

Decision in case 143/2019/TE on the European Parliament's refusal to give access to documents showing the expenses and allowances received by Irish Members of European Parliament

Decision

Case 143/2019/TE - Opened on 28/03/2019 - Decision on 28/03/2019 - Institution concerned European Parliament (No maladministration found) |

The case concerned the way in which the European Parliament dealt with a request for public access to documents showing the expenses and allowances received by Irish Members of European Parliament (MEPs). Parliament refused access to the documents as, in its view, they contained "personal data" of the MEPs which should not be disclosed.

The Ombudsman accepts that the documents do contain "personal data" of the MEPs, since the concept of "personal data" covers all information relating to an identified or identifiable person. The EU courts have ruled that such data could be released only if its disclosure serves a specific necessity and that necessity is more important than the legitimate interests of the MEPs.

The complainant in the present case did not inform Parliament as to why, specifically, he needed the information contained in the documents. Parliament could therefore not release the documents requested by the complainant without infringing the personal data rights of the individual MEPs.

Background to the complaint

1. In July 2018, the complainant, an EU citizen, asked the European Parliament for access to "*a breakdown of the specific amount paid to each Irish MEP from their election as an MEP, to now under salary and expenses (including all expenses or allowances or any funds paid that are not covered under basic salary)*".

2. In August 2018, Parliament rejected the complainant's request on the basis that it did not hold any documents with all the requested information in aggregated form.

3. The complainant asked Parliament to review its decision, by making a so-called "



confirmatory application ”.

4. On 21 September 2018, Parliament replied that it had been able to extract from its database two documents for each Irish MEP (22 documents in total) with information concerning the amounts paid as **salary, travel expenses and subsistence expenses** .

5. Parliament stated, however, that the information on salary, travel expenses and subsistence expenses is the personal data [1] of the MEPs. Since the complainant did not put forward any argument demonstrating the necessity for this personal data to be transferred to him, Parliament refused access to the documents on the basis of the exception in the EU rules on public access to documents (Regulation 1049/2001) which concerns the protection of privacy and the integrity of the individual [2] .

6. Parliament also explained that it could not identify any further document as falling within the scope of the complainant's request. While data concerning the **general expenditure allowance and the parliamentary assistance allowance** *“could be retrieved using a data retrieval software tool”*, there would be no standard query that could be launched to produce the total amount paid to the Irish MEPs per year or per legislative term. Therefore, *“[a] specific query would [...] have to be created in order to extract all the required information and significant resources would have to be invested in that process”*. These efforts would amount to the creation of a new document, which Parliament is not obliged to do under Regulation 1049/2001.

7. Dissatisfied with Parliament's reply, the complainant turned to the Ombudsman on 22 January 2019 .

The inquiry

8. The Ombudsman opened an inquiry into the following aspects of the complaint:

1) Parliament refused access to the 22 identified documents containing information on the amounts paid to each individual Irish MEP as salary, travel expenses and subsistence expenses.

2) Parliament did not identify any existing document with information concerning the general expenditure allowance and the parliamentary assistance allowance paid to Irish MEPs per year or per legislative term.

The Ombudsman's assessment

Preliminary remarks

9. The Ombudsman is of the opinion that the information requested by the complainant in this



case, namely the total salary amounts paid to MEPs, is information that should, as a matter of principle, be in the public domain. MEPs' salaries are paid by EU citizens. Being transparent about how citizens' money is spent is key to the creation of trust and accountability in democracies. Arguably, this is even more important at European Union level, where citizens at times feel more distant from the Union and its institutions and where, as a result, public trust is a particularly fragile element to build and maintain.

10. The European Parliament does already publish on its website general information on MEPs' "salaries and pensions" [3] and a "summary of allowances" [4] that MEPs receive, including the pre-tax salary figure, daily allowances to cover accommodation and the general expenditure monthly allowance. However, Parliament does not publish proactively information on the total salary amounts, including allowances and expenses, paid to individual MEPs.

11. It is in this context that the complainant asked Parliament for access to this information under Regulation 1049/2001. **The Ombudsman notes that several Irish MEPs also already publish information about their individual expenses and allowances on their personal websites.** Regulation 1049/2001, however, only applies to EU institutions and not to MEPs. In addition, the Ombudsman has no mandate over MEPs, but only the EU administration. The Ombudsman therefore assessed, in this inquiry, whether the Parliament's administration correctly applied Regulation 1049/2001.

Refusal of access to documents

12. Parliament refused access to the 22 identified documents containing information on the amounts paid to each individual Irish MEP as salary, travel expenses and subsistence expenses on the basis that this information is the personal data [5] of the MEPs concerned.

13. The Ombudsman notes that, under EU law, personal data covers any information related to an identified or identifiable person [6] . Documents held by Parliament relating to an MEP's salary, travel expenses and subsistence expenses necessarily identify that MEP, if only for the payment of those allowances [7] . It is therefore the case that, legally, such information constitutes the personal data of the MEP concerned. The Ombudsman notes that this is not the same as data relating to private life and the two should not be confused.

