



## Decision on how the European Commission dealt with a request for public access to a letter concerning a report on an investigation into a fatal train accident in Spain (cases 710/2022/OAM and 716/2022/OAM)

Decision

**Case 710/2022/OAM - Opened on 06/04/2022 - Decision on 09/11/2022 - Institution concerned** European Commission ( No further inquiries justified ) |

**Case 716/2022/OAM - Opened on 06/04/2022 - Decision on 09/11/2022 - Institution concerned** European Commission ( No further inquiries justified ) |

The cases concerned how the European Commission dealt with two requests for public access to a letter sent by the Spanish authorities to the Commission concerning a report by the EU Agency for Railways in relation to a train accident in Spain in which 79 people died. The Commission initially refused access to the requested letter. The complainants asked the Commission to reconsider its position, but did not receive a final reply to their requests within the applicable deadlines.

The Ombudsman asked the Commission to reply without delay to the complainants' requests. The Ombudsman inquiry team also inspected the letter in question. Based on the review of the letter, the Ombudsman was not convinced by the Commission's arguments to refuse public access and asked to meet with the Commission to obtain more information.

The complainants informed the Ombudsman that, in the meantime, the letter had been disclosed by the Spanish authorities at national level. Since both complainants have now obtained access, no further inquiries into these cases are justified and the Ombudsman closes them.

Background to the complaints

**1.** On 24 July 2013, a high-speed train derailed close to Santiago de Compostela, north-west Spain. Of the 222 people aboard, 79 died and around 140 were injured. The train accident was investigated at national level. After being asked by the European Commission, the EU Agency for Railways (ERA) [1] prepared a report with advice concerning the independence of the investigative body in Spain. The ERA report was published in July 2016, following a public access to documents request. [2]

**2.** In January 2022, a journalist and the victims' association submitted requests to the Commission, asking for public access [3] to a **letter of 26 May 2016** concerning the ERA report. The letter was transmitted by the then Spanish Ministry of Development to the then



European Commissioner for Transport.

**3.** The Commission identified the following documents as falling within the scope of the request: *a letter from the Spanish Minister of Development Pastor Julián to Commissioner Bulc, 26 May 2016, reference Ares(2016)2471290, and its annex - a letter from the Secretary General for Infrastructure to the Minister of Development* (hereafter 'the documents'). The Commission said it consulted [4] the Spanish authorities from which the documents originate. The Spanish authorities opposed disclosure, arguing that the documents concern an issue, which was at the time subject to criminal proceedings before a Spanish court. The Commission refused access to the letter and its annex, invoking the exception for the protection of ongoing court proceedings. [5]

**4.** Both complainants asked the Commission to review its decision (by making a 'confirmatory application'). The Commission did not reply to the confirmatory applications within the deadlines established by Regulation 1049/2001.

**5.** Dissatisfied, both complainants turned to the Ombudsman.

**6.** In the course of the inquiry, the Commission replied to the confirmatory applications, confirming its initial position to refuse access.

The inquiry

**7.** The Ombudsman opened two inquiries into the complaints and decided to treat these jointly.

**8.** The Ombudsman inquiry team inspected the documents in question, as well as the documentation relating to the consultation of the Spanish authorities, at initial and confirmatory stage.

Arguments presented

**9.** Both **complainants** expressed doubts as to whether the documents in question could relate to the ongoing court proceedings in Spain. Rather, the complainants suspected the documents to relate to the ERA's decision to make public its report in July 2016. In the complainants' view, there was thus no valid reason to refuse access to the documents, which predated the disclosure of the ERA report.

**10.** The complainants informed the Ombudsman that they had requested access to the same documents also at national level. In reply, the Spanish authorities refused their requests. One of the complainants contested the Spanish authorities' decision before the Spanish Council of Transparency and Good Governance. [6]

**11.** The **Commission** noted that the Spanish authorities opposed disclosure, on the grounds that the documents related to the train accident, which was subject to ongoing criminal proceedings. In July 2021, the Spanish courts opened an oral trial in relation to the accident and the court hearings were scheduled to take place as of September 2022.

