

# Review of the Ombudsman's work in the area of public access to documents for the years 2021 to 2023



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## 1. Executive summary

The Ombudsman strives to achieve tangible improvements for complainants and the public in the EU administration. In the area of public access to EU documents, she does so by securing increased access for the applicants, but also by helping the EU administration to better its practices, ensure greater proactive transparency and be fully accountable to the public.

**The number of public access complaints has increased significantly over the past years:** from an average of 45 complaints per year from 2014 to 2016, to an average of 83 complaints per year in the period 2017 to 2020, to 129 complaints on average in the years 2021 to 2023. Overall, **26% of all inquiries opened by the Ombudsman in the last three years concerned how EU institutions dealt with requests for public access to documents.**

The public's choice to turn more often to the Ombudsman to seek redress is a positive development. This might be due to the increased awareness of the Ombudsman's role, to applicants encountering problems more frequently with the EU administration, to faster case-handling by the Ombudsman in this area, or a combination of these and other factors.

While the number of complaints has gone up, the Ombudsman's Office continued to deal with public access complaints much faster. **The average time for reaching an outcome has remained stable over the past three years, being three time faster than before the introduction of the Fast-Track procedure** (over the period 2021-2023: 83 working days, in 2016: 255 working days).

**The Ombudsman's intervention led to a helpful outcome for the complainant in a majority of cases.** Most inquiries were closed as settled (many after a delay by the institution in reaching a final decision on the request) or the Ombudsman made a proposal for a solution which was accepted by the institution thus leading to wider public access.

The Ombudsman's Office consulted individuals and organisations who submitted complaints after experiencing difficulties with accessing EU documents. The respondents were generally satisfied with the experience and said it was **likely they would approach the Ombudsman next time they are dissatisfied with the outcome of a public access request.** Notably, they appreciated that the Ombudsman provides an objective assessment of the institution's position.

In addition to reaching conclusions on individual complaints, between 2021 and 2023, **the Ombudsman tackled strategic and systemic issues in the EU administration.** This work aimed to ensure compliance with Regulation 1049/2001 and the principles of good administration, by raising awareness, providing guidance and improving general practices. For example, the Ombudsman found that the systemic and significant delays in the Commission's processing of requests for public access to documents amount to maladministration. The Ombudsman asked the Commission to correct this situation as a matter of priority and brought the matter to the European Parliament. The Office will continue to monitor the issue, which appears to persist according to the stakeholders consulted and recent complaints.

**The Ombudsman has also provided guidance to the public and the EU institutions, on the right of access to EU documents.** The material is available on the Ombudsman's website and includes a 'questions and answers guide' in all EU languages, a more detailed resource for experts and a short guide for the EU administration on policies and practices.



## 2. Overview: Public access to documents cases and the Fast-Track procedure

### a. Role of the EO in the area of public access to EU documents

The right of the public to access documents held by the EU institutions, bodies, offices and agencies is set out in the EU Treaties and the Charter of Fundamental Rights.<sup>1</sup> It plays a crucial role in ensuring that the EU institutions operate in a transparent manner, thereby reinforcing the legitimacy of and public trust in the EU. The general rules giving effect to this right are set out in the EU legislation on public access to documents (Regulation 1049/2001).<sup>2</sup> Should an EU institution refuse to give public access to a specific document, there are two means of redress available for those seeking access. Applicants may bring the matter either before the Court of Justice of the EU or turn to the European Ombudsman.

Persons seeking public access to documents typically rely on swift disclosure so as to be able to use the documents for the purpose that they intended. Applicants therefore expect their access request to be handled quickly. This is especially true for civil society organisations, businesses and citizens that want to engage in the EU's decision-making process, and for journalists, and researchers who may be keen to scrutinise the EU administration.

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

### b. How the EO handles public access to EU documents cases

Drawing on the principle underpinning the EU's rules on public access that requests should be handled promptly, the Ombudsman has consistently sought to ensure that her Office deals with such complaints as swiftly as possible. She therefore introduced an accelerated procedure for dealing with public access complaints. Following a 5-month trial period, the Ombudsman formally launched the 'Fast-Track procedure' for access to documents complaints in February 2018.

Upon receiving a complaint concerning the refusal of public access to documents, the Ombudsman's Office registers it and examines whether an inquiry can be opened. This depends on several factors, including whether a complaint is admissible<sup>3</sup> or whether the Ombudsman finds grounds to open an inquiry.<sup>4</sup>

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<sup>1</sup> Article 15 of the Treaty on the Functioning of the European Union: [https://eur-lex.europa.eu/eli/treaty/tfeu\\_2016/art\\_15/oj](https://eur-lex.europa.eu/eli/treaty/tfeu_2016/art_15/oj), and Article 42 of the Charter of Fundamental Rights of the EU: [https://eur-lex.europa.eu/eli/treaty/char\\_2012/oj](https://eur-lex.europa.eu/eli/treaty/char_2012/oj).

<sup>2</sup> Regulation 1049/2001 regarding public access to European Parliament, Council and Commission documents: <https://eur-lex.europa.eu/eli/reg/2001/1049/oj>. Regulation 1049/2001 applies directly to the European Commission, the Council of the EU and the European Parliament. However, other EU institutions, bodies, offices and agencies also apply the Regulation or have adopted decisions setting out how they apply it.

<sup>3</sup> 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.

<sup>4</sup> Article 3.4 of the Ombudsman's [implementing provisions](#). As an example, the Ombudsman may find there are no grounds to open an inquiry because another body is better placed to deal with the complaint.



If the opening of an inquiry appears warranted, the Office also performs a first internal assessment to decide whether the complaint can be dealt with under the Fast-Track procedure. This is usually the case where the final position of the institution concerned is known, in other words where there is an explicit final decision refusing to give public access (an explicit 'confirmatory decision'). The Fast-Track procedure is normally not used in cases where (i) the complainant challenges that no document exists, (ii) further clarifications are needed before the Ombudsman inquiry team can inspect the documents in question or (iii) the institution concerned has not yet adopted its final position (where the time limit for the confirmatory response has lapsed and there is thus an implicit negative decision). In any case, the Ombudsman attempts to deal with all access to documents complaints as swiftly as possible.

The case is then assigned to an inquiries officer and a formal decision on whether an inquiry can be opened is taken. The Office's target for such '**admissibility decisions**' is 30 calendar days. However, if the case is dealt with under the Fast-Track procedure, the target is **5 working days** from the registration of the complaint.

After opening an inquiry under the Fast-Track procedure, the Office takes a number of inquiry steps. It starts with the prompt inspection of the documents in question, requesting a reply from the relevant institution and, in certain cases, a meeting. The Ombudsman has made arrangements with the EU institutions allowing her rapid access to the **documents** (within **5 working days** of opening the inquiry) and to possible **additional comments** by the institutions (within **15 working days**).

The Ombudsman inquiry team then inspects the documents in question and may consult further with the EU institution. The aim is to have an 'assessment' done as swiftly as possible. If the case is dealt with under the Fast-Track procedure, the target for finalising the assessment is within **40 working days** from the registration of the complaint.

The assessment can be that there is scope to achieve a swift solution. To this end, the Ombudsman may propose that the institution disclose (parts of) the documents.

If the Ombudsman finds that the EU institution should not have refused access, she can make a formal finding of maladministration and recommend that the institution grant (increased) access to the documents in question.

The Ombudsman might also conclude that the EU institution's decision to refuse access was justified in view of one or several exceptions<sup>5</sup> provided for under the EU's rules on public access to documents and close the case with a finding that there was no maladministration.

