



EUROPEAN COMMISSION  
SECRETARIAT-GENERAL

The Secretary-General

Brussels,  
SG.B.4/MF/rc - sg.dsg2.b.4(2014)2703787

Sent by registered mail:

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**Subject: Your application for access to documents - Ref. GestDem 2014/2007**

Dear Ms Pop,

I refer to your e-mail dated 10 June 2014, registered on 11 June 2014, in which 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<sup>1</sup> ("Regulation 1049/2001").

In your initial application of 6 April 2014, addressed to the Directorate-General for Human Resources (DG HR), you had requested access to *[d]ocuments which contain the following information: [t]he salaries, travel and other expenses paid out to the Commissioners and Commission President Jose Manuel Barroso for the years 2012 and 2013.*

**1. SCOPE OF YOUR REQUEST**

The Commission has identified the following documents as falling under the scope of your request:

- the salary slips of the Commissioners and of the Commission President for the years 2012 and 2013;
- the declarations of mission costs and representation expenses of the Commissioners and of the Commission President for the years 2012 and 2013.

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<sup>1</sup> Official Journal L 145 of 31.5.2001, p. 43.

Through its initial reply of 3 June 2014, DH HR (Office for the Administration and Payment of Individual Entitlements - PMO):

- provided a table setting out, for the years requested, the overall costs of mission and representation expenses of all Commissioners, including President Barroso;
- drew your attention to the information about the Commissioners published on the EUROPA website<sup>2</sup>, which also includes an overview of their financial entitlements<sup>3</sup> (but without any personal data);
- refused access to the documents requested, based on the exception of Article 4(1)(b) of Regulation 1049/2001 (protection of the privacy and integrity of the individual).

Through your confirmatory application you request a review of this position. You argue that *[s]urely the travel, accommodation, daily subsistence allowances and "other expenses" related to the Commissioners' missions can be disclosed in a way that doesn't compromise their privacy, and that [you are] asking for these documents because this is public money and as a journalist [you are] interested to see how this money was spent. You state that [t]he same should apply to representation costs, and that [i]t should be possible to see what these costs consist of, even without disclosing the name of the Commissioner.*

## **2. ASSESSMENT AND CONCLUSIONS UNDER REGULATION 1049/2001**

When assessing a confirmatory application for access to documents submitted pursuant to Regulation 1049/2001, the Secretariat-General conducts an independent review of the reply given by the Directorate-General concerned at the initial stage.

Following this review, I regret to inform you that I have to confirm the refusal of DG HR to provide access to the documents requested, based on the exception of Article 4(1)(b) of Regulation 1049/2001 (protection of the privacy and integrity of the individual).

Article 4(1)(b) of Regulation 1049/2001 provides that access to documents is refused where disclosure would *undermine the protection of privacy and integrity of the individual, in particular in accordance with Community legislation regarding the protection of personal data.*

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<sup>2</sup> <http://ec.europa.eu/commission/2010-2014>

<sup>3</sup> [http://ec.europa.eu/commission/2010-2014/pdf/entitlements\\_en.pdf](http://ec.europa.eu/commission/2010-2014/pdf/entitlements_en.pdf)

In its judgment in the *Bavarian Lager* case<sup>4</sup>, the Court of Justice ruled that when a request is made for access to documents containing personal data, the Data Protection Regulation 45/2001<sup>5</sup> ("the Data Protection Regulation") becomes fully applicable.

Article 2(a) of the Data Protection Regulation provides that '*personal data*' shall mean any information relating to an identified or identifiable person. As the Court of Justice confirmed in case C-465/00 (*Rechnungshof*)<sup>6</sup>, there is no reason of principle to justify excluding activities of a professional [...] nature from the notion of "private life". The salary slips and the declarations of mission expenses and representation costs requested by you therefore clearly constitute personal data in the meaning of Article 2(a) of the Data Protection Regulation.

In accordance with Article 8 (b) of Regulation 45/2001, personal data shall only be transferred to recipients if the necessity to disclose the personal data has been established and there is no reason to assume that the legitimate rights of the persons concerned might be prejudiced. These conditions are cumulative.

