



**Ildikó GÁLL-PELCZ**  
Vice-President

REGISTERED LETTER  
WITH ACKNOWLEDGEMENT OF RECEIPT

Mr Nicholas Aiossa  
Transparency International EU Office  
Rue de l'Industrie, 10  
1000 Brussels  
Belgium

D 302845 16.02.2016

Re: Your confirmatory application for access to European Parliament documents  
Our reference: **A(2015)14430-35-36-37 C** (to be quoted in any future correspondence)

Dear Mr Aiossa,

On 5 January 2016, the European Parliament registered your confirmatory application in accordance with article 7(2) of Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents.

On 19 November 2015 you had submitted four initial applications for public access to documents relating to expenditure and allowances of all Members of the European Parliament during the current legislative period, as laid down in the decision of the Bureau of the European Parliament of 19 May and 9 July 2008<sup>1</sup>. In particular, you requested copies of documents showing details regarding:

- a) individual reimbursement claims for Travel Expenses (Articles 10-23), ref. 14436;
- b) individual claims for Subsistence Allowance (Article 24), ref. 14437;
- c) use of the General Expenditure Allowance (Articles 25-28), including a list of MEPs who have reimbursed unspent amounts of this allowance, ref. 14430;
- d) individual expenses for Assistance from Personal Staff (Articles 33-42), including a detailed list of names of all current and past service providers employed by Members, ref. 14435.

By letter of the Secretary General of 8 December 2015, access was refused with regard to the exceptions provided for under Article 4(1)(b) and Article 4(2) first indent of Regulation (EC) No 1049/2001. Access was also refused on the grounds that the workload

<sup>1</sup> Bureau Decision of 19 May and 9 July 2008 laying down implementing measures for the statute of Members of the European Parliament. OJ C 159 of 13 July 2009, p.1 ([http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.C\\_.2009.159.01.0001.01.ENG](http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.C_.2009.159.01.0001.01.ENG)).

linked to individual screening and (partial) disclosure of the requested documents would entail an excessive administrative burden.

In the confirmatory application you request the European Parliament to reconsider its refusal to grant public access to the documents pertaining to MEP allowances while underlining that you had purposefully filed separate initial requests for the sake of clarity in the individual assessment.

#### The terms of your confirmatory application

In your confirmatory application, you have further specified the scope of your initial requests.

Concerning Travel Expenses you clarify that you do not request every single invoice but that you wish to obtain the total amount that each Member has both claimed and been reimbursed since the beginning of the current legislative mandate.

Concerning the Subsistence Allowance you have specified that you request the number of times each Member has been paid the allowance in order for the public to evaluate their elected representatives' parliamentary activities by means of attendance rates. In other words you would like to know the total number of times a MEP has signed the attendance register.

Concerning Assistance from Personal Staff you clarify that you are not interested in individual contracts or documents containing bank or personal information details. You especially request a list of the names of all current and past service providers employed by Members in the current mandate. In this respect you refer to the new Bureau rules applicable since 1 January 2016. You also request the detail of the services provided to individual Members.

As regards the use of parliamentary assistance you consider that Parliament could provide breakdowns on how MEPs use the secretarial allowance without indicating the names of the concerned assistants. You refer in particular to the document "*récapitulatif budgétaire par contrat*" produced by the competent unit in DG FINANCE and to the individual accredited assistant's declarations concerning conflicts of interest and their monitoring; you wish to obtain information relating to detected cases of conflict of interest.

Concerning the General Expenditure Allowance in particular you clarify that your request should not be interpreted to pertain to personal information or bank account details. Your request refers rather to details on how the 751 MEPs spend the allowance, and you demand that Parliament provide detailed reasoning as to why the exception relating to personal data would apply.

You thus request that Parliament reconsiders your four separate initial requests for public access.

Pursuant to Rule 116 (4) and (6) of the Rules of Procedure of the European Parliament and to Article 15 of the Decision of the Bureau of the European Parliament, dated 28 November 2001, on public access to European Parliament documents, I, as Vice-President responsible for matters relating to access to documents, am responding to your confirmatory application, on behalf and under the authority of the Bureau.

#### Reassessment of your requests

I consider that Parliament was entitled, for the sake of good administration, to reply to your four initial applications in one single letter, given that the exceptions that applied to your requests were the same and the reasoning followed when considering them was similar. Furthermore, you have only lodged one confirmatory application under Article 8 of Regulation (EC) No 1049/2001, so that it would not be possible to reply separately to

different parts of your application. Nevertheless, in the present letter I will deal with each request specifically. I shall start with the General Expenditure Allowance, considering that you have expressed a particular concern as regards the reasoning on why exceptions would relate to this request.

