

Letter from the European Ombudsman to the European Commission on how it handled a request for public access to correspondence exchanged with Member State authorities concerning the distribution of medical masks in the context of the COVID-19 pandemic - Commission reference: GESTDEM 2020/3437

Correspondence - 30/04/2021

Case 790/2021/MIG - **Opened on** 30/04/2021 - **Recommendation on** 05/11/2021 - **Decision on** 25/05/2022 - **Institutions concerned** European Commission (Maladministration found) | European Commission (Recommendation agreed by the institution) |

Strasbourg, 30/04/2021

Complaint 790/2021/MIG

Subject of case: How the European Commission handled a request for public access to correspondence exchanged with Member State authorities concerning the distribution of medical masks in the context of the COVID-19 pandemic - Commission reference: GESTDEM 2020/3437

Dear Mr Y,

The Ombudsman has received a complaint from Mr X against the European Commission concerning a request for public access to documents relating to the suspension of the distribution of medical masks by the Commission in spring 2020 after complaints about their quality. She has asked me to deal with the case on her behalf.

The Commission has identified 134 documents as falling within the scope of the complainant's request. Following a confirmatory application, the Commission maintained its refusal to give access to (parts of) twelve documents [1] . The complainant would like the



Commission to disclose these documents in their entirety. He considers that there is an overriding public interest in knowing *“how it was possible that these masks were initially considered to conform to EU rules, and what measures were taken.”* He also argues that, if there was ill intent, there is an overriding public interest in knowing the identity of the manufacturer concerned.

We have decided to open an inquiry into the complaint against the Commission’s decision to refuse access to documents 1, 2 and 4 and to grant only partial access to documents 14, 23, 53, 61, 62, 69, 70, 77 and 97 under Regulation 1049/2001.

Regulation 1049/2001 states that applications for access should be handled promptly. It is in line with this principle that we also seek to deal with cases such as this as quickly as possible.

As a first step, we consider it necessary to review the twelve documents at issue in the complaint. I would be grateful if the Commission could provide copies of these documents, preferably in electronic format through encrypted e-mail, [2] **by Thursday, 6 May 2021** .

The documents subject to the public access request will be treated confidentially, along with any other material the Commission chooses to share with us that it marks confidential. Documents of this kind will be handled and stored in line with this confidential status and will be deleted from the Ombudsman’s files shortly after the inquiry has ended.

The Commission’s position has been set out in its confirmatory response of 20 April 2021. However, should the Commission wish to provide additional views, to be taken into account by the European Ombudsman during this inquiry, I would be grateful if they could be provided to me within fifteen working days from the receipt of this letter, that is, **by Tuesday, 25 May 2021** .

If you have any questions, please feel free to contact the case handler, Michaela Gehring.

Yours sincerely,

Tina Nilsson Head of the Case-handling Unit

[1] Referred to as documents 1, 2 4, 14, 23, 53, 61, 62, 69, 70, 77 and 97.

[2] Encrypted emails can be sent to our dedicated mailbox.