

Proposal of the European Ombudsman for a solution in case 1/2020/MIG on the European Economic and Social Committee's refusal of public access to documents concerning travel expenses related to an official trip to China

Solution - 30/03/2020

Case 1/2020/MIG - Opened on 14/01/2020 - Decision on 23/07/2020 - Institution concerned European Economic and Social Committee (Solution achieved) |

Made in accordance with Article 3(5) of the Statute of the European Ombudsman [1]

Background to the complaint

1. In July 2019, a delegation from the European Economic and Social Committee (EESC) took part in the 17th meeting of the EU-China Civil Society Round Table in Shanghai, China. [2] The delegation consisted of 14 members of the EESC and 3 support staff.
2. In September 2019, the complainant, a Brussels based journalist, asked the EESC for public access to documents [3] containing information on this event, namely who authorised the delegation to attend, a list of the EESC participants and *"[a] breakdown of [their] r/t flight details, individual ticket costs and seating class assignments (first class, business or economy)"* .
3. The EESC informed the complainant about the decision authorising the delegation to attend the event and the list of the EESC participants. It refused, however, to disclose documents containing information on the flights taken by the EESC participants, as it considered that this information constituted 'personal data'. [4]
4. The complainant asked the EESC to review its decision (he made a so-called 'confirmatory application').
5. The EESC responded that the total travel expenses of all participants was EUR 69 685.80). It also provided the complainant with a table showing the flight details and the travel costs of two members. It did so because they had given their consent to the disclosure of this information.
6. As regards the travel details and travel costs of the other participants, the EESC said it was



treating the complainant's application as a request for the flight tickets of the members of the delegation. It stated that it could not disclose those documents, as to do so would constitute unauthorised processing of the 'personal data' of the persons concerned.

7. The complainant remained dissatisfied and complained to the Ombudsman. In his complaint, he said that the information disclosed for the two members (who had consented to the disclosure) should be disclosed in respect of all the other participants.

The inquiry

8. The Ombudsman opened an inquiry into the complainant's view that the EESC was wrong to reject his request for public access to documents.

9. In the course of the inquiry, the Ombudsman received the reply of the EESC on the complaint. The inquiry team also inspected the full version of the table, an extract of which the EESC had disclosed to the complainant, showing the flight details, flight costs and seating class for all members of the EESC delegation.

Arguments presented to the Ombudsman

10. The EESC argued that it could not disclose the flight details, the individual ticket costs and the seating classes of the delegation because this information constituted 'personal data' of the persons concerned and the complainant had failed to put forward a necessity for the transfer of this data to him.

11. The complainant contended that he could not understand how disclosure of the data concerned would violate privacy rights as the flight tickets had been purchased using public money. He added that the names of the participants had already been revealed. The complainant also stated that the EESC had in the past released detailed information about the costs of individual members. He failed to see how this situation was any different.

12. Regarding a need for transferring the requested information to him, the complainant explained that he is a journalist, whose job includes accessing information on how public funds are spent. He stated that allowing him to understand how this money was used enables him to assess and explain to the wider public how their taxes are used.

13. The EESC replied that the information included in the travel tickets, including flight details and seating class, potentially allows the monitoring and the tracking of the 'behavioural patterns' of individuals. The EESC also said that anyone who asks for access to 'personal data' had to fulfil the legal requirement of 'necessity'. It added that the public disclosure of the flight tickets was, in any event, not the most appropriate means of dealing with the complainant's stated need, *"as extensive controls already apply."*



14. As regards the three EESC staff who accompanied the delegation, the EESC stated that they were support staff. It stated that even if their travel costs are incurred in their professional functions, the requested information nevertheless constitutes 'personal data'.

The Ombudsman's assessment

15. The concept of 'personal data' is very broad under EU data protection rules [5] ; it comprises "*any information relating to an identified or identifiable natural person*". [6] Thus, 'personal data' is not limited to information relating to the private life of a person, it also covers any information relating to the professional life of a person.

16. EU data protection rules require that a person seeking access to 'personal data' must demonstrate a specific need that is met by obtaining such access. [7] Moreover, the specific need in question must serve a public interest. Even if such a need exists, 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.

17. The information which the complainant requests can, unless effectively anonymised, be linked to identifiable persons. Therefore, absent anonymisation, the information that the complainant states he needed constitutes 'personal data' of the persons concerned.

18. The Ombudsman notes that the complainant is seeking access to information to be able to understand how taxpayers' money was spent, and to communicate this to the public in the context of his work as a journalist. Specifically, he wants information about how much the flights cost and the seating class used on the flights. He has not expressed any need, or indeed an interest, in knowing the precise origin of the flights within the EU, or the final return destination in the EU. He has not asked for the flight tickets of individual members of the EESC delegation.

19. While the complainant has a need to have access to information as regards how public money was spent [8] , he has no evident need to know the identity of **the specific individuals** who incurred specific costs in order to meet this need.

20. The table containing the costs of the delegation, which the Ombudsman has viewed, could be anonymised by redacting those columns that include the participants' names.

21. It may be possible to speculate about the identity of some participants on the basis of their flight routes set out in the table, in particular those that travelled from and to their country of residence. However, since the complainant has not specifically asked for information about precisely where in the EU flights originated and ended, this information can also be redacted.

22. If the names of the participants and any other details identifying individuals are redacted, it



would not be possible to link any particular set of flight costs or seating class details to any specific person. The release of the redacted table would, in that context, cease to constitute a disclosure of personal data, but would appear to satisfy the complainant's request.

23. Accordingly, the Ombudsman will make a proposal for a solution below.

The proposal for a solution

Based on the above findings, the Ombudsman proposes that the European Economic and Social Committee should disclose an anonymised version of the table compiling the flight details of the participants of the Round Table, removing any information that it considers would allow for the identification of the data subjects concerned.

The EESC is invited to inform the Ombudsman by 29 May 2020 of any action it has taken in relation to the above solution proposal.

Emily O'Reilly

European Ombudsman

Strasbourg, 30/03/2020

[1] Decision of the European Parliament of 9 March 1994 on the regulations and general conditions governing the performance of the Ombudsman's duties (94/262/ECSC, EC, Euratom), OJ 1994 L 113, p. 15.

[2] For more information, visit:

<https://www.eesc.europa.eu/en/agenda/our-events/events/17th-meeting-eu-china-round-table> [Link].

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

[5] 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].



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

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

[8] See also decision in case 143/2019/TE,
<https://www.ombudsman.europa.eu/en/decision/en/111831> [Link].