



Decision in case 1270/2017/EIS on the European Police Office's refusal to grant full access to documents regarding Joint Investigation Teams and operational plans at EU border 'hotspots'

Decision

Case 1270/2017/JAP - Opened on 28/06/2018 - Decision on 10/05/2019 - Institution concerned European Union Agency for Law Enforcement Cooperation (Solution achieved)
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The complaint concerned the European Police Office's (Europol) refusal to grant full access to documents regarding Joint Investigation Teams and operational plans at EU border 'hotspots'.

The Ombudsman considered that Europol did not give sufficiently specific reasons for its refusal to disclose the documents. The Ombudsman therefore asked Europol to reassess its position on the five documents at issue, and consult the relevant national authorities on the possibility of disclosing one of them.

Having consulted the national authorities in question, Europol provided more specific reasons for refusing to grant public access to one of the five documents. Having reassessed its decision to refuse public access to all five documents, it confirmed its previous stance, reiterating its grounds for refusing public access.

Although Europol has not provided any more detail on its assessment of the other four documents, it has reviewed its position in compliance with the Ombudsman's proposal and restated its reasons for refusing public access.

Having reviewed the content of the documents in the course of the inquiry, the Ombudsman accepts that Europol was justified in refusing public access in order to protect public security, the proper fulfilment of Europol's tasks and the investigations and activities of Member States. She therefore closed the case.

Background to the complaint

1. This complaint concerned how the European Police Office (Europol) dealt with a request for public access to documents regarding the mutual agreements of Europol's Joint Investigation Teams [1] and Europol's operational plans at EU border 'hotspots' [2] in Italy and Greece. The complainant, a Spanish researcher, made his request to Europol on 1 April 2017. Europol identified six documents within the scope of the complainant's request. It refused to grant public access to the documents, arguing that the disclosure of the



documents would undermine the proper fulfilment of Europol's tasks and the investigations and operational activities of Member States, third parties or EU bodies [3] .

2. The complainant subsequently asked Europol to review its initial decision (by making what is known as 'a confirmatory application'). He argued that, regarding finished operations, at least partial access should be granted.

3. Europol replied to the request for review and granted partial access to **one** document, with redactions of personal data only. For the remaining **five** documents, its position remained unaltered, with public access refused. It did not expand on its reasoning.

4. Dissatisfied with Europol's decision, the complainant turned to the Ombudsman in July 2017.

5. The Ombudsman opened an inquiry into Europol's decision not to grant full access to the six documents. The Ombudsman's inquiry team inspected the six documents in order to be able to determine whether Europol had applied its rules on access to documents correctly. The Ombudsman then made a proposal for a solution.

The Ombudsman's proposal for a solution

6. The Ombudsman found that Europol's redaction of the personal data in the document to which partial access had been granted was justified. However, Europol had failed to give sufficient reasons for its refusal of the complainant's request for review to grant public access to the remaining five documents in accordance with Article 8(1) of Europol's rules on public access to documents [4] . In this regard, the Ombudsman noted that the application of an exception to public access to documents may be justified only if the institution has assessed whether access to the specific document in full and in part would **specifically and actually** undermine the protected interest.

7. In addition, the Ombudsman noted that one of the documents concerned the standard operating procedures applicable to hotspots in Greece and that the author of that document, which was a draft, is the Greek ministry in charge of migration issues. The Ombudsman considered that it was apparent from the inspected file that Europol had not consulted the Greek authorities about the disclosure of the document before refusing to grant public access to it.

8. The Ombudsman therefore made the following proposal for a solution [5] to Europol:

Europol should reassess its position on the five documents at issue, having consulted the authorities who have authored or supplied the information contained in the documents.

9. In its reply of 8 March 2019, Europol informed the Ombudsman that it had consulted the Greek authorities regarding the document on the standard operating procedures applicable to hotspots in Greece and had also reassessed its decision to refuse public access to all the



documents. The Greek authorities considered that its document should not be released to the public. They argued that it was still in a drafting stage and that it contained sensitive information on operational procedures, the disclosure of which could undermine the protection of the public interest regarding public security.

10. As regards the other four documents, Europol found that the reasons for its initial refusal of access to all five documents were valid at the confirmatory stage and that they continue to be valid after the reassessment. It reaffirmed its view that the documents contain sensitive operational information on procedures applicable to hotspots.

11. It noted that the disclosure of the documents " *would risk prejudicing the effectiveness and the outcome of the ongoing, but also future, operations in the hotspots*". Finally, Europol contended that the disclosure could have a negative effect on the mutual cooperation and relationship of trust with its partners, which in turn could hinder its ability to effectively perform its tasks.

The Ombudsman's assessment after the proposal for a solution

12. Regarding the document drafted by the Greek authorities in charge of migration issues, the Ombudsman welcomes the fact that Europol consulted its author. This has enabled Europol to expand on its reasons for refusing public access to that document.

13. The Ombudsman further notes that Europol has made a reassessment of its position on the possibility of disclosure of the all the documents. Although Europol has not provided any more detail on its assessment of the other four documents, having inspected the documents in the course of the inquiry, the Ombudsman considers that the grounds for refusing public access to them are applicable. The exceptions applied are not subject to an overriding public interest test.

14. Given that Europol has complied with the Ombudsman's proposal for a solution by reviewing its position on the withheld documents and in the light of her own inspection of those documents, the Ombudsman considers that Europol was justified in its decision not to grant further public access to the requested documents.

Conclusion

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

Europol has complied with the Ombudsman's proposal for a solution and was justified in its decision not to grant further public access to the requested documents.

The complainant and Europol will be informed of this decision .

Emily O'Reilly



European Ombudsman

Strasbourg, 10/05/2019

[1] These are the terms in accordance with which Joint Investigation Teams are to operate.

[2] 'Hotspots' are areas of frontline Member States which are facing important migratory pressures at the EU's external borders.

[3] Under Article 4(1)(a) of the Decision of the Management Board of Europol laying down the rules concerning access to Europol documents.

[4] Article 8(1) of the Decision of the Management Board of Europol laying down the rules concerning access to Europol documents: "[...], *Europol shall either grant access to the documents requested and provide access in accordance with Article 10 within that period, or in a written reply, state the reasons for the total or partial refusal.*"

[5] The full text of the Ombudsman's proposal for a solution is available here: website: <http://www.ombudsman.europa.eu/en/resources/otherdocument.faces/en/70669/html.bookmark>