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European Ombudsman

Decision

in case 682/2014/JF on the European Commission's requirement that persons who ask for public access to documents provide their postal address

The European Commission refused to register a request for public access to documents made by the organisation Access Info Europe because it had not provided a postal address. Access Info Europe complained that the Commission should not be allowed to ask for a postal address from someone who makes a request for public access to documents.

The Ombudsman took note of the Commission's administrative reasons for asking for a postal address. The Commission claimed that, without a requirement to provide a postal address, individuals can easily (and abusively) submit a request under an invented identity, unclear identity or under the identity of a third person. There had been several such concrete instances already. The Commission also put forward a legal argument. It claimed that it is legally obliged to send ('notify') its decisions on access to documents by paper post.

The Ombudsman did not doubt the factual background. She found, however, that it was disproportionate to apply the postal address requirement to all persons requesting access. If a request appears to be made under false identity, the Commission can simply ask the person to send it a postal address, an identity card or other means of identification.

The Commission's view that it is legally obliged to send all its decisions by paper post was not convincing. The Ombudsman pointed out that the Commission's practice is archaic for the 21st century and that the practice is not discernible in numerous other identical or similar administrative procedures in the EU administration.

The Ombudsman made appropriate recommendations in the light of her findings. These were rejected by the Commission. In her decision, closing the inquiry, the Ombudsman made suggestions for improvement to modernise the Commission's practices. She also asked the Commission again to finally register and process the specific request for access to documents, which the applicant still wanted to pursue.



The Ombudsman's recommendation¹ (2016)

1. In her recommendation, the Ombudsman asked the Commission to no longer require all applicants to provide their postal address if a suitable alternative address for correspondence is supplied.
2. She also recommended that the Commission should register the complainant's application and deal with it promptly.
3. Finally, she made the *suggestion for improvement* that the Commission consider alternative online systems or electronic means of communicating its decisions on requests for public access to documents.

The Ombudsman's assessment after the recommendation

4. The Commission rejected the Ombudsman's recommendation to no longer require all applicants to provide their postal address if a suitable alternative address for correspondence is supplied. It essentially repeated the arguments from its previous submissions, and emphasised that "[t]he Commission respectfully points out that it is free to decide on the use of the most suitable system for notifying decisions under Regulation 1049/2001, as long as that system complies with the legal requirements...".
5. The Commission informed the Ombudsman that it had not acted on the Ombudsman's recommendation to register the complainant's application and deal with it promptly. It stated, however, that, if the complainant is still interested in having its request registered, it would now do so.
6. The Commission responded to the Ombudsman's suggestion for alternative online systems by stating that "[w]hilst the Commission does not exclude any possible future changes in the way it notifies its administrative decisions, there are currently no satisfactory alternative ways of ensuring legal certainty, avoiding abuse of the right to public access...".
7. In sum, the Commission has not accepted the Ombudsman's recommendations or her suggestion for improvement.

¹ For further information on the background to the complaint, the parties' arguments and the Ombudsman's inquiry, please refer to the full text of the Ombudsman's proposal for a solution and recommendation, as well as the related opinions and comments, available at:

<https://www.ombudsman.europa.eu/en/cases/caseopened.faces/en/54427/html.bookmark>

The recommendation followed an attempt to resolve the case through a proposal for solution, the main part of which were, however, rejected by the Commission. The Commission merely dropped a requirement to request persons to state their field of professional activity when submitting requests for documents.



8. The Ombudsman regrets the Commission's position in this case which she considers to be wrong on the facts and the law. She is particularly concerned that the Commission's response contradicts its own advice that the EU administration itself fully embraces the digital age and maximizes the use of electronic communication.

9. The Ombudsman has fully supported the practice of verifying, on a case by case basis, the identity of persons making requests for public access to documents where there are any grounds for suspecting the exercise of that right is being abused. However, to proceed on that basis in every case is disrespectful of citizens and their fundamental rights under the EU Charter. The Ombudsman has in this inquiry provided advice about alternative working methods, and has done so in the exercise of her Treaty-based mandate to uncover maladministration and make recommendations with a view to putting an end to it. The Ombudsman deeply regrets that the European Commission has rebutted this advice, clearly implying that, as long as its systems and procedures are 'legal', it considers that there is no need to consider improvements for the benefit of citizens and in pursuance of the general principles of good administration.

10. In closing this inquiry, the Ombudsman, in addition to confirming her findings of maladministration makes a further suggestion for improvement.

11. With regard to the specific request for public access to documents made in this case, the Ombudsman can confirm that the complainant remains interested in the requested documents. Once again, the Ombudsman deeply regrets that the Commission has chosen to ignore all the very clear indications of the continuing desire for public access to the requested documents. Insisting on renewed requests and procedural formalities, when they are unnecessary and serve no obvious useful purpose, shows a lack of respect for citizens' fundamental rights. The Commission is therefore kindly asked to formally register the request at the reception of the present decision, and to process it rapidly and in any case within the deadline foreseen in Regulation 1049/2001.

Conclusions

On the basis of the inquiry into this complaint, the Ombudsman closes it with the following conclusions:

The Commission's requirement that all persons who ask for public access to documents must provide their postal address for its paper post sending arrangements, is maladministration.

The Commission's failure to register and respond to the complainant's access to documents request was an instance of maladministration.



In addition to the above conclusions, the Ombudsman makes the following suggestion for improvement:

The Ombudsman asks the Commission to seek peer review of the issues in this case at the inter-institutional committee provided for in Article 15 of Regulation 1049/2001.

Article 15 states:

“1. The institutions shall develop good administrative practices in order to facilitate the exercise of the right of access guaranteed by this Regulation.

2. The institutions shall establish an interinstitutional committee to examine best practice, address possible conflicts and discuss future developments on public access to documents.”

The Ombudsman suggests that, with regard to requests received by e-mail, it be agreed that the responsibility for the reliability of this means of communication rests with the person making the request, meaning, for instance, that it is left to that sender to choose a reliable e-mail system, to inform the institution of possible problems regarding volume limits, and to check whether correspondence received by the institution is filtered as spam. This should alleviate concerns that the institutions may have with regard to the notification of the decisions here in question.

If the view persists that sending decisions by e-mail is not consistent with legal requirements, the Ombudsman suggests that a peer review of this point of view is carried out in the Article 15(2) Committee, which could also specifically address the claim that there is currently no alternative to sending decisions by paper post. In doing so, the Commission is encouraged to have regard to, for instance, the EU’s ambitious ‘Digital Agenda’ that was launched by the Commission seven years ago. It is moreover encouraged to have regard to the widespread use of online electronic communication systems, including electronic signatures, used around Europe by public administrations.

The Ombudsman would like to be informed of the outcome of such a peer review by the end of the first quarter of 2018.



The other participants in the said Article 15(2) Committee (Parliament and Council) will be informed separately of the present decision and the suggestions.

The complainant and the President of the European Commission will be informed of this decision.

Emily O'Reilly
European Ombudsman

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