

Decision of the European Ombudsman closing her inquiry into complaint 1824/2013/(ANA)PMC against the European Commission

Decision

Case 1824/2013/PMC - **Opened on** 22/10/2013 - **Decision on** 20/02/2014 - **Institution concerned** European Commission (No maladministration found) |

The background to the complaint

1. On 5 March 2013, the complainant, who is a journalist residing in Belgium, requested access pursuant to Regulation 1049/2001 [1] to all correspondence (including e-mail messages) that had been exchanged between the Commissioner in charge of research and science (including her cabinet) and certain companies and organisations listed in his application during the period between 1 January 2012 and 31 October 2012. The complainant specified that, although he is chiefly interested in correspondence relating to biofuels, he also wished to be informed about any correspondence on other topics during the timeframe in question.
2. On 6 March 2013, the Commission acknowledged receipt of the complainant's access request and informed him that the statutory deadline to reply to his request was set for 27 March 2013.
3. By e-mail dated 8 April 2013, the Commission's Directorate-General Research and Technological Development ('DG RTD') informed the complainant that it had to extend the time limit for replying to his request, which required the assessment of a large number of documents from different Commission services. The new deadline was set for 22 April 2013.
4. By e-mail dated 23 April 2013, DG RTD informed the complainant that, as his application concerns a very large number of documents, its handling could not be carried out within the normal time limits set out in Article 7 of Regulation 1049/2001 [2] . Moreover, the Commission informed the complainant that Article 6(3) of Regulation 1049/2001 provides for a possibility to confer with applicants in order to find a fair solution when an application concerns a very large number of documents. The Commission stated that " *[b]ased on this provision, we would kindly ask you whether you would agree that we extend the deadline for handling your application until 30 June 2013* ".



5. By e-mail of 26 April 2013, the complainant expressed his dissatisfaction at the delay and his disagreement as regards the Commission's interpretation of Article 6(3) of Regulation 1049/2001.
6. On 16 July 2013, the Commission's DG RTD replied to the complainant's request for access. It identified 13 documents as falling within the scope of his request and gave access to them after the personal data contained in the documents had been removed.
7. On 6 August 2013, the complainant made a confirmatory application, in which he expressed the view that 13 documents cannot be considered " *a very large number of documents* " as the Commission had maintained. He therefore had grounds to believe that the Commission was withholding relevant information and requested that the Commission investigate the matter promptly and disclose all documents relating to his application without further delay.
8. In its decision on the complainant's confirmatory application of 19 September 2013, the Commission's Secretariat-General ('SG') first observed that since DG RTD had to carry out a thorough research it proposed a fair solution to the complainant by extending the deadline to 30 June 2013. The SG stated that, following the complainant's confirmatory application, it asked DG RTD to check its files again. According to the Commission, DG RTD, after a thorough research, confirmed that there were no documents covered by the complainant's request other than those already disclosed to him. On this basis, the Commission argued that the complainant's confirmatory application had become devoid of purpose.
9. On 29 September 2013, the complainant lodged the present complaint with the European Ombudsman.

The subject matter of the inquiry

10. The Ombudsman opened an inquiry into the following allegation and claim:

Allegation

The Commission did not make a complete disclosure of the requested documents.

Claim

The Commission should: (a) acknowledge that it failed to make a complete disclosure of the requested documents; (b) explain why that failure occurred; and (c) grant the complainant access to all relevant documents without delay.

The inquiry



11. Given that the essence of the complaint was the disagreement as to the existence of certain documents, the Ombudsman concluded that it would be useful, as a first measure of inquiry, to carry out an inspection of the Commission's relevant file. The Ombudsman's services inspected the Commission's file on 22 November 2013. On 6 December 2013, the Ombudsman forwarded a copy of the inspection report both to the Commission and the complainant, and invited the latter to make observations before 31 December 2013. The complainant did not make any observations.

The Ombudsman's analysis and conclusions

Preliminary remarks

12. The complainant's allegation and related claim concern the issue of the completeness of the disclosure made by the Commission. However, they do not concern the question whether, in handling the complainant's access request, the Commission complied with the deadlines foreseen in Regulation 1049/2001. This question will therefore not be dealt with in the present decision.

