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Ildikó GÁLL-PELCZ
Vice-President

314532 14.09.2015

REGISTERED LETTER
WITH ACKNOWLEDGEMENT OF RECEIPT

Mr Nils Mulvad
Investigative Reporting Denmark
Ellebjergvej 25
DK-8240 Risskov - Denmark

Dear Mr Mulvad,

Re: Your confirmatory application for access to European Parliament documents
Our reference: **A(2015)8732 C** (to be quoted in any future correspondence)

On 2 August 2015, the European Parliament received your confirmatory application seeking access to Parliament's documents, in accordance with 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.

In particular, you have requested public access to:

- a) copies of reports or other relevant documents which show details regarding how and when Danish Members of the European Parliament (MEPs) spent their allowances (travel expenses, subsistence allowance and general expenditure allowance);
- b) copies of reports of other relevant documents which show details regarding how and when Danish MEPs spent money allocated to them for staffing arrangements;
- c) copies of records of MEPs' bank accounts which are used specifically for general allowance payments.

Your confirmatory application relates to any relevant documents held by the European Parliament between 6 July 2011 and 6 July 2015.

By letter of the Secretary General of 20 July 2015, access to any documents falling under points a) and b) of your request were refused according to the exception provided under point (b) of Article 4(1) of Regulation (EC) No 1049/2001.

As regards documents requested under point c), you have already been informed that Parliament does not hold such documents.

The terms of your confirmatory application

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

Concerning travel expenses, you have specified that you wish to obtain copies of travel documents, including supporting documents that show the expenses incurred by additional journeys undertaken outside and within the Member State of election, such as itineraries, receipts or, in the event of use of private car, claim forms detailing the date, destination and distance of the journey. As regards distance and time allowance, you have requested documents that would be in the possession of the Financial Office.

Concerning the subsistence allowance for daily attendance, you have specified that your request does not concern the *per diem* allowance which MEPs receive for attendance at a place of work or meeting venue, as outlined under point (a) of Article 24(1) of Decision of the Bureau of 19 May and 9 July 2008, concerning the implementing measures for the Statute for Members of the European Parliament (hereinafter referred as Bureau Decision implementing the Statute for Members)¹. However, you have now requested copies of records provided by MEPs in order to be reimbursed for accommodation expenses, and other reasonable subsistence expenses for official activities taking place outside the European Union, as is their right, regulated by points (b) and (c) of Article 24(3) and Article 24(4) of the afore-mentioned Bureau Decision implementing the Statute for Members.

Concerning the general expenditure allowance, it is Parliament's understanding that you wish to receive copies of invoices and other documents related to MEPs' office management costs, such as telephone and postal charges, computer and IT equipment (purchase and maintenance) and other similar expenses.

Concerning parliamentary assistance allowance, you have specified that you wish to obtain copies of reports, invoices or other relevant documents showing details of staffing arrangements and/or contracts for expert studies.

In your confirmatory application you consider that the privacy exception invoked by Parliament to refuse access to the documents requested at the initial stage should not apply, since the personal data referred to is to be considered as part of the public and not private sphere of MEPs. You consider it necessary to access, review and analyse the requested documents, as you claim that there is no other way to hold MEPs to account. As a journalist, you state that your aim is to facilitate public debate and to enforce the accountability of public bodies and officials, claiming an individual and professional right to know.

Finally, you state that Parliament is obliged to carry out a specific and individual examination of each of the documents concerned by your request, in order to determine whether any exceptions apply or whether partial access may be granted, thereby questioning the claim that your application entails an excessive burden for Parliament's administration.

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.

¹ Decision of the Bureau of 19 May and 9 July 2008 concerning the implementing measures for the Statute for Members of the European Parliament, (OJ C159 of 13.7.2009, p.1).

Preliminary remarks

On the basis of your confirmatory application, the Parliament has identified the following categories of documents as relevant to your request.

As a preliminary remark with regard to travel expenses, please allow me to clarify that MEPs are entitled to the reimbursement of any ordinary travel expenses, additional travel expenses and up to 24 return journeys by air, rail, car or boat undertaken in their Member State of election, per calendar year.

