



EUROPEAN COMMISSION

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Ms Helen Darbshire
Access Info European Commission
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Spain

**DECISION OF THE EUROPEAN COMMISSION PURSUANT TO ARTICLE 4 OF THE
IMPLEMENTING RULES TO REGULATION (EC) NO 1049/2001¹**

**Subject: Your confirmatory applications for access to documents under
Regulation (EC) No 1049/2001 - GESTDEM 2019/3534, 2019/3565,
2019/3578 and 2019/3656**

Dear Ms Darbshire,

I refer to the emails of 21 August 2019, registered on the next day, in which you submit four confirmatory applications on behalf of Access Info Europe, concerning the four 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').

Please accept our apologies for this late reply.

1. SCOPE OF YOUR REQUEST

In the initial application registered under number GESTDEM 2019/3534 of 19 June 2019, submitted by Ms P. Gonzáles, Access Info Europe requested access to, I quote,

‘[...] to the travel expenses of the Director General Gert Jan Koopman, of the Deputy Director General Silvano Presa, and of the Deputy Director General Maria Rosa Aldea Busquets for the period 1 January 2017 to 31 December 2018 inclusive.’

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

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

In the initial application registered under number GESTDEM 2019/3565 of 19 June 2019, submitted by Ms N. Lazaro Prevost, Access Info Europe requested access to, I quote,

‘[...] the travel expenses of:

- The Director General Jean-Eric Paquet
- The Deputy Director General Wolfgang Burtscher
- The Deputy Director General Patrick Anthony Child
- The Deputy Director General Signe Ratso

for the period 1 January 2017 to 31 December 2018 inclusive.’

In the initial application registered under number GESTDEM 2019/3578 of 19 June 2019, submitted by Ms M. Tombini, Access Info Europe requested access to, I quote,

‘[...] the travel expenses of the Director General Paraskevi Michou, of the Deputy Director General Simon Mordue, and of the Deputy Director General Oliver Onidi for the period 1 January 2017 to 31 December 2018 inclusive.’

In the initial application registered under number GESTDEM 2019/3656 of 19 June 2019, submitted by Mr D. Espinosa, Access Info Europe requested access to, I quote,

‘[...] the travel expenses of the Director General Daniel Calleja Crespo and of the Deputy Director General Joanna Drake for the period 1 January 2017 to 31 December 2018 inclusive’.

In all these applications, Access Info Europe specified that it is ‘looking for documents that contain, for each of the trips, the following information:

- Place of origin and destination, and the amount spent on travel or transportation;
- Exact dates and duration of the trip;
- Amount spent on accommodation;
- Amount spent on subsistence;
- Other information, such as possible miscellaneous costs.’

Access Info Europe also requested that ‘[i]f the travel was by air taxi and a team of people were travelling, [...] documents with details on the other travellers (at a minimum, names and job titles) [should be provided].

Moreover, Access Info Europe stated that ‘[w]ith respect to personal information contained in any documents [the European Commission] might have, please note that the only information being sought here is the name of the Directors, something which is already in the public domain. This request does not seek access to any other personal information such as bank account details. Nor [is Access Info Europe] requesting data such as the office addresses, signatures or telephone numbers of the DG staff members.’

In its initial replies of 11 July 2019 concerning the applications registered under reference GESTDEM 2019/3534 and GESTDEM 2019/3565, of 17 July 2019 concerning the application registered under reference GESTDEM 2019/3578 and of 25 July 2019 concerning the application registered under reference GESTDEM 2019/3656, the European Commission's Pay Master's Office (PMO) informed you that it had identified the mission costs summary fiches relating to the Commission officials you were interested in.

It refused access to the documents falling within the scope of your request 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.

