

## Draft recommendation to the European Commission in complaint 1902/2004/GG

Recommendation

**Case 1902/2004/GG - Opened on 24/06/2004 - Recommendation on 28/02/2005 - Decision on 04/10/2005**

(Made in accordance with Article 3 (6) of the Statute of the European Ombudsman (1) )

### THE COMPLAINT

#### *Background*

In 1998, two representatives of the Commission's local agents in Austria lodged a complaint with the Ombudsman concerning the Commission's failure to provide its local staff working in the representation in Vienna with supplementary insurance coverage (367/98/(VK)/GG). The case was closed after the Commission had accepted a draft recommendation made by the Ombudsman. The complainant in the present case was one of the complainants in that case.

On 10 May 2001, the Commission decided to suspend the complainant as a result of serious allegations that had been made against her. At the same time, the Commission offered her the possibility to be heard regarding these allegations. This hearing took place on 12 October 2001.

By decision of 31 January 2002, the Commission dismissed the complainant without notice. The complainant appealed against this decision to an Austrian court where the case is currently pending. Given that the complainant had argued that as a staff representative she could not be summarily dismissed by the Commission, the latter wrote to her on 14 June 2002 in order to terminate the contract (in case the previous dismissal should have been unlawful).

The complainant subsequently demanded access to certain documents on which the Commission had based its decision. This request gave rise to complaint 242/2003/GG which was closed after the Commission had granted the complainant access to parts of the relevant documents. In the course of this inquiry, the Ombudsman's services inspected the Commission's file that was located in Brussels.

#### *The present complaint*

In the course of the Ombudsman's inquiry into complaint 242/2003/GG, the Commission had offered the complainant the possibility to inspect her personal file in Vienna. The complainant made use of this possibility.

On 11 March 2004, the complainant submitted an internal complaint to the Commission's



Directorate-General ("DG") Press and Communication in which she alleged a violation of "Articles 26 and 24 of the Staff Regulations for civil servants and other servants of the European Communities".

Article 24 of the Staff Regulations provides that the Communities shall assist any official, in particular in proceedings against any person perpetrating [sic] threats, insulting or defamatory acts or utterances, or any attack to person or property to which he or a member of his family is subjected by reason of his position or duties.

Article 26 of the Staff Regulations for officials of the EU provides as follows:

"The personal file of an official shall contain:

(a) all documents concerning his administrative status and all reports relating to his ability, efficiency and conduct;

(b) any comments by the official on such documents.

Documents shall be registered, numbered and filed in serial order; the documents referred to in subparagraph (a) may not be used or cited by the institution against an official unless they were communicated to him before they were filed. (...)

There shall be only one personal file for each official.

An official shall have the right, even after leaving the service, to acquaint himself with all the documents in his file and take copies of them."

In her complaint to DG Press and Communication, the complainant submitted that several documents had been added to her personal file without her knowledge. On the other hand, most of her comments on documents that had been put on the file (including those she had marked with the words "copy to personal file") had according to her not been included in the file. The complainant cited two documents on her personal file (marked as "IV/18" and "IV/19") as examples. According to the complainant, the documents on her personal file as a consequence gave a distorted view as regards the objective facts. The complainant further submitted that there was a "parallel" personal file in Brussels, most of the contents of which did not figure in the personal file in Vienna. Finally, the complainant pointed out that her personal file contained no elements to justify her dismissal, that is to say no documents after the date in May 2001 when she had been suspended from her duties.

In addition to that, the complainant argued that the Commission ought to have granted her access to the complete contents of the file in Brussels. She also stated that she appealed against the decision to dismiss her, reserving all further rights.

In her complaint to the Ombudsman lodged in June 2004, the complainant referred to her complaint to the Commission of 11 March 2004, pointing out that no reply had been given to



that complaint by the Commission. The complainant thus basically alleged that the Commission had failed to comply with its duties regarding her personal file.

## THE INQUIRY

### **The Ombudsman's approach**

The complaint was sent to the Commission for its opinion. In order to avoid confusion, the Ombudsman informed the Commission and the complainant that his inquiry only concerned the issues relating to the complainant's personal file and would thus not cover the other points mentioned by the complainant in her letter to the Commission of 11 March 2004 (such as the issue of access to the file in Brussels and the Commission's decision to dismiss the complainant).

