



Decision of the European Ombudsman closing the inquiry into complaint 248/2016/PB against the European Anti-Fraud Office in relation to non-disclosure of an investigation file

Decision

Case 248/2016/PB - **Opened on** 08/04/2016 - **Decision on** 31/10/2016 - **Institution concerned** European Anti-Fraud Office (No maladministration found) |

Decision

of the European Ombudsman closing the inquiry into complaint 248/2016/PB against the European Anti-Fraud Office in relation to non-disclosure of an investigation file

The case concerned a decision of the EU's anti-fraud office, OLAF, not to grant a request for public access to the content of an investigation file concerning allegedly unlawful behaviour by some EU staff.

The Ombudsman opened an inquiry and inspected OLAF's investigation file. She then found that the refusal to make the content of that file public was justified because, at the time of the complaint, follow-up work related to the OLAF investigation, was on-going. That follow-up work would have been undermined by the disclosure of the report.

The background to the complaint

1 . The complainant, a UK media group, requested OLAF on 24 September 2015 to provide it with the content of an OLAF investigation file. When making its request, it made reference to certain aspects of the investigation which, apparently, the complainant had learned from its sources. That information concerned alleged wrongdoings by some EU staff. OLAF refused to disclose the requested document. It explained that its final investigation report had been sent to the relevant authorities for follow-up. It added that, in its view, these authorities needed a reasonable period of time to decide on any action to take in the light of the report sent to them by OLAF. That reasonable period had not, in OLAF's view, elapsed.

2. OLAF investigates fraud against the EU budget, corruption and serious misconduct within the European institutions. Its mandate covers any actions of staff working at the EU's institutions. Following an investigation, OLAF will inform the relevant EU or national authorities of its findings and recommendations. These will then decide on the appropriate follow-up action that may need to be taken [1] . Such action may extend from disciplinary



proceedings to court proceedings against any person that has been found to have committed an offence.

The inquiry

3. The Ombudsman opened an inquiry into the complaint and carried out an early inspection of OLAF's investigation file. It sent the inspection report to the complainant with an invitation to submit observations on its content. No observations were received.

An allegedly wrongful decision not to grant the request for public access to the content of an investigation file

Arguments presented to the Ombudsman

4. The complainant stated that the information available to it led it to believe that for approximately one year after OLAF closed its investigation, no action had been taken. This did not, in the complainant's view, lend credibility to OLAF's view that disclosure could not be granted because of on-going timely follow-up actions.

5. The complainant also pointed out that OLAF publishes short summaries of investigations in its annual reports. It therefore wondered if it would not be possible for OLAF to at least publish some information on the investigation in question.

The Ombudsman's assessment

6. The Ombudsman's inspection showed that the EU institution (where the EU staff under investigation had worked) had carefully examined OLAF's findings, and that it had taken decisions related to possible follow-up actions. This information, which had not been available to the complainant, showed that the OLAF investigation file was still closely related to relevant and timely follow-up actions. OLAF's decision not to publicly disclose the file was therefore, in the Ombudsman view, justified. As regards whether it was possible to grant partial access to the file, the Ombudsman notes that disclosing parts of the file would serve no meaningful purpose.

7. The inspection of the investigation file also showed that there was nothing to indicate that public disclosure of the documents could be justified on the basis that there was an 'overriding public interest' in disclosure [2]. The Ombudsman would consider that disclosure of such a file would be justified by an overriding public interest only if there was evidence that any appropriate follow up actions were being blocked or otherwise impaired. No such evidence emerged in the context of the Ombudsman's inspection.

Conclusion

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



conclusion:

OLAF's decision not to grant the request for public disclosure of the investigation file in question did not amount to maladministration.

The complainant and OLAF will be informed of this decision.

Strasbourg, 31/10/2016

[1] For more information on OLAF, see http://ec.europa.eu/anti-fraud//home_en

[2] Article 4(3) of 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.