EUROPEAN COMMISSION

Brussels, 8.10.2025
C(2025) 6913 final

Nikolaj Nielsen

DECISION OF THE EUROPEAN COMMISSION PURSUANT TO ARTICLE 11 OF THE DETAILED RULES FOR THE APPLICATION OF REGULATION (EC) NO 1049/2001, ANNEXED TO THE RULES OF PROCEDURE OF THE COMMISSION[1]

Subject: Your confirmatory application for access to documents under Regulation (EC) No 1049/2001 – EASE 2025/1146

Dear Mr Nielsen,

I refer to your e-mail of 25 March 2025, registered on the same day, wherein you submit a confirmatory application in accordance with Article 7(2) of Regulation (EC) No 1049/2001 regarding public access to European Parliament, Council and Commission documents[2] ('Regulation (EC) No 1049/2001').

Please accept our apologies for the delay in the handling of your request.

1. SCOPE OF YOUR REQUEST

In your initial application of 26 February 2025, registered on the same day, you requested access to the following documents, I quote:

'[…] I am writing to request, under the provisions of Regulation (EC) No 1049/2001 regarding public access to documents, and in line with the European Union's commitment to transparency, information concerning the expenses incurred by [the person concerned by this request] during her visits to Israel.

Specifically, I request the following details:

[1] Commission Decision (EU) 2024/3080 of 4 December 2024 establishing the Rules of Procedure of the Commission and amending Decision C(2000) 3614 (OJ L, 2024/3080, 5.12.2024, ELI: http://data.europa.eu/eli/dec/2024/3080/oj).

[2] OJ L 145 of 31.5.2001, p. 43.

- A detailed breakdown of all expenses incurred, including but not limited to:
    - Flights (including the cost, class of travel, and airline used)
    - Hotel accommodations (including the cost per night and the name of the hotel)
    - Any other expenses (transport, meals, etc.)
- The purpose of the visit to Israel, including the date(s) of travel and the specific Israeli official(s) involved.
- The name of the entity and/or institution that paid for those costs.'

In its reply to your initial application, dated 24 March 2025, the Office for the Administration and Payment of Individual Entitlement ('PMO') informed you that it could not confirm the existence of any documents falling under the scope of your request, as any identification of documents covered by your request is prevented by Regulation (EU) 2018/1725 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[3] ('Regulation (EU) 2018/1725').

In your confirmatory application of 25 March 2025, you request the Commission to review the decision of the PMO.

Your arguments will be addressed in more detail in the corresponding sections below.

2. ASSESSMENT AND CONCLUSIONS UNDER REGULATION 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 or Service concerned at the initial stage.

Following this review, the Secretariat-General regrets to inform you that it can neither confirm nor deny the existence of documents held by the Commission and falling within the scope of your request as such a confirmation or denial would be tantamount to a breach by the Commission of the Community legislation regarding the protection of personal data.

Indeed, as already explained by the PMO in its reply to your initial application, information about the existence of documents falling within the scope of an application for access to documents which is formulated in such a way that it relates to an identified or identifiable natural person, and identification of such documents, if any, reveals information relating to that identified or identifiable natural person, which constitutes processing of personal data within the meaning of the relevant provisions of Article 3 of Regulation (EU) 2018/1725.

In this respect, please note that Regulation (EC) No 45/2001 was repealed on 11 December 2018 by Regulation (EU) 2018/1725, which now governs the processing of natural persons' personal data by the Union institutions, bodies, offices and agencies.

[3] 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, OJ L 295, 21.11.2018, p. 39–98.

Nevertheless, the relevant case law remains applicable to the interpretation of Regulation (EU) 2018/1725.

Article 3(1) of Regulation (EU) 2018/1725 provides that personal data 'means any information relating to an identified or identifiable natural person […]'. Further to this, the Court of Justice has also confirmed in the case *Rechnungshof*[4] that 'there is no reason of principle to justify excluding activities of a professional […] nature from the notion of private life.'

In your confirmatory application, you argue that '[f]inancial information of public official is not "personal data"'. You state that '[p]ublic officials performing their duties have a lower expectation of privacy regarding official expenses' and that '[f]inancial information related to public functions is not inherently "personal data"'. In support of your claim that financial information of public officials is not personal data, you mention the cases '*De Capitani v. European Parliament* (T-540/15, 2018)[5]' and '*Bavarian Lager* (C-28/08 P, 2010)[6]', as well as the 'Ombudsman case 682/2014/JF (2016)[7]'.

