

Council tells student that legal opinion on openness should stay secret

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The European Ombudsman, **Jacob Söderman**, has called on the Council to give a researcher access to an opinion from its Legal Service. The opinion is on the legislative proposal from the Commission for rules on access to documents (1) and was requested by a student for his post-graduate dissertation on public access to Council documents.

In his special report to the European Parliament, the Ombudsman states "the refusal to give access is particularly surprising since it concerns an opinion about rules on access to documents". He asks the Parliament to support his call for the Council to reconsider the student's application.

The student claimed that the Council had infringed the fundamental principle of giving the public the widest possible access to documents. The Council argued that disclosure of legal opinions would undermine its ability to obtain independent legal advice.

According to the Ombudsman, a distinction should be drawn between different kinds of legal opinion:

- Opinions on draft legislation should normally become available to the public when the legislative process has reached a conclusion. They should be exempt only if the institution can show that disclosure would seriously undermine its decision-making process and that there is no overriding public interest in disclosure (Article 4 (3) of Regulation 1049/2001).
- Opinions given in the context of possible future court proceedings should normally be exempt from disclosure, as they are analogous to a communication between a lawyer and a client.

Applying this distinction, the Ombudsman found that the Council was entitled to reject another application by the same complainant. This was for access to an analysis by the Council's Legal Service of a judgement of the Court of First Instance and how the Council should act in similar cases in the future.

The Special Report can be found on the Internet at:

<http://www.ombudsman.europa.eu/cases/specialreport.faces/en/383/html.bookmark> [Link]



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(1) The European Parliament and Council finally adopted Regulation 1049/2001 on public access to documents in May 2001.