



EUROPEAN COMMISSION

Brussels, 4.3.2019
C(2019) 1864 final

Mr Arun Dohle
Against Child Trafficking
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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 2018/6981**

Dear Mr Dohle,

I refer to your e-mail of 6 February 2019, registered on the same day, in which you submitted a confirmatory application 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 your initial application of 15 December 2018, addressed to the Secretariat-General of the European Commission, you requested access to:

‘all communication[s] related to the award of the 20-year medal to Mrs. Roelie Post, from 2007 - 2018’.

The Directorate-General for Human Resources and Security has dealt with your initial application.

In its initial reply of 23 January 2019, Directorate-General for Human Resources and Security refused access to any potentially existing documents relating to your initial application based on the exception of Article 4(1)(b) (protection of privacy and integrity

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

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

of the individual) of Regulation (EC) No 1049/2001. It explained that the rules on the protection of privacy do not allow the Commission even to confirm the existence of documents concerning the communication related to an individual's possible 20-year service medal. In addition, it stated that the 'mere disclosure of that information would indeed infringe the privacy of the person concerned', and concluded that 'the consideration of a partial disclosure, in this context, must be ruled out.'

In your confirmatory application, you requested a review of this position. You support your request with detailed information. In both your initial and confirmatory application, you invite the Commission to contact Ms Roelie Post in order to 'see if she is ready to lift the privacy requirements'.

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 review of the reply given by the Directorate-General concerned at the initial stage.

Following this review, I wish to inform you that I confirm the initial decision of the Directorate-General for Human Resources and Security to refuse access, based on the exception of Article 4(1)(b) (protection of privacy and integrity of the individual) of Regulation (EC) No 1049/2001, for the reasons set out below.

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'.

As from 11 December 2018, the Community legislation regarding the protection of personal data 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 (hereafter 'Regulation (EU) 2018/1725').

Regulation (EU) 2018/1725 repealed 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 data³ (hereafter 'Regulation (EC) No 45/2001') and Decision No 1247/2002/EC⁴. However, the case law issued with regard to Regulation (EC) No 45/2001 remains relevant for the interpretation of Regulation (EU) 2018/1725.

The initial decision established that, 'information relating to the award of the 20-year service medal to a given staff member is personal data.'

³ Official Journal L 8 of 12.1.2001, p. 1.

⁴ Official Journal L 205 of 21.11.2018, p. 39.

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

In its judgment in Case C-28/08 P (*Bavarian Lager*)⁵, the Court of Justice ruled that when a request is made for access to documents containing personal data, Regulation (EC) No 45/2001 (in fact, Regulation (EU) 2018/1725) becomes fully applicable.

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

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

The Court of Justice has specified in Case C-434/16 (*Nowak*), that ‘the expression “any information” in the definition of [...] “personal data”, [...] 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, [...] provided that it “relates” to the data subject.’ This ‘latter condition [...] is satisfied where the information, by reason of its content, purpose or effect, is linked to a particular person.’⁷

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’.⁸

The 20-year service medal is an indication of the duration of the public servants’ employment relationship with the European Commission, which in turn forms part of the data describing an individual’s professional activities. Associating the possession of such a 20-year service medal to a natural person relates to this natural person and is linked to her or him. In this sense, this information is personal data under Article 3(1) of Regulation (EU) 2018/1725.

To reveal potentially existing documents in the framework of a request for access to documents procedure would qualify as processing of personal data under Article 3(3) of Regulation (EU) 2018/1725 as it would involve disclosure by transmission.

⁵ 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.

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

⁷ Judgment of the Court of Justice of 20 December 2017, *Peter Novak v Data Protection Commissioner*, request for a preliminary ruling from the Supreme Court, C-434/16, EU:C:2017:994, paragraphs 34-35.

⁸ 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.

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 ‘[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 (EU) 2018/1725, can the transmission of personal data occur. In this context, you point out in your confirmatory application that Ms Roelie Post might give her consent to the processing of her personal data. However, even in such a case, you would have needed to establish first that it had been necessary to have the data transmitted for a specific purpose in the public interest in line with point (d) of Article 5(1) of Regulation (EU) 2018/1725. It is because the consent of the data subject can be given only ‘for one or more specific purposes’.

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.⁹ This is also clear from Article 9(1)(b) of Regulation (EU) 2018/1725, which requires that the recipient must establish the necessity to have the personal data transmitted.

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 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.

Notwithstanding the above, there are reasons to assume that the legitimate interests of the data subject 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 such public disclosure would harm their privacy and subject them to unsolicited external contacts.

The handling of your request for access to documents would consist of identifying documents that are linked to a natural person and transmitting such data. This is considered as processing of personal data to which access cannot be granted.

⁹ 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.

Consequently, I conclude that this request has to be refused pursuant to Article 4(1)(b) of Regulation (EC) No 1049/2001, as no specific purpose in the public interest has been substantiated in order to access personal data 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.

3. OVERRIDING PUBLIC INTEREST IN DISCLOSURE

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

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
Martin SELMAYR
Secretary-General