EUROPEAN COMMISSION

Brussels, 29.5.2020
C(2020) 3652 final

Ms Veronica Quaix
Van Den Wildenberglaan 1
2100 Antwerpen
Belgium

DECISION OF THE EUROPEAN COMMISSION PURSUANT TO ARTICLE 4 OF THE IMPLEMENTING RULES TO REGULATION (EC) NO 1049/2001[1]

Subject: **Your confirmatory application for access to documents under Regulation (EC) No 1049/2001 - GESTDEM 2020/0836**

Dear Ms Quaix,

I refer to your email of 15 March 2020, registered on the next day, in which you submit a confirmatory application concerning the initial application, reference number mentioned above, in accordance with Article 7(2) of Regulation (EC) No 1049/2001 regarding public access to European Parliament, Council and Commission documents[2] (hereafter 'Regulation (EC) No 1049/2001').

1. SCOPE OF YOUR REQUEST

In the initial application of 8 February 2020, addressed to the Office for Administration and payment of individual entitlements (PMO), you requested information on the business trip performed by Mr Ernesto Bianchi, and his 'stay in the hotel Vinepearl Ha Long Bay Resort, room 317 between 7/10/19 and 10/10/19 in touristic area Reu Island, Bai Chay, Viet Nam'. More specifically, you wish to have access to documents that contain the following information, I quote: '- [p]lace 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'.

Furthermore, you specified that if 'the travel was by air taxi and a team of people were travelling, please also provide documents with details on the other travellers (at a minimum, names and job titles'.

1 OJ L 345 of 29.12.2001, p. 94.
2 OJ L 145 of 31.5.2001, p. 43.

In its initial reply of 28 February 2020, the Office for the Administration and Payment of Individual Entitlements of the European Commission refused access to the document(s) 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.

Following this review, I can inform you that the European Commission has identified the following categories of documents, under mission reference number DL-19-1770672, as falling under the scope of your application registered under reference GESTDEM 2020/0836:

- one mission summary fiche relating to the mission of the member of senior management stated in your application;
- one supporting document concerning accommodation;
- one supporting document concerning transport;
- one supporting document concerning exchanges with travel agency;
- one other supporting document.

These documents pertain to the categories indicated above based on the type of information they contain. In particular, the mission summary contains information about the person it concerns, 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 Office for the Administration and Payment of Individual Entitlements of the European Commission 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 data [4] (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/EC [5] (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].

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].

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 Regulation [8].

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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.

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).

The requested documents contain personal data, namely information relating to an identified natural person in relation to various information relating to his mission, 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'.

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 person it concerns.

In the *Nowak* judgment [9], 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 official during the mission in question is information which, by reason of its content, is linked to particular natural person. 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 information [10]. In the present case, a clear link to an identifiable person remains, since your request focuses on one identified member of the senior management and to the mission costs' this member incurred. Consequently, it is not possible to redact the name or surname of the natural person it concerns, and only leave the breakdown of the costs, as the whole information continues to relate to the natural person indicated in your request.

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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.

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 mission of a member of the 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.

I note that your request does not concern documents where the name of the person concerned is merely mentioned, but documents containing personal data, which are intrinsically connected with this 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 the Commissioners. 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 individual concerned during the mission being information relating to an identified natural person constitutes indeed personal data.

[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 Lauermann (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.

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 a Commission staff member 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.

The names [14] of the person 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 person 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.

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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.

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

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 [15]. 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.

You refer to Article 5 of Regulation (EU) 2018/1725 and argue that '[…] the requested processing is lawful in the sense that the data was collected to fulfil various tasks established by law. These include the financial management, control, and auditing of the expenses, and also the proactive publication of the expenses as required by the Code of Conduct with the aim of ensuring transparency and accountability to the European public'. In your view, '[r]esponding to access to documents requests 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.'

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, for whom the Code of Conduct for the Members of the European Commission applies. While the individual to whom you refer occupies indeed a senior post within the European public administration, his status is not the same as the status of Commissioners. 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.

[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.

The travel costs of Commission staff members are regulated by Articles 11-13 of Annex VII to the Staff Regulations [16] 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 available [17]. 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.

You also 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. Therefore, a request for access to information, which would result in greater transparency of a Union institution – PMO as part of the Commission in this case – is in and of itself a specific purpose in the public interest.'

The recital 28 of Regulation (EU) 2018/1725[20] refers to the elements that the recipients established in the Union other than Union institutions and bodies would have to

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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.

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.'

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 a senior Commission official, 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 receiving the requested documents. You indicate that the 'pursuance of transparency of travel expenses 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 are exercising public power and spending public funds in a responsible and appropriate manner. Even more specifically, the request is designed to permit us and others, including anti-corruption civil society organisations and investigative journalists, to act as public watchdogs. This is something that [Access Info] has pursued and achieved over the course of the past five years of work on EU-level travel expenses, in addition to our wider track record during well over 13 years promoting transparency as a tool for defending human rights, fighting corruption, and promoting participation. Furthermore, requests such as this one made via the AsktheEU.org website, the data becomes available to all members of the European (and indeed the global) public for them to exercise their rights to participation, to engage in public debate, and to hold public bodies accountable.'

You further argue that '[s]uch transparency is particularly in the public interest at the present time, in a political context of rising Euroscepticism and with it an ongoing debate about the role and functions of those in the Commission, as well as more broadly about the salaries and expenses payments made by European taxpayers to public officials in Brussels. Basic information such as the spending of public funds, with details on how the funds are used, is essential to ensure an informed and accurate debate about the way in which Brussels functions.

This request aims to contribute directly and specifically to that public debate, sharing, as we have done in the past, such information in order to broaden and deepen understanding of the use of public funds in Brussels, and hence to provide greater legitimacy to the work of the European Commission'.

As a civil society organisation, Access Info Europe (that maintain present website) plays a watchdog role akin to that of journalists in line with the European Court of Human Rights jurisprudence on access to information.[7] There is therefore a legitimate interest in publishing information about the use of public funds – this request forms part of that line of enquiry – and we warrant similar protection as the press.[8].The denial of this request would adversely affect ability to exercise this 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 our right to freedom of expression and information in Article 11 of the Charter of Fundamental Rights of the EU, which is analogous to Article 10 of the European Convention on Human Rights'.

As a preliminary remark, I would like to draw attention to the fact that the above-mentioned argumentation was developed and is relevant for Access Info Europe. It developed this argumentation in its capacity as a non-governmental organisation whose main field of activity is the right of access to information. You yourself indicate that you will follow the arguments developed by Access Info Europe and its reasoning in your confirmatory application. However, the same arguments would not necessarily be of the same relevance for you, in your capacity as a citizen.

Furthermore I note that article 2(1) of Regulation (EC) No 1049/2001, 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 Commission [21]. 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.

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

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 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 P [24], 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 to which you refer. 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.

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

23 *Ibid*, paragraph 90.

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.

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.

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,

CERTIFIED COPY
For the Secretary-General,

Jordi AYET PUIGARNAU
Director of the Registry
EUROPEAN COMMISSION

For the Commission
Ilze JUHANSONE
Secretary-General