



Review of the Ombudsman's Fast-Track procedure

**Three years on - a faster way of
handling public access to
documents complaints**

December 2020

EN



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1. Executive summary

One of the principles underpinning the EU's rules on public access to documents is that requests should be handled promptly. The information may be required quickly and can lose its relevance to the requester if delays occur. The Ombudsman too wanted to ensure that her Office deals with complaints in this area as swiftly as possible. In February 2018, she therefore introduced a Fast-Track procedure for dealing with public access complaints.

Three years on, this review aims to assess how the procedure is working in practice. The headline results are positive: the Ombudsman's Office now deals with public access complaints much faster - **the average time for handling public access complaints is now one third what it was before the procedure was introduced.**

It is difficult to say whether this faster process has led to a doubling of **public access complaints received by the Ombudsman during this time** but it is, in any case, a positive development.

The **indicative timeline of 40 working days for the Ombudsman to conduct her substantive assessment is a challenge in two thirds of Fast-Track cases.** This results partly from at times overstretched resources, and partly from slow responses from the institutions. It may be worth reflecting on whether to increase this indicative timeline, to provide greater certainty for complainants, whilst avoiding the use of such an extension to prompt even further delays.

The Ombudsman's Office also consulted individuals and organisations who have used the procedure. While generally satisfied with the experience, respondents also called for greater clarity on what to expect during the processing of access to documents complaints. This indicated some **confusion as to what is and is not considered as a Fast-Track complaint** within the broader category of public access cases handled by the Ombudsman. This is worth further reflection by the Office including an assessment as to whether it would be better simply to say that the Ombudsman attempts to deal with all access to documents complaints as swiftly as possible, based on an indicative timeline. The designation of the new process as 'Fast Track' may have helped the office to focus on how to streamline the former process but now that that has been achieved, it may no longer be useful to afford it a special designation.

The Ombudsman has already addressed some of the issues identified in this review: **the team dealing with public access cases has been expanded, while clearer information is now given on the website** about our handling of public access complaints. It may now be necessary to **adopt more definitive guidelines on when to grant institutions deadline extensions**, given the concerns raised by stakeholders on this.

In parallel to this Fast-Track review, the Ombudsman is conducting an internal audit on the outcome of public access to documents complaints. She hopes to report on that soon.



2. Overview

a. Background

Persons seeking public access to documents held by an EU institution typically need the documents as quickly as possible in order for them to be relevant to the purpose for which they intend to use them. They therefore expect the request to be handled swiftly. This is true for journalists, for civil society organisations (CSOs) or for citizens that want to engage in the EU's decision-making process. Businesses and researchers also seeking information relevant to their work.

If access is not prompt, the documents can lose their usefulness. The European Ombudsman has consistently argued that **access delayed can be access denied**.

Drawing on the principle underpinning the EU's rules on public access¹ that requests should be handled promptly, the Ombudsman wanted to ensure that her Office deals with such complaints as swiftly as possible. She therefore introduced a Fast-Track procedure for dealing with public access complaints. Following a trial period beginning in September 2017, the Ombudsman formally launched the 'Fast-Track procedure' for access to documents complaints in February 2018.

b. Fast-Track designation

The Ombudsman does not designate all public access to documents complaints as 'Fast-Track'. The complaints dealt with under the Fast-Track procedure concern those in which the institution has refused public access to a document or where the institution has not replied to a request for access to documents within the time limit and thus implicitly denied access.

It has proved difficult or unnecessary to use the Fast-Track procedure to deal with other public access cases. Examples include cases in which it is unclear whether the requested documents exist or in which further clarifications are needed before the Ombudsman's inquiry team can inspect the documents in question. Where it is clear from the outset that, in order to try to achieve redress for the complainant, it may be necessary to carry out a more in-depth investigation, the Fast-Track procedure is not used.²

This review has revealed that it is not always clear to complainants which cases are dealt with by the Fast-Track procedure. This issue will be addressed.

¹ For most EU institutions, bodies, offices and agencies, the relevant rules on public access to documents are contained in Regulation 1049/2001. This principle is reflected in the Regulation, which states that applications for access to documents shall be handled promptly, and in any event within 15 working days of the registration of a request. The Regulation can be found at: <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=celex%3A32001R1049>.