Please first note that in the case *VG* v *European Commission*[8], the General Court confirmed that 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 person 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.

It follows that any information that would relate to accommodations, transportation, and other expenses, as well as invitations sent to a specific person, is to be considered personal data.

Furthermore, in the *Nowak*[9] judgment, 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.

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4 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.

5 Judgment of the General Court of 22 March 2018, *Emilio De Capitani* v *European Parliament*, T-540/15, EU:T:2018:167.

6 Judgment of the Court of Justice of 29 June 2010, *European Commission* v *The Bavarian Lager Co. Ltd*, C-28/08, EU:C:2010:378.

7 Decision of the European Ombudsman of 19 December 2017, Decision in case 682/2014/JF on the European Commission's requirement that persons who ask for public access to documents provide their postal address.

8 Judgment of the General Court of 27 November 2018, *VG* v *European Commission*, Joined Cases T-314/16 and T-435/16, EU:T:2018:841, paragraph 64.

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.

In this sense, information about costs, incurred by Commission officials during missions is information which, by reason of its content, is linked to particular natural persons.

In addition to this, please also note that the person concerned by this request, while being an official of the European Commission, is not part of the management of the Commission. In your confirmatory application, you first refer to the case *De Capitani*[10] in support of your claim that financial information of public officials is not personal data. Kindly note that this case concerned the exception of the first subparagraph of Art. 4(3) of Regulation (EC) No 1049/2001 and the question of the existence of a general presumption of non-disclosure of the fourth column of tables from ongoing trilogues. The question of data protection was therefore not approached in this case, and it is unclear how it would support your point regarding financial information of public officials.

In your confirmatory application you also refer to the case *Bavarian Lager*[11] to argue that financial information of public officials is not personal data. You state that in this case '[t]he ECJ ruled that personal data protection cannot be used as an absolute ground for refusal when a strong public interest justifies disclosure'.

Please note that in *Bavarian Lager*[12], the documents requested were minutes of meetings where the names of five participants had been redacted by the Commission in order to protect their personal data. The Court of Justice confirmed that surnames and forenames may be regarded as personal data[13] and agreed with the Commission's decision to redact these names in order to comply with the data protection obligations of Regulation No 45/2001[14]. The Secretariat-General can therefore not agree with the conclusions you have drawn from the *Bavarian Lager*[15] judgement.

Finally, you also refer to the Ombudsman case 682/2014/JF[16] in support of your claim that financial information of public officials is not personal data. Please note that this Ombudsman case relates to the Commission's requirement that persons who ask for public access to documents provide their postal address. As the case does not mention financial information of public officials, the Secretariat-General cannot agree with the conclusions you have drawn from the Ombudsman's decision.

According to Article 9(1)(b) of Regulation (EU) 2018/1725, personal data shall only be transmitted if the recipient establishes 'that it is necessary to have the data transmitted for a specific purpose in the public interest'[17]. As the data controller, the institution is not required to verify the need for transferring personal data by itself.

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10 Judgment of the General Court of 22 March 2018, *Emilio De Capitani* v *European Parliament*, T-540/15, EU:T:2018:167.

11 Judgment of the Court of Justice of 29 June 2010, *European Commission* v *The Bavarian Lager Co. Ltd*, C-28/08, EU:C:2010:378.

12 Ibid.

13 Ibid, paragraph 68.

14 Ibid, paragraph 76.

15 Ibid.

16 Decision of the European Ombudsman of 19 December 2017, Decision in case 682/2014/JF on the European Commission's requirement that persons who ask for public access to documents provide their postal address.

17 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.

Only once the recipient has established the necessity for transmission, must the institution assess whether the data subject's legitimate interests might be prejudiced and, in the affirmative, ensure that the transmission is proportionate after weighing the 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 your confirmatory application you claim that there are three public interest grounds according to which you should obtain the data contained in the documents in question.

You first argue that '[t]he current conflict in Gaza has heightened public scrutiny regarding EU diplomatic engagement with Israel, particularly with regard to its position on humanitarian issues, human rights, and foreign policy decisions. [The person concerned by this request's] meetings with Israeli authorities must be transparent, as her role may influence EU policy towards Israel, Jewish communities, and the broader geopolitical landscape' and that '[t]he EU's stance on Israel's actions in Gaza has been subject to international debate. Who [the person concerned by this request] met with, the nature of the discussions, and the funding behind these visits are directly relevant to understanding the EU's diplomatic priorities'.

