



Decision in case 1498/2019/NH on the European Parliament not sending its reply to an access to documents request by e-mail

Decision

Case 1498/2019/NH - Opened on 14/10/2019 - Decision on 28/05/2020 - Institution concerned European Parliament (No maladministration found) |

The case concerned the refusal by the European Parliament to send a decision refusing public access to documents by e-mail.

The Ombudsman found that Parliament's reply to the complainant was reasonable in the given context, as the complainant had already received the decision by registered post.

The Ombudsman closed the inquiry with the conclusion that there had been no maladministration by Parliament in this case.

Background to the complaint

- 1.** The complainant, who lives in Germany, asked the European Parliament for access to documents concerning its reimbursement of travel and accommodation costs of journalists invited to Parliament's headquarters in Strasbourg. The complainant made his access request on 23 May 2019 through the online platform "FragDenStaat".
- 2.** The complainant sent a number of reminders to Parliament. In his last reminder, sent on 31 July 2019, the complainant asked Parliament to send him its decision by e-mail as soon as possible.
- 3.** Parliament replied by e-mail on 1 August 2019, saying that it sends its decisions refusing public access to documents by registered post. Registered post gives a sound piece of evidence - the acknowledgement of receipt - for the time limit of 15 working days within which applicants may challenge the decision to refuse public access. [1] This is why Parliament sent its decision to the complainant by registered post and not by e-mail.
- 4.** Dissatisfied with Parliament's reply, the complainant turned to the Ombudsman. He argued that other EU institutions, such as the European Commission, are more citizen-friendly in that they send the rejection decisions by e-mail in addition to sending them by registered post. He also contended that Parliament failed to give valid reasons for its refusal to send the decision by e-mail.

The inquiry

- 5.** The Ombudsman opened an inquiry into the refusal by the European Parliament to send



its decision on a request for access to documents by e-mail *in addition to* sending it by registered post.

6. In the course of the inquiry, the Ombudsman received from Parliament certain clarifications on the issues raised in the complaint.

7. Parliament set out the chronology of the events as follows: It had taken the final decision rejecting the complainant's access to documents request on 9 July 2019 and had sent it to him by registered post. The acknowledgement of receipt, signed by the complainant, showed that he had received the decision on 16 July 2019. The complainant had sent reminders on 23 and 31 July 2019, despite the fact that he had already received the decision. Parliament had replied to the complainant on 1 August 2019, explaining why it had sent the decision by registered post and not by e-mail.

8. Parliament explained to the Ombudsman that it sends positive replies to access to documents requests by e-mail. Decisions refusing public access to documents are always notified by registered post to ensure legal certainty. As laid down in the EU Treaty, decisions taken by EU institutions shall take effect upon notification to the person addressed. EU case law [2] favours notification by registered post over e-mail delivery confirmations. Parliament argued that, if decisions refusing public access to documents were systematically sent by email, the addressee might be inclined not to collect the hard copy decision from the post office and would thus not sign the acknowledgement of receipt, which it required for reasons of legal certainty.

9. Parliament said that it may also send a copy of the decision refusing access to documents to the applicant's private email address, if the applicant requests it and if the applicant has already received and acknowledged the decision sent by registered post. However, in order to respect data protection rules, [3] it is not good administrative practice to send decisions refusing access to documents to non-private email accounts, created via an online platform, such as the one used by the complainant. If sent to such accounts, emails and their annexes may be automatically published online, without prior scrutiny. The decision may contain personal data of the applicant as well as of third parties.

10. Parliament said it cannot apply the European Commission's practice to send decisions refusing access to document requests both by e-mail and registered post systematically. Unlike the Commission, Parliament does not have a decentralised system for handling initial applications for public access to documents.

The Ombudsman's assessment

11. Parliament does not always refuse to send a negative decision by e-mail in addition to sending it by registered post. Parliament may choose to send the decision also by e-mail if certain conditions are met.

12. In this case, the Ombudsman finds that the complainant formulated his reminders dated 23 and 31 July as if he had not yet received the negative decision from Parliament, and not as a request to receive a copy of the decision by e-mail *as well* . While the Ombudsman considers that Parliament could have sent the decision also by e-mail, as requested, it was



not unreasonable, in the circumstances, for Parliament to reply to the complainant in the way it did.

13. Parliament has given its reasons for not automatically sending negative decisions by e-mail in addition to sending them by registered post. In this regard, the Ombudsman recognises the importance of knowing, with certainty, when an applicant received a reply, to determine the time limit for making an appeal under the applicable rules on access to documents. [4] While the EU courts consider that notifying a decision by registered post with acknowledgement of receipt is a particularly secure solution compared to e-mail delivery confirmations, they also recognise that other means of notifying administrative decisions can meet the need for legal certainty. [5] The Ombudsman would encourage all EU institutions to develop more modern and citizen-friendly approaches to the notification of administrative decisions, which achieve the required standards of security and legal certainty.

Conclusion

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

There was no maladministration by the European Parliament in this case.

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

Emily O'Reilly

European Ombudsman

Strasbourg, 28/05/2020

[1] In line with the timeframes set out in Regulation (EC) No 1049/2001 regarding public access to European Parliament, Council and Commission documents, available at: <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=celex%3A32001R1049> .

[2] See judgment of the General Court of 7 December 2018, *GE.CO.P. Generale Costruzioni e Progettazioni SpA v European Commission* , T-280/17, paragraphs 50-62.

[3] Regulation (EU) 2018/1725 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies, available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32018R1725>

[4] Article 7(2) of Regulation (EC) No 1049/2001.

[5] See the GE.CO.P. judgment referred to in footnote 2, paragraphs 61 and 62.