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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, Secretariat General, SG/B/5 - Transparence

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

This complaint relates to the refusal of the Secretariat General of the European Commission to register a request for access to documents which was first presented on 14 November 2013, by Agnieszka Kubiak acting on behalf of Access Info Europe.

The refusal to register the request was based on the grounds that Agnieszka did provide her surname, country, and “activity sector” when making the request.

This is in spite of the fact that she did in the messages exchanged with the Commission, in fact provide information about the fact that the request was being submitted by someone working at Access Info Europe and that the activity sector is the human rights field.

Whilst at no point did Agnieszka provide her surname, she stated that she had no problem in providing it. She also stated clearly that she was working for a legal person registered in a Member State and that she is an EU citizen of Polish nationality, living in Sweden and currently interning in Spain. In spite of providing this information, the EC SG refused to register the request.

The Facts

1. The request, submitted on 14 November 2013, concerned access to documents held by the European Commission related to the report which the Commission is

required to submit to the European Parliament and the Council on the application in Member States of Article 19 of Directive 2008/115/EC of 16th December 2008 on common standards and procedures in member states for returning illegally staying third-country nationals. The request asked for, in particular, any documents on the provisions on detention in Article 15 of the Directive.

2. The request was submitted by the web platform AsktheEU.org and can be found here
http://www.asktheeu.org/en/request/report_on_provisions_on_detentio#outgoing-1973
3. The first response, received on 15 November 2013, stated
“Please be informed that we would need the following information in order to be able to register your request for access to documents in our database :

* your name;
* your surname;
* your country;
* your activity sector..”

Please see this response here:

http://www.asktheeu.org/en/request/report_on_provisions_on_detentio#incoming-3422

4. The Requester replied on 15 November 2013 as follows:

Dear Secretariat General (SG),

I am an intern in Access Info Europe - a human rights organisation dedicated to promoting and protecting the right of access to information in Europe and globally as a tool for defending civil liberties and human rights.

Also, according to the regulation 1049 /2001, Art. 6.1 there is no requirement for the requester to provide the information you've mentioned, in order for the institution to process and access for documents requests.

thank you for your help

Yours faithfully,

Agnieszka

Please see this correspondence here:

http://www.asktheeu.org/en/request/report_on_provisions_on_detentio#outgoing-1979

5. The European Commission answered on 22 November 2013 as follows:

As a matter of general remark, it is not a question of legal obligation derived from Article 6 (1), you quote, as this article states only : applications for access to a document shall be made in any written form, including electronic form, in one of the languages referred to in Article 314 of the EC Treaty and in a sufficiently precise manner to enable the

institution to identify the document. The applicant is not obliged to state reasons for the application.

However, in order to be able to ensure the legal right of the applicant to receive an answer we need to know the basic details of this person.

Lastly, I would like to inform you that our registration system requires this information in order to be able to process a request ([1]<http://ec.europa.eu/transparency/regdoc/...>).

By consequence, we will only be able to register your request once we receive the necessary information.

6. The requester submitted a longer answer on 2 December 2013. The full answer can be found here:

http://www.asktheeu.org/en/request/report_on_provisions_on_detentio#outgoing-1979

It contained five main arguments which are summarised here:

1) That she had already stated she was working for Access Info Europe. At this point she confirmed that she is an EU Citizen.

2) That the EU treaties do not require activity sector to be provided, and indeed that this is an inappropriate request in the context of exercise of a fundamental right.

3) That more reference information about the document than that provided places a disproportionate burden on the requester.

4) That in principle she had no objection to providing her surname but argued that nothing in Regulation 1049 specifically requires a requester to provide a fuller identity in order to be able to process the request. She noted that a first name and email address had been provided and argued that from the perspective of a fundamental human right, it is immaterial who makes the request, referring here to international standards including the Council of Europe Convention on Access to Official Documents. She further argued the practical impossibility of confirming her identity without submitting original documents to the European Commission, thereby establishing a burdensome bureaucratic process which would be inconsistent with the nature of the right of access to information as a right of all EU citizens and residents, for the reasons explained above.

5) That this request was inconsistent with previous practice by the European Commission on AsktheEU.org.

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

Refused to register a request for documents, which is the exercise of a right enshrined in the EU treaties, when sufficient information to do so had been provided by the requester including first name, organisation, country of origin, country of residence, and details about the nature of the document being sought.

Insisted on provision of a surname when the name of a registered organisation had been given.

Insisted on full name and citizenship/residence details when in fact it is not possible for the European Commission to verify this information without provisions of copies of documentation which they did not require, and which it would be bureaucratic and burdensome to do with any degree of certainty.

Required the requester to provide more details than needed in order to be able to process the request. These include in particular the activity sector which is tantamount to asking for reasons for asking for the document.

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

The European Commission should accept information requests from requesters without burdensome requirements. This approach would be consistent with respecting exercise of the right of access to documents.

Given that access to documents is a fundamental human right, it is a right which can be exercised by any person (legal or natural, citizen or resident). It does not matter if it is me, a friend, a relative, a colleague or another person unknown to me who files this request. Hence the information about who the requester is not strictly necessary to comply with the requirements of the treaties, namely that: "In order to promote good governance and ensure the participation of civil society, the Union institutions, bodies, offices and agencies shall conduct their work as openly as possible."

We note that the Council of Europe Convention on Access to Official Documents states that "*Parties may give applicants the right to remain anonymous except when disclosure of identity is essential in order to process the request.*" (Article 4). Importantly, the drafters of the Convention, which is not yet in force and is not binding on the EU but which establishes a clear international standard, make clear in the Explanatory Report that "*the present Convention does not require Parties to the Convention to grant applicants a right to submit requests anonymously, but encourages this by including an optional obligation in this respect. In the countries where such a right exists, it has been deemed unnecessary to require the applicant's identity when there at the same time is no obligation for the applicant to declare any reasons for the request.*"

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

We believe that we have exhausted avenues with the EU body. We stated to them that we planned to appeal to the Ombudsman and no further response was received.

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?

Not applicable

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

No

Please select one of the following two options after having read the information in the box below:

- **Please treat my complaint publicly**
- **I require that my complaint be treated confidentially**

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