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

In its opinion, the Commission referred to the decision of 21 June 2004 by which it had replied to the complainant's letter of 11 March 2004. The Commission regretted that this reply had been delayed.

In its letter of 21 June 2004, the Commission rejected the complainant's complaint of 11 March 2004. The Commission argued that Articles 24 and 26 of the Staff Regulations were not applicable to local agents and that the so-called "personal file" in the Representation in Vienna was therefore not a file of the kind mentioned in Article 26 of the Staff Regulations.

The Commission added that even if these Articles were applicable in the present case, it would not be correct to compare the file that had been shown to the Ombudsman's services with the "personal file" relating to an official. The file shown to the Ombudsman's services was merely a working file related exclusively to the disciplinary hearing that had been initiated against the complainant. Moreover, in those proceedings the complainant would, according to the Commission, have had access to all the documents mentioned in the "notification of grievances" of 8 May 2001 on which the Commission had relied. The Commission took the view that this was exactly what Article 26 of the Staff Regulations was meant to ensure in the case of officials (i.e., that decisions were not taken on the basis of information unknown to them).

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

In her observations, the complainant maintained her complaint. She also made further comments as regards Article 24 of the Staff Regulations. According to the complainant, she had been condemned in public by the Commission long before the hearing had taken place. The complainant also submitted that at the hearing she had been asked questions that had nothing to do with the grievances that had been levelled at her.

### **Further inquiries**

After careful consideration of the Commission's opinion and the complainant's observations, it appeared that further inquiries were necessary.

#### *Request for further information*

On 12 October 2004, the Ombudsman therefore asked the Commission (1) to explain its view that the so-called "personal file" in the Representation in Vienna was not a file of the kind mentioned in Article 26 of the Staff Regulations, given (a) that in its reply of 25 September 2003 to a request for further information made by the Ombudsman within the framework of the



Ombudsman's inquiry into complaint 242/2003/GG, the Commission had pointed out that the complainant could make use of her right to inspect her personal file at the seat of the Representation in Vienna and (b) that the Commission documents submitted by the complainant (marked as "IV/18" and "IV/19") clearly stated that they were meant to be included in the complainant's "personal file", (2) to explain the nature and purpose of the complainant's "personal file" in its Representation in Vienna and to specify on what legal basis this file was kept, (3) to explain whether it considered that the "personal file" of the complainant in its Representation in Vienna did not need to contain (a) all documents concerning the complainant's administrative status and all reports relating to her ability, efficiency and conduct and (b) any comments by the complainant on such documents and (4) to explain why the complainant's "personal file" in its Representation in Vienna did not contain the complainant's comments on the documents marked as "IV/18" and "IV/19" and no documents drawn up after the date in May 2001 when the complainant had been suspended.

*The Commission's reply*

In its reply, the Commission made the following comments:

Article 26 of the Staff Regulations only applied to officials and not to local agents such as the complainant had been. The relevant rules for local agents had not referred to this provision. Article 11 of the Conditions of employment of other servants of the European Communities in their new version (that is to say after the modifications that came into effect on 1 May 2004), which provided that Article 26 of the Staff Regulations was applicable by analogy to temporary staff, was now applicable to contract staff by way of analogy pursuant to Article 81 of the Conditions. However, the new rules did not govern situations which had taken place in the past.

The personal file at the Commission's Representation in Austria was the only personal file which the Commission had opened as the complainant's employer for personnel management purposes. The Commission's right to do so was governed in this instance by Austrian law. The rules governing how personal files on the Commission's local staff were to be kept were laid down in the "Note administrative no. 119" of 13 February 1985 (2) . The Commission's Representations had also been reminded of the requirement to keep personal files, for example by a letter sent by DG Press and Communication on 26 October 2000 (3) .

Austrian law did not require employers to keep personal files. The Commission was thus not legally required to include in the personal file all documents relating to the status of the complainant and to her ability, performance and conduct. Nor did Austrian law require the Commission to include in the personal file statements by the complainant on individual events.

The note submitted by the complainant in respect of document "IV/19" did not have to be kept in the complainant's file. Document "IV/19" had been put on the file on account of the instruction to the complainant to notify absences orally the day before. However, the documents submitted by the complainant only concerned the medical reasons for her partial absence on 3 October 2000. These documents therefore had to be filed in the complainant's medical file, and not her personal file.

