

Recommendation of the European Ombudsman in case 934/2018/RM on the European Commission's failure to deal with a request for access to briefing documents for the Commissioner for Budget and Human Resources within an acceptable time frame

Recommendation

Case 934/2018/RM - **Opened on** 31/05/2018 - **Recommendation on** 12/07/2018 - **Decision on** 04/12/2018 - **Institution concerned** European Commission (Maladministration found) |

The case concerned a request for access to briefing documents prepared for meetings of the Commissioner for Budget and Human Resources and his advisors with third parties. The Commission has not taken a decision on the request after more than a year.

In the course of the inquiry, the Commission indicated that it was still not in a position to take a decision. The Ombudsman found that this delay constituted maladministration, and recommended that the Commission take a decision without delay and provide the complainant with a list of all the documents covered by his request.

Made in accordance with Article 3(6) of the Statute of the European Ombudsman [1]

Background to the complaint

1. On 3 May 2017, the complainant - a German citizen - requested access to briefing documents prepared for meetings of the Commissioner for Budget and Human Resources and his team of advisors ('cabinet') with third parties between 1 September 2016 and 3 May 2017 [2]. The request was made in accordance with the EU's rules on public access to documents [3] (Regulation 1049/2001). The Commission's reference is Gest Dem 2017/2627.

2. On 29 May 2017, the European Commission wrote to the complainant stating that it was extending the time limit for dealing with his request by 15 working days, as provided for under Regulation 1049/2001. This was because of the size of the files it needed to examine to retrieve the requested documents.

3. On 20 June 2017, the Commission wrote to the complainant to propose a 'fair solution'. In particular, it asked if he would agree to narrow the scope of his request, as the "administrative



burden” involved in analysing all the files in question was “too high” for the cabinet of the Commissioner.

4. In response, the complainant asked the Commission to provide him with a list of the documents covered by his request within a defined time frame [4] . He would then indicate which documents he was seeking to access, taking into account the exceptions provided for under Regulation 1049/2001 [5] .

5. Not having received a response from the Commission by 30 June 2017, the complainant assumed it was implicitly denying his request. Accordingly, he requested that the Commission review its decision (making a so-called ‘confirmatory application’, as provided for under Regulation 1049/2001).

6. On 25 July 2017, the Commission wrote to the complainant stating that it was extending the time limit for dealing with his confirmatory application by 15 working days, as provided for under Regulation 1049/2001.

7. On 17 August 2017, the Commission stated that it was still not able to take a decision on the request due to “internal consultations”.

8. In response, the complainant asked the Commission to indicate when it would be in a position to take a decision. The Commission replied that the delay was due to the scope of the request and that it was not able to indicate how long the related internal consultation would take.

9. On 20 March 2018, the complainant asked for an update from the Commission, which responded that it had not concluded assessing the documents concerned by the request but would do so “as soon as possible”.

10. On 22 May 2018, not having heard from the Commission, the complainant turned to the Ombudsman

The inquiry

11. The Ombudsman opened an inquiry into the time taken by the Commission to respond to the request for access to documents.

12. In the course of the inquiry, the Ombudsman wrote to the Commission urging it to take a decision on the request and, in the interim, provide the complainant with a list of the documents covered by his request. In response, the Commission indicated that it was preparing its reply to the complainant’s confirmatory application and “hoped[d]” to send this “before the summer break”.



The Ombudsman's assessment leading to a recommendation

13. It is now over a year since the complainant first submitted his request for access to documents, and the time limits and extensions provided for under Regulation 1049/2001 have long since elapsed. It is understandable that he considers the delay by the Commission, as well as the failure to respond to his proposal for a 'fair solution', to be unreasonable. Indeed, the time taken to deal with the confirmatory application in question is particularly egregious.

14. In its reply to the Ombudsman, the Commission did not offer any guarantee that it would reply to the complainant's confirmatory application imminently.

15. Based on the above, the Ombudsman finds that the time taken by the Commission to deal with the complainant's request for access to documents within an acceptable time frame clearly constitutes maladministration. She therefore makes a corresponding recommendation below, in accordance with Article 3(6) of the Statute of the European Ombudsman.

16. The Ombudsman's inquiry to date has been concerned only with the Commission's failure to make a decision on this request. In due course, further inquiries may be necessary in the event that the complainant is not satisfied with the substance of the decision to be taken.

Recommendation

On the basis of the inquiry into this complaint, the Ombudsman makes the following recommendation to the European Commission:

The Commission should take a decision on the complainant's request for access to documents and confirmatory application without further delay. As an interim step, it should immediately provide him with a list of the documents covered by his request.

The Commission and the complainant will be informed of this recommendation. In accordance with Article 3(6) of the Statute of the European Ombudsman, the Commission shall send a detailed opinion by 15 October 2018.

Emily O'Reilly

European Ombudsman

Strasbourg, 12/07/2018



[1] Decision of the European Parliament of 9 March 1994 on the regulations and general conditions governing the performance of the Ombudsman's duties (94/262/ECSC, EC, Euratom), OJ 1994 L 113, p. 15.

[2] The complainant specified that he was referring to the meetings for this period, which are listed online under the Commission's 'transparency initiative':

<http://ec.europa.eu/transparencyinitiative/meetings/meeting.do?host=f24e4f06-d181-4f58-9604-3aaf3ce391ea>

[Link] and

<http://ec.europa.eu/transparencyinitiative/meetings/meeting.do?host=595cf53f-c018-4fc8-afa0-9d66c289795c&d-66>

[Link].

[3] 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.

[4] 45 working days for the documents pertaining to the Commissioner himself and 60 days for those pertaining to his cabinet.

[5] Article 4 of Regulation 1049/2001 provides for certain exceptions under which an institution can refuse access to certain documents or parts thereof.