

The European Commission's refusal to give public access to documents related to its proposal for a Regulation on the European Health Data Space (COM(2022) 197 final)

Case opened

Case 1999/2022/SF - **Opened on** 28/11/2022 - **Decision on** 19/12/2023 - **Institution concerned** European Commission (No further inquiries justified) |

Secretariat-General

Head of Unit - C2

Ethics, Good Administration &

Relations with the European Ombudsman

European Commission

Dear Mr X,

The Ombudsman has received a complaint against the European Commission.

The complaint concerns the Commission's refusal to give full public access to five documents related to the inter-service consultation related to the Commission proposal for a Regulation on the European Data Health Space (Com(2022) 197 final).

On 28 July 2022, the Commission identified 45 documents as falling within the complainant's request for public access to documents. It granted full access to seven documents [1] , partial access to 33 documents [2] , and refused access to five documents [3] in their entirety. In doing so, the Commission invoked several exceptions under the EU legislation on access to documents, arguing that their disclosure could undermine the protection of the public interest as regards international relations and the protection of legal advice, and seriously undermine its decision-making process. [4]



On 10 August 2022, the complainant asked the Commission to review its decision to refuse full access to the five documents by making a 'confirmatory application'. He argued that there is a strong public interest in disclosing the documents, as they concern a legislative proposal that is highly sensitive at a political and legal level.

The Commission extended the time-limit for its reply to 23 September 2022, but has not provided the complainant with a reply within this extended time-limit.

We have decided to open an inquiry into the complaint against the Commission's decision to refuse access under Regulation 1049/2001.

Regulation 1049/2001 states that applications for access should be handled promptly. It is in line with this principle that the Ombudsman also seeks to deal with cases such as this as quickly as possible.

As a first step, we consider it necessary to review the five documents at issue in the complainant's request. We would be grateful if the Commission could provide copies of these documents, preferably in electronic format through encrypted e-mail, [5] by 5 December 2022.

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.

The Commission's position has been set out in its initial reply. However, should the Commission wish to provide additional views, to be taken into account during the Ombudsman's inquiry, they should be provided to us within fifteen working days of receipt of this letter, that is, by 19 December 2022.

If, in the meantime, the Commission adopts its reply to the complainant's confirmatory application, we would be grateful if you could provide us with a copy of the reply.

If you have any questions, please feel free to contact the inquiries officer responsible for the case, Ms Silvia Fuller.

Yours sincerely,

Rosita Hickey Director of Inquiries

Strasbourg, 28/11/2022

[1] Documents 2b, 3b, 5b, 8b, 19c, 21b and 21c.



[2] Documents 1, 2a, 3a, 4a, 4b, 4c, 5a, 6, 7, 8a, 9a, 9b, 10a, 10b, 11a, 11b, 11c, 12a, 12b, 12c, 12d, 12e, 14, 15, 16, 17, 18a, 18b, 18c, 19a, 19b, 20a and 21a.

[3] Documents 13a, 13b, 13c, 13d and 20b.

[4] Article Article 4(1)(a) third indent, 4(2) second indent and Article 4(3) first paragraph of Regulation 1049/2001.

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