

## Decision of the European Ombudsman on complaint 255/2007/PB against the European Commission

Decision

**Case 255/2007/PB - Opened on 20/03/2007 - Decision on 11/07/2008**

Strasbourg, 11 July 2008

Dear Mr X,

On 20 January 2007, you submitted a complaint to the European Ombudsman against the European Commission concerning an application for public access to documents that you had made to the Commission.

On 20 March 2007, I forwarded the complaint to the President of the Commission. The Commission sent its opinion on 13 September 2007. I decided to conduct further inquiries, and informed you accordingly on 28 September 2007. On 22 January 2008, the Commission sent its complementary opinion in reply to my further inquiries. I sent the Commission's initial and complementary opinions to you with an invitation to submit observations. You submitted your observations on 3 February 2008.

I am writing now to let you know the results of the inquiries that have been made.

### THE COMPLAINT

On 23 October 2006, the complainant submitted, under Regulation 1049/2001 (1), a request to the Commission for access to a copy of the application that Ireland had made to the Court of Justice for the annulment of Directive 2006/24/EC of the European Parliament and of the Council of 15 March 2006 on the retention of data generated or processed in connection with the provision of publicly available electronic communications services or of public communications networks and amending Directive 2002/58/EC (2) (Case C-301/06 *Ireland v Council and Parliament* (3)).

On 16 November 2006, the Commission rejected the application. On that same date, the complainant made a confirmatory application.

On 8 December 2006, the Commission extended, acting on the basis of Article 8 of Regulation 1049/2001, the deadline for its reply to 9 January 2007.



On 9 January 2007, the Commission informed the complainant that it needed more time for the translation of its reply to the complainant's confirmatory application. The Commission pointed out that the complainant was entitled, in accordance with Article 8(3) (4) of Regulation 1049/2001, to submit a complaint to the Court of First Instance or to the European Ombudsman. At the same time, it stated that it was trying to send the complainant a final decision as soon as possible.

On 20 March 2007, the Ombudsman opened his present inquiry into the following allegation:

*The complainant alleges that the Commission has wrongly failed to inform him in a timely manner of its decision on his confirmatory application (5) .*

## THE INQUIRY

### **The Commission's opinion**

In its opinion, the Commission fully recognised and regretted the delay which, because of the workload of its relevant services, had occurred in its handling of the complainant's application for access. Following a request for clarification from the Ombudsman, the Commission expressly apologised, in a complementary opinion, for the delay.

### **The complainant's observations**

The complainant did not comment on the issue of delay in his observations (6) .

## THE DECISION

### **1 The allegation that the Commission has wrongly failed to inform the complainant in a timely manner of its decision on his confirmatory application**

1.1 On 23 October 2006, the complainant submitted, under Regulation 1049/2001 (7) , a request to the European Commission for access to a copy of an application made by Ireland in Case C-301/06 (8) . On 16 November 2006, the Commission rejected the application. On that same date, the complainant made a confirmatory application under Regulation 1049/2001. On 8 December 2006, the Commission, acting on the basis of Article 8 of Regulation 1049/2001, extended the deadline for its reply to 9 January 2007. On 9 January 2007, the Commission informed the complainant that it needed more time for the translation of its reply to the complainant's confirmatory application. The Commission pointed out that the complainant was entitled, in accordance with Article 8(3) (9) of Regulation 1049/2001, to submit a complaint to the Court of First Instance or to the European Ombudsman. At the same time, it stated that it was trying to send the complainant a final decision as soon as possible.

1.2 The complainant alleged that the Commission has wrongly failed to inform him in a timely manner of its decision on his confirmatory application.

1.3 In the course of the present inquiry, the Commission expressly recognised the delay in its decision on the complainant's confirmatory application, and apologised for it. The complainant made no further comments on this issue in his observations.



1.4 In light of the above, the Ombudsman does not consider it necessary further to inquire into the complainant's allegation.

## **2 Conclusion**

On the basis of his inquiries into this complaint, the Ombudsman does not consider it necessary further to inquire into the complainant's allegation. The Ombudsman therefore closes the case.

The President of the Commission will also be informed of this decision.

## **FURTHER REMARKS**

The Commission explained the delay that occurred in this case by reference to the heavy workload of the Commission service involved. During the present inquiry, delays furthermore occurred in the Commission's response to the Ombudsman's inquiry. It appeared that the delays were, in large part, due to the work of the above-mentioned service on the reform of Regulation 1049/2001. In a letter to the Commission, the Ombudsman regretted the delays. He requested that the Commission inform him of the specific and concrete measures that it would take in order to ensure that the said reform would not prevent it from respecting the relevant deadlines in relation to applications for access to documents and subsequent complaints.

In reply to this, the Commission informed the Ombudsman that it had decided to take measures with respect to the reorganisation of the service that handles applications for public access to documents. It had first of all decided to recruit new staff to this service. One vacant post had already been filled, and the recruitment procedure for a second post had been initiated. Furthermore, the handling of Ombudsman inquiries would henceforth be shared by two staff members. Finally, in order to accelerate the handling of the requests, as from their receipt by the institution, a new ad hoc procedure had been put in place for the registration of new confirmatory applications. The Commission expressed confidence that the positive results of this reorganisation would soon be apparent.

The Ombudsman welcomes the Commission's decision to take the above-mentioned measures, which appear pertinent, in part, for the purpose of addressing systemic shortcomings in its services' handling of applications for public access to documents.

Yours sincerely,

P. Nikiforos DIAMANDOUROS

(1) Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents, OJ 2001 L 145, p. 43.



(2) OJ 2006 L 105, p. 54.

(3) Action brought on 6 July 2006, OJ 2006 C 237, p. 5.

(4) " *Failure by the institution to reply within the prescribed time limit shall be considered as a negative reply and entitle the applicant to institute court proceedings against the institution and/or make a complaint to the Ombudsman, under the relevant provisions of the EC Treaty.* "

(5) The inquiry was also opened into the claim that the Commission should inform him of its decision on his confirmatory application. The Commission in fact sent its reply on 19 March 2007, rendering the claim obsolete. The content of the Commission's reply formed the object of a new complaint to the Ombudsman (819/2007/PB). The decision in that case was issued on the same date as the present one.

(6) In his observations, the complainant addressed substantive issues relating to the above-mentioned related case 819/2005/PB, for which he had also, at that time, received the Commission's opinion.

(7) See footnote 1.

(8) See footnote 3.

(9) " *Failure by the institution to reply within the prescribed time limit shall be considered as a negative reply and entitle the applicant to institute court proceedings against the institution and/or make a complaint to the Ombudsman, under the relevant provisions of the EC Treaty.* "