

## Decision in case 1995/2019/MIG on the European Commission's refusal to grant public access to documents concerning Commissioners' travel expenses

Decision

**Case** 1995/2019/MIG - **Opened on** 06/11/2019 - **Decision on** 17/06/2020 - **Institution concerned** European Commission ( Settled by the institution ) |

The case concerned three requests for public access to documents, which the European Commission had refused to disclose. Each request concerned the expenses incurred by Commissioners on business trips. Each request related to a different Commissioner and a different trip.

In the course of the Ombudsman's inquiry, the Commission gave the complainant almost unrestricted access to the documents detailing the expenses of each trip. The Ombudsman therefore closed the inquiry as settled. She noted, however, the delay by the Commission in replying to the requests, and committed to monitor whether this issue persists in how the Commission deals with requests for public access to documents.

### Background to the complaint

1. Since 2018, following the implementation of its new Code of Conduct for commissioners [\[1\]](#) [\[Link\]](#) (the 'Code of Conduct'), the European Commission has proactively published information on the commissioners' travel related expenses (so called 'mission costs') every two months. [\[2\]](#) The published information includes an overview of the amounts spent on travel, accommodation, daily allowances and other expenses.

2. The Ombudsman's inquiry in this case concerned three requests for public access to documents [\[3\]](#) [\[Link\]](#). Each request related to a business trip ('mission'), made by a Commissioner. Each request related to a different Commissioner and a different mission. Two of the requests were about missions to France to attend a French language course [\[4\]](#) and the third was about a mission to Brussels for the purpose of a videoconference [\[5\]](#) . The requests were made by the Madrid-based human rights organisation Access Info Europe ('the complainant') in May 2019.



3. In relation to attendance at the language courses, the complainant asked the Commission for access to documents relating to (i) the travel expenses incurred, (ii) the rules governing the reimbursement of travel expenses for language training and (iii) the tuition fees (to the extent that they had been paid for by the Commission). In relation to the mission to take part in the videoconference, the complainant sought access to documents relating to the travel expenses incurred only.
4. In June 2019, the Commission denied access based on the need to protect personal data. [\[6\]](#) [\[Link\]](#)
5. On 25 and 27 June 2019 respectively, the complainant asked the Commission to review its decisions (by making so-called 'confirmatory applications').
6. The Commission extended the time limit for its replies but did not reply to the complainant within the extended period.
7. Having not received a reply, the complainant turned to the Ombudsman on 29 October 2019.

## The inquiry

8. The Ombudsman opened an inquiry into the complainant's position that the Commission had wrongly refused public access to the requested documents and failed to deal with the complainant's requests within the prescribed time limits.
9. The Ombudsman asked the Commission to reply to the complainant's confirmatory applications. The Ombudsman then received the Commission's confirmatory replies and the complainant's comments on them.
10. In the course of the inquiry, the Ombudsman's inquiry team inspected the documents at issue: three "*statements of mission expenses*", showing the expenses declared by the commissioners and the amounts approved for reimbursement by the Commission, and eight supporting documents (receipts, tickets, etc.) The Ombudsman also obtained further clarifications from the Commission concerning certain issues raised by the complainant.

## Arguments presented to the Ombudsman

11. The complainant said that the Commission's Code of Conduct provides for the proactive publication of commissioners' travel related expenses unless disclosure would undermine one of the public interests protected under the EU rules on access to documents. [\[7\]](#) [\[Link\]](#) However, the complainant pointed out, the Code of Conduct does not refer to the need to protect personal data. [\[8\]](#) [\[Link\]](#) In the complainant's opinion, this could imply that the proactive publication of commissioners' travel related expenses was considered not to fall within the scope of EU data protection rules.



**12.** Therefore, the complainant said, the requested documents should be disclosed. The amounts spent by the commissioners concerned are already public and the documents contain some additional details only. Disclosure would not undermine the privacy of the commissioners concerned. In addition, commissioners are informed in advance that their travel related expenses would be made public.

**13.** The complainant further argued that there is a specific purpose in the public interest for disclosing the requested information, namely to ensure maximum possible transparency in and foster public debate about the spending of public funds, and to allow the complainant to fulfil its role as 'watchdog'.

