

To the attention of:

Ms Luisa Izuzquiza
Access Info Europe
Email: luisa@access-info.org

Vienna, 16 January 2018
Ref: 2018-outgoing-000032

Subject: Access to documents request - Travel expenses of FRA Director Michael O'Flaherty - reference number 2018-outgoing- 000001.

Dear Ms Izuzquiza,

We are contacting you in relation to your request registered on 04/01/2018 with reference number 2018-outgoing- 000001.

As indicated in our email communication of 04/01/2018, the Agency requested that you submit your request using the Agency's website online form or to provide your postal address. This enables the FRA to ensure that requests are made in a precise manner and contain, in particular, sufficient elements to enable the FRA to identify that the applicant is a citizen or resident of the Union (Article 2 (1) - Beneficiaries and Scope - Regulation No 1049/2001).

Contrary to what was discussed over the telephone earlier on the same day (04/01/2018) where explanations why the postal address is required and where you agreed to provide this information, in your follow up response you submitted a confirmatory application.

In accordance with the Regulation No 1049/2001, the Agency does not consider your confirmatory application to be a valid one.

When handling access to documents requests, the Agency follows closely the good practices of the European institutions. Therefore, it would like to reiterate the same points as provided in the DG NEAR response on the asktheeu.org website available under: https://www.asktheeu.org/en/request/correspondence_between_johannes#incoming-15450

In particular, the request of the postal address does not constitute a violation of Regulation (EC) 1049/2001 for the following reasoning:

- a. The need to obtain legal certainty as regards the date of receipt of the reply by the applicant under Regulation 1049/2001. Indeed, as foreseen by Article 297 of the Treaty on the Functioning of the European Union (TFEU), [...] decisions, which specify to whom they are addressed, shall be notified to those to whom they are addressed and shall take effect upon such notification. Replies triggering the possibility for administrative or judicial redress are therefore transmitted via registered mail with acknowledgement of receipt. This requires an indication of a valid postal address by the applicant;

- b. The need to direct the Agency's scarce resources first of all to those requests, which have been filed by "real" applicants. With only a compulsory indication of an e-mail address, applicants can easily introduce requests under an invented identity or under the identity of a third person. Asking for a postal address helps the Agency to protect the administration, as well as other citizens and legal persons, from abuse;
- c. For similar reasons, asking for a compulsory indication of a postal address enables the Agency services to verify whether Article 6(3) of the Regulation, on voluminous requests, is being evaded by introducing several requests under different identities. The Agency would like to point out that, in 2012/2013 it received numerous requests from suspects being one single applicant operating under 4 or more different identities; When it challenged the admissibility of a compliant case on the grounds of a valid postal address when that was brought to the Ombudsman, the case was closed by the Ombudsman.
- d. Knowing whether the applicant is an EU resident in the sense of Article 2(1) of Regulation 1049/2001 is a precondition for the purpose of correctly applying the exception in Article 4(1)(b) of Regulation 1049/2001 (protection of the privacy and integrity of the individual), which has to be interpreted in accordance with Data Protection Regulation 45/2001. Article 9 of Regulation 45/2001 requires the adequacy of the level of protection afforded by the third country or international organisation when transmitting personal data to third-country residents or legal persons. It follows that, in case of requests for documents, which include personal data, the correct application of the data protection rules cannot be ensured in the absence of a postal address enabling the Agency to ascertain that the minimum data protection standards will be respected.

All of these considerations show that the request for and the consequent processing of a postal address is not only appropriate, and from a transparency principle point of view correct, (a key principle for your organisation), but also strictly necessary for the performance of a task carried out in the public interest within the meaning of Article 5 (a) of Data Protection Regulation 45/2001, namely providing a smooth and effective access to documents.

The Agency has been applying this approach since mid-2013, because of numerous problems encountered by the Agency in its previous practice like false identities used and legal uncertainty. This approach was adopted following the practices of the Court of Justice who ask for the address in their respective electronic forms for access to documents requests.

Furthermore, the Agency would like to note that you followed a different approach towards the Agency, in comparison to the one used towards the Commission services. In the case of the Agency not only did you consider to submit a confirmatory application but you also:

- a) used social media means to negative label the practices of Agency which are completely identical to the ones used by other EU institutions, including the Commission and the Court of Justice
- b) proceeded, contrary to what was agreed on a telephone discussion on the same day when you contacted the Agency, in another manner without informing the Agency first, a practice that raises ethical considerations on the way you treat different organizations differently

However, based on your response to the European Commission, DG NEAR, under https://www.asktheeu.org/en/request/correspondence_between_johannes#inco

[ming-15450](#) we consider that you provided the requested postal address within the meaning of Regulation 1049/2001. In this context please find below a response to your application.

In your application, you request access to the following:

“Under the right of access to documents in the EU treaties, as developed in Regulation 1049/2001, I am hereby requesting access to the travel expenses of FRA Director Michael O’Flaherty, for the period 1 January 2016 to 31 December 2016 inclusive.

I am looking for documents that contain, for each of the trips, the following information:

- Place of origin and destination, and the amount spent on travel or transportation
- Exact dates and duration of the trip;
- Amount spent on accommodation;
- Amount spent on subsistence;
- Other information, such as possible miscellaneous costs.

If the travel was by air taxi and a team of people were travelling, please also provide documents with details on the other travellers (at a minimum, names and job titles).”

Having carefully analysed your application, FRA established that your application concerns the following documents:

1. Mission Status Report

Having examined your application, the Agency would like to inform you about the following conclusions:

I. Full disclosure:

Full access can be granted to document 1. Please find the document attached to this letter.

Redress mechanism

In case you would disagree with the assessment, you are entitled, in accordance with Article 7(2) of Regulation 1049/2001, to make a confirmatory application requesting the FRA to review its position. Such a confirmatory application should be addressed within 15 working days upon receipt of this email to FRA: documents@fra.europa.eu

The Agency would like to take this opportunity and mention that any future access to documents requests should be submitted via the Agency’s online form (<https://fra.europa.eu/en/about-fra/register-of-documents/application-for-access-to-documents>) for the reasons mentioned above.

Yours sincerely,

Signed

Constantinos Manolopoulos
Head of Corporate Services