

## **Decision of the European Ombudsman in case 934/2018/RM on how the European Commission dealt with a request for public access to briefing documents for the Commissioner for Budget and Human Resources**

Decision

**Case** 934/2018/RM - **Opened on** 31/05/2018 - **Recommendation on** 12/07/2018 - **Decision on** 04/12/2018 - **Institution concerned** European Commission ( Maladministration found ) |

The case concerned a request for access to briefing documents prepared for meetings of the Commissioner for Budget and Human Resources and his advisors with third parties. The European Commission had not taken a decision on the request after more than a year. The Ombudsman found that this delay constituted maladministration, and recommended that the Commission take a decision without delay.

The Commission subsequently failed to meet the deadline for responding to the Ombudsman, even after this was extended, but apologised for this when it finally sent its formal opinion. The Ombudsman found the excessive delays in this case to be regrettable. However, she found the solution offered by the Commission, making available documents from 12 meetings of the Commissioner, to be reasonable.

### **Background to the complaint**

1. On 3 May 2017, the complainant - a German citizen - requested public access to briefing documents prepared for meetings of the Commissioner for Budget and Human Resources and his team of advisors ('cabinet') with third parties between 1 September 2016 and 3 May 2017 [1] . The request [2] was made in accordance with the EU's rules on public access to documents [3] (Regulation 1049/2001).

2. On 29 May 2017, the European Commission extended the time limit for dealing with the request by 15 working days, as provided for under Regulation 1049/2001. This was because of the size of the files it needed to examine to retrieve the requested documents, which covered 124 meetings.

3. On 20 June 2017, the Commission asked the complainant if he would agree to narrow the



scope of his request, as the “administrative burden” involved in analysing all the files in question was “too high” for the cabinet of the Commissioner.

4. In response, the complainant asked the Commission to provide him with a list of the documents covered by his request within a defined time frame [4] . He would then indicate which documents he was seeking to access, taking into account the exceptions provided for under Regulation 1049/2001 [5] .

5. As the complainant had not received a response from the Commission by 30 June 2017, he assumed it was implicitly denying his request. Accordingly, he requested that the Commission review its decision (making a so-called ‘confirmatory application’, as provided for under Regulation 1049/2001).

6. On 25 July 2017, the Commission extended the time limit for dealing with the complainant’s confirmatory application by 15 working days, as provided for under Regulation 1049/2001.

7. On 17 August 2017, the Commission stated that it was still not able to take a decision on the request due to “internal consultations”.

8. In response, the complainant asked the Commission to indicate when it would be in a position to take a decision. The Commission replied that the delay was due to the scope of the request and that it was not able to indicate how long the related internal consultation would take.

9. On 20 March 2018, the complainant asked for an update from the Commission, which responded that it had not concluded assessing the documents concerned by the request but would do so “as soon as possible”.

10. On 22 May 2018, not having heard from the Commission, the complainant turned to the Ombudsman.

## **The Ombudsman’s recommendation and follow-up**

11. The Ombudsman found that the delay constituted maladministration. She recommended [6] that the Commission take a decision without delay and, in the meantime, provide the complainant with a list of documents covered by his request. She invited the Commission to send her an opinion in response to her recommendation by 15 October 2018.

12. On 2 October 2018, the Commission finally sent the complainant its ‘confirmatory decision’ on his request. The Commission made available briefing documents (totalling over 300 pages) from 12 of the 124 meetings in the time period covered by the complainant’s request. It stated that it had “unilaterally” selected these meetings, since the complainant had refused to engage with its previous request to reduce the scope of his request.



13. On 15 October 2018, the Commission requested that the Ombudsman agree to extend the deadline for replying to her recommendation until 31 October 2018. This deadline was also missed.

14. The Commission finally sent its opinion to the Ombudsman on 8 November 2018. In its opinion, the Commission offered its sincere apologies for the significant delay. It referred to the confirmatory decision to explain how it had finally dealt with the complainant's request.

15. In his comments on the Commission's opinion, the complainant expressed dissatisfaction with the long delay and argued that the Commission had given no explanation for this. In essence, he expressed concern that how the Commission handled his request was indicative of a systemic problem.

## **The Ombudsman's assessment after the recommendation**

16. The Commission has recognised that there was excessive delay in dealing with this request. While the Ombudsman acknowledges that the Commission has apologised for this, there does not seem to be a good reason for this considerable and regrettable delay. She therefore urges the Commission to deal with requests for public access to documents within the applicable deadlines in the future, and to take whatever steps are necessary to prevent similar excessive delays.

17. Notwithstanding this delay, the Ombudsman finds reasonable the Commission's position that analysing all the documents covered by the complainant's request would create a disproportionate administrative burden. In the circumstances, the Commission's ultimate decision to disclose to the complainant some of the documents requested was appropriate.

18. The Ombudsman thus closed her inquiry, confirming the original finding of maladministration on grounds of excessive delay. She notes that the Commission has responded appropriately to the original request for access to documents.

## **Conclusion**

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

**Following the Ombudsman's recommendation, the European Commission has responded appropriately to the original request for public access to documents, albeit with excessive delay, which constituted maladministration.**

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



Emily O'Reilly

European Ombudsman

Strasbourg, 04/12/2018

[1] The complainant specified that he was referring to the meetings for this period, which are listed online under the Commission's 'transparency initiative':

<http://ec.europa.eu/transparencyinitiative/meetings/meeting.do?host=f24e4f06-d181-4f58-9604-3aaf3ce391ea> [Link] and

<http://ec.europa.eu/transparencyinitiative/meetings/meeting.do?host=595cf53f-c018-4fc8-afa0-9d66c289795c&d-66> [Link].

[2] The Commission's reference for the file is Gest Dem 2017/2627.

[3] 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.

[4] 45 working days for the documents pertaining to the Commissioner himself and 60 days for those pertaining to his cabinet.

[5] Article 4 of Regulation 1049/2001 provides for certain exceptions under which an institution can refuse access to certain documents or parts thereof.

[6] Made in accordance with Article 3(6) of the Statute of the European Ombudsman; recommendation available at:

<https://www.ombudsman.europa.eu/en/recommendation/en/99299> [Link].