#### A) General Expenditure Allowance

In your confirmatory application, you clarify that your request relating to the General Expenditure Allowance should not be interpreted to pertain to personal information or bank account details and that it refers rather to details on how the 751 MEPs spend the allowance.

As to the relevant documents, I can confirm that Parliament holds applications for payment of the allowance as well as the list of MEPs who have reimbursed unspent amounts.

Nevertheless, since the General Expenditure Allowance is paid in the form of a lump sum, pursuant to Articles 25 to 28 of the Implementing Measures for the Statute for Members of the European Parliament, Parliament does not hold any documents concerning the details on how the allowance is spent by each Member.

It should be noted that the referred applications and list of MEPs contain information to be considered personal data within the meaning of Article 2(a) of Regulation (EC) No 45/2001, disclosure of which could undermine the protection of the privacy of the Members concerned.

Pursuant to Article 4(1)(b), Parliament shall refuse access to documents where disclosure would undermine the protection of privacy and the integrity of the individual, in accordance with Community legislation on the protection of personal data, i.e. Regulation (EC) No 45/2001. In addition, it follows from settled case law that, where an application for access to documents relates to personal data, it is necessary to apply in full Regulation (EC) No 45/2001.

Under Article 8(b) of Regulation (EC) No 45/2001, personal data shall only be transferred if the recipient establishes the necessity for having the personal data transferred and if there is no reason to assume that the data subject's legitimate interests might be prejudiced.

In its judgement in case T-115/13, the General Court clarified that, in order to fulfil the condition of necessity laid down by Article 8(b) of Regulation No 45/2001, which is to be interpreted strictly, the applicant would have to establish that "*the transfer of personal data is the most appropriate of the possible measures for attaining the applicant's objective, and that it is proportionate to that objective, which means that the applicant must submit express and legitimate reasons to that effect*"<sup>2</sup>.

In the same judgement, the General Court also pointed out that the condition of necessity for having the personal data transferred entails an examination by the relevant institution or body, in the light of the objective pursued by the applicant for access to documents<sup>3</sup>.

#### 1) Assessment of the justification given for the necessity for transfer of the personal data

In your confirmatory application, you did not invoke any justification for the transfer of the personal data at stake, as you consider that the documents requested do not contain any personal data.

As a justification for all your requests, you refer to the principle of transparency in general terms. You also state that documents relating to how EU taxpayer funds are being used by MEPs and how the Parliament is, or is not, regulating and monitoring the use of these

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<sup>2</sup> Case T-115/13 *Dennekamp v Parliament*, paragraphs 59 and 77.

<sup>3</sup> Case T-115/13 *Dennekamp v Parliament*, paragraph 68.

funds would allow civil society organisations, such as TI EU, and citizens to scrutinise these expenditures and exercise democratic accountability in order to promote integrity and good governance.

In addition, although the exception foreseen under Article 4(1)(b) of Regulation (EC) No 1049/2001 does not provide for a limitation in case of an overriding public interest, I have taken note of the reasons you adduce in order to justify such an interest, i.e. to allow citizens and civil society the ability to scrutinise public spending of taxpayer money by MEPs and, more importantly, to allow the public and civil society to assess if the Parliament has adequate control mechanisms in place on how MEPs spend nearly EUR 40 million per year in office-related expenditure.

I would like to underline that the use of allowances allocated to MEPs is subject to stringent rules and comprehensive control mechanisms. The Quaestors and the Bureau of the Parliament review complaints from Members, as regards both the interpretation and the application of these rules by the administration. The payments and the procedures for such payments are also subject to thorough internal control by the Parliament's financial services, the Internal Auditor and the parliamentary committee on budgetary control, as well as to external control by the Court of Auditors and OLAF in the event of alleged fraud. In addition, MEPs are subject to criminal law and national jurisdiction in case of fraud.

Parliament holds the view that the alleged generic interest of the public to scrutinise public spending and to assess if the Parliament has adequate control mechanisms in place is too abstract to be considered sufficient in order to establish the necessity for having the personal data transferred, given the existing control mechanisms. Indeed, it is settled case law that the aim of informing the public and enabling it to take part in a debate is not a valid interest justifying the necessity for transfer of personal data<sup>4</sup>. Moreover, you have not submitted express and legitimate reasons proving that the transfer of personal data is the most appropriate of the possible measures for attaining your objective.

