

Der Generalsekretär

D 200679 09.06.2021

REGISTERED LETTER
WITH ACKNOWLEDGEMENT OF RECEIPT

Luisa Izuzquiza
Arne Semsrott
FragDenStaat | Open Knowledge Foundation Deutschland e.V.
Singerstr. 109
10179 Berlin
Germany

Subject: Your application for public access to documents
Our reference: **EP(2020)011519** (to be quoted in any future correspondence)

Dear Ms Izuzquiza, dear Mr Semsrott,

On 28 April 2021, the European Parliament registered your application, based on Regulation (EC) No 1049/2001¹, for public access to all documents from 20 October 2020 to date related to:

- (1) the request treated under procedure 2020/2240(IMM) for the waiver of immunity of Ioannis Lagos, MEP, including all meeting documents, correspondence, briefing notes, legal opinions and every document in committee dossier JURI/9/04660; and
- (2) allowances granted to Mr Lagos by the European Parliament, including any correspondence regarding such allowances, and the payment of salaries to Mr Lagos' local and accredited parliamentary assistants.

Your application has been examined in light of Regulation (EC) No 1049/2001 laying down the terms and conditions for public access to the documents of Parliament, Council and Commission, as well as Regulation (EU) 2018/1725² on the processing of personal data by Union institutions and bodies.

¹ 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.

² 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

As a preliminary remark, Parliament would like to point out the particular nature of procedures on immunity. Such procedures are initiated by a transmission letter, sent to Parliament by the competent judicial authorities of the Member State concerned and containing a request to waive a Member's immunity. It then falls upon the Legal Affairs Committee to consider that request and suggest for Parliament to waive or defend the relevant Member's immunity.

The immunity at stake is not a personal right of Members, but a prerogative vested in Parliament as an institution to uphold its parliamentary independence, which is a vital element of parliamentary democracy. As a consequence, Parliament treats requests to waive a Member's immunity from the perspective of parliamentary independence, which would notably be jeopardised if Members were subject to judicial proceedings because of their voting record or in light of charges brought by political opponents.

Parliament does not, therefore, consider requests to waive a Member's immunity from the perspective of that Member's guilt or lack thereof, the appropriateness of the relevant national court proceedings or the relative merit of national legal and judicial systems.

Assessment of your application

A) Point (1) of your application

Parliament has identified a number of documents in relation to procedure 2020/2240(IMM) as falling within the scope of point (1) of your application, including:

- the transmission letter containing the request for the waiver of immunity;
- a communication to Members of the Legal Affairs Committee containing the transmission letter;
- meeting documents, including agendas, minutes and recordings concerning the relevant meetings of the legal affairs committee, which took place on 4 February, 12 April and 22 April 2021; and
- the relevant committee report and Parliament's corresponding decision.

Parliament would first like to point out that under its rules, several of the identified documents are publicly available, namely the committee report and Parliament's corresponding decision to waive Mr Lagos' immunity,³ as well as the agendas and minutes of the relevant meetings.⁴ Indeed, Parliament's decision under procedure 2020/2240(IMM) lays out in some detail the factual and legal circumstances under which Parliament decided to waive Mr Lagos' immunity.

At the same time, Parliament's rules, and in particular paragraph 11 of Rule 9 of the Rules of Procedure, provide that procedures on immunity, including, in particular, documents received with regard to such procedures, shall be treated with the utmost confidentiality.

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.

³ The procedure may be followed on the website of the legislative observatory here: [https://oeil.secure.europarl.europa.eu/oeil/popups/ficheprocedure.do?reference=2020/2240\(IMM\)&l=en](https://oeil.secure.europarl.europa.eu/oeil/popups/ficheprocedure.do?reference=2020/2240(IMM)&l=en)

⁴ The agendas and minutes are available on Parliament's public register of documents; however, please note that the minutes will be published only after formal approval, and may therefore not yet be available for more recent committee meetings: <https://www.europarl.europa.eu/registreWeb/home/welcome.htm>.

The protection of the institution's decision-making processes

In accordance with the second subparagraph of Article 4(3) of Regulation (EC) No 1049/2001, access to a document is to be refused where the disclosure of opinions for internal use would seriously undermine the institution's decision-making process. This would be the case when the risk of a future disclosure of similar opinions would lead to a culture of self-censorship within the institution, depriving its decision-making bodies of frank and complete views.⁵

Parliament's rules concerning the confidentiality of certain documents relevant to procedures on immunity serve to protect the integrity of such procedures in light of their purpose to uphold parliamentary independence. Indeed, those of the identified documents that are not already publicly available are precisely those that, by their very nature, contain opinions and information that would be relevant to an assessment, from the perspective of parliamentary independence, of the request to waive an MEP's immunity. If disclosed by Parliament, such confidential documents would invite pressure on and thus seriously undermine the immunity procedure.

For this reason an obligation for Parliament to disclose such confidential documents would lead to a culture of self-censorship within Parliament and of national authorities requesting an MEP's immunity to be waived. Such self-censorship would seriously undermine Parliament's decision-making process in the context of parliamentary independence, a vital element of parliamentary democracy. It is in this context that Parliament's rules, and in particular paragraph 11 of Rule 9 of the Rules of Procedure, provide for the treatment with utmost confidentiality of certain documents relevant to procedures on immunity.

According to the relevant case-law, the overriding need to ensure that certain, by their nature confidential procedures operate correctly, and in order to guarantee that the objectives of such procedures are not jeopardised, general presumptions of non-disclosure may apply to documents relevant to such confidential procedures.⁶ In light of the purpose of the procedure on immunity, a general presumption exists according to which public access to confidential documents of the above-described nature would seriously undermine Parliament's decision-making process in the sense of the second subparagraph of Article 4(3) of Regulation (EC) No 1049/2001.

