

EUROPEAN COMMISSION

OFFICE FOR THE ADMINISTRATION AND PAYMENT OF INDIVIDUAL ENTITLEMENTS

The Director

Brussels, 18. 10. 2017

Mr Abdul Hai
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Subject: Your application for access to documents under Regulation (EC) No 1049/2001 - GESTDEM 2017/5586

Dear Mr Hai,

We refer to your email dated 26 September 2017, 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: Can you publish the travel expenses for Martin Selmayr since he was appointed to his current job with President Juncker.

The Commission has identified the mission cost summary fiches relating to the official missions of the Head of Cabinet of European Commission President Juncker carried out during the period 1 November 2014 up until the date of your access-to-documents request, 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.

Article 4(1)(b) of Regulation 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 accordance with the *Bavarian Lager* ruling¹, when a request is made for access to documents containing personal data, 'Data Protection Regulation' 45/2001² becomes fully applicable.

The mission cost data of the Head of Cabinet to European Commission President Juncker, to which you request access, are undoubtedly personal data in the meaning of Article 2(a) of Regulation 45/2001, which defines it as *any information relating to an identified or identifiable natural person (...); an identifiable person is one who can be identified, directly or indirectly, in particular by reference to an identification number or to one or more factors specific to his or her physical, physiological, mental, economic, cultural or social identity*.

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*.

It follows that public disclosure of the above-mentioned mission cost summary fiches would constitute processing (transfer) of personal data within the meaning of Article 8(b) of Regulation 45/2001.

According to Article 8(b) of Regulation 45/2001, personal data shall only be transferred to recipients if the recipient establishes the necessity of having the data transferred and if there is no reason to assume that the data subject's legitimate interests might be prejudiced. Those two conditions are cumulative.⁴ Only if both conditions are fulfilled and the transfer constitutes lawful processing in accordance with the requirements of Article 5 of Regulation 45/2001, can the processing (transfer) of personal data occur.

In this respect, I would like to bring to your attention the recent judgment in the *ClientEarth* case, where the Court of Justice ruled that *whoever requests such a transfer must first establish that it is necessary. If it is demonstrated to be necessary, it is then for the institution concerned to determine that there is no reason to assume that that transfer might prejudice the legitimate interests of the data subject. If there is no such reason, the transfer requested must be made, whereas, if there is such a reason, the institution concerned must weigh the various competing interests in order to decide on the request for access*⁵.

¹ Judgment of the Court (Grand Chamber) of 29 June 2010 in case C-28/08 P, *European Commission v the Bavarian Lager Co. Ltd.* (ECLI:EU:C:2010:378), paragraph 63.

² Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data.

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 (Grand Chamber) of 29 June 2010 in case C-28/08 P, *European Commission v the Bavarian Lager Co. Ltd.* (ECLI:EU:C:2010:378), paragraphs 77-78.

⁵ Judgement of the Court of Justice of 16 July 2015 in case C-615/13P, *ClientEarth v EFSA*, (ECLI:EU:C:2015:489), paragraph 47.

Furthermore, according to the *Dennekamp* judgment, if the condition of necessity laid down by Article 8(b) of Regulation No 45/2001, which is to be interpreted strictly, is to be fulfilled, it must be established that the transfer of personal data is the most appropriate means for attaining the applicant's objective, and that it is proportionate to that objective⁶. The EU Court has also confirmed that a mere *interest* of members of the public in obtaining certain personal data cannot be equated with a *necessity* to obtain the said data in the meaning of Regulation 45/2001.⁷

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 data⁸.

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 the Head of Cabinet is not a public office holder, but merely supports the Commission President in his official duties.

Therefore, I have to conclude that the transfer of personal data in question through the disclosure of the requested documents cannot be considered as fulfilling the requirement of Regulation 45/2001, and that consequently the use of the exception under Article 4(1)(b) of Regulation 1049/2001 is justified, as there is no need to publicly disclose the personal data included therein, and it cannot be assumed that the legitimate rights of the data subjects concerned would not be prejudiced by such disclosure.

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 unit SG-B-4

BERL 5/288

⁶ Judgment of the General Court of 15 July 2015 in case T-115/13, *Dennekamp v European Parliament*, (ECLI:EU:T:2015:497), paragraph 77.

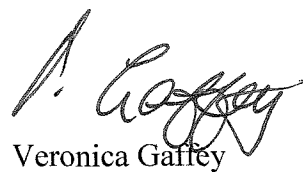
⁷ Judgment of the Court of Justice of 2 October 2014 in case C-127/13, *Strack v Commission*, EU:C:2014:2250, paragraphs 107 and 108.

⁸ 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.

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

Yours sincerely,



Veronica Gaffey