² It may also be necessary not to designate a case as 'Fast-Track' if an institution, due to its structure, requires its position to be formally requested again in addition to its original response to the applicant.



c. How the Fast-Track procedure works

On receiving a complaint, the Ombudsman's Office registers the complaint and sends an acknowledgement of receipt. Within **five working days** from registration, the Ombudsman should take a decision on whether an inquiry can be opened under the Fast-Track procedure. This depends on several factors, including whether a complaint is admissible³ or whether the Ombudsman finds grounds to open an inquiry.⁴

After opening an inquiry, the Fast-Track procedure includes a number of investigative steps, starting with the timely inspection of the documents in question and, in certain cases, a meeting with the relevant institution. The Ombudsman has made arrangements with the EU institutions allowing her rapid access to the documents for inspection (within 5 working days of opening the inquiry) and quickly to receive possible additional comments by the institutions (within 15 working days).

The Ombudsman aims to reach an outcome in Fast-Track cases **within 40 working days** (from when the complaint was registered). During this time, the Ombudsman's inquiry team inspects the documents in question and may consult further with the institution or body.

The Ombudsman then determines if there is scope to achieve a swift solution to the issue, by proposing that the institution disclose (parts of) the documents.

If the Ombudsman finds the EU institution should not have refused access to the document(s), she may find maladministration and recommend that it grant either full or partial access to the documents in question.

3. Performance review

The following statistics show the impact of the Fast-Track procedure on processing times and the development in terms of number of cases. This section contains statistics on the handling of all public access cases and not exclusively those dealt with under the Fast-Track procedure.

a. Number of complaints

From 1 September 2017 until 31 August 2020, the Ombudsman dealt with 252 complaints in the area of public access to documents. In 189 of these complaints, the Ombudsman opened an inquiry.

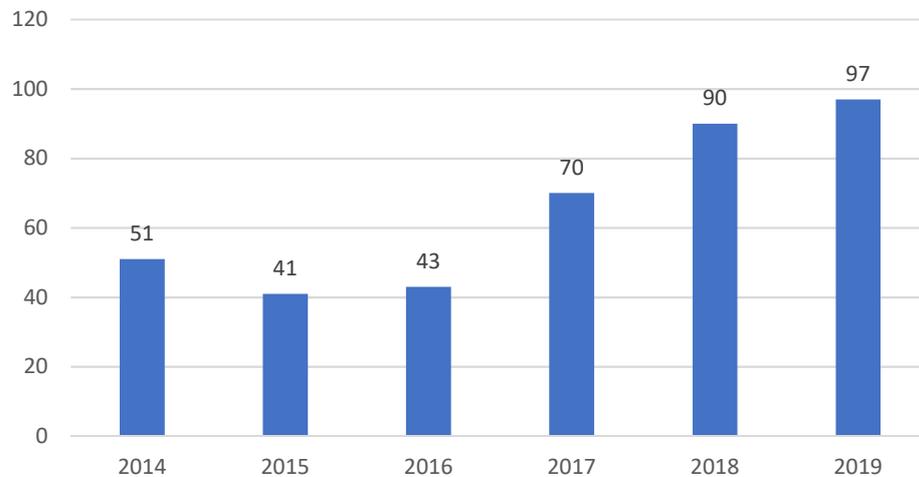
The number of public access related complaints almost doubled from an average of 45 per year in the years 2014 to 2016 to an average of 82 per year between 2017 and 2019, when the Fast-Track procedure was in place.

³ To be admissible, complaints must fulfil certain conditions set out in Article 2 of the [Ombudsman's Statute](#). These include, among others, the requirement to make a confirmatory application for access to documents with the respective institution before making a complaint.

⁴ As an example, the Ombudsman may find that another body is better placed to deal with the complaint (Article 3.3 of the Ombudsman's [implementing provisions](#)).