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<sup>5</sup> Under Article 4 of Regulation 1049/2001.



### 3. Performance review

This section contains statistics on the handling of all public access to documents complaints between 1 January 2021 and 31 December 2023, including those dealt with under the Fast-Track procedure.

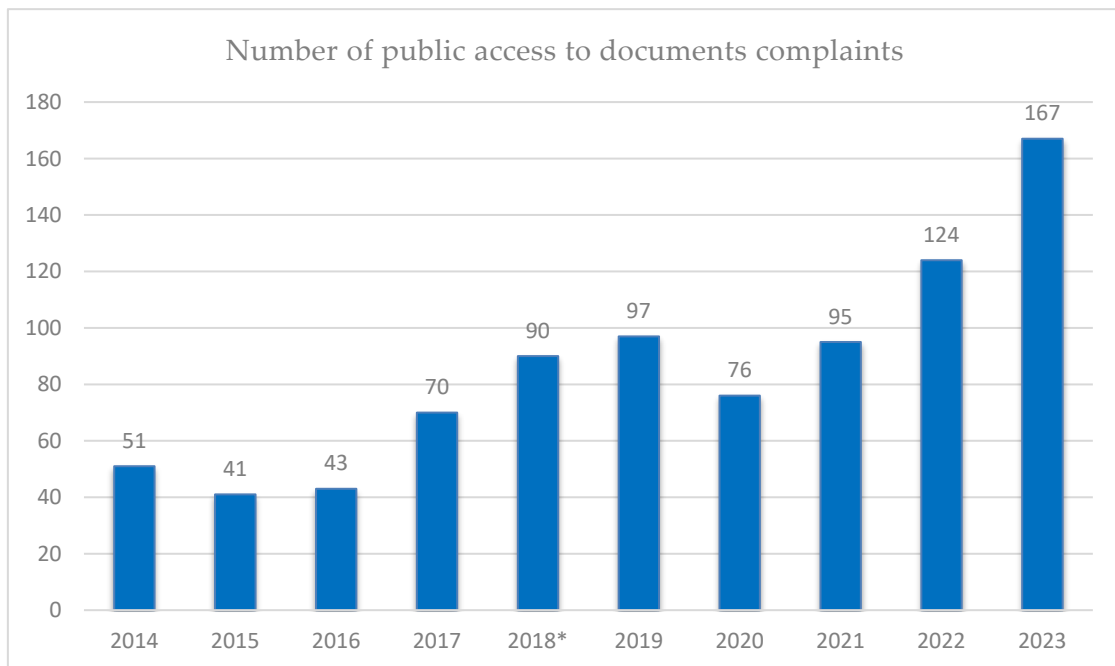
A previous review of the public access complaints and the application of the Fast-Track procedure for the period 1 September 2017 - 31 August 2020 was published in February 2021.<sup>6</sup>

#### a. Number of complaints

Between 2021 and 2023, the Ombudsman received 386 complaints in the area of public access to documents. This represents 16% of all the complaints within mandate during that period.

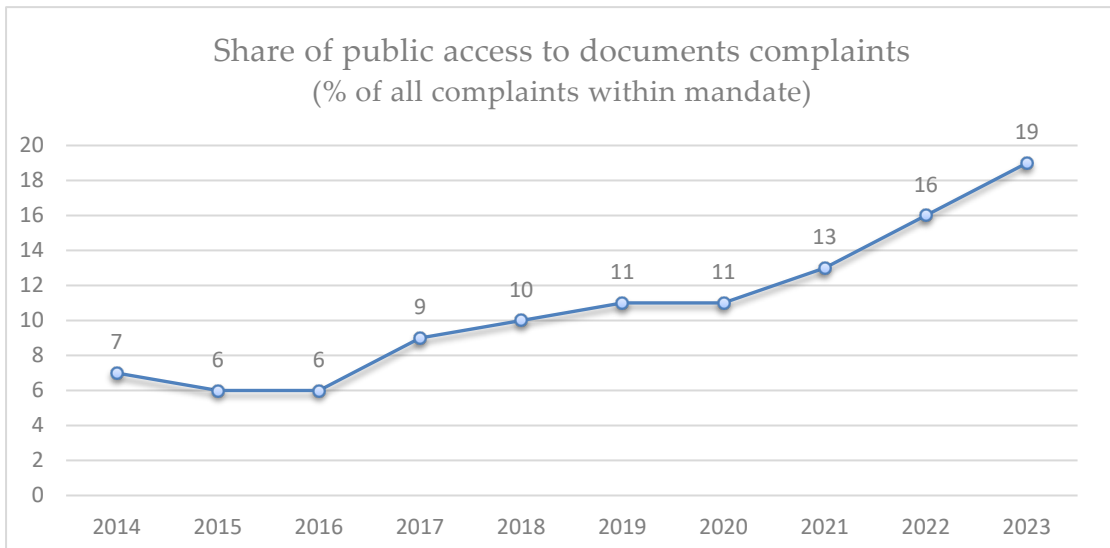
The number of public access complaints has increased significantly over the past years: from an average of 45 complaints per year from 2014 to 2016, to an average of 83 complaints per year in the period 2017 to 2020, to 129 complaints on average in the years 2021 to 2023.

The tables below show the yearly breakdown.