Secondly, you argue that '[d]isclosing who financed these trips is essential to ensure there is no undue influence from Israeli authorities or third parties on EU policy'.

Finally, you claim that '[t]ransparency regarding high-level officials' visits is necessary for public trust. The principle of transparency in public expenditure is a well-established legal norm within EU jurisprudence. The European Courts and the European Ombudsman have consistently held that financial information pertaining to public officials in their official capacity should be subject to disclosure, as it does not fall within the scope of personal data protections when weighed against public interest'.

In support of your claim for public interest in foreign policy transparency, you refer to the cases 'C-280/11 *Access Info Europe* (2013)', 'T-233/09 *Dennekamp v. European Parliament* (2011)', and 'T-214/11 *ClientEarth v. EFSA* (2015)'.

In relation to the case *Access Info Europe*[18] you claim that 'The Court ruled that access to documents related to EU foreign relations is crucial for democratic accountability and public debate. The judgment emphasized that public institutions must not deny access without proving that disclosure would cause concrete harm.'

Please note that in *Access Info Europe*[19] the document in question was a legislative document containing proposals for amendments. In comparison, the scope of your request relates only to administrative documents which would concern the person concerned by this request personally. Furthermore, in that case, the refusal to disclose names of Member States was not based on the data protection exception, but instead on the first subparagraph of Article 4(3) of Regulation (EC) No 1049/2001. This case, and the conclusions drawn from it by the Court of Justice, are therefore not comparable to the case at hand.

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18 Judgment of the Court of Justice of 17 October 2013, *Council of the European Union* v *Access Info Europe*, C-280/11, EU:C:2013:671.

19 Ibid.

Regarding case 'T-233/09 *Dennekamp v. European Parliament* (2011)' you claim that 'The General Court confirmed that EU citizens have the right to scrutinize the financial accountability of high-level officials when public funds are involved.'

Please first note that the case number 'T-233/09' does not correspond to the case of *Dennekamp v European Parliament,* but instead to the case *Access Info Europe*[20] at first instance. Furthermore, please note that there are two cases with the title '*Dennekamp v European parliament*': case T-115/13[21] and case T-82/09[22]. Based on the fact that you mention the year 2011, we assume that you are referring to the *Dennekamp* case with the case number T-82/09, whose judgement was issued on 23 November 2011[23].

Please note that in this case the General Court found that there was a risk that the privacy and integrity of MEPs might be undermined as a result of the disclosure of the names. The General Court therefore clearly weighed the privacy of the MEPs' data as being higher than the right to scrutinise the financial accountability of high-level officials. Furthermore, please note that MEPs are publicly elected officials who have voluntarily chosen to be in the public eye and for which therefore a lower threshold of data privacy might apply. Such is, however, not the case for the person concerned by this request, who is neither a publicly elected official nor part of the management of the Commission and for whom a higher threshold of privacy must therefore apply.

In relation to the case *ClientEarth v. EFSA*[24], you claim that 'The Court held that public interest in transparency regarding decision-making overrides individual privacy concerns, especially in matters affecting public policy.'

Please note that in this case, the General Court held that the names of the experts in relation to the comments had to be protected, even though their names were disclosed on the EFSA website. The General Court also decided that general considerations of transparency are not sufficient to justify the transfer of data. It is therefore unclear how this case supports your argument that 'public interest in transparency regarding decision-making overrides individual privacy concerns, especially in matters affecting public policy'.

With regard to the public interests you have invoked in your confirmatory application, please first note that these interests, namely the EU's diplomatic priorities, ensuring that there is no undue influence by Israeli authorities on EU policy, and transparency regarding high-level officials, are very broad and of general wording and do not establish in themselves the need for the transfer of personal data in question[25].

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20 Judgment of the General Court of 22 March 2011, *Access Info Europe* v *Council of the European Union*, T-233/09, EU:T:2011:105.

21 Judgment of the General Court of 15 July 2015, *Gert-Jan Dennekamp* v *European Parliament*, T-115/13, EU:T:2015:497.

22 Judgment of the General Court of 23 November 2011, *Gert-Jan Dennekamp* v *European Parliament*, T-82/09, EU:T:2011:688.