Against this background, Parliament comes to the conclusion that, on the basis of the arguments put forward in your confirmatory application, you did not demonstrate the necessity for the transfer of the personal data of MEPs contained in the requested documents as required under the applicable case law.

## 2) Prejudice to the legitimate interests in the protection of privacy of the data subjects

On a subsidiary ground, and without prejudice to the fact that you did not demonstrate the transfer of the personal data as the most appropriate measure for attaining the objectives pursued, nor that the data transfer is "necessary" in line with Article 8(b) of Regulation (EC) No 45/2001, Parliament holds the view that if the data were transferred the legitimate interests of the Members concerned would be prejudiced. Indeed, it would not have been proportionate to allow such a transfer of personal data, given the weight of the legitimate interests of the data subjects concerned.

I would like to recall that case law has stated that MEPs, as public figures, have accepted that some of their personal data will be disclosed to the public and they thus enjoy a lesser protection than other data subjects. Nevertheless, that in no way implies that Members' legitimate interests must be regarded as never being prejudiced by a decision to transfer data relating to them<sup>5</sup>.

In this respect, it should be pointed out that MEPs enjoy a free mandate. This freedom, the protection of which equally has to be considered a 'legitimate interest' of the data subject under Article 8(b) of Regulation (EC) No 45/2001, is guaranteed inter alia by Article 6 of

<sup>4</sup> Case T-115/13 *Dennekamp v Parliament*, paragraph 87.

<sup>5</sup> Case T-115/13 *Dennekamp v Parliament*, paragraph 119.

the Act concerning the election of the Members of the European Parliament by direct universal suffrage and by Article 2 of the Statute for Members.

Public disclosure of the information you have requested, i.e. whether a Member has requested the full amount foreseen as General Expenditure Allowance or only a partial amount, or whether he or she has reimbursed unspent amounts, could interfere in the way the Members would use the material means necessary to carry out their mandate, encroaching upon its free exercise.

Under such circumstances, the public interest in the exercise of a free mandate by a Member of the European Parliament should prevail over the alleged public interest in disclosure.

It follows that a transfer of the requested personal data is not permissible under Article 8(b) of Regulation (EC) No 45/2001.

Consequently, disclosure of the requested documents would undermine the protection of the privacy of the data subjects concerned, as outlined in detail above, within the meaning of Article 4(1)(b) of Regulation (EC) No 1049/2001. Parliament is therefore obliged to refuse public access to the requested documents.

### B) Travel Expenses

In your confirmatory application, you clarify that, regarding Travel Expenses, you wish to obtain the total amount that each Member has both claimed and been reimbursed since the beginning of the current legislative mandate.

As to the relevant documents, I can confirm that Parliament holds the information that you request and that a list with amounts claimed by and reimbursed to each Member could be extracted from the database MIME.

However, such a list would contain information to be considered personal data within the meaning of Article 2(a) of Regulation (EC) No 45/2001, disclosure of which could undermine the protection of the privacy of the Members concerned.

Following the same reasoning as for the General Expenditure Allowance, and since you did not submit any specific justification on the necessity for transfer of data concerning Travel Expenses, Parliament comes to the conclusion that, on the basis of the arguments put forward in your confirmatory application, you did not demonstrate the necessity for the transfer of the personal data of MEPs contained in the requested documents as required under the applicable case law.

On a subsidiary ground, and without prejudice to the fact that you did not demonstrate the transfer of the personal data as the most appropriate measure for attaining the objectives pursued, nor that the data transfer is "necessary" in line with Article 8(b) of Regulation (EC) No 45/2001, Parliament holds the view that if the data were transferred the legitimate interests of the Members concerned would be prejudiced. Also in this case, it would not have been proportionate to allow such a transfer of personal data, given the weight of the legitimate interests of the data subjects concerned.

Concerning such legitimate interests, public disclosure of the information you have requested, i.e. the amounts claimed by and reimbursed to each Member, would allow for the tracking and profiling of the Member concerned, encroaching upon the free exercise of his mandate, as well as his freedom to decide how often and where to travel within his parliamentary activity.

Under such circumstances, I consider that, also in this case, the public interest in the exercise of a free mandate by a Member of the European Parliament should prevail over the alleged public interest in disclosure.

Consequently, disclosure of the requested documents would undermine the protection of the privacy of the data subjects concerned, within the meaning of Article 4(1)(b) of Regulation (EC) No 1049/2001, and Parliament is obliged to refuse public access to the requested documents.

