



## European Ombudsman

**Emily O'Reilly**  
European Ombudsman

Mr Andreas Pavlou  
Access Info Europe

[luisa@access-info.org](mailto:luisa@access-info.org)

Strasbourg, 01/04/2015

Complaint 393/2015/JN

Dear Mr Pavlou,

On 4 March 2015, you submitted a complaint to the European Ombudsman against the European External Action Service (EEAS) concerning access to documents relating to a tender procedure.

I have asked the EEAS to submit an opinion on the following allegation, arguments and claim.

**Allegation:**

The EEAS wrongly denied access to (i) the names of the companies that submitted bids in response to the procurement notice, (ii) the names of the committee members who decided upon the winning bid, and (iii) the details of the companies and their assessment.

In support of the allegation, you put forward the following arguments:

1. The EEAS failed to specify what the harm to commercial interests would be and to demonstrate a reasonably foreseeable risk to commercial interests in the event of disclosure of the companies' names, details and assessment.
2. An evaluation document is inherently not a document containing opinions for internal use as part of deliberations or preliminary consultations because it is produced after the decision has been taken. The EEAS failed to demonstrate a real risk that the decision-making process would be seriously undermined.
3. The EEAS failed to apply the public interest test. The verification that public funds are being spent correctly is in the public interest and consequently, there is a strong public interest in disclosure. There is also a strong public interest regarding access to water.



4. The publication of the names of the members of the evaluation committee is essential as this enables full accountability of the process, in particular when there exist clear concerns regarding corruption and fraud in EU accession countries such as Serbia.

5. It is not clear whether the Delegation tried to seek the consent of the members of the evaluation committee to the disclosure of their names. The disclosure is not only warranted, relevant and proportionate to the purposes for which the personal data was collected but necessary for the transparency and legitimacy of the evaluation process.

**Claim:**

The EEAS should provide full access to the redacted documents.

In accordance with Articles 2(2) and 3(1) of the Statute of the European Ombudsman, I informed the Chief Operating Officer ad interim of the EEAS of your complaint and invited him to submit an opinion on the allegation, arguments and claim included in my inquiry by 31 July 2015.

Please note that I have decided not to include in my inquiry your allegation that the EEAS wrongly denied access to the procurement contract. I consider that this item was not clearly included in the request for access and was, in any event, not covered by the confirmatory application. Therefore, this part of the complaint is inadmissible under Article 2.4 of the Statute of the European Ombudsman. If you wish to pursue this point, you could make a request for access directly to the EEAS or the Delegation.

In addition, please be informed that I have asked the EEAS to address the following points:

1. Could the EEAS confirm that it is not in possession of any other evaluation documents?

2. Could the EEAS identify the parts of the evaluation documents which are covered by the exception relating to the decision-making process? Could the EEAS explain why it considers that disclosure of these parts would **seriously** undermine the institution's decision-making process?

3. Could the EEAS clarify why it considers that the conditions set out in Regulation 45/2001<sup>1</sup> do not authorise it to disclose personal data contained in the evaluation documents? Could the EEAS consider the request for access under Article 8 of Regulation 45/2001?<sup>2</sup>

4. Could the EEAS clarify why it considers that the parts of the evaluation documents specifying the prices offered and their modifications (reductions, corrections) cannot be disclosed? Would the EEAS consider that non-disclosure is justified also in the event that the names of the companies concerned remain confidential? Could the EEAS take into account the fact that non-disclosure of this information means that the public is entirely prevented

---

<sup>1</sup> Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data, OJ L 8, 12.1.2001, p. 1.

<sup>2</sup> See judgment in Case C-28/08 P *Commission v Bavarian Lager* 2010 ECR p. I-6055, paragraphs 63-65.



from verifying that the lowest price offered was accepted in the context of the tender procedure?

Moreover, I consider that it would be appropriate to inspect the non-redacted version of the evaluation documents and have therefore informed the EEAS that my services will carry out an inspection of these documents.

As soon as I receive the EEAS's opinion, I will forward it to you with an invitation to make observations. Any observations you wish to make should be submitted to my office within one month of receiving the opinion. I will also forward to you a copy of the inspection report.

Once my office receives your observations, or the deadline has passed, the Legal Officer responsible for your case, Mr Josef Nejedly (+33 3 88 16 41 48), will then examine your file. Mr Nejedly is a member of Complaints and Inquiries Unit 1, headed by Ms Marta Hirsch Ziembinska, which is part of Directorate A. I will inform you if I need to inquire further into your complaint before making a decision on it.

Every effort is made to deal with cases as quickly as possible. I try to reach a preliminary conclusion in an inquiry on a complaint within one year of opening it.

Yours sincerely,

Emily O'Reilly