



Emily O'Reilly

European Ombudsman

Mr Vasco Alves Cordeiro
President
European Committee of the Regions

[REDACTED]
[REDACTED]

Strasbourg, 02/12/2022
Complaint 795/2022/OAM

[REDACTED]

Subject: Proposal for a solution in the above case on the refusal by the European Committee of the Regions to give full public access to the expenses and travel itineraries of a former Irish member

Dear Mr Cordeiro,

I am writing to seek a solution in this case concerning a request for public access to documents containing expenses and travel itineraries of a former member of the European Committee of the Regions (CoR).

My Office already shared our preliminary views with the CoR in May 2022, and asked it to reassess the arguments and evidence put forward by the complainant with a view to providing wider access. In reply, the CoR maintained its position that no further access could be granted. In October 2022, my Office asked the CoR to share the documents in question with us so we could inspect them.

Having inspected the documents, I have taken the view that the CoR was not justified in refusing to disclose the documents.¹ My reasons for reaching this conclusion are set out in the annex to this letter.

Against this background, I have decided to propose the following solution:

¹ CoR invoked the exception for the protection of personal data under the EU's legislation on public access to documents. See 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%3A32001R1049>.



The Committee of the Regions should review its position on the complainant's public access request with a view to granting the widest possible access to the documents requested.

In particular, the CoR should consider releasing, for each of the events of interest to the complainant,² at least those parts of the documents that contain an overview of the payments and the itineraries — more specifically, the pages entitled '*Statement of travel and subsistence expenses*' (similar data on mission expenses of Commissioners is regularly published proactively by the European Commission) and '*Claim for reimbursement of travel expenses and travel and meeting allowances*'. Non-relevant personal data (such as the names of the CoR staff, car licence plate numbers, bank accounts and signatures) can reasonably be redacted.

I would be grateful to receive the CoR's reply by **2 February 2023**.

In the course of the inquiry, the CoR informed the Ombudsman about a preliminary examination ('selection') by the European Anti-Fraud Office presumably in relation to the complainant's suspicions of wrongdoing with EU funds. However, it is not clear whether the documents at issue have become part of an (ongoing) EU or national investigation. Should this be the case and the CoR considers that wider access to the documents could undermine the protection of the purpose of that investigation,³ please indicate this in your reply.

At this stage, the solution proposal is confidential. My inquiry team has, however, informed the complainant of our intention to seek a solution in this case.⁴ Please note that our usual practice is to send a copy of the solution proposal to the complainant for comments, together with a copy of the institution's reply to it, once we have received that reply. I would therefore ask the CoR to inform us if any information contained in the assessment in the annex, or in its reply, should not be shared with the complainant.⁵

Should the CoR have any questions, please contact the inquiries officer responsible,

Yours sincerely,

Emily O'Reilly
European Ombudsman

² See annex for further details.

³ Article 4(2), third indent of Regulation 1049/2001.

⁴ In line with Article 2(10) of the Statute of the European Ombudsman, Regulation 2021/1163 of 24 June 2021 laying down the regulations and general conditions governing the performance of the Ombudsman's duties: <https://www.ombudsman.europa.eu/en/legal-basis/statute/en>.

⁵ If you wish to submit documents or information that you consider to be confidential, and which should not be disclosed to the complainant, please mark them 'Confidential'. Encrypted emails can be sent to our dedicated mailbox eo-secem@ombudsman.europa.eu. Please contact eo-secem@ombudsman.europa.eu beforehand. Information and documents of this kind will be deleted from the European Ombudsman's files shortly after the inquiry has ended.



Enclosure: Assessment leading to the solution proposal in complaint 795/2022/OAM



Annex: Assessment leading to the solution proposal in complaint 795/2022/OAM

The Ombudsman inquiry team inspected the documents sent by the CoR on 18 October 2022 and took note of the additional information received from the CoR. In accordance with the Ombudsman's practice in such cases, while the complainant was informed of our inspection request, these documents and any other information or documents that the CoR considers to be confidential will not be disclosed to the complainant or any other person without the prior agreement of the CoR.

