

Proposal of the European Ombudsman for a solution in case 1794/2019/EWM on the European Commission's refusal to provide full access to documents relating to an event attended by Commission officials and by a former Commission head of unit

Solution - 07/11/2019

Case 1794/2019/OAM - **Opened on** 01/10/2019 - **Recommendation on** 08/07/2020 - **Decision on** 11/12/2020 - **Institution concerned** European Commission (Maladministration found) |

Made in accordance with Article 3(5) of the Statute of the European Ombudsman [1]

Background to the complaint

1. On 16 July 2019, the complainant - an Austrian journalist - wrote to the Commission to request “ *[i] nvitations to Commission officials and all other documents relating to an event called "Internet of Things: fast forward to the future" organised by Vodafone on April 29 in Brussels .”*
2. On 26 August 2019, the Commission sent its reply to the complainant. The Commission identified 21 documents as falling within the scope of the complainant's request. Having examined them, the Commission **granted full access to 3 documents** and **partial access to 18 documents** .
3. On the same day, the complainant asked the Commission to reconsider its position through a so-called ‘confirmatory application’. In doing so, he set out arguments as regards the public interest in disclosure of the partially redacted documents; in particular, to the disclosure of those redacted parts relating to the Commission's former Head of Unit, Mr X.
4. On 26 September 2019, the Commission sent a confirmatory decision to the complainant confirming its initial decision. The Commission partially refused public access based on the exception in article 4(1)(b) of Regulation 1049/2001 regarding the protection of privacy and the integrity of an individual.
5. Dissatisfied with the Commission's reply, the complainant turned to the Ombudsman.



The inquiry

6. The Ombudsman opened an inquiry into the Commission's refusal to provide full public access to the requested documents.

7. The Ombudsman's inquiry team inspected the non-redacted versions of the requested documents.

Arguments presented to the Ombudsman

Arguments of the Commission

8. The Commission argued that the documents to which it granted partial access contain the names and initials of persons who do not form part of the senior management of the European Commission, as well as representatives of Vodafone and other companies.

9. The Commission contended that these names constitute **personal data** and that the complainant **failed to substantiate any necessity** as to why that personal data should be transferred to him for a specific purpose in the public interest. According to the Commission, although the complainant refers to the existence of a possible conflict of interest, this does not constitute evidence as to the necessity, under the present circumstances, to have the personal data transferred to him.

10. The Commission further considered that there was a real and non-hypothetical risk that public disclosure of the personal data in the documents would harm the privacy of the persons concerned who could become subject to 'unsolicited external contacts'.

11. The Commission therefore redacted the names that appeared in the requested documents.

Arguments of the complainant

12. The complainant explained that he is investigating the involvement of a former Commission official, Mr X, in the organisation of the event.

13. In this respect, the complainant argued there is a broader public interest in disclosing the documents including the personal data, as this would allow him to scrutinise Mr X's role in the interactions between Commission officials and Vodafone.

14. In his confirmatory application, the complainant referred to the fact that this very issue has been subject to a public discussion in media and in the European Parliament. He also specified that his request focuses on the particular role of Mr X. The complainant therefore considered that, at the least, the name of this person should be disclosed in the documents.



The Ombudsman's assessment

15. The names of persons contained in the documents to which the Commission granted partial access constitute personal data. Personal data may only be transmitted if the conditions as set out under Article 9(1)(b) of Regulation 2018/1725 are met.

16. First, the recipient needs to demonstrate the need for the transfer for a specific purpose in the public interest. Second, if there is reason to assume that such transfer might undermine the legitimate interests of the data subject, the controller (the Commission) needs to establish that it is proportionate to transmit the personal data for that specific purpose, having weighed the various competing interests.

17. The Commission considers that the complainant has not established a necessity to have the personal data transferred to him. The Ombudsman notes, however, that the complainant in his confirmatory application specifically sets out that he intends to use this personal data to investigate “ *a potential conflict of interest in Mr. [X] 's work for Vodafone, in which the event in April plays a crucial role* ”. He refers to an article published on netzpolitik.org. In this article, he cites a Commission representative's explanation that the involvement of Mr X in the organisation of the event would amount to a violation of Mr X's obligations as a former Commission official, namely his obligation to avoid conflicts of interest.

18. In his article, the complainant also cites a public statement by Commissioner Oettinger clarifying that Mr X “ *was also requested not to deal in any way with files and matters directly linked to his work at the Commission and not to participate in meetings or have contacts of professional nature with his former Directorate General or service for a period of one year* ”.

19. The Ombudsman considers that there is a broader public interest in disclosing the documents, including the personal data of Mr X, as this will allow the complainant to scrutinise whether there was a possible conflict of interest regarding Mr X's role in the interactions between Commission officials and Vodafone. The Ombudsman therefore considers that the complainant has demonstrated a necessity to have the particular personal data of Mr X transferred for a specific purpose in the public interest.

20. This is particularly so, since the name of Mr X in fact appears in the documents in a manner which might also allow the complainant to take a view as to whether the Commission respects the rules it set itself in regard to Mr X's contacts with the Commission.

21. Having established the necessity for the transfer of the personal data, the Ombudsman considers it then appropriate to assess, in line with EU privacy rules, whether the disclosure of Mr X's name to the complainant might prejudice Mr X's legitimate interests. The Ombudsman is of the view that in the present circumstances any interest that Mr X may have in his name being redacted from the document cannot be described as a 'legitimate interest' given that the use of his name in the context of that document relates directly to the issue of whether Mr X and the



Commission in fact respected the restrictions on contacts between him and the Commission. [2] Accordingly, there is no need to carry out a proportionality assessment in accordance with Article 9(1)(b) of Regulation 2018/1725.

22. In light of the above, the Ombudsman makes the following proposal:

The proposal for a solution

Based on the above findings, the Ombudsman proposes that the European Commission provides the complainant with a copy of the requested document without redacting the name of Mr X.

The Commission is invited to inform the Ombudsman by **17 January 2020** of any action it has taken in relation to the above solution proposal.

Emily O'Reilly

European Ombudsman

Strasbourg, 07/11/2019

[1] Decision of the European Parliament of 9 March 1994 on the regulations and general conditions governing the performance of the Ombudsman's duties (94/262/ECSC, EC, Euratom), OJ 1994 L 113, p.

[2] See document 11, „ *Back to office report prepared following the Vodafone IoT event of 29 April 2019* “.