



Decision in case 1849/2019/DL on the European Union Agency for Law Enforcement Cooperation's refusal to grant public access to documents relating to its operational tasks in combating illegal migrant smuggling

Decision

Case 1849/2019/DL - **Opened on** 10/10/2019 - **Decision on** 01/07/2020 - **Institution concerned** European Union Agency for Law Enforcement Cooperation (Settled by the institution) |

The case concerned Europol's refusal to provide access to i) various Joint Investigation Teams (JIT) agreements it entered into with Member States, and ii) documents regulating the Joint Liaison Task Force on Migrant Smuggling. Europol considered that the disclosure would undermine the protection of the public interest as regards public security and the privacy and integrity of the individuals mentioned therein.

The Ombudsman inquired into the issue and found that Europol was justified in refusing full access to most of the documents. However, she proposed partial access to "The Joint Liaison Task Force - Migrant Smuggling, draft Process Description", since certain parts did not appear to be sensitive or in need of protection.

Europol accepted the Ombudsman's proposal to an extent. It granted partial access to the draft Process Description, but with more redactions than the Ombudsman had proposed. Having obtained additional justifications for those redactions, the Ombudsman considers them reasonable. While acknowledging that the complainant remains dissatisfied, the Ombudsman closes her inquiry on the basis that it has been settled by Europol.

Background to the complaint

1. On 8 and 18 July 2019, the complainant filed two access to documents requests to the European Union Agency for Law Enforcement Cooperation (Europol). The requests concerned: i) 12 Joint Investigation Teams (JIT) agreements [1] between various EU Member States and Europol; ii) the Working Program, Operational Plan and/or any document regulating the recently launched Joint Liaison Task Force Migrant Smuggling and Trafficking in Human Beings.

2. On 16 August 2019, Europol issued its initial decision. It identified 10 JIT agreements as falling within the scope of the first request and two documents as falling within the scope of the second request, namely "the Liaison Bureaux Input For The Joint Liaison Task Force for



Migrant Smuggling” and “the Joint Liaison Task Force - Migrant Smuggling draft Process Description”. Europol refused access to all documents based on the protection of the public interest as regards the proper fulfilment of Europol’s tasks and the investigations and operational activities of Member States, third parties and EU bodies, as well as the privacy and integrity of the individuals mentioned in the documents. [2]

3. On the same day, the complainant submitted a request for review to Europol (a so-called “confirmatory application”).

4. On 2 October 2019, Europol confirmed its initial decision.

5. On the same day, dissatisfied with Europol’s decision, the complainant turned to the Ombudsman. The complainant argued that Europol’s refusal to grant access to the requested documents was not properly justified. The complainant considered it extremely difficult for individuals to hold Europol accountable if information on the operational activities that Europol conducts on the ground, with reference to illegal migrant smuggling, are kept completely secret and not even partial access to documents is granted.

The Ombudsman's proposal for a solution

6. The Ombudsman inquired into Europol’s decision not to grant access to the requested documents.

7. In the course of the inquiry, the Ombudsman’s inquiry team inspected the file on this case. Europol provided the Ombudsman with two documents [3] and the model JIT agreement. [4] The Ombudsman also obtained Europol’s reasoning for withholding the documents.

8. Based on her inquiry, the Ombudsman presented Europol with a proposal for a solution to the complaint.

9. As regards the first request, the Ombudsman found that there was no maladministration by Europol in refusing to provide access to the JIT agreements. This was because the JIT agreements contain details about individual investigations, such as information on suspects, the purpose of the specific criminal investigation and personal data of staff working on the issue of illegal migration. The Ombudsman therefore considered that the disclosure of these agreements could undermine the protection of the public interest as regards public security.

10. As regards the second request, the Ombudsman made a distinction between the two documents identified by Europol. She found that Europol was justified in refusing access to “the Liaison Bureaux Input for the Joint Liaison Task Force for Migrant Smuggling”, since its disclosure might undermine the protection of public security with regard to the proper fulfilment of Europol’s tasks, investigations and operational activities of Member States.

