



EUROPEAN COMMISSION

OFFICE FOR THE ADMINISTRATION AND PAYMENT OF INDIVIDUAL ENTITLEMENTS

The Acting Director

Brussels,
PMO/GS/ARES(2019)

Mrs Martina Tombini
Calle Cava de San Miguel, 8,
4 centro
28005 Madrid, Spain

E-mail: ask+request-6894-400e9a6f@asktheeu.org

Subject: Your application for access to documents under Regulation (EC) No 1049/2001 - GESTDEM 2019/2760

Dear Mrs Tombini,

We refer to your email dated 10.5.2019, in which you make a request for access to documents, registered on the same day under the above-mentioned reference number.

You request access to documents “*summarising the mission of Commissioner Vera Jourova to Avignon and Prague from 29th July to 29th August 2018.*” More specifically, you would like to obtain documents which “*provide the justification of the expenses of mission and basis and rationale for the commissioner’s participation in “an intensive week long French course”, a summary of the activities for the remainder of the month-long mission, including the purposes of visits to each city*”.

Firstly, I would like to note that, in accordance with the code of conduct for the Members of the European Commission¹, Commissioners have the obligation ‘to conduct missions in compliance with the rules in the Financial Regulation, the internal rules on the implementation of the general budget of the European Union, the Guide to Missions and the rules set out in Annex 2. A mission is defined as travel in the exercise of his or her duties by a Member away from the Commission's place of work’ solely in the interests of the service, on the instructions of a line manager or the appointing authority.

Moreover, 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

¹ Commission Decision of 31.1.2018, C(2018)700 final, Article 6(2).

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.’²

Under the code of good administrative behaviour, I would like to note that pursuant to the regulatory framework for mission expenses,³ all official travel is undertaken in the most cost-efficient way possible, according to the needs of the mission. For instance, officials are indeed required to book hotel rooms within strict price limits (per country or city) and the cheapest transportation option available on the market at the time of the purchase. Any derogation from these guidelines can only be granted under exceptional and duly justified circumstances.

The code of conduct entered into force on 1 February 2018. Accordingly, since 28 February 2018, information pertaining to the mission costs of the Members of the Commission has been proactively published every two months.

Against this background, the information pertaining to the mission costs of Commissioner Vera Jourova for the mentioned period is available under the link below:

http://ec.europa.eu/transparencyinitiative/meetings/mission.do?host=cc463fab-bfff-4595-bb45-6d0af96b5e83&missionsperiod=2018_3

Secondly, having examined your request under the provisions of Regulation (EC) No 1049/2001 regarding public access to documents, I regret to inform you that access to the documents requested cannot be granted, as disclosure is prevented by an exception to the right of access laid down in Article 4 of this Regulation.

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/EC (‘Regulation 2018/1725’).

In the recent *Psara* judgment, the General Court reiterated that Article 4(1)(b) ‘is an indivisible provision [which] 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, in particular with Regulation No 45/2001’ and that ‘[it] establishes a specific and reinforced system of protection of a person whose personal data could, in certain cases, be communicated to the public [...]’.⁴

² *Ibid.*

³ In addition to the above-mentioned Code of Conduct for Members of the Commission, see Commission decision of 18.11.2008, ‘General implementing provisions adopting the Guide to missions for officials and other servants of the European Commission’, C(2008)6215.

⁴ Judgment of 25 September 2018, *Maria Psara and Others v European Parliament*, T-639/15 to T-666/15 and T-94/16, EU:T:2018:602, paragraph 65, (hereafter ‘the *Psara* judgment’).

Furthermore, the General Court reaffirmed that no automatic priority can be conferred on the objective of transparency over the right to protection of personal data.⁵

Notwithstanding the fact that this judgment referred to Regulation No 45/2001, it applies by analogy to Regulation No 2018/1725, as, in principle, the rest of the case law pertaining to the former.

Article 3(1) of Regulation No 2018/1725 provides that personal data ‘means any information relating to an identified or identifiable natural person [...]’. The Court of Justice ruled that any information that, due to its content, purpose or effect, is linked to a particular person, qualifies as personal data.⁶

In the *Rechnungshof* case law, the Court of Justice further confirmed that ‘there is no reason of principle to justify excluding activities of a professional [...] nature from the notion of private life’.⁷

The General Court also stressed that ‘[t]he Court previously held that derogations from the protection of personal data must be interpreted strictly’.⁸

The documents falling under the scope of your request contain information concerning identified natural persons, namely Commissioner Vera Jourova and they reveal in a detailed manner how, where and when the Commissioner spent these amounts. Therefore, they undoubtedly consist of information that qualifies as personal data.

The General Court reaffirmed in the *Psara* judgment that ‘[t]he fact that data concerning the persons in question are closely linked to public data on those persons [...] 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’.⁹

The public disclosure of these personal data would consequently constitute processing (transfer) of personal data within the meaning of Article 9(1) (b) of Regulation No 2018/1725.

Pursuant to this provision, ‘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 both of these conditions are fulfilled and the processing constitutes lawful processing in accordance with the requirements of Article 5 of Regulation No 2018/1725, can the transmission of personal data occur.

According to settled case law, the condition of necessity laid down in Article 9(1)(b) of Regulation No 2018/1725 requires the demonstration by the applicant that the transfer of

⁵ Ibid, paragraph 91.

⁶ Judgment of 20 December 2017, C-434/16, *Peter Novak v Data Protection Commissioner*, EU:T:2018:560, paragraphs 33-35

⁷ Judgment of 20 May 2003, C-465/00, C-138/01 and C-139/01, *Rechnungshof v Österreichischer Rundfunk and others*, EU:C:2003:294, paragraph 73.

⁸ *Psara* judgment, *op. cit.*, paragraph 68.

⁹ *Psara* judgment, paragraph 52.

personal data is the most appropriate of the possible measures for attaining his/her objective, and that it is proportionate to that objective.¹⁰

Furthermore, the applicant needs to provide convincing evidence in order to establish the need for the transfer of personal data, and not make use of general considerations relating to the public interest and rights to transparency and information.¹¹

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 subjects' legitimate interests might be prejudiced.

Furthermore, I consider that the transfer of the personal data of Commissioner Vera Jourova contained in the requested documents, would go beyond what is necessary for attaining the objective of ensuring the transparency of the costs pertaining to the mission, and is therefore disproportionate to that purpose.

Therefore, I conclude that the transfer of personal data contained in the requested documents does not fulfil the requirement of lawfulness provided for in Article 5 of Regulation No 2018/1725.

Consequently, I 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 individual concerned would not be prejudiced by disclosure of the personal data.

The fact that Article 4(1)(b) of Regulation No 1049/2001 is an absolute exception that does not require the institution to balance the exception defined therein against a possible public interest in disclosure, only reinforces this conclusion.

The exceptions laid down in Regulation (EC) No 1049/2001 must be waived if there is an overriding public interest in disclosure. Such an interest must, firstly, be public and, secondly, outweigh the harm caused by disclosure.

Nevertheless, please note 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.

In accordance with Article 4(6) of Regulation 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 interest of privacy and the integrity of the individual protected under Article 4(1)(b) of Regulation No 1049/2001.

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.

¹⁰ Judgment of 15 July 2015, *Dennekamp v Parliament*, T-115/13, EU:T:2015:497, paragraph 77.

¹¹ *Psara* judgment, paragraphs 73-76.

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 and Access to Documents (SG.C.1)
BERL 7/076
B-1049 Brussels,

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

Yours sincerely,

[Signed]

Giuseppe Scognamiglio