Ordinary travel expenses are incurred by MEPs when travelling to and from Parliament's places of work, or venues for meetings of Parliament's bodies. Additional travel expenses are incurred as a result of MEPs' participation, outside their Member State of election, in activities connected with the performance of their duties.

It must be noted that all travel expenses are reimbursed on the basis of the costs actually incurred, and up to a maximum reimbursable amount, calculated on the basis of the most direct route between the MEP's place of residence, or the capital of his or her Member State of election, and the place of work or meeting venue². As you have correctly indicated in your confirmatory application, additional travel expenses are reimbursed within the limit of an annual amount fixed at 4 264 EUR. The reimbursable amount is determined on the basis of supporting documents (the travel documentation).

Your application covers supporting documents such as train tickets, electronic ticket-itinerary receipts bearing Members' names and all boarding cards, or declarations, specifying the registration number of the vehicle used, the place of departure and arrival, together with other relevant supporting documents, in the event of travel by car. Invitations, programmes and other documentary evidence showing that the journey was undertaken in the performance of MEPs' duties may also be relevant to your request, in case of additional travel expenses.

The supporting documents related to subsistence allowance claims in connection with official activities undertaken outside the European Union, falling within the scope of your request, would include original invoices for accommodation expenses.

Furthermore, documents such as recruitment requests for accredited assistants and their pay slips, contracts between the MEPs and their national paying agents and local assistants, local assistants pay slips, traineeship agreements, as well as contracts with service providers and invoices for services provided by them are relevant under point b) of your application.

As far as documents pertaining to the use of the general expenditure allowance and copies of MEPs' bank records are concerned, I regret to inform you that Parliament was unable to identify any document relevant to your confirmatory application.

Finally, global figures provided by the Directorate General for Finance indicate that the Parliament departments responsible for payments related to expenditure and allowances for Members perform some 34.000 bank transfers per year, resulting from 220.000 individual records of travel expenses and subsistence allowances alone, with every payment being linked to often more than 15 supporting documents.

² According to Article 15 of the Bureau Decision implementing the Statute for Members, travel expenses shall be reimbursed on the basis of the expenses actually incurred, up to a maximum of:

- a) in the event of travel by air: the business class tariff;
- b) in the event of travel by rail or boat: the first-class rate;
- c) in the event of travel by car, with a reimbursement ceiling of 1000 km per outward or inward journey: EUR 0.50/km, plus the cost of any ferry crossing or similar transportation required.

Taking into account that your application covers two parliamentary legislative terms, supporting documents of former Members of the European Parliament and their staff would also need to be considered, adding considerably to the above estimates.

Reassessment of your application in accordance with Article 4(1)(b) of Regulation (EC) No. 1049/2001, read in conjunction with Article 8(b) of Regulation (EC) No 1049/2001

Concerning documents falling under point c) of your application, I can only confirm once again that the Parliament does not hold any copies of Members' bank records and, thus, is unable to provide you with the documents requested.

As regards the general expenditure allowance, it should be recalled that, according to Article 25 of the Bureau Decision implementing the Statute for Members, cited above, MEPs receive a flat-rate allowance, paid monthly, following completion of a single application form at the beginning of their mandate. Consequently, Parliament does not possess any documents related to the actual spending of this general allowance and, thus, cannot provide you with the requested documents.

All documents related to the reimbursement of travel expenses and subsistence allowance, as listed under point a) of your confirmatory application, contain 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 MEPs.

Pursuant to point (b) of Article 4(1) of Regulation (EC) No 1049/2001, 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). It follows from established case law that Regulation (EC) No 45/2001, and notably its Article 8(b), is fully applicable with regard to the transfer of such personal data to third parties.

Documents related to the spending of the parliamentary assistance allowance also contain personal data in the sense of Article 2 of Regulation (EC) No 45/2001, and are subject to the conditions established by Article 8(b) of Regulation (EC) No 45/2001 as regards lawful transfers to a third party.

