



EUROPEAN COMMISSION

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DECISION OF THE SECRETARY GENERAL ON BEHALF OF THE COMMISSION PURSUANT TO ARTICLE 4 OF THE IMPLEMENTING RULES TO REGULATION (EC) N° 1049/20011

**Subject: Your confirmatory application for access to documents under
Regulation (EC) No 1049/2001 - GESTDEM 2015/5430**

Dear Ms Darbshire,

I refer to your e-mail of 4 December 2015, 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 documents² ('Regulation 1049/2001'). Finalising the reply to your application took more time than expected and I would like to apologise for that delay.

1. SCOPE OF YOUR REQUEST

In your initial application of 19 October 2015, dealt with by the Commission's Office for the Administration and Payment of Individual Entitlements (PMO), you requested access, under Regulation 1049/2001, to documents which contain information regarding *[t]he mission and representation costs (expenses) of the Commissioners in the current (Juncker) Commission from 1 November 2014 to 30 July 2015*. You explained that *[you are] interested in obtaining documents which will provide [you], inter alia and at a minimum, with a sufficient level of detail to be able to ascertain how much was spent by*

¹ Official Journal L 345 of 29.12.2001, p. 94.

² Official Journal L 145 of 31.5.2001, p. 43.

each Commissioner on each mission they have undertaken (with details on travel, accommodation, refreshment, etc.) itemised by payment (in other words, the breakdown of the spending by invoice or bill). You also clarified that with regard to the representation costs, [you are] interested in knowing for each identified activity or event, the details of what was spent and for which items, broken down per invoice or bill paid.

2. INITIAL REPLY

Following an initial search for the documents requested, it appeared that your request relates to the information stored in the following categories of documents:

- (1) 1180 summary fiches relating to Commissioners' missions undertaken during the period 1 November 2014 to 30 July 2015,
- (2) 540 request for reimbursement of representation costs covering the above-mentioned period.

Through its reply of 13 November 2015, PMO:

- provided two tables setting out, for the period requested, (1) the mission expenses of each Commissioner and (2) the representation costs of each Commissioner³.

Both tables contain global figures, which encompass the travel costs, accommodation and daily subsistence costs, not subdivided, however, to specify the amount for each specific mission or event;

- explained that in order to provide the information with the requested level of detail, the Commission would have to process manually all the above-mentioned files. The reason provided was that the databases storing the above-mentioned files do not permit for extraction of the requested information through the automatic means. In consequence, an amount of work necessary to satisfy the request would be disproportionate to the interest served by disclosure⁴;
- refused access to any documents containing more detailed information on the basis of the exception of Article 4(1)(b) of Regulation 1049/2001 (protection of the privacy and integrity of the individual).

³ Ares(2015)5058328

⁴ Judgment of the Court of First Instance (First Chamber) of 19 July 1999 in case T-14/98, *Hautala v Council*, (ECLI:EU:T:1999:157), paragraph 86.

3. CONFIRMATORY APPLICATION AND THE PROPOSAL FOR THE FAIR SOLUTION

Through your confirmatory application, you request a review of the position of the PMO and underpin your request with detailed arguments. In particular, you question PMO's statement that, in order to satisfy your request, it would be necessary to individually assess all 1180 mission cost and 540 representation cost files.

As regards the mission costs, you argue that, *given that it was possible to extract very precise totals for the mission expenses, it does appear that this data is indeed held in a database* and there must be a possibility to extract a more detailed cost breakdown than that provided to you at the initial stage.

You employ a similar argumentation with regard to the representation costs. You argue that, given that the Commission was able to provide you with information regarding the total expenditure for each Commissioner, (...) *it does seem rather surprising that there is not a digitisation of such information*. In consequence, it should be possible to compile a more detailed breakdown of Commissioners' representation costs.

In its fair solution proposal of 18 April 2016, the Secretariat-General explained that it is true that, the files mentioned in PMO's initial reply are digitised to a certain extent as they form part of the respective IT databases (*MIPS* as concerns missions and *RepCost* for the representation costs), these databases do not include any search function enabling one to extract the requested data through a routine query⁵.

The Commission also clarified that, in case of *MIPS*, the information requested (i.e. the reimbursed cost of individual missions, including the corresponding cost components such as travel and accommodation costs) is reflected in the individual summary fiche for each mission. In case of the representation costs, only the global cost of each representation event is introduced into the *RepCost* database. The detailed cost components are included only in the underlying documentation such as bills and invoices, which are not digitised (i.e. not scanned nor uploaded into the database).

Taking into account the available search facilities, extraction of the requested data range would require developing specific scripts for that purpose or carrying out heavy, successive manipulations in order to filter out the requested information.

Consequently, in order to satisfy your request, it would be necessary to carry out a concrete and individual examination of 1180 mission summary fiches and 540 requests for reimbursement of representation costs, so as to assess the possibility of granting partial access thereto by redacting both the information that does not fall under the scope of your request (but is included in the above-mentioned documents) and personal data within the meaning of Regulation 45/2001. That would constitute an administrative burden

⁵ Judgment of the General Court of 2 July 2015, in case T-214/13, *Typke v Commission*, (ECLI:EU:T:2015:448), paragraph 56.

disproportionate to the interest served by the (partial) disclosure of the requested documents⁶.

