



EDPS
EUROPEAN DATA PROTECTION SUPERVISOR

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LCN/LP/tt D(2022) 0990 C 2022-0289
Please use edps@edps.europa.eu for all correspondence

Subject: Your request for access to documents under Regulation (EC) 1049/2001

Dear Mr Breyer,

On 04.03.2022, you sent an access to documents request to the European Data Protection Supervisor ("EDPS") based on Regulation (EC) No 1049/2001, which we registered on the same day. On 08.03.2022, we sent you an acknowledgement of receipt for your request also mentioning the deadline in accordance with Article 7(1) of Regulation (EC) 1049/2001. On 24.03.2022 the EDPS informed you that due to the large amount of documents, the EDPS would not be in a position to respond within the original time limit of 15 working days. We therefore decided to extend the time limit by 15 working days in accordance with Article 8(2) of Regulation (EC) 1049/2001.

Your request for access to documents concerns documents relating to "*the correspondence between the EDPS and the European Parliament on plans to introduce a biometric attendance register*". You also stated that EDPS should not "*send correspondence before 2021*".

The EDPS has identified the following documents falling within the scope of your request:

	DOC ID	DATE	NAME	SUBJECT
1	COO.6515.100.3.425026	29/03/2021	Copy of D(2021)0686	FW: Our ref.: 2020-0921 + 2021-0355 - D(2021) 0681
2	COO.6515.100.2.433764	19/07/2021	A(2021) 2677	INFORMATION ON THE ENVISAGED DATA PROCESSING REGARDING THE BIOMETRIC FINGERPRINTING OF MEPS AT THE EUROPEAN PARLIAMENT
3	COO.6515.100.2.438782	28/10/2021	Copy of A(2021) 3720	RE: INFORMATION ON THE ENVISAGED DATA PROCESSING REGARDING

				THE BIOMETRIC FINGERPRINTING OF MEPS AT THE EUROPEAN PARLIAMENT
4	COO.6515.100.3.439600	16/11/2021	Follow-up meeting EDPS-EP	Follow-up meeting EDPS-EP
5	COO.6515.100.2.443740	17/01/2022	RE: Draft minutes of meeting regarding biometric fingerprinting of MEPs (Cases 2020-0921 and 2021-0355)	RE: Draft minutes of meeting regarding biometric fingerprinting of MEPs (Cases 2020-0921 and 2021-0355)

The EDPS would like to note that document 2, 3, 4 and 5, falling within the scope of your request originated from a third party, the European Parliament (“EP”). We have consulted EP in accordance with Article 4(4) of Regulation (EC) No 1049/2001 in order to assess whether any of the exceptions in Article 4(1) and (2) would be applicable. The EP has indicated that according to their assessment:

“The extract of the Minutes of the meeting of the Bureau of 17 June 2019 is a publicly available document accessible via the public register of documents [https://www.europarl.europa.eu/RegData/organes/bureau/proces_verbal/2019/06-17/BUR_PV\(2019\)06-17_EN.pdf](https://www.europarl.europa.eu/RegData/organes/bureau/proces_verbal/2019/06-17/BUR_PV(2019)06-17_EN.pdf).

Therefore, we do not oppose to its disclosure.

Concerning the other categories of documents identified (i.e. minutes of preparatory meetings, email exchanges, data protection impact assessment- DPIA), it is our assessment that they cannot be disclosed under Regulation (EC) No 1049/2001 since they fall within the exceptions laid down in Article 4.

Firstly, access to documents should be refused based on the exception related to the protection of the public security, pursuant to the first indent of point (a) of Article 4(1), since the documents contain detailed information about the structure, the functioning, the weaknesses and the protective elements of the signature-, badge-, and fingerprint-based attendance register systems, which makes it easier to exploit them.

Secondly, pursuant to Article 4(2), the disclosure would undermine the protection of the purpose of inspections, investigations and audits. In this regard, in accordance with the Financial Regulation and, in particular, Articles 36(1), 74(2) and 98(5), the authorising officers may carry out checks on the record of attendance to verify whether the amounts defrayed in relation to the daily subsistence allowance have been deployed in compliance with the applicable rules. In addition, the disclosure of the documents object of your consultation would also undermine the protection of the purpose of the ongoing EDPS investigation.

Thirdly, all relevant documents falling within this request contain opinions for internal use as part of deliberations and preliminary consultation within Parliament. Their disclosure would seriously undermine Parliament’s decision-making process. Therefore, access should be refused pursuant to Article 4(3) of the regulation, as it appears that an overriding public interest in disclosure in the present case is lacking.

Fourthly, some extracts of the documents are partially covered by the exception relating to the protection of the privacy and the integrity of the individual (point (b) of Article 4(1) of Regulation (EC) No 1049/2001), as they contain the names of the officials involved in the biometrics file. The conditions for transfer to third parties of personal data are jointly established by Articles 5 and 9 b) of this Regulation (EU) 2018/1725. Accordingly, personal data are only to be transmitted to recipients if they establish that it is necessary to have the data transmitted for a specific purpose in the public interest. In the current application, the conditions set under Regulation (EU) 2018/1725 are not met since the applicant did not establish the necessity of the transmission of

the personal data for a specific purpose.

For all the above reasons, our position is not to disclose the documents object of your consultation, with the exception of the Minutes of the meeting of the Bureau of 17 June 2019 which is a document already publicly available, since they are covered by the above-mentioned exceptions of Regulation (EC) No 1049/2001.”

