**European Ombudsman**

**Complaint about maladministration**

Please read the section entitled ‘How to complain’ before filling out this complaint form. Please continue on a separate sheet if necessary and enclose all the documents necessary to support your complaint.

***First name:***  Helen

***Surname:*** Darbishire

***On behalf of (if applicable):*** Access Info Europe

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***Against which European Union (EU) institution or body do you wish to complain?***

European Commission

***What is the decision or matter about which you complain? When did you become aware of it?***

I would like to complain about the Commission’s refusal to provide full access to three documents, following a request on 17 May 2016 and a confirmatory application on 18 August 2016.

For information on the decision about which I am complaining and when I became aware of it, **please see Annex (pp. 2-4), in attachment.**

***What do you consider that the EU institution or body has done wrong?***

I believe that the European Commission (the “Commission”) has engaged in maladministration in its handling of my request for access to documents, in that it has failed to act in accordance with the law, particularly *Regulation No 1049/2001 regarding public access to European Parliament, Council and Commission documents* (hereinafter “Regulation 1049/2001” or “the Regulation”).

**Please see Annex (pp.4-18), in attachment, for full details.**

A short summary of my main allegations are set out below:

Procedural violations

* The Commission has breached Article 7(1) Regulation 1049/2001 for failure to handle my application for access to documents ‘promptly’.
* The Commission has breached Article 7(3) Regulation 1049/2001 for extending the 15 working day deadline to reply without it being an “exceptional case” and without ‘detailed reasons’ being given.

Substantive violations

Article 4(2), second indent, Regulation

* The Commission does not explain how exactly disclosure of each of the three requested documents could specifically and effectively undermine the protection of the legal advice.
  + The Commission does not sufficiently explain how the requested documents are ‘particularly sensitive’.
  + The Commission does not sufficiently explain how the third document requested is of ‘particularly wide scope’
  + The Commission does not sufficiently explain how disclosure of the requested documents would lead to ‘erroneous and premature conclusions about the Commission’s rationale for opting for specific solutions in its proposal’ which would compromise its ‘interest in, and possibilities for, seeking and receiving frank, objective and comprehensive legal advice’.

Article 4(3), first paragraph, Regulation

* The Commission cannot rely on Article 4(3), first paragraph, exception as it does not satisfy the requirement that ‘the decision has not been taken by the institution’.
* In the alternative, the Commission does not demonstrate that there is a real risk that is reasonably foreseeable and not purely hypothetical that disclosure of the requested documents might seriously undermine the Commission’s decision-making process within the meaning of the first paragraph of Article 4(3) of the Regulation.

Overriding public interest in disclosure (alternative argument)

* The Commission incorrectly argues that there are not public interests capable of overriding the interests protected by Article 4(2), second indent, and Article 4(3), first paragraph, of Regulation 1049/2001
* To the contrary, there is an overriding public interest in
  + a balanced and informed public debate to facilitate better decision making;
  + obtaining the best possible outcome in transparency register reform; and
  + ensuring accountability of EU institutions and citizen participation.

***What, in your view, should the institution or body do to put things right?***

It should publish the three documents identified, in full.

***Have you already contacted the EU institution or body concerned in order to obtain redress?***

® Yes, I have submitted a confirmatory application and have received a reply that I wish to complain about.

***If the complaint concerns work relationships with the EU institutions and bodies: have you used all the possibilities for internal administrative requests and complaints provided for in the Staff Regulations? If so, have the time limits for replies by the institutions already expired?***

® No (does not relate to work relationships with the EU institutions)

***Has the object of your complaint already been settled by a court or is it pending before a court?***

No

***Do you agree that your complaint may be passed on to another institution or body (European or national), if the European Ombudsman decides that he is not entitled to deal with it?***

® Yes

Date:

**Information note on data processing and confidentiality**

Data processing

Complaints to the Ombudsman and related correspondence often contain personal data, such as names, contact details and other information relating to identifiable individuals.

There are rights and obligations under European law (Regulation 45/2001(1)) as to how personal data is handled by EU institutions, including the European Ombudsman. These include an individual’s right to obtain access to his or her own information held by this Office. To exercise these rights or to find out more, please contact our Office.

If a person considers that the Ombudsman has not handled his or her personal data properly, he or she may contact the European Data Protection Supervisor.

Confidentiality of your complaint and information

Complainants are requested to identify clearly any document or information that they consider to be confidential immediately on sending it to the Ombudsman.

Confidentiality can only apply if there would be some adverse effect if the information were to be disclosed. It might, for example, apply to financial information, commercially sensitive information or personal information about a private individual. Confidentiality cannot always be guaranteed. In particular, if you submit to the Ombudsman documents that contain the personal data of someone other than yourself, that person will most likely be able to obtain it from the Ombudsman, exercising their data protection rights. In any event, you should expect your complaint and any supporting documents to be shared in full with the institution or body you are complaining about, so that they can properly understand it and respond to the Ombudsman.

(1) 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).

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