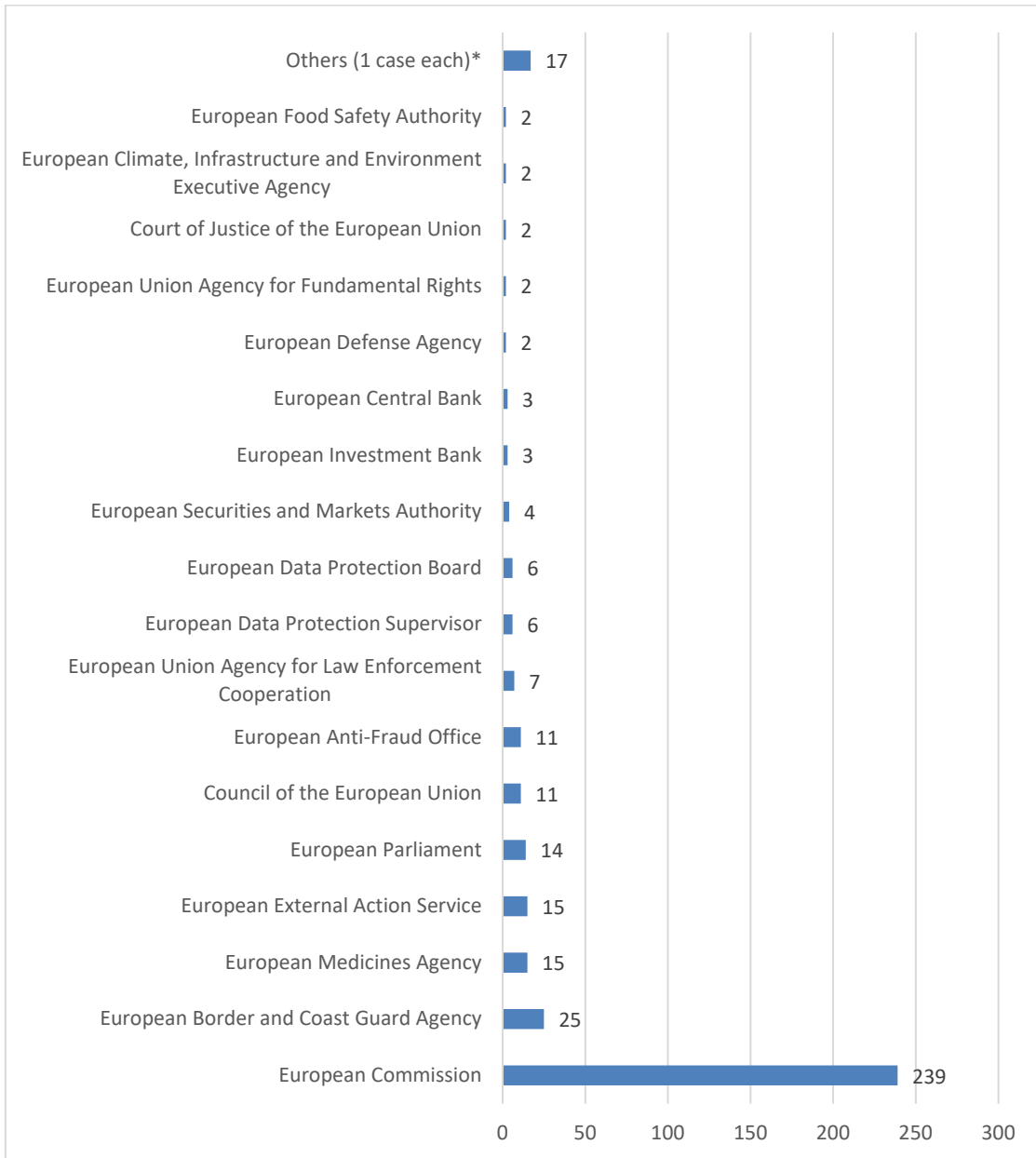
\* FT procedure introduced

<sup>6</sup> Review of the Ombudsman's Fast-Track procedure of 24 February 2021, available at: <https://www.ombudsman.europa.eu/en/document/en/138509>



## b. Which institutions were concerned?

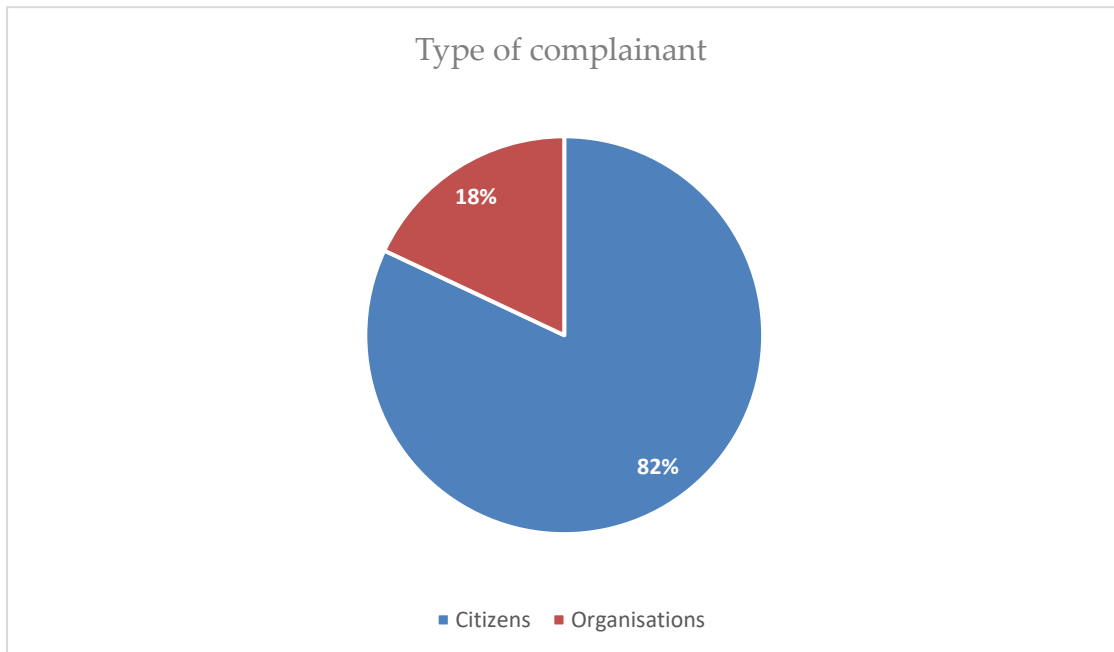
The majority of the public access to documents complaints received between 2021 and 2023 were made against the European Commission, which is the largest EU institution and receives by far the highest number of access requests. The remaining complaints concerned a large variety of other EU institutions, bodies, offices and agencies (IBOAs), notably the European Border and Coast Guard Agency (Frontex) and the European Medicines Agency (EMA), as well as the European External Action Service (EEAS), the European Parliament and the Council of the EU.



\* European Insurance and Occupational Pensions Authority, European Aviation Safety Authority, European Economic and Social Committee, European Union Agency for the Cooperation of Energy Regulators, European Union Satellite Centre, European Union Agency for Asylum, European Council, European Banking Authority, European Centre for the Development of Vocational Training, European Committee of the Regions, European Health and Digital Executive Agency, European Innovation Council and SMEs Executive Agency, European Personnel Selection Office, European Maritime Safety Agency, European Research Executive Agency, European Union Agency for Criminal Justice Cooperation, Single Resolution Board.

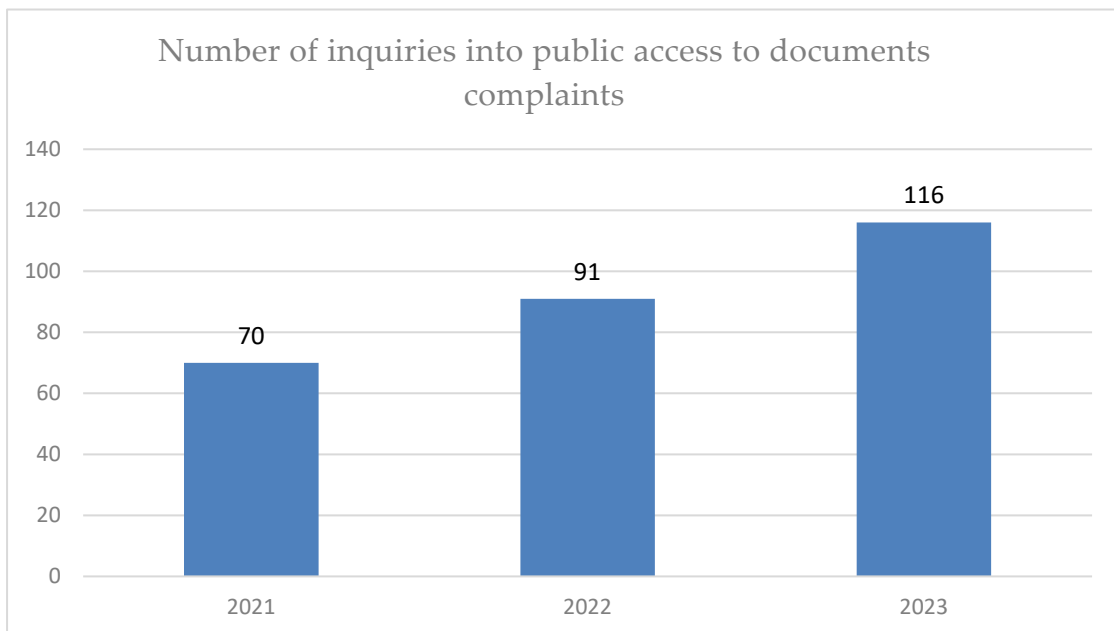


### c. Who are the complainants?



### d. Number of inquiries

Between 2021 and 2023, the Ombudsman opened inquiries into 277 complaints in the area of public access to documents.<sup>7</sup> Overall, 26% of all inquiries opened by the Ombudsman between 2021 and 2023 concerned how EU institutions dealt with requests for public access to documents.



