

Der Generalsekretär

REGISTERED LETTER  
WITH ACKNOWLEDGMENT OF RECEIPT

██████████ 23.07.2020

██████████

**Subject:** Your application for public access to documents  
Our reference: ██████████ (to be quoted in future correspondence)

Dear ██████████

On 1 July 2020, the European Parliament registered your application seeking public access to documents containing information on the number of reported break-ins in offices of Members of the European Parliament (MEPs) and their staff as well as the number of thefts reported within the premises of the European Parliament by MEPs and their staff. You request as well to circumscribe the information to the years 2019 and 2020, broken down by month and by the victims' political group.

### Preliminary remarks

The scope of Regulation (EC) No 1049/2001 laying down the terms and the conditions for public access to the documents of the European Union institutions<sup>1</sup>, as defined in its Article 2(3), extends only to documents held by an institution, that is to say documents drawn up or received by the institution and in its possession, and it does not cover the broader concept of information.

The General Court has confirmed such interpretation underlining that it is necessary to maintain a distinction between the concept of a document and that of information, for the purposes of applying Regulation (EC) No 1049/2001. Information may be distinguished from a document, in particular, as far as it is defined as a data element that may appear in one or more documents. In that respect, since none of the provisions of Regulation (EC) No 1049/2001 deals with the right of access to information as such, it cannot be inferred that the public's right of access to an institution documents implies a duty on the part of the institution to reply to any request for information from an individual<sup>2</sup>.

<sup>1</sup> 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, OJ L 145, 31.5.2001, p.43

<sup>2</sup> Judgment of the General Court of 2 July 2015, *Typke v Commission*, T-214/13, EU:T:2015:448, paragraphs 53 and 54.

In addition, the Court of Justice of the European Union<sup>3</sup> also stated that the right of access to documents held by the institutions within the meaning of Article 2(3) of Regulation (EC) No 1049/2001 applies only to existing documents in the possession of the institution concerned. Therefore, an application for access to documents that would require the institution to create a new document, even if that document were based on information already appearing in existing documents held by it, does not fall within the scope of Regulation (EC) No 1049/2001. This conclusion is implicitly confirmed by Article 10(3) of Regulation (EC) No 1049/2001, stating that documents to which access is granted have to be supplied in an existing version and format.

### **Assessment of your application**

Parliament has identified an administrative working document of the relevant Directorate-General, kept for internal investigation purposes, which falls partially within the scope of your application. The document contains some of the information requested in your application but mainly personal data of the victims, the location and a brief description of the items concerned, covering the years 2019 and 2020.

Parliament assessed your application in the light of Regulation (EC) No 1049/2001 and Regulation (EU) 2018/1725 on the processing of personal data<sup>4</sup>, and after examination of the identified document, Parliament has determined that public access cannot be granted since such document is covered by the exceptions relating to the protection of Parliament investigations and the protection of the privacy and the integrity of the individuals concerned.

#### **- The exception relating to the protection of Parliament investigations (third indent of Article 4(2) of Regulation (EC) No 1049/2001)**

This provision reads as follows: “[t]he institutions shall refuse access to a document where disclosure would undermine the protection of: [...] the purpose of inspections, investigations and audits, unless there is an overriding public interest in disclosure.”

Moreover, General Court<sup>5</sup> states that the third indent of Article 4(2) of Regulation (EC) No 1049/2001 applies only if disclosure of the document in question may endanger the completion of investigations and that various acts of investigation may remain covered by the exception as long as the investigations continue.

Parliament is indeed carrying out ongoing investigations on the incidents specified in the identified document. The identified document is an internal working document only for the eyes of the investigators which is used as an important tool for the conduct of the investigations. It allows the investigators to have an overall view of the incidents that took place during the covered period as well as to look for patterns and *modus operandi* (MO) that may help to discern the authors of the incidents or at least to prevent future similar incidents. The disclosure of such document would indeed undermine the protection of the purpose of the investigations, which is not only to identify the authors of the incidents that took place but also to prevent future ones by putting in place effective measures.

