



Emily O'Reilly
European Ombudsman

Mr José Manuel Barroso
President
European Commission
1049 BRUSSELS
BELGIQUE

Confidential

Strasbourg, 27/03/2014

Complaint 2310/2013/VL

Dear Mr President,

On 29 November 2013, I received a complaint from Mr [REDACTED] against the European Commission concerning the Commission's refusal to deal with the complainant's request for access to documents pursuant to Regulation 1049/2001, and to grant him access to the requested documents.¹ In its reply to the complainant's request for access, the Commission had asked the complainant to submit (i) a certified copy of his passport and (ii) a copy of his initial request for access.

Following an informal request by my services, the Commission sent a further reply, dated 4 February 2014, in which it explained that it had refused to proceed with the handling of the request for access to documents because of its doubts about the complainant's identity. For this reason, the Commission insisted that the complainant provide it with a proof of his identity before proceeding further with his request for access.

The complainant provided his observations on the Commission's reply by letter dated 28 February 2014.

After a careful examination of the arguments presented by both parties, I would like to inform you of my preliminary view of the situation.

In its further reply to the complainant of 4 February 2014, the Commission appeared to suggest that ascertaining whether the complainant was an EU citizen or resident in the EU was not the 'primary' reason for its approach, which it considers justified in order to prevent the right of access granted by Regulation 1049/2001 from being abused.

¹ The complainant submitted a practically identical complaint against OLAF, i.e. complaint 2309/2013/VL.



In that respect, it is useful to highlight that Article 2(1) of Regulation 1049/2001 provides as follows: "*Any citizen of the Union, and any natural or legal person residing or having its registered office in a Member State, has a right of access to documents of the institutions, subject to the principles, conditions and limits defined in this Regulation*". However, Article 2(2) makes it clear that institutions may extend this right to persons who are neither citizens nor resident in the EU. The Commission has done so in the implementing provisions it adopted in 2001.

More generally, the Commission's insistence on confirming the complainant's identity does not appear to be based on any concrete provision of Regulation 1049/2001, nor does it seem to promote any of the objectives of that Regulation.

As regards possible abuse of the right of access, the Ombudsman does not exclude that there may be exceptional situations where an administration could be entitled to take appropriate and proportionate measures in order to prevent abuse of rights flowing from Regulation 1049/2001. She considers, however, that none of the elements put forward by the Commission suggest that the request in the case at hand would constitute an abuse of rights.

It may be useful to add in this context that, in his observations, the complainant has raised concerns relating to respect for the rules on data protection by the Commission and/or OLAF. These concerns are currently not within the scope of the present inquiry, and that the complainant will be invited to decide whether he wishes to submit them to the Ombudsman or to the European Data Protection Supervisor. In my view, it would however in any event be useful if the Commission and OLAF could address these concerns and inform the complainant of the result of their examination.

I take the view that there is no need to discuss the Commission's arguments in detail at this stage. It may however be useful to note that, as the complainant pointed out in his observations, it appears that it would have been possible for the Commission to verify the complainant's identity by having recourse to more proportionate measures than requesting copies of personal documents, for instance, by sending him a registered letter with an acknowledgement of receipt.

I further note that the complainant had already previously addressed a request for access to documents to the Commission. This request was handled by the Commission on the basis of Regulation 1049/2001, without the latter raising any doubts as to the complainant's identity.

In the spirit of seeking a rapid, citizen-friendly and unbureaucratic solution, I would therefore invite the Commission to proceed with processing the complainant's request for access to documents. I should be grateful if the Commission could confirm to me by 30 April 2014 at the latest that it accepts this proposal. Receiving such confirmation would make it unnecessary to proceed with the present inquiry by addressing a draft recommendation to the Commission.



Enclosed, please find a copy of the complainant's observations.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Emily O'Reilly'. The signature is fluid and cursive, with a long horizontal flourish extending from the bottom of the name.

Emily O'Reilly

Enclosure: (sent by e-mail)

- Copy of complainant's observations