access Info Europe, addressed to the Secretariat-General, you requested, I quote, 'access to documents that provide details on expenditure listed as "miscellaneous costs" of Euros 8320 for the mission by Commission President Jean Claude Juncker to Buenos Aires between 28 November and 2 December 2018 as published here http://ec.europa.eu/transparencyinitiative/meetings/mission.do?host=829436d0-1850-424f-aebe-6dd76c793be2&missionsperiod=2018_5'.

¹ Official Journal L 345 of 29.12.2001, p. 94.

² Official Journal L 145 of 31.5.2001, p. 43.

You requested further ‘that the documents provided contain sufficient details to be able to identify for each type of miscellaneous cost (what the money was spent on) and the total amount (in local currency and/or in Euros) for each item.’ This request has been registered under reference number GESTDEM 2019/2780.

On 10 May 2019, another member of the Access Info Europe team requested ‘access to documents further detailing the items listed as “miscellaneous costs” for the mission by Commission President Jean Claude Juncker to Buenos Aires between the 28 November and 2 December 2018.’ He requested further that, I quote, ‘the information provided [should] : [a] Be in the form of the documents released in response to request GestDem 2016/6050 [b] Include information in the level of detail made available to commissioners when submitting mission orders, presented in pages 12-18 of first document released in response to request GestDem 2015/6011 [...] For example, the information presented in the table contained in the screenshot at the bottom of page 15 of this document, namely information in the fields of the: Type of Miscellaneous cost, Amount in Euros, and Comments by the officer introducing the order.’

In its initial reply of 25 June 2019, the Directorate C ‘Transparency, Efficiency & Resources’ of the Secretariat-General refused access to the documents falling within the scope of your requests based on the exception of Article 4(1)(b) (protection of privacy and the integrity of the individual) of Regulation (EC) No 1049/2001.

In your confirmatory application, you request a review of this position. You underpin your request with detailed arguments, which I will address in the corresponding sections below.

2. ASSESSMENT AND CONCLUSIONS UNDER REGULATION (EC) No 1049/2001

When assessing a confirmatory application for access to documents submitted pursuant to Regulation (EC) No 1049/2001, the Secretariat-General conducts a fresh review of the reply given by the Directorate-General concerned at the initial stage.

In your confirmatory application, you indicate that ‘the two requests [seek] access to documents that contain a breakdown of the type or types of miscellaneous costs for which the spending of € 8320 was incurred’.

Following this review, I can inform you that the European Commission has identified the following documents as falling under the scope of your request:

- Invoice of 3 December 2018 addressed to the Office of the President of the European Commission, reference Ares(2018)6480913, (hereafter ‘document 1’);
- Invoice of 6 December 2018 addressed to the Office of the President of the European Commission, reference Ares(2018)6563895, (hereafter ‘document 2’).

I would like to clarify that there are no documents falling under your request ‘further detailing the items listed as “miscellaneous costs” [...] ‘in the form of the documents released in response to request GestDem 2016/6050’, as these documents do not contain any further details of the item ‘miscellaneous costs’ additional to the information which has been made proactively public³. At the time you received the reply to the request you refer to, the European Commission did not yet proactively publish the Commissioners’ mission expenses in the ATMOS⁴ application. The information you request is now publicly available in the ATMOS application.⁵ As to the information available in the MiPS system,⁶ I confirm that it does not contain details allowing to identify further subcategories of miscellaneous costs.

I regret to inform you that I have to confirm the initial decision of Directorate C ‘Transparency, Efficiency & Resources’ of the Secretariat-General to refuse access to documents 1 and 2 based on the exception of Article 4(1)(b) (protection of privacy and the integrity of the individual) of Regulation (EC) No 1049/2001, for the reasons set out below.

2.1. Protection of privacy and the integrity of the individual

Article 4(1)(b) of Regulation (EC) No 1049/2001 provides that ‘[t]he institutions shall refuse access to a document where disclosure would undermine the protection of [...] privacy and the integrity of the individual, in particular in accordance with Community legislation regarding the protection of personal data’.

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, 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 data⁸ (hereafter ‘Regulation (EC) No 45/2001’) becomes fully applicable.

³ http://ec.europa.eu/transparencyinitiative/meetings/mission.do?host=829436d0-1850-424f-aebe-6dd76c793be2&missionsperiod=2018_5.

⁴ Application for Transparent Meetings with Organisations and Self-employed individuals (hereafter referred to as ‘ATMOS’).

