

Decision in cases 562/2017/THH and 1069/2017/THH on the Commission's handling of a large number of requests for access to documents concerning Commissioners' travel expenses

Decision

Case 562/2017/THH - Opened on 06/07/2017 - Decision on 16/11/2018 - Institutions concerned European Commission (Settled by the institution) | European Commission (No further inquiries justified) |

Case 1069/2017/THH - Opened on 16/11/2018 - Decision on 16/11/2018 - Institutions concerned European Commission (Settled by the institution) | European Commission (No further inquiries justified) |

The case arose from a campaign launched by Access Info Europe, a non-governmental organisation (NGO) based in Spain, in January 2017 to obtain public access to the travel expenses of European Commissioners for the year 2016. Some 120 citizens participated in the campaign, submitting a total of 188 requests to the Commission. The Commission decided to handle the many requests as coming from one source and to deal directly with Access Info Europe, which meant that the Commission did not send acknowledgements of receipt to the individual applicants, nor did it send any responses to the individuals' requests. Due to the large number of documents to which access was sought, the Commission made a proposal to the NGO to narrow down the scope of the request and then granted access to a limited number of documents.

The Ombudsman found that the Commission should have contacted all the applicants individually, at the very least so as to inform them that it would deal with all of the requests only through Access Info Europe. However, after verifying in an inspection precisely how much administrative work was required to deal with each of the 188 requests, she also agreed that the Commission acted reasonably when it considered that the resources required to deal with all 188 requests would constitute an excessive administrative burden. The Commission was therefore entitled to narrow the scope of the request for public access.

However, the Ombudsman considers that there is a public interest in public access to information on Commissioners' travel expenses. As the Commission has now committed to giving such access proactively and is now doing so on a regular basis, the Ombudsman found that there are no grounds for further inquiry into the issue. She has therefore closed her inquiry.



The Ombudsman commends the Commission for this new proactive publication policy.

Background to the complaint

1. In January 2017, Access Info Europe, a non-governmental organisation (NGO), launched a campaign to get public access to all Commissioners' travel expenses for 2016. It created a website [1] where citizens could follow links to request access to travel expenses for one Commissioner for a two month period. 120 citizens made 188 such requests. The NGO is the first complainant in this case. The second complainant is an individual, one of the citizens who made a request, seeking access to the travel expenses of Commissioner Hahn for May to June 2016 and for September to October 2016.

2. In March 2017, the Commission wrote to the NGO explaining that its campaign had triggered the requests and suggesting that it would communicate with the NGO as an intermediary for the 120 citizens, treating the requests as from one source. The NGO did not agree, since it did not consider that it was acting on behalf of the applicants. Due to the Commission taking this approach, the individual complainant in this case received neither a reply nor an acknowledgement of receipt of his initial request. The same was true of his request for review (a so-called "confirmatory application"), in relation to which he received nothing by way of a reply from the Commission.

3. In response to the access requests themselves, the Commission showed that it would need 75.5 working days to prepare a reply to them all. It concluded that this was a disproportionate administrative burden. In line with EU public access rules, the Commission proposed a fair solution [2]. The fair solution presented was for the NGO to narrow down the request to any two-month period in 2015 and 2016, excluding five Commissioners for whom travel expenses for a two-month period had already been published in December 2016.

4. The NGO argued that it was not in a position to accept any proposed solution, since it was not the only source of the requests. Nonetheless, it underlined that, in any event, it found the proposed solution unacceptable. The NGO complained to the Commission about the way in which the Commission had handled the requests for access.

5. The individual complainant turned to the Ombudsman in April 2017 since the Commission had not responded to his request for public access to documents. The NGO turned to the Ombudsman in June 2017, having received no reply from the Commission on its complaint.

6. In June 2017, the Commission informed the NGO that due to the very large number of documents covered by the access request, it would need more time before responding.

7. In July 2017, the Commission issued its response to the request for review, sending it only to the NGO. The decision set out that the Commission had limited the scope of the request unilaterally since a solution had not been reached. [3] The Commission granted access to 257



summary cost statements relating to travel expenses during the period of January and February 2016 for the President, Vice-Presidents and Commissioners in office at the time.

The inquiry

8. The Ombudsman opened an inquiry into how the Commission handled the public access requests concerning Commissioners' travel expenses. In the course of the inquiry, the Ombudsman's inquiry team met with the Commission and inspected the Commission's file on the case. The Ombudsman's decision takes into account the arguments and views put forward by the parties in the course of the inquiry, as well as the written exchanges between the parties during the public access request procedure.

The Commission's handling of the requests for public access to documents concerning Commissioners' travel expenses

Arguments presented to the Ombudsman

9. The individual complainant argued that the Commission did not handle his complaint in accordance with the applicable rules [4] , as the Commission did not acknowledge his request nor, indeed, reply to it.

10. The NGO is also concerned about how the Commission handled the access requests. It argues they should have been handled as separate requests rather than as a single request from one source. Moreover, the NGO argues that the Commission was wrong to decide to communicate directly with it, rather than with all applicants individually, particularly after the NGO has said it would not act as an intermediary for the applicants.