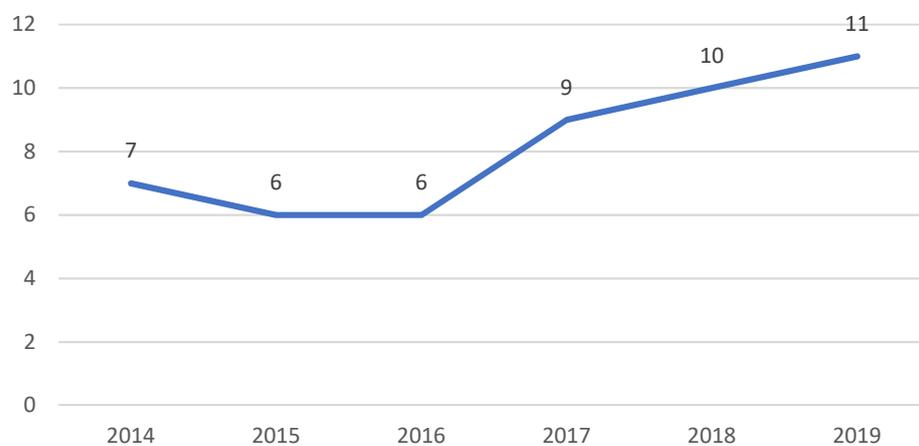


Number of access to documents complaints



The overall yearly number of complaints that the Ombudsman received increased by about 20% between 2014 and 2019. The share of complaints related to access to documents increased significantly between 2016 and 2017, when the Fast-Track procedure was introduced.

Share of access to documents complaints
(% of all complaints)



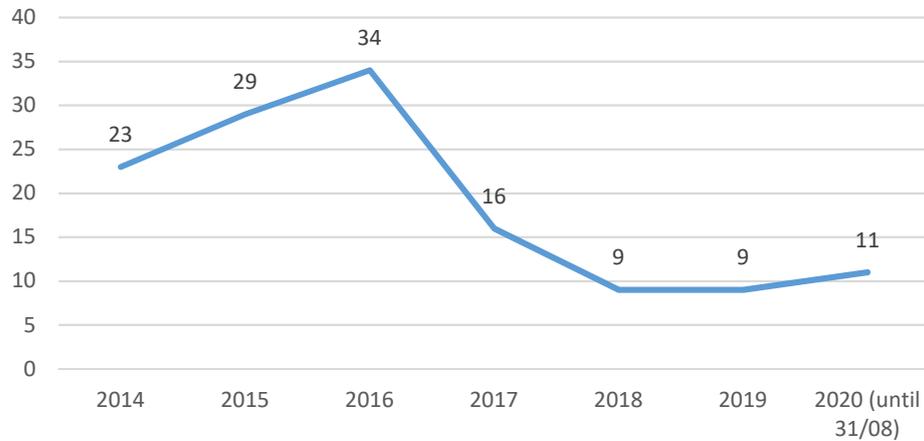
b. Average processing time

The average time needed to process public access cases has been substantially reduced since the introduction of the Fast-Track procedure. The three key stages of complaint-handling are all three times faster since the introduction of the Fast-Track procedure: taking the admissibility decision, adoption of the Ombudsman's assessment of the matter and definitive closure of the case.

The average time for 'admissibility decisions' for all complaints related to public access to documents is over three times faster now than before the procedure was introduced.

