Decision on how the European Food Safety Authority (EFSA) dealt with a request for public access to documents related to a proposal to restrict lead in ammunition (case 2124/2021/MIG)

Decision
Case 2124/2021/MIG - **Opened on** 17/12/2021 - **Recommendation on** 02/05/2022 - **Decision on** 14/11/2022 - **Institution concerned** European Food Safety Authority (Recommendation agreed by the institution) |

The case concerned a request for public access to documents held by the European Food Safety Authority (EFSA) concerning lead in ammunition. EFSA took more than seven months to deal with the request, extending the deadline on various occasions, which prevented the complainant from using the documents in preparing a contribution to a public consultation organised by another EU agency.

The Ombudsman opened an inquiry and found maladministration in how EFSA had dealt with the complainant's access request and, specifically, its failure to comply with the time limits set out in the EU legislation on public access to documents. She recommended that EFSA should cease its practice of extending the prescribed time limits beyond 30 working days when proposing a 'fair solution'. She also recommended that EFSA should provide applicants at an early stage with a list of the documents it identifies where an access request is formulated in broad terms.

EFSA replied positively to the Ombudsman's recommendations, committing itself to changing its rules and practices to ensure that requests for public access to documents are processed swiftly. The Ombudsman closed the inquiry, welcoming EFSA's positive response and the steps it has already taken and intends to take to implement her recommendations.

Background to the complaint
1. In 2019, the European Commission asked the European Chemicals Agency (ECHA) to assess the risk [1] of lead in ammunition and fishing weights [2] . For the purpose of its risk assessment, ECHA obtained information on game meat and lead in game meat from the European Food Safety Authority (EFSA). After finalising its assessment, ECHA proposed to restrict the use of lead and consulted the public on this (the public consultation was open until 24 September 2021).

2. In February 2021, the complainant sought public access [3] from EFSA to the documents it had provided to ECHA in the context of ECHA's risk assessment, as it intended to participate in the public consultation. EFSA informed the complainant that it would reply by 16 March

2021.

3. EFSA extended the time limit for its reply twice and, in April 2021, proposed as a 'fair solution' [4] that it would reply within a timeframe that would enable it to finalise its assessment of the documents at issue.

4. In May 2021, EFSA informed the complainant that it had identified five documents falling under the request: an email to ECHA with four attachments. EFSA gave the complainant access to parts of the email and one attachment. As regards the three remaining documents, EFSA extended the time limit for its reply to 26 May 2021. EFSA also informed the complainant that it could request a review of the decision on the first batch of documents (by making a 'confirmatory application') either immediately or after the adoption of EFSA's decision on the remaining documents.

5. On 28 May 2021, EFSA gave the complainant access to parts of a second batch of documents: two brief email exchanges between EFSA and two Member State authorities on information on food consumption of individuals involved in hunting and their families. As regards the remaining document, a table with data on lead in game meat, EFSA extended the time limit five more times (in the end to 28 September 2021, that is, until after the conclusion of the public consultation conducted by ECHA).

6. On 21 September 2021, the complainant requested a review of EFSA's implicit decision not to give access to the remaining document (by making a 'confirmatory application').

7. In October 2021, EFSA gave the complainant wide access to the remaining document.

8. Dissatisfied with the delay incurred by EFSA, the complainant turned to the Ombudsman. The Ombudsman opened an inquiry into the time taken by EFSA in dealing with the complainant's request for public access to documents. In the course of the inquiry, the Ombudsman inquiry team inspected the documents at issue and parts of EFSA's file on the case. The inquiry team also met with representatives of EFSA. A report on that meeting [5] was then shared with the complainant who subsequently provided its comments.

The Ombudsman's recommendations

9. The Ombudsman took the view that the complainant's access request did not concern a 'very large number of documents' or a 'very long document', which is a precondition for proposing a fair solution under the EU's legislation on public access to documents (Regulation 1049/2001 [6]).