Please note that several members of the senior management, whose trip details and travel expenses you seek to access did not occupy the function you indicate in your application for the period for the period 1 January 2017 to 31 December 2018 inclusive. In particular, Ms Michou occupies the post of Director-General only since 1 March 2018, while Mr Pacquet occupies the post of Director-General only since 1 April 2018 and Mr Koopman since 1 August 2018. Ms Aldea Busquets occupies the post of Deputy Director-General since 1 January 2018, while Ms Ratsos occupies the post of a Deputy Director-General since 1 March 2018. Consequently, only the missions they have performed in the period they occupied the functions indicated in your applications fall within their scope. Following this review, I can inform you that the European Commission has identified the following categories of documents as falling under the scope of your application registered under reference GESTDEM 2019/3534: :

36 mission summaries relating to the missions of the members of senior management stated in your application;

11 supporting documents concerning accommodation;

23 supporting documents concerning transport;

17 supporting documents concerning miscellaneous costs;

nine other supporting documents.

As regards your application registered under reference GESTDEM 2019/3565, the following categories of documents fall within the scope of your application:

154 mission summaries relating to the missions of the members of senior management stated in your application;

138 supporting documents concerning accommodation;

135 supporting documents concerning transport;

157 supporting documents concerning miscellaneous costs;

217 other supporting documents.

As regards your application registered under reference GESTDEM 2019/3578, the following categories of documents fall within the scope of your application:

189 mission summaries relating to the missions of the members of senior management stated in your application;

174 supporting documents concerning accommodation;

281 supporting documents concerning transport;

195 supporting documents concerning miscellaneous costs;

136 other supporting documents.

As regards your application registered under reference GESTDEM 2019/3656, the following categories of documents fall within the scope of your application:

108 mission summaries relating to the missions of the members of senior management stated in your application;

77 supporting documents concerning accommodation;

117 supporting documents concerning transport;

32 supporting documents concerning miscellaneous costs;

174 other supporting documents.

The global number of the documents falling within the scope of your request are:

487 mission summaries relating to the missions of the members of senior management stated in your application;

400 supporting documents concerning accommodation costs;

556 supporting documents concerning transport costs;

401 supporting documents concerning miscellaneous costs;

536 other supporting documents.

These documents pertain to the categories indicated above based on the type of information they contain. In particular, all mission summaries contain information about the person they concern, the exact dates and duration of the business trip, the destination, the amounts spent on travel, accommodation, subsistence and other information, such as miscellaneous costs. The supporting documents correspond to the incurred expenses in each one of the respective category of expenses.

I regret to inform you that I have to confirm the initial decision of the European Commission's Pay Master's Office (PMO) to refuse access to the documents 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*)³, 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 data⁴ (hereafter 'Regulation (EC) No 45/2001') becomes fully applicable.

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/EC⁵ (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'⁶.

³ 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.

⁴ Official Journal L 8 of 12.1.2001, page 1.

⁵ Official Journal L 295 of 21.11.2018, p. 39.

⁶ *European Commission v The Bavarian Lager* judgment, cited above, paragraph 59.

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’⁷.

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 persons 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 Regulation⁸.

The requested documents contain personal data, namely information relating to identified natural persons in relation to various information relating to their missions, including the incurred mission costs. It is clear that this information is indeed personal data. In addition, the requested documents contain the personal data, such as names and surnames of European Commission staff not holding any senior management position.

In your confirmatory application, you do not contest that the requested documents contain personal data. You contest the extent to which the exception has been applied. You explain that ‘these documents will contain data on mission destinations, mission dates, modes of transport, and of course, data on the costs of travel, accommodation, daily allowances and miscellaneous costs. There may also be other data, such as notes about the processing of the claim by the PMO. In addition, the data on expenditure is most likely to have been entered into the Mission Processing System (MiPS), which [you] understand is a requirement for the processing of expenses of Commission staff. In which case, it should have been possible, in response to [your] request, to provide a 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 we 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’.

I would like to clarify that the type or types of costs incurred by the Commission senior management concerned by your application are indeed personal data, as this information cannot be disassociated from the natural persons it concerns.

⁷ 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.

⁸ 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).

