

31 August 2006

"TRANSPARENCY AND DATA PROTECTION":

CONCLUSIONS ON RELEASING FURTHER INFORMATION ABOUT LOBBYISTS

The EDPS has recently dealt with two related cases regarding the publication of further information about accredited lobbyists to the European Parliament (EP). These cases are linked to the conclusions drawn from the analysis in EDPS' paper on public access to documents and data protection. The new cases constitute good 'real-life' examples and can be added to the list of guiding practical examples in the paper. The EDPS concludes that the home address of a lobbyist should not be published because that would undermine their privacy, but that more information could be made public by the EP if the lobbyists are properly informed about it at the moment of collecting their data.

In June 2006, the EDPS received a request from a lobbyist organisation on the possibility for the European Parliament (EP) to release more information about lobbyists. That institution's website currently lists the lobbyist's name and the organisation that he or she represents in the public register "Accredited Lobbyists". The request to the EDPS was whether the protection of the privacy and integrity of lobbyists would be undermined if the EP were to release further data, such as the position of the lobbyist, or the address, telephone number, e-mail- or website address of the office.

The EDPS reply, which is summarised below, was based on the background paper on the relationship between public access to documents and data protection that the EDPS published in July 2005. The paper lists some 11 examples of situations in which the principle of access to documents (transparency) needs to be analysed in relation to the protection of privacy. The two new cases represent real-life application of the paper, and can be added as guiding examples to the paper.

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The paper was also used when dealing with a related case in which a lobbyist complained about the possible publication of home addresses as a consequence of the procedure for lobbyists who apply for an EP entrance pass. In that case, the EDPS found that, although the application form seemed to suggest otherwise, the submission of home addresses was optional. It was left to the applicant to decide whether to submit his or her home address for situations where responsible EP staff might use it for identification, or to deal with major incidents. The EDPS also found that these data were not made available to anyone outside the security service of the EP. The conclusion was therefore that the complaint was justified to the extent that the publication form does not adequately reflect the status of home addresses and their possible use, but not founded as to the publication.

The complaint led the EDPS to recommend EP's Security unit to amend the lobbyist entrance pass application form on a number of points. As additional comment in the decision, Article 4(1)(b) of Regulation (EC) 1049/2001 regarding public access to European Parliament, Council and Commission documents was quoted. That article provides that access to a document shall be refused *"where disclosure would undermine the protection of the privacy and integrity of the individual, in particular in accordance with Community legislation regarding the protection of personal data"*. This exception would certainly apply to private home addresses submitted to the EP's security services for the purposes indicated above.

The 5-page application form currently implies that personal data on the two first pages would be made public. However, as described above, that was not the practice. As to most other data on the first two pages - more in detail those relating to the organisation represented (such as the contact details of his or her office) and the professional activities of a lobbyist - Article 4(1)(b) of Regulation 1049/2001 would in general not apply, as no privacy is involved. However, in those cases where it applies (where the privacy of the lobbyist would be substantially affected by disclosure), the exception could not be outweighed by a possible public interest in the release of further data since the Regulation has made it an absolute exception.

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As a consequence of the decision on the complaint to the EDPS, the EP is likely to reconsider also to what extent more data from the first two pages of the present form could be made publicly available. This is a policy decision of the EP, which the EDPS does not intend to influence in any way (subject to the provisions laid down by Regulation 45/2001).

However, if the EP would find it necessary for the performance of its tasks in the public interest (as referred to in Article 5(a) of Regulation 45/2001) to make more data available, including those mentioned above, it may well be in line with the Regulation. That would require the EP to inform lobbyists about it and other relevant circumstances when the data are collected (see Article 11 of the Regulation).