



Ombudsman criticises how Commission handled request for access to President's text messages

Press release no. 2/2022 - 28/01/2022

The Ombudsman has criticised how the Commission handled a request for public access to text messages between its President and the CEO of a pharmaceutical company.

She has now asked it to do a more extensive search for the relevant messages.

In response to the public access request by a journalist, the Commission said no record had been kept of such messages, which were related to the purchase of COVID-19 vaccines.

The Ombudsman inquiry revealed that the Commission did not explicitly ask the President's personal office (cabinet) to look for text messages.

Instead, it asked her cabinet to look for documents that fulfil the Commission's internal criteria for recording - text messages are not currently considered to meet these criteria.

The Ombudsman found that this amounted to maladministration.

"The narrow way in which this public access request was treated meant that no attempt was made to identify if any text messages existed. This falls short of reasonable expectations of transparency and administrative standards in the Commission," said Emily O'Reilly.

"Not all text messages need to be recorded, but text messages clearly do fall under the EU transparency law and so relevant text messages should be recorded. It is not credible to claim otherwise."



“When it comes to the right of public access to EU documents, it is the content of the document that matters and not the device or form. If text messages concern EU policies and decisions, they should be treated as EU documents. The EU administration needs to update its document recording practices to reflect this reality.”

“Access to EU documents is a fundamental right. While this is a complex issue for many reasons, EU administrative practices should evolve and grow with the times we live in and the modern methods we use to communicate,” said the Ombudsman.

The Ombudsman requested the Commission to ask the Commission President’s personal office to search again for the relevant text messages. If any text messages are identified, the Commission should then assess whether they meet the criteria - under the EU access to documents law - for being released.

Background

In April 2021, the New York Times published an article in which it reported that the Commission President and the CEO of a pharmaceutical company had exchanged texts related to the procurement of COVID-19 vaccines. This prompted a journalist to request public access to text messages and other documents relating to the exchange. The Commission identified three documents as falling within the scope of the request - an email, a letter, and a press release - which were all released. The complainant turned to the Ombudsman as the Commission had not identified any text messages.

Regulation 1049/2001 , which sets out the public’s right to access EU documents, defines a document as *“a ny content whatever its medium (written on paper or stored in electronic form or as a sound, visual or audiovisual recording) concerning a matter relating to the policies, activities and decisions falling within the institution's sphere of responsibility”*.

The question whether text messages should be registered is being addressed in a separate ongoing strategic initiative on how EU institutions record text and instant messages sent/received by staff members in their professional capacity.

The details of the Recommendation are here .