10. In addition, the Ombudsman noted that EFSA had first approached the complainant on a possible fair solution only after the expiry of the maximum time limit of 30 working days. Moreover, EFSA had neither explained the full extent of the "fair solution" to the complaint nor listed the specific documents it had identified.

11. The Ombudsman also recalled that, according to case-law, a fair solution cannot entail extending the maximum time limit of 30 working days.

12. Given the significant delay that meant that the complainant could not use the documents when preparing its contribution to ECHA's public consultation, the Ombudsman found that how EFSA had dealt with the complainant's access request constituted maladministration. She made the following two recommendations [7] :

Under Article 6(3) of Regulation 1049/2001) for dealing with public access requests, EFSA should cease its practice, reflected in its implementing rules [8] , of extending the prescribed time limits beyond 30 working days.

If EFSA considers that a public access request is formulated in broad terms, it should provide applicants with a list of the specific documents it identifies at an early stage, to enable the applicants to clarify their request, if necessary.

The Ombudsman's assessment after the recommendations

13. In reply to the Ombudsman's recommendations, EFSA [9] committed itself to changing its rules and practices to ensure that requests for public access to documents are processed swiftly, in line with Regulation 1049/2001.

14. Specifically, EFSA confirmed its commitment to transparency, referring to the significant number of documents it publishes proactively and to its general efforts to deal with requests for public access efficiently. EFSA explained that it had just launched a new dedicated platform [10] that facilitates submitting requests for public access to documents. It added that it was in the process of establishing an IT tool that will allow for a realistic calculation of the time needed to process a specific access request upon its receipt.

15. Concerning its rules, EFSA promised to revise its relevant decision and to provide guidance to applicants, including in the form of an online seminar, to familiarise the public with its procedure for processing access requests.

16. As regards very large access requests, EFSA promised that it would from now on provide applicants with a list of identified documents at an early stage, and that it would engage with applicants so as to find a solution swiftly.

17. The Ombudsman welcomes EFSA's positive response to her recommendations which, in her view, addresses the issues raised by this complaint. She trusts that EFSA will follow up on its commitments and invites EFSA to inform her about any further progress on implementing the measures it still intends to take in fourth months' time.
Conclusion
Based on the inquiry, the Ombudsman closes this case with the following conclusion:

EFSA has accepted the Ombudsman's recommendations.

The complainant and EFSA will be informed of this decision **.**

Emily O'Reilly European Ombudsman

Strasbourg, 14/11/2022

[1] ECHA evaluates the risk to public health or the environment in relation to the manufacturing, placing on the marking or use of a specific substance, and may propose how to address this risk. Regulation 1907/2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH), establishing a European Chemicals Agency:
https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A02006R1907-20140410 .

[2] For more info, visit:
https://echa.europa.eu/hot-topics/lead-in-shot-bullets-and-fishing-weights .

[3] 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 which applies to EFSA in accordance with Article 41(1) of Regulation 178/2002 laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety:
https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A02002R0178-20210526 .

[4] EFSA referred to Article 6(3) of Regulation 1049/2001.

[5] The full meeting report is available at:
https://www.ombudsman.europa.eu/en/doc/inspection-report/en/155312 .

[6] See footnote 3.

[7] The full text of the recommendation and the assessment that led to it are available at:
https://www.ombudsman.europa.eu/en/recommendation/en/155508 .

[8] Article 4 of the Decision of the Management Board laying down practical arrangements for implementing Regulation (EC) No 1049/2001 and Articles 6 and 7 of Regulation (EC) No 1367/2006: https://www.efsa.europa.eu/sites/default/files/documents/wp200327-a2.pdf .

[9] EFSA's reply to the Ombudsman's recommendation is available at :
https://www.ombudsman.europa.eu/en/doc/correspondence/en/161298 .

[10] See: https://connect.efsa.europa.eu/RM/s/ (a video on how to make a request for public access to documents via EFSA's Portal can be found here:

https://www.youtube.com/watch?v=k_L2d81Cefo).