Euroopan oikeusasiamies

Päätös asiassa 1050/2017/TE, joka koskee Euroopan komission tapaa käsitellä pyyntöä tutustua komission jäsenen ja edunvalvontayrityksen välisiä yhteyksiä koskeviin asiakirjoihin

Päätös
Kanteluasia 1050/2017/TE - **Tutkittavaksi otetut kantelut, pvm** 10/07/2017 - **Päätökset, pvm** 20/07/2018 - **Toimielin, jota kantelu koskee** Euroopan komissio (Ei hallinnollista epäkohtaa) |

Asia koski pyyntöä tutustua kaikkiin komission jäsenen kabinetin säilyttämiin asiakirjoihin, joissa käsiteltiin komission jäsenen yhteyksiä edunvalvontayritykseen. Komissio lykkäsi vastaamista kantelun tekijälle useita kuukausia. Oikeusasiamiehen puututtua asiaan komissio myönsi osittaisen tutustumisoikeuden seitsemään edunvalvontayrityksen lähettämään sähköpostiin.

Oikeusasiamiehen tutkintaryhmä tutki asiaankuuluvat asiakirjat, jolloin ilmeni, että yksi kantelun tekijän pyynnön kohteena olleista asiakirjoista puuttui. Tämän jälkeen komissio myönsi tutustumisoikeuden puuttuvaan asiakirjaan. Siitä syystä oikeusasiamies katsoi, että komissio oli ratkaissut kantelun tämän näkökohdan.

Oikeusasiamies totesi, että komission viivästynyt vastaus kantelun tekijän pyyntöihin rikkoo menettelyllisiä vaatimuksia. Hallinnollisen epäkohdan toteaminen ja sitä koskevan suosituksen antaminen ei kuitenkaan olisi tarkoituksenmukaista tässä nimenomaisessa tapauksessa. Tämän vuoksi oikeusasiamies lopetti asian käsittelyn.

Background to the complaint

1. On 19 April 2017, the complainant, who is an investigative journalist, requested access to all documents held by the ‘cabinet’ [1] of a European Commissioner regarding any contacts with a named lobbying firm, under the EU rules on public access to documents (hereafter ‘Regulation 1049/2001 [2]).

2. The complainant received confirmation from the Commission´s Secretariat-General on 21 April 2017 that his request was registered (under the internal reference number GestDem 2017/2383). On 24 April 2017, the Commission’s Directorate-General for Communications Networks, Content and Technology (DG CONNECT) also acknowledged that it had received his

request (and referred to the same reference number).

3. Since the complainant did not receive a response from either Commission department on his request within the time limit set out in Regulation 1049/2001, he took this to mean they were implicitly refusing access. As a result, the complainant asked the Commission departments to review their decisions (making what is known as a 'confirmatory application' under Regulation 1049/2001).

4. On 18 May 2017, DG CONNECT wrote to the complainant to explain that it was not able " *to identify concrete documents which would correspond to [his] request* ". It asked the complainant to clarify the request. It stated that the 15 working days for handling his request would begin only once it had received the requested clarifications.

5. The complainant replied on the same day, reiterating that his request for access related to all documents held by the Commissioner's cabinet concerning contacts with the lobbying firm in question.

6. On 14 June 2017, the complainant turned to the Ombudsman as he had received no further reply from the Commission.

The inquiry

7. The Ombudsman opened an inquiry into the following aspects of the complaint:

1) The Commission wrongly rejected the complainant's request for access to documents; and

2) The Commission failed to reply to the complainant's request within the time limits prescribed by Regulation 1049/2001.

8. In the course of the inquiry, the Ombudsman asked the Commission to reply to the complainant's request, as she considered it to be sufficiently precise.

9. The Commission replied to the Ombudsman on 31 July 2017, stating that, due to a " *communication error between Commission departments* ", the complainant's request for review was registered on 11 July 2017 only. It added that, given the " *sensitivity of the matter* ", the Commission was not in a position to take a decision before September.

10. On 3 and 22 August 2017, the Commission extended the deadline for replying to the complainant's request for review.

11. On 21 November 2017, the Commission replied to the request for review, stating that it had identified seven emails with annexes falling within the scope of the complainant's request. Since all documents originated from third parties, the Commission explained that it had been obliged to consult those third parties, including the lobbying firm [3] . Since the firm in question was

opposed to the Commission disclosing the documents, the Commission could only grant access to the annexes originating from other third parties at that point, with personal data redacted.