In the light of the above, and in line with Article 6(3) of Regulation 1049/2001, the Commission proposed, in its above-mentioned letter of 18 April 2016, to narrow down the temporal scope of your request (i.e. 9 months, from 1 November 2014 until 30 July 2015) to a shorter timeframe (two weeks, whether consecutive or not). It explained that such a narrowed-down scope would cover a more manageable number of documents.

On 13 May 2016, you accepted that proposal, by narrowing down the timeframe of your request to the two-week period *from 27 April 2015 to Sunday 10 May 2015 inclusive*.

In the light of the above, the Commission has identified the following documents as falling under the scope of your confirmatory application:

- 1) 56 summary fiches corresponding to 56 missions undertaken by Commissioners during the period 27 April 2015 to Sunday 10 May 2015;
- 2) 35 reimbursement requests, covering the representation costs incurred by Commissioners during the above-mentioned period.

4. 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 a fresh review of the reply given by the Directorate-General concerned at the initial stage.

Following this review, I am pleased to inform you that wide partial access is granted to all 56 mission summary fiches⁷ and 35 reimbursement requests for representation costs.

The undisclosed parts of the documents:

- are either covered by the exception concerning protection of privacy and integrity of individual, provided for in Article 4(1)(b) of Regulation 1049/2001; or
- contain information falling outside the scope of your request.

The detailed explanations are provided below.

4.1. Protection of the privacy and integrity of the individual

Article 4(1)(b) of Regulation 1049/2001 provides that *[The institutions shall refuse access to a document where disclosure would undermine the protection of (...) privacy*

⁶ According to the detailed calculation included in the letter of 18 April 2016, in order to prepare the reply to your request, one full-time equivalent (FTE) would have to spend 83 full working days.

⁷ Please note that in case of 4 missions the corresponding pdf files contain two or more summary fiches. These additional summary fiches relate to the costs in supporting documents submitted after the settlement of the costs included in the 'main' summary fiche" or corrections for administrative errors.

and the integrity of the individual, in particular in accordance with Community legislation regarding the protection of personal data].

Personal data of the Commission staff members and third parties

The mission summary fiches contain the names, surnames and telephone numbers of Commission staff members. The reimbursement requests for representation costs include the names, surnames, office addresses, signatures and telephone numbers of Commission staff members, as well as the names and surnames of third parties such as persons providing services (e.g. external interpreters), or persons met or invited, together with the name of the organisation they represented and their position therein.

These are undoubtedly personal data in the meaning of Article 2(a) of Regulation 45/2001⁸, which defines it as *any information relating to an identified or identifiable natural person (...); an identifiable person is one who can be identified, directly or indirectly, in particular by reference to an identification number or to one or more factors specific to his or her physical, physiological, mental, economic, cultural or social identity.*

It follows that public disclosure of the above-mentioned information would constitute processing (transfer) of personal data within the meaning of Article 8(b) of Regulation 45/2001.

In accordance with the *Bavarian Lager* ruling⁹, when a request is made for access to documents containing personal data, the Regulation 45/2001 becomes fully applicable. According to Article 8(b) of that Regulation, personal data shall only be transferred to recipients if the recipient establishes the necessity of having the data transferred and if there is no reason to assume that the data subject's legitimate interests might be prejudiced. Those two conditions are cumulative.¹⁰ Only if both conditions are fulfilled and constitutes lawful processing in accordance with the requirements of Article 5 of Regulation 45/2001, can the processing (transfer) of personal data occur..

In that context, whoever requests such a transfer must first establish that it is necessary. If it is demonstrated to be necessary, it is then for the Institution concerned to determine that there is no reason to assume that that transfer might prejudice the legitimate interests of the data subject.¹¹

I would also like to bring to your attention the recent judgment in the *ClientEarth* case, where the Court of Justice ruled that “*whoever requests such a transfer must first*

⁸ 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.

⁹ Judgment of the Court (Grand Chamber) of 29 June 2010 in case C-28/08 P, *European Commission v the Bavarian Lager Co. Ltd.* (ECLI:EU:C:2010:378), paragraph 63.

¹⁰ Judgment of the Court (Grand Chamber) of 29 June 2010 in case C-28/08 P, *European Commission v the Bavarian Lager Co. Ltd.* (ECLI:EU:C:2010:378), paragraphs 77-78.

¹¹ Judgment of the Court of Justice of 16 July 2015 in case C-615/13P, *ClientEarth v EFSA*, (ECLI:EU:C:2015:489), paragraph 47.

*establish that it is necessary. If it is demonstrated to be necessary, it is then for the institution concerned to determine that there is no reason to assume that that transfer might prejudice the legitimate interests of the data subject. If there is no such reason, the transfer requested must be made, whereas, if there is such a reason, the institution concerned must weigh the various competing interests in order to decide on the request for access*¹². I refer also to the *Strack* case, where the Court of Justice ruled that the Institution does not have to examine by itself the existence of a need for transferring personal data¹³.

