

Decision of the European Ombudsman in case 1651/2018/FP on the European Parliament's refusal to grant public access to documents related to the revision of the list of expenses that may be covered by the General Expenditure Allowance granted to Members of the European Parliament

Decision

Case 1651/2018/FP - **Opened on** 01/10/2018 - **Recommendation on** 29/04/2019 - **Decision on** 16/09/2019 - **Institution concerned** European Parliament (No further inquiries justified) |

The case concerned a decision by the European Parliament's administration not to grant public access to documents related to the revision of the list of expenses which may be covered by the General Expenditure Allowance granted to Members of the European Parliament. The complainant had requested public access to a proposal on how to review the allowance and to an accompanying letter from the chair of the working group that prepared the proposal, as well as to other documents relating to the discussion of the allowance at a meeting in Parliament.

Parliament's stance is that disclosing the documents requested by the complainant could undermine its decision-making process.

The Ombudsman found that the public interest in making these documents public overrode the need to protect Parliament's decision-making process and that Parliament's refusal to grant public access constitutes maladministration. She made a corresponding recommendation that Parliament grant public access to the documents. However, Parliament chose not to follow that recommendation.

The Ombudsman now closes the inquiry.

Background to the complaint

1. The General Expenditure Allowance (GEA) [1] is a flat-rate allowance “ *intended to cover costs incurred which are directly related to the exercise of the Member's parliamentary activities, such as office rent and management costs, telephone and subscriptions, representation activities, computers and telephones, the organisation of conferences and exhibitions* ”. [2]



2. On 12 June 2017, the Bureau [3] of the European Parliament set up an ad-hoc working group, composed of Members of the European Parliament (MEPs), “ *with the aim of drawing up a revised list of expenses which may be defrayed under the GEA and of making recommendations for the future* ”. [4] The working group made a proposal on the list of expenses which may be covered by the GEA and on the rules governing the reimbursement of these expenses. On three issues the working group set out a number of options.

3. On 2 July 2018, the Bureau considered the working group’s proposal, together with a letter accompanying the proposal from the chair of the working group. Based on this, the Bureau decided on the list of expenses to be covered by the GEA. [5]

4. On 4 July 2018, the complainant, a journalist, requested public access to the following documents: the letter from the working group’s chair; [6] the proposal from the ad hoc working group, including the options that were set out; and other documents relating to the GEA discussion at the Bureau meeting of 2 July 2018.

5. Parliament replied to the complainant on 25 July 2018. In addition to the letter and the proposal requested by the complainant, it identified, as falling under his request, the non-exhaustive list of expenses that may be covered by the GEA, as established by the Bureau decision of 13 December 2010. Parliament explained that the list of expenses was already publicly available. It gave the complainant a link to the website where the list was available [7] and provided him with a copy of the list. However, Parliament refused public access to the requested letter from the chair of the working group and the working group’s proposal. It justified its refusal by reference to Article 4.3 of the EU rules on public access to documents (Regulation 1049/2001). That article seeks to protect the internal decision-making processes of EU institutions. [8]

6. On 31 July 2018, the complaint requested that Parliament review its decision, by making a so-called 'confirmatory application'.

7. Parliament confirmed its refusal to grant public access to the requested documents on 12 September 2018.

8. Dissatisfied with Parliament’s response, the complainant turned to the Ombudsman on 21 September 2018.

9. The Ombudsman opened an inquiry and her inquiry team held two meetings with Parliament’s representatives, during one of which the requested documents were examined.

The Ombudsman's recommendation

10. On the basis of the inquiry into this complaint, the Ombudsman made the following recommendation [9] to Parliament:



The European Parliament should grant public access to the proposal of the ad hoc working group on the revision of the list of expenses which may be defrayed from the General Expenditure Allowance from the agenda of the Bureau meeting of 2 July 2018 and the related letter from its chair.

Parliament's reply to the Ombudsman's recommendation

11. On 1 July 2019, Parliament rejected the Ombudsman's recommendation.

12. In its opinion on the recommendation, Parliament questioned if it is appropriate for the Ombudsman to determine whether there is an overriding public interest in disclosing a document, given that Parliament enjoys a margin of discretion when determining if there is a public interest in disclosing a document. It argued that the Ombudsman's review of how an institution dealt with an access to documents request should be limited to verifying whether the procedural rules were complied with, the contested decision was properly reasoned and the facts were accurately stated, and whether there was a manifest error in assessing the facts, or there was a misuse of powers.

13. Parliament also disagreed with the Ombudsman's finding that there is an overriding public interest in disclosing the documents, since these concerned merely proposals from a working group that did not take the eventual decisions. By contrast, Parliament had published documents related to the decision taken by the MEPs in the Bureau. It argued that there would be no public interest in releasing an internal opinion that the Bureau received from a working group, since the public can access the actual decision and draw conclusions [from that] on how Parliament manages the reimbursement of MEPs' expenses.

The complainant's comments on Parliament's reply

14. The complainant did not agree with Parliament's view that the activities of MEPs in an ad-hoc working group do not require the same public scrutiny as those of MEPs acting as members of the Bureau. He pointed out that the working group consisted solely of MEPs who were also members of the Bureau at the time.

15. The complainant rejected Parliament's argument that the working group was merely an internal advisory body, which took no decisions. He contended that the MEPs in the working group set out options that formed the basis of the Bureau's decision, and that this is part of the decision-making process.

16. The complainant argued that not only should the final decision of the Bureau be made public, but also the proposals of the working group. This would enable the public to make a proper judgement on the decision on the reimbursement of the expenses under the GEA.