⁵ http://ec.europa.eu/transparencyinitiative/meetings/mission.do?host=829436d0-1850-424f-aebe-6dd76c793be2&missionsperiod=2018_5.

⁶ Mission Processing System (hereafter referred to as ‘MiPS’).

⁷ Judgment of the Court of Justice of 29 June 2010, *European Commission v The Bavarian Lager Co. Ltd* (hereafter referred to as ‘*European Commission v The Bavarian Lager* judgment’), C-28/08 P, EU:C:2010:378, paragraph 59.

⁸ Official Journal L 8 of 12.1.2001, page 1.

Please note that, as from 11 December 2018, Regulation (EC) No 45/2001 has been repealed by 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/EC⁹ (hereafter ‘Regulation (EU) 2018/1725’).

However, the case law issued with regard to Regulation (EC) No 45/2001 remains relevant for the interpretation of Regulation (EU) 2018/1725.

In the above-mentioned judgment, the Court stated that Article 4(1)(b) of Regulation (EC) No 1049/2001 ‘requires that any undermining of privacy and the integrity of the individual must always be examined and assessed in conformity with the legislation of the Union concerning the protection of personal data, and in particular with [...] [the Data Protection] Regulation’.¹⁰

Article 3(1) of Regulation (EU) 2018/1725 provides that personal data ‘means any information relating to an identified or identifiable natural person [...]’.

As the Court of Justice confirmed in Case C-465/00 (*Rechnungshof*), ‘there is no reason of principle to justify excluding activities of a professional [...] nature from the notion of private life’.¹¹

In a recent judgment, the General Court confirmed that, in addition to names, information concerning the professional or occupational activities of a person can also be regarded as personal data where, first, the information relates to the working conditions of the said person and, second, the information is capable of indirectly identifying, where it can be related to a date or a precise calendar period, a physical person within the meaning of the Data Protection Regulation.¹²

Documents 1 and 2 contain personal data, namely information relating to the person of the President Juncker in relation to the type of miscellaneous costs¹³ incurred during his mission to Buenos Aires. It is clear that this information is indeed personal data. In addition, the requested documents contain handwritten annotations as well the signature of a Commission staff member.

In your confirmatory application, you do not contest that the requested documents contain personal data. You contest, however, that the ‘requested document(s) contain personal data to the extent that they are protected in their entirety’.

⁹ Official Journal L 205 of 21.11.2018, p. 39.

¹⁰ *European Commission v The Bavarian Lager* judgment, cited above, paragraph 59.

¹¹ Judgment of the Court of Justice of 20 May 2003, *Rechnungshof and Others v Österreichischer Rundfunk*, Joined Cases C-465/00, C-138/01 and C-139/01, EU:C:2003:294, paragraph 73.

¹² Judgment of the General Court of 27 November 2018, *VG v Commission*, Joined Cases T-314/16 and T-435/16, EU:T:2018:841, paragraph 64 (hereafter referred to as ‘*VG v Commission*’ judgment).

¹³ Miscellaneous costs are expenses incurred for the purpose of the mission, other than travel costs, accommodation costs and daily allowances.

You explain that ‘this is because the request only seeks a document that contains data on the type of miscellaneous expenditure incurred. It should be possible to provide that document-extracted from the MiPS system in an excel sheet or in another format-either with no personal data included and/or with the personal data (the name and surname of any persons redacted)’. You note that you ‘have received excel sheets from other Commission agencies that appear to be extracted from a computer system and that do indeed itemise miscellaneous costs by type’. You further state that Access Info does ‘not seek information relating to an individual, but to an institution, in this instance, the institution of the President of the European Commission. The mere fact that the current holder of that office is Mr Jean-Claude Juncker is neither here nor there; what matters is that this is about the transparency and accountability of the institution.’ In your view, ‘in this sense Access Info’s request for the Commission President’s travel expenses is materially different from the matters at issue in the *Rechnungshof* and *Psara* cases’. You refer further to the Guidance Note concerning access to names and functions of Commission Staff, reference Ares(2019)4352523, and conclude that ‘the names of Commissioners, their Cabinet Members, and staff in senior positions, namely Secretary-General, Directors-General, Directors, can be provided to the public unless very specific circumstances apply’. Finally, you refer to the Code of Conduct for the Members of the European Commission and conclude that the ‘Code of Conduct establishes the principle of transparency, and requires proactive publication, but does not limit further disclosure pursuant to requests’.

