

Decision in joined cases 1279/2019/MIG and 278/2020/MIG on the European Commission's refusal of public access to documents concerning the asylum system in Greece

Decision

Case 1279/2019/MIG - Opened on 10/07/2019 - Decision on 09/09/2020 - Institution concerned European Commission (No further inquiries justified) |

Case 278/2020/MIG - Opened on 21/02/2020 - Decision on 09/09/2020 - Institution concerned European Commission (No further inquiries justified) |

These cases concerned two requests for public access to documents concerning a project on the implementation of the EU-Turkey statement and the management of migratory flows in Greece. The Commission had granted the complainant partial access to the documents, redacting significant parts based on the need to protect the commercial interests of the contractor of the project and the need to protect the public interest as regards public security and international relations.

The Ombudsman found that information related to the substance of the project should be disclosed unless this would reasonably undermine the public interest as regards public security or international relations, and made a corresponding proposal for a solution. However, the Commission maintained its decision to refuse access to the relevant parts of the documents.

The Ombudsman regrets the Commission's rejection of her proposal for a solution, particularly given the importance of the matter at hand. The EU-Turkey statement is of enormous public relevance and constitutes an essential element of the EU's response to the migration crisis. In this context, the Commission's interaction with a private consultancy company is of significant public interest and proper public scrutiny should, as far as possible, be facilitated. However, given that the Commission has reconsidered and confirmed its refusal, the Ombudsman considers that no further inquiries are justified and closes the joined cases.

Background to the complaints

1. In recent years, the European Union, via the European Commission, has funded projects to help the Greek authorities to manage the migration crisis.



Complaint 1279/2019/MIG

2. In this context, in October 2018, the complainant, an academic carrying out research into the migration crisis, asked the Commission to give him public access [\[1\] \[Link\]](#) to “any communication” concerning the Greek asylum system that was exchanged with a management consultancy between October 2016 and January 2017. The consultancy was the contractor in one of the EU-funded projects related to the migration crisis in Greece.

3. The Commission identified seven documents, namely five ‘update reports’ and one ‘summary report’ concerning phase 1 of the project at issue, and a ‘proposal’ for the implementation of phase 2 of the project. The Commission granted the complainant partial access to the update reports and the summary report, but refused to grant any access to the phase 2 proposal. It justified its decision by relying on the needs to protect public security, international relations, personal data, and the commercial interests of the management consultancy concerned. [\[2\] \[Link\]](#)

4. In January 2019, the complainant asked the Commission to review its decision by making a so-called ‘confirmatory application’.

5. Following that review, in June 2019 the Commission granted the complainant partial access to the phase 2 proposal and wider partial access to the summary report.

6. The complainant considered that, apart from the redaction of personal data, the redactions were excessive. He therefore turned to the Ombudsman in July 2019.

7. The Ombudsman opened an inquiry into the complaint that the Commission had wrongly refused public access to the redacted parts of the requested documents (with the exception of the personal data).

8. In the course of the inquiry, the Ombudsman’s inquiry team obtained copies of the requested documents as well as the comments sent to the Commission by the Greek authorities and the management consultancy about the disclosure of the documents. The Ombudsman’s inquiry team also met with representatives of the Commission with a view to obtaining a clear understanding of the documents at issue.

9. In November 2019, the Ombudsman made a proposal for a solution (see paragraphs 17 to 19 below).

Complaint 278/2020/MIG

10. In October 2019, the complainant made another request for public access to documents, asking the Commission for access to any contract between it and the consultancy in relation to the project at issue.



11. The Commission identified one document as falling within the scope of the complainant's request, namely the proposal for the implementation of phase 1 of the project dated September 2016. It gave the complainant partial access to this proposal, redacting large parts based on the need to protect personal data, the need to protect public security and international relations, and the need to protect the commercial interests of the consultancy concerned.

12. The complainant made a confirmatory application, contesting the redactions made with the exception of the redaction of the personal data.

13. In January 2020, the Commission decided to give the complainant increased partial access to the phase 1 proposal, including information on the objectives of the project. Aside from the personal data, the Commission redacted only the commercial information which it considered to be sensitive, that is, information on the tasks to be carried out to achieve the objectives of the project, on the team composition and on the details of the outputs/deliverables of the project. The Commission argued that the redacted commercial information reflected the specific know-how of the consultancy, which might be relevant in future projects. As such, disclosure would give potential competitors of the consultancy an unfair advantage.