11. The Ombudsman found that “the Joint Liaison Task Force - Migrant Smuggling draft Process Description” presented a description of the process related to the activity of the Task



Force, a flowchart of the process and details about documents retention. While she acknowledged that some parts should remain confidential due to their sensitivity, she concluded that the remaining parts of the documents should be disclosed since they did not appear to be sensitive or in need of protection. Therefore, **the Ombudsman proposed as a solution to Europol to partially disclose the “Joint liaison Task Force - Migrant Smuggling draft Process Description”, with the exception of paragraphs 1, 2.8, 2.16 and 2.17 and the personal data of any individuals mentioned in the document.**

The Ombudsman's assessment after the proposal for a solution

12. Europol partially accepted the Ombudsman’s proposal for a solution and granted the complainant partial access to the “Joint liaison Task Force - Migrant Smuggling draft Process Description”.

13. The Ombudsman notes that Europol maintained the redaction of more paragraphs than she had proposed, namely, paragraphs 2.2, 2.9-2.13 and 2.15. Europol justified these redactions by reiterating that release would undermine the proper fulfilment of Europol’s tasks and investigations and operational activities of Member States, third parties or Union bodies, as well as the privacy and integrity of the individuals therein mentioned. [5] Europol emphasized that the disclosure of those paragraphs would risk jeopardizing the processes and workflows within Europol in several ways, which, in turn, would risk undermining the operational activities of the Member States in their fight against migrant smuggling. It added that the release of such information might jeopardize the cooperative relationships between Europol and its partners, thus hindering Europol’s ability to fulfil its tasks.

14. The Ombudsman sought additional clarifications from Europol as to why it considered these paragraphs to be particularly sensitive. Europol explained that it adopted a restrictive approach to these paragraphs since they contained specific security details.

15. The Ombudsman sent the complainant her proposal for a solution together with Europol’s reply and asked the complainant to comment. The complainant was dissatisfied with the reply, as Europol had redacted additional paragraphs to the ones indicated in the Ombudsman’s proposal. The complainant argued that it was impossible to provide any useful comments since only parts which were irrelevant for his purpose were disclosed, while the relevant paragraphs remained redacted.

16. The Ombudsman agrees with the complainant that transparency of Europol’s operational activities as regards illegal migrant smuggling is very important. Moreover, the Ombudsman acknowledges that the complainant remains dissatisfied since the paragraphs he considered crucial for the purpose of holding Europol accountable for these activities remain redacted.

17. However, given the high degree of protection attributed by EU rules on public access to documents detailing security operations, and taking into account the additional justifications



provided her by Europol, the Ombudsman accepts that the information contained in these paragraphs is highly sensitive in the context of Europol's ongoing work in this difficult area. The Ombudsman therefore considers the additional redactions by Europol to be reasonable.

18. In light of the above, while acknowledging that the complainant remains dissatisfied, the Ombudsman considers that Europol has settled the matter by granting partial public access to one of the documents requested.

Conclusion

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

The issue has been settled by Europol by granting partial public access to one of the documents requested.

The complainant and Europol will be informed of this decision .

Emily O'Reilly

European Ombudsman

Strasbourg, 01/07/2020

[1] More information about JIT agreements can be found here:
<https://www.europol.europa.eu/publications-documents/jits-practical-guide> .

[2] Article 4(1)(a) and (b) of the Management Board Decision laying down the rules for applying Regulation 1049/2001 with regard to Europol documents.

[3] Liaison Bureaux Input For The Joint Liaison Task Force for Migrant Smuggling and Joint Liaison Task Force - Migrant Smuggling Process Description.

[4] On which the actual JIT agreements, to which the complainant requested access, are based.

[5] [5] In accordance with Article 4(1)(a) and (b) of the Decision of the Management Board of Europol laying down the rules for applying Regulation 1049/2001 with regard to Europol documents.