I would like to clarify that the type or types of miscellaneous costs incurred by President Juncker are indeed personal data, as this information cannot be disassociated from the natural person it concerns. In the *Nowak* judgment,¹⁴ the Court of Justice has acknowledged that ‘[t]he use of the expression “any information” in the definition of the concept of “personal data”, within Article 2(a) of Directive 95/46, reflects the aim of the EU legislature to assign a wide scope to that concept, which is not restricted to information that is sensitive or private, but potentially encompasses all kinds of information, not only objective but also subjective, in the form of opinions and assessments, provided that it “relates” to the data subject.’ As regards the latter condition, it is satisfied where the information, by reason of its content, purpose or effect, is linked to a particular person.’ It is obvious that information about costs, including the miscellaneous costs, incurred by President Juncker during his mission to Buenos Aires is information which by reason of its content is linked to a particular natural person. In the *VG v Commission* judgment, the General Court ruled that even anonymised data should be considered as personal data, if it would be possible to link them to an identifiable natural person through additional information.¹⁵ It is clear that the information contained in the requested documents clearly constitutes personal data.

¹⁴ Judgment of the Court of Justice of 20 December 2017, *Peter Nowak v Data Protection Commissioner* (Request for a preliminary ruling from the Supreme Court), C-434/16, EU:C:2017:994, paragraphs 34-35.

¹⁵ *VG v Commission* judgment, cited above, paragraph 74.

Consequently, it is not possible to redact the name or surname of the natural person it concerns, as you suggest, and only leave the breakdown of the costs, as the whole information continues to relate to the natural person you indicated in your request, namely President Juncker.

The fact that the information you request is indeed personal data is not altered by your argument that you do ‘not seek information relating to an individual, but to an institution, in this instance, the institution of the President of the European Commission’, because the President of the European Commission is a natural person. In other words, the information contained in the documents you seek to obtain, does not cease to be personal data because it relates to the person who holds the office of the President of the European Commission. Nor does the Guidance Note concerning access to names and functions of Commission Staff stipulate that the names of Members of the Commission should be disclosed in all cases. Your request does not concern a document where the name of President Juncker is merely mentioned, but documents containing personal data which are intrinsically connected with his person. In full compliance with Regulation (EC) No 1049/2001, an individual assessment of the requested documents has to be performed taking into account the data protection parameters stipulated in Regulation (EU) 2018/1725.

You indicate that ‘what matters is that this is about the transparency and accountability of the institution’. In this context, I would like to underline that the European Commission proactively publishes information about the mission expenses of its members. The Code of Conduct for the Members of the European Commission provides that ‘[f]or reasons of transparency, the [European] Commission will publish an overview of mission expenses per Member every two months covering all missions undertaken unless publication of this information would undermine the protection of the public interest as regards public security, defence and military matters, international relations or the financial, monetary or economic policy of the Union or a Member State.’¹⁶

The Code of Conduct for the Members of the European Commission entered into force on 1 February 2018. Accordingly, since 28 February 2018, information pertaining to the mission costs of the Members of the Commission, including the President, has been proactively published every two months.

You state that ‘Access Info’s request for the Commission President’s travel expenses is materially different from the matters at issue in the *Rechnungshof* and *Psara* cases’. I do not share your views. In the first case, which concerned the disclosure of data on the income of employees of bodies subject to control by the Rechnungshof, the Court of Justice stated that ‘the data [...], which relate both to the monies paid by certain bodies and the recipients, constitute personal data within the meaning of Article 2(a) of Directive 95/46, being information relating to an identified or identifiable natural person.’¹⁷

¹⁶ Commission Decision of 31.1.2018, C(2018)700 final, Article 6(2).

