



EUROPEAN COMMISSION  
SECRETARIAT-GENERAL

The Secretary-General

Brussels,  
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**Sent by registered mail:**

Ms Helen DARBISHIRE  
Access Info Europe  
Calle Cava de San Miguel 8, 4c  
28005 Madrid  
SPAIN

Copy by e-mail:  
[helen@access-info.org](mailto:helen@access-info.org)

**DECISION OF THE SECRETARY GENERAL ON BEHALF OF THE COMMISSION PURSUANT TO  
ARTICLE 4 OF THE IMPLEMENTING RULES TO REGULATION (EC) N° 1049/2001<sup>1</sup>**

**Subject: Your confirmatory application for access to documents under Regulation  
(EC) No 1049/2001 - GESTDEM 2014/2324**

Dear Ms Darbshire,

I refer to your e-mail dated 26 June 2014, registered on 27 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>2</sup> ('Regulation 1049/2001').

**1. SCOPE OF YOUR REQUEST**

In your initial application of 6 May 2014, you had requested access to "[d]ocuments which provide detail on the amounts paid in: i) salaries, ii) travel costs and travel expenses, [and] iii) other expenses to each of the EU Commissioners and to Commission President Jose Manuel Barroso for the years 2012 and 2013".

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

<sup>1</sup> Official Journal L 345 of 29.12.2001, p. 94.

<sup>2</sup> Official Journal L 145 of 31.5.2001, p. 43.

- The salary slips of the Commissioners and of the Commission President for the years 2012 and 2013 (part 1);
- The mission costs and representation expenses of the Commissioners and of the Commission President for the years 2012 and 2013 (part 2).

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 travel (official mission) expenses and representation expenses of all Commissioners, including President Barroso;
- drew your attention to the information about the Commissioners published on the EUROPA website<sup>3</sup>, which also includes an overview of their financial entitlements<sup>4</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 underpin your request with detailed arguments, which I will address 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 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/PMO to provide access to these documents, based on the exception of Article 4(1)(b) of Regulation 1049/2001 (protection of the privacy and integrity of the individual).

I am pleased to inform you, however, that in addition to the overall costs of travel (official mission) expenses and representation expenses of all Commissioners, including President Barroso, the Commission is now providing in annex the breakdown of these expenses per Commissioner for the years 2012 and 2013, as you requested.

Please note that these documents were created by the Commission on the basis of your above request and thus fall outside the scope of Regulation 1049/2001. However, in the interest of transparency and under the Code of Good Administrative Behaviour you are now granted access to this information. I consider that this information addresses the second part of your

<sup>3</sup> <http://ec.europa.eu/commission/2010-2014>

<sup>4</sup> [http://ec.europa.eu/commission/2010-2014/pdf/entitlements\\_en.pdf](http://ec.europa.eu/commission/2010-2014/pdf/entitlements_en.pdf)

request. However, as regards your request for access to the specific documents (mission declarations) submitted by the Commissioners in 2012 and 2013, I regret to inform you that this request has to be denied.

My above conclusions are based on the following considerations:

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*".

In your confirmatory application you argue that public disclosure of the documents requested would not undermine the privacy and integrity of the individuals concerned within the meaning of Article 4(1)(b) of Regulation 1049/2001, since public disclosure of the salaries and travel expenses reimbursed to each Commissioner "*are directly linked to their public function*". In your view, given that the entitlement figures are already available, the information on what was actually paid would not harm privacy and integrity of the persons concerned and that "*the principles of transparency and openness in the EU Treaties require that the remuneration of a public official can never be considered purely private because it is paid with tax money and there is a duty of accountability towards the public*". You note further that the mission expenses cannot be considered personal data and that there is a lot of information on the work of the Commissioners and the travel they undertake, so the only information that is missing is how much these activities cost.

I would like to inform you in this regard that both the salary slips and the declarations of mission expenses and representation costs clearly constitute personal data of the latter in the sense of Article 2(a) of Regulation 45/2001<sup>5</sup>. I refer to the initial reply provided by DG HR/PMO and I confirm the latter's conclusion to that effect.

Article 2(a) of Data Protection Regulation 45/2001<sup>6</sup> ('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>7</sup>, there is no reason of principle to justify excluding activities of a professional [...] nature from the notion of "*private life*".