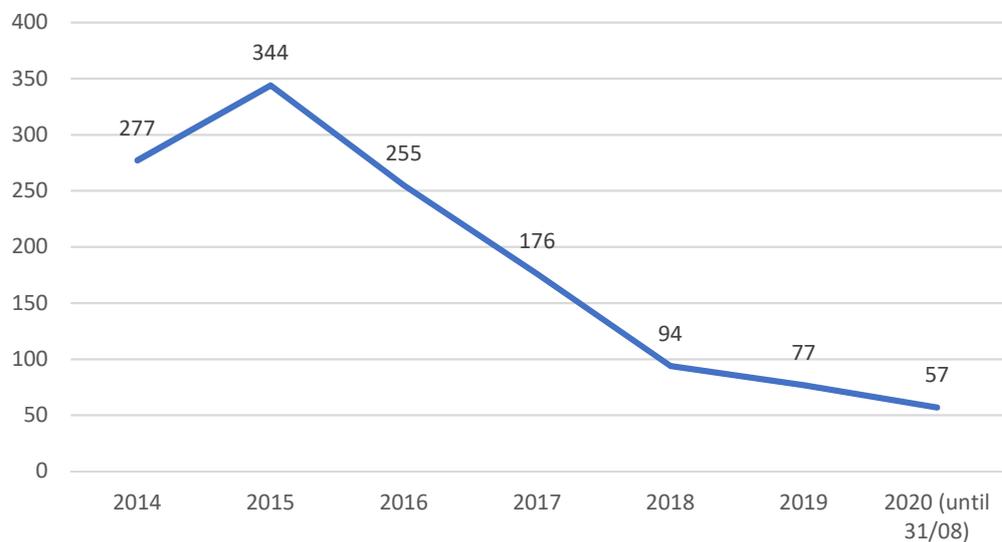


Average working days until admissibility decision
(all access to documents complaints)



Under the Fast-Track procedure, the Ombudsman endeavours to ensure her inquiries lead to a decision or outcome (such as a solution proposal or recommendation) within 40 working days. The average time within which access to documents inquiries reach an outcome is now one third of what it was before the procedure was introduced in 2017.

Average working days until decision or other outcome
(all access to documents inquiries)



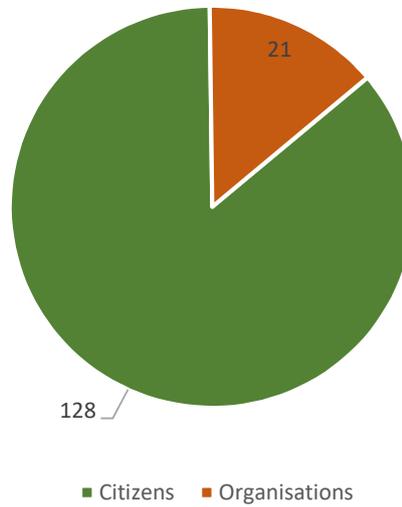
c. Fast-Track statistics

Between 1 September 2017 and 31 August 2020, the Ombudsman dealt with 148 complaints under the Fast-Track-procedure. In 119 of these complaints, she opened an inquiry.

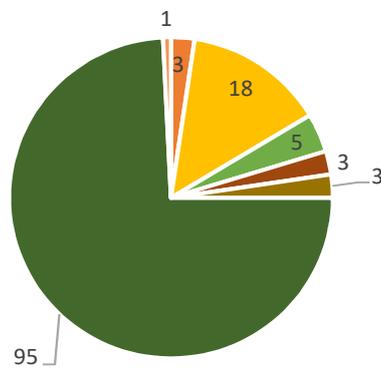


i. Who are the complainants?