The Commission acknowledged that the note to which the complainant had referred in relation



to document "IV/18" had not been filed together with this document in her personal file. As this omission had occurred over four years ago, it was no longer possible to establish how it had come about. However, contrary to what the complainant had asserted in her letter of 11 March 2004, a majority of the complainant's opinions and replies was not missing from her personal file. When the complainant had submitted opinions and replies regarding events that had been recorded in her personal file, they had been attached to the file. The complainant had been able to back up her claims in only two instances, one of which was clearly not relevant here.

The complainant's personal file ended in May 2001 because she had been released from her duties on 10 May 2001. The disciplinary proceedings had been carried out by DG Press and Communication. Since the latter was based in Brussels, it had properly kept a file in Brussels on the disciplinary proceedings.

*The complainant's observations*

In her observations, the complainant maintained her complaint and made the following further comments:

According to an internal note concerning the visit of the financial controller to the Representation that was dated 2 July 1999 and that had been drawn up by Mr P., the management had been asked to comply with certain guidelines as regards the keeping of personal files, for example the principle that any document to be included in a personal file had to be countersigned by the local agent concerned.

The documents of 13 November 1985 and of 26 October 2000 to which the Commission had referred clearly showed that the personal files of local agents had to be dealt with by analogy to those of officials. It emerged from the note dated 26 October 2000 that the personal file was to be kept exclusively in the Representation.

The Commission's reasoning as regards document "IV/19" was unintelligible. In the relevant document, she (the complainant) had been accused of having absented herself from work without permission. In her reply, she had defended herself against this accusation. This reply thus did not just concern the medical reasons for her absence, but constituted her reaction to a completely groundless accusation. This incident provided a very good example of how the management of the Representation at the time had, by including only selected documents in the file, tried to create the impression that she had failed to comply with her duties or been guilty of wrongdoing.

As she had stressed in her letter of 11 March 2004, the references to documents "IV/18" and "IV/19" only constituted illustrative examples.

The complainant included a detailed list of the documents that had been included in the personal file without her knowledge and of the comments that had not been included although she had marked them for inclusion in her personal file. According to the complainant, at least 12 of her notes which she had marked for inclusion in her personal file had not been included, whereas nearly 30 letters of the administration had been included without her knowing. The complainant also submitted a copy of an e-mail of 29 September 2000 in which she had



informed the management of the Representation that she was due to see a doctor on the morning of 3 October 2000.

## THE DECISION

### 1 Introductory remarks

1.1 The original complaint lodged in June 2004 concerned the Commission's handling of the complainant's personal file but also mentioned some other issues. In his letters opening the inquiry, and in order to avoid confusion, the Ombudsman informed the Commission and the complainant that his inquiry only concerned the issues relating to the complainant's personal file and would thus not cover the other points mentioned by the complainant in her letter to the Commission of 11 March 2004 (such as the issue of access to the file in Brussels and the Commission's decision to dismiss the complainant).

1.2 In her observations on the Commission's opinion, the complainant made further comments as regards Article 24 of the Staff Regulations to which she had already referred in her complaint. According to the complainant, she had been condemned in public by the Commission long before the hearing had taken place. The complainant also submitted that at the hearing she had been asked questions that had nothing to do with the grievances that had been levelled at her. The Ombudsman considers that it would not be appropriate to extend the present inquiry so as to cover these further issues. Doing so would inevitably delay the Ombudsman's inquiry into the complainant's original allegation. The Ombudsman considers that this would not be in the complainant's interest. However, the complainant remains free to submit a new complaint regarding these issues.

### 2 Alleged failure on the part of the Commission to deal with its duties regarding the complainant's personal file

2.1 The complainant used to work as a local agent for the Commission's Representation in Vienna. On 10 May 2001, the Commission decided to suspend the complainant as a result of serious allegations that had been made against her. By decision of 31 January 2002, the Commission dismissed the complainant without notice. The complainant appealed against this decision to an Austrian court where the case is currently pending. The complainant subsequently demanded access to certain documents on which the Commission had based its decision. This request gave rise to complaint 242/2003/GG which was closed after the Commission had granted the complainant access to parts of the relevant documents. In the course of this inquiry, the Ombudsman's services inspected the Commission's file that was located in Brussels.

