

Decision on the European Union Satellite Centre's (SatCen) refusal to give public access to documents concerning the situation at the Belarus-Poland border (case 130/2022/SF)

Decision

Case 130/2022/SF - Opened on 04/02/2022 - Decision on 11/07/2022 - Institution concerned European Union Satellite Centre (No maladministration found) |

The case concerned a request for public access to documents held by the European Union Satellite Centre (SatCen) concerning the migrant situation at the Belarussian border. The SatCen refused to disclose the documents, arguing that disclosure could undermine the protection of the public interest as regards defence and military matters, as well as international relations of the EU's Member States.

The Ombudsman found that the SatCen was justified in refusing public access to the requested documents. She thus closed the inquiry finding no maladministration.

The Ombudsman welcomed the SatCen's decision to update its rules on public access to documents and encouraged it to follow her 'short guide for the EU administration on policies and practices to give effect of the right of public access to documents'.

Background to the complaint

1. The European Union Satellite Centre [1] (SatCen) supports the EU's actions and decision-making in the field of Common Foreign and Security Policy by providing, at the request of the Council of the EU or the High Representative of the Union for Foreign Affairs and Security Policy, products and services resulting from the exploitation of Copernicus [2] imagery data.
2. In December 2021, the complainant asked the SatCen to grant public access [3] to the *"[t]he latest three reports and map series on the Belarussian border migrant situation"*.
3. In January 2022, the SatCen refused public access to these documents in their entirety. In doing so, it invoked an exception under the EU legislation on access to documents [4], arguing that the requested documents could be disclosed to authorised users of Copernicus only. It said that the documents contain operational analyses that are not intended for public use.



4. The complainant asked the SatCen to review its decision (by making a 'confirmatory application'). The SatCen maintained its decision to refuse access, arguing that disclosure of the documents would undermine the protection of the public interest as regards defence and military matters, as well as international relations. It explained that the SatCen was essential for strengthening early warning and crisis monitoring functions within the context of the common foreign and security policy, in particular the common security and defence policy. Thus, it follows specific rules on public access to documents and all products that it develops in the Copernicus framework are accessible to authorised users only.

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

The inquiry

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

7. In the course of the inquiry, the Ombudsman inquiry team met with representatives of the SatCen and inspected one report as a sample of the requested documents.

Arguments presented to the Ombudsman

By the complainant

8. The complainant argued that the SatCen did not explain how disclosure would undermine the protected interests. He contended that SatCen should have considered partial release of the requested documents. Furthermore, the complainant asked, in general, whether Copernicus products do not need to be disclosed.

By the SatCen

9. During the meeting with the Ombudsman inquiry team, the SatCen representatives provided additional confidential explanations as to how disclosure of the requested documents would, in the SatCen's view, undermine the protection of the public interest as regards defence and military matters, as well as international relations.

10. The SatCen representatives clarified that the SatCen develops its products using a Copernicus imagery data warehouse at the request of Copernicus authorised users, under the exclusive supervision of the High Representative. [5] Thus, it holds no Copernicus products that would be accessible to the public.



11. The SatCen representatives explained that its rules on public access to documents had been adopted in 2003 and that the SatCen was in the process of updating them.

The Ombudsman's assessment

12. The EU institutions and agencies enjoy a wide margin of discretion when determining whether disclosing a document would undermine any of the public interests protected under Article 4(1)(a) of Regulation 1049/2001 [6] , such as the protection of defence and military matters and the protection of international relations. [7] As such, the Ombudsman's inquiry aimed to assess if there was a manifest error in the SatCen's assessment on which it based its decision to refuse access to the documents.

13. To that end, the Ombudsman inquiry team inspected one of the documents in question as a sample and confirmed that it contains information that is worthy of protection throughout. Thus, partial access to the requested documents was not possible.

14. During the meeting with the SatCen's representatives, the Ombudsman inquiry team obtained additional confidential explanations. The SatCen had not been able to share the information contained in these explanations with the complainant, as this would have undermined the very interests the SatCen is aiming to protect by withholding the information.

15. Based on this, the Ombudsman finds that the SatCen was justified in refusing access to the requested documents.

16. Given the sensitive nature of the information contained in the documents at issue, the Ombudsman also considers that the SatCen provided the complainant with sufficient reasons for its decision to refuse access.

17. In his complaint to the Ombudsman, the complainant asked whether, in general, Copernicus products do not need to be disclosed. In this context, the Ombudsman understands from the explanations provided during the meeting with the SatCen's representative, that the SatCen does not hold any information or data delivered by the Copernicus space infrastructure that would be freely available and accessible to citizens [8] . Rather, it holds only Copernicus products that it develops at the request of authorised users under the supervision of the High Representatives in the framework of the EU's Common Foreign and Security Policy.

18. The Ombudsman welcomes the SatCen's initiative to update its rules on public access. In this context, she encourages the SatCen to follow her 'short guide for the EU administration on policies and practices to give effect to the right of public access to documents' [9] .

Conclusion

Based on the inquiry, the Ombudsman closes this case with the following conclusion [10] :



There was no maladministration by the European Union Satellite Centre.

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

Rosita Hickey

Director of Inquiries

Strasbourg, 11/07/2022

[1] More information available at: <https://www.satcen.europa.eu/who-we-are/our-mission> [Link]

[2] Copernicus is the Union's Earth Observation Programme consisting of satellites and sensors, gathering data to provide users with reliable information:

<https://www.satcen.europa.eu/Search/copernicus> [Link]

[3] The complainant made his request 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].

In accordance with Council Decision 2014/401/CFSP on the European Satellite Centre (<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32014D0401&from=en> [Link]), the SatCen adopted its own 'Rules on public access to the documents of SatCen', taking into account the principles and limits laid down in Regulation 1049/2001.

[4] By way of analogy to Article 4 (1) of Regulation 1049/2001.

[5] Articles 2 and 4 of Council Decision 2014/401/CFSP on the European Union Satellite Centre; <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32014D0401> [Link]

[6] In analogy Article VI(b)(i) of the rules on public access to documents of the SatCen.

[7] See, for example, judgment of the General Court of 11 July 2018, *ClientEarth v Commission*, T-644/16, paragraphs 23-25:

<https://curia.europa.eu/juris/document/document.jsf?text=&docid=203913&pageIndex=0&doclang=EN&mode=lst&>
[Link]

[8] See, for example, the Copernicus Conventional Data Access Hubs:

<https://www.copernicus.eu/en/accessing-data-where-and-how/conventional-data-access-hubs>
[Link]



[9] available at: <https://www.ombudsman.europa.eu/en/doc/correspondence/en/149198> [Link]

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