¹⁷ Judgment of the Court of Justice of 20 May 2003, *Rechnungshof (C-465/00) v Österreichischer Rundfunk and Others and Christa Neukomm (C-138/01) and Joseph Lauermann (C-139/01) v*

This finding is applicable also in the present case; thus the requested information on the miscellaneous expenses of President Juncker during his mission to Buenos Aires being information relating to an identified natural person constitutes indeed personal data. As to the second case, which concerned the expenditure incurred by Members of the European Parliament, in particular disclosure of documents showing details regarding how and when [...] MEPs' from each Member State 'spent', during various periods, the General Court concluded that 'it is apparent [...] [that] all the requested documents contain personal data, so that the provisions of Regulation No 45/2001 are applicable in their entirety to the present case.'¹⁸ This case, as the case at hand, concerned members of a European institution and details on the expenditure they incurred. I, therefore, consider the findings of the General Court as directly relevant to the present case. The General Court did not only conclude that the requested documents obviously contained personal data, but also confirmed the decision of the European Parliament to refuse access to these documents. In this same judgment, the General Court stated that 'the fact that data concerning the [MEPs] in question are closely linked to public data on those persons, inter alia as they are listed on the Parliament's internet site, and are, in particular, MEPs' names does not mean at all that those data can no longer be characterised as personal data, within the meaning of Article 2(a) of Regulation No 45/2001.'¹⁹ This is exactly the case for the breakdown of the mission expenses you request.

The names²⁰ of the persons contained in the requested documents, their handwritten comments and signatures, as well as the information regarding the break-down of the miscellaneous expenses of President Juncker are indeed data from which their identity can be deduced, consequently they undoubtedly constitute personal data in the meaning of Article 3(1) of Regulation (EU) 2018/1725.

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.

Österreichischer Rundfunk, (References for a preliminary ruling: Verfassungsgerichtshof (C-465/00) and Oberster Gerichtshof (C-138/01 and C-139/01) – Austria), Joined Cases C-465/00, C-138/01 and C-139/01, EU:C:2003:294, paragraph 64.

¹⁸ Judgment of the General Court of 25 September 2018, *Maria Psara and Others v European Parliament* (hereafter referred to as '*Psara v European Parliament* judgment'), Joined Cases T-639/15 to T-666/15 and T-94/16, EU:T:2018:602, paragraph 52.

¹⁹ *Ibid*, paragraph 52.

²⁰ *European Commission v The Bavarian Lager* judgment, cited above, paragraph 68.

In Case C-615/13 P (*ClientEarth*), the Court of Justice ruled that the institution does not have to examine by itself the existence of a need for transferring personal data.²¹ This is also clear from Article 9(1)(b) of Regulation (EU) 2018/1725, which requires that the necessity to have the personal data transmitted must be established by the recipient.

According to Article 9(1)(b) of Regulation (EU) 2018/1725, the European Commission has to examine the further conditions for the lawful processing of personal data only if the first condition is fulfilled, namely if the recipient establishes 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 confirmatory application, you put forward several arguments to justify why a transmission of the personal data should take place. Firstly, you refer to Article 5 of Regulation (EU) 2018/1725 and argue that the requested processing is lawful. In your view, it 'could well be determined to constitute either (a) performance of a task carried out in the public interest or in the exercise of official authority vested in the Union institution or body, or (b) processing is necessary for compliance with a legal obligation to which the controller is subject.' Although I agree that the processing of the data relating to mission expenses by the European Commission is a lawful activity, this does not prove that the transmission of the collected personal data to you fulfils the requirements of Article 9 of Regulation (EU) 2018/1725. Moreover, as you acknowledge yourself, the Code of Conduct for the Members of the European Commission only refers to the publication of an 'overview' of the mission expenses and does not contain any legal obligation to publish the 'break-down' of the miscellaneous costs you request. Therefore, your arguments, including the reference to the Code of Conduct for the Members of the European Commission, are not sufficient to establish that the conditions of Article 9 and Article 5 of Regulation (EU) 2018/1725 are fulfilled.

Secondly, you argue that '[a]nother lawful basis for processing established in Article 5(1)(d) is that 'the data subject has given consent to the processing of his or her personal data for one or more specific purposes'. You add that 'it seems correct to sustain that the Commissioners are not only aware of the processing expenses data, given that they are surely aware of the Code of Conduct and the proactive publication of the travel expenses, – but that they have given their consent in writing.' You do not substantiate your argument in relation to the breakdown of the miscellaneous expenses. Even if the Commissioners are aware of the proactive publication of an 'overview' of their mission expenses, this does not establish in any way that they have given their consent for the public disclosure of their detailed breakdown.

²¹ Judgment of the Court of Justice of 16 July 2015, *ClientEarth v European Food Safety Agency*, C-615/13 P, EU:C:2015:489, paragraph 47.

