

Decision in case 947/2016/JN on the Commission's handling of the complainant's Facebook enquiry

Decision

Case 947/2016/JN - Opened on 04/08/2016 - Decision on 24/07/2017 - Institutions concerned European Commission (No maladministration found) | European Commission (Settled by the institution) |

This case arose from the failure of the European Commission Representation in Croatia to reply to an information request made on Facebook and the fact that it blocked the complainant on its Facebook page. The complainant had asked if the Head of Representation in Croatia was a former member of the communist party of Yugoslavia.

Since the Commission has now unblocked its Facebook page and replied, the Ombudsman finds that the Commission has settled these aspects of the case. The Ombudsman further finds that the Commission committed no maladministration by not disclosing the requested information because it constituted protected personal data.

However, the Ombudsman makes a suggestion for improvement about the need for replies to citizens communicating with the Commission on social media. The Commission should take into account the fact that the right to a reply, guaranteed by the EU Charter of Fundamental Rights and the principles of good administration, as provided for in the European Code of Good Administrative Behaviour, applies to communications received via social media, subject only to limitations justified under the principle of proportionality. The Commission should take this into account in revising its Information Providers Guide and in any other relevant work.

The background to the complaint

1. The complainant contacted the European Commission Representation in Croatia on Facebook and asked whether the Head of Representation had ever been a member of the communist party of Yugoslavia. The Representation did not reply but blocked the complainant on Facebook. The complainant therefore turned to the Ombudsman.

The inquiry



2. The Ombudsman opened an inquiry into the complaint and identified the following allegations and claims:

- 1) The European Commission Representation in Croatia failed to reply to the complainant on Facebook.
- 2) The Representation prevented the complainant from communicating with it on Facebook by blocking him. The Representation should enable him to communicate with it on Facebook.
3. In the course of the inquiry, the Ombudsman asked the Commission for a reply to the complainant, and to clarify its Facebook communication policy. The Representation then responded to the complainant and, in a separate letter to the Ombudsman, the Commission provided an explanation of its communication policy. The complainant sent comments on the Representation's response. Given the content of these comments, the Ombudsman included the assessment of the Representation's response in her inquiry and invited the Commission to improve its response. The Commission then sent a further response. In conducting the inquiry, the Ombudsman has taken into account the arguments and opinions put forward by all the parties.

Allegation that the Representation failed to reply but blocked the complainant on Facebook

Arguments presented to the Ombudsman

4. The complainant said that his request for information made on Facebook had been polite without any intention to hurt anyone's feelings or spread intolerance.
5. The Head of Representation sent the following reply to the complainant, following the Ombudsman's intervention:
 - The information requested by the complainant was of a strictly personal nature and the question was not connected to the work of the institutions. Therefore, the Representation decided not to provide him with any reply.
 - In accordance with Regulation 45/2001 on Data Protection [1] the EU institutions have a duty to protect their employees' personal data.
 - In accordance with the Staff Regulations, an employee should not be discriminated against on any grounds, including political opinion. The Representation referred to Article 1d(1) [2] , Article 11 [3] and 15 [4] of the Staff Regulations.
 - The Representation had no intention to limit the complainant's freedom of expression and explained that it regularly answers questions and enquiries on a variety of topics through different communication channels. The Representation would continue to answer questions relating to the work of the institutions.

6. The complainant commented on the Representation's reply as follows:



- By not responding, the Representation breached Article 41(4) [5] of the EU Charter of Fundamental Rights.
- The main reason for the complaint to the Ombudsman was that the Representation had apparently blocked him on Facebook (both comments and messaging). Blocking him breaches his freedom of expression (Article 11 of the EU Charter of Fundamental Rights).
- Since the Head of Representation is a public person, his affiliation with a political party cannot be seen as merely personal information. Even if the Staff Regulations do not prevent people with a communist background from working for the EU, it does nevertheless raise some ethical questions about the EU itself.

7. In a separate letter sent to the Ombudsman, the Commission clarified relevant aspects of its communication policy:

- The Commission receives on average 369 000 mentions per month on its central accounts on social media. It received 1.3 million mentions between August and October 2016 only. This does not include other accounts such as those of the Commissioners, Representations, Directorates General and Spokespersons.
- The Commission uses social media to support citizens in gathering information, knowledge and opinions in an easy and conversational manner. Social media serve to convey broader political messages and – if possible and relevant – to engage in dialogue with the citizens.
- As regards requests for information, “ *citizens are guided to the relevant information channels* ”. They can use letters, emails, telephone etc. The Commission’s Code of Good Administrative Behaviour governs the use of these means of communication. Considering the magnitude of comments and inquiries on social networks and in light of the administrative and budgetary burden that this would generate, the Commission considers that it would not be appropriate to apply the Code to social media. This burden would not be proportionate to the benefits expected, taking into account alternative communication channels.
- The Commission mentioned that it was working on an update of its Information Providers Guide to communicate transparently about its moderation policy on social networks.