In the course of the Ombudsman's inquiry into complaint 242/2003/GG, the Commission had offered the complainant the possibility to inspect her personal file in Vienna. The complainant made use of this possibility. She then complained to the Commission's Directorate-General ("DG") Press and Communication, arguing that several documents had been added to her personal file without her knowledge and that most of her comments on documents that had been put on the file (including those she had marked with the words "copy to personal file") had not been included in the file. The complainant cited two documents on her personal file (marked as "IV/18" and "IV/19") as examples. According to the complainant, the documents on her



personal file as a consequence gave a distorted view as regards the objective facts. The complainant further submitted that there was a “parallel” personal file in Brussels, most of the contents of which did not figure in the personal file in Vienna. Finally, the complainant pointed out that her personal file contained no elements to justify her dismissal, that is to say no documents after the date in May 2001 when she had been suspended from her duties.

In her complaint to the Ombudsman lodged in June 2004, the complainant referred to her complaint to the Commission of 11 March 2004, pointing out that no reply had been given to that complaint by the Commission. The complainant thus basically alleged that the Commission had failed to comply with its duties regarding her personal file.

In her complaint, the complainant referred to Article 26 of the Staff Regulations for officials of the EU which provides as follows:

“The personal file of an official shall contain:

- (a) all documents concerning his administrative status and all reports relating to his ability, efficiency and conduct;
- (b) any comments by the official on such documents.

Documents shall be registered, numbered and filed in serial order; the documents referred to in subparagraph (a) may not be used or cited by the institution against an official unless they were communicated to him before they were filed. (...)

There shall be only one personal file for each official.

An official shall have the right, even after leaving the service, to acquaint himself with all the documents in his file and take copies of them.”

2.2 In its opinion, the Commission argued that Article 26 of the Staff Regulations was not applicable to local agents and that the so-called “personal file” in the Representation in Vienna was therefore not a file of the kind mentioned in Article 26 of the Staff Regulations. The Commission further submitted that during the disciplinary proceedings that had been initiated against the complainant, the latter would have had access to all the documents on which the Commission had relied against her. According to the Commission, this was exactly what Article 26 of the Staff Regulations was meant to ensure in the case of officials (i.e., that decisions were not taken on the basis of information unknown to them).

In its reply to a request for further information made by the Ombudsman, the Commission submitted that the personal file kept at its Representation in Vienna was the only personal file which it had opened as the complainant's employer for personnel management purposes. The Commission took the view that its right to do so was governed in this instance by Austrian law. The rules governing how personal files on the Commission's local staff were to be kept were laid down in the “Note administrative no. 119” of 13 February 1985. The Commission's





Representations had also been reminded of the requirement to keep personal files, for example by a letter sent by DG Press and Communication on 26 October 2000. The Commission submitted that Austrian law did not require employers to keep personal files and that it was thus not legally required to include in the personal file all documents relating to the status of the complainant and to her ability, performance and conduct. It further argued that Austrian law did not require the Commission to include in the personal file statements by the complainant on individual events, either.

According to the Commission, the note submitted by the complainant in respect of document "IV/19" did not have to be kept in the complainant's personal file, but in her medical file. The Commission acknowledged that the note to which the complainant had referred in relation to document "IV/18" had not been filed together with this document in her personal file. According to the Commission, however, a majority of the complainant's opinions and replies was not missing from her personal file. The Commission argued that the complainant had been able to back up her claims in only two instances, one of which was clearly not relevant here.

The Commission further stated that the complainant's personal file ended in May 2001 because she had been released from her duties on 10 May 2001. The disciplinary proceedings had been carried out by DG Press and Communication. Since the latter was based in Brussels, the Commission submitted that it had properly kept a file in Brussels on the disciplinary proceedings.

2.3 Before dealing with the complainant's allegation, it appears useful to examine a preliminary issue. In its opinion, the Commission argued that its right to keep personal files on the members of its staff in the Representation in Vienna was governed by Austrian law and that the latter did not require employers to keep such files. However, the Ombudsman notes that the Commission has not argued that Austrian law would prevent it from keeping such personal files. Furthermore, it clearly emerges from the evidence available to the Ombudsman that the Commission did decide to keep personal files in respect of its local agents and that it issued internal instructions as to how this should be done in its "Note Administrative no 119" of 13 February 1985. In these circumstances, there is nothing to prevent the Ombudsman from examining the way in which the Commission handled the personal file relating to the complainant.