Thirdly, you refer to the recital 28 of Regulation (EU) 2018/1725 and underline that '[t]he specific purpose in the public interest could relate to the transparency of Union institutions and bodies'. The recital 28 of Regulation (EU) 2018/1725²² refers to the elements that the recipients established in the Union other than Union institutions and bodies would have to demonstrate when requesting to have personal data transmitted to them. This recital has to be read in conjunction with Article 9 of Regulation (EU) 2018/1725. According to this article, the recipient has to establish first 'that it is necessary to have the data transmitted for a specific purpose in the public interest'. You argue, that 'the new legal framework established by Regulation 2018/1725 means that the Commission should no longer rely heavily on previous case law, such as *Volker und Markus Schecke and Eifert*, *ClientEarth v EFSA* and *Psara*, which established that mere invocation of the principle of transparency is not sufficient in and of itself to justify the disclosure of a document'. I do not share your view. The wording of the recital 28 referring to '[t]he specific purpose in the public interest could relate to the transparency of Union institutions and bodies' cannot be interpreted as meaning that any general invocation of transparency is sufficient to substantiate it. A 'specific purpose in the public interest' is not any general purpose. Contrary to your allegations, as it is clear from the wording of both recital 28 and Article 9 of Regulation (EU) 2018/1725, the need to demonstrate a 'specific purpose in the public interest' exists also 'with respect to requests relating to the spending of public funds'. In this context, I would like to underline that the European Commission does indeed publish overviews of the mission expenses of all its members. You have to take into account this publication and substantiate in detail the specific purpose in the public interest which justifies the transmission of any information which goes beyond what is already proactively published.

Fourthly, you refer to the European Ombudsman's finding on cases 562/2017/THH and 1069/2017/THH stating that 'the Ombudsman considers that there is a public interest in public access to information on Commissioners' travel expenses.' In this particular case, the European Ombudsman concluded that '[i]n light of the positive commitment of the Commission to publish regularly and routinely information about each Commissioner's travel expenses every two months, the Ombudsman finds that there are no grounds for further inquiry into the issue.'

²² The recital 28 of Regulation 2018/1725 states: 'When recipients established in the Union other than Union institutions and bodies would like to have personal data transmitted to them by Union institutions and bodies, those recipients should demonstrate that it is necessary to have the data transmitted to these recipients either for the performance of their task carried out in the public interest or in the exercise of official authority vested in them. Alternatively, those recipients should demonstrate that the transmission is necessary for a specific purpose in the public interest and the controller should establish whether there is any reason to assume that the data subject's legitimate interests might be prejudiced. In such cases, the controller should demonstrably weigh the various competing interests in order to assess the proportionality of the requested transmission of personal data. The specific purpose in the public interest could relate to the transparency of Union institutions and bodies. Furthermore, Union institutions and bodies should demonstrate such necessity when they themselves initiate a transmission, in compliance with the principle of transparency and good administration. The requirements laid down in this Regulation for transmissions to recipients established in the Union other than Union institutions and bodies should be understood as supplementary to the conditions for lawful processing.'

The European Ombudsman never concluded that the breakdown of the travel expenses of Commissioners, which is what you request, should be made public.

Fifthly, you argue that ‘there is a strong and specific public interest in Access Info receiving the requested documents’. You indicate that your organisation has the ‘specific goal to ensure that there is public scrutiny of the spending of public funds, that there can be a fully-informed, evidence-based public debate about how such funds are used, and that the public can be confident that public bodies exercising power and spending public funds in a responsible and appropriate manner.’ Furthermore, you state that ‘[your] request is designed to permit [you] and others, including anti-corruption civil society organisations and investigative journalists, to act as public watchdogs.’ You refer to the mission of Access Info, the fact that you make the data available ‘to all members of the European (and indeed the global) public’ and conclude that ‘[b]asic information such as how the Commissioners spend funds, with details on how the funds are used, is essential to ensure an informed and accurate debate about the way in which Brussels functions.’ Finally, you state that ‘the denial of this request would adversely affect [your] role as a public watchdog, subsequently breaching not only the right of access to documents (Article 15 of the TFEU and Article 42 of the Charter of Fundamental Rights of the European Union) but also [your] right to freedom of expression and information in Article 11 of the Charter of Fundamental Rights of the EU.’

As a preliminary remark, I would like to draw attention to Article 2(1) of Regulation (EC) No 1049/2001, which states that ‘[a]ny citizen of the Union, and any natural or legal person residing or having its registered office in a Member State, has a right of access to documents of the institutions, subject to the principles, conditions and limits defined in this Regulation’ (emphasis added). It is clear from this provision that the right of access is neither unconditional nor unlimited.

