

## Decision in case 1102/2016/JN on the Commission's failure to reply to correspondence and to fully disclose a document

Decision

**Case 1102/2016/JN - Opened on 09/08/2016 - Decision on 13/01/2017 - Institutions concerned** European Commission ( No maladministration found ) | European Commission ( Settled by the institution ) |

The case concerned the Commission's failure to reply to the complainant's correspondence in the context of a financial audit at the Member State level. Following the Ombudsman's intervention, the Commission replied. It disclosed the document requested by the complainant but redacted some personal data (names of physical persons). The Ombudsman found that the Commission correctly justified the redaction under Regulation 45/2001.

### The background to the complaint

1. The complainant has been facing proceedings at the Member State level concerning its budgetary discipline in the context of an EU funded project. Against this background, the complainant wrote, on 7 March 2016, to the Commission (DG REGIO). It requested the document on which the Commission had based its statement that a regional tax authority had found that the complainant had breached budgetary rules. The complainant further asked the Commission to inform it of the person having provided that information to the Commission.
2. Since the Commission did not reply, the complainant turned to the Ombudsman on 14 July 2016.

### The inquiry

3. The Ombudsman opened an inquiry into the complaint and identified the following allegation:

The Commission failed to reply to the complainant's letter dated 7 March 2016.

4. In the course of the inquiry, the Ombudsman received the Commission's replies sent to the complainant and the complainant's comments on those replies. This correspondence was exchanged in the framework of the procedure concerning access to documents foreseen by Regulation 1049/2001 on access to documents [1]. The Ombudsman decided to join the issue



of access to documents to this inquiry. In conducting the inquiry, the Ombudsman has taken into account the arguments and opinions put forward by the parties.

### **Allegation of a failure to reply and the complainant's further argument that the Commission wrongly redacted personal data in the disclosed documents**

Arguments presented to the Ombudsman

5. The Commission provided a copy of the document requested (a short report and the accompanying email). It said that it had received the document from the Czech Audit Authority on 3 June 2013. The email contained several redactions. Relying on Article 8(b) of Regulation 45/2001 on data protection [2], the Commission explained that it had redacted personal data because the necessity of disclosing the data had not been established and it could not be assumed that disclosure would not prejudice the legitimate rights of the persons concerned.

6. The complainant challenged the redaction of the identity of the person(s) having drafted the report. In its view, the report incorrectly stated that the Czech Financial Office had found that the complainant breached budgetary discipline and requested reimbursement. The complainant explained that the audit had been suspended and that several related court proceedings had been ongoing. The complainant needed to know the identity of the person having made false statements about the complainant in order to be able to assert its rights in the context of those court proceedings. These false statements harmed the complainant's good name and caused financial damage (e.g. the costs of legal representation, salaries of the employees dealing with this issue, credit interests). The authors of those statements had no legal right to be protected because their acts were part of their public duties financed from public funds. Thus, the complainant considers that the Commission should disclose the identity of the person(s) concerned. Public communication between the Czech Ministry of Finance and the Commission, public court proceedings and especially administrative proceedings are not of a private nature. The financial damage is not general but specific and the complainant can evidence it.

7. In reply, the Commission stated that the complainant had not established the necessity of the data transfer for the following reasons:

- o The use of the document in ongoing court proceedings was a private interest and not a public interest. The complainant did not explain how the document could serve it in the court proceedings.

- o The complainant's assertion that its reputation had been damaged and that it had suffered a financial damage were not substantiated. Such general considerations were insufficient to establish necessity.

- o If a national court needed the redacted personal data, it could request the Commission to provide it.

The Ombudsman's assessment



8. The Ombudsman's inquiry originally concerned the Commission's failure to reply. The Commission has now replied and this aspect of the case has thus been settled by the Commission.

9. As regards the substance of the Commission's replies in which the Commission refused to give full access to the documents requested by the complainant, the Ombudsman notes that the complainant disagrees specifically with the Commission's decision to redact the name of the person(s) having drafted or sent the report. However, the Ombudsman finds the Commission's reasoning convincing and legally correct. The name constitutes personal data within the meaning of Regulation 45/2001 [3] and the Commission's assessment of the necessity requirement is convincing. The Ombudsman shares the Commission's view that the arguments put forward by the complainant do not establish the necessity of the data transfer. In particular, the complainant does not provide any convincing explanation why the data would be necessary for the purposes of the ongoing proceedings or for the satisfaction of its alleged reputational and financial interests. Accordingly, the Ombudsman finds that the Commission committed no maladministration as regards this aspect of the case.

## **Conclusions**

On the basis of the inquiry into this complaint, the Ombudsman closes it with the following conclusions [4] :

**The Commission settled the allegation that it failed to reply to the complainant.**

**There is no maladministration as regards the redaction of personal data.**

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

Emily O'Reilly

European Ombudsman

Strasbourg, 13/01/2017

[1] Regulation 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 L 145. 31. 5. 2001.

[2] Regulation 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies on the free movement of such data, OJ L 8, 12. 1. 2001.



[3] In accordance with Article 2(a) of Regulation 45/2001, “ *‘personal data’ shall mean any information relating to an identified or identifiable natural person hereinafter referred to as ‘data subject’; an identifiable person is one who can be identified, directly or indirectly, in particular by reference to an identification number or to one or more factors specific to his or her physical, physiological, mental, economic, cultural or social identity* ”

[4] Information on the review procedure can be found on the Ombudsman’s [website \[Link\]](http://www.ombudsman.europa.eu/en/resources/otherdocument.faces/en/70669/html.bookmark):  
<http://www.ombudsman.europa.eu/en/resources/otherdocument.faces/en/70669/html.bookmark>  
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