



EUROPEAN COMMISSION

OFFICE FOR THE ADMINISTRATION AND PAYMENT OF INDIVIDUAL ENTITLEMENTS

The Acting Director

Brussels,

Mr A. Andreo
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Subject: Your application for access to documents under Regulation (EC) No 1049/2001 - GESTDEM 2019/2472

Dear Mr Andreo,

We refer to your email dated 24.04.2019, 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 which contain the following information: *a list of the travels of the special advisor of the commission of Human Resources and Security, Henk Post, in the last year specified by date, reason for the trip, duration and cost.*

The Commission has identified the mission cost summary fiches relating to the official missions of Mr Henk Post, carried out during the period 1 January 2018 to 31 December 2018, as falling under the scope of your request.

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/EC¹ ('Regulation 2018/1725').

In its judgment in Case C-28/08 P (*Bavarian Lager*)², the Court of Justice ruled that when a request is made for access to documents containing personal data, the Data Protection Regulation becomes fully applicable.

The mission cost data of a special advisor of the Commission, to which you request access, are undoubtedly personal data in the meaning of Article 3(1) of Regulation 2018/1725 which provides that personal data 'means any information relating to an identified or identifiable natural person [...]'.³

As the Court of Justice confirmed in Case C-465/00 (*Rechnungshof*)³, *there is no reason of principle to justify excluding activities of a professional [...] nature from the notion of private life.*

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 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.

You have not put forward any arguments supporting the necessity of disclosing any of the above-mentioned personal data. I also refer to the *Strack* case, where the Court of Justice ruled that, if an applicant does not substantiate the need for obtaining access to personal data, the institution does not have to examine by itself the existence of a need for transferring such data⁴.

Nevertheless, please allow me to emphasise that the travel costs of Commission staff are subject to the audit and control procedures established by the EU Treaties, and that a special adviser is not a public office holder.

¹ Official Journal L 295 of 21.11.2018, p. 39.

² 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.

³ Judgment of the Court of 20 May 2003 in joined cases C-465/00, C-138/01 and C-139/01, preliminary rulings in proceedings between *Rechnungshof and Österreichischer Rundfunk*, paragraph 73.

⁴ Judgment of the Court of Justice of 2 October 2014 in case C-127/13 P, *Strack v Commission*, (ECLI:EU:C:2014:2250), paragraph 106.

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 individuals concerned would not be prejudiced by disclosure of the personal data concerned.

In case you would disagree with the assessment that the withheld data are personal data which can only be disclosed if such disclosure is legitimate under the applicable rules on the protection of personal data, you are entitled, in accordance with Article 7(2) of Regulation 1049/2001, 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
Transparency, Document Management & Access to Documents (SG.C.1)
BERL 7/076
B-1049 Bruxelles

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

Yours sincerely,



Giuseppe Scognamiglio

