



EUROPEAN COMMISSION

Brussels, 20.7.2017
C(2017) 5273 final

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

Email:
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° 1049/2001¹

Subject: Your confirmatory application for access to documents under Regulation (EC) No 1049/2001 – Gestdem 2017/4129

Dear Ms Darbshire,

I refer to:

- the *Access Info Europe* on-line campaign on Commissioners' travel expenses (<https://www.access-info.org/commissioners-expenses> launched on 25 January 2017. Through that campaign, access was requested, under Article 6(1) of Regulation 1049/2001 regarding public access to European Parliament, Council and Commission documents² ('Regulation 1049/2001'), to individual cost statements relating to all missions carried out by the Members of the Commission in 2016;
- your corresponding confirmatory application under Article 7(2) of Regulation 1049/2001 of 13 March 2017, contesting *inter alia* the lack of an initial reply.

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

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

1. SCOPE OF YOUR REQUEST

In each of the 196 separate parts of the above-mentioned campaign, received between 25 January 2017 and 28 February 2017, access was requested:

[...]under the same circumstances and with the same arguments put forward in requests GESTDEM 2016/5975, 2016/6006, 2016/6010, 2016/6050, [...] to the following documents:

The travel expenses of Commissioner [...], for the [two-month] period [...], as contained in the relevant mission summary fiches/settlement of mission expenses.

Taken together, these separate parts would cover, for each of the 28 Commissioners, the period from 1 January 2016 until 31 December 2016.

The Secretariat-General of the Commission sent you a first holding reply on 15 February 2017. As the request concerned a very large number of documents, we subsequently sent you, on 27 February 2017, a proposal for a fair solution in the meaning of Article 6(3) of Regulation 1049/2001. On 8 June 2017, as the treatment of the request took more time than expected, we sent you a second holding reply, inviting you to post it on the *Access Info Europe* website.

1.1. Proposal for a fair solution

In the above-mentioned proposal for a fair solution of 27 February 2017, the Commission invited you to narrow down the scope of your request to a two-month period of your choice in 2015 or 2016.

Indeed, as explained in that proposal for a fair solution, it was the first time that the Commission received such a large number of similarly worded 'requests', on a similar subject matter, during such a short period of time (the majority of the requests were submitted during the first three days of the campaign).

The proposal for a fair solution therefore explained that, due to the large number of documents falling under the scope of the request, it would not be possible to handle the request within the statutory deadlines provided for in Regulation 1049/2001. In this context, we provided a detailed calculation regarding the estimated workload (in terms of number of working days) required for every step of the process.

You rejected that proposal by message of 9 March 2017, *inter alia* maintaining your request that the Commission cover the full, 12-month scope of the campaign.

1.2. Consequence of the failure to reach a fair solution: unilateral restriction of the scope of your request

Article 6(3) of Regulation 1049/2001 states that, *in case of an application relating to a very long document or to a very large number of documents, the institution may confer with the applicant informally, with a view to finding a fair solution.*

However, as the Court recently confirmed in its recent *Strack* judgment³, in case such a fair solution cannot be reached, the institution has a right to unilaterally restrict the scope of the application to an amount of documents that can be handled within the statutory deadlines. Indeed, as stated by the Court, *it flows from the principle of proportionality that the institutions may, in particular cases in which the volume of documents for which access is applied or in which the number of passages to be censured would involve an inappropriate administrative burden, balance the interest of the applicant for access against the workload resulting from the processing of the application for access in order to safeguard the interests of good administration.*

Thus, an institution may, in exceptional circumstances, refuse access to certain documents on the ground that the workload relating to their disclosure would be disproportionate as compared to the objectives set by the application for access to those documents. However, reliance on the principle of proportionality cannot allow the time-limits laid down by Regulation No 1049/2001 to be changed without creating a situation of legal uncertainty.

