

Decision on the European Commission's failure to take a final decision in a timely manner on a request for public access to documents concerning a project funded under the Internal Security Fund (case 1896/2021/MIG)

Decision

Case 1896/2021/MIG - **Opened on** 03/11/2021 - **Decision on** 17/05/2022 - **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 EU funded project on the legal framework and capability in terms of search and rescue of the Libyan Coast Guard.

The Ombudsman found that there were shortcomings in how the Commission dealt with the public access request with the result that it took too long. However, since 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 in this case. She thus closed the inquiry.

Background to the complaint

1. The complainant, a journalist, was seeking access to documents related to a project funded under the Internal Security Fund. The project is entitled 'Assessment of the Libyan Coast Guard legal framework and capability in terms of SAR Services' and was implemented by a Member State between September 2017 and January 2019.

2. On 20 July 2021, the complainant made a corresponding request [1] for public access to documents to the European Commission.

3. On 27 August 2021, the Commission replied, identifying 24 documents [2] as falling within the scope of the access request. It refused to give access to 16 documents, relying on the need to protect public security, and to one document to protect the purpose of an audit. [3] As regards the seven remaining documents, the Commission gave access to parts of them, redacting personal data and what it considered to be commercially sensitive information. [4]



4. On the same day, the complainant asked the Commission to review its decision (by making a 'confirmatory application'). The complainant did not object to the redaction of personal data but challenged the application of the remaining exceptions. He also argued that the Commission had failed to assess whether there was an overriding public interest in disclosure and whether the monthly reports at issue could have been disclosed *in part* .

5. On 1 September 2021, the Commission acknowledged receipt of the complainant's confirmatory application and informed him that the time limit for its reply would expire on 22 September 2021.

6. On 22 September 2021, the Commission extended the time limit for its reply to 13 October 2021, saying that it had not been "*able to gather all elements*".

7. The complainant then asked the Commission to provide detailed reasons for the extension of the time limit and, on 27 September 2021, sent a reminder to the Commission.

8. On the same day, the Commission replied, saying that, when assessing a confirmatory application for access to documents, its Secretariat-General conducts a fresh review of the reply given by the responsible Directorate-General. In this case, the review included the assessment of all the documents at issue, some of which concern sensitive topics. In addition, other departments, including its Legal Service had to be consulted. Thus, the Commission said, in the light of the complexity of the case, more time was required for finalising its confirmatory reply.

9. On 13 October 2021, the Commission extended the time limit again, without indicating when the complainant could expect to receive its confirmatory reply. It reiterated the previous reasons for the extension of the time limit and said that it had still not been able to gather all elements. The Commission assured the complainant that it was doing its utmost to reply as soon as possible.

10. The complainant contested the extensions of the time limit and asked the Commission to provide him with a time line for its confirmatory reply.

11. On 25 October 2021, the complainant sent a reminder to the Commission. He also called the Commission and was told that the confirmatory reply would be finalised "*in a few weeks*".

12. Dissatisfied, the complainant turned to the Ombudsman.

13. On 26 October 2021, the Commission replied to the complainant, reiterating that it was not able to predict when he would receive a confirmatory reply, given that its internal consultations on his request had not yet been finalised. The Commission also reassured the complainant that it was doing its utmost to provide him with a reply as soon as possible.

The inquiry



14. The Ombudsman opened an inquiry into the Commission's failure to reply to the complainant's confirmatory application.

15. In the course of the inquiry, the Ombudsman received the reply of the Commission on the complaint and, subsequently, the comments of the complainant in response to the Commission's reply. The Ombudsman inquiry team also inspected the documents at issue. However, following the adoption of the Commission's confirmatory response on 14 February 2022, the complainant clarified that he would make a new complaint in case he was dissatisfied with the access granted. As such, this decision focuses on the time the process took.

Arguments presented to the Ombudsman

16. The complainant was concerned that the Commission did not issue a confirmatory reply within the prescribed time limit. He considered that his access request was not exceptional, in terms of the quantity and complexity of the documents concerned, and that how the Commission dealt with his request reflected its unwillingness to dedicate sufficient resources to the area of public access to documents.

17. The Commission said that the complainant's access request concerned sensitive documents, including a classified document.

18. The Commission also argued that the case was particularly complex. It said that, at the confirmatory stage, it had to conduct a fresh review of all documents falling within the scope of the complainant's access request. The request covered more than 1000 pages.

19. The Commission further contended that some of the documents at issue originate from a Member State, which it had to consult. It had done so on 2 December 2021 and, after several exchanges, had received a final reply on 24 December 2021.

The Ombudsman's assessment

20. 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 swiftly, that is, within the time limits set out in the EU legislation on public access to documents (Regulation 1049/2001).

21. In this case, it took the Commission more than five months to reply to the complainant's confirmatory application. The delay goes far beyond the time limit of 30 working days to deal with a confirmatory request.

22. The Ombudsman finds it understandable that the complainant is extremely dissatisfied with the time taken by the Commission to deal with his request. She too takes the view that the



process took far too long.

23. Nor did the Commission provide the complainant with sufficient information that would have enabled him to understand what the exceptional circumstances were that required an extension of the prescribed time limit of 15 working days. The fact that the Commission has to carry out a renewed assessment following a confirmatory request and that it has to consult different departments is inherent in the procedure as such.

24. In addition, the fact that an institution has to consult third parties in Member State authorities cannot in itself justify a delay, given that the Member States, like the EU institutions, have to ensure that Regulation 1049/2001 is applied effectively. [5] This means that Member State authorities should respond swiftly when they are consulted by the EU administration concerning a request for public access, but also that the EU administration should consult them as soon as possible. Again, this was not done here. Rather, the Commission consulted the Member State concerned only in December 2021, that is, long after the expiry of the maximum time limit of 30 working days to deal with a confirmatory request.

25. 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. [6] That inquiry aims to identify if there are any issues that could be addressed by systemic solutions. The Ombudsman will consider this complaint in that context and urges the Commission to deal with requests for public access to documents within the applicable deadlines, while that inquiry is ongoing.

26. The Ombudsman therefore refrains from making a formal finding of maladministration with a corresponding recommendation in this case. That said, she reiterates that the process took too long and that the reasons given for the delay – consulting a Member State and conducting a renewed assessment – are integral to the procedure and thus not convincing.

Conclusion

Based on the inquiry, the Ombudsman closes this case with the following conclusion [7] :

There were shortcomings in how the Commission dealt with this public access request with the result that it took too long. The Ombudsman is now pursuing this matter from a systemic perspective. As such, no further inquiries are justified in this case.

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

Rosita Hickey Director of Inquiries

Strasbourg, 17/05/2022



[1] Under 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] The relevant evaluation report, the Commission's award decision, the grant agreement and two amendments thereof, the final technical implementation report of the grant agreement, a letter on the final payment, the audit certificate of the final report, an assessment of the Libyan Coast Guard legal framework and 16 monthly reports on the implementation of the grant agreement.

[3] Article 4(1)(a), first indent, and (2), third indent, of Regulation 1049/2001.

[4] Article 4(1)(b) and (2), first indent, of Regulation 1049/2001.

[5] Judgment of the Court (Grand Chamber) of 18 December 2007, *Sweden v Commission*, C-64/05 P, paragraphs 85 f.:

<https://curia.europa.eu/juris/showPdf.jsf?text=&docid=71934&pageIndex=0&doclang=en&mode=lst&dir=&occ=first&> [Link].

[6] 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].

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