



Decision in case 860/2018/THH on the European Food Safety Authority's refusal to grant public access to declarations of interest of middle management staff

Decision

Case 860/2018/THH - Opened on 11/10/2018 - Decision on 18/06/2019 - Institution concerned European Food Safety Authority (Solution achieved) |

The complaint concerned the European Food Safety Authority's (EFSA) refusal to grant public access to declarations of interest of EFSA's middle management staff. More generally, the Ombudsman also examined how EFSA processes requests for public access to documents.

The complainant requested public access to the declarations of interest of EFSA's operational management, but was granted access only to the declarations of the Executive Director and four Heads of Department, which were already published on EFSA's website.

In the course of the inquiry, EFSA adopted a new policy, making publicly available the declarations of interest of its entire operational management. The Ombudsman proposed that EFSA should also make public the declarations of interest of its Chief Scientist, Senior Science Coordinator and Senior Policy Adviser. EFSA agreed to act on this proposal.

In her inquiry, the Ombudsman also confirmed that EFSA has an appropriate system in place to process requests for access to documents.

The Ombudsman closed the inquiry with the conclusion that a solution had been accepted and implemented by EFSA.

Background to the complaint

1. On 26 October 2017, the complainant, acting on behalf of an international network of non-governmental organisations, requested the European Food Safety Authority (EFSA) to give it public access to "*the declarations of interests of EFSA's operational management*".
2. On 20 November 2017, EFSA granted public access to the declarations of interest of EFSA's Executive Director and four Heads of Department, which were already published on EFSA's website.
3. On 21 November 2017, the complainant responded to EFSA's decision, clarifying that the request had been for the declarations of interests of *all* EFSA operational management-level staff, meaning that the request also concerned the declarations of interest that had not been published on EFSA's website.



4. After registering the complainant's clarification as a new request for public access to documents, EFSA denied access to the remaining declarations of interest on 15 December 2017. EFSA justified its decision on the basis that the documents contained personal data of the individuals concerned and that the EU rules on the protection of personal data therefore applied. [1] It noted that documents containing personal data may only be disclosed if legitimate necessity for their disclosure has been established. [2] In this context, EFSA invited the complainant to describe to EFSA the necessity of disclosing the personal data.
5. On 23 January 2018, the complainant explained to EFSA his view of the legitimate necessity for disclosing the documents containing personal data.
6. Having extended the deadline for its response, EFSA refused public access to the declarations of interest on 9 March 2018.
7. The complainant submitted a request for a review of the refusal, a so-called "*confirmatory application*", [3] on 16 March 2018.
8. On 11 April 2018, EFSA confirmed its initial decision, refusing access.
9. Dissatisfied with this outcome, the complainant turned to the Ombudsman on 9 May 2018.
10. The Ombudsman opened an inquiry into EFSA's refusal to grant public access to declarations of interest of middle management staff and presented a proposal for a solution to EFSA. [4] She also asked EFSA to respond to concerns about how it handled requests for access generally.
11. The Ombudsman noted that EFSA initially argued that it published on its website all declarations for which public disclosure is mandatory under the legal framework underpinning the work of EFSA. [5] According to EFSA, the rules applicable to non-scientific staff members of EFSA are the EU Staff Regulations, [6] which do not require the disclosure of declarations of interest. In EFSA's view, the complainant had not put forward any valid argument establishing the necessity of having the personal data transferred to him, as required under Regulation 1049/2001 for compliance with EU data protection rules.
12. However, in the course of the inquiry, EFSA informed the Ombudsman that it had changed its policy regarding the publication of declarations of interest of staff by adopting a new decision on competing interest management. [7] From July 2018, EFSA published the declarations of interest of all members of EFSA's operational management team. This covers not only EFSA's Executive Director, but also the Heads of Department and Heads of Unit. [8]
13. In her proposal for a solution, the Ombudsman welcomed this development and noted that, in publishing the declarations of interest of Heads of Department and Heads of Unit, EFSA has taken an important step in increasing transparency.

The Ombudsman's proposal for a solution

14. Based on her inquiry and in order to seek a solution to the complaint, the Ombudsman



presented to EFSA a proposal for a solution.

15. The Ombudsman noted that the complainant, in his request for public access to the declarations of interest of the members of EFSA's operational management team, had understood the operational management team to include the Chief Scientist, the Senior Science Coordinator, the Senior Policy Adviser, the Team Leader and the Stakeholder Engagement Officer.

