

Decision in case 104/2020/EWM on the European Border and Coast Guard Agency's refusal to deal with a request for public access to documents based on procedural grounds

Decision

Case 104/2020/EWM - Opened on 20/02/2020 - Decision on 20/02/2020 - Institution concerned European Border and Coast Guard Agency (Settled by the institution) |

The case concerned the alleged refusal by the European Border and Coast Guard Agency to process a request for access to documents submitted via the online portal fragdenstaat.de. After the complainant had turned to the Ombudsman, Frontex started processing his complaint.

The Ombudsman thus closes the inquiry on the basis that Frontex has settled the complaint by processing the complainant's request for public access to documents.

Background to the complaint

1. The complainant submitted a request for access to documents [1] to the European Border and Coast Guard Agency (Frontex) by email via the online portal fragdenstaat.de. He received a response within the hour informing him: “ *If you intend to apply for public access to documents, please use the gateway: <https://pad.frontex.europa.eu/padrequests/create>. Before applying, kindly consider the application procedure as indicated under <https://frontex.europa.eu/contact/public-access-to-documents-applications/>. ”*
2. The complainant replied that Frontex should answer his request via fragdenstaat.de as they had done in the past.
3. The complainant turned to the Ombudsman stating that Frontex declined to register his application for access to documents because he did not send it through Frontex's website. The complainant argued that Frontex was obliged to register and answer his request.

The inquiry

4. The Ombudsman looked into the alleged refusal to process the complainant's application for



access to documents submitted via email.

Frontex's reply and the complainant's arguments

5. After the complainant had turned to the Ombudsman, Frontex sent him a link to its website, informing him that new information regarding his application was available under that link (and that it is valid for 15 working days). He had to fill in a code, his email address and the case ID on an online form to access the information. Frontex informed him that his application falls under the EU rules for access to documents and that Frontex would start processing his application.

6. The complainant argued that this does not settle his complaint, because Frontex sent him only a login link for their website, which is valid only for 15 days, and he had to enter further data before he could read a content response. He complained that Frontex can track when and how often he logs in. He was concerned that these barriers are not compatible with the requirements of the EU rules on public access to documents. Frontex should reply to him in an e-mail as usual.

The Ombudsman's assessment

7. One day after the complainant had turned to the Ombudsman, Frontex informed him that it would start processing his complaint.

8. The fact that Frontex told the complainant it would communicate with him via a link to its own online portal is not, in itself, contrary to the EU rules on public access to documents. According to those rules, the institution concerned shall supply documents “ *with full regard to the applicant's preference* ”. [2] However, the rules do not oblige the institutions to communicate with the applicant according to the applicant's own preference, if there is good reason for it not to do so, for example if to do so would involve a disproportionate amount of time and effort.

9. The Ombudsman notes that the EU rules on public access to documents aim to give the fullest possible effect to the right of access. [3] It is important that citizens do not feel that an institution is putting unnecessary obstacles in the way of their exercising their fundamental right of public access to documents. Portals such as fragdenstaat.de and AsktheEU.eu have been developed to facilitate citizens' requests for public access to documents in pursuance of this fundamental right.

10. The Ombudsman notes that, when responding to a request for access, the rules oblige an institution to provide access only to the applicant, that is, the person who has asked for the document. It is not obliged to publish the document or disclose it to the world at large. Nevertheless, the institution should always take steps to fulfil its obligation to give the fullest possible effect to the right of access and take into account the public interest in the wider disclosure of documents requested.



11. Fulfilling requests via online portals is an effective means of complying with this obligation. Where an applicant has specifically stated that this is their preferred medium for receiving the response to their request and any documents to which public access is granted, institutions should comply with that request unless there is very good reason (which should be explained) for them not to do so. This is a matter of good administration as well as a means of complying with the legal obligation to give the widest possible public access.

Conclusion

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

Frontex has settled the complaint by processing the complainant's request for public access to documents.

As a suggestion for improvement, the Ombudsman encourages Frontex to respond to requests for public access to documents via online portals where this is the express wish of the applicant or the means by which the request has been received, unless there is very good reason (which should be explained) for it not to do so.

The complainant and Frontex will be informed of this decision .

Emily O'Reilly

European Ombudsman

Strasbourg, 20/02/2020

[1] Pursuant to the EU rules on public access to documents: Regulation (EC) No 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 <https://eur-lex.europa.eu/eli/reg/2001/1049/oj> [Link].

[2] Article 10 of Regulation 1049/2001.

[3] Recital 4 of Regulation 1049/2001.