



Decision on the European Commission's refusal to give public access to a proposal and a grant agreement concerning an EU funded project in the defence industry (case 1980/2022/NH)

Decision

Case 1980/2022/NH - Opened on 10/11/2022 - Decision on 14/03/2023 - Institution concerned European Commission (No maladministration found) |

The case concerned a request for public access to documents concerning technology developed and military equipment produced as part of an EU-funded project in the defence industry. The European Commission refused access to the two documents it identified, arguing that full disclosure could undermine the public interest as regards public security, defence and military matters, the protection of the privacy and the integrity of the individual and the protection of commercial interests.

The Ombudsman inquiry team inspected the documents in question and found that the Commission's refusal to disclose them was justified due to their sensitive nature.

The Ombudsman closed the inquiry with the conclusion that the Commission had not acted with maladministration in this case.

Background to the complaint

- 1.** The complainant is an Italian investigative journalist. In May 2022, he made a request for public access to documents [1] held by the European Commission. He requested access to documents containing a detailed description of the technology developed and military equipment produced by projects funded by the EU under two programmes between 2017 and 2020. [2]
- 2.** The Commission contacted the complainant with a view to finding a fair solution as the complainant's request concerned a very large number of documents. In reply, the complainant agreed to limit the scope of his request to documents concerning the largest project funded up to that date.
- 3.** The Commission identified two documents falling within the scope of the request: the project proposal and the grant agreement concerning an EU-funded project called "DECISMAR". [3] It denied public access to the documents based on the need to protect the public interest as regards public security, defence and military matters, the commercial interests of legal persons (including intellectual property) and the personal data of certain persons named in the documents.



4. The complainant asked the Commission to review its position in June 2022 (by making a 'confirmatory application'). After conducting a review, the Commission decided to confirm its initial position that it would not disclose the two documents.

5. Dissatisfied with the Commission's decision, the complainant turned to the Ombudsman in November 2022.

The inquiry

6. The Ombudsman opened an inquiry into the Commission's decision to refuse public access to the documents requested by the complainant.

7. In the course of the inquiry, the Ombudsman inquiry team inspected the documents at issue. It also presented the complainant with an opportunity to give his comments on the inspection report and on the inquiry team's preliminary views in this case.

Arguments presented to the Ombudsman

By the Commission

8. The Commission argued that the documents cannot be disclosed for security and defence reasons, because they contain sensitive information related to a cyber-secure IT environment concerning maritime surveillance. If disclosed to the public, the Commission said, the information would become accessible to criminal organisations or terrorist networks, which would weaken the defence capabilities of the EU and of its Member States.

9. The Commission also argued that the documents contain personal data such as the names, surnames, functions and hand-written signatures of certain persons. The Commission relied on EU data protection rules [4] to refuse public access on that ground, arguing that the complainant did not put forward any arguments to establish the necessity to have the personal data transmitted for a specific purpose in the public interest.

10. It also explained that the first document is a grant application received by the Commission in the context of a call for proposals, describing in detail the proposed actions to be conducted through the grant, thus constituting inside knowledge, experience and specific know-how belonging to the consortium of legal entities that submitted the grant application. The public disclosure of such information, the Commission said, would undermine the commercial interests of the applicant, as it would give other potential grant applicants in future calls the possibility to copy from this application and use it to support their own application.

11. The Commission did not find any overriding public interest in disclosure, and confirmed that no partial access could be granted without undermining the interests described above.

By the complainant

12. The complainant argued that there is a public interest in knowing how EU taxpayers'



money is used to develop military technologies and related equipment. European citizens, he said, have the right to scrutinise how their money is being used to make sure that the technologies and products developed are effective.

13. In the course of the inquiry, the complainant received the inspection report drafted by the Ombudsman inquiry team following the inspection of the documents that took place at the premises of the Commission. He commented on the inspection report by saying that public access to documents like those at issue is very important to increase transparency and accountability in the EU decision-making process.

The Ombudsman's assessment

14. Based on the review of the documents in question, the Ombudsman can confirm that the Commission's description of the content of the documents is accurate.

15. The EU institutions 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, such as the protection of the public interest as regards defence and military matters. [5]

16. As such, the Ombudsman's inquiry aimed to assess if there was a manifest error in the Commission's assessment on which it based its decision to refuse access to parts of the documents it had identified as falling under the request.

17. To that end, the Ombudsman inquiry team inspected the documents. The documents contain indeed sensitive information related to defence and military matters, and it was reasonable for the Commission not to disclose them. Based on this, the Ombudsman finds that it was not manifestly wrong for the Commission to consider that disclosing the information at issue could undermine the public interest as regards defence and military matters.

18. As one exception under the EU legislation on public access was validly invoked, it is not necessary for the Ombudsman to examine the Commission's arguments as regards the need to protect the commercial interests of the consortium that submitted the project proposal and the need to protect personal data.

19. The Ombudsman understands the complainant's arguments that EU citizens should have the widest possible access to EU documents in order to scrutinise how the EU budget is being spent. However, according to Regulation 1049/2001, once the exception as regards defence and military matters has been validly invoked, no other public interest can supersede it, no matter how compelling. The Ombudsman notes that the Commission has published a factsheet on the project in question.

20. On that basis, the Ombudsman finds that the Commission's decision to refuse public access to the documents requested does not constitute maladministration.

Conclusion

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



There was no maladministration by the European Commission.

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

Emily O'Reilly European Ombudsman

Strasbourg, 14/03/2023

[1] Under Regulation (EC) 1049/2001 regarding public access to European Parliament, Council and Commission documents:
<https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=celex%3A32001R1049> .

[2] Namely, the European Defence Industrial Development Programme (EDIDP) and the Preparatory Action on Defence Research (PADR) . EDIDP is an industrial programme of the EU supporting the competitiveness and innovation capacity of the Union's defence industry; it has a financial envelope of EUR 500 million for 2019-2020. PADR was a programme that funded 18 projects between 2017 and 2019 on research and technologies related to defence technologies, products and systems (with an envelope of EUR 90 million).

[3] DECISMAR stands for "*Development of a Decision Support Toolbox for enhancing the feasibility study of the Upgrade of Maritime Surveillance through the integration of legacy assets with new innovative solutions*". It is a project funded under the EDIDP programme in 2019 for a total cost EUR 7.86 million. The Commission published a factsheet on the project, available at: https://ec.europa.eu/commission/presscorner/detail/en/fs_20_1078

[4] Namely, Article 9 of Regulation (EU) 2018/1725 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data.

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

<http://curia.europa.eu/juris/document/document.jsf?text=&docid=203913&pageIndex=0&doclang=EN&n>