Under Article 8(b) of Regulation (EC) No 45/2001, potential recipients of personal data must establish the necessity of having the personal data transferred to them, provided that there is no prejudice to the data subject's legitimate interests.

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"*³.

In the same judgement, the General Court also pointed out that the condition of necessity of 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 documents⁴.

³ Case T-115/13 *Dennekamp v Parliament*, ECLI:EU:T:2015:497, point 59 and 77.

⁴ Case T-115/13 *Dennekamp v Parliament*, ECLI:EU:T:2015:497, point 68.

A) Assessment of the justification given for the necessity of transfer of the personal data

In your confirmatory application, you have invoked, as justification for the transfer of the personal data at stake, the general public concern for transparency and general public's right to be well informed.

You refer to the principles of good governance and participation, as set out in Article 15 of the TFEU, as well as to your mission as a journalist to promote transparency and accountability in governance and public spending, facilitate public participation and promote accountability of public bodies.

In essence, in your confirmatory application, you maintain that it is necessary for Parliament to transfer the personal data at stake to allow you to achieve the following two objectives: 1) ensure public control over the spending of public funds, allowing possible financial irregularities to come to light, through the exercise of the right of information; 2) contribute to the public debate on how Parliament functions and how certain expenditures are generated or maintained.

Regarding your first objective, you assume that journalists have a major role in revealing possible irregularities in public expenditure and you do not seem to be convinced of the efficiency of Parliament's internal control mechanisms, nor of the respect of relevant rules, without analysing the documents concerned. Moreover, you claim that it is impossible to verify that more than 700 elected MEPs are following the relevant rules without having access, and the opportunity to review and analyse all supporting documentation.

Parliament takes the view that you have not demonstrated the necessity of having the personal data at stake transferred with regard to your first objective.

In particular, your mere assertion that the internal parliamentary controls do not "*work properly*" and are "*ineffective*" cannot be considered a solid enough argument in order to determine that the transfer of personal data is the most appropriate measure for attaining your objective of ensuring public control over public expenditure, or that such a transfer is proportionate to obtaining your objective.

Contrary to your allegation, 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 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.

As far as your second objective is concerned, that is to say the contribution to public debate "*regarding the way in which the EP functions as well as public spending*", you claim that basic information, such as how each Member spends the allocated resources for staffing arrangements and travels, and details on how the funds are used, are essential to an informed and accurate debate.

However, you did not make clear to what extent details about family members, or salary perceived by a parliamentary assistant who does not hold any public office, is necessary to your purpose. Nor is it clear how making certain details public, for example the registration number of a Member's vehicle or his/her flight itinerary to reach a meeting venue, is necessary to stimulate a debate on the functioning of Parliament or the use of public funds. Similar doubts exist regarding other information pertaining to the privacy of a Member or a third party from the documents requested.

Therefore, Parliament holds the view that you did not sufficiently demonstrate the necessity of transfer of the above mentioned personal data and information as the most

appropriate measure for attaining your second objective of contributing to public debate, or that it is proportionate to that objective.

On the contrary, your confirmatory application shows that you already have precise information on the amounts allocated to each Member to cover their travel expenses and staffing needs. In Parliament's view, this information already enables you to contribute to or encourage public debate on the way Parliament functions or public funds are spent, without interfering with the privacy of individuals. Under such circumstances, it is evident that no "necessity" exists to provide you with the requested personal data.

Against this background, Parliament concludes that, on the basis of the arguments put forward in your confirmatory application, you have not demonstrated the necessity of the transfer of the personal data of MEPs and third parties contained in the requested documents.

B) Prejudice to the legitimate interest 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 objective 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 the legitimate interests of the MEPs and third parties concerned prevails over the public interest in transparency and public's right to information. Indeed, it would have not been proportionate to allow such a transfer of personal data, given the weight of the legitimate interests of the data subjects concerned.

With regard to your reasoning that "*the scope of privacy an MEP could expect to enjoy is smaller than that of an ordinary citizen*", Parliament interprets your statement to mean that the degree of protection provided under Regulation (EC) No 45/2001 for MEPs would also be lesser.

