

Decision on the European External Action Service's refusal to grant public access to documents related to EU funding provided to Palestinian civil society organisations (case 29/2022/TM)

Decision

Case 29/2022/TM - Opened on 06/01/2022 - Decision on 05/07/2022 - Institution concerned European External Action Service (No maladministration found) |

The case concerned a request for public access to documents drawn up for the High Representative of the Union for Foreign Affairs and Security Policy relating to funding of Palestinian civil society organisations. The European External Action Service (EEAS) identified excerpts of five documents as falling within the scope of the request. The EEAS denied access, arguing that disclosure would undermine the protection of the public interest as regards international relations.

The Ombudsman inquiry team inspected the documents at issue and obtained additional, confidential explanations from the EEAS. Based on this and considering the wide margin of discretion that EU institutions enjoy where they consider that international relations are at risk, the Ombudsman found that the EEAS's decision to refuse access was not manifestly wrong. Given that the public interest at stake cannot be superseded by another public interest that is deemed more important, the Ombudsman closed the case finding no maladministration.

Background to the complaint

1. In October 2021, the complainant, a journalist, asked the European External Action Service (EEAS) to grant public access [1] to *"all briefing documents studied by [the High Representative of the Union for Foreign Affairs and Security Policy [2] (HR/VP)] on European Union funding to Palestinian non-governmental organisations between 30 July 2020 and 29 October 2021"*.

2. The EEAS identified excerpts from five briefings prepared for the HR/VP (hereafter 'the documents') as falling within the scope of the complainant's request. The EEAS refused access to the briefing excerpts, relying on the need to protect the public interest as regards international relations [3] .



3. The complainant asked the EEAS to review its decision (by making a 'confirmatory application'). In reply, the EEAS maintained its decision to refuse access.

4. Dissatisfied with the outcome, the complainant turned to the Ombudsman in January 2022.

The inquiry

5. The Ombudsman opened an inquiry into the EEAS's refusal to grant public access to the requested documents.

6. In the course of the inquiry, the Ombudsman inquiry team inspected the requested documents and held a meeting with the EEAS to obtain clarifications on the reasons for refusing access. The Ombudsman then provided the complainant with a report on this meeting. The complainant did not provide any comments on the meeting report.

Arguments presented to the Ombudsman

7. The complainant argued that the exception for the protection of the public interest as regards international relations provided for in Regulation 1049/2001 only covers relations between *governments and/or intergovernmental bodies*. His public access request concerned documents related to funding provided by the EU to *non-governmental organisations*, which, in the complainant's view, are not covered by the exception. The complainant also said that there was an overriding public interest in disclosure as the public has the right to know how EU external aid is distributed and spent.

8. During the meeting with the Ombudsman inquiry team, the EEAS representatives provided explanations on the issue of EU funding to Palestinian civil society organisations. The representatives also detailed the reasons why the EEAS considered that the briefing excerpts were closely linked to the EU's international relations and explained how disclosure would undermine those relations. The EEAS requested that these explanations remain confidential.

The Ombudsman's assessment

9. The EU institutions enjoy a wide margin of discretion when determining whether disclosing a document would undermine the protection of the public interest as regards international relations under Regulation 1049/2001. As such, the Ombudsman's inquiry sought to determine if there was a manifest error in the EEAS's assessment on which it based its decision to refuse access to the documents it had identified as falling under the scope of the complainant's request.

10. To that end, the Ombudsman inquiry team inspected the documents in question and obtained additional explanations and concrete examples from the EEAS representatives during



the meeting, including information that the EEAS considers to be confidential. Based on this information, the Ombudsman finds that there was no manifest error in the EEAS's assessment.

11. The Ombudsman already took the view, in the context of a previous inquiry, that the exception for the protection of the public interest as regards international relations is not limited to the EU's relations with *states* [4] . Irrespective of that, the Ombudsman notes that the documents concerned in this case are internal briefings for the HR/VP ahead of his meetings with government officials.

12. . The Ombudsman notes that the protection of the public interest as regards international relations under the EU legislation on public access to documents cannot be overridden by any other public interest [5] . This means that, if an institution considers that this interest could be undermined by disclosure, it must refuse to give access. Thus, the complainant's arguments concerning a possible overriding public interest in disclosure, namely that disclosure is necessary to ensure transparency and accountability of spending EU foreign aid, could not be considered.

13. In light of the above, the Ombudsman finds that the EEAS was justified in refusing public access to the briefing excerpts.

Conclusion

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

There was no maladministration by the European External Action Service in refusing public access to the documents at issue.

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

Emily O'Reilly

European Ombudsman

Strasbourg, 05/07/2022

[1] Under Regulation 1049/2001 regarding public access to European Parliament, Council and Commission



documents:

<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32001R1049&from=EN> [Link].

[2] The HR/VP coordinates the external action of the European Union. More information is available at: https://www.eeas.europa.eu/eeas/high-representative-vice-president_en [Link]

[3] In accordance with Article 4(1)(a), third indent of Regulation 1049/2001.

[4] Decision in case 2051/2021/MIG, paragraph 24, available at: <https://www.ombudsman.europa.eu/en/decision/en/153326> [Link]

[5] See Article 4(1) of Regulation 1049/2001