Furthermore, in its *Ryanair* judgment⁴, the General Court⁵ confirmed that Article 6(3) may not be evaded by splitting an application into several, seemingly separate, parts.

As stated by the Court in the above-mentioned case law, the Commission needs to respect the principle of proportionality and ensure that *the interest of the applicant for access is balanced against the workload resulting from the processing of the application for access in order to safeguard the interests of good administration.*

Accordingly, and in line with the earlier replies already provided on the same subject matter, the Commission has decided to restrict the temporal scope of the 'requests', taken together as one, to the months of January and February 2016. This balances the interest of the applicant for access against the workload resulting from the processing of the application for access and, in so doing, safeguards the interests of good administration. The above-mentioned temporal scope (January-February 2016) corresponds to the one relied on in the context of your earlier access request on the same subject, relating to Commissioner Jourová's mission cost statements.

Against this background, the following documents have been identified:

257 summary cost statements relating to the missions effected during the period 1 January 2016 – 29 February 2016 by the President, Vice-Presidents and Commissioners then in office.

³ Judgment of the Court of 2 October 2014 in Case C-127/13, *Guido Strack v Commission*, ECLI:EU:C:2014:2250, paragraphs 27-28.

⁴ Judgment of the General Court of 10 December 2010 in Case T-494/08, *Ryanair v Commission*, ECLI:EU:T:2010:511, paragraph 34.

⁵ Then 'Court of First Instance'.

1.3. Your wish that the Commission deal with all 196 parts of the campaign separately

In your above-mentioned message of 9 March 2017, you insisted that the Commission deal with all 196 parts of your campaign, to which you referred as 'individual applications', separately.

I would like to recall in this respect that, through the above-mentioned campaign launched on 25 January 2017, *Access Info Europe* invited citizens via a dedicated website to submit, under Regulation 1049/2001, parts of its request for access to individual mission cost statements of all Commissioners, presented to the Commission as (pre-prepared) individual 'initial applications'.

By 28 February 2017, the Commission had received 196 such 'requests' (including 28 duplicates), the large majority of which were launched in the first three days of the campaign). Each of these 'requests' covered the mission cost statements relating to the missions carried out by a given Commissioner during a two-month period.

From your above-mentioned correspondence with the Secretariat-General, I understand that you consider that those 196 'requests' should be registered and replied to separately. However, as clearly transpires from the above-mentioned website and from your correspondence with the Commission and its services, these 'requests' are undoubtedly part of a campaign. The objective of that campaign seems to be, to obtain more proactive publication of information about Commissioners' mission costs by the Commission.

Indeed, the specific campaign website which *Access Info Europe* set up for that purpose, entitled *Our campaign to make transparent the travel expenses of EU Commissioners*, states that: *Citizens have a right to know how public funds are spent, yet until recently the travel costs for official trips by EU Commissioners was not public. Access Info has now won the right to access this information! Help us get all travel expenses of all EU Commissioners for 2016 by submitting a request.*

In this context, it is also important to note that, in December 2016 and January 2017, *Access Info Europe* had already received mission cost statements regarding six Commissioners (President Juncker, First Vice-President Timmermans and Commissioners Oettinger, Cañete, Stylianides, Jourová), following earlier requests for access to documents submitted (with the exception of one request) by *Access Info Europe*⁶.

Following the Commission's positive reply to the latter requests, *Access Info Europe*:

⁶ Under reference numbers *GestDem* 2016/5975, 2016/5981, 2016/6006, 2016/6010 (this request was not submitted by *Access Info Europe* but was sent from an e-mail address generated by *Access Info Europe*'s website *Ask the EU*, and is therefore publicly accessible on the latter website) and 2016/6050.