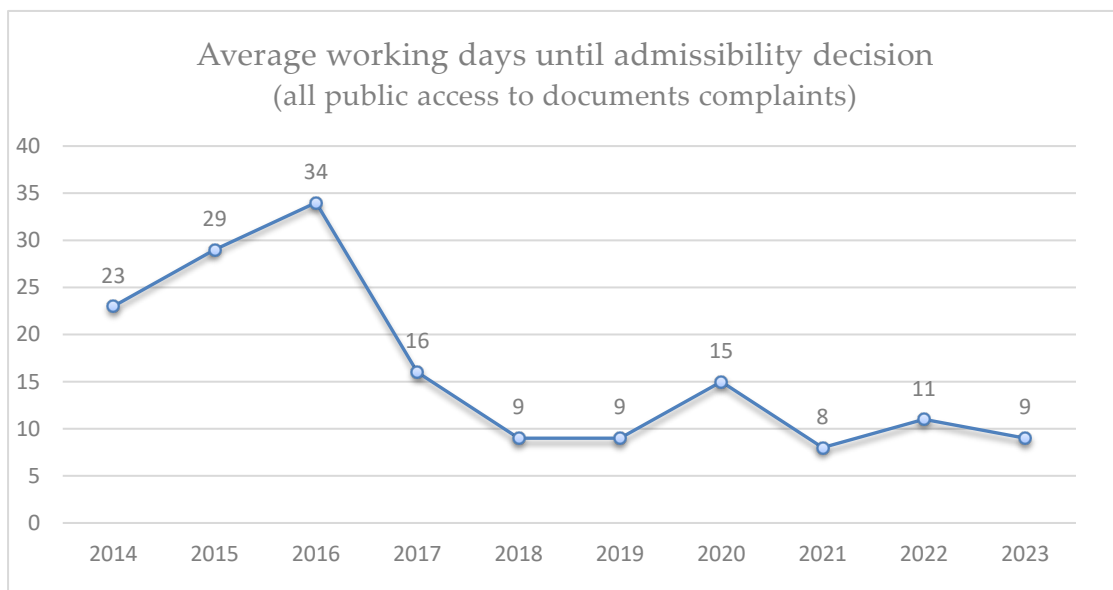
<sup>7</sup> The remaining complaints were either inadmissible or the Ombudsman did not find sufficient grounds to open an inquiry.



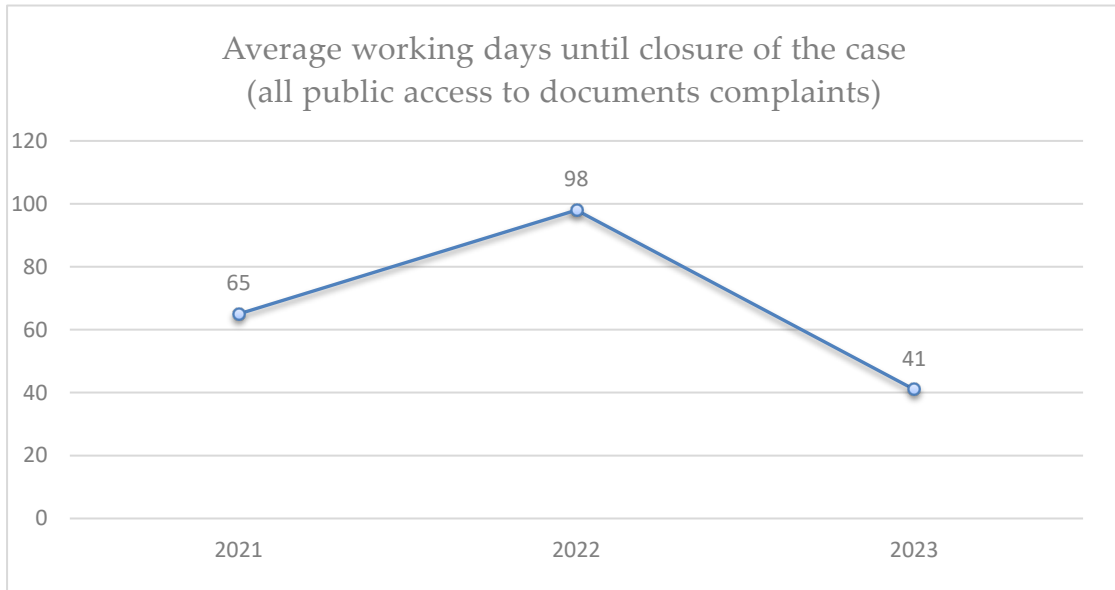
## e. Average processing time

The average time needed to process public access complaints has been substantially reduced over the years. The three key stages of complaint-handling are faster since the introduction of the Fast-Track procedure: taking the admissibility decision, adopting an assessment (relevant for inquiries) and closing 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 Fast-Track procedure was introduced (in 2023: 9 working days, in 2016: 34 working days).



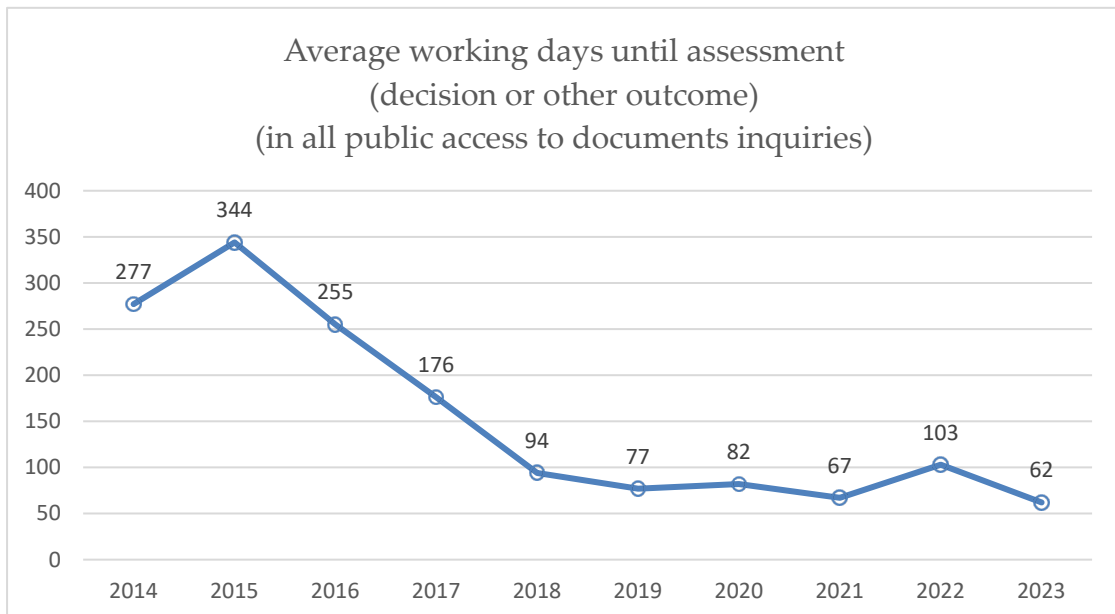
Over the period 2021-2023, the average time from registration until the definitive closure of the case for all public access to documents complaints was 69 working days. The tables below show the yearly breakdown.



