



Brussels, 16 December 2019

## ACCESS TO NAMES AND FUNCTIONS OF COMMISSION STAFF GUIDANCE NOTE

### 1. BACKGROUND

Commission services receive a large number of requests each year, under Regulation (EC) No 1049/2001, for access to documents (e.g. e-mails<sup>1</sup>, copies of correspondence, meeting minutes), which include the names and functions of Commission staff.

This note sets out the approach to follow in such cases.

It aims to strike a fair balance between the right of access to documents<sup>2</sup> and the right to personal data protection<sup>3</sup>. It also takes into account the fact that, in most cases, applicants are interested in the substance of the documents rather than in the personal data appearing therein.

This approach consists of granting, in principle, access to the names and functions<sup>4</sup> of Commissioners and their Cabinet members (AD officials) and staff in senior management positions<sup>5</sup>, as well as to the Heads of the Commission's Representations in the Member States of the EU. This access is exceptionally extended to the names and functions of staff not occupying any senior management position, if:

- the applicant has substantiated the need for such transmission for a specific purpose in the public interest<sup>6</sup>;

---

<sup>1</sup> These are only considered documents to the extent that they are registered or should have been registered in Ares [in accordance with the document management rules](#).

<sup>2</sup> As defined in Article 15(3) of the Treaty on the Functioning of the European Union (TFEU) and Regulation (EC) No 1049/2001 of 30 May 2001 regarding public access to European Parliament, Council and Commission documents.

<sup>3</sup> As defined in Article 16(1) of the TFEU and Regulation (EU) 2018/1725 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. The Court of Justice has confirmed that 'there is no reason of principle to justify excluding activities of a professional [...] nature from the notion of "private life", see Judgment of the Court of Justice of 20 May 2003, preliminary rulings in proceedings between *Rechnungshof and Österreichischer Rundfunk*, [Joined Cases C-465/00, C-138/01 and C-139/01](#), EU:C:2003:294, paragraph 73.

<sup>4</sup> No access should be granted to other personal data, for example, telephone number, office number, e-mail address part preceding the domain name etc.

<sup>5</sup> Secretary-General, Directors-General, Directors. Please note that the Commission Spokesperson forms part of the senior management.

<sup>6</sup> As specified in recital 28 of Regulation (EU) 2018/1725, '[t]he specific purpose in the public interest

- there are no reasons to assume that the legitimate rights of the individuals concerned might be prejudiced; or
- the institution considers the transmission proportionate for the specific purpose brought forward by the applicant, after having demonstrably weighed the various competing interests.

## **2. BASIC PRINCIPLE: REFUSAL FOR STAFF NOT OCCUPYING ANY SENIOR MANAGEMENT POSITION**

Both at the initial and at confirmatory stage, no access should, in principle, be granted to the names and functions<sup>7</sup> of staff which do not form part of senior management, unless a **need** thereto is established, there are no reasons to assume that the **legitimate interests** of the individuals concerned might be prejudiced, and the transfer is proportionate for the purpose put forward by the applicant, after having demonstrably weighed the various competing interests.

### **2.1. How to assess the need for the data transfer**

The need to obtain the personal data must be clearly demonstrated by the applicant. It should be distinguished from a mere interest in obtaining these data<sup>8</sup>.

For instance, some applicants request access to the names of members of a tender or project evaluation committee to verify whether there have been any conflicts of interests. However, save specific circumstances, this will rarely constitute a ‘need’ to obtain the personal data concerned, given that the Financial Regulation already establish the necessary procedural guarantees to avoid such conflicts of interests.

The necessity of the data transfer must be demonstrated by express and legitimate justifications or convincing arguments<sup>9</sup>, and there must be no less invasive measures available, taking into account the principle of proportionality<sup>10</sup>.

### **2.2. How to assess the absence of any risks to the data subjects’ rights**

As regards the possible risks to the legitimate rights of the data subjects concerned, and hence to the privacy and integrity of these individuals in the meaning of Article 4(1)(b) of Regulation (EC) No 1049/2001, these can in a limited number of cases be established without a need to consult the staff members concerned, in particular:

- for members of tender or project evaluation committees, for whom there is a real and non-hypothetical risk of being the subject of unsolicited contacts by unsuccessful, current or future tenderers or project promoters;
- for staff members tasked with investigative functions (e.g. investigative staff working on antidumping or competition files, auditors, OLAF investigators, etc.);
- for staff members forming part of an administrative entity which has been the subject of

---

could relate to the transparency of Union institutions and bodies.’

<sup>7</sup> To the extent that they enable the individual staff members to be identified. If this is not the case, these functions are not to be considered “personal data”, and access can in principle be granted if no other exceptions of Article 4 of Regulation (EC) No 1049/2001 are applicable.

<sup>8</sup> As required by Article 9(1)(b) of Regulation (EU) 2018/1725.

<sup>9</sup> Judgment of the Court of Justice of 29 June 2010, *European Commission v The Bavarian Lager Co. Ltd*, [C-28/08 P](#), EU:C:2010:378, paragraphs 77-78.

<sup>10</sup> Judgment of the General Court of 23 November 2011, *Gert-Jan Dennekamp v European Parliament*, [T-82/09](#), EU:T:2011:688, paragraphs 30-34 and Judgment of the General Court 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 72.

targeted physical or verbal attacks or defamatory actions by outside parties.

In those cases, access should normally be denied.

In principle, it is the responsibility of the controller to establish whether the data subject's interests might be prejudiced. If the controller concludes that this is the case, he will then have to weigh the various competing interests and determine whether it is proportionate to transmit the personal data to the applicant. In case of doubt and if practically possible, the controller can decide to consult the data subjects concerned to establish the level of prejudice to their rights.

In case of doubt, it is advisable to err on the side of caution, so as to avoid potentially adverse consequences for the data subject concerned of which it has not been possible to assess the likelihood and magnitude set off against the purpose of the transfer.

### **2.3. Practical implications**

The applicant should be invited, if he/she wishes to receive the names and/or functions of Commission staff members who do not occupy any senior management position or are Heads of the Commission Representations in Member States of the EU, to demonstrate the need for having these personal data transferred.

Unless it is clearly evident, based on the assessment described above, that the conditions of Article 9(1)(b) of Regulation (EU) 2018/1725 are fulfilled, services are invited to redact the names and functions<sup>11</sup> appearing in the documents to which (full or partial) access is granted, with reference to Article 4(1)(b) of Regulation (EC) No 1049/2001 read in conjunction with the above-mentioned provision of Regulation (EU) 2018/1725.

The detailed reasoning should indicate that, based on the information available, the necessity of disclosing the personal data has not been established, there are reasons to assume that such disclosure would prejudice the legitimate rights of the persons concerned, and/or the weighing of the various interests involved led to the conclusion that the transmission of the personal data would not be proportionate.

As the possible release of staff names and functions of Commission staff members not occupying any senior management position is conditional upon the prior proof of the necessity of the transmission by the applicant, the number of cases where a specific risk assessment has to be made, and hence the resulting administrative burden and the risk of errors, is expected to remain limited.

---

<sup>11</sup> To the extent that these enable the individuals concerned to be identified.