



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 2016/4227**

Dear Ms Cann,

I refer to your e-mail of registered on 25 August 2016 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').

1. SCOPE OF YOUR REQUEST

In your initial application of 27 July 2016, dealt with by the Commission's Office for the Administration and Payment of Individual Entitlements (hereafter: PMO), you requested access to *documents which contain the following information:*

- *The total budget spent on transitional allowances for all former Commissioners since 1 November 2014,*
- *A breakdown of the total transitional allowance received by each former Commissioner since 1 November 2014.*

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

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

With regard to the first part of your request, in its initial reply of 11 August 2016, PMO provided information regarding the total budget spent on the transitional allowance of all former Commissioners during the period since 1 November 2014.

With regard to the second part of your request, PMO provided you the references to the legal acts laying down the provisions for calculation of the transitional allowance. It refused, however, to grant access to the figures corresponding to the individual allowances paid out to each of the respective (former) Commissioners. PMO explained that such information constitutes personal data within the meaning of Regulation 45/2001 and therefore its public disclosure is prevented by the privacy constraints linked to the exceptions provided for in Article 4 of Regulation 1049/2001.

In your confirmatory application, you request a review of this position as regards the amounts of the transitional allowance paid out to individual (former) Commissioners. You support your request by the series of arguments, including the detailed justification of the necessity of having the information transferred.

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

Following this review, I regret to inform you that I have to confirm the refusal of PMO, for the reasons set out below.

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

As PMO explained in its initial reply, the transitional allowance is calculated in line with the provisions of Regulation 422/67/EEC³. As laid down in Article 7 of that Regulation, the basic amount of the allowance is calculated as the percentage (provided for in the Regulation) of the basic salary, which is based, in turn, on the salary grid of EU officials included in the Staff Regulations. The basic allowance depends on the time the Commissioner concerned held his/her term of office. It is therefore possible to calculate the basic amount of the allowance paid out to a specific Commissioner on the basis of publically available information⁴.

³ Regulation No 422/67/EEC, 5/67/EURATOM of the Council of 25 July 1967 determining the emoluments of the President and members of the Commission and of the President, Judges, Advocates-General and Registrar of the Court of Justice and of the President, Members and Registrar of the Court of First Instance (OJ L 187, 8.8.1967, p. 1).

⁴ The Staff Regulations is public document. The information regarding Commissioners' terms of office is also in public domain.

However, after the basic amount of the transitional allowance has been established for a specific Commissioner, various adjustments are carried out depending on the specific entitlements of the (former) Commissioner linked to his/her personal situation, such as family allowances, educational allowances for dependent children, etc. as well as deductions linked to tax and sickness contributions.

The information requested under point (2) of your initial application, i.e. the amount of transitional allowance actually received by each former Commissioner, therefore reflects the personal situation of each former Commissioner. This very aspect clearly differentiates it from the information released following request 2015/5430⁵, to which you refer in your confirmatory application as a precedent for detailing the transitional allowance received by each Commissioner.

Indeed, in the case at hand, the transitional allowances actually received by each former Commissioner, calculated on the basis of his/her personal situation, need to be considered as personal data within the meaning of Article 2(a) of Regulation 45/2001, 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*.

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.

In accordance with the *Bavarian Lager* ruling⁶, 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.⁷ Only if both conditions are fulfilled and the processing 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.⁸

⁵ Under case 2015/5430 access was sought to the detailed information regarding mission and representation costs. The personal situation of the Commissioner does not have impact on this type of spending.

⁶ 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.

⁷ 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.

⁸ 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

According to the *Dennekamp* judgement, 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 objective⁹.

In your confirmatory application, you point out that *there is a genuine necessity for this information to be released*. In your view, *[w]ithout this information, no assessment of whether or not the transitional allowance is effective in preventing conflicts of interest and in reinforcing the ongoing duty (...) is possible*. You further argue that *[a]ny assessment of [transitional allowance] effectiveness has to be based on specific information about who has received what*.

You also underline in your confirmatory application that *[C]ommissioners are public figures who have chosen to expose themselves to scrutiny by third parties, particularly the media and general public*. In your opinion, this means that *they have generally already accepted that some of their personal data will be disclosed to the public*. You conclude that *[your] request would involve only very limited transfer of data and it would not reveal other information such as the new income subsequently received (or even their precise salary whilst commissioner)*. *It will simply provide information about the transitional allowance received, as paid out of EU funds*.

Please note in this respect that the global amount of transitional allowances paid out to all (former) Commissioners has been provided to you in PMO's initial reply. Furthermore, as already explained, the basic amount of the transitional allowance paid out to an individual (former) Commissioner can be considered as publicly known, as it can be calculated with reasonable accuracy based on the information available in public domain.

In my view, the above-mentioned pieces of information provide a sufficient basis for carrying out the assessment to which you refer in your confirmatory application.

In the light of the above, I consider that the transfer of the requested personal data (i.e. the transitional allowances actually received by each former Commissioner), would go beyond what is necessary for attaining your objective, as this goal can be achieved without those data being transferred.

I conclude therefore that the transfer of personal data in question through the disclosure of the requested information cannot be considered as fulfilling the requirements of Regulation 45/2001. In consequence, the use of the exception under Article 4(1)(b) of Regulation 1049/2001 is justified, as there is no demonstrated need to publicly disclose the personal data included therein, and there is no reason to assume that the legitimate rights of the data subjects concerned would not be prejudiced by such disclosure.

⁹ Judgement of the General Court of 15 July 2015 in case T-115/13, *Dennekamp v European Parliament*, (ECLI:EU:T:2015:497), paragraph 77.

3. NO 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 an overriding public interest in disclosure.

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,



For the Commission
Alexander ITALIANER
Secretary-General