**14.** Regarding the delay, the complainant contended that the 15 working day time limit for handling requests for public access to documents could be extended only once and in exceptional circumstances only. In the complainant's view, the Commission had violated this rule as it had extended the time limit more than once and without giving sufficient reasons.

**15.** In the course of the inquiry, the Commission gave the complainant wide partial access to the three statements of mission expenses, redacting only information that is outside the scope of the requests or the personal data of its staff who had assessed the commissioners' declarations of expenses.

**16.** The Commission maintained its refusal to grant access to the eight supporting documents, based on the need to protect the personal data of the commissioners concerned. It pointed out that information related to a person's professional activity is not excluded from the concept of 'personal data' and that the receipts at issue constitute personal data, given that they are clearly linked to identified persons.

**17.** The Commission said that the Code of Conduct does not provide for the publication of personal data beyond the expenses incurred by commissioners, and that disclosure of any additional information, such as the number of a person's bank account, could cause harm to that person.

**18.** Finally, the Commission argued that the complainant had not established a 'necessity' as required by EU data protection rules [\[9\] \[Link\]](#), because its stated purpose for requiring the information was not sufficiently specific. Nor had the complainant fulfilled the further legal requirement that the transfer of the personal data was the most appropriate means for attaining its stated purpose.

**19.** With regard to the rules on meeting the cost of language training, the Commission clarified that it did not hold any relevant documents and explained that it had not paid the course fees.

**20.** The complainant was not satisfied with the Commission's replies. It questioned whether the Commission had identified all relevant documents and said that the documents it received (*"the expenses claims forms"*) did not contain the information it was seeking.



**21.** Regarding the necessity for the transfer of the data at issue, the complainant argued that the Commission should accept, as a legitimate purpose in the public interest, transparency of public expenditure and the complainant's role as watchdog. It argued that EU data protection rules require that a balance be struck between a data subject's right to the protection of personal data and an applicant's right of public access to documents.

**22.** The complainant also questioned the eligibility for reimbursement of certain costs, which the Commission had approved.

## The Ombudsman's assessment

**23.** The Ombudsman accepts that all the documents at issue in this inquiry constitute personal data, as they relate to an identified person. [10] The complainant did not contest this, but took the view that they should nevertheless be released to ensure transparency in and public scrutiny of public expenditure.

**24.** The Ombudsman considers that transparency in public expenditure is vitally important for establishing and maintaining trust and legitimacy in a democracy. This is even more important at EU level, where citizens at times feel more distant from the institutions and activities of the EU, and where, as a result, public trust may be particularly fragile. [11] [\[Link\]](#)

**25.** However, EU data protection rules require that a person seeking access to personal data must demonstrate a specific need in the public interest that would be met by obtaining such access. [12] [\[Link\]](#) Even if such a need can be shown, the personal data cannot be disclosed if the data subject has a legitimate interest in non-disclosure which outweighs this need. Finally, even if that test is met, disclosure of the personal data can only occur if it is the most appropriate means of attaining the purpose pursued by the person seeking access. If an alternative means of achieving the same purpose exists, this must be used instead.

**26.** Regarding the travel-related expenses incurred on the three business trips at issue, the Ombudsman recognises that the Commission has given wide partial access to the statements of mission expenses.

**27.** While the complainant appears to consider these documents to constitute "*expenses claims forms*", these documents show not only the expenses that have been declared (see column "expense statement") but also the amounts that have been approved for reimbursement (see column "expenditure report"). The statements of mission expenses also provide additional details, over and above the information which the Commission has proactively published, such as the deductions made and the amounts paid directly to a travel agency by the Commission. Thus, in releasing these documents, the Commission has made transparent how public money was spent in each case.

**28.** The Ombudsman takes the view that, as the statements of mission expenses have been



disclosed with limited redactions only, an appropriate degree of transparency has been achieved.

**29.** For that reason and for the reasons set out below, the Ombudsman also considers that disclosure of the eight supporting documents (transport tickets/receipts, hotel bills and a bank account statement) would be disproportionate, even if the purpose put forward by the complainant were to be considered sufficiently specific.

**30.** Firstly, having inspected the withheld documents, the Ombudsman can verify that there is nothing to indicate that there was a violation of the applicable rules or that the Commission's system for the reimbursement of expenses is not 'fit for purpose'. In all three cases, the declared expenses were higher than the approved amounts. This shows that a thorough assessment of the declared expenses has taken place and, as a result, only those costs that were deemed eligible have been approved for reimbursement.