8. In its further reply, the Commission informed the Ombudsman that “ *the Facebook profile of the European Commission Representation in Zagreb has been unblocked and is now accessible to everybody* ”. It sent a further reply to the complainant providing the following clarifications:

- The employment of the Heads of Representation is governed by the Staff Regulations which prohibit any form of discrimination, including on the basis of political views (Article 1.d of the Staff Regulations).
- In accordance with Article 11 [6] of the Staff Regulations, the Appointing Authority has to examine whether the candidate for an EU post has any personal interest such as to impair his independence or any other conflict of interest. To that end, the candidate has to inform the appointing authority of any actual or potential conflict of interest by completing a special form.
- The EU institutions and bodies have the duty to protect fundamental rights and freedoms of physical persons, especially their privacy rights (Regulation 45/2001). The Staff Regulations do not allow the EU institutions to identify an official based on his or her political beliefs. Because of these rules and because the information requested by the complainant was strictly personal and did not relate to the Representation’s work, the Representation decided not to answer the complainant’s question.



- The Commission is present on social media (Facebook, Twitter, Instagram etc) to enable easier and informal access to information for citizens. Social media are used for transmitting broader political messages and - where possible and relevant - for dialogue with citizens. The Facebook page of the Representation is open to all citizens for those purposes.

The Ombudsman's assessment

9. The Ombudsman points out that the Commission has now replied to the complainant's Facebook information request and informed the Ombudsman that the Representation's Facebook page has been unblocked. The Ombudsman agrees with the Commission's view that the requested information cannot be disclosed because it constitutes protected personal data within the meaning of Regulation 45/2001. [7] These aspects of the complaint can be therefore regarded as settled by the Commission.

10. However, in the light of the Commission's reply (paragraphs 7-8 above), the Ombudsman considers it useful to make a suggestion as regards communication with citizens by EU institutions, bodies and agencies via social media.

11. The Ombudsman first points out citizens exercise their freedom of expression on social media every day. It is on social media that citizens seek, exchange and criticize information, including information concerning the conduct of public affairs. That is why public institutions establish their presence on social media. However, when deciding to do so, the administration needs to bear in mind that the Charter and the European Code of Good Administrative Behaviour apply and that citizens therefore have the right to receive a reply.

12. Article 41(4) of the Charter reads as follows: "*Every person may write to the institutions of the Union in one of the languages of the Treaties and must have an answer in the same language.*" This provision necessarily implies **the right to a reply**. [8] It is in broad terms which clearly encompass all forms of written communication, regardless of the platform, medium or format. It therefore applies to communication via social media.

13. It follows that the Commission's Code should equally apply to the Commission's contacts on social media. Article 3(1) of the European Code of Good Administrative Behaviour, on which the Commission's Code is based, provides that "[t] his Code contains the general principles of good administrative behaviour which apply to **all relations of the institutions and their administrations with the public**, unless they are governed by specific provisions." (emphasis added). Article 17 of the European Code provides for an obligation to decide on "every request" and "answer letters" no later than two months from the date of receipt. These provisions too need to be interpreted in the light of the Charter and of present day circumstances, as referred to in paragraph 11 above.

14. The Ombudsman understands the practical difficulties the Commission could have if it were obliged to address every comment made on its Facebook page, but notes the right to a reply is not an absolute right. It may be subject to limitations, exceptions, qualifications or balanced with



other rights, governed by the principle of proportionality. [9] However, a clear request for information cannot simply be ignored. The Ombudsman suggests that the Commission take account of her comments in its work on updating its Information Providers Guide and any other relevant work.

Conclusion

The Ombudsman closes this case with the following conclusions [10] :

The Commission has settled the aspects of the case concerning the failure to reply and blocking the complainant on Facebook.

The Commission committed no maladministration as regards the substance of its reply to the complainant and the refusal to inform him of the political past of the Head of Representation.

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

Suggestion for improvement

The Commission should take into account the Ombudsman's comments on the right to a reply to matters raised with it via social media in its work on updating its Information Providers Guide and any other relevant work.

Emily O'Reilly

European Ombudsman

Strasbourg, 24/07/2017

[1] 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 and on the free movement of such data, OJ L 8, 12.1.2001

[2] The Representation quotes Article 1d(1) which reads as follows: “ *In the application of these Staff Regulations, any discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age, or sexual orientation shall be prohibited.* ”

[3] The Representation refers to the following part of Article 11 of the Staff Regulations: “ *An*



official shall carry out his duties ... solely with the interests of the Union in mind. ”

[4] The Representation refers to the following part of Article 15 of the Staff Regulations: “ *An official who intends to stand for public office shall notify the Appointing Authority. ”*

[5] Article 41(4) of the Charter reads as follows: “ *Every person may write to the institutions of the Union in one of the languages of the Treaties and must have an answer in the same language. ”*

[6] See footnote 3 above.

[7] Article 2(a) reads, in relevant part, as follows: “ *“ personal data’ shall mean any information relating to an identified or identifiable natural person (...)* ”

[8] http://ec.europa.eu/justice/fundamental-rights/files/networkcommentaryfinal_en.pdf [Link] ; page 332, last sentence. The Court of Justice of the European Union provides the only authoritative interpretation of EU law.

[9] In broad terms the proportionality and necessity test can be referred to as follows: (i) Is the interference prescribed by a clear and accessible law?; (ii) Is there a legitimate aim to the interference?; (iii) Is the interference proportionate to the identified legitimate aim and necessary in a democratic society?; (iv) Is there protection against arbitrary exercise of this interference?

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