16. In this respect, the Ombudsman considered EFSA's Chief Scientist, Senior Science Coordinator and Senior Policy Adviser to have influential roles concerning the setting of EFSA's policies, as they act as advisers and provide direct support to the Executive Director.

17. The Ombudsman therefore proposed that EFSA also publish the declarations of interest of these individuals, in the same way as it does those of the Heads of Department and Heads of Unit.

18. Concerning EFSA's handling of access to documents requests, the complainant had argued that the fact that a confirmatory application has to be sent to the same person within EFSA as the original application renders the review procedure futile.

19. In the course of the inquiry, the Ombudsman established that initial and confirmatory applications within EFSA are handled by different staff. In addition, EFSA has changed its Standard Operating Procedure [9] so that confirmatory applications have to be sent directly to EFSA's Executive Director. This procedural change is intended to reflect the prominence given by EFSA to the decision-making process relating to the handling of confirmatory applications.

20. As these clarifications were established in the course of the inquiry and not communicated to the complainant, however, the Ombudsman suggested that EFSA provide this information to the complainant.

The Ombudsman's assessment after the proposal for a solution

21. The European Food Safety Authority accepted the Ombudsman's proposal for a solution. EFSA has published on its website the declarations of interest of EFSA's Chief Scientist and Senior Policy Adviser. EFSA informed the Ombudsman that the function of Senior Science Coordinator no longer exists at EFSA. No declaration of interest relating to that position has therefore been published.

22. Furthermore, EFSA has implemented the Ombudsman's suggestion to provide the complainant with more information regarding the system it has in place for the handling of initial and confirmatory applications under Regulation 1049/2001. EFSA sent a letter to the complainant in which it explained EFSA's new procedures for the processing and handling of access to documents requests at EFSA. These provide that initial applications for public access to documents are processed by its Legal and Assurance Services, whereas decisions on confirmatory applications are taken by the Executive Director himself.

23. The Ombudsman sought comments from the complainant concerning her proposal for a



solution and EFSA's response to it. As regards EFSA's revised policy for the handling of access to documents requests, the complainant commented to the Ombudsman that, in his view, the revised procedure remains unsatisfactory. The complainant argued that the new procedure does not guarantee that a confirmatory application will be dealt with by a different staff member or department from the original complaint. In his view, for the procedure to be effective, a confirmatory application should be dealt with by a 'neutral third entity'.

24. The Ombudsman considers the revised procedure which has been introduced by EFSA, namely that confirmatory applications are handled differently than initial applications, to be satisfactory. The Ombudsman trusts that such a system will provide a sufficient level of objectivity to the review process.

25. In light of the above, the Ombudsman welcomes EFSA's positive response to her solution proposal and suggestion. She considers that the complaint has been resolved and therefore closes the case.

Conclusion

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

The Ombudsman closes the case as resolved since the European Food Safety Authority has accepted and implemented the Ombudsman's proposal for a solution.

The complainant and the European Food Safety Authority will be informed of this decision .

Emily O'Reilly European Ombudsman

Strasbourg, 18/06/2019

[1] In accordance with Regulation 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community

institutions and bodies and on the free movement of such data, available at <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2001:008:0001:0022:en:PDF> and with 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>

[2] Article 8(b) of Regulation 45/2001

[3] In accordance with Article 8 of Regulation 1049/2001

[4] The full text of the proposal for a solution is available at:



<https://www.ombudsman.europa.eu/en/solution/en/113726>

[5] See Regulation (EC) No 178/2002 of the European Parliament and of the Council of 28 January 2002 laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety, available at:

<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32002R0178&from=EN>

[6] Regulation No 31 (EEC), 11 (EAEC), laying down the Staff Regulations of Officials and the Conditions of Employment of Other Servants of the European Economic Community and the European Atomic Energy Community, available at

<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:01962R0031-20140501&from=EN>

[7] Decision of the Executive Director of the European Food Safety Authority on Competing Interest Management, available at:

https://www.efsa.europa.eu/sites/default/files/corporate_publications/files/competing_interest_management.pdf

[8] Article 24(1)(a)(iv) of the Decision of the Executive Director of the European Food Safety Authority on Competing Interest Management

[9] Available at:

https://www.efsa.europa.eu/sites/default/files/corporate_publications/files/SOP-036_A.pdf