This chart concerns all public access to documents complaints (inadmissible, no grounds, inquiries)

For the complaints received in 2022, all but one have been closed, while for the complaints received in 2023, 116 have been closed (69%). The remaining cases were still open at the time of this review.

As regards the inquiries only, once an assessment is finalised, the Ombudsman shares it with the EU institution concerned. This may be done by way of a preliminary assessment, a proposal for a solution, a recommendation or a decision closing the case. The average time for finalising the assessment was more than three times faster than in the past (over the period 2021-2023: 83 working days, in 2016: 255 working days).



For the 2023 inquiries, the assessment has been finalised in 77 cases (66%). The assessment in the remaining cases was still pending at the time of this review.

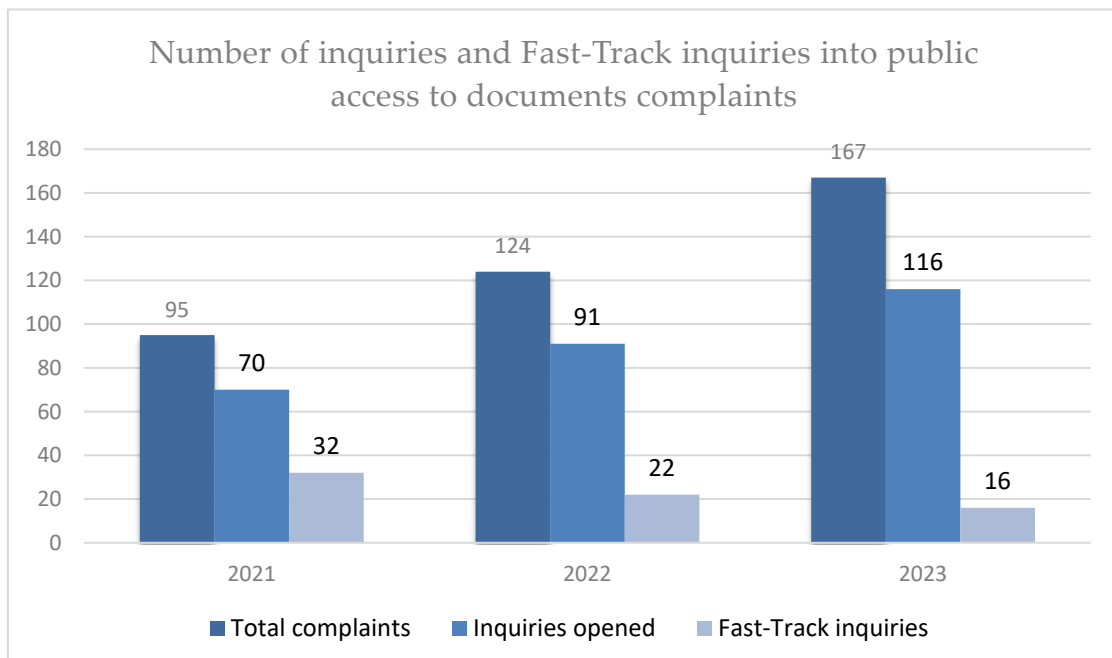


## f. Fast-Track inquiries

Between 2021 and 2023, the Ombudsman dealt with 70 complaints under the Fast-Track procedure.<sup>8</sup> Whilst the number of cases concerning public access to documents has been increasing significantly, the share of Fast-Track cases went down. Overall, 25% of public access complaints were designated as Fast-Track (compared with 47% in the previous review, although the Ombudsman had a broader definition of Fast-Track cases at that time).

Based on the Office's experience with the Fast-Track procedure and the review conducted in 2020, it became clear that, to be able adequately to deal with a case through the Fast-Track procedure, the final position of the institution concerned must be known. The main reason for this is that the Ombudsman, as a redress mechanism, seeks first and foremost to verify whether a decision to refuse public access was justified.

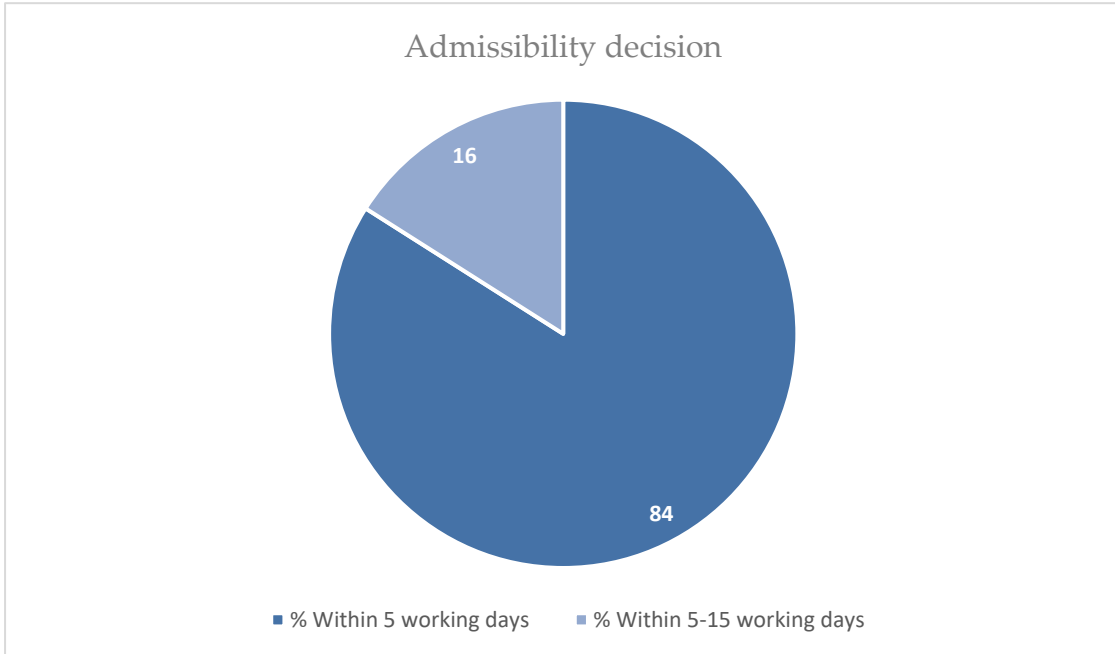
However, in many cases brought to the attention of the Ombudsman during the period 2021 to 2023, the institution concerned had not yet adopted an explicit confirmatory decision when the complaint was made. Accordingly, upon opening an inquiry, the Ombudsman could not review the institution's final position, alongside the documents at issue. These cases could therefore not be dealt with through the Fast-Track procedure. This was particularly relevant for the cases concerning the European Commission, which are by far the most numerous reaching the Ombudsman. The Ombudsman has monitored the issue of delays and conducted an own initiative inquiry that led to a number of recommendations asking the Commission to urgently address the issue (more details below).