Therefore, in accordance with the *Bavarian Lager* ruling<sup>8</sup>, when a request is made for access to documents containing personal data, the Data Protection Regulation becomes fully applicable. This means that 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 requested 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.

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<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> 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>7</sup> Paragraph 73.

<sup>8</sup> Judgment of 29 June 2010, C-28/08 P

As regards the first condition you substantiate your request by referring to Article 15 TFEU and Regulation 1049/2001 and the need for "*maximum possible transparency in the spending of public funds. This includes transparency around the use of public funds, which is what this request is about*". In light of the ongoing debate about the role and functions of the Commissioners, you see a legitimate public interest in obtaining this information and according to you the Commission should thus process and transfer the data in question. You add that "*having accurate and detailed information of the expenses per Commissioner enables [Access Info] and [your] civil society partners to carry out [your] watchdog function*" and that once you receive the information you "*will disseminate it to the media and civil society, as fulfilment of your role in advancing transparency and facilitating public accountability*" and "*in providing support to journalistic investigations into the amounts spent per Commissioner*". You finally make a parallel with the gifts register of the Commission and the fact that information on gifts received over a value of 150 EUR is available and broken down by Commissioners, who are also specifically named. On this basis, you consider that the Commissioner's mission and representation expenses should be made public in the same way.

While I understand and subscribe fully to transparency as regards the financial entitlements relating to EU Commissioners, I note that whilst your arguments underpin your interest in obtaining the documents requested, they do not substantiate a need to obtain the documents. I acknowledge that there can be an interest, by members of the public, in obtaining assurance that the public funds concerned are correctly spent.

However, I would like to recall that the Commission has already proactively disclosed on the EUROPA website an overview of the Commissioners' entitlements, without any personal data, specifying the basic salary of the Commissioner and the level of taxation applied, as well as their residence allowance, monthly allowance for representation expenses, financial entitlements on leaving office and retirement pension. You have also been granted a table detailing the overall costs of missions and representation expenses of all the Commissioners, including the Commission President, for the years requested. In addition, the Commission is providing in annex the breakdown of mission and representation expenses per Commissioner for the years 2012 and 2013.

I consider that the aggregate data referred to above and the elements joined in the annex, 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 the assurance sought. As part of these control mechanisms, 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. Disclosure of the documents requested would not bring any additional assurance in this respect.

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<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.

As regards the salary details of the Commissioners, I take the view that even aggregated figures (per year) reflect the personal and family situation (for example whether they have any dependent children) of the individuals concerned and thus constitute personal data. Therefore, providing such information would undermine their privacy and would be contrary to Article 4(1)(b) of Regulation 1049/2001.

I recall in this regard that Article 4(1)(b) pertaining to privacy and integrity of the individual is an absolute exception which does not require the institution to balance the exception defined therein against any possible public interest in disclosure.

As regards the second precondition to be fulfilled for disclosing personal data, I take the view that 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 their family composition, hotels in which they usually stay, the length of time they spend away from their respective homes, private addresses, or expenses falling within their personal sphere which are not reimbursed but which may appear on the bills annexed to the reimbursement claims) that could harm their privacy or security. Moreover, certain elements taken out of their context could also potentially be used to discredit the Commissioners concerned.

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.

Concerning your comment on the public disclosure of the gifts received by the Commissioners, I note that handing over the gifts over 150 EUR and listing them in the public register of gifts is required under the Code of Conduct for Commissioners<sup>10</sup>. In accordance with point 1.11 of the Code accepting gifts is only possible with diplomatic and courtesy usage. Therefore, public listing of such gifts is not a matter of personal data and revealing this information would not undermine the privacy of the Commissioners, since this is a question of diplomatic protocol and consequently the public register of gifts is maintained by the Commission's Protocol department.

Given that the Commission should ensure that both data protection and transparency obligations are equally respected and after having balanced the interests concerned, I conclude that the salary slips and individual mission expenses declarations cannot be disclosed, as they are covered by the exception of Article 4(1)(b) of Regulation 1049/2001. The fact that the salary details are directly related to Commissioner's public function does not invalidate this conclusion, since as noted above the jurisprudence confirmed that the notion of privacy extends to the workplace.

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<sup>10</sup> Available at: [http://ec.europa.eu/commission\\_2010-2014/pdf/code\\_conduct\\_en.pdf](http://ec.europa.eu/commission_2010-2014/pdf/code_conduct_en.pdf)

### **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.

### **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,



Catherine Day

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