Decision in case 1713/2019/FP on the European External Action Service’s failure to grant full access to briefing material on EU’s relations with Israel provided to the EU Commissioner for external relations in 2007 and 2008 (Ref. 2018/130)

The case concerned the European External Action Service’s (EEAS) refusal to grant public access to briefing notes prepared for the European Commissioner for external relations in 2007 and 2008 concerning the European Union’s relations with Israel.

The Ombudsman found that the EEAS was justified in (partially) refusing public access to the requested documents in order to protect the international relations of the EU.

The Ombudsman closed the inquiry with a finding of no maladministration.

Background to the complaint

1. On 4 September 2018, the complainant submitted a request for public access to the European External Action Service (EEAS) for ‘all briefing notes’ prepared for the then European Commissioner for external relations between 1 January 2007 and 31 December 2008, concerning the European Union’s relations with Israel.

2. On 18 January 2019, the EEAS replied to the complainant’s request. It explained that since the request for public access concerned documents drawn up before the EEAS had been established, the documents had been stored at the historical archive of the European Commission.

3. The EEAS identified eight documents in the historical archive. These documents consisted mostly of extracts from briefing notes and speaking points drafted for the Commissioner. [1]

4. After examining the documents, the EEAS granted full access to one document [2]; partial access to two documents [3]; and gave no access to five documents [4]. The EEAS stated that full access to these documents would negatively affect the climate of trust between the EU and Israel, thereby undermining the EU’s relationship with Israel.

5. On 28 January 2019, the complainant asked for a review of EEAS’ initial decision by way of a so-called ‘confirmatory application’.
6. On 18 February 2019, the EEAS confirmed its initial decision that five documents could not be disclosed [5]. With reference to the two documents for which partial access had been granted, [6] the EEAS reviewed its initial decision and granted access to some additional paragraphs.

7. Dissatisfied with EEAS' decision, the complainant turned to the Ombudsman.

The inquiry

8. The Ombudsman opened an inquiry into the refusal to disclose documents.

9. In the course of the inquiry, the Ombudsman carefully analysed the available information and reviewed the relevant EEAS' documents.

Arguments presented to the Ombudsman

10. The EEAS relied on the exception in Regulation 1049/2001 [7] aimed at protecting the international relations of the EU. [8]

11. In particular, it explained that the content of the documents relate to internal affairs of Israel and positions of the EU in preparation for meetings with international partners. Therefore, it argued, the disclosure of these documents would negatively affect the climate of confidence between the EU, Israel and international partners, and prejudice the EU’s relations with the countries concerned.

12. The EEAS added that the disclosure of the remaining parts of the documents for which access had been partially granted, [9] would negatively affect the climate of trust between the EU and Israel and other parties involved in the Israeli-Palestinian peace process.

13. It also argued that disclosure of the requested documents would harm the environment of mutual trust in diplomatic dialogues between the EU and Israel, vital to such discussions.

14. The EEAS maintained that it had not identified any overriding public interest that would justify granting access.

15. Finally, the EEAS argued that even though the documents were drafted several years before the request for public access was made, many of the issues discussed in the documents relate to the Middle-East peace process and are still relevant today.

16. The complainant contended that since a considerable length of time has passed since the documents were drawn up, it is highly unlikely that disclosing the concerned documents could cause any real damage to the EU’s relations with Israel.
17. The complainant further claimed that there is a public interest in making the documents available, namely to verify that the Association Agreement with Israel was correctly applied. [10]

The Ombudsman's assessment

18. Having inspected the content of the requested documents, the Ombudsman takes the view that the EEAS was justified in relying on the exception for the protection of international relations of the EU.

19. The requested documents [11] are diplomatic briefings. These briefings outline the EU's position towards third country partners, including the positions of EU member states. They further contain assessments of Israel's internal affairs, as well as lines to take for the EU Commissioner in high-level meetings. These positions and considerations concern topics that continue to be relevant today for the EU's international relations.

20. The Ombudsman finds it therefore reasonable to state that disclosure of the concerned documents would be likely to undermine international relations.

21. Under EU law on public access to documents, this interest cannot be overridden by any other public interest.

22. The Ombudsman considers that the EEAS acted reasonably when it refused to grant full public access to the documents. The refusal was therefore justified and in accordance with the law.

23. Finally, the Ombudsman acknowledges that the EEAS carried out a thorough search in the historical archive of the European Commission to identify the documents falling within the scope of the complainant's request.

Conclusion

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

There was no maladministration by the EEAS in refusing full public access to the documents.

The complainant and the European External Action Service will be informed of this decision.

Emily O'Reilly

European Ombudsman
1) [1] The part "Israeli political Situation" on page 77 in the briefing "EU - Canada Summit", 4 June 2007;

2) Briefing "EU-Israel Relations" for the meeting between Mrs. Benita Ferrero-Waldner Commissioner and representatives from the American Jewish Committee, 4 December 2007;

3) Speaking points on the topic "EU-Israel Relations" for Commissioner Ferrero-Waldner when meeting representatives of the American Jewish Committee, 4 December 2007;

4) Briefing File "Visit of Commissioner Ferrero-Waldner to Israel", 28/29 October 2007; 

5) One paragraph on page 10 in the briefing for "EU-Russia Summit", 26-27 June 2008;

6) Two paragraphs on page 80 in the briefing for "EU-US Summit", 10 June 2008;

7) Two short paragraphs (on page 57 and page 60 respectively) in the briefing "EU-US Foreign Ministers' Troika Meeting", 6 March 2008;


[3] The EEAS granted partial access to the documents listed in footnote n. 1 point 2) and 3).

[4] The EEAS refused access to the documents listed in footnote n. 1, point 4) to 8).


[8] See footnote n. 3.
[9] For more information:

[11] See footnote n. 1 at point 2) to 8)