12. However, the Commission added that it had decided to also grant partial access to the other documents originating from the lobbying firm. Before the complainant could access these documents, the Commission first had to give the lobbying firm the opportunity to challenge its decision. It stated that, if the lobbying firm did not challenge its decision within ten working days, the Commission would then forward the redacted documents to the complainant.

13. On 12 December 2017, the Commission provided the complainant with the remaining documents, that is, the emails originating from the lobbying firm, with personal data redacted.

14. In his comments on the Commission's reply, the complainant expressed concerns that the Commission had identified only emails originating from the lobbying firm as falling within his request. He questioned why the Commission had not identified any replies to those emails from the Commissioner's cabinet, nor had it mentioned any meetings.

15. In March 2018, the Ombudsman's inquiry team met with the Commission and inspected the documents that the Commission identified as relevant to the request. At the meeting, the Commission's representatives explained that the Commission had originally identified seven documents as falling within the scope of the complainant's request. After careful re-examination, following the Ombudsman's intervention, the Commission considered that one other document falls within the scope of the request. The Commission representatives agreed with the Ombudsman's inquiry team that the Commission should review the request, with a view to considering whether this document should be disclosed.

16. On 16 May 2018, the Commission granted access to the additional document identified during the inspection, with personal data redacted.

17. The Ombudsman's decision takes into account the arguments and views put forward by the parties.

The Ombudsman's assessment

Failure to release the requested documents

18. Following the Ombudsman's intervention, the Commission dealt with the complainant's request and eventually granted partial access to seven emails with annexes, with personal data redacted.

19. The Commission then released an additional document that had been identified as falling within the scope of the complainant's request during the inspection meeting with the Ombudsman's inquiry team.

20. The Ombudsman finds that, by granting appropriate partial access to these documents, the Commission settled this aspect of the complaint.

Failure to deal with the request in a timely manner

21. The Ombudsman notes that Regulation 1049/2001 requires EU institutions to ask an applicant to clarify requests for public access to documents that are not " *sufficiently precise* " [4] . It also allows for an extension of the time limit to reply to access requests " *in exceptional cases, for example in the event of an application relating to a very long document or to a very large number of documents* " [5] . In such cases, the applicant must be notified in advance and " *detailed reasons* " [6] must be given. Where the institution fails to reply within the prescribed time limit, the applicant is entitled to submit a review request [7] .

22. In this case, the Ombudsman considered the request of the complainant sufficiently precise for the Commission to reply to it. Furthermore, the request did not concern very long documents, nor a very large number of documents. Rather, it concerned a confined number of emails and their annexes.

23. The Ombudsman also notes that the Commission failed to comply with its own commitments of 3 and 22 August 2017, in which it assured the complainant that his requests would be dealt with and that he would receive a response in due time. However, the complainant was not granted partial access to the seven emails and their annexes until November/December 2017.

24. At the inspection meeting, the Commission representatives explained that the Commissioner's cabinet had to deal with several (six or seven) requests for access at the same time, all of which were very complex and generated a lot of documents that had to be examined. Moreover, the Commission had to overrule the lobbying firm, which objected to the release of the documents, which lead to a further delay.

25. The Ombudsman considers that these explanations do not fully justify a delay of several months in releasing the requested documents.

26. The Ombudsman thus considers that the failure to comply with the time limits was in breach of the procedural requirements of Regulation 1049/2001. The Ombudsman wishes to make it clear that the Commission must endeavour to comply fully with the deadlines and provisions set out in the EU rules on access to documents. Failure to do so amounts to a denial of citizens' rights. However, she takes the view that a formal finding of maladministration with a recommendation would not now serve any useful purpose in this particular case.

Conclusion

The Ombudsman therefore closes this case with the following conclusion:

The Commission settled the complaint by granting appropriate partial access to the requested documents, but failed to comply with the procedural requirements of Regulation 1049/2001.

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

Emily O'Reilly

European Ombudsman

Strasbourg, 20/07/2018

[1] In the European *Commission* , a *'cabinet'* is the personal office of a European *Commissioner* . Its role is to give political guidance to its *Commissioner* .

[2] 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 L 145, 31.5.2001 (Regulation 1049/2001)

[3] Third parties must be consulted according to Article 5(6) of Commission Decision of 5 December 2001 amending its rules of procedure (2001/937/EC, ECSC, Euratom).

[4] Article 6(2) of Regulation 1049/2001.

[5] Articles 7(3) and 8(2) of Regulation 1049/2001.

[6] Articles 7(3) and 8(2) of Regulation 1049/2001.

[7] Article 7(4) of Regulation 1049/2001.