In the *Nowak* judgment⁹, 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’(emphasis added). 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, incurred by the Commission officials during the missions in question is information which, by reason of its content, is linked to particular natural persons. 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 information¹⁰. In the present case, a clear link to an identifiable person remains, since your request focuses on identified members of the senior management and to the missions costs they incurred. Consequently, it is not possible to redact the names or surnames of the natural persons it concerns, and only leave the breakdown of the costs, as the whole information continues to relate to the natural persons you indicated in your request.

In your application, you refer 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’ and that ‘[f]or these people (in contrast to other officials), it is not necessary to require that requesters establish, either at the initial and at confirmatory stage, the need for a public interest in transmitting the personal data (the names). In other words, there is no need to apply the tests set out in Regulation 2018/1725’.

I would like to note that the Guidance Note concerning access to names and functions of Commission Staff does not stipulate that the names of senior management of the Commission should be disclosed in all cases. The Guidance Note explicitly ‘takes into account the fact that, in most cases, requestors are interested in the substance of the documents rather than in the personal data appearing therein’. In the case at hand, your request is focused on the disclosure of personal data relating to the missions of Commission staff pertaining to the senior management. Therefore, according to the Data Protection Regulation, the institution has to make an individual assessment of the personal data requested and examine whether the conditions for transmission of these data are fulfilled.

⁹ 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.

¹⁰ *VG v Commission* judgment, cited above, paragraph 74.

I note that your request does not concern documents where the names of the persons concerned are merely mentioned, but documents containing personal data, which are intrinsically connected with their person. In full compliance with Regulation (EC) No 1049/2001, an individual assessment of the requested documents has been performed taking into account the data protection parameters stipulated in Regulation (EU) 2018/1725.

I would like to underline that the European Commission proactively publishes information about the mission expenses of its members. However, no such rule exists for members of senior management of the European Commission.

In the *Rechnungshof* case law, 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’¹¹. This finding is applicable also in the present case; thus the requested information on expenses of the individuals concerned during the mission being information relating to identified natural persons constitutes indeed personal data.

In the recent *Psara* ruling, 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’¹². This case, concerned members of a European institution and details on the expenditure they incurred. I consider the findings of the General Court as directly relevant to the present case, which concerns Commission staff members pertaining to the senior management. 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 45/2001’¹³. This is even more the case for the breakdown of the mission expenses you request, because they pertain to senior management and not to members of the Commission.

¹¹ 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 Lauerermann (C-139/01) v 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.

¹² 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.

¹³ *Ibid*, paragraph 52.

The names¹⁴ of the persons contained in the requested documents, as well as the information regarding the details on mission costs are indeed data from which the identity of the persons concerned can be deduced, consequently they undoubtedly constitute personal data in the meaning of Article 3(1) of Regulation (EU) 2018/1725. Moreover, I would like to point out that Article 4(1)(b) of Regulation (EC) No 1049/2001 also protects the integrity of the individual, which is a broader concept than privacy.

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.

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 data¹⁵. 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.’

¹⁴ *European Commission v The Bavarian Lager* judgment, cited above, paragraph 68.

¹⁵ 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.

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.

I would like to point out that there is no publication rule of the mission costs of Commission staff members pertaining to senior management. Indeed, these officials are not subject to the same obligations as Members of the College and their Cabinet members, for whom the Code of Conduct for the Members of the European Commission applies. While the individuals you refer to occupy indeed senior posts within the European public administration, their status is not the same as the status of Commissioners and their Cabinet members. While Members of the College are public figures, Directors-General, Deputy Directors-General and Directors are permanent public servants within the European administration and thus less exposed to the public than the Commissioners and their cabinet members. The travel costs of Commission staff members are regulated by Articles 11-13 of Annex VII to the Staff Regulations¹⁶ and the Commission Decision on the general provisions for implementing Articles 11, 12 and 13 of Annex VII to the Staff Regulations of Officials (mission expenses) and on authorised travel Guide to missions and authorised travel. It has to be noted that this document, which is known as the 'Mission Guide' is publicly available¹⁷. The case-law you refer to, namely the *Dennekamp v European Parliament* judgment in Case T-115/13, concerns Members of the European Parliament and not staff members pertaining to senior management. While the General Court indeed confirms that Members of the European Parliament are public figures, it does not conclude that staff members pertaining to senior management are public figures 'who have chosen to expose themselves to scrutiny by third parties'¹⁸, particularly the media and, through them, by a lesser or greater general public depending on the policy area'. Even for public figures, such as the Members of the European Parliament, the General Court acknowledges that 'such a choice in no way implies that their legitimate interests must be regarded as never being prejudiced by a decision to transfer data relating to them'¹⁹.

