

Reply of the European Commission to the European Ombudsman's request in relation to the European Commission's refusal to give public access to documents relate to EU environmental strategy and legislation, ref. 1378/2022/TM

I. BACKGROUND/SUMMARY OF THE FACTS/HISTORY

On 9 March 2022, the complainant submitted an application for public access to documents¹ under Regulation (EC) No 1049/2001 regarding public access to European Parliament, Council and Commission documents (hereafter 'Regulation (EC) No 1049/2001')².

In his application, the applicant requested access to correspondence concerning the Commissioner for International Partnerships and her Cabinet in relation to EU environmental and climate legislation, namely 'the taxonomy delegated act on climate, the biodiversity delegated act, the forest strategy, the closer-to-nature guidelines, the definition and strict protection of last remaining old growth forests, the renewable energy directive and its sustainability criteria, LULUCF³ and the carbon farming communication'. The complainant also requested three specific e-mails and any correspondence with stakeholders in relation to these topics.

Further to a proposal for a fair solution, the Directorate-General for International Partnerships identified 117 documents as falling within the scope of the applicant's request. As regards the three specific e-mails requested by the complainant, the Directorate-General for International Partnerships informed that the documents were not registered in the European Commission's corporate document management system. The e-mails did not meet the European Commission's document registration criteria as they were short-lived correspondence for a preliminary, internal exchange of views.

The Directorate-General for International Partnerships granted full access to two documents, and partial access to the remaining documents based on the exceptions laid down in the third indent (protection of international relations) of Article 4(1)(a), Article 4(1)(b) (protection of privacy and the integrity of the individual), the first indent (protection of commercial interests) of Article 4(2), and the second subparagraph (protection of the decision-making process) of Article 4(3) of Regulation (EC) No 1049/2001.

On 11 May 2022, the complainant submitted a confirmatory application in accordance with Article 7(2) of Regulation (EC) No 1049/2001.

In the confirmatory decision of 18 August 2022, the European Commission's Secretariat-General confirmed the position of the Directorate-General for International Partnerships.

¹ Registered under reference GESTDEM 2022/1405.

² OJ L 145 of 31.5.2001, p. 43.

³ Land Use, Land-Use Change and Forestry.

The redacted parts of the documents concerned were protected on the basis of the exceptions laid down in Article 4(1)(b) (protection of privacy and the integrity of the individual), the first indent (protection of commercial interests) of Article 4(2) and the first and second subparagraphs (protection of the decision-making process) of Article 4(3) of Regulation (EC) No 1049/2001.

On 20 July 2022, the complainant lodged a complaint with the European Ombudsman. On 20 August 2022, the complainant considered that the European Commission failed to identify three e-mails as falling within the scope of Regulation (EC) No 1049/2001 and refused to disclose the e-mails in question.

II. THE EUROPEAN OMBUDSMAN'S INQUIRY AND THE EUROPEAN OMBUDSMAN'S REQUEST OF 27 MARCH 2023

The Ombudsman's inquiry relates solely to the three e-mails to which the complainant refers. On 3 November 2022, the European Ombudsman requested a copy of the e-mails concerned and a meeting with relevant representatives of the European Commission to obtain further information on the matter concerning the complainant's request for public access.

In the course of the inquiry, and without prejudice to the European Commission's position on the e-mails in question, the European Commission provided a copy of these e-mails to the European Ombudsman. The European Ombudsman inquiry team also met with European Commission representatives.

In the letter of 27 March 2023, the European Ombudsman invites the European Commission to assess whether disclosure of the e-mails would specifically and actually undermine one of the interests protected under the exceptions to public access, and whether there is an overriding public interest in the disclosure of the documents in line with Regulation 1367/2006⁴. The European Ombudsman states that '[i]t is not immediately apparent [...] that the Commission can refuse full access to the three e-mails'. The European Ombudsman invited the European Commission to provide a reply to this request and requested the European Commission's agreement to publish its reply in the European Ombudsman's website.

III. THE EUROPEAN COMMISSION'S REPLY TO THE EUROPEAN OMBUDSMAN'S REQUEST

The European Commission notes that the inquiry of the European Ombudsman does not concern the 117 documents identified as falling within the scope of the complainant's request and that were fully or partially released by the European Commission. It

⁴ Regulation (EC) No 1367/2006 of the European Parliament and of the Council of 6 September 2006 on the application of the provisions of the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters to Community institutions and bodies, OJ L 264, 25.9.2006, p. 13.

concerns three very specific e-mails to which the applicant refers in his correspondence with the European Commission.

Consequently, the European Commission considers that it has handled the complainant's request in a transparent way and granted the widest possible access to the 117 documents identified as falling within the scope of the complainant's application for public access.

The European Commission has examined the European Ombudsman's letter of 27 March 2023 and the arguments provided therein in relation to the three e-mails concerned.

The European Commission has registered the three e-mails⁵ and is currently assessing whether they can be disclosed in line with Regulation (EC) No 1049/2001 and Regulation (EC) No 1367/2006. The complainant will be duly informed of the European Commission's detailed assessment and the expected timeline when he can expect the final position of the European Commission in relation to the three e-mails.

Moreover, the European Commission agrees with the publication of this reply on the European Ombudsman's website as requested by the European Ombudsman.

For the Commission
Virginijus Sinkevičius
Member of the Commission



⁵ The e-mails have been registered under references Ares(2023)4555910, Ares(2023)4555706, and Ares(2023)4555355.