

Proposal of the European Ombudsman for a solution in case 2067/2020/MIG on the European Border and Coast Guard Agency's (Frontex) handling of multiple requests for public access to documents made by a single applicant

Solution - 20/04/2021

Case 2067/2020/MIG - Opened on 22/01/2021 - Decision on 16/06/2021 - Institution concerned European Border and Coast Guard Agency (Solution achieved) |

Strasbourg, 20/04/2021

Subject: Proposal for a solution in case 2067/2020/MIG on the European Border and Coast Guard Agency's (Frontex) handling of multiple requests for public access to documents made by a single applicant (your reference: ICO/MIJU/761a/2021)

Dear Mr X,

Thank you very much for your reply dated 23 March 2021.

You explain that, since September 2020, the complainant has made eight requests for public access to Frontex. Frontex has taken a decision on two of the complainant's access requests. Concerning the remaining six requests [1] that were made in close temporal proximity, Frontex considered that their simultaneous processing would entail an unreasonable administrative burden. It therefore offered the complainant, as a "fair solution", that his access requests be put in a queue and processed consecutively.

To date, it is not clear how many documents the complainant's access requests concern, how large each document is, and how much work it would entail to assess whether they can be released. It is also not clear what Frontex's capacities were at any given time. We can, at this stage, therefore not take a conclusive view on whether it was warranted to invoke Article 6(3) of Regulation 1049/2001. However, it appears that the complainant's access requests concern a significant number of documents. Given that they were made in close temporal proximity, it therefore seems reasonable to consider them as one access request concerning a very large number of documents [2] .

We therefore welcome that Frontex, as it considered that it could not deal with the complainant's



access request within the prescribed time limits, attempted to engage with the complainant to find a fair solution. However, it appears that the communication between Frontex and the complainant has broken down and that Frontex therefore put all six access requests on hold.

Regulation 1049/2001 requires EU institutions and agencies to deal with requests for public access promptly. We are thus writing to seek a rapid solution to this case. In particular, we propose that Frontex **should immediately recommence processing the complainant's six access requests**. In the course of this inquiry, the complainant has indicated that the most urgent one of his requests is access request **PAD-2020-236** concerning *"all the Frontex 'Serious Incident Reports' that contain the word 'Libya' in the title or the text (...) since 1st January 2020."* We therefore propose that Frontex should process that request first.

In addition, Frontex **should, as soon as possible, provide the complainant with a list of all documents at issue in his six access requests, detailing the title, date, number of pages and reference of each document**. This will enable the complainant to determine the priority of each request/document.

Frontex should then deal with all access requests as quickly as possible and in the order the complainant prefers. To that end, Frontex should continuously reassess its workload and its capacities, speeding up the processing of the complainant's access requests wherever possible.

We would be grateful to receive your reply, informing us of any action Frontex has taken and/or is going to take in relation to this proposal for a solution, including a list of the documents to which the complainant is seeking access, by **5 May 2021**. Once we have received your reply, we will send a copy of it to the complainant together with a copy of the proposal. You are, of course, free to share with our Office any additional information that you deem relevant to this inquiry.

Yours sincerely,

Rosita Hickey Director of Inquiries

[1] References; PAD-2020-233, PAD-2020-234, PAD-2020-235, PAD-2020-236, PAD-2020-237, PAD-2020-247.

[2] In accordance with Article 6(3) of Regulation 1049/2001.