11. Furthermore, the NGO does not consider that the Commission could make a proposal for a fair solution, since each individual request did not relate to a large number of documents. It also disputes the view of the Commission that the time needed to deal with all the access requests would be 75.5 days.

12. The Commission argues that it was right to deal with the many access requests as one. The NGO's campaign and the very similar wording of the requests make clear that the requests were part of an organised campaign. The Commission considers that this was an attempt to avoid making one public access request for a large number of documents, which would have been too burdensome for the Commission to handle.

13. Public access rules cannot be circumvented by splitting a request for a large number of documents into multiple, smaller, requests [5] . Since it was the NGO that had initiated the campaign for public access to these documents, the Commission considered it to be an



intermediary of the applicants.

14. The Commission also argued that when it deals with a public access request, it has to take into account the interest of the applicant and the workload required to process the application. In this case, it considers that the proposed solution appropriately balanced those interests by limiting the access request to a two-month period. As the NGO did not accept the proposed solution, the Commission argues that it correctly applied the proposed solution, so that it could deal with the request within the legal deadline of 15 working days.

The Ombudsman's assessment

15. EU public access rules take due account of the administrative burden that can be placed on an institution in the event of a very large request or very many requests from the same applicant. In this case, the Commission received 188 public access requests in a short time frame. Given the very similar nature of these requests, and the undisputed fact that the requests were encouraged, organised and coordinated by the NGO, it was reasonable for the Commission to handle them as a single large request. If the Commission were not permitted to take such a view, the rules seeking to protect the public interest in the proper functioning of the public administration would be easily circumvented and undermined.

16. While the Ombudsman agrees that the Commission acted reasonably when it decided to deal with all the requests together, it should nonetheless have informed the applicants of its decision to communicate only with the NGO, as an intermediary. Informing each applicant as to how it intended to proceed, by way of a standardised email to each applicant, would not have required an excessive amount of work.

17. While it is clear to the Ombudsman that the NGO orchestrated the campaign, the Commission cannot delegate the obligation to respond to individual access requests to a party which does not accept this role. If the Commission finds it necessary to communicate with one party in a situation such as this in order to facilitate the handling of requests, the Commission should ensure that the relevant party agrees and the Commission should also inform all the applicants of this decision.

18. As regards whether the Commission acted reasonably when it then proposed to narrow the request for public access, the Ombudsman finds, after carrying out an inspection of the file, and obtaining an explanation as to how the Commission processes and stores the documents in question, that the Commission's estimated time to handle the access request, 75.5 working days, was reasonable. As such, the Commission was justified in attempting to find a fair solution, as provided for in the legal framework.

19. As regards the substance of the proposal to narrow the scope of the request, the Commission presented a solution so that the request could be handled within a reasonable period. The Ombudsman notes that the EU Courts have insisted that this deadline cannot be extended to deal with large requests [6] . In this context, the Commission acted reasonably



when it granted access to 257 summary cost statements relating to travel expenses during the period of January and February 2016 for the President, Vice-Presidents and Commissioners in office at the time.

20. However, the Ombudsman does agree that there is a significant public interest in having access to the information in question. As such, the Ombudsman, was, during the inquiry, minded to explore means by which the Commission could render such documents proactively available in a timely manner in the future. In this context, the Ombudsman welcomes the recent developments which have occurred, namely the commitment by the Commission [7] to publish information about each Commissioner's travel expenses every two months. The Ombudsman has been monitoring the fulfilment of this commitment and welcomes the fact that publication of this information is now regular and routine. This is a very positive step towards greater transparency in this area and justifies the closure of the present inquiry. Nevertheless, the Ombudsman will continue to monitor the situation closely.

Conclusion

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

In light of the positive commitment of the Commission to publish regularly and routinely information about each Commissioner's travel expenses every two months, the Ombudsman finds that there are no grounds for further inquiry into the issue.

The Ombudsman commends the Commission for this new proactive publication policy.

The complainant and the Commission will be informed of this decision.

Emily O'Reilly

European Ombudsman

Strasbourg, 16/11/2018

[1] www.access-info.org/commissioners-expenses [Link]

[2] Article 6(3) of Regulation (EC) 1049/2001 regarding public access to documents of the European Parliament, the Council and the Commission, OJ L 145, 31.05.2001, p.43.

[3] Judgment of the Court of 2 October 2014 in Case C-127/13, *Guido Strack v Commission* , ECLI:EU:C:2014:2250, paragraphs 27-28.



[4] Namely Article 7 of Regulation 1049/2001 whereby applications shall be handled promptly and acknowledgments of receipt shall be sent

[5] Judgment of the General Court of 10 December 2010 in Case T-494/08, *Ryanair v Commission* , ECLI:EU:T:2010:511, paragraph 34

[6] Case C-127/13, *Guido Strack v Commission* , paragraphs 27-28

[7] See the State of the Union Address 2017 by President Jean-Claude Juncker, subsequently elaborated in Article 6(2) of Commission Decision C(2018) 700 final of 31 January 2018 on a Code of Conduct for the Members of the European Commission, available at:
https://ec.europa.eu/info/sites/info/files/code-of-conduct-for-commissioners-2018_en_0.pdf