

Letter from the European Ombudsman to the European Commission concerning the refusal of public access to text messages exchanged between the Commission President and the CEO of a pharmaceutical company on the purchase of a COVID-19 vaccine (your reference GESTDEM 2021/2908)

Correspondence - 16/09/2021

Case 1316/2021/MIG - **Opened on** 16/09/2021 - **Recommendation on** 26/01/2022 - **Decision on** 12/07/2022 - **Institution concerned** European Commission (Maladministration found) |

Dear President,

I have received a complaint from X against the European Commission. It concerns public access to text messages on the conclusion of a purchase agreement for a COVID-19 vaccine earlier this year, as reported in the New York Times [1] .

In the event of a refusal of public access to documents under Regulation 1049/2001, applicants may turn to the Ombudsman. In this context, I am opening an inquiry into this complaint.

The Commission has partially disclosed three documents to the complainant, but stated that it has no records of text messages falling under the request. The Commission also stated that it does not have “ *to preserve each and every document* ”, and that text messages are generally “ *short-lived* ” in nature and thus, in principle, excluded from its record-keeping policy.

Given the presumed subject of the texts, the complainant considers that such messages would fall within the concept of a ‘document’ under Regulation 1049/2001.

I have decided that it is necessary for my inquiry team to meet with the relevant representatives of the Commission to obtain further information. Specifically, I would appreciate it, if the Commission could, during the meeting, explain

- its policy on keeping records of text messages and how this policy is implemented in practice [2] ,

- whether, and if so how and where, it searched for possible text messages falling under the complainant’s request.



I would be grateful if the relevant Commission representatives could contact Ms Michaela Gehring who is the Inquiries Officer on this inquiry, to agree the arrangements for the meeting to take place before 8 October 2021, if possible.

Information or documents that the Commission considers to be confidential will not be disclosed to the complainant or any other person without prior agreement.

Yours sincerely,

Emily O'Reilly European Ombudsman

Strasbourg, 16/09/2021

[1]

<https://www.nytimes.com/2021/04/28/world/europe/european-union-pfizer-von-der-leyen-coronavirus-vaccine.html>
[Link]

[2] See also strategic inquiry SI/4/2021/TE into how EU institutions, bodies, offices and agencies record text and instant messages sent/received by staff members in their professional capacity: <https://www.ombudsman.europa.eu/en/case/en/59322> [Link].