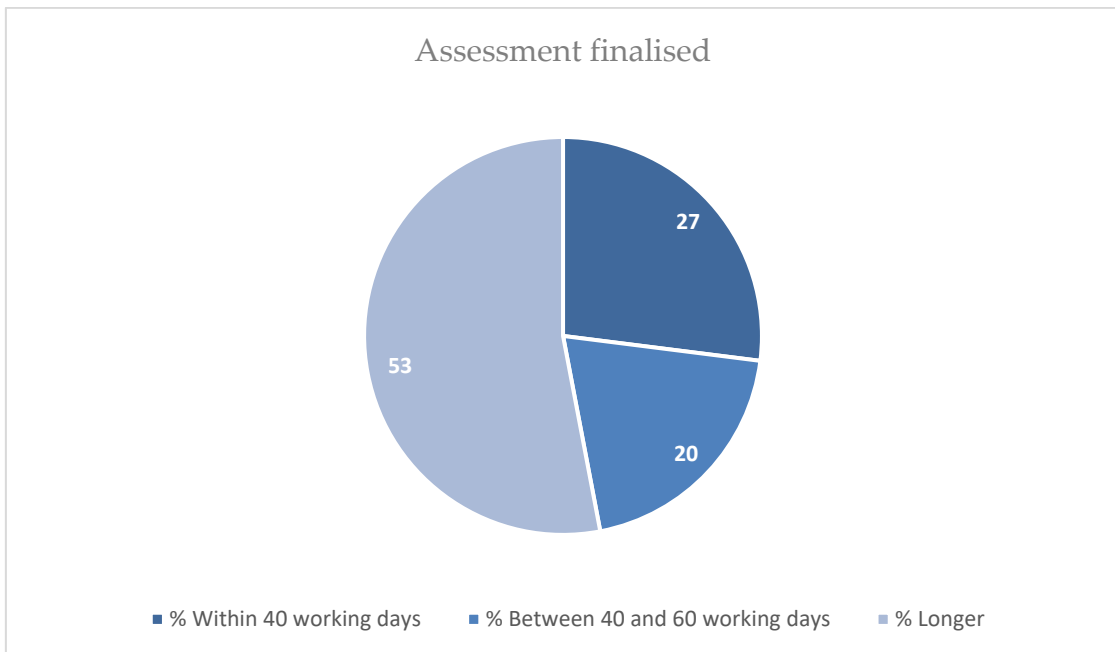
<sup>8</sup> The 70 inquiries dealt with under the Fast-Track procedure were based on complaints received from 2021 to 2023. Out of the 70 inquiries, eight were still ongoing at the time of drafting this report.



The Ombudsman was able to meet the admissibility target, that is opening an inquiry within five working days, in the majority of all cases. During the reference period, the average time taken to decide on the admissibility of a complaint was four working days.



As for the assessment, in 27% of the Fast-Track inquiries, the Ombudsman's assessment was issued within the indicative timeline of 40 working days. In 47% of all inquiries, the assessment was issued within 60 working days. Overall, the average time to take a position was 83 working days. This shows that it remains challenging to meet the 40 working day timeline for Fast-Track complaints.

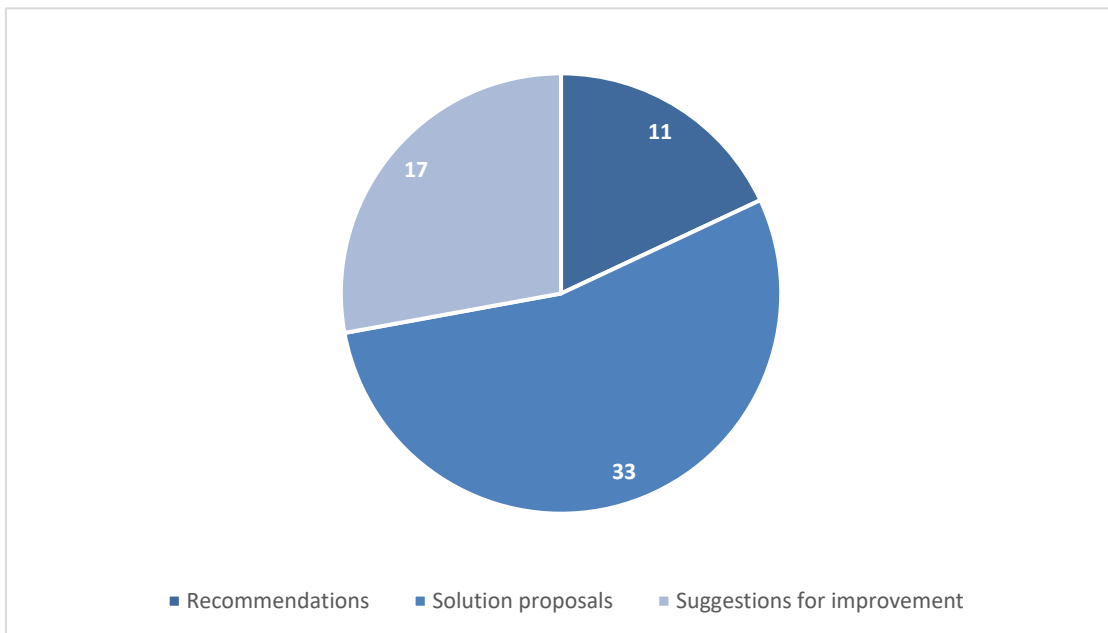




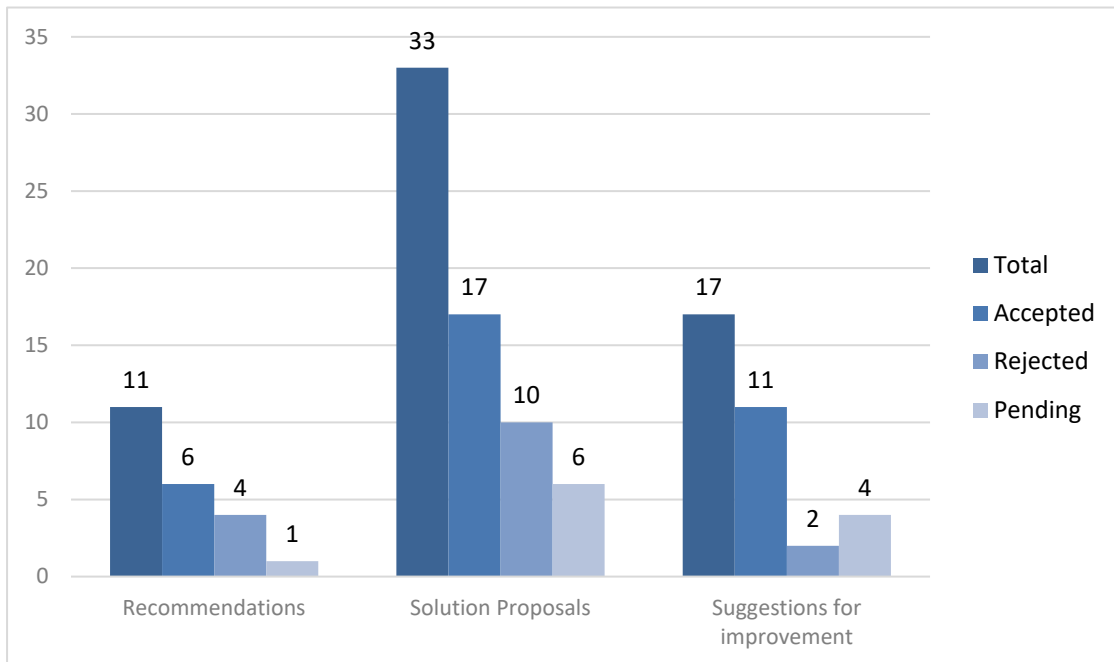
Most inquiries under the Fast-Track procedure were closed with a finding of no maladministration or were settled following the intervention of the Ombudsman. In about 43% of the Fast-Track inquiries where the assessment was finalised at the time of this report, the Ombudsman made a solution proposal and/or a recommendation and/or a suggestion for improvement (further details on the outcome are included below).