### C) Subsistence Allowance

In your confirmatory application, you clarify that, regarding the Subsistence Allowance, you request the number of times each Member has been paid the allowance.

As to the relevant documents, I can confirm that Parliament holds the information that you request, i.e. the total number of times a MEP has signed the attendance register, and a list with such information could be extracted from the database MIME.

Nevertheless, such a list would contain information to be considered personal data within the meaning of Article 2(a) of Regulation (EC) No 45/2001, disclosure of which could undermine the protection of the privacy of the Members concerned.

As a justification for your request, you invoke the interest of the public to evaluate their elected representatives' parliamentary activities by means of attendance rates. Still, Parliament holds the view that the alleged interest of the public to evaluate their representatives' activities is too abstract to be considered sufficient in order to establish the necessity for having the personal data transferred. Moreover, you have not submitted express and legitimate reasons proving that the transfer of personal data is the most appropriate of the possible measures for attaining your objective.

Again, and since you did not submit sufficient justification on the necessity for transfer of data concerning the Subsistence Allowance, Parliament comes to the conclusion that, on the basis of the arguments put forward in your confirmatory application, you did not demonstrate the necessity for the transfer of the personal data of MEPs contained in the requested documents as required under the applicable case law.

Also in this case, on a subsidiary ground, and without prejudice to the fact that you did not demonstrate the transfer of the personal data as the most appropriate measure for attaining the objectives pursued, nor that the data transfer is "necessary" in line with Article 8(b) of Regulation (EC) No 45/2001, Parliament holds the view that if the data were transferred the legitimate interests of the Members concerned would be prejudiced. It would thus not have been proportionate to allow such a transfer of personal data, given the weight of the legitimate interests of the data subjects concerned.

As regards such legitimate interests, public disclosure of the information you have requested, i.e. the total number of times a MEP has signed the attendance register, would allow for the tracking and profiling of the Member concerned, encroaching upon the free exercise of his mandate. In addition, disclosure of the information that a Member has often not signed the attendance register, without an explanation on possible justifications for the absence (e.g. maternity, sickness) could impinge on the private sphere of the Member, which, according to case law, is subject to a higher degree of protection than his or her public sphere<sup>6</sup>.

Under such circumstances, again, I consider that the public interest in the exercise of a free mandate by a Member of the European Parliament should prevail over the alleged public interest in disclosure.

Consequently, disclosure of the requested documents would undermine the protection of the privacy of the data subjects concerned, within the meaning of Article 4(1)(b) of Regulation (EC) No 1049/2001, and Parliament is obliged to refuse public access to the requested documents.

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<sup>6</sup> Case T-115/13 *Dennekamp v Parliament*, paragraph 124.

#### D) Assistance from Personal Staff

In your confirmatory application, you clarify that, as regards expenses for Assistance from Personal Staff, you request a list of the names of all current and past service providers employed by Members in the current mandate and the detail of the services provided to individual Members. You also request the document "*récapitulatif budgétaire par contrat*" produced by the competent unit in DG FINANCE. Finally, you ask for the individual accredited assistant's declarations concerning conflicts of interest and their monitoring and for information relating to detected cases of conflict of interest.

As to the relevant documents, I can confirm that Parliament holds contracts, invoices and application forms relating to service contracts and that such documents contain the information that you request concerning service providers. Parliament also holds the "*récapitulatif budgétaire par contrat*", individual accredited assistant's declarations concerning conflicts of interest and letters sent to assistants in case of conflict of interests.

#### 1) Protection of privacy and the integrity of the individual

It should be noted that the documents that you request in connection with expenses for Assistance from Personal Staff contain information to be considered personal data within the meaning of Article 2(a) of Regulation (EC) No 45/2001, disclosure of which could undermine the protection of the privacy of Members, service providers and assistants.

In your confirmatory application, you did not invoke any justification for the transfer of the personal data at stake. On the other hand, although the exception foreseen under Article 4(1)(b) of Regulation (EC) No 1049/2001 does not provide for a limitation in case of an overriding public interest, I have taken note of the reasons you adduce in order to justify such an interest, i.e. to allow the public and civil society to scrutinise who MEPs are employing with taxpayer money and if that spending conforms to the rules in place.

Again, Parliament holds the view that the alleged generic interest of the public to scrutinise who MEPs are employing and whether rules are complied with is too abstract to be considered sufficient in order to establish the necessity for having the personal data transferred, given the existing control mechanisms. Parliament also considers that you have not submitted express and legitimate reasons proving that the transfer of personal data is the most appropriate of the possible measures for attaining your objective.