Our review of the documents confirmed that the information contained therein constitutes personal data. When considering the disclosure of personal data, two legal frameworks need to be applied: Regulation 1049/2001⁶ governing the right of the public to access documents and Regulation 2018/1725⁷ which concerns the right to the protection of an individual's personal data.

Three cumulative conditions need to be considered when deciding if personal data should be disclosed, in accordance with Article 9(1)(b) of Regulation 2018/1725:

- (1) The applicant must have established that the transfer of the personal data is necessary for a specific purpose in the public interest.
- (2) There should be no reasons to assume that the data subject's legitimate interests might be prejudiced by the disclosure of the data.
- (3) Where there are reasons to assume that the data subject's legitimate interests might be prejudiced, that disclosure of the personal data is proportionate after having weighed the various competing interests.

If these conditions are not met, the exception under Article 4(1)(b) of Regulation 1049/2001 - the protection of privacy and the integrity of the individual - can be invoked to refuse access to the personal data.

The complainant in this case put forward two specific purposes in the public interest to justify the need for access to the personal data, namely (i) *to verify that public funds were spent correctly and that there was no fraud/wrongdoing* and (ii) *the transparency of the EU institutions*.

In the CoR's view, the complainant did not establish the need for the transfer of the requested personal data. It thus refused to give access based on Article 4(1)(b) of

⁶ Regulation 1049/2001 regarding public access to European Parliament, Council and Commission documents, available at: <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A32001R1049>.

⁷ 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>.



Regulation 1049/2001. It considered the complainant's first purpose inadequate for establishing a need to transfer the personal data to him, arguing that "*journalists are not vested with the power to control the spending of EU funds*". The CoR pointed to specific internal and external means in place to verify how EU funds are spent. As regards the second purpose put forward by the complainant, the CoR considered that this has been satisfied with the partial access granted, that is, with the disclosure of a document showing whether the former CoR member had received allowances and reimbursements for the events in question, without including any amounts.

In particular, the CoR considers the *Psara* judgment⁸ fully relevant in relation to the complainant's access requests. In the *Psara* judgment, the Court found that the need for disclosure put forward by the applicants was too general in nature and that the applicants had failed to provide any concrete evidence that would have supported that need. The Court therefore considered that the first condition for the disclosure of personal data had not been met. In view of this, the Court did not assess the subsequent condition, that is, whether the legitimate interests of the data subjects concerned could have been affected by disclosure.⁹

However, the facts in this case differ from the circumstances in *Psara*. While the applicants in *Psara* made only a very general reference to possible fraud, the complainant in this case raised specific concerns about inconsistencies in the reimbursement claims of the former member of the CoR. In addition, the complainant provided the CoR with concrete evidence, obtained from Irish local authorities, namely reimbursement claims by the former member for national events, which supports his concerns. The complainant explained that he intended to verify if the former member submitted expenses claims for *overlapping* national and CoR events. It should also be noted that, in the *Psara* case, the applicants requested access to documents showing how *all* members of the European Parliament spent their allowances over the course of four years. In this case, the complainant asked for specific data corresponding to a defined and limited number of events.

We therefore consider that the case at hand is not directly comparable to the *Psara* case. Specifically, the complainant provided concrete evidence for his concerns that there had been inconsistencies in the reimbursement of the member concerned. In light of this, we consider that the complainant has successfully established a need for having the personal data at issue transferred that is in the public interest. The fact that, based on the evidence put forward by the complainant, the CoR has, in the meantime, recovered certain expenses from the member concerned, illustrated that the complainant's concerns are valid.

