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Secretariat-General

Directorate B - Institutional and Administrative Policies
SG.B.4-Transparency

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By registered mail:
Ms Helen Darbshire

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

Dear Ms Darbshire,

I refer to your email of 4 December 2015, through 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 documents¹ ('Regulation 1049/2001'). I also refer to the holding replies of 4 and 26 January 2016.

The internal consultations, mentioned in the holding reply of 26 January 2016, took more time than initially expected and I would like to apologise for that delay.

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 the 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 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*.

¹ Official Journal L 145 of 31.5.2001, p. 43.

As mentioned in the reply provided by PMO on 13 November 2015, the above-mentioned information is included in 1180 mission and 540 representation costs summary fiches.

It is true that, as you point out in your confirmatory application, these files are indeed digitalised to a certain extent, i.e. the relevant information is introduced into the appropriate IT databases (*MIPS* as concerns missions and *RepCost* for the representation costs), by means of which the Commission processes mission and representation costs. In case of *MIPS*, the information requested (i.e. the total reimbursed cost of individual missions, including the corresponding cost components such as travel and accommodation costs) is included in the individual summary fiche for each mission. In case of 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 digitalised (i.e. not scanned or uploaded into the database). The above-mentioned databases do not include search functions allowing to extract the requested data through a routine query.

Indeed, the available search facilities do not provide the possibility to define search criteria that would enable the requested information to be extracted, without developing specific scripts for that purpose or carrying out heavy, successive manipulations in order to filter out the requested information. In consequence, in order to satisfy your request, it would be necessary to carry out concrete and individual examination of 1180 mission and 540 representation cost summary fiches aimed at granting partial access thereto by redacting the information that does not fall under the scope of the request (but is included in the above-mentioned documents) or information which constitutes personal data within the meaning of Regulation 45/2001.

Each mission summary fiche contains personal data of the Commissioners, such as the name, surname, telephone number, office address and job Id reference number. In case of representation costs summary fiches, beside Commissioner's name and surname, also the individual bank account number is provided. 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* ruling², 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.³ Only if both conditions are fulfilled, can the processing (transfer) of personal data be considered as compliant with the requirement of lawfulness provided for in Article 5 of Regulation 45/2001.

² Judgment of the Court (Grand Chamber) of 29 June 2010, *European Commission v the Bavarian Lager Co. Ltd.*

³ Judgment of the Court (Grand Chamber) of 29 June 2010, *European Commission v the Bavarian Lager Co. Ltd.*, paragraphs 77-78.

With regard to the necessity of having the data transferred, you refer, in your confirmatory application, to the issue of *spending by public officials of public funds while on public business*. You seem to wish to demonstrate, with this argument, that the disclosure (transfer) of the personal data in question is justified by need to control the appropriate use of public funds. This justification is rather general and does not seem sufficient to consider that the need to have the personal data transferred has been established.

The representation costs summary fiches contain also personal information regarding external individuals such as names, surnames and positions of persons met, identification of the place of the meeting, as well as names, surnames, signatures and contact details of the Commission administrative staff (involved in the preparation of the fiches). Those personal data fall outside the scope of your request and would have to be redacted.

Granting partial access to the individual 1180 mission and 540 representation costs summary fiches would therefore require a major workload constituting a disproportionate administrative burden. The below calculation illustrates the estimation of workload linked to the preparation of the redacted versions of these documents, based on the human resources necessary for the following steps in the treatment of your initial requests:

1. Registration of the confirmatory application and internal attribution: 2 working days
2. Gathering preliminary contributions and consultations of the relevant services (PMO, President's Cabinet) regarding the line to be taken: 4 working days,
3. Preparation of the redacted version of 1180 missions and 540 representation costs fiches: 61 working days:
 - identification and listing of the individual fiches and representation costs files falling under the temporal scope of the request: 2 minutes per document,
 - extraction and printing: 2 minutes per document,
 - in depth scan of the document's content: 5 minutes per document,
 - Redaction of the information falling out of the scope of your request and personal data: 8 minutes per document.
4. Double-checking of the final verification of the documents to be released: 2 working days,
5. Preparation of the draft text of the reply: 3 working days,
6. Consultation of the relevant services (PMO) regarding the draft text: 1 working day,
7. Approval of the reply by the Legal Service: 4 working days,
8. Formal approval by the Secretary General and dispatch of the reply: 6 working days.


In the light of the above, in order to prepare the reply to your request, one full-time equivalent (FTE) would have to spend 83 full working days.⁴

Therefore, I would like to propose that, in line with Article 6(3) of Regulation 1049/2001, the temporal scope of your request (i.e. 9 months, from 1 November 2014 until 30 July 2015) is narrowed down to a shorter timeframe of two weeks (consecutive or not). Such a narrowed-down scope would cover a more manageable number of documents including the preparation of the redacted versions thereof.

Could you please inform us, at your earliest convenience and in any case within ten working days, if the above-mentioned proposal is acceptable for you (and if so, which two weeks you would suggest we take into account), by e-mail to: SG-DOSSIERS-ACCES@ec.europa.eu.

If you have any questions further to this proposal, please feel free to contact me by phone: (32-2) 29 99559.

Yours sincerely,


Martin Kröger
Head of Unit

⁴ Please note that some time was already invested in the preliminary assessment of your request and in the preparation of this proposal for a fair solution. These come on top of the 83 working days referred to above.