

Decision on the European Commission's failure to take a final decision on a request for public access to documents concerning an audit on an external fleet (case 5/2022/DL)

Decision

Case 5/2022/DL - Opened on 20/01/2022 - Decision on 21/04/2022 - Institution concerned
European Commission (No further inquiries justified) |

The case concerned the European Commission's failure to reply in time to a request for public access to documents concerning an audit on an external Italian fleet.

The Ombudsman found that the Commission had failed to respect the deadlines set in the EU legislation on public access to documents. She considered that the Commission's performance in this case fell short of meeting the standards of a modern, citizen-friendly and transparent administration. However, since the Commission adopted a final decision in the course of the inquiry and as the Ombudsman is now examining, from a systemic perspective, the time taken by the Commission to deal with requests for public access to documents, she considered that no further inquiries were justified. She thus closed the inquiry.

Background to the complaint

1. On 26 May 2021, the complainant, a non-governmental organisation, requested [1] the European Commission to give public access to documents related to an audit on an Italian external fleet that the Commission's Directorate-General for Maritime Affairs and Fisheries (DG MARE) had conducted in 2019. The complainant was particularly interested in information that concerned the monitoring of the Italian fishing fleet in coastal waters off African countries.

2. On 14 July 2021, the Commission issued its decision. It identified one document, the audit report, as falling within the scope of the request. It granted partial access to the report, redacting the personal data it contained, such as the names and initials of the persons mentioned, and the names and identification numbers of the vessels. [2] The Commission added that it had also redacted some other parts, as it considered that they did not fall within the scope of the request.

3. On 30 July 2021, the complainant asked the Commission to review its decision (by submitting



a 'confirmatory application') [3] . The complainant specified that it wished to obtain access to the entire report. It also put forward several arguments as to why it considered that there was an 'overriding public interest in disclosure'.

4. On 23 August 2021, the Commission extended the deadline to reply by 15 working days. [4]

5. On 13 September 2021, the Commission sent a holding reply.

6. On 30 November 2021, the Commission sent another holding reply.

7. Not having heard from the Commission, the complainant turned to the Ombudsman in December 2021.

The inquiry

8. The Ombudsman opened an inquiry into the Commission's delay in replying to the complainant's request for review. In the course of the inquiry, the Ombudsman received the Commission's comments on the delay that it incurred.

9. On 23 March 2022, the Commission issued its final decision on the complainant's request for access to documents ('confirmatory decision') [5] and apologised for the delay it incurred.

Arguments presented

By the complainant

10. The complainant said that it trusted the words of the Commission and waited in good faith for a reply, convinced that the Commission would adopt a confirmatory decision soon. The complainant was particularly aggrieved that the Commission provided another holding reply after more than three months of waiting, with no actual guarantee of a reply.

11. The complainant said that this is not the first time that the Commission substantially exceeds the time limits in replying to a request for public access to documents. It is concerned about the Commission's practice more generally.

By the Commission

12. In its correspondence with the complainant, the Commission said that it was doing its utmost to deal with the confirmatory application swiftly, and referred to its limited human resources and the workload generated by other pending requests.



13. In reply to the Ombudsman, the Commission said it incurred the delay because:

- It had to ensure that the EU legislation on public access to documents was applied in a manner compatible with other relevant legislation [6] . The Commission added that neither the EU legislation on public access to documents nor the other legislation prevailed over the other;
- It had to consider whether to consult the Italian authorities on possible disclosure [7] , since certain parts of the audit report originated from them;
- The Commission had to reassess the scope of the request, since, in its confirmatory application, the complainant specified that it wished to obtain access to the entire audit report;
- It had to verify whether the audit report was related to an EU Pilot Procedure [8] and, if so, whether this procedure was still ongoing. This would have had a decisive impact on whether access could be granted [9] ;
- The Commission had to assess several arguments, put forward by the complainant in its confirmatory application, as to why it considers that there is an 'overriding public interest in disclosure';
- The Commission's Secretariat-General, which deals with the confirmatory application, had to consult DG MARE, which dealt with the initial application, on the draft reply. The Commission said that it could consult its legal service only once an agreement had been reached between those two departments.

14. The Commission considered that the extension of the time limit to reply to the complainant's confirmatory application was justified and proportionate in light of these circumstances.

The Ombudsman's assessment

15. Public access to documents is a fundamental right that helps safeguard the transparency and legitimacy of the EU institutions, bodies, offices and agencies. To ensure meaningful access, it is key that the EU administration deals with every request for public access as swiftly as possible.

16. In this case, it took the Commission more than seven months to reply to the complainant's confirmatory application. The delay goes far beyond the deadlines set out in the EU legislation on public access to documents.

17. The Ombudsman notes that the request was not voluminous and of no apparent complexity. It is also difficult to identify any exceptional circumstances that would have required the Commission to depart from the standard procedure for handling confirmatory applications.

18. The Commission has, in the course of this inquiry and following the Ombudsman's explicit request to this effect, adopted its confirmatory decision in this case. As such, no further inquiries are justified.

19. That said, the Ombudsman finds it understandable that the complainant is dissatisfied with the time taken by the Commission to deal with its request. The Commission's performance in this case falls short of the standards that citizens are entitled to expect from a modern,



citizen-friendly, and transparent administration.

20. As delays are increasingly being raised in complaints in this area, the Ombudsman recently opened an own-initiative inquiry on the time taken by the Commission to deal with requests for public access to documents [10] . While this inquiry is ongoing, the Ombudsman urges the Commission to deal with requests for public access to documents within the applicable deadlines.

Conclusion

Based on the inquiry, the Ombudsman closes this case with the following conclusion:

While the Ombudsman identified shortcomings in the Commission's handling of this case, no further inquiries are justified as the question of delays is now being pursued as a systemic matter.

The complainant and the Commission will be informed of this decision .

Emily O'Reilly European Ombudsman

Strasbourg, 21/04/2022

[1] In line with Regulation 1049/2001 regarding public access to European Parliament, Council and Commission documents:

<https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX%3A32001R1049> [Link].

[2] Invoking the exception contained under Article 4(1)(b) of Regulation 1049/2001, namely the protection of the privacy and the integrity of the individual.

[3] In line with Article 7(2) of Regulation 1049/2001.

[4] In line with Article 8(2) of Regulation 1049/2001.

[5] As stipulated under Article 8 of Regulation 1049/2001.

[6] The Commission referred, among others, to Regulation 1380/2013 on the Common Fisheries Policy and Regulation 1224/2009 establishing a Community control system for ensuring compliance with the rules of the common fisheries policy.

[7] In accordance with Article 4(4) and (5) of Regulation 1049/2001.



[8] EU Pilot procedure (EUP(2020)9562).

[9] See Article 4(2), third indent, of Regulation 1049/2001.

[10] The Ombudsman opened the own-initiative inquiry OI/2/2022/MIG on 4 April 2022:
<https://www.ombudsman.europa.eu/en/opening-summary/en/154404> [Link].