

## **Decision in case 717/2017/THH on the European Defence Agency's handling of a request for public access to documents related to contacts with industry on the Preparatory Action on Defence Research and the European Defence Research Programme**

Decision

**Case 717/2017/THH - Opened on 20/06/2017 - Decision on 04/07/2018 - Institution concerned** European Defence Agency ( Settled by the institution ) |

The case concerned *the European Defence Agency's (EDA) failure to grant public access to documents relating to contacts with the defence industry in relation to research on defence and the European Defence Research Programme.*

During the Ombudsman's inquiry the EDA granted the complainant access to the requested documents and made significant improvements in its procedures and systems for handling and responding to access to documents requests.

The Ombudsman therefore found that the case was settled by the EDA and closed the case.

### **Background to the complaint**

1. On 15 February 2017, the complainant, acting on behalf of a Belgian non-governmental organisation, submitted a request to the European Defence Agency (EDA) for public access to the following documents, under Regulation 1049/2001 [1] : “ *a list of meetings of EDA officials and/or representatives and representatives of individual companies, including lobby consultancies and law firms, and/or industry associations, in which the upcoming Preparatory Action (PA) on Defence Research and the European Defence Research Programme (EDRP) were dealt with; minutes and other reports of these meetings; all correspondence (including emails) between EDA officials and/or representatives and representatives of individual companies (including lobby consultancies and law firms) and/or industry associations, in which the PA on Defence Research and the EDRP were dealt with*”; and “*a list of invitees to the annual EDA conference of 2016 and the organisations/institutions/ companies these invitees represent*”.

2. The complainant received no response and therefore sent, on 9 March 2017, a letter to the EDA reminding it of his request. After still receiving no response, the complainant filed a request



for review, a so-called “confirmatory application”, on 13 March 2017. The complainant heard nothing in response.

3. The complainant turned to the European Ombudsman on 28 April 2017.

## The inquiry

4. The Ombudsman opened an inquiry into the European Defence Agency’s failure to respond to the complainant’s request for public access to documents on lobbying on the Preparatory Action on Defence Research (PADR) and the European Defence Research Programme (EDRP). Whilst the inquiry was ongoing, the EDA responded to the complainant and granted partial access to the requested documents. The Ombudsman then examined the EDA’s handling of the complainant’s request for public access to documents.

5. In the course of her inquiry, the Ombudsman’s inquiry team inspected the EDA’s files and held meetings with the representatives of the EDA concerning the handling of the complainant’s request. The inquiry team checked the redactions which had been made to the documents in relation to which partial access had been granted and explored options for resolving the matter. The inquiry team also reviewed the systems and procedures required to ensure the EDA’s proper implementation of Regulation 1049/2001.

## The complainant’s request for public access to documents

### The Ombudsman's assessment

6. The Ombudsman notes that the complainant filed a request, following up with a reminder to the EDA, and then filed a request for review, a so-called “confirmatory application”. At no point did he receive a response from the EDA. As such, the EDA failed to comply with Regulation 1049/2001, which sets a time limit of 15 working days in which access to a document shall either be granted (fully or partially) or refused. A refusal to grant public access needs to be provided in writing and to be reasoned. [2] The EDA did not extend the time limit available to it, an opportunity which exists in the case of a large document or a large number of documents. In such a case, an institution has the possibility to extend the deadline for an additional 15 working days, provided reasonable justification and timely notification are provided to the applicant. [3]

7. Following the Ombudsman’s intervention, the EDA responded to the complainant’s request on 12 July 2017. In its response, the EDA granted *partial* public access to the requested documents, disclosing to the complainant documents identified under the first, second and fourth parts of his request. As regards the third part of the complainant’s request, the EDA found it related to a very large number of documents, the identification of which would constitute an excessive administrative burden on the EDA, since it would require individual screening of the



EDA's industry-specific correspondence by the relevant staff members. As a result, the EDA requested that the complainant clarify this part of the request, first on 12 July 2017 and, subsequently, after the complainant's initial refusal to make the clarification, on 26 July 2017.

8. Having initially refused to clarify the scope of the requested documents, the complainant did so on 26 July 2017. Based on this clarification, the EDA identified documents which related to this revised third part of the complainant's request and provided access to them on 7 September 2017.

9. On 7 September 2017, having received these documents, the complainant indicated that some meetings were not included in the EDA's response. The EDA clarified that minutes were not taken of the meetings in question, explaining that one of the meetings was informal, and notes on the other meeting had not been provided to the EDA.

10. Against this background, whilst the initial failure of the EDA to respond to the complainant's request for public access to documents constituted maladministration, the Ombudsman notes that, in the course of the inquiry, the EDA went on to provide in good faith public access to the requested documents. Furthermore, the EDA expressed its willingness to engage with the complainant to resolve the request. In the light of this, the Ombudsman considers that the EDA has settled the case.

## **The European Defence Agency's systems and procedures for handling requests for public access to documents**

### **The Ombudsman's assessment**

11. In the course of her inquiry, the Ombudsman found that, at the time of receiving the complainant's request for access to documents, the EDA's system for handling such requests could be improved. There was no reliable system for recording requests made by e-mail, resulting in the Agency becoming aware of the complainant's request only through the Ombudsman's intervention. The difficulties experienced in applying Regulation 1049/2001 within the EDA were the result of various issues, including a lack of resources. It was also, in part, related to the nature of the EDA's work, namely the sphere of defence and security. This context, which entails the EDA handling information which is sensitive and confidential, had a significant impact on the Agency's handling of documents and information.

12. At the time of the Ombudsman's inspection, the proposals for procedures to implement Regulation 1049/2001 were still under discussion within the Agency. However, since the beginning of the Ombudsman's inquiry, the EDA has made significant improvements and progress in its system for handling requests for public access to documents. Following good cooperation between the EDA's top management and the Ombudsman's inquiry team, the Agency has adopted a new, comprehensive policy on access to documents, set out in Decision



17/15 of 9 November 2017. Furthermore, the EDA included in its 2017 Annual Report [4] a chapter on access to documents, introducing this new policy and setting out the work that has been done in this area during the relevant year. In addition to this, the EDA has taken significant steps to raise awareness within the Agency of its obligations concerning access to documents, including through regular training for staff. The Ombudsman welcomes these positive developments and encourages the EDA to continue to follow good administrative practises in its handling of public access to documents requests.

## Conclusion

Based on the inquiry, the Ombudsman closes this case with the following conclusion:

**The Ombudsman closes the case as settled by the European Defence Agency.**

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

Emily O'Reilly

European Ombudsman

Strasbourg, 04/07/2018

[1] Regulation 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents, available at

<http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32001R1049&rid=1> [Link].

[2] Article 7(1) of Regulation 1049/2001.

[3] Article 7(3) of Regulation 1049/2001.

[4] European Defence Agency's Annual Report 2017, available at

<https://www.eda.europa.eu/docs/default-source/eda-annual-reports/eda-2017-annual-report-final.pdf> [Link]