Type of complainant

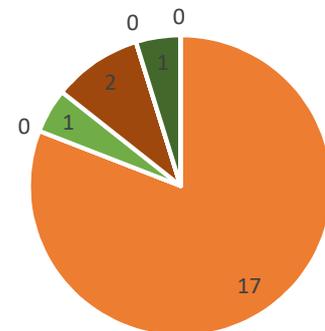


Citizens



- Law
- Media
- Academic/research
- MEP
- EU staff
- N/A
- Other

Organisations

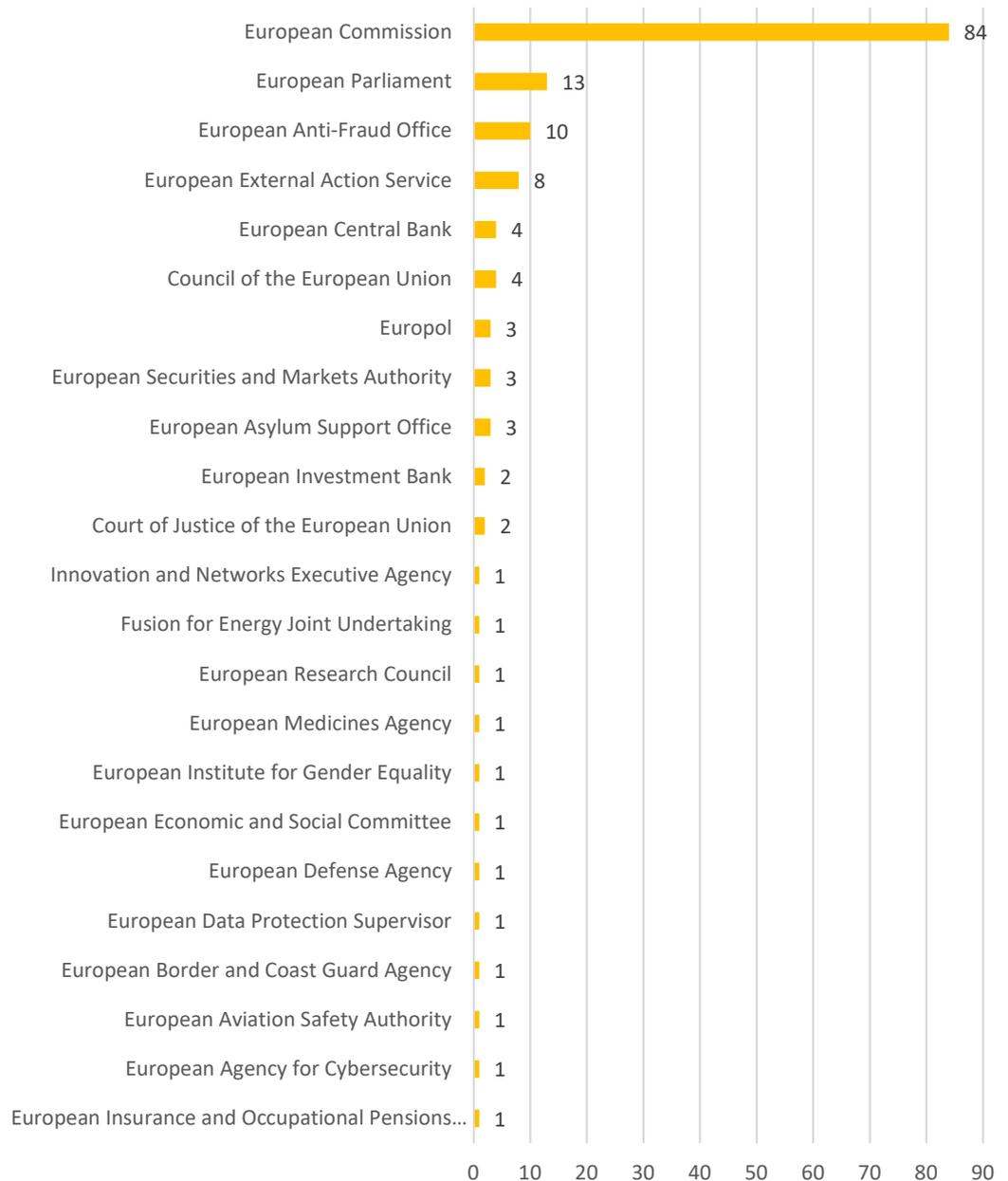


- Association, organisation, NGO
- Citizens' initiative
- Citizens groups
- Company/firm
- Public institution
- Other
- N/A



ii. Which institutions were concerned?

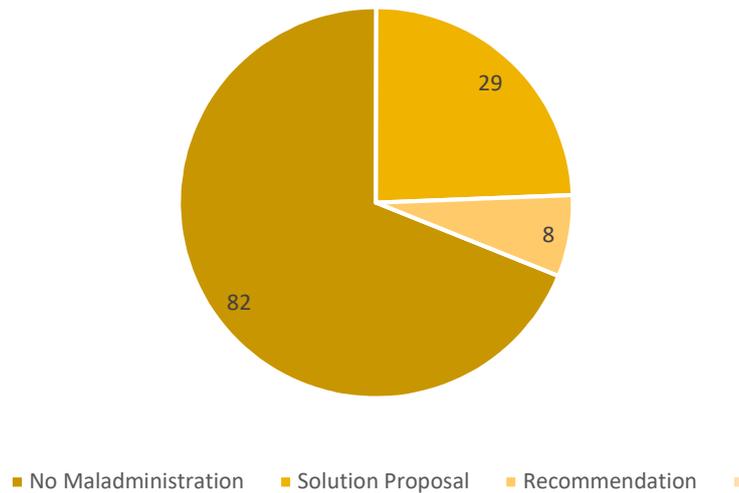
A large majority of complaints that were handled under the Fast-Track procedure were made against the European Commission. The rest were spread among other institutions, bodies, offices and agencies.