**12.** In view of this, the Commission stated in its confirmatory decisions that the documents requested *"cannot be clearly dissociated from the investigation of the accident which is subject to*



judicial proceedings". Even if the documents were not drawn up in the context of the judicial proceedings, it considered that *"the disclosure of correspondence on the position of the Spanish national authorities in relation to the publication of the advice of the European Union Agency for Railways could affect the course of the judicial proceedings, the position of the parties and the principle of equality of arms"*.

**13.** The Commission also said that it was under no obligation to carry out an exhaustive assessment of the Member State's opposition. Rather, it needed to check whether the explanations given appeared to be well founded. [7] The Commission considered that the justifications provided by the Spanish authorities in this case warranted, *"at first sight"*, the application of the exception under Article 4(2) second indent of Regulation 1049/2001.

The Ombudsman's assessment

**14.** While the Commission is not obliged to carry out an exhaustive assessment of a Member State's position to oppose disclosure of documents originating from it, the Commission nevertheless needs to examine whether the explanations given appear to be well founded. It is ultimately the responsibility of the Commission to decide on requests for public access to documents that it holds. [8]

**15.** Based on the review of documents in question, the Ombudsman was not convinced by the Commission's reliance on Article 4(2) second indent of Regulation 1049/2001, that is, the protection of ongoing court proceedings. In particular, based on the documentation available to the Ombudsman, it was not clear how the documents in question could have a 'relevant link' to the ongoing court proceedings, as required under EU case-law. [9]

**16.** The Ombudsman therefore asked that her inquiry team meet with representatives of the Commission to better understand the 'relevant link' between the requested documents and the ongoing court proceedings in Spain.

**17.** Before the meeting could take place, one of the complainants informed the Ombudsman that the Spanish Council of Transparency and Good Governance asked the Spanish authorities to release the documents, arguing that they had not shown how disclosure would harm the ongoing judicial proceedings. As a result, the documents had now been disclosed at national level. The complainant said that there was thus no need for the Ombudsman to continue her inquiry into his complaint. The second complainant subsequently confirmed that it had also obtained access to the documents.

**18.** In light of this, no further inquiries into these cases are justified.

Conclusion

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

**There are no further inquiries justified.**

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



Rosita Hickey Director of Inquiries

Strasbourg, 09/11/2022

[1] More information about the EU Agency for Railways is available at:  
<https://www.era.europa.eu/> .

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

<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:32001R1049> .

[3] Idem 2.

[4] In line with Articles 4(4) and 4(5) of Regulation 1049/2001.

[5] Article 4(2) second indent of Regulation 1049/2001.

[6] More information about the Council of Transparency and Good Governance is available at: [https://www.consejodetransparencia.es/ct\\_Home/en/index.html](https://www.consejodetransparencia.es/ct_Home/en/index.html) .

[7] The Commission referred to Judgment of the General Court of 6 February 2020, *Compañía de Trenes de la Coruña, S.A. v European Commission* , T-485/18, paragraphs 69 and 70:

<https://curia.europa.eu/juris/document/document.jsf?text=&docid=223086&pageIndex=0&doclang=EN&>  
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[8] Judgment of the General Court of 14 February 2012 in case T-59/09, *Germany v Commission* , paragraphs 51, 54:

<https://curia.europa.eu/juris/document/document.jsf?text=&docid=119422&pageIndex=0&doclang=EN&>  
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[9] Judgment of the General Court of 6 February 2020, *Compañía de Tranvías de la Coruña, SA v European Commission* , T-485/18, paragraph 42:

<https://curia.europa.eu/juris/document/document.jsf?text=&docid=223086&pageIndex=0&doclang=EN&>  
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[10] This complaint has been dealt with under delegated case handling, in accordance with the Decision of the European Ombudsman adopting Implementing Provisions