14. Regulation 1049/2001 protects the privacy and integrity of an individual, in accordance with Regulation 2018/1725 on data protection. [8] That Regulation [9] requires that, for personal data to be legally transferred to a third party, the recipient must establish that it is necessary to have the data transmitted for a specific purpose in the public interest. This could, for example, be any possible evidence of abuse of expenses or allowances or of a deficiency in Parliament's current administrative safeguards on monitoring the use of public money in this area. If such necessity is demonstrated, the EU institution then needs to consider whether the data subjects' legitimate interests would be prejudiced by the disclosure.



15. From the documentation provided to the Ombudsman, it appears that the complainant did not make any arguments to Parliament as to why he considers that the personal data of the Irish MEPs needs to be transferred to him. According to EU case law, transparency in itself, in general terms, is not enough to show “ *necessity* ”. Indeed, in a recent 2018 judgment as regards transparency of MEPs’ expenses and allowances, the General Court of the EU stated that “ *[n]o automatic priority can be conferred on the objective of transparency over the right to protection of personal data* ” [10] . This is based on the EU treaties which give equal weight to the right to access EU documents, and the right to the protection of personal data.

16. In light of the above, the Ombudsman takes the view that Parliament was in a position to rely, legally, on the exception for the protection of the privacy and integrity of an individual to refuse public access to the 22 identified documents.

Failure to identify further documents

17. Parliament did not identify any further documents as falling within the scope of the complainant’s request. It explained to the complainant that the requested data concerning the total amounts paid to Irish MEPs as the general expenditure allowance and the parliamentary assistance allowance could not be retrieved from an electronic database using a standard query. Instead, the extraction of the relevant data would have required the creation of a specific query, which would have involved the investment of significant resources. This means that Parliament would have needed to create a new document, which it is not obliged to do under Regulation 1049/2001.

18. The Ombudsman notes that the right of public access to documents technically does indeed apply only to documents in the possession of an institution [11] , that is, to “ *existing documents* ”. As regards data held in electronic databases, the Court of Justice of the EU clarified that “ *all information which can be extracted from an electronic database by general use through pre-programmed search tools ... must be regarded as an existing document* ” [12] . To the contrary, any information whose extraction would require a substantial investing, such as the programming of a new search query, must be regarded as a “ *new document* ” [13] .

19. In this case, Parliament argued that the retrieval of the data and its transmission to the complainant would have required the creation of a new document. The rules on public access to documents do not impose such an obligation.

20. The Ombudsman also notes that the monthly general expenditure allowance, for which the figure is published already on the Parliament website, is paid as a lump sum and not on the presentation of receipts for the expenditure incurred.

21. In light of the above facts, the Ombudsman’s inquiry into this aspect of the complaint has not brought to light any instance of maladministration.



Final remarks

22. In the absence of an overall policy adopted by Parliament on the proactive publication of total amounts of salaries, including expenses and allowances, received by individual MEPs, the Ombudsman dealt with this complaint as a public access to documents case under Regulation 1049/2001. The Ombudsman found that, under this EU law, Parliament was technically in a position to refuse both access to the 22 identified documents and the creation of new documents.

23. However, the complainant has stated in his complaint to the Ombudsman that there should be a transparent database, where EU funded payments to MEPs are accessible to the public. In view of the principles outlined above [14], the Ombudsman has considerable sympathy with this view. Some national parliaments in the EU have already adopted policies on the publication of expenses and allowances received by their Members. The Ombudsman considers that the European Parliament already publishes a large amount of information in this area, but to further boost transparency, the development of such an open database could usefully be considered by the new Parliament to be elected in May 2019.

Conclusion

Based on the inquiry, the Ombudsman closes this case with the following conclusion:

The Ombudsman has found no maladministration in the European Parliament's handling of the request for public access to documents.

The complainant and the European Parliament will be informed of this decision.

Emily O'Reilly

European Ombudsman

Strasbourg, 28/03/2019

[1] In accordance with Article 3(1) of Regulation 2018/1725 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data:

<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32018R1725> [Link].

[2] Article 4(1)(b) of Regulation 1049/2001 regarding public access to European Parliament, Council and Commission documents:



<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:32001R1049> [Link].

[3] Available here: <http://www.europarl.europa.eu/news/en/faq/13/salaries-and-pensions> [Link]

[4] Available here: <http://www.europarl.europa.eu/news/en/faq/14/summary-of-allowances> [Link]

[5] In accordance with Article 3(1) of Regulation 2018/1725.

[6] Article 3(1) of Regulation 2018/1725.

[7] Cases T-639/15 to T-666/15 and T-94/16 *Psara et al v. Parliament* [2018], ECLI:EU:T:2018:602.

[8] Article 4(1)(b) of Regulation 1049/2001.

[9] Article 9(1)b of Regulation 2018/1275.

[10] Cases T-639/15 to T-666/15 and T-94/16 *Psara et al v. Parliament* [2018], ECLI:EU:T:2018:602, para 91.

[11] Article 2(3) of Regulation 1049/2001.

[12] Case C-491/15 P *Typke v. Commission* [2017] ECLI:EU:C:2017:5, ECLI:EU:C:2017:5, para. 37.

[13] Case C-491/15 P *Typke v. Commission* [2017] ECLI:EU:C:2017:5, ECLI:EU:C:2017:5, paras. 39 and 47.

[14] Paragraph 9.