Your arguments on transparency stipulated above, do not establish that it is necessary to have the data transmitted to you for a specific purpose in the public interest. Neither do you demonstrate the existence of a ‘specific’ purpose nor demonstrate that the transfer of personal data you request is the most appropriate of the possible measures for attaining your objective and that it is proportionate to that objective, by providing express and legitimate reasons to that effect and taking into account the data which are proactively published by the European Commission.²³ The General Court has rejected very similar arguments put forward in the *Psara v European Parliament* judgment, where the applicants stated various objectives pursued by their requests for access to documents, namely, on the one hand, to enable the public to verify the appropriateness of the expenses incurred by MEPs in the exercise of their mandate and, on the other, to guarantee the public right to information and transparency. The General Court stated that ‘because of their excessively broad and general wording, those objectives cannot, in themselves, establish the need for the transfer of the personal data in question.’²⁴

²³ Judgment of the General Court of 15 July 2015, *Gert-Jan Dennekamp v European Parliament* (hereafter referred to as ‘*Dennekamp v European Parliament* judgment’, T-115/13, EU:T:2015:497, paragraphs 54 and 59.

²⁴ *Psara v European Parliament* judgment, cited above, paragraph 74.

It also concluded that ‘the wish to institute public debate cannot suffice to show the need for the transfer of personal data, since such an argument is connected solely with the purpose of the request for access to the documents’.²⁵ The General Court concluded that ‘the need for the transfer of personal data may be based on a general objective, such as the public’s right to information concerning the conduct of MEPs in the exercise of their duties, [...] [however] only demonstration by the applicants of the appropriateness and proportionality to the objectives pursued by the request for disclosure of personal data would allow the Court to verify the need for that disclosure within the meaning of Article 8(b) of Regulation No 45/2001.’ These findings are applicable to the case at hand, as the new Regulation (EU) 2018/1725 does indeed put the burden of proof on the recipient who has to demonstrate the existence of the necessity of the transmission of the data for a specific purpose in the public interest.

You argue further that ‘the Commission failed to establish that any data subject’s legitimate interest might be prejudiced’. As explained above, as you have not demonstrated that the transfer you request can be considered as a lawful processing nor have you established the necessity to have the data transmitted for a specific purpose in the public interest the European Commission does not have to examine whether there is a reason to assume that the data subjects’ legitimate interests might be prejudiced.

Notwithstanding the above, there are reasons to assume that the legitimate interests of the data subjects concerned would be prejudiced by the disclosure of the personal data reflected in the documents, as there is a real and non-hypothetical risk that public disclosure would harm the privacy of President Juncker by revealing security relevant information, which can lead to a risk of his personal integrity during his missions. Moreover, it public disclosure of the personal data of the non-senior Commission staff included in the documents would undermine their privacy and subject them to unsolicited external contacts.

As to the handwritten signatures appearing in documents, which constitute biometric data, there is a risk that their disclosure would prejudice the legitimate interest of the person concerned.

Please note also that Article 4(1)(b) of Regulation (EC) No 1049/2001 does not include the possibility for the exceptions defined therein to be set aside by an overriding public interest.

Consequently, I conclude that, pursuant to Article 4(1)(b) of Regulation (EC) No 1049/2001, access cannot be granted to the requested documents 1 and 2, 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 the disclosure of the personal data concerned.

²⁵ *Ibid*, paragraph 90.

The fact that an overview of the mission costs of President Juncker has already been made publicly available in an proactive manner only reinforces this conclusion. It also proves that the European Commission did indeed balance the right to the protection of personal data with the right of access to documents in accordance with Union law.

3. PARTIAL ACCESS

In accordance with Article 4(6) of Regulation (EC) No 1049/2001, I have considered the possibility of granting partial access to the documents requested.

However, for the reasons explained above, no meaningful partial access is possible without undermining the protection of privacy and the integrity of the individual.

Consequently, I have come to the conclusion that the documents requested are covered in their entirety by the invoked exceptions to the right of public access.

4. MEANS OF REDRESS

Finally, I draw your attention to the means of redress available against this decision. You may either bring proceedings before the General Court or file a complaint with the European Ombudsman under the conditions specified respectively in Articles 263 and 228 of the Treaty on the Functioning of the European Union.

Yours sincerely,



For the Commission
Ilze JUHANSONE
Acting Secretary-General