This is manifestly not the case for assistants; they merely work for persons of public interest but their privacy as regards their personal data should not be affected hereby. This excludes any transfer of data relating to the payments of assistants and service providers.

As regards MEPs, they enjoy a free mandate. This freedom, the protection of which equally has to be considered a 'legitimate interest' of the data subject concerned under Article 8(b) of Regulation (EC) No 145/2001, is guaranteed *inter alia* by Article 6 of the Act concerning the election of the Members of the European Parliament by direct universal suffrage⁵ and by Article 2 of the Statute for Members⁶.

Public disclosure of documents relating to the subsistence allowance and to travel expenses containing details about "how and when" Parliament has reimbursed expenses, would limit a Member's freedom to, in the context of the free exercise of the parliamentary mandate, meet whomever they choose, to vote or to participate in meetings, conferences, official business etc., to inform him/herself in preparation of debates and voting in Parliament.

With regard to the use of parliamentary assistance allowance, the same considerations apply. MEPs must be able to seek assistance, choose members of staff and determine their salaries freely, within the limits set out by the rules. The relation of confidence between the Member and his/her assistant constitutes the core element of the decision on recruitment. The Member has to remain entirely free as to this choice. Transparency on

⁵ Act concerning the election of the representatives of the European Parliament by direct universal suffrage, annexed to Council Decision 76/787/ECSC, EEC, Euratom of 20 September 1976 (OJ No L 278 of 8 October 1976).

⁶ Decision of the European Parliament of 3 June 2003, on the adoption of a Statute for Members of the European Parliament (OJ C 68E of 18 March 2004).

this matter is guaranteed by the publication on Parliament's website of the names of the accredited and local parliamentary assistants currently employed by the acting Member.

In essence, the disclosure of the documents you have requested would allow for the tracking and profiling of MEPs, encroaching upon the free exercise of their mandate, as well as their freedom to seek the advice and/or assistance deemed necessary.

As demonstrated above, there are less intrusive means available for the effective scrutiny of MEPs' expenses, whereas access to the requested documents would not allow the Member to freely exercise their mandate. Under such circumstances, the public interest in the exercise of a free mandate by Members 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.

Under such circumstances, 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.

C) Presumption of the applicability of the relevant exceptions to all requested documents

The requested documents, such as hotel bills, travel tickets, employment contracts or pay slips, all belong to the same categories. Therefore Parliament may presume that considerations of a similar kind to those detailed in sections A) and B) are likely to apply to all the documents covered by your application.

It follows from relevant case-law that the Institution may base its decision on the applicability of exceptions under Article 4 of Regulation (EC) No 1049/2001 on the presumption that those exceptions apply to other documents of the same nature as those which have been examined. In this regard, reference is made to Case *Technische Glaswerke Ilmenau*, paragraph 54⁷. Therefore the institution is exempt from the general obligation, under Article 4 of Regulation (EC) No 1049/2001, to conduct an examination of each individual document.

D) Refusal of access on the grounds of an excessive administrative burden

As indicated above, the number of financial supporting documents linked to the reimbursement of expenditure and allowances provided by MEPs is estimated at over 200.000 documents per year. Moreover, the requested documents are held by Parliament for administrative and financial purposes only. Some of them are kept in their original paper form.

This means that, in order to satisfy your request, Parliament would potentially have to examine all the financial supporting documents in its possession for the period 2011 onwards, in order to identify, copy and scan the documents related specifically to Danish MEPs. In parallel to your application, identical applications have been submitted to Parliament by your European colleagues, seeking access to the same categories of documents for MEPs of all other nationalities. Therefore, within the statutory deadlines, Parliament would need to screen the financial supporting documents of the 750 current

⁷ Commission v. Technische Glaswerke Ilmenau, C-139/07 P, EU:C:2010:376. In particular, paragraph 54: "However, the Court has acknowledged that it is, in principle, open to the Community institution to base its decisions in that regard on general presumptions which apply to certain categories of documents, as considerations of a generally similar kind are likely to apply to requests for disclosure relating to documents of the same nature."

