

Decision in case 1484/2019/UNK on the European Commission's handling of a request for full public access to drafts of an article on the copyright directive published on the Commission's website

Decision

Case 1484/2019/UNK - Opened on 05/08/2019 - Decision on 02/12/2019 - Institution concerned European Commission (No maladministration found) |

The case concerned the European Commission's decision to redact the names of Commission staff members from a document before granting the complainant public access to it.

The Ombudsman found that the Commission was correct to redact the names. She therefore closed the inquiry with a finding of no maladministration.

Background to the complaint

1. In February 2019, the Commission published an article related to the Copyright Directive on one of its social media platforms. A short time later, it removed the article and stated, in its place, that: “ *This article published by the Commission services was intended to reply to concerns, but also to misinterpretations that often surround the copyright directive proposal. We acknowledge that its language and title were not appropriate and we apologise for the fact that it has been seen as offending* ”. [1]
2. On 16 February, the complainant, who is an advocate for an internet information resource, requested public access to all drafts of the article.
3. On 1 April, the Commission granted partial access to an internal Commission email exchange in which the article was contained. In doing so, it redacted the names of Commission staff contained in the email exchange (specifically, it redacted the email addresses and ‘signatures’ at the bottom of emails). It stated that these redactions were in line with the rules regarding the protection of personal data contained in Article 4(1)(b) of Regulation 1049/2001 [2] and Regulation 2018/1725 [3] .
4. On 10 April, the complainant submitted a request for review, a so-called “ *confirmatory application* ”, to the Commission, stating that public disclosure of the names was justified.



5. On 26 June 2019, the Commission confirmed its decision to grant partial public access to the document.

The inquiry

6. The Ombudsman opened an inquiry into the Commission's handling of the request for full public access.

7. In the course of the inquiry, the Ombudsman received an unredacted copy of the requested document from the Commission.

Issue

Arguments presented to the Ombudsman

8. The complainant disagreed with the Commission's redaction of the names of Commission staff. He considered that their public disclosure was justified because (he alleges) the name of the author of the article is already publicly known (he provided the Commission with the name of the person who he believed was the author).

9. When submitting his complaint to the Ombudsman, the complainant also argued that public disclosure of the names of Commission staff would inform the public about how the Commission decided to publish the article.

10. The complainant also stated that he suspected that the Commission did not disclose all the drafts of the article.

11. The Commission considered that the names of Commission staff are 'personal data'. The Commission explained that, in accordance with Article 9(1)(b) of Regulation 2018/1725, 'personal data' may be publicly disclosed only if there is a 'necessity' to have the data disclosed. That 'necessity' must be for a specific purpose and the 'specific purpose' must be in the public interest. The Commission noted, however, that the complainant had not explained how the disclosure of the names of its staff was necessary to achieve a specific purpose in the public interest. [4] It stated that the complainant's argument, that the names should be disclosed because the name of the author of the article is already publicly known, is not convincing.

12. The Commission also noted that there is a real and non-hypothetical risk that public disclosure of the names of its staff would harm the privacy of these persons and subject them to unsolicited external contacts.



The Ombudsman's assessment

13. The Ombudsman notes that the names of Commission staff members are 'personal data' of the staff members in question. Public access to those names must be refused unless the legal standard set by Article 9(1)(b) of Regulation 2018/1725 is met. In accordance with this legal standard, personal data may be publicly disclosed only if there is a 'necessity' to have the data disclosed. That 'necessity' must be for a 'specific purpose' and the 'specific purpose' must be in the public interest. Even if that part of the test is met, access can still be denied in the light of a proportionality test in which any 'legitimate interests' of the persons concerned are taken into account.

14. The Ombudsman considers that the complainant did not provide the Commission with any convincing argument demonstrating why the disclosure of the names of Commission staff was necessary.

15. The complainant argued that the names of the Commission staff should be disclosed because the identity of the author of the article is known. Even if the identity of the author of the article was known, this would not mean that there is any need to disclose the names of Commission staff contained in the email exchange.

16. The complainant also informed the Ombudsman that disclosing the names of staff would inform the public about how the article was published. The Ombudsman notes that the complainant has not put forward this argument to the Commission when submitting his initial and confirmatory applications. He only made this argument when submitting his complaint to the Ombudsman. In any event, the Ombudsman has examined the document in question. In light of this examination, she does not agree that disclosing the names of the Commission staff members would shed any light on how the article in question was published.

17. Regarding the complainant's concern that the Commission did not disclose all the drafts of the article, the Ombudsman notes that there is no evidence that the Commission holds any other drafts of the document. Indeed, the content of the email exchange does not lead to a conclusion that there were other drafts of the article in the possession of the Commission.

Conclusion

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

There was no maladministration by the European Commission.

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

Emily O'Reilly



European Ombudsman Strasbourg, 02/12/2019

[1] The article was called "*The Copyright Directive: how the mob was told to save the dragon and slay the knight*" and was available, for a time, at the following link:

<https://medium.com/@EuropeanCommission/the-copyright-directive-how-the-mob-was-told-to-save-the-dragon-and-slay-the-knight> [Link].

[2] Regulation (EC) 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 the following link:

<https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A32001R1049> [Link].

[3] Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC. Available at the following link:

<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32018R1725> [Link].

[4] In accordance with the judgment of 16 July 2015, *ClientEarth and Pesticide Action Network Europe (PAN Europe) v European Food Safety Authority*, Case C-615/13 P, ECLI:EU:C:2015:489, paragraph 47. Available at the following link:

<http://curia.europa.eu/juris/document/document.jsf?jsessionid=0601AB9D34DB0EE31604D2D99AFB63FB?text=&docid=111111> [Link].