EDPS Assessment of the documents

The EDPS has examined specifically each one of the documents in order to assess whether disclosure was possible. Following this assessment, we concluded that more than one exception of those listed in Article 4 of Regulation (EC) 1049/2001 apply to a number of documents in scope, as it will be explained hereafter.

The EDPS has concluded that Article 4(2) third indent, of Regulation (EC) 1049/2001 (*“protection of the purpose of inspections, investigations and audits”*) applies to the totality of all documents as they are currently part of an open EDPS investigation, and thus, that any disclosure of the documents at this stage of the investigation will seriously undermine its outcome. Following this conclusion, and in line with Regulation (EC) 1049/2001, we have examined whether there could be an overriding public interest in disclosing the documents, but have not been able to identify such an interest.

Furthermore, we have concluded that Article 4(1) (a), first indent, of Regulation (EC) 1049/2001 (*“protection of the public interest as regards of public security”*) also applies to documents 2 and 5 from the table above. In particular, the documents contain information relating to (i) structure, functionalities, processes, access rights, security measures, etc. of an ICT system in the process of development that will be used by the EP and (ii) detailed description of processes, access rights, security measures currently used by the EP in its day-to-day work. This information, if disclosed, will seriously threaten the security of EP day-to-day operations and thus will endanger the proper functioning of the organisation¹.

Finally, the EDPS concluded that the exception of Article 4(1)(b) of Regulation (EC) 1049/2001 (*“privacy and the integrity of the individual”*) applies to the personal data in the documents in scope, as well as to other contextual information rendering the person(s) identifiable. Therefore, the information relating to the personal data of the sender(s)/recipient(s) cannot be disclosed.

We would like to note that in accordance with Article 4(6) of Regulation (EC) 1049/2001, the EDPS has considered the possibility of granting you partial access to the documents identified. With regards to documents 1, 3, 4 and 5, taking into account the exceptions for disclosure under Articles 4(1) (a) and (b) and Article 4(2) third indent of Regulation (EC) 1049/2001, the EDPS has concluded that no meaningful partial access is possible without undermining the purpose of the protection of the public interest as regards of public security, the protection of the personal data of those concerned and protection of purpose of inspections, investigations and audits. Regarding document 2, the EDPS would like to inform you, that pages 115-122 of the document in question are already publicly available and can be found at [https://www.europarl.europa.eu/RegData/organes/bureau/proces_verbal/2019/06-17/BUR_PV\(2019\)06-17_EN.pdf](https://www.europarl.europa.eu/RegData/organes/bureau/proces_verbal/2019/06-17/BUR_PV(2019)06-17_EN.pdf).

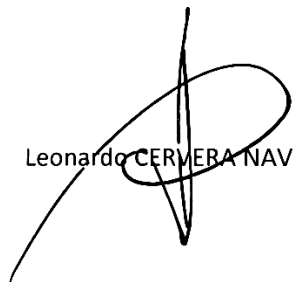
Therefore, we regret to inform you that we cannot provide you with access to the documents falling within the scope of your request, with the exception of the parts of the publicly available parts of document 2.

¹ See judgement in case T-174/95, Svenska Journalistförbundet v Council

Remedies

Please note that pursuant to Article 7(2) of Regulation (EC) No 1049/2001, you may submit a confirmatory application asking the EDPS to reconsider his position as regards the total or partial refusal of your request. Such a confirmatory application should be submitted within 15 working days upon receipt of this letter to the EDPS general e-mail: edps@edps.europa.eu.

Yours sincerely,



Leonardo CERVERA NAVAS

Data Protection Notice

According to Articles 15 and 16 of Regulation (EU) 2018/1725 (the Regulation) 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, we are processing your personal data, where proportionate and necessary, for the purpose of answering your request. The legal base for this processing operation is Regulation (EC) 1049/2001 and Article 52(4) of the Regulation (EU) 2018/1725. Subject to applicable rules under EU legislation, the personal data relating to you, as provided in your request as well as personal data that might be collected while processing your request, are used solely for the purpose of replying to your request. EDPS staff members dealing with the request will have access to the case file containing your personal data on a need-to-know basis. All access to case files is logged. Your personal data are not disclosed outside the EDPS. Your personal data will be stored electronically for a maximum of ten years after the closure of the case, or as long as the EDPS is under a legal obligation to do so. You have the right to access your personal data held by the EDPS and to relevant information concerning how we use it. You have the right to rectify your personal data. Under certain conditions, you have the right to ask that we delete your personal data or restrict its use. We will consider your request, take a decision and communicate it to you. For more information, please see Articles 14 to 21, 23 and 24 of the Regulation. Please note that in some cases restrictions under Article 25 of the Regulation may apply. Any request to exercise your rights should be addressed to the EDPS at edps@edps.europa.eu. You may contact the data protection officer of the EDPS (EDPS-DPO@edps.europa.eu), if you have any remarks or complaints regarding the way we process your personal data. You have the right to lodge a complaint with the EDPS, as supervisory authority. Any such request should be addressed to the EDPS at edps@edps.europa.eu. You can reach the EDPS in the following ways: E-mail: edps@edps.europa.eu; EDPS postal address: European Data Protection Supervisor, Rue Wiertz 60, B-1047 Brussels, Belgium. For more information, please refer to the extended version of the data protection notice available on the EDPS website: https://edps.europa.eu/data-protection/our-work/publications/other-documents/requests-access-documents_en.