14. The complainant questioned whether the Commission had conducted its own, independent assessment (rather than relying on the comments made by the consultancy, after it was consulted by the Commission [\[3\] \[Link\]](#)). He specifically contested the redaction of the commercial information. The complainant also argued that there was an overriding public interest in disclosure, namely the widespread interest of EU citizens in the Commission's role in the management of migratory flows in Greece and the implementation of the EU-Turkey statement, and in how public money was spent.

15. The Ombudsman opened an inquiry into this second complaint about the Commission's refusal of public access to commercial information contained in the phase 1 proposal.

16. In the course of the inquiry, the Ombudsman's inquiry team inspected a copy of the phase 1 proposal. The Ombudsman also gave the Commission the opportunity to provide comments on this second complaint, in the light of the proposal for a solution she had already made in case 1279/2019/MIG. No comments were received.

The Ombudsman's proposal for a solution

17. The Ombudsman found that the Commission was justified in denying public access to the parts of the documents that it had redacted based on the need to protect the public interest as regards international relations and public security.

18. Regarding information that was redacted for the sole purpose of protecting the commercial interests of the consultancy, from whom the documents originated, the Ombudsman took the view that information related to the substance of the funded project, especially the work packages and deliverables of the project, should be fully disclosed, unless there was a justification based on the need to protect public security and/or international relations.

19. The Ombudsman therefore proposed that the Commission should grant further



partial access to the requested documents. [4]

20. Referring to the arguments it had put forward previously, including in its confirmatory decision on the complainant's first request for public access to documents, the Commission rejected the Ombudsman's proposal for a solution. [\[5\] \[Link\]](#)

21. The complainant disagreed with the Ombudsman's finding that the Commission was justified in refusing public access to the parts of the documents which it had redacted with a view to protecting the public interest as regards public security. He expressed his disappointment at the Commission having rejected the Ombudsman's proposal for a solution and maintained that there was an overriding public interest in disclosure. However, the complainant also acknowledged that the Commission's decision to refuse public access to the redacted parts of the documents was final.

The Ombudsman's assessment after the proposal for a solution

22. The Ombudsman regrets that the Commission did not accept her proposal for a solution.

23. The Ombudsman maintains the view that the Commission's application of the exemption for the protection of the public interest as regards public security and international relations, was reasonable. As explained in the proposal for a solution, the EU institutions enjoy a wide margin of discretion in this regard. This means that the Ombudsman can verify only whether there has been an obvious error in the institution's assessment. Given that there was no manifest error in this case and that this exemption cannot be overridden by another public interest, the Ombudsman considers that the respective redactions made by the Commission were justified.

24. The Commission insists that it cannot release information which it considers to be commercially confidential and therefore does not agree with the Ombudsman's proposal for a solution. The Ombudsman continues to believe that there was scope for the Commission to agree to disclose information on the substance of the project, which it had redacted solely for the purpose of protecting the contractor's commercial interests.

25. The Ombudsman is also acutely aware of the importance of the matter at hand. The EU-Turkey statement is of enormous public relevance and constitutes an essential element of the EU's response to the migration crisis. In this context, the Commission's interaction with a private consultancy company is of significant public interest and proper public scrutiny should, as far as possible, be facilitated.

26. The Ombudsman notes, however, that the Commission has reconsidered the matter, come to the same conclusion it adopted originally and that its position is final. Therefore, there is no useful purpose in pursuing the matter.

Conclusion

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



There are no further inquiries justified.

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

Emily O'Reilly European Ombudsman

Strasbourg, 09/09/2020

[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(1)(a), first and third indent, 4(1)b and 4(2), first indent of Regulation 1049/2001.

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

[4] [Link] The full text of the Ombudsman's proposal for a solution is available at:

<https://www.ombudsman.europa.eu/correspondence/132244> [Link].

[5] [Link] The full text of the Commission's reply to the proposal for a solution is available at:

<https://www.ombudsman.europa.eu/correspondence/132245> [Link].