For these reasons, Parliament considers that the exception regarding the protection of the institution's decision-making process applies to those documents identified under point (1) of your application that are not already in the public domain.

The protection of privacy and the integrity of the individual

In accordance with point (b) of Article 4(1) of Regulation (EC) No 1049/2001, access to a document shall be refused where this would undermine the protection of personal data. This would notably be the case if personal data were transmitted in breach of Regulation (EU) 2018/1725. Specifically, point (b) of Article 9(1) of that Regulation requires that recipients other than Union institutions may only receive personal data if they demonstrate that such transmission is necessary for a specific purpose in the public interest.

⁵ Judgment of the Court of first Instance of 8 September 2008, *My Travel group plc v European Commission*, T-403/05, ECLI:EU:T:2008:316, paragraph 50-52.

⁶ Judgment of the General Court of 7 February 2018 in case T-718/15, *PTC Therapeutics International v European Medicines Agency (EMA)*, ECLI:EU:T:2018:66, paragraph 39.

Due to the above-described nature of those documents identified under point (1) of your application that are not already in the public domain, that is, given that they concern acts or opinions that have been attributed to Mr Lagos and that have given rise to criminal convictions, they contain personal data within the meaning of Regulation (EU) 2018/1725.

In your application you note that the waiver of Mr Lagos' immunity has attracted public attention, making reference to news articles that have appeared in the New York Times. Parliament recognises that MEPs' public activities often create public awareness and agrees that media coverage of such activities is generally in the public interest. However, such coverage does not depend on public access to confidential documents related to the immunity procedure, not least given the public availability of key documents, as outlined above. Furthermore, the fact that documents containing personal data are relevant to an existing public debate does not by itself demonstrate the necessity of the transfer of such data.⁷

For these reasons, Parliament considers that the conditions for the transmission of any personal data contained in those documents identified under point (1) of your application that are not already in the public domain have not been satisfied and that the exception regarding the protection of privacy and integrity of the individual applies to those documents.

B) Point (2) of your application

The General Court has underlined the necessity 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.⁸

However, the Court has also established that all information which can be extracted from an electronic database by general use through pre-programmed search tools must be regarded as an existing document, and that the institutions, to satisfy the requirements of Regulation (EC) No 1049/2001, may be led to establish a document from such information⁹.

The payment of allowances and salaries is handled through an electronic database, from which information can be extracted through pre-programmed search tools. Parliament is therefore able to extract information about such payments. This is also the case with regard to allowances and salaries received by Mr. Lagos and his assistants in the time period covered by your application. Parliament has also identified correspondence between Parliament and Mr. Lagos concerning allowances falling within the scope of your application. Such information related to salaries and allowances contained in a database or in correspondence constitutes personal data within the meaning of Regulation (EU) 2018/1725.

⁷ Judgment of the General Court of 15 July 2015, *Dennekamp v Parliament*, T-115/13, ECLI:EU:T:2015:497, paragraph 84.

⁸ Judgment of the General Court of 2 July 2015, *Typke v Commission*, T-214/13, ECLI:EU:T:2015:448, paragraphs 53 and 54.

⁹ Judgment of the Court of 11 January 2017, *Typke v Commission*, C-491/15 P, ECLI:EU:C:2017:5, paragraphs 37 and 38.

In your application you imply that Mr Lagos' conviction, as well as comments he may have made with regard to avoiding the consequences of his conviction, call for scrutiny of his finances and so justify the transmission of personal data. However, in a democratic society, such scrutiny of an individual's personal data with a view to investigating possible instances of improper or illegal behaviour is carried out by the competent independent judicial authorities and supervisory bodies. It is therefore not necessary to transmit to any other recipients personal data for the purpose of such scrutiny.

For these reasons, Parliament considers that the conditions under point (b) of Article 9(1) of Regulation (EU) 2018/1725 for the transmission of personal data have not been satisfied and that the exception regarding the protection of privacy and integrity of the individual applies to the documents requested under point (2) of your application.

C) Partial access

In accordance with Article 4(6) of Regulation (EC) No 1049/2001, the parts of a document not covered by any of the exceptions shall be released. Without prejudice to the fact that partial access is not possible in cases where a presumption of non-disclosure applies,¹⁰ Parliament has concluded that, insofar as the exceptions identified above do not apply to the entirety of the documents in question, partial access would not respond to the purpose of your application. For the same reasons, and since the number of document pages concerned would be very large, granting partial access would also constitute an excessive administrative burden, in particular taking into consideration the time-limits under Regulation (EC) No 1049/2001.

Conclusion

In view of the foregoing, and in accordance with point (b) of Article 4(1) and the second subparagraph of Article 4(3) of Regulation (EC) No 1049/2001, read in conjunction with Union legislation regarding the protection of personal data, Parliament refuses access to

- (1) the transmission letter containing the request for the waiver of immunity, a related communication to Members and recordings of the three meetings held under procedure 2020/2240(IMM); and
- (2) documents related to allowances granted to Mr Lagos by the European Parliament, correspondence regarding those allowances and the payment of salaries to Mr Lagos' local and accredited parliamentary assistants.

Parliament informs you that in conformity with Article 7(2) of Regulation (EC) No 1049/2001 you may, within 15 working days of receiving this letter, introduce a confirmatory application requesting Parliament to reconsider its position.

Yours sincerely,



Klaus WELLE

¹⁰ Judgment of the Court of Justice of 14 July 2016, *Sea Handling v Commission*, C-271/15 P, ECLI:EU:C:2016:557, paragraph 39.