

Decision in case 1774/2018/THH on the European Commission's refusal to grant full public access to documents related to the first call for applications of the WiFi4EU portal

Decision

Case 1774/2018/THH - Opened on 23/10/2018 - Decision on 30/11/2018 - Institution concerned European Commission (Settled by the institution) |

The case concerned how the European Commission dealt with a request for access to documents related to a technical issue which affected an EU funded project, namely the WiFi4EU portal project.

The complainant turned to the Ombudsman, because the Commission had disclosed only parts of the requested documents. Besides, the Commission had not replied to the part of the complainant's request for review in which he had contested the Commission's claim that some of the undisclosed passages were out of the scope of his request.

In the course of the Ombudsman's inquiry, the Commission replied to the complainant's request for review of its decision and granted wider partial access to the requested documents. The Ombudsman inspected full versions of the requested documents and found that it was reasonable to refuse access to the undisclosed passages on the basis that they were out of the scope of the complainant's request.

The Ombudsman therefore concluded that the Commission had settled the matter and closed the inquiry. However, as the Commission could have dealt with the matter better, the Ombudsman made a suggestion for improvement.

Background to the complaint

1. As of May 2018, municipalities in the EU could, by way of a "call for applications", apply to the European Commission for funding for free WiFi hotspots in public spaces. This project is known as "WiFi4EU". In the coming two years, three more WiFi4EU calls will be launched, approximately one every 6 months (the most recent was launched in November 2018). WiFi4EU-funded networks will be free of charge, free of advertising and free of personal data harvesting. [1]



2. The complainant, a Brussels-based journalist, requested the Commission to give him public access to documents related to a technical issue that affected the first call for applications of the WiFi4EU portal.

3. The Commission granted the complainant partial access to ten documents. The complainant was dissatisfied with the Commission's response and filed a request for review [2] . He raised two issues. First, the complainant considered that the Commission had failed to disclose a reply from the Commission's legal service. Second, the complainant was dissatisfied with the redactions which the Commission had made to three documents (documents 1, 3 and 9) on the basis that parts of these documents were "out of scope" of his request. By "out of scope", the Commission meant that the information contained in those sections did not relate to the information the complainant had requested. The complainant argued that this was "illogical, stylistically", given the content of the paragraphs surrounding the redacted parts.

4. On 27 September 2018, the Commission disclosed the reply of the legal service. However, the Commission failed to respond to the complainant's objection concerning the redactions and the argument that the Commission was wrong to classify certain parts of documents 1, 3 and 9 as outside the scope of his request. Therefore, on the same day, the complainant again raised this issue with the Commission. The Commission reassured the complainant that it would provide its response as soon as possible.

5. Having not received a response, the complainant sent a reminder to the Commission on 15 October 2018, stating that he would turn to the Ombudsman if he did not receive a response within one day. When he received no response, the complainant turned to the Ombudsman on 16 October 2018.

The inquiry

6. The Ombudsman opened an inquiry into the complaint that the Commission:

1. had failed to respond to the part of the complainant's request for review concerning the redactions to documents 1, 3 and 9 within the time limit set out in Regulation 1049/2001; and
2. was wrong to classify certain parts of documents 1, 3 and 9 as "outside the scope of the complainant's request" and thus to redact them.

7. The Ombudsman's inquiry team contacted the Commission, inspected the documents in question and urged the Commission to respond to the complainant's request for review. Subsequently, on 26 October 2018, the Commission provided the complainant with a response to his request for review [3] . It granted public access to document 1 (in which only personal data was redacted), full public access to two annexes to document 9, and wider partial access to documents 3 and 9, redacting only one paragraph in each of the two documents.



8. In its review decision, the Commission also stated that the redacted parts of the documents, which it said fell outside of the scope of the complainant's request, did so as they “ *do not concern the first call for applications, but possible future calls for applications* ”.

9. Following the Commission's decision, the complainant confirmed to the Ombudsman that he was satisfied with the Commission's wider disclosure of the requested documents. However, he indicated that he wanted the Ombudsman to assess whether the passages in documents 3 and 9 that remained undisclosed were indeed out of scope of his original request.

The Ombudsman's assessment

10. Following the complainant's request for review, the Commission granted increased partial access to the documents, disclosing most passages in the relevant documents which had originally been redacted. Only one paragraph in each of two documents remained redacted, on the basis that the Commission considered those two paragraphs to be outside the scope of the complainant's request.

11. The Ombudsman's inquiry team reviewed the unredacted versions of the documents in question. It has determined that the redacted paragraphs do not concern the complainant's original request which was to receive documents related to a technical issue that affected the first call for applications of the WiFi4EU portal. . Rather, the redacted paragraphs relate to *possible future* calls for applications.

12. As the Commission has granted partial access to the documents in question, redacting only those parts that were outside the scope of the complainant's request, the Ombudsman finds that the case has been settled by the institution.

13. Nevertheless, whilst the Commission was justified, legally, in redacting the two paragraphs concerning *possible future* calls for applications, the Ombudsman considers that the Commission could nevertheless have considered whether the two paragraphs could have been disclosed to the complainant. Such a pragmatic and citizen-friendly approach would demonstrate a commitment to transparency, avoids a false impression of secrecy and would reduce the likelihood of a new request for access to documents for those parts concerning *possible future* calls for applications, which is unnecessarily bureaucratic.

Conclusion

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

By granting extended partial access to the documents in question, the European Commission has settled the complaint.

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



Suggestions for improvement

14. In cases such as this, where only limited parts of a document being considered for disclosure may be considered technically out of the scope of the request for public access, the Commission should consider whether disclosure would nevertheless be compatible with Regulation 1049/2001, thus avoiding giving citizens a false impression of a lack of transparency .

Emily O'Reilly

European Ombudsman

Strasbourg, 30/11/2018

[1] <https://ec.europa.eu/digital-single-market/en/policies/wifi4eu-free-wi-fi-europeans> [Link].

[2] A so-called confirmatory application in accordance with Article 7(2) of Regulation 1049/2001, available here:
<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32001R1049&from=en> [Link].

[3] A so-called confirmatory decision, see Article 8 of Regulation 1049/2001.