23 Ibid.

24 Judgment of the General Court of 13 September 2013, *ClientEarth and Pesticide Action Network Europe (PAN Europe)* v *European Food Safety Authority*, T-214/11, EU:T:2013:483.

25 Judgment of the General Court of 25 September 2018, *Maria Psara and Others* v *European Parliament*, joined cases T-639/15 to T-666/15 and T-94/16, EU:T:2018:602, paragraph 74.

Moreover, in your confirmatory application, you have also not demonstrated whether the transmission of the data requested was the most appropriate measure, among the other possible measures, to achieve the specific interests you pursue.

In that regard, please note that the General Court in *Psara*[26] held that an institution 'cannot be criticised for not having deduced from such objectives, expressed in such broad and general terms, an express demonstration of the need to transfer those personal data. A contrary view would oblige the institution, as a matter of principle, to infer from general considerations relating to the public interest in the disclosure of personal data that the necessity for the transfer of those data has, by implication, been established.'

Please also note that in *Dennekamp*[27], the General Court held that relying on the the right to information and on the right to freedom of expression in order to justify the necessity of having the personal data transferred is not sufficient to establish that the transfer is the most appropriate of the possible measures for attaining the objective or that it is proportionate to that objective.

Therefore, as regards the justification of your request for having the personal data concerned transmitted to you, in the Secretariat-General's opinion, the above mentioned arguments do not demonstrate the necessity for transmission of these personal data, as the Secretariat-General does not find the purpose of this transmission in the public interest to be sufficiently specific, as required by Article 9(1)(b) of Regulation (EU) 2018/1725.

Please note that even if the necessity of the transfer had been established based on the arguments you have put forward in your confirmatory application, *quod non,* there are reasons to assume that processing the data related to the person concerned by this request would prejudice the data subject's legitimate interests.

This requirement must lead the EU institution or body in receipt of the application to refuse to transfer the personal data if it is found that there is reason to assume that the data subject's legitimate interests would be prejudiced[28].

Furthermore, there is a real and non-hypothetical risk that the processing data of the person concerned by this request and its public disclosure would harm their privacy and subject them to unsolicited external contacts.

Moreover, when assessing the risk of the legitimate interests, it is important to take the current environment and context into account. In the present case, due to the current situation and the ensuing tensions, there is a real and non-hypothetical risk that publicly disclosing the requested information, in particular concerning hotel accommodations, could bring about a risk to the person concerned by this request's physical security.

Finally, in your confirmatory application, you argue that you should be sent documents as, 'even if certain details (e.g., security arrangements or personal identification numbers) are deemed sensitive, a full refusal is disproportionate'.

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26 Ibid, paragraphs 75 and 76.

27 Judgment of the General Court of 15 July 2015, *Gert-Jan Dennekamp* v *European Parliament*, T-115/13, EU:T:2015:497, paragraph 81.

28 Ibid, paragraph 117.

You state that '[t]he principle of proportionality requires the Commission to provide at least a partial disclosure of the requested information' and that '[r]edacting specific personal data while releasing financial details and meeting records would be a lawful and balanced approach'

In this regard, and for the reasons explained above, the Secretariat-General reiterates that providing you with information about the existence, or not, of documents falling within the scope of your application, which is formulated in such a manner that it refers to an identified individual, would equal to an unlawful processing and an unlawful transmission of the personal data concerned, which would prejudice the legitimate interests of that individual, protected by Regulation (EU) 2018/1725.

3. MEANS OF REDRESS

Finally, I draw your attention to the options available for challenging this decision. You may institute proceedings against the Commission before the General Court[29] or submit a complaint to the Ombudsman[30]. The conditions for doing so are laid down in Articles 263 and 228 of the Treaty on the Functioning of the European Union.

Yours sincerely,

For the Commission
Ilze JUHANSONE
Seretary-General

CERTIFIED COPY
For the Secretary-General

Martine DEPREZ
Director
Decision-making & Collegiality
EUROPEAN COMMISSION

[29] For deadlines and other procedural requirements concerning the institution of proceedings at the General Court, please refer to the following page: http://curia.europa.eu/jcms/jcms/Jo2_7040/en/.

[30] Any complaint to the Ombudsman must be made within two years of receiving the Commission's final position on the matter. The Ombudsman's online complaint form is available at: https://secure.ombudsman.europa.eu/en/atyourservice/secured/complaintform.faces.