## g. Outcome

Between 2021 and 2023, the Ombudsman made recommendations in 11 cases, solution proposals in 33 cases and suggestions for improvement<sup>9</sup> in 17 cases. As regards compliance, in six cases the recommendation was accepted by the institution, in four cases it was rejected and for one recommendation a reply has not yet been received. For the solution proposals, in 17 cases a solution was achieved, 10 proposals were rejected and in six cases a reply was still pending. As for the suggestions for improvement, 11 were accepted, two rejected and four are still to be replied to.



<sup>9</sup> In the decision closing the inquiry, the Ombudsman may suggest improvements regarding issues identified in the course of the inquiry.



## h. Relevant work in the area of public access to documents

In addition to reaching conclusions on individual complaints, between 2021 and 2023, the Ombudsman also strived to tackle strategic and systemic issues. This work aimed to ensure compliance with Regulation 1049/2001 and the principles of good administration, by raising awareness, providing guidance and improving general practices. The following section highlights some of the cases of public importance that the Ombudsman dealt with during this period. Some of these were based on a complaint; some were opened by the Office on its own initiative.

### ***The Ombudsman issued practical recommendations in relation to the recording of text and instant messages and their disclosure***

The Ombudsman conducted a strategic initiative on how EU institutions, bodies, offices and agencies record text and instant messages sent/received by staff members in their professional capacity. The initiative came after she received complaints in relation to requests for public access to text messages.<sup>10</sup> Based on the information gathered, the Ombudsman identified good practices that may guide the EU administration in dealing with this issue in the future. The Ombudsman shared these 'practical recommendations' with all EU IBOAs and also published them on her website.<sup>11</sup>

<sup>10</sup> Case 1219/2020/MIG on how the European Council dealt with a request for public access to mobile phone based messages supposedly sent by its then President to heads of state and government:

<https://www.ombudsman.europa.eu/en/case/en/57432> and Case 1316/2021/MIG on the European Commission's refusal of public access to text messages exchanged between the Commission President and the CEO of a pharmaceutical company on the purchase of a COVID 19 vaccine:

<https://www.ombudsman.europa.eu/en/case/en/59777>.

<sup>11</sup> For more information, see strategic initiative SI/4/2021/MIG on how EU institutions, bodies, offices and agencies record text and instant messages sent/received by staff members in their professional capacity:

<https://www.ombudsman.europa.eu/en/doc/correspondence/en/158383>.



***The Ombudsman clarified that whether a document was registered in an institution's document management system is irrelevant in the context of public access requests***

The Ombudsman dealt with various complaints in which the European Commission had failed to search properly for specific emails or text messages to which the respective complainant sought public access. The Commission in these cases took the view that only documents that are registered in its document management system constitute 'documents' within the meaning of Regulation 1049/2001. However, the Commission records only such documents that it considers fulfil its recording criteria.

The Ombudsman clarified that, for the question of whether public access can be given to a specific document, it is irrelevant whether this document has been recorded in the institution's document management system. Rather, what matters is the document's content and whether or not it relates to the "policies, activities and decisions" for which the institution is responsible.<sup>12</sup>

***Delays in processing public access to documents requests by the European Commission***

A recurrent topic brought to the Ombudsman's attention was delays incurred by the EU institutions in processing requests for public access to documents, in particular by the European Commission.

Complaints to the Ombudsman suggested that the time limits to reply to public access to documents requests were often not met by the Commission. The Ombudsman therefore opened an own-initiative inquiry with the Commission to verify whether this was a systemic issue. The inquiry showed that the Commission fails to adhere to the prescribed time limits when dealing with requests for public access to documents in a significant number of cases. In addition, the delays that occurred were rather significant, specifically at the review stage (when dealing with 'confirmatory applications'). The situation deteriorated over the period 2021-2023, with more and more 'delay' cases reaching the Ombudsman.<sup>13</sup>

The Ombudsman found that the systemic and significant delays in the Commission's processing of requests for public access to documents amount to maladministration. She asked the Commission to correct this situation as a matter of priority. She also submitted a Special Report to the attention of the European Parliament.<sup>14</sup> In March 2024, Parliament voted with overwhelming support on a resolution supporting the Ombudsman's findings.<sup>15</sup>

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<sup>12</sup> For more information, see Case 1316/2021/MIG on the European Commission's refusal of public access to text messages exchanged between the Commission President and the CEO of a pharmaceutical company on the purchase of a COVID 19 vaccine: <https://www.ombudsman.europa.eu/en/case/en/59777>, case 211/2022/TM on how the European Commission dealt with a request for public access to emails from its representatives based in Greece concerning the migration situation in two hotspots: <https://www.ombudsman.europa.eu/en/case/en/60980> and case 1378/2022/TM on how the European Commission dealt with a request for public access to documents related to EU environmental strategy and legislation: <https://www.ombudsman.europa.eu/en/case/en/62144>.

<sup>13</sup> In 2021, the Ombudsman opened 22 inquiries related to delays by the Commission in dealing with requests for public access, in 2022, 35 inquiries and most significantly in 2023, the Ombudsman has opened 75 such inquiries.

<sup>14</sup> For more information, see case OI/2/2022/OAM on the time taken by the European Commission to deal with requests for public access to documents: <https://www.ombudsman.europa.eu/en/case/en/60766>.

<sup>15</sup> European Parliament resolution of 14 March 2024 on the time the European Commission takes to deal with requests for public access to documents (2023/2941(RSP)) [https://www.europarl.europa.eu/doceo/document/TA-9-2024-0172\\_EN.html](https://www.europarl.europa.eu/doceo/document/TA-9-2024-0172_EN.html)



### ***The Ombudsman's intervention brought improvements in how the European Food Safety Authority (EFSA) deals with requests for public access to documents***

Following an inquiry of the Ombudsman, EFSA agreed to change its rules and practices to ensure that requests for public access to documents are processed more swiftly.

The case concerned a request for public access to documents concerning lead in ammunition. EFSA took more than seven months to deal with the request, extending the deadline on various occasions. The complainant could therefore not use the documents when preparing a contribution to a public consultation organised by another EU agency. The Ombudsman found maladministration in this case and made recommendations to EFSA.

EFSA responded positively to the Ombudsman's recommendations. It revised its decision on public access to documents and promised to improve its communication with applicants.<sup>16</sup>

### ***The Ombudsman found issues with Frontex's practices in dealing with access requests that it considers imprecise or that concern many or large documents***

In this case, the Ombudsman took issue with Frontex's practices when dealing with access requests that it considers not sufficiently clear or that concern many or large documents. Specifically, if Frontex finds that a request is so complicated that it needs to seek a 'friendly solution' with the person who requests access, it "defers" the registration of the request and thus prevents the statutory time-limits from starting to run. If Frontex finds that a registered access request is, on a closer look, so imprecise that the document(s) cannot be identified, it considers that it can suspend the statutory time-limits to clarify the scope of the request.

The Ombudsman considered that Frontex's practices amount to maladministration and recommended that it discontinue them. As Frontex did not accept this recommendation, the Ombudsman maintained the finding of maladministration. She disagreed with Frontex's position that these practices are beneficial to requesters. On the contrary, it cannot be beneficial when an EU body allows itself unilaterally to delay or suspend the applicable statutory time-limits.<sup>17</sup>

### ***The Ombudsman asked the European Medicines Agency (EMA) to change its current practice of queuing requests for public access to documents***

EMA introduced certain practices in its handling of public access to documents requests to manage the challenges following two unprecedented events, namely the loss of staff due to its relocation from London to Amsterdam following Brexit and the COVID-19 pandemic. These practices are that (i) EMA defers the handling of certain requests for public access to documents by placing them in a queue in the order in which EMA receives them; (ii) EMA limits both the number of documents applicants can seek per request and the number of requests individual applicants can have in the queue at a given time.