2.4 It is good administrative practice to ensure that a personal file on a member of the staff of a Community institution or body should contain (1) all documents concerning his administrative status and all reports relating to his ability, efficiency and conduct as well as (2) any comments by the official on such documents. This obligation is laid down in Article 26 of the Staff Regulations in so far as officials are concerned. It is true that the Conditions relating to the employment of local agents did not, prior to the adoption of the modifications that came into effect on 1 May 2004, expressly provide that Article 26 of the Staff Regulations for officials of the European Communities should be applicable to local agents as well. It should be noted, however, that the "Note Administrative no. 119" of 13 February 1985 expressly provides that "by analogy to the staff reports of officials" the personal files of local agents should only contain the documents mentioned in a list attached to these instructions. In its note of 26 October 2000





reminding the persons in charge of the rules governing the personal files of local agents, DG Press and Information repeated the very same formula ("[p]ar analogie avec les dossiers personnels des fonctionnaires"). It should further be noted that the list attached to the instructions issued in 1985 explicitly refers (in its point G) to the need to add to the personal file any comments the agent may have regarding reports on his ability, performance and conduct ("les observations éventuelles de l'agent à leur sujet"). Finally, the Commission itself accepted that the complainant's comments on document "IV/18" ought to have been included in her personal file in the present case. In view of these circumstances, the Ombudsman considers that Article 26 of the Staff Regulations is a codification of obligations flowing from the principle of good administration and that these obligations were therefore incumbent on the Commission as regards local agents even before the coming into force of a rule expressly providing for Article 26 of the Staff Regulations to be applied to local agents by analogy.

2.5 The Ombudsman has not himself seen the complainant's personal file that is kept in Vienna. However, it emerges from the information provided by both the complainant and the Commission that this file does not contain any documents concerning the disciplinary proceedings conducted against the complainant after the date in May 2001 when she was suspended from her duties. In its reply to the Ombudsman's request for further information, the Commission argued that the documents concerning the disciplinary proceedings had been kept in a file in Brussels, given that these proceedings had been carried out by DG Press and Communication which is based in Brussels. The Ombudsman considers that this explanation is not acceptable. The list attached to the Commission's internal instructions of 13 February 1985 on how to keep the personal files of local agents comprises a section H entitled "Disciplinary matters" ("Questions disciplinaires"). It is thus obvious that documents concerning disciplinary proceedings have to be included in the personal file of a local agent. It should further be noted that Article 26 of the Staff Regulations (the obligations flowing from which, as mentioned above, are applicable as regards local agents) provides that only one personal file is to be kept for each member of staff. The same principle would appear to be recalled in point 3 of the Commission's note of 26 October 2000, according to which the personal file is to be kept "exclusively" at the Representation. The Ombudsman accepts that it may make sense, in the conditions described by the Commission, to keep a working copy of the documents relating to the disciplinary proceedings within the service dealing with these proceedings (4) . However, this does not affect the need to add the documents themselves to the complainant's personal file that is being kept in Vienna. The Commission's failure to do so in the present case thus constitutes an instance of maladministration.

2.6 As regards document "IV/19", the Ombudsman notes that this document is an e-mail that Mr K., the complainant's superior, addressed to the complainant on 3 October 2000 and that was copied to a number of other persons, including the head of the Representation. In this e-mail, Mr K. alleged that the complainant had indicated that she would be absent until 9.30 am but that she had in effect only arrived at work that day around noon without having informed her superior, the reception desk or the administration beforehand. According to Mr K., he knew of no subsequent explanation either. Mr K. concluded that the complainant had thus been absent from work without permission. In her reply of the same day, the complainant pointed out that she had informed Mr K. by e-mail of 29 September 2000 that she would have to see a doctor at



the hospital on "Tuesday morning" (i.e., on the morning of 3 October 2000) and that she had not been able exactly to indicate how long this would take. The complainant further explained that she had submitted an attestation to the administration. According to this document, the complainant had been at the hospital until 11 am that day. The Ombudsman considers that another document submitted by the complainant (an attestation by a doctor dated 27 September 2000) did indeed not have to be kept in the complainant's personal file, but in her medical file. However, the Ombudsman takes the view that a different conclusion needs to be drawn as regards the complainant's e-mail to Mr K. of 3 October 2000 and the attestation of the time she had spent at the hospital. In her e-mail, the complainant replied to Mr K.'s accusation that she had been absent from work without permission. The Ombudsman considers that in view of the fact that Mr K.'s e-mail of 3 October 2000 was included in the complainant's personal file, at least the complainant's reply of the same date needed to be included as well. As a result of the Commission's failure to do so, the complainant's personal file would indeed appear to give a distorted view as regards the objective facts (5) . The Ombudsman therefore considers that the Commission's failure to include (at least) the complainant's e-mail of 3 October 2000 in her personal file also constitutes an instance of maladministration.