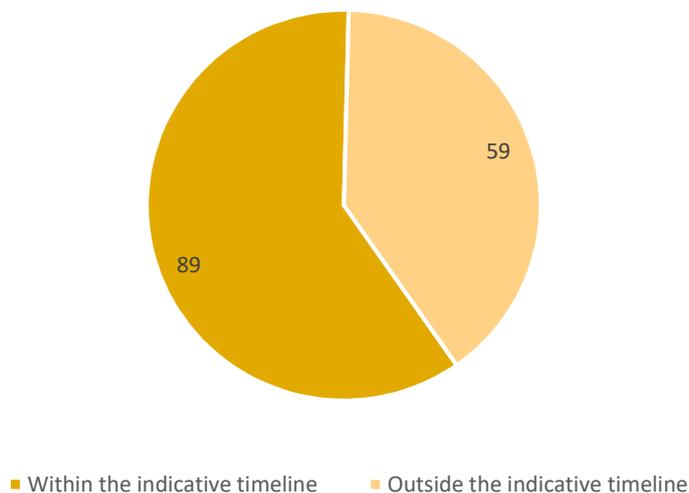
iii. Outcome

Most inquiries under the Fast-Track procedure were closed with a finding of no maladministration. In about 30% of her Fast-Track inquiries, the Ombudsman made a solution proposal or a recommendation.



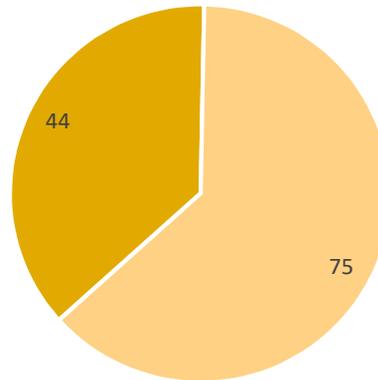
iv. Complaints handled within the indicative timeline

Overall, in two thirds of the Fast-Track cases, the **admissibility decision** was taken within the indicative timeline of five working days. For Fast-Track cases, the average time until the decision on admissibility was **6 working days**. The Office target for taking admissibility decisions in non-Fast-Track cases is 30 calendar days. This shows that, while the Office did not meet the 5 working day target for all Fast-Track cases, in most cases, the admissibility decision was taken much faster than in non-Fast-Track cases.





In 36% of all Fast-Track inquiries, the Ombudsman's assessment⁵ was issued within the indicative timeline of 40 working days. In 55% of all complaints, an assessment was issued within 60 working days. Overall, for Fast-Track inquiries, the average time to reach an outcome was 67 working days.



■ Within the indicative timeline ■ Outside the indicative timeline

4. Stakeholders' views

In the context of reviewing the performance of the Fast-Track procedure, the Ombudsman's Office consulted various stakeholders that have direct experience of the procedure, with a view to getting feedback. This included both complainants (from civil society, academia, and the media) and the Commission, as the main EU institution that is the subject of Ombudsman access to documents inquiries.

a. Awareness of the Fast-Track procedure

In general, almost all those consulted were aware of the main aims and guiding principles of the procedure. There was some uncertainty as to whether the procedure applies to all access to documents complaints.

b. Perception of Fast-Track in practice

For those who had experience of complaints before and after the procedure was introduced, they considered that the Ombudsman's handling of complaints had become quicker and more streamlined. In general, those consulted found the communication with the Ombudsman's Office to be effective and helpful, enabling them to follow the process.

⁵ Solution proposal, recommendation or closing decision.



The biggest perceived impact appears to be in getting the institution to deal more swiftly with the request: getting things moving where there is a delay. In general, correspondents saw the Fast-Track procedure as an effective way of ensuring that there is no undue delay on the part of the institutions in dealing with public access requests. Where delays occurred, it was, however, not always immediately apparent why this was the case. Some respondents noted that the Ombudsman often grants the institutions deadline extensions even where there have already been delays.