In addition, the Ombudsman has consistently taken the view that, as travel expenses of members or officials of EU institutions are funded by EU citizens, it is justified that the public takes an interest in how this money is spent.¹⁰ It is also unlikely that disclosure of such information would jeopardise the legitimate interests of such

⁸ The *Psara* judgement refers to the EP's refusal to provide access to MEPs' expenses and allowances. See Judgement of the General Court of 25 September 2018, *Psara et al v Parliament*, Cases T-639/15 to T-666/15 and T-94/16: <https://curia.europa.eu/juris/document/document.jsf?text=&docid=206663&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=2866235>.

⁹ Paragraphs 94, 96, 97.

¹⁰ See, for example, decision on the European Commission's refusal to give public access to documents concerning travel expenses related to an official trip to Vietnam (case 221/2021/DL), paragraph 14: <https://www.ombudsman.europa.eu/en/decision/en/139808>.



individuals. Rather, allowing for public scrutiny increases public trust in and the legitimacy of the EU administration.

In this context, it must be recalled that the personal data contained in the requested documents relates to a (then) public figure acting in ■ public capacity and relating solely to ■ professional activities as member of the CoR.¹¹ It is therefore reasonable to consider that the individual's *legitimate* interests as a public representative would not be harmed by disclosure. Objectively, the disclosure of the personal data at issue could, on the one hand, dispel any doubts that had been raised concerning the individual's integrity. On the other hand, if disclosure showed that those doubts had been justified, the former member's interest in non-disclosure was arguably *not* legitimate.

As for proportionality, the complainant's requests relate to specific personal data, access to which would allow him to pursue his objectives in the public interest.

The CoR refers to the fact that the data subject did not give ■ consent for the disclosure of ■ personal data. This is however not a requirement under Article 9(1)(b) of Regulation 2018/1725. In the absence of consent, the institution needs to check if the conditions mentioned above are fulfilled and if that is the case, access could be granted.

In light of the above, **the Ombudsman considers that the CoR should review its position on the complainant's public access request, taking into account the above observations, with a view to granting the widest possible access to the documents requested.** In particular, the CoR should consider releasing, for each of the events of interest to the complainant,¹² at least those parts of the documents that contain an overview of the payments and the itineraries — more specifically, the pages entitled '*Statement of travel and subsistence expenses*' (similar data on mission expenses of Commissioners is regularly published proactively by the European Commission) and '*Claim for reimbursement of travel expenses and travel and meeting allowances*'. Non-relevant personal data (such as the names of the CoR staff, car licence plate numbers, bank accounts and signatures) can reasonably be redacted.

Finally, in the course of the inquiry, the CoR informed the Ombudsman about a preliminary examination ('selection') by the European Anti-Fraud Office presumably in relation to the complainant's suspicions of wrongdoing with EU funds. However, it is not clear whether the documents at issue have become part of an (ongoing) EU or national investigation. Should this be the case and the CoR considers that wider access to the documents could undermine the protection of the purpose of that investigation,¹³ this could be indicated in the CoR reply.

¹¹ See in that regard the Judgment of the General Court of 15 July 2015, case T-115/13, *Dennekamp v Commission*, paragraphs 119-121:

<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A62013TJ0115&qid=1666769186543>.

¹² These correspond to the complainant's request of 23 August 2021: NAT seminar (Zwolle, 12 March 2015); CIVEX seminar (Elblag, 10 April 2015); ENVE meeting (Brussels, 24 February 2016); 119th plenary session (Brussels, 10-12 October 2016); European Week of the Regions and Cities (Brussels, 13 October 2016); 121st plenary session (Brussels, 8-9 February 2017); local event 'Challenges for the Atlantic Cities on the Eve of Brexit' (A Coruña, 10 February 2017); CIVEX meeting (Brussels, 6 April 2017); local event 'EU maritime agenda: a territorial view' (Viana do Castelo, 28 April 2017); Atlantic Strategy Group meeting (Madrid, 12 February 2018); Atlantic Stakeholder Platform Conference (Vigo, 23-24 October 2018); and NAT Seminar (Szombathely, 14 May 2019).

¹³ Article 4(2), third indent of Regulation 1049/2001.