A. Allegation that the Commission did not make a complete disclosure of the requested documents

Arguments presented to the Ombudsman

13. In his complaint, the complainant submitted the following arguments in support of his allegation:

(i) While the Commission, when handling his initial application, maintained that the request concerned " *a very large number of documents* ", it subsequently identified only 13 documents as falling within the scope of the access request. This suggested that the Commission did not disclose all relevant documents held by it.

(ii) It appeared from information in the public domain that, during 2012, the competent Commissioner was receiving from biofuel companies and associations up to three e-mails per hour which would fall within the scope of his access request.

The results of the inspection of the Commission's file

14. During the inspection on 22 November 2013, the Commission's representatives briefly commented on the complainant's supporting arguments (i) and (ii). As regards point (i), they



observed that the term "*very large number of documents*" used by the Commission was meant as referring not to the number of documents falling within the scope of the complainant's request, but rather to the large number of correspondence the Commission had to search through in order to identify the documents to be disclosed. Concerning point (ii), they stated that no further e-mails falling within the scope of the complainant's access request were received by Ms Geoghegan-Quinn, the Commissioner in charge of research and science, or her Cabinet other than those disclosed to the complainant.

15. The inspection of the Commission's file did not show any element suggesting the existence of documents covered by the complainant's access request other than those disclosed to him.

The Ombudsman's assessment

16. In the present case, the complainant put forward two arguments in support of his view that the Commission did not make a complete disclosure of documents.

17. As regards the complainant's first argument, it should be noted that, in its letter of 23 April 2013, DG RTD informed the complainant that his application concerned 'a very large number of documents' and that it was therefore impossible to deal with it within the deadlines set out in Regulation 1049/2001. However, the Commission ultimately identified only 13 documents that were covered by the complainant's request. It cannot seriously be argued that this constitutes a 'very large number of documents'. The Ombudsman further considers that the explanation provided by the Commission's representatives on the occasion of the inspection, according to which the above-mentioned statement was in fact referring to the large number of documents the Commission had to go through in order to identify those which were covered by the complainant's request for access is not convincing. In fact, it is obvious that Article 6(3) of Regulation 1049/2001, which enables the institution to try and find a 'fair' solution when an application relates to a very long document or to a very large number of documents, is not intended to cover the case referred to by the Commission's representatives. However, this deficiency concerns the procedural handling of the relevant request for access, which is not the object of the present complaint.

18. As far as the complainant's second argument is concerned, the Ombudsman recalls that the inspection did not enable her representatives to identify any element that would have suggested the existence of documents covered by the complainant's access request other than those disclosed to him.

19. In view of the above, the Ombudsman concludes that the complainant's allegation that the Commission did not make a complete disclosure of the requested documents cannot be sustained. It follows that his claim cannot succeed either.

B. Conclusions



On the basis of his inquiry into this complaint, the Ombudsman closes it with the following conclusion:

There was no maladministration in relation to the complainant's allegation and claim.

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

Emily O'Reilly

Done in Strasbourg on 20 February 2014

[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, 31.5.2001, p. 43.

[2] Article 7 provides the following: " 1. *An application for access to a document shall be handled promptly. An acknowledgement of receipt shall be sent to the applicant. Within 15 working days from registration of the application, the institution shall either grant access to the document requested and provide access in accordance with Article 10 within that period or, in a written reply, state the reasons for the total or partial refusal and inform the applicant of his or her right to make a confirmatory application in accordance with paragraph 2 of this Article.* 2. *In the event of a total or partial refusal, the applicant may, within 15 working days of receiving the institution's reply, make a confirmatory application asking the institution to reconsider its position.* 3. *In exceptional cases, for example in the event of an application relating to a very long document or to a very large number of documents, the time-limit provided for in paragraph 1 may be extended by 15 working days, provided that the applicant is notified in advance and that detailed reasons are given.* 4. *Failure by the institution to reply within the prescribed time-limit shall entitle the applicant to make a confirmatory application."*