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Ildikó GÁLL-PELCZ
Vice-President

REGISTERED LETTER
WITH ACKNOWLEDGEMENT OF RECEIPT

Mr Jakub Michálek
Mariánské nám. 2
Praha 1
Česká republika

D 302846 16.02.2016

Dear Mr Michálek,

Re: Your confirmatory application for access to European Parliament documents
Our reference: **A(2015)13723C** (to be quoted in any future correspondence)

On 5 January 2016, the European Parliament registered your confirmatory application seeking access to Parliament's documents, in accordance with Article 7(2) of Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents.

The application concerns:

- 1) list of contractors of the Office of MEP Miroslav Poche who received payments from 1 January 2014 until today,
- 2) list of contracts with Mr Karel Březina (supposedly a contractor under 1) and a sum of payments made under each of these contracts, as well as the documents provided to the Office of MEP Miroslav Poche in fulfilment of each of these contracts by Mr Karel Březina.

On 14 January 2016, you provided Parliament with a copy of two judgements to which you referred in your confirmatory application.

In reply to your initial application, by letter of the Secretary General of 25 November 2015, access to the identified documents was refused on the basis of the exceptions provided for under Article 4(1)(b) and Article 4(2) first indent of Regulation (EC) No 1049/2001.

The terms of your confirmatory application

In your confirmatory application, invoking the Freedom of Information Act of the Czech Republic and asserting that the right to information on public spending is regarded as higher than the right to privacy, you consider that you have demonstrated the necessity for having the requested personal data transferred to you. You allege moreover that the service provider supposedly concerned, being also a politician (member of the City

Council of Prague), is subject to public scrutiny and that he was sentenced in 2014 for fraud by the District Court of Prague 9.

Pursuant to Rule 116 (4) and (6) of the Rules of Procedure of the European Parliament and to Article 15 of the Decision of the Bureau of the European Parliament of 28 November 2001, on public access to European Parliament documents, I, as Vice-President responsible for matters relating to access to documents, am responding to your confirmatory application, on behalf and under the authority of the Bureau.

Preliminary remarks

I should like to point out that documents held by the European Parliament are not subject to the Freedom of Information Act of the Czech Republic, and that the relevant provisions in order to assess your request are Regulation (EC) No 1049/2001 as well as Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data.

As to the identified documents, I can confirm that Parliament holds contracts, invoices and application forms relating to service contracts under Articles 34 and 41 of the Implementing Measures for the Statute for Members of the European Parliament and that these documents contain the information that you request.

Reassessment of your request

It should be noted that the list of contractors that you request contains information to be considered personal data within the meaning of Article 2(a) of Regulation (EC) No 45/2001, disclosure of which could undermine the protection of the privacy of MEP Poche and the service providers. The same would apply to any possible contracts with Mr Karel Březina as well as the documents held by the Office of MEP Poche in execution of such contracts in the event that Mr Březina would have been hired as service provider by MEP Poche, a circumstance that I cannot confirm.

Pursuant to Article 4(1)(b), Parliament shall refuse access to documents where disclosure would undermine the protection of privacy and the integrity of the individual, in accordance with Community legislation on the protection of personal data, i.e. Regulation (EC) No 45/2001. In addition, it follows from settled case law that, where an application for access to documents relates to personal data, it is necessary to apply in full Regulation (EC) No 45/2001.

Under Article 8(b) of Regulation (EC) No 45/2001, personal data shall only be transferred if the recipient establishes the necessity for having the personal data transferred and if there is no reason to assume that the data subject's legitimate interests might be prejudiced.

In its judgement in case T-115/13, the General Court clarified that, in order to fulfil the condition of necessity laid down by Article 8(b) of Regulation No 45/2001, which is to be interpreted strictly, the applicant would have to establish that "*the transfer of personal data is the most appropriate of the possible measures for attaining the applicant's objective, and that it is proportionate to that objective, which means that the applicant must submit express and legitimate reasons to that effect*"¹.

¹ Case T-115/13 *Dennekamp v Parliament*, paragraphs 59 and 77.

In the same judgement, the General Court also pointed out that the condition of necessity for having the personal data transferred entails an examination by the relevant institution or body, in the light of the objective pursued by the applicant for access to documents².

A) Assessment of the justification given for the necessity for transfer of the personal data

In your confirmatory application, you invoked, as justification for the transfer of the personal data at stake, that Mr Březina was sentenced in 2014 for fraud by the District Court of Prague 9, that public scrutiny makes it imperative that his financial whereabouts are subject to public interest among the general public in the Czech Republic, and that there is a strong public interest for other political parties and for media to have access to documents to investigate the suspicion that Mr Březina might have worked for MEP Poche before the elections to the Assembly of Prague in October 2014 without providing any contracting work to the Member.

Parliament holds the view that the alleged generic interest of the public for Mr Březina's financial whereabouts and the interest of other political parties to investigate the suspicion described are too abstract to be considered sufficient in order to establish the necessity for having the personal data transferred. Indeed, it is settled case law that the aim of informing the public and enabling it to take part in a debate is not a valid interest justifying the necessity for transfer of personal data³. Moreover, you have not submitted express and legitimate reasons proving that the transfer of personal data is the most appropriate of the possible measures for attaining your objective, given that investigating possible instances of fraud would fall under the responsibility of the law enforcement authorities.

