

Letter to the European Commission on how the institution dealt with a request for public access to documents related to EU environmental strategy and legislation

Correspondence - 02/08/2022

Case 1378/2022/TM - **Opened on** 02/08/2022 - **Decision on** 18/09/2023 - **Institutions concerned** European Commission (No further inquiries justified) | European Commission (Maladministration found) |

Dear Mr X,

The Ombudsman has received a complaint against the European Commission concerning a public access to documents request. [1] The complaint asked for access to (1) three specific e-mails and (2) other documents regarding EU environmental legislation involving the Commissioner for International Partnerships and her Cabinet.

The Commission estimated the request concerned more than 300 registered entries and approximately 2000 pages of documents and contacted the complainant seeking to find a fair solution. [2] The complainant agreed to reduce the scope of the request.

On 3 May 2022, the Commission informed the complainant that it considered the three specific e-mails requested did not fall within the scope of Regulation 1049/2001, *“as they were elaborated as short-lived correspondence for a preliminary, internal exchange of views during the preparation of legislative proposals”*. It added that these e-mails do not need to be registered in its document management system [3] and are usually automatically deleted after six months. As regards the second part of the request, the Commission partially disclosed a series of documents to the complainant. Some parts of these documents were redacted in order to protect the public interest as regards international relations, [4] the privacy and the integrity of the individual, [5] commercial interests [6] and the decision-making process. [7]

On 10 May 2022, the complainant made a confirmatory application noting that e-mails fall under the scope of Regulation 1049/2001 and reiterating his request to receive public access to the specific e-mails requested. The complainant also asked for full access to four documents partially released on 3 May 2022.

The Ombudsman notes that the Commission has not yet provided the complainant with a



confirmatory reply within the deadlines established by Regulation 1049/2001.

We would suggest, if you have not done so in the meantime, that you now reply to the complainant and inform us when it is done. We would be grateful if you could send your reply as soon as possible, and not later than **24 August 2022**. We would also appreciate receiving a copy of the confirmatory decision as soon as the Commission issues it.

At the same time, we consider it necessary to review the documents at issue in this public access request. We would therefore be grateful if you could provide us with the three specific e-mails requested and the unredacted versions of the four documents, preferably in electronic format through encrypted e-mail, [8] by **9 August 2022**. As regards these four documents, we would ask that the Commission explain which exception(s) it invoked to those parts partially withheld.

The documents subject to the public access request will be treated confidentially, along with any other material the Commission chooses to share with us that it marks confidential. Documents of this kind will be handled and stored in line with this confidential status and will be deleted from the Ombudsman's files shortly after the inquiry has ended.

If you have any questions, please feel free to contact the inquiries officer, at the following telephone number: XXX, or email address: YYY.

Yours sincerely,

Tina Nilsson

Head of the Case-handling Unit

Strasbourg, 02/08/2022

[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]

and under Regulation 1367/2006 of the European Parliament and of the Council on the application of the provisions of the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters to Community institutions and bodies,

<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32006R1367> [Link].

[2] In accordance with Article 6(3) of Regulation 1049/2001.



[3] Commission Decision of 6.7.2020 on records management and archives, available at: https://ec.europa.eu/info/files/commission-decision-records-management-and-archives_en [Link].

[4] Article 4(1)(a) of Regulation 1049/2001.

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

[6] Article 4(2) first indent of Regulation 1049/2001.

[7] Article 4(3) of Regulation 1049/2001.

[8] Encrypted emails can be sent to our dedicated mailbox.