<sup>3</sup> Judgment of the Court of 11 January 2017, *Typke v Commission*, C-491/15 P, EU:C:2017:5, paragraph 31.

<sup>4</sup> Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 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, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC, OJ L 295, 21.11.2018, p. 39

<sup>5</sup> Judgment of the Court of First Instance of 6 July 2006, *Franchet and Byk v Commission*, T-391/03 and T-70/04, EU:T:2006:190, paragraphs 109, 110 and 113.

If the document were to be publicly disclosed, the patterns and MOs that may be identified by the investigators in order to put in place future measures could also be identified by third parties in order to precisely change such patterns in order to circumvent the security efforts carried out by Parliament.

As regards the existence of an overriding public interest, within the meaning of the third indent of Article 4(2) of Regulation (EC) No 1049/2001, in the disclosure of the document at stake, Parliament notes that you have not cited any and that, at present, there is no evidence of the existence of such a public interest in disclosure that would outweigh the need for the protection of Parliament investigations.

Therefore, Parliament concludes that public access to the identified document cannot be granted since it is covered by the exception of the third indent of Article 4(2) of Regulation (EC) No 1049/2001.

- The exception relating to the protection of the privacy and the integrity of the individuals concerned (point (b) of Article 4(1) of Regulation (EC) No 1049/2001)

This article provides that: “[t]he institutions shall refuse access to a document where disclosure would undermine the protection of [...] the privacy and the integrity of the individual, in particular in accordance with Community legislation regarding the protection of personal data.”

The identified document contains personal data of several persons. When processing an application filed under Regulation (EC) No 1049/2001 for public access to documents that contain personal data, Parliament also has to apply the European legislation in force regarding the protection of such data, in the present case Regulation (EU) 2018/1725.

Point b) of Article 9(1) of Regulation (EU) 2018/1725 provides that personal data shall only be transmitted to recipients established in the Union other than EU institutions and bodies if “the recipient establishes that it is necessary to have the data transmitted for a specific purpose in the public interest and the controller, where there is any reason to assume that the data subject’s legitimate interests might be prejudiced, establishes that it is proportionate to transmit the personal data for that specific purpose after having demonstrably weighed the various competing interests”.

Parliament notes that you do not mention in your application any specific purpose in the public interest that demonstrates the necessity of transmitting to you the personal data contained in the document at stake. Thus, Parliament is of the opinion that you have not justified the necessity for transmission of the personal data pursuant to point b) of Article 9(1) of Regulation (EU) 2018/1725.

In addition, the identified document contains details, other than personal data, of the victims. Indeed, the description of the items concerned by the incidents shows details that are private to the victims. The protection of the privacy of the individuals concerned is enshrined in the exception of the point (b) of Article 4(1) of Regulation (EC) No 1049/2001.

Therefore, Parliament concludes that public access to the identified document cannot be granted since it is covered by the exception of point b) of Article 4(1) of Regulation (EC) No 1049/2001.

Finally, Parliament has considered the possibility of granting partial access to the identified document, in accordance with Article 4(6) of Regulation (EC) No 1049/2001. However, it has concluded that deletion of the relevant information in order to grant partial access would not provide you with the information that you are seeking in your application.

### **Conclusion**

Considering all the above reasons, Parliament refuses public access to the identified document on the grounds of the protection of Parliament investigations (third indent of Article 4(2) of Regulation (EC) No 1049/2001) and the protection of the privacy and the integrity of the individuals concerned (point (b) of Article 4(1) of Regulation (EC) No 1049/2001).

Your attention is drawn to the fact that, pursuant to Article 7(2) of Regulation (EC) No 1049/2001, you are entitled to submit, within 15 working days of receipt of this letter, a confirmatory application with a reasoned request for the European Parliament's position to be reconsidered.

Yours sincerely,