On the other hand, certain respondents were worried that a faster processing time would mean that the Ombudsman would not have the time to investigate complaints thoroughly and to address properly all legal arguments raised by the complainant and the institution.

Complaints to the Ombudsman, in particular when handled under the Fast-Track procedure, were seen as a lower-risk and faster alternative to litigation in court and could be used in cases in which success was uncertain. This was especially seen to be the case for complainants who did not have the financial means to bring court proceedings.

For its part, the Commission pointed out that, while the time limits of the Fast-Track procedure are very short (in particular the inspection of documents within five working days of the request), it can meet them in the large majority of cases.

c. Suggested improvements

One concern raised by several respondents was that it is not clear when the Ombudsman uses the Fast-Track procedure to deal with access to documents complaints. It was suggested to inform complainants whether the Fast-Track procedure was applied, to allow them to predict the duration in advance.

While the Ombudsman's complaint handling may have become swifter for access to documents cases, some respondents questioned whether this had come at the expense of dealing with the substance of the complaint. In particular, while they may get a swifter response from the institution to their request, they may not gain access to the documents.

Some respondents questioned whether the Ombudsman should grant the institution deadline extensions in complaints that relate to delays in dealing with access to documents requests.

Some respondents considered that the process and form for submitting complaints on the Ombudsman's website could be improved (some suggested a separate, dedicated complaint form for access to documents complaints). Others suggested providing more information on access to documents in general on the Ombudsman's website.

The Commission stated that, since it is still adapting to the new procedure, it would prefer if the Ombudsman did not change this procedure again.



5. Conclusion

a. What works well?

The Fast-Track procedure has led to a significant decrease in processing times. On average, complaints related to public access to documents were completed three times faster in 2019 than before the procedure was introduced. While complaint handling, generally, by the Ombudsman has become much faster and more efficient, this is particularly the case in Fast-Track cases.

The procedure attracted an increased number of complainants, essentially doubling the number of complaints on public access to documents.

Stakeholders were generally satisfied with the Fast-Track procedure. They praised the speed of the procedure and the overall quality of the Ombudsman's work.

b. What can be improved?

While the Fast-Track procedure is a success overall, there is room for improvement in certain areas.

- J The average processing time of all Fast-Track complaints is 67 working days. While processing times have been significantly reduced, in only 36% of all Fast-Track cases did the Ombudsman complete her assessment within the 40 working day timeline foreseen.⁶

In part, this is a consequence of the success of the Fast-Track procedure. The fact that the Ombudsman's office is relatively small means that it could not always deal with unforeseen surges in complaints within the timeline foreseen. The Ombudsman has already addressed this issue by increasing the size of the team that deals with complaints related to public access to documents. In addition, there are other factors leading to delays such as the need to await the reply from the relevant institutions.

It does, however, remain challenging to meet the 40 working day timeline for Fast-Track complaints. It may be worth reflecting on whether to increase this indicative timeline, to provide greater certainty for complainants, whilst ensuring that a possible increase is not used as a justification for dealing with access to documents cases less swiftly.

- J The stakeholder consultation showed that there was some confusion about what is and is not considered as a Fast-Track complaint. This raises the question of whether it is advisable to 'designate' certain complaints as 'Fast-Track', and others not; and whether it may provide greater clarity for complainants to indicate that the Ombudsman attempts to deal with all access to documents complaints as swiftly as possible.

⁶ Registration until closing decision, solution or recommendation. The average processing time of cases within the deadline was 26 working days.



c. Way forward

The Ombudsman remains committed to producing not only results in good time, but also to find the best possible solution for the complainant.

Following this review, the Ombudsman will:

- J Continue to streamline processes where possible in order to deal with complaints relating to access documents as efficiently as possible.
- J Assess whether it would be better simply to say that the Ombudsman attempts to deal with all access to documents complaints as swiftly as possible, based on an indicative timeline, rather than affording the process a special designation.
- J If the Fast-Track process is maintained, consider a possible extension of the 40 working day timeline and develop clearer criteria concerning the types of cases that should be dealt with under the Fast-Track procedure.
- J Determine whether it may be necessary to adopt more definitive guidelines on when to grant institutions deadline extensions.



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