It should also be noted that the judgements that you have submitted do not prove that Mr Březina was sentenced to fraud as you contend.

Against this background, Parliament comes to the conclusion that, on the basis of the arguments put forward in your confirmatory application, you did not demonstrate the necessity for the transfer of the personal data of a Member and third parties contained in the requested documents as required under the applicable case law.

B) Prejudice to the legitimate interests in the protection of privacy of the data subjects

On a subsidiary ground, and without prejudice to the fact that you did not demonstrate the transfer of the personal data as the most appropriate measure for attaining the objectives pursued, nor that the data transfer is “necessary” in line with Article 8(b) of Regulation (EC) No 45/2001, Parliament holds the view that if the data were transferred the legitimate interests of the Member and third parties concerned would be prejudiced. Indeed, it would have not been proportionate to allow such a transfer of personal data, given the weight of the legitimate interests of the data subjects concerned.

Although service providers work for persons of public interest, their privacy as regards their personal data should not be affected hereby. In addition, disclosure of the fact that they have provided services to one specific Member might also prejudice their legitimate interests.

As regards the Member concerned, I would like to recall that case law has stated that MEPs, as public figures, have accepted that some of their personal data will be disclosed to the public and thus they enjoy a lesser protection than other data subjects. Nevertheless, this fact does in no way imply that Members' legitimate interests must be regarded as never being prejudiced by a decision to transfer data relating to them⁴.

² Case T-115/13 *Dennekamp v Parliament*, paragraph 68.

³ Case T-115/13 *Dennekamp v Parliament*, paragraph 87.

⁴ Case T-115/13 *Dennekamp v Parliament*, paragraph 119.

In this respect, it should be pointed out that MEPs enjoy a free mandate. This freedom, the protection of which equally has to be considered a 'legitimate interest' of the data subject under Article 8(b) of Regulation (EC) No 45/2001, is guaranteed inter alia by Article 6 of the Act concerning the election of the Members of the European Parliament by direct universal suffrage and by Article 2 of the Statute for Members.

Public disclosure of the information you have requested, i.e. the names of services providers employed and the amounts paid under various contracts, would allow for the tracking and profiling of the Member concerned, encroaching upon the free exercise of his mandate, as well as his freedom to seek the specialised advice deemed necessary.

Under such circumstances, the public interest in the exercise of a free mandate by a Member of the European Parliament should prevail over the alleged public interest in disclosure.

It follows that a transfer of the requested personal data is not permissible under Article 8(b) of Regulation (EC) No 45/2001.

Consequently, disclosure of the requested documents would undermine the protection of the privacy of the data subjects concerned, as outlined in detail above, within the meaning of Article 4(1)(b) of Regulation (EC) No 1049/2001. Parliament is therefore obliged to refuse public access to the requested documents.

C) Protection of commercial interests of a natural person

In addition, the documents that you request would reveal information relating to the commercial activity both of the Member concerned and the service providers.

As regards the Member, disclosing detailed information about how much he has paid for the various services would undermine his interests as a purchaser in the market in the sense of being able to obtain the best rates from possible future contractors.

As for the individual service provider, the fact of disclosing the amounts that he has received would also undermine his interests given that competitors would be able to offer more advantageous rates.

Furthermore, disclosing that the service providers have performed work for one specific Member would undermine their chances to offer services to Members with a different political position.

Finally, as regards the existence of an overriding public interest within the meaning of Article 4(2) of Regulation (EC) No 1049/2001, you have not proved the existence of such an interest in disclosure that would outweigh the need to protect the commercial interests of the Member and the service providers concerned. Parliament cannot identify such interest either, given the weight of the interests to be protected.

Conclusion

On the basis of the foregoing, Parliament cannot grant public access to the documents requested pursuant to Article 4(1)(b) and Article 4(2) first indent of Regulation (EC) No 1049/2001.

Moreover, as the information protected under the relevant exceptions covers entire documents, deletion of the relevant information in order to grant you partial access in the meaning of Article (6) of Regulation (EC) No 1049/2001 would not serve the purpose of your request.

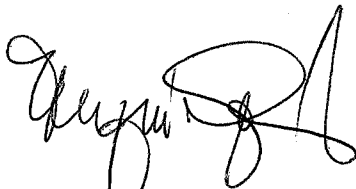
Nevertheless, I would like to point out that the Implementing Measures for the Statute for Members of the European Parliament have recently been amended and their new version,

applicable as of 1 January 2016⁵, contains in Article 34(8) the provision that the names or corporate names of service providers shall, for the duration of their contract, be published on the website of the European Parliament, together with the name of the Member or Members they assist.

While this provision does not apply to your request, which has to be assessed based on the rules in force at the time of your initial application, if you were to lodge in the future a request for access to the names of the service providers working at a given time for a Member, the assessment of such new request could lead to a different conclusion than the present one.

Finally, I would like to draw your attention to the means of redress available against this decision according to Article 8 of Regulation (EC) No 1049/2001. You may either bring proceedings before the General Court or file a complaint with the European Ombudsman under the conditions specified respectively in the Treaty on the Functioning of the European Union. I equally draw your attention to the fact that filing a complaint with the European Ombudsman does not have suspensory effect.

Yours sincerely,



Ildikó GÁLL-PELCZ

⁵ OJ C397 of 28.11.2015, p. 2.