The Ombudsman's assessment after the recommendation

17. Parliament considers that the Ombudsman does not have a mandate to take a position on whether there is a public interest in disclosing documents held by EU institutions. Regulation 1049/2001 expressly gives a right to complainants to bring to the Ombudsman a refusal to grant access to a document. The Ombudsman can, in that context, examine any aspect of how the institution concerned has dealt with the access to documents request, both in terms of procedure and substance. There is nothing in the Regulation to limit the Ombudsman's remit in the way Parliament suggests.

18. As regards the substance of a case, the Ombudsman can take a view as to whether the actual content of a document justifies the application of an exception to public access and/or whether there is an overriding public interest in access to the document. It is for this reason that the Ombudsman, exercising the powers of inspection granted to her by her Statute, systematically requests institutions that have refused access to documents to give her access to the documents concerned. This allows her, when the content of the document is of crucial importance to the decision whether access should be granted, to take a view on whether the refusal to grant access is justified.

19. The right of the Ombudsman to take a view on whether there is an overriding public interest in the disclosure of a document is particularly important. Complainants have a right to put forward, to an institution, arguments as regards whether there is an overriding public interest in disclosing a document. However, this right is practically limited by the fact that the complainant does not have knowledge of the content of a non-disclosed document. In contrast, by virtue of the powers granted to her by the Statute of the Ombudsman, the Ombudsman can view the document. She can therefore, when the content of the document is of crucial importance to the decision whether the document should be disclosed, take an informed view as to whether or not there is an overriding public interest in disclosing the document.

20 . When taking any view as to whether an exception to public access applies, or whether there is an overriding public interest in disclosure, the Ombudsman takes careful note of the view of the institution concerned, recognising its own margin of discretion. However, the Ombudsman herself has the discretion, taking all relevant factors into account, to form her own independent view of where the balance of the public interest lies. In the present case, the Ombudsman considers that there is a very strong public interest in knowing how Parliament arrived at its decision on the list of expenses covered by the GEA.

21 . As emphasised in her recommendation, MEPs, as members of the Bureau, decide on the expenses covered by the GEA. MEPs are the beneficiaries of the GEA. It is thus important that MEPs take these decisions on the use of public funds as openly as possible. Ensuring full transparency of the decision-making process can build and strengthen public trust. The Ombudsman's view is that this public interest is of such importance that it prevails over other arguments for refusing to grant access to the requested documents, notably the need to protect the Bureau's decision-making process.



22 . The Ombudsman acknowledges and welcomes that the final decision of the Bureau on the list of expenses which may be covered by the GEA was published. [10] However, she found that disclosing the working group's proposals would enable the public to better understand the options envisaged by the working group and discussed by the Bureau.

Conclusion

The Ombudsman now closes the inquiry.

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

Emily O'Reilly

European Ombudsman

Strasbourg, 16/09/2019

[1] The legal basis for the General Expenditure Allowance is Article 20(3) of the Statute for the Members of the European Parliament

<https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:32005Q0684> [Link].

[2] More information: <http://www.europarl.europa.eu/news/en/faq/14/summary-of-allowances> [Link].

[3] The Bureau of the European Parliament is composed of MEPs. It lays down the Parliament's internal rules, draws up the preliminary draft budget and decides all administrative, personnel and organisational matters. It is composed of the European Parliament's President, fourteen vice-Presidents and five quaestors (who are responsible for administrative and financial matters of direct concern to Members of the European Parliament). See, for example,

<http://www.europarl.europa.eu/news/en/headlines/eu-affairs/20140702STO51229/the-bureau-meet-the-people-in-ch> [Link].

[4] European Parliament Bureau minutes of the meeting of 12 June 2017, pages 12-13, available at:

[http://www.europarl.europa.eu/RegData/organes/bureau/proces_verbal/2017/06-12/BUR_PV\(2017\)06-12_EN.pdf](http://www.europarl.europa.eu/RegData/organes/bureau/proces_verbal/2017/06-12/BUR_PV(2017)06-12_EN.pdf) [Link].

[5] European Parliament Bureau minutes of the meeting of 2 July 2018, pages 19-20; List of expenses which may be defrayed from the General Expenditure Allowance (GEA), Bureau Decision of 2 July 2018, Annex of the minutes, pages 60-63, available at:



[http://www.europarl.europa.eu/RegData/organes/bureau/proces_verbal/2018/07-02/BUR_PV\(2018\)07-02_EN.pdf](http://www.europarl.europa.eu/RegData/organes/bureau/proces_verbal/2018/07-02/BUR_PV(2018)07-02_EN.pdf)
[Link] .

[6] Reference to this letter had been made in the draft agenda of the Bureau meeting of 2 July 2018.

[7] List of expenses which may be defrayed from the General Expenditure Allowance

(GEA), available at:

[http://www.europarl.europa.eu/RegData/publications/notes/2010/438665/EP-PE_NT\(2010\)438665_XL.pdf](http://www.europarl.europa.eu/RegData/publications/notes/2010/438665/EP-PE_NT(2010)438665_XL.pdf)
[Link]

[8] Article 4(3) of Regulation 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents, available at:

<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32001R1049&rid=1> [Link].

[9] Recommendation of the European Ombudsman in case 1651/2018/THH on the European Parliament's refusal to grant public access to documents related to the revision of the list of expenses that may be covered by the General Expenditure Allowance granted to Members of the European Parliament, available at:

<https://www.ombudsman.europa.eu/en/recommendation/en/113092> [Link].

[10]

[http://www.europarl.europa.eu/RegData/organes/bureau/proces_verbal/2018/07-02/BUR_PV\(2018\)07-02_EN.pdf](http://www.europarl.europa.eu/RegData/organes/bureau/proces_verbal/2018/07-02/BUR_PV(2018)07-02_EN.pdf)
[Link]