

Letter from the European Ombudsman to the European Commission on its refusal to give public access to documents related to EU environmental strategy and legislation

Correspondence - 27/03/2023

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) |

Ms Ursula von der Leyen

President

European Commission

Dear President,

This case concerns the Commission's refusal to provide public access to three e-mails concerning the draft EU soil, forest and climate adaptation strategies. To date, the Commission has refused to examine the e-mails with a view to possible disclosure on the grounds that the e-mails were not recorded in the Commission's document management systems, as the Commission does not consider them 'documents' within the meaning of the EU legislation on public access to documents (Regulation 1049/2001). [1]

The e-mails pertain to "*policies, activities and decisions*" for which the Commission is responsible and they are clearly held by the Commission. Thus, they are 'documents' within the meaning of Regulation 1049/2001. The Commission risks being seen as particularly citizen unfriendly when it holds documents but refuses to examine them with a view to disclosure, simply on the ground that it has decided not to register the documents.

This case was brought by a journalist who writes about the environment. He identified the documents in question, specifically citing their titles, and asked for public access to them. When



he turned to my Office, he noted that he had missed the deadline to submit his story on lobbying EU commissioners on environmental matters.

While this is unfortunate, he maintains his interest. The e-mails, although internal, could, in the complainant's view, shed light on whether the views expressed therein were in line with those of interest representatives.

Given the need for the highest levels of transparency in interactions with interest representatives, in particular on environmental matters, I therefore now urge the Commission to assess whether disclosure of the e-mails would *specifically* and *actually* undermine one of the interests protected under the exceptions to public access. In its assessment, the Commission must consider whether partial access can be granted and whether there is an overriding public interest in disclosure in line with the Aarhus Regulation (Regulation 1367/2006). It is not immediately apparent from the documents the Commission has shared with my Office that the Commission can refuse full access to the three e-mails.

I would be grateful to receive the Commission's reply as soon as possible and, given the very limited scope of my request, at the latest within two months of the date of this letter. I will publish this letter on my website and I trust too that I can publish your reply.

Yours sincerely,

Emily O'Reilly European Ombudsman

Strasbourg, 27/03/2023

[1] Regulation 1049/2001 regarding public access to European Parliament, Council and Commission documents: <https://eur-lex.europa.eu/eli/reg/2001/1049/oj> [Link].