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<sup>16</sup> For more information, see case 2124/2021/MIG on how the European Food Safety Authority (EFSA) dealt with a request for public access to documents related to a proposal to restrict lead in ammunition: <https://www.ombudsman.europa.eu/en/case/en/60579>.

<sup>17</sup> For more information, see case OI/4/2022/PB, on the time taken by the European Border and Coast Guard Agency (Frontex) to deal with requests for public access to documents: <https://www.ombudsman.europa.eu/en/case/en/62097>.



Concerning the first practice, the Ombudsman considered this not to be good administration and not in line with the principle under Regulation 1049/2001 that access requests shall be handled “promptly”. Concerning the second practice, the Ombudsman concluded that it constituted maladministration, given what seemed to be arbitrary elements.

At the time of this report, EMA’s reply to the Ombudsman’s findings was pending. However, EMA has signalled already that it was taking steps to phase out the first practice of the ‘chronological queue’.<sup>18</sup>

### ***The Ombudsman published general guidance on the right of public access to documents***

As shown in this report, complaints alleging a lack of transparency account for the highest proportion of cases dealt with by the Ombudsman. To provide guidance to the public and the EU institutions, the Ombudsman has prepared several online resources on the right access EU documents. These include a ‘questions and answers guide’ in all EU languages, a more detailed resource for experts and a short guide for the EU administration on policies and practices.<sup>19</sup>

## **4. Stakeholders’ views**

In the context of reviewing its performance in dealing with public access to documents complaints, the Ombudsman’s Office consulted several stakeholders to get feedback. This included both complainants (from civil society, academia, and the media) and the Commission, as the main institution concerned.

### **a. Feedback**

#### ***Overall experience***

In general, those consulted had a positive experience with the Ombudsman. They also found the communication with the Ombudsman’s Office to be effective and helpful, enabling them to follow the process.

#### ***Website and complaint form***

Respondents appreciated improvements done to the website of the Ombudsman and the possibility to monitor the progress of their complaints. Respondents also said they make use of the Ombudsman’s website to search for past cases. Many were not yet aware that the Ombudsman had also published general guidance on the right to access documents.

The majority found submitting a complaint to be straightforward.

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<sup>18</sup> For more information, see case 2243/2022/SF on how the European Medicines Agency (EMA) deals with requests for public access to documents concerning a large number of documents:  
<https://www.ombudsman.europa.eu/en/case/en/63009>.

<sup>19</sup> See Public access to EU documents and the role of the European Ombudsman:  
<https://www.ombudsman.europa.eu/en/areas-of-work/access-to-documents>.



## **Outcome**

Complaints to the Ombudsman in the area of public access to documents 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 some respondents, even if the outcome was not positive in terms of receiving broader access, they appreciate that the Ombudsman provides an objective assessment of the institution's position. Some stated that when the Ombudsman closes her inquiry with a finding of maladministration this confirms their complaint was justified.

For many respondents, there was a serious problem with delays in receiving access to documents. When complainants turn to the Ombudsman, the institution concerned has often already incurred a significant delay in handling their access request. Even if wider access is obtained after the Ombudsman's intervention, by that time, the document sought might no longer be useful. Some stated that sometimes they reflect whether the documents' relevance will have expired by the end of the process. If yes, this might discourage them from submitting a complaint in the first place. However, others come to the Ombudsman not only looking to obtain access, but also to signal an issue (for example delays) and to seek to improve procedures for the future.

## ***Fast-Track procedure***

Respondents were aware of the Fast-Track procedure and appreciated the quick opening of inquiries and the streamlined process. However, once an inquiry is opened, the process can still be lengthy. Some respondents noted that the Ombudsman often grants the institutions deadline extensions even where there have already been delays. Where delays occurred, respondents appreciate receiving updates as often as possible. There was still some uncertainty as to whether the procedure applies to all access to documents complaints.

## ***Likelihood to come back***

Overall, respondents said that it is likely they would approach the Ombudsman next time they are dissatisfied with the outcome of a public access request.

## ***Feedback from the European Commission***

For its part, the Commission pointed out that, over the past three years, it has generally met the deadlines of the Fast-Track procedure in inquiries that followed the Commission's adoption of a confirmatory decision. In these cases, the Commission has been able to provide the Ombudsman with the requested documents and reply to the Ombudsman's questions on the Commission's position as laid down in the reply to the confirmatory application.

For those cases where an explicit confirmatory decision was not yet adopted by the Commission, the transmission of documents and replies to the Ombudsman is more complex, as the documents are still being assessed by the Commission and the position could risk being incomplete at that time.



### ***Elements that could be improved***

Among the elements that respondents identified as areas for improvement in the Ombudsman's handling of public access cases were the following:

- small adjustments to the form for submitting complaints to the Ombudsman, in particular to clarify the attachments needed;
- more information resources with case-law, which would help prepare confirmatory applications;
- more clarity on when the Fast-Track procedure is applied;
- more information on the expected timeline to finalise an inquiry, for example what are in general the time limits for the institutions to provide replies to the Ombudsman;
- possible meetings or phone calls with the complainant to hear their substantive arguments orally;
- encouragement from the Ombudsman to the institutions to have more personal contacts with applicants so public access requests can be clarified.

## **b. Addressing suggestions from the past review**

The Ombudsman has also addressed suggestions raised by stakeholders in the context of the previous review.

The Ombudsman has improved the process for complainants to submit and keep track of complaints. Complainants can now track the status of their complaint on the Ombudsman website. This includes a detailed time line that can be accessed via a complainant's account and a less detailed time line that is publicly visible. Improvements are also planned to simplify the online complaint form.

The Ombudsman has also prepared and published on its website guidance on the right of public access to documents.

## **5. Conclusion**

Over the past years the number of complaints on public access to documents has almost doubled. At the same time, the complaint handling in this area has been streamlined, after the introduction of the Fast-Track procedure. The increased efficiency of the Office is generally notable in relation to public access complaints.

Over 2021-2023, the average processing time for all public access complaints, from registration until the closure of the case was 69 working days. For public access inquiries, the average time to reach an outcome is 83 working days.

Adhering to the 40 working day timeline in Fast-Track cases has been a challenge. The team has been reinforced to help deal with the much higher number of public access cases and, by extension, help enable the Office to meet this timeline. Other factors that make it challenging to meet this timeline include the need to wait for replies from the relevant institutions in some cases.



More generally delays encountered by other institutions in dealing with public access cases had a spill-over effect on the Ombudsman's complaint-handling. Firstly, the cases could not be dealt with under the Fast-Track procedure. Secondly, the Ombudsman inquiry needed to remain open until the reply was actually provided. The Ombudsman has tried to move the process along to the extent possible, notably by inspecting documents in the absence of a final explicit position from the institution on the disclosure, and subsequently proposing solutions or sharing preliminary views.

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 continue to:

- improve and update the guidance note on public access to documents available on its website, as this is a valuable tool for complainants and citizens in general. She will also ensure that the guidance is disseminated further;
- continue to uphold the speedy handling of inquiries related to public access to documents;
- continue to simplify how the public submits complaints to the Ombudsman (complaint form);
- make sure that complainants are well informed about the scope and status of their complaints;
- keep working with institutions to avoid delays in handling requests for public access, in line with the principle that "access delayed is access denied";
- maintain an open dialogue on efficient and effective working methods with the EU institutions.