

Decision in case 719/2020/MIG on the European Commission's refusal of public access to documents concerning press freedom in Hungary

Decision

Case 719/2020/MIG - Opened on 30/04/2020 - Decision on 22/06/2020 - Institutions concerned European Commission (Dropped by the complainant) | European Commission (Settled by the institution) |

This case concerned a request for public access to documents concerning press freedom and media pluralism in Hungary and held by the European Commission. The Commission gave the complainant partial access to 26 documents. When the complainant contested this decision, the Commission failed to reply within the prescribed time limits.

The Ombudsman asked the Commission to reply to the complainant's request for review. The Commission then issued a confirmatory decision, after which the complainant informed the Ombudsman he did not intend to pursue the matter further.

The Ombudsman therefore closed the inquiry.

Background to the complaint

1. In July 2019, the complainant, a journalist, made a request for public access [1] to documents to the Commission concerning press freedom and media concentration in Hungary.
2. In September 2019, the Commission informed the complainant that it had identified 26 documents, including briefings, legal notes and a report. It gave the complainant full access to seven documents, partial access to ten documents, and refused to disclose the remaining nine documents. The Commission justified its decision to refuse public access to those documents (either in part or in their entirety) on the basis of the need to protect its decision-making process and, concerning two documents, also with the need to protect legal advice. [2] [\[Link\]](#)
3. On 17 September 2019, the complainant asked the Commission to review its decision to refuse (partially) access to eight of the identified documents by making a so-called 'confirmatory application'. He questioned whether the disclosure of those documents would indeed undermine the protection of the Commission's decision-making process or legal advice. The complainant



also considered that, irrespective of whether the Commission was justified in relying on the two exemptions invoked, there was an overriding public interest. For example, the complainant argued that disclosure of the documents would help the public to understand how the Commission monitors media pluralism in Hungary. Regarding two legal notes, the complainant considered that disclosure would serve the public interest in ensuring that EU law is properly transposed and respected.

4. When the complainant did not receive a reply, he turned to the Ombudsman in April 2020.

The inquiry

5. The Ombudsman opened an inquiry into the following aspects of the complaint:

1) The Commission's failure to reply to the complainant's confirmatory application within the prescribed time limit, and

2) the Commission's decision to give only partial access to one and to refuse access to seven of the requested documents.

6. As a first step, the Ombudsman asked the Commission to review the documents at issue in this inquiry and suggested that the Commission reply to the complainant's confirmatory application.

7. Following the Ombudsman's intervention, the Commission adopted a confirmatory decision, giving the complainant wider partial access to one document and partial access to another document, which it had not disclosed previously. Regarding the remaining six documents, it maintained its position that access must be denied.

8. The Ombudsman then asked the complainant for his comments on the Commission's confirmatory decision.

9. The complainant informed the Ombudsman that he was only partially satisfied with the Commission's reply. He considered that the Commission should have granted at least partial access to two legal notes, reiterating that there was an overriding public interest in their disclosure. Nevertheless, the complainant said, he preferred not to pursue his complaint to the Ombudsman.

10. While the Ombudsman notes with concern the significant delay in the Commission's response to the complainant's confirmatory decision, she considers that the Commission has now resolved this aspect of the complaint.

11. As regards the Commission's (partial) refusal of public access, the Ombudsman notes that the complainant has decided not to pursue his complaint. Therefore, she will take no further action on it.



Conclusions

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

The Commission settled the first aspect of the complaint adopting a confirmatory decision.

No further action is required on the second aspect of the complaint.

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

Emily O'Reilly

European Ombudsman

Strasbourg, 22/06/2020

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

<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32001R1049&from=EN> [Link].

[2] [Link] In accordance with Article (4)(2), second indent and Article 4(3) of Regulation 1049/2001.