Neither in your initial, nor in your confirmatory application, have you established the necessity of disclosing any of the above-mentioned personal data.

Therefore, I have to conclude that the transfer of personal data through the disclosure of the requested documents cannot be considered as fulfilling the requirement of Regulation 45/2001 and in consequence, the use of the exception under Article 4(1)(b) of Regulation 1049/2001 is justified, as there is no need to publicly disclose the personal data included therein, and it cannot be assumed that the legitimate rights of the data subjects concerned would not be prejudiced by such disclosure.

Personal data of the Members of the College

Each individual mission summary fiche contains the name, surname, personal *id* number, unique identifier of the Cabinet, office address and telephone number of the relevant College Member. Every representation cost reimbursement request includes the name and surname of the relevant College Member. Some requests also include the Commissioner's private bank account number.

Contrary to what you argue in your letter of 13 May 2016, these are also personal data in the meaning of Article 2(a) of Regulation 45/2001, as defined above. Consequently, public disclosure of the above-mentioned information would constitute processing (transfer) of personal data within the meaning of Article 8(b) of Regulation 45/2001.

As mentioned above, in accordance with the *Bavarian Lager* ruling, when a request is made for access to documents containing personal data, Regulation 45/2001 becomes fully applicable. According to Article 8(b) of that Regulation, personal data shall only be transferred to recipients if the recipient establishes the necessity of having the data transferred and if there is no reason to assume that the data subject's legitimate interests might be prejudiced. Those two conditions are cumulative.¹⁴ Only if both conditions are fulfilled and constitutes lawful processing in accordance with the requirements of Article 5 of Regulation 45/2001, can the processing (transfer) of personal data occur. In this context, whoever requests such a transfer must first establish that it is necessary.

¹² Judgement of the Court of Justice of 16 July 2015 in case C-615/13P, *ClientEarth v EFSA*, (ECLI:EU:C:2015:489), paragraph 47

¹³ Judgment of the Court of Justice of 2 October 2014 in case C-127/13 P, *Strack v Commission*, (ECLI:EU:C:2014:2250), paragraph 106.

¹⁴ Judgment of the Court (Grand Chamber) of 29 June 2010 in case C-28/08 P, *European Commission v the Bavarian Lager Co. Ltd.* (ECLI:EU:C:2010:378), paragraphs 77-78.

In your confirmatory application, you point out that *[a]t issue here is the spending by public officials of public funds while on public business. Often the activities of the Commissioners is proactively published (...). The only additional information requested are the details of how much these activities cost.* I interpret your explanation to mean that the activities in questions (missions and representation) are financed through the public funds, the necessity of the transfer of the above-mentioned personal data is warranted by the general principle of transparency, i.e. the right of the general public to know the cost of these activities.

However, according to the *Dennekamp* judgment, if the condition of necessity laid down by Article 8(b) of Regulation No 45/2001, which is to be interpreted strictly, is to be fulfilled, it must be established that the transfer of personal data is the most appropriate means for attaining the applicant's objective, and that it is proportionate to that objective¹⁵.

I would like to emphasise in this respect that each individual mission summary fiche and request for the reimbursement of representation costs includes detailed information about, respectively, mission and representation costs. That information has not been redacted from the mission summary fiches and representation cost reimbursement requests, to which partial access is granted under this decision.

That anonymised financial information, together with the global figures released at the initial stage by PMO, therefore provides you with the appropriate level of detail regarding the costs in question in order for you to verify the way public money is spent. Therefore, I consider that the additional transfer of the requested personal data (i.e. the name of the Commissioner and other personal data), would go beyond what is necessary for attaining your objective, as this goal can be achieved without those data being transferred.

I conclude that the transfer of personal data in question through the disclosure of the non-redacted versions of the requested documents cannot be considered as fulfilling the requirement of Regulation 45/2001 and in consequence, the use of the exception under Article 4(1)(b) of Regulation 1049/2001 is justified, as there is no need to publicly disclose the personal data included therein, and it cannot be assumed that the legitimate rights of the data subjects concerned would not be prejudiced by such disclosure.

4.2. Information falling outside the scope of the request

The mission summary fiches to which you request access contains other information regarding a mission such as, for example, details regarding the documentation provided, the reimbursement limits applied in particular cases, etc. The reimbursement requests for representation costs include information about the date and place where the event or

¹⁵ Judgment of the General Court of 15 July 2015 in case T-115/13, *Dennekamp v European Parliament*, (ECLI:EU:T:2015:497), paragraph 77.

meeting to which the representation cost is linked was organised, the detailed nature of the event, etc.

As you initially requested to have access to documents which would provide you information *to be able to ascertain how much was spent by each Commissioner on each mission* [and representation cost] *they have undertaken*, I consider that the above-mentioned information falls outside the scope of your request.

5. OVERRIDING PUBLIC INTEREST IN DISCLOSURE

The exception laid down in Article 4(1)(b) of Regulation 1049/2001 is absolute exception, i.e. its applicability does not need to be balanced against overriding public interest in disclosure.

6. 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,

For the Commission
Alexander ITALIANER
Secretary-General