Therefore, your arguments are not sufficient to establish that the conditions of Article 9 and Article 5 of Regulation (EU) 2018/1725 are fulfilled.

Secondly, 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'.

¹⁶ Staff Regulations of Officials and conditions of employment for other servants of the EU.

¹⁷ C(2017) 5323, link:

<https://ec.europa.eu/transparency/regdoc/?fuseaction=list&coteId=3&year=2017&number=5323&language=EN>.

¹⁸ <https://ec.europa.eu/transparency/regdoc/rep/3/2017/EN/C-2017-5323-F1-EN-MAIN-PART-1.PDF>.

¹⁹ 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, paragraph 119).

The recital 28 of Regulation (EU) 2018/1725²⁰ 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 the present case, which concerns the missions’ expenses of senior Commission officials, which are not proactively published, the same reasoning on the demonstration of the specific purpose in the public interest applies.

Furthermore, 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.’

²⁰ 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.’

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 ‘[a]s a civil society organisation, Access Info Europe plays a watchdog role akin to that of journalists in line with the European Court of Human Rights jurisprudence on access to information. [You] therefore have a legitimate interest in obtaining information about the use of public funds’. In your view, ‘audit and control [of the mission costs] by the European Commission do not substitute transparency.’ 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 Commission²¹. As explained above, the ‘Mission Guide’ is publicly available. 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’²². 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’²³. 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

²¹ *Dennekamp v European Parliament* judgment, paragraphs 54 and 59.

²² *Psara v European Parliament* judgment, cited above, paragraph 74.

²³ *Ibid*, paragraph 90.

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.

The fact that audit and control procedures exist within the European Commission has to be taken into account when substantiating in detail the specific purpose in the public interest, which justifies the transmission of the requested information. You argue further that the Commission failed to establish that any data subjects’ 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.

In your confirmatory application, you refer to the judgment *ClientEarth and PAN Europe v European Food Safety Authority* in Case C-615/13 P²⁴, to support your argument that ‘the authority concerned must assess whether the disclosure requested might have a specific and actual adverse effect on the interest protected’. I do not consider that the case at hand is similar to the one you refer to. In that case, the Court of Justice has indeed acknowledged that the transfer of the personal data was necessary, as there were detailed allegations of ClientEarth and PAN Europe concerning the accusations of partiality made against EFSA in relation to its choice of experts. Only after establishing that necessity, the Court of Justice went on to examine whether or not there was any reason to assume that that transfer might have prejudiced the legitimate interests of the data subjects. In the case at hand, the necessity of the transfer is not established; therefore, the European Commission does not have the obligation to examine any other condition relating to the transfer of the requested personal data.

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 their privacy and integrity.

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, 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.

²⁴ Judgment of the Court of 16 July 2015, *ClientEarth and Pesticide Action Network Europe (PAN Europe) v European Food Safety Authority*, C-615/13 P, EU:C:2015:489.

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.

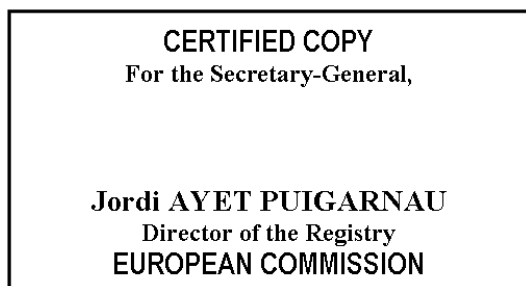
However, for the reasons explained above, no meaningful partial access is possible without undermining the protection of privacy and the integrity of the individual.

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
Secretary-General