

## Decision in case 833/2019/MIG on the European Commission's refusal to grant public access to the job description of its Coordinator on Combating Anti-Semitism

Decision

**Case 833/2019/MIG - Opened on 05/09/2019 - Decision on 16/06/2020 - Institutions concerned** European Commission ( Settled by the institution ) | European Commission ( Solution achieved ) |

The case concerned the European Commission's refusal to grant public access to the job description of its Coordinator on Combating Anti-Semitism on the ground that disclosure would undermine the privacy and the integrity of the post holder.

The Ombudsman found that the complainant had put forward a necessity for the disclosure of the requested job description and proposed, as a solution, that the Commission should release the document.

The Commission agreed to release the job description, which resolved the complaint.

### Background to the complaint

1. At the end of 2015, the Commission established two new posts, the Coordinator on Combating Anti-Semitism and the Coordinator on Combating Anti-Muslim Hatred. Their role is *"to bring the concerns of the respective communities to the attention of (...) the Commission and help to coordinate efforts across services in the context of the Commission's overarching policy on racism, xenophobia and other forms of intolerance"*. [\[1\] \[Link\]](#)
2. In November 2018, the complainant requested the Commission to give him public access [\[2\] \[Link\]](#) to the job description of its Coordinator on Combating Anti-Semitism ('the Coordinator').
3. The Commission refused to grant public access to the job description relying on the need to protect the privacy and integrity of the current post holder. [\[3\] \[Link\]](#)
4. The complainant then asked the Commission to review its decision (he made a so-called 'confirmatory application').



5. The Commission maintained its position that public access could not be granted to the job description as its disclosure would undermine the privacy and integrity of the post holder. It said that the complainant had not put forward a valid necessity to justify obtaining access to this personal data, as required by the EU rules on data protection.

6. Dissatisfied with this response, the complainant turned to the Ombudsman in May 2019.

7. The Ombudsman opened an inquiry into the Commission's refusal to grant public access to the job description at issue. In the course of the inquiry, the Ombudsman's inquiry team reviewed the requested document.

## The Ombudsman's proposal for a solution

8. 'Personal data' includes **any** information related to an identified or identifiable person. Having examined the requested job description, the Ombudsman found that the document constituted personal data of the post holder.

9. The Commission must follow a three-stage analysis before it can make any personal data public. First, it has to examine whether the person seeking access has demonstrated a **necessity** to make the data public. If they have, the institution has to establish whether making the data public could undermine the **legitimate interests of the 'data subject'** (in this case, the Coordinator). If it could, the institution has to carry out a **balancing exercise between the interests** .

10. The Ombudsman disagreed with the Commission's position that the complainant had failed to establish a necessity for having the document released.

11. The Ombudsman also noted that the Commission had not explained how specifically disclosure of the job description would, in its view, affect the legitimate interests of the current post holder.

12. Taking into account three factors, namely (i) the content of the document and the type of personal data at issue, (ii) the nature of the role of the Coordinator, and (iii) the likelihood of a negative impact of disclosure on the post holder's interests, the Ombudsman considered that the interests of the post holder did not outweigh the interests put forward by the complainant in the public disclosure of the job description.

13. The Ombudsman therefore made the following proposal for a solution:

**The European Commission should reconsider its refusal to grant public access to the job description of its Coordinator on Combating Anti-Semitism and consider granting public access to it. [4] [\[Link\]](#)**



14. The Commission replied to the Ombudsman's proposal for a solution in May 2020. It stated that its decision to refuse public access to the job description on the ground that disclosure would undermine the post holder's interests had been legally and factually correct. However, in the light of the special circumstances of this case and because the post holder had given her consent to the disclosure, the Commission agreed that public access may exceptionally be granted.

15. The complainant was invited by the Ombudsman to provide comments on the Commission's response but did not make any comments.

16. The Ombudsman considers that the Commission has followed her proposal for a solution by giving the complainant full public access to the requested job description.

17. The Ombudsman welcomes the Commission's positive response to her proposal for a solution and considers that the complaint has been resolved.

## Conclusion

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

**The European Commission has settled the complaint by granting full public access to the job description of its Coordinator on Combating Anti-Semitism.**

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

Emily O'Reilly

European Ombudsman

Strasbourg, 16/06/2020

[1] [Link] See [https://ec.europa.eu/home-affairs/what-is-new/news/news/2015/20151201\\_2\\_en](https://ec.europa.eu/home-affairs/what-is-new/news/news/2015/20151201_2_en) [Link].

[2] [Link] Under Regulation 1049/2001 regarding public access to European Parliament, Council and Commission documents:

<https://eurlex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2001:145:0043:0048:en:PDF> [Link]



[3] [\[Link\]](#) In accordance with Article 4(1)(b) of Regulation 1049/2001.

[4] [\[Link\]](#) The full proposal for a solution including the Ombudsman's assessment leading to it, is available at:

<https://www.ombudsman.europa.eu/en/solution/en/129115> [\[Link\]](#).