Members and in addition, the former Members, of each nationality, for the period 2011 to 2015.

This task undoubtedly constitutes an excessive workload for the departments responsible, which at the same time have to ensure the continuity of ordinary business.

As already indicated in the reply to your initial application, and stated in settled case-law: *"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"*⁸.

Thus, an institution may, in exceptional circumstances, refuse access to certain documents on the grounds that the workload created would be disproportionate to the objectives of the request.

Obligation for Parliament to grant partial access to the requested documents

In your confirmatory application, you claim that in its initial reply Parliament did not demonstrate that the requested documents exclusively contain personal data of MEPs and third parties allowing for partial access. As a consequence, you assume that Parliament should have blackened any personal information of MEPs and third parties contained in the documents and provided partial access.

However, the deletion of all personal data, in order to grant partial access to the requested documents under Article 4(6) of Regulation (EC) No 1049/2001, would not serve the purpose of your request, while at the same time constituting an excessive administrative burden for Parliament's administration, disproportionate to the objectives of your application.

Removal of all the personal data concerned would make disclosure of the remaining parts of the requested documents completely meaningless. Indeed, it has been recognised by the General Court that an institution is entitled to refuse partial access in cases where examination of the documents in question shows that partial access would be meaningless⁹.

In order to erase all personal data and provide partial access to the requested documents, Parliament's administration would have to, first, retrieve the documents relevant to your request, then, copy or scan them and, finally blacken all personal information of MEPs and third parties. Taking into consideration the very high number of documents involved, this would constitute an excessive administrative burden for the departments responsible, which at the same time have to ensure the continuity of their ordinary business.

It follows from established case law that the principle of sound administration requires that the duty to grant partial access should not result in an administrative burden which is disproportionate to the applicant's interest in obtaining that information. Moreover, the General Court has stated that in exceptional cases, derogation from the obligation to grant partial access is permissible where the administrative burden of blanking out the parts of the documents that may not be disclosed exceeds the limits of what may reasonably be required¹⁰.

⁸ See judgment of the Court of Justice of 2 October 2014 in case C-127/13, *Strack v Commission*, par. 27.

⁹ See judgment of the Court of first Instance of 12 July 2001 in case T-204/99, *Mattila v Council and Commission*, par. 69.

¹⁰ See judgment of the Court of first Instance of 7 February 2002 in case T-211/00, *Kuijter v Council*, par. 57.

Parliament is therefore under no obligation to grant partial access to the requested documents, pursuant to Article 4(6) of Regulation (EC) No 1049/2001.

Conclusion

As regards your request for documents pertaining to the use of the general expenditure allowance and copies of Members' bank records, Parliament does not possess any relevant document and cannot provide you with the documents requested.

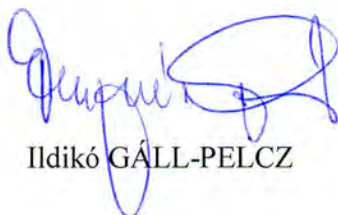
Regarding your request for documents related to the reimbursement of travel expenses and the subsistence allowance, as well as for documents related to the parliamentary assistance allowance, Parliament cannot grant public access to the requested documents, pursuant to point (b) of Article 4(1) of Regulation (EC) No 1049/2001. Indeed, the disclosure of such documents would undermine the privacy and integrity of Members of Parliament as well as of their assistants and other third parties.

Moreover, in light of the efforts already undertaken by Parliament, your confirmatory application must be rejected, as thorough examination of any documents potentially covered by the request constitutes an administrative burden which is not proportionate to the interests you have invoked to access these documents.

Finally, granting partial access to the requested documents, under Article 4(6) of Regulation (EC) No 1049/2001, would not serve the purpose of your request and would at the same time constitute an excessive administrative burden for Parliament, disproportionate to the objectives of your application.

I would draw your attention to the means of redress available against this decision according to Article 8 of the 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 complaint with the European Ombudsman does not have suspensory effect.

Yours sincerely,



Ildikó GÁLL-PELCZ