

Decision in case 803/2018/THH on the European Asylum Support Office's refusal to grant public access to the report of the study carried out by McKinsey & Company concerning the asylum system in Greece

Decision

Case 803/2018/THH - Opened on 04/05/2018 - Decision on 31/07/2018 - Institution concerned European Asylum Support Office (Solution achieved) |

Background to the complaint

1. On 13 November 2017, the complainant submitted a request to the European Asylum Support Office (EASO) for public access to the report of the study carried out by a private consultancy firm, McKinsey & Company, concerning the asylum system in Greece, amongst several other documents.
2. On 17 January 2018, the EASO partially agreed to the complainant's request, disclosing several of the requested documents and refusing access to others, including the requested report. The EASO justified its decision not to disclose the report on the grounds that the exceptions set out in Article 4(1)(a) (the protection of public security) and (2) (the protection of commercial interests) of Regulation 1049/2001 [1] apply due to "*the sensitive and restrictive nature of the document*" and because the complainant had failed to identify an overriding public interest for the disclosure.
3. Not satisfied with the EASO's decision, the complainant submitted a request for review, a so-called "*confirmatory application*", on 28 January 2018.
4. Further to informal telephone conversations on 9 and 14 February 2018 between the complainant and EASO representatives, the EASO stated that the EASO's Executive Office, Department of Operations, Finance & Procurement Unit, and Communications and Stakeholders Unit had been consulted on providing the complainant with the requested documents. The EASO stated that it had considered partial disclosure of the report, in line with Article 4(6) of Regulation 1049/2001, but concluded that it would impose an "*extremely extensive*" administrative burden. On 9 March 2018, the EASO issued its decision on the request for review. It disclosed several documents to which public access had not been granted previously, but confirmed its decision concerning the report, refusing public access.



5. Not satisfied with the decision, the complainant turned to the European Ombudsman on 29 April 2018 requesting public access to the report.

The Ombudsman's proposal for a solution

6. In the course of the inquiry, the Ombudsman established that the complainant argued that an overriding public interest exists for disclosure of the documents concerning “ *EU hotspots - financed through EU taxpayer's money - and the specific role of EASO* ”. From the complainant's point of view, it is in the service of democracy and transparency of the EU institutions' work to publicly disclose them, especially considering that EU funding of the management of refugees and migrants in Greece has reached an unprecedented level.

7. The Ombudsman noted that the EASO refused public access to the report on the basis of the exceptions provided in Articles 4(1)(a) and (2) of the Regulation 1049/2001. The EASO concluded that, since the report is of a “ *sensitive and restrictive nature* ” and contains “ *in-depth analyses of the roles and responsibilities of each of the institutions involved* ”, disclosure of the report would undermine the protection of public security and international relations, as well as the commercial interests and intellectual property of McKinsey & Company.

8. The Ombudsman also noted that the EASO argued that it had considered partial disclosure of the report, in accordance with Article 4(6) of Regulation 1049/2001, and concluded that doing so would impose an “ *extremely extensive* ” administrative burden on the EASO.

9. The Ombudsman accepted that full disclosure of the report could undermine the protection of public security. Detailed information on the management of the asylum action plan in the Greek islands, which included the identification of remaining challenges, could be exploited and thus undermine the protection of the public security.

10. The Ombudsman also considered that the report is very extensive, running to over 1,500 pages. Therefore, the Ombudsman accepted the EASO's argument that going through the entire report, redacting the excepted information, would impose a significant and disproportionate administrative burden on the EASO.

11. However, in the course of the inquiry, the Ombudsman established that the report contains a Summary which comprises the main points of the report. In the light of above, the Ombudsman proposed as a solution that the EASO should disclose the Summary of the report from pages 1 to 17, excluding pages 18 and 19 which do appear to contain sensitive information the disclosure of which would undermine public security.

12. In addition to this, the Ombudsman proposed that the EASO should disclose to the complainant a list of the sections of the report, enabling the complainant to identify any sections which are of particular interest to him. He could then, potentially, submit new requests for access to those sections.



13. In the event that the complainant does submit any new requests for public access to specific sections of the report, the EASO should consider disclosure afresh. Such a course of action opens the way to the complainant receiving specific parts of the report, redacted as necessary, that he considers to be in the public interest.

14. The Ombudsman considered that the EASO's arguments that the disclosure of the report would undermine the protection of commercial interests and intellectual property of McKinsey & Company were not well founded. However, the EASO had not made clear whether there were any parts of the report that had been withheld on the basis of that exception only.

15. Based on the above findings, the Ombudsman proposed that the European Asylum Support Office should disclose to the complainant the Summary of the report of the study carried out by McKinsey & Company concerning the asylum system in Greece (pages 1 to 17 only), together with a list of the sections of the report, which will enable the complainant to identify and potentially make a new request for public access to specific sections.

The Ombudsman's assessment after the proposal for a solution

16. The European Asylum Support Office accepted the Ombudsman's proposal for a solution and stated that it intends to fully comply with the Ombudsman's proposal and to send the complainant the Summary of the report of the study carried out by McKinsey & Company concerning the asylum system in Greece (pages 1 to 17 only), together with a list of the sections of the report.

17. The complainant also accepted the solution proposal and indicated that he will submit a new request for access to several specific sections of the report on the basis of the table of contents disclosed following the solution proposal.

18. The Ombudsman welcomes the EASO's positive response to her solution proposal. Since the EASO accepted the Ombudsman's proposal, the Ombudsman closed the case. The Ombudsman trusts that the EASO will make the agreed disclosures to the complainant shortly, if it has not already done so.

Conclusion

Based on the inquiry, the Ombudsman closes this case with the following conclusion:

The European Asylum Support Office has accepted the Ombudsman's proposal for a solution.

The complainant and the European Asylum Support Office will be informed of this decision.



Emily O'Reilly

European Ombudsman

Strasbourg, 31/07/2018

[1] Regulation 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents, available at <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32001R1049&rid=1> [Link].