Against this background, Parliament comes to the conclusion that, on the basis of the arguments put forward in your confirmatory application, you did not demonstrate the necessity for the transfer of the personal data of a Member and third parties contained in the requested documents as required under the applicable case law.

Also as regards the request under examination, on a subsidiary ground, and without prejudice to the fact that you did not demonstrate the transfer of the personal data as the most appropriate measure for attaining the objectives pursued, nor that the data transfer is "necessary" in line with Article 8(b) of Regulation (EC) No 45/2001, Parliament holds the view that if the data were transferred the legitimate interests of the Member and third parties concerned would be prejudiced. Indeed, it would not have been proportionate to allow such a transfer of personal data, given the weight of the legitimate interests of the data subjects concerned.

Although service providers work for persons of public interest, their privacy as regards their personal data should not be affected hereby. In addition, disclosure of the fact that they have provided services to one specific Member might also prejudice their legitimate interests.

The same goes for assistants, whose privacy should not be affected by the fact that they work for a MEP. Furthermore, their declarations concerning conflicts of interest and any

relating correspondence are kept in their personal file, which is confidential based on Article 26 of the Staff Regulations.

Concerning Members, public disclosure of the information you have requested, i.e. the names of service providers employed and details of the service providers, as well as the "*récapitulatif budgétaire par contrat*" and individual accredited assistant's declarations, would allow for the tracking and profiling of the Member concerned, encroaching upon the free exercise of his mandate, as well as his freedom to seek the assistance and specialised advice deemed necessary.

Consequently, disclosure of the requested documents would undermine the protection of the privacy of the data subjects concerned, as outlined in detail above, within the meaning of Article 4(1)(b) of Regulation (EC) No 1049/2001. Parliament is therefore obliged to refuse public access to the requested documents.

## 2) Protection of commercial interests of a natural person

In addition, the names of service providers employed and details of the services provided, as well as the "*récapitulatif budgétaire par contrat*" would reveal information relating to the commercial activity both of the Members concerned and the service providers.

As regards Members, disclosing detailed information about how much they have paid for the various services would undermine their interests as a purchaser in the market in the sense of being able to obtain the best rates from possible future contractors.

As for the individual service providers, the fact of disclosing the amounts that they have received would also undermine their interests given that competitors would be able to offer more advantageous rates.

Moreover, disclosing that the service providers have performed work for one specific Member may undermine their chances to offer services to Members with a different political position.

Finally, as regards the existence of an overriding public interest within the meaning of Article 4(2) of Regulation (EC) No 1049/2001, you have not proved the existence of such an interest in disclosure that would outweigh the need to protect the commercial interests of the Member and the service providers concerned. Parliament cannot identify such interest either, given the weight of the interests to be protected.

## Conclusion

On the basis of the foregoing, Parliament cannot grant public access to the documents requested pursuant to Article 4(1)(b) and Article 4(2) first indent of Regulation (EC) No 1049/2001.

Furthermore, as the information protected under the relevant exceptions cover the whole documents, deletion of the relevant information in order to grant you partial access in the meaning of Article (6) of Regulation (EC) No 1049/2001 would not serve the purpose of your request.

Nevertheless, I would like to point out that the Implementing Measures for the Statute for Members of the European Parliament have recently been amended and their new version, applicable as of 1 January 2016<sup>7</sup>, contains in Article 34(8) the provision that the names or corporate names of service providers shall, for their duration of their contract, be published on the website of the European Parliament, together with the name of the Member or Members they assist.

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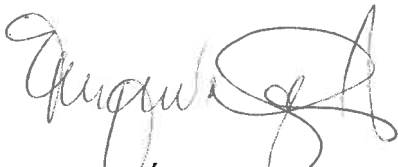
<sup>7</sup> OJ C397 of 28.11.2015, p. 2.



While this provision does not apply to your request, which has to be assessed based on the rules in force at the time of your initial applications, if you were to lodge in the future a request for access to the names of the service providers working at a given time for a Member, the assessment of such new request could lead to a different conclusion than the present one.

Finally I would like to draw your attention to the means of redress available against this decision according to Article 8 of Regulation (EC) No 1049/2001. You may either bring proceedings before the General Court or file a complaint with the European Ombudsman under the conditions specified respectively in the Treaty on the Functioning of the European Union. I equally draw your attention to the fact that filing a complaint with the European Ombudsman does not have suspensory effect.

Yours sincerely,



Ildikó GÁLL-PELEZ