

Decision on how the European Commission dealt with a request for public access to e-mail delivery logs (case 1595/2021/MIG)

Decision

Case 1595/2021/MIG - **Opened on** 07/10/2021 - **Decision on** 07/10/2021 - **Institution concerned** European Commission (No maladministration found) |

The complaint to the Commission

1. The complainant submitted an infringement complaint against Finland to the European Commission concerning a breach of EU law on equal treatment of men and women in employment. When the Commission decided not to pursue the matter further, the complainant sent an e-mail to the general contact e-mail addresses for 26 commissioners, arguing that the Commission had not properly dealt with his infringement complaint.
2. On that same day, the Commission changed how it displayed some of the relevant e-mail addresses on its website (it changed from displaying them in uppercase letters to displaying them in lowercase letters).
3. As the e-mail address for the Commission President was about to be replaced by an online contact form, the complainant received an automatic reply from that e-mail account, informing him that the e-mail address would soon be de-activated, and asking him to use the contact form instead.
4. As the complainant considered that his e-mail might not have reached its recipients, he asked the Commission to clarify the matter.
5. The Commission confirmed that the complainant's e-mail had been delivered to all mailboxes in question, including that of the Commission President, as this was still functioning at the time. The Commission also explained that the e-mail addresses concerned are not case-sensitive, so it does not matter whether they are written in lowercase or uppercase letters.
6. In May, the complainant made a request for public access [1] to the Commission, asking for documents that show that his e-mail to the contact addresses of the commissioners had indeed been delivered to the relevant mailboxes.



7. The Commission gave the complainant full access to two documents that, it said, it had extracted from the “transport log files” of its e-mail system, giving details of the message activity – the transfer and delivery of e-mails.

8. As the complainant believed that there must be additional documents, he asked the Commission to review its decision (by making a ‘confirmatory application’). In the complainant’s view, the documents disclosed to him showed the receipt of his e-mail by the Commission’s server but not that the e-mail had been forwarded from that server to the inboxes of all recipients in question. He was concerned that his e-mail might have been forwarded to a spam folder instead or that it might have been “blocked”.

The Commission’s response to the complainant

9. The Commission replied that the two documents it had disclosed match the description given by the complainant in his access request. It said that these documents show that the e-mail had indeed been delivered to the mailboxes concerned.

10. The Commission said that it had nevertheless carried out a renewed search for the requested documents but that it did not have any additional proof of delivery for the complainant’s e-mail or any other document that could fall within the scope of his access request.

11. The Commission argued that the right of access to documents applies only to documents that an institution actually holds.

The European Ombudsman's finding

12. The complainant sought access to “proof” that an e-mail, which he sent to the contact e-mail addresses of 26 Commissioners on 30 March 2021, was indeed delivered to the respective mailboxes.

13. The Commission disclosed two documents to the complainant. The first document is a list showing when (date and time) the e-mail sent by the complainant was delivered from the relevant Commission server to the contact mailboxes of the commissioners. The second document shows the detailed tracking log data of the server that forwarded the incoming e-mail to the mailboxes in question. The documents do not include information on the server(s) of the sender. Rather, they show when the e-mail sent by the complainant was delivered to the respective mailboxes. This includes the mailbox for the Commission President, from which the complainant had received an automatic reply.

14. The Ombudsman thus considers that the documents, which the Commission disclosed to the complainant, correspond to the access request.



15. The Ombudsman considers credible the Commission's statement that it does not hold any additional documents that could fall within the scope of the complainant's access request. According to EU case-law [2] , where an institution says that it does not hold documents requested under Regulation 1049/2001, it must be presumed that this is true, unless the applicant puts forward evidence that unequivocally calls this into question.

16. The arguments put forward by the complainant do not set out evidence that demonstrates the Commission's assertion – that it holds no other documents – is false.

17. The Commission has replied on several occasions to the complainant's concerns about the automatic reply he received from the Commission President's mailbox and that his e-mail might have been blocked. It has confirmed that the complainant's e-mail was delivered to all mailboxes in question, including that of the President, which was still active at the time. The Commission has also clarified that all its e-mail addresses are not case-sensitive, which means that e-mails sent to them are delivered irrespective of whether the address is written in uppercase or lowercase.

18. The Ombudsman considers these replies to be reasonable.

19. Based on the information provided by the complainant, the Ombudsman finds no maladministration by the Commission in this case. [3]

Rosita Hickey Director of Inquiries

Strasbourg, 07/10/2021

[1] According to the procedure set out in Regulation 1049/2001 regarding public access to European Parliament, Council and Commission documents:
<https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=celex%3A32001R1049> [Link].

[2] See, for example, judgment of the General Court of 11 June 2015, *McCullough v Cedefop* , T-496/13:
<https://curia.europa.eu/juris/document/document.jsf?text=&docid=164964&pageIndex=0&doclang=EN&mode=lst&d>
[Link].

[3] This complaint has been dealt with under delegated case handling, in accordance with [the Decision of the European Ombudsman adopting Implementing Provisions](#) [Link].