2.7 It follows from the above that the Commission failed to include the complainant's comments on documents "IV/18" and "IV/19" in her personal file. The Ombudsman notes that the complainant had mentioned these documents as illustrative *examples* of documents that ought to have been included in her personal file. In her observations on the Commission's reply to the request for further information, the complainant submitted a detailed list of the documents that had been included in the personal file without her knowledge and of the comments that had not been included although she had marked them for inclusion in her personal file. Contrary to what the Commission assumes, there is therefore nothing to suggest that the complainant is able to back up her claims in only two instances. However, even if upon closer examination it should prove that none of the additional comments referred to by the complainant needed to be included in her personal file, this would not affect the conclusion that her comments on documents "IV/18" and "IV/19" did have to be included in her personal file. In this context, the Ombudsman notes that the Commission acknowledged that the comments on document "IV/18" ought to have been included, without however indicating whether this has been done in the meantime.

2.8 As regards the complainant's allegation that documents were included without informing her thereof, the Ombudsman notes that the Commission appears to argue that it was in any event unable to rely on any of the documents without giving the complainant a chance to comment on them. The Ombudsman notes that Article 26 of the Staff Regulations provides that "the documents referred to in sub-paragraph (a) may not be used or cited by the institution against an official unless they were communicated to him before they were filed." This provision thus protects the officials (or, where the obligations flowing from it are applied to local agents, the agent) against the use of documents that have been put on the personal file without informing the official (or agent). The Ombudsman considers, however, that good administrative practice demands that this negative protection is complemented by a positive obligation to give the person concerned the possibility to comment on a document before it is included in the personal file (6) . It is obvious that an official or agent cannot make comments (and ask for these



comments to be included in his personal file) on documents that have not been brought to his attention. The Ombudsman notes, however, that the complainant has in the meantime consulted her personal file and thus discovered all the documents that were included there. He further notes that in her complaint, in her observations on the Commission's opinion and in particular in her observations on the Commission's reply to the request for further information, the complainant has set out in detail the documents and comments that should still be included in her personal file. Given that the Ombudsman makes a draft recommendation inviting the Commission to reconsider these documents and comments with a view to including them in the complainant's personal file (see below), it does not appear to be necessary to make further inquiries as regards the Commission's failure to consult the complainant on documents that it had included in her personal file.

2.9 In these circumstances, the Ombudsman considers that the Commission has failed to comply with its duties regarding the complainant's personal file by not including all relevant documents therein.

### **3 Conclusion**

In view of the above, the Ombudsman makes the following draft recommendation to the Commission, in accordance with Article 3 (6) of the Statute of the Ombudsman:

#### **The draft recommendation**

The Commission should review the documents referred to by the complainant with a view to including them in her personal file and grant her access to the properly reconstituted file.

The Commission and the complainant will be informed of this draft recommendation. In accordance with Article 3 (6) of the Statute of the Ombudsman, the Commission shall send a detailed opinion by 31 May 2005. The detailed opinion could consist of the acceptance of the Ombudsman's decision and a description of the measures taken to implement the draft recommendation.

Strasbourg, 28 February 2005

P. Nikiforos DIAMANDOUROS

(1) Decision 94/262 of 9 March 1994 of the European Parliament on the Regulations and General Conditions Governing the Performance of the Ombudsman's Duties, OJ 1994 L 113, p. 15.

(2) A copy of this note was submitted by the Commission.

(3) A copy of this document was also provided by the Commission.

(4) Point 3 of the Commission's note of 26 October 2000 provides that copies of the documents on the personal file can be forwarded to Brussels upon request.



(5) It should be noted that the attestation submitted by the complainant appears to prove that the latter only left the hospital at 11 am on 3 October 2000. The Ombudsman further notes that together with her observations on the Commission's reply to the request for further information, the complainant submitted a copy of her e-mail of 29 September 2000 informing Mr K. of her forthcoming absence on 3 October 2000.

(6) If the note of Mr P. to which the complainant referred in her observations on the Commission's reply to the request for further information does indeed have the contents the complainant claims it has, the Commission itself would appear to share this view.