- contacted the Commission's Secretariat-General (unit B4) on 20 December 2016, making reference to one of those earlier access requests, and asking whether, in the event that other people would submit similar requests, they would receive a similar reply;
- launched the above-mentioned campaign on 25 January 2017, inviting citizens to submit, via dedicated website, pre-prepared initial requests for access under Regulation 1049/2001 to individual Commissioners' mission cost statements for 2016;
- sent, in parallel, a letter to First Vice-President Timmermans, on 31 January 2017, calling for pro-active publication of detailed information regarding Commissioners' mission expenditure. I am responding separately and in parallel to this letter.

Indeed, you split your current request into several quasi-simultaneous requests, articulated in such a way that, taken together, they cover a far wider scope than each of the above-mentioned earlier requests, both in terms of content and temporal scope⁷. Your wide-scope request, misleadingly presented as separate 'applications', thereby trying to evade the requirements of Article 6(3) of Regulation 1049/2001, covers all Commissioners' mission cost statements relating to missions carried out in 2016 and potentially amounts to thousands of documents.

2. THE COMMISSION'S ASSESSMENT UNDER REGULATION 1049/2001

Following the Commission's assessment, wide partial access is granted to all 257 mission summary fiches identified (covering all Commissioners' missions in January and February 2016, except those of Commissioner Jourová, for which the summary fiches were already released following your above-mentioned earlier request).

Please find copies of the documents annexed. You may reuse the documents requested free of charge for non-commercial and commercial purposes, provided that the source is acknowledged and that you do not distort the original meaning or message of the document. Please note that the Commission does not assume liability stemming from the reuse.

As was the case for the Commission's replies to the above-mentioned earlier requests, the undisclosed parts of the documents:

- are either covered by the exception concerning protection of privacy and the integrity of the individual, provided for in Article 4(1)(b) of Regulation 1049/2001, as explained below; or

⁷As mentioned on your website: 'We launched our crowd-sourced Commissioner Travel Expenses Campaign on Thursday 26 January 2016. Via the click of a button, citizens are able to send 168 requests for the spending of all 28 Commissioners for two month periods in 2016.'

- contain information falling outside the scope of your request, i.e. going beyond the requested information *to be able to ascertain how much was spent by each Commissioner on each mission [and representation cost] they have undertaken.* Consequently, this additional information (such as such as details regarding the documentation provided, the reimbursement limits applied in specific cases, etc.) has also been redacted.

The mission summary fiches contain the names, surnames and telephone numbers of Commission staff members not holding senior management positions, or of external individuals.

These are undoubtedly personal data in the meaning of Article 2(a) of Regulation 45/2001⁸. 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 the recent judgment in the *ClientEarth* case, the Court of Justice ruled that *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. 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*⁹. 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 data¹⁰.

In your application, you do not establish the necessity of having the data in question transferred.

Furthermore, based on the information available, it cannot be presumed that the legitimate interests of the individuals concerned would not be prejudiced by the release of the personal data concerned.

Therefore, 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 in question, and it cannot be assumed that the legitimate rights of the data subjects concerned would not be prejudiced by such disclosure.

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 16 July 2015, *ClientEarth v EFSA*, C-615/13P, EU:C:2015:489, paragraph 47.

¹⁰ Judgment of 2 October 2014, *Strack v Commission*, C-127/13 P, EU:C:2014:2250, paragraph 106.

3. PARTIAL ACCESS

As explained above, the access which is granted is partial access in the meaning of Article 4(6) of Regulation 1049/2001. No further access is possible without undermining the interests referred to above.

4. NO OVERRIDING PUBLIC INTEREST IN DISCLOSURE

The exception provided for in Article 4(1)(b) of Regulation 1049/2001 does not require any assessment of the possible existence of an overriding public interest in disclosure.

5. 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.

I would be grateful if you would post this decision on the *Access Info Europe* website, in order to allow all interested parties in the campaign to take note of it.

Yours sincerely,

For the Commission
Alexander ITALIANER
Secretary-General

<p>CERTIFIED COPY For the Secretary-General,</p> <p>Jordi AYET PUIGARNAU Director of the Registry EUROPEAN COMMISSION</p>
--