As the Court has also explained, if the applicant does not provide any express and legitimate justification in order to demonstrate the necessity for the personal data to be transferred, the Commission cannot weigh up the interests, and the request must therefore be refused.<sup>7</sup>

In the present case, I note that you have not put forward any arguments to substantiate a need to obtain these personal data. However, I acknowledge that there can be an interest, by members of the public, in obtaining assurance that the public funds concerned are correctly spent.

I have therefore decided to make available to you newly compiled tables reflecting respectively, for each Commissioner, the mission and representation costs reimbursed in 2012 and 2013<sup>8</sup>. Please find a copy of these tables annexed.

I consider that these tables and the aggregate data referred to above, to which you were already granted access at the initial stage, combined with the existence of thorough and well-defined control and audit mechanisms<sup>9</sup> applicable to the expenses concerned, are sufficient to provide such assurance. The total amount for both categories of expenditure (missions and

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<sup>4</sup> Judgment of 29 June 2010, C-28/08 P

<sup>5</sup> 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, Official Journal L 8 of 12.1.2001, p. 1.

<sup>6</sup> Paragraph 73.

<sup>7</sup> Judgment of 29 June 2010, C-28/08 P, para. 77-78,

<sup>8</sup> Please note that these are newly created documents to respond to your request for information in accordance with the Code of Good Administrative Behaviour. They therefore fall outside the scope of Regulation 1049/2001, which only concerns *existing* documents.

<sup>9</sup> As defined in the Guide to Missions for officials and other servants of the Commission, the Financial Regulation and its Rules of Application, completed by the rules of the Code of Conduct for Commissioners.

representation) remains within the overall spending ceiling authorised by the budget authorities for commissioners for official purposes. Indeed, each cost statement and request for reimbursement of representation expenses is individually checked prior to payment, and non-eligible expenditure, which falls outside of the existing legislative framework, is not reimbursed. Each individual expenditure is authorised on the basis of the most economic option, taking into account the diplomatic and official requirements associated with these events.

Revealing the personal data to which you request access would not bring any additional assurance in this respect.

Furthermore, it cannot be assumed that the disclosure of the personal data would not prejudice the legitimate rights of the Commissioners concerned. To the contrary, there is a real and non-hypothetical risk that, should these documents be disclosed, personal information on the Commissioners would be revealed (for example hotels in which they usually stay, the length of time they spend away from their respective homes, private addresses) that could harm their privacy or security.

Finally, I would like to recall that, in order to satisfy the requirements of Regulation 45/2001, the personal data to which you request access can be accessed only by authorised Commission staff members and can be shared only for financial or administrative purposes.

Therefore, in accordance with Article 4(1)(b) of Regulation 1049/2001, access to the documents requested has to be refused, as they reflect personal data for which the need for public disclosure has not been substantiated, and it cannot be assumed that the disclosure of the personal data would not prejudice the legitimate rights of the individuals concerned.

### **3. NO PARTIAL ACCESS**

In accordance with Article 4(6) of Regulation 1049/2001, I have considered the possibility of granting partial access to the document requested. However, for the reasons explained above, no meaningful partial access (going beyond the aggregated figures provided to you by DG HR/PMO at the initial stage) is possible without undermining the interests described above.

Consequently, I have come to the conclusion that the documents requested are covered in their entirety by the invoked exception to the right of public access.

Furthermore, an initial estimate reveals that your request covers a very large number of documents, for which the implementation of partial access would engender a disproportionate administrative burden. For instance, to satisfy the part of your request relating to mission cost declarations, some 1 129 mission cost declarations would have to be examined (with personal data such as names, addresses, telephone numbers, electronic contact details having to be redacted in accordance with Article 4(1)(b) of Regulation 1049/2001) for the year 2013, and an expectedly similar number for the year 2012.

The administrative burden would be clearly disproportionate to the possible interest in obtaining the redacted documents, especially in light of the existence of comprehensive information on Commissioners' entitlements and their overall mission and representation costs, to which you have been granted access.

#### **4. MEANS OF REDRESS**

Finally, I would like to draw your attention to the means of redress that are available against this decision, that is, judicial proceedings and complaints to the Ombudsman under the conditions specified respectively in Articles 263 and 228 of the Treaty on the Functioning of the European Union.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Catherine Day', with a stylized flourish at the end.

Catherine Day

Enclosures (3): tables setting out the mission and representation costs per Commissioner in the years 2012 and 2013