**31.** Secondly, the release of information such as the name of the hotel at which a commissioner stayed or details of a commissioner's bank account would likely infringe personal privacy and could potentially give rise to security concerns. Furthermore, its disclosure would not provide any meaningful additional insight into how public money was spent. Therefore, it would serve no discernible public interest.

**32.** Finally, the Ombudsman notes that the applicable rules on commissioners' travel-related expenses, including those incurred attending training and seminars, are publicly available. [\[13\]](#)  
[\[Link\]](#)

**33.** With regard to the failure to comply with time limits, the Ombudsman notes with concern the delay that has occurred in the Commission's handling of the complainant's access requests. The Ombudsman calls on the Commission to make sure that, in future, requests for public access to documents are dealt with within the prescribed time limits. The Ombudsman continues to monitor this issue closely.

## Conclusion

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

**The European Commission has settled the complaint by giving the complainant significant partial access to the requested documents.**

The complainant and the Commission will be informed of this decision .

Emily O'Reilly



European Ombudsman

Strasbourg, 17/06/2020

[1] [Link] Commission Decision 2018/C 65/06 ('Code of Conduct for the Members of the European Commission'), available at:  
<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32018D0221%2802%29> [Link].

[2] [Link] For the travel expenses of the Juncker Commission, visit:  
[https://ec.europa.eu/info/former-colleges-commissioners/transparency-pages-juncker-commission\\_en](https://ec.europa.eu/info/former-colleges-commissioners/transparency-pages-juncker-commission_en) [Link]. The travel expenses of the von der Leyen Commission can be found on the respective webpage of each Commissioner under 'transparency':  
[https://ec.europa.eu/commission/commissioners/2019-2024\\_en](https://ec.europa.eu/commission/commissioners/2019-2024_en) [Link].

[3] [Link] Under Regulation 1049/2001 regarding public access to European Parliament, Council and Commission documents:  
<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32001R1049&from=EN> [Link].

[4] [Link] Commissioner Věra Jourová's mission "Intensive week-long French Course" in summer 2018:  
<https://ec.europa.eu/transparencyinitiative/meetings/mission.do?host=cc463fab-bfff-4595-bb45-6d0af96b5e83&mission=Vera+Jourova+Intensive+week-long+French+Course+summer+2018> [Link] and Commissioner Valdis Dombrovskis mission "French language course" in August 2018:  
<https://ec.europa.eu/transparencyinitiative/meetings/mission.do?host=12405586-0ba8-4a54-94ae-12e8daeb7b26&mission=Valdis+Dombrovskis+French+language+course+August+2018> [Link].

[5] [Link] Commissioner Malmström's mission "Videoconference with US Secretary of Commerce" which took place in April 2018:  
<http://ec.europa.eu/transparencyinitiative/meetings/mission.do?host=fd6c08d-54d1-4524-aa70-1287c34ceb4d&mission=Malmstrom+Videoconference+with+US+Secretary+of+Commerce> [Link].

[6] [Link] In accordance with Article 4(1)(b) of Regulation 1049/2001.

[7] [Link] Article 6(2) of the Code of Conduct.

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

[9] [Link] Regulation 2018/1725 on the protection of natural persons with regard to the processing of personal data by the EU institutions, bodies, offices and agencies, available at:  
<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32018R1725&from=EN> [Link].

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



[11] [Link] See decision of the European Ombudsman on complaint 193/2019/TE:  
<https://www.ombudsman.europa.eu/en/decision/en/111831> [Link].

[12] [Link] Article 9(1)(b) of Regulation 2018/1725.

[13] [Link] See, in particular, Annex II to the Code of Conduct and Commission Decision on the general provisions for implementing Articles 11, 12 and 13 of Annex VII to the Staff Regulations of Officials (mission expenses) and on authorised travel ('Guide to missions and authorised travel'), available at:

<https://ec.europa.eu/transparency/regdoc/?fuseaction=list&coteld=3&year=2017&number=5323&version=ALL&lang>  
[Link] (the Guide is applicable to Commissioners' expenses under Article 6(2) of the Code of Conduct).