



European Ombudsman

P. Nikiforos Diamandouros
European Ombudsman

Mr Zois Zervos

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Strasbourg,

Dear Mr Zervos,

Thank you for your letter of 18 July 2013, in which you respond to my decision on your request for access to documents in certain case files. In your letter, you ask me to revise the decision. You also express your disagreement with the interpretation and handling of your previous correspondence. I will address these two main points in that order.

With regard to your request that I revise my decision to refuse your request for documents in the files of cases 2415/2006/ELB and 3264/2008/(WP)GG, you note that my decision is based solely on the fact that these cases are classified as confidential. You take the view that my decision does not respect the relevant reason-giving requirements under Regulation 1049/2001, legislation that you consider to be applicable to the handling of your request.

My decision of 17 July 2013 included links to the European Ombudsman's Statute and Implementing Provisions. Article 4 (1) of the Statute provides as follows:

"The Ombudsman and his staff, to whom Article 287 of the Treaty establishing the European Community and Article 194 of the Treaty establishing the European Atomic Energy Community shall apply, shall be required not to divulge information or documents which they obtain in the course of their inquiries." (Our underlining.)

The European Ombudsman's Statute was adopted by the EU legislator, who considered it appropriate to introduce the restriction underlined above. The Ombudsman's long-established practice is to grant public access to non-confidential case documents. This practice is formalised in Article 14 of the Ombudsman's Implementing Provisions. It is also our practice, as you rightly



point out, to publish online, in anonymised form, information about confidential cases.

In my view, those practices and rules cannot, however, be extended to giving access to documents contained in confidential case files without putting into question the meaning and the applicability of the above-quoted Article 4 (1) of the Statute, as well as its Article 4a¹. In that context, Article 14 of the Ombudsman's Implementing Provisions (*"The public may request access to inquiry-related documents held by the Ombudsman, provided that the complaint has not been classified as confidential at the request of the complainant, or by the Ombudsman pursuant to Article 10.1..."*), although at first sight restrictive, represents an interpretation of the above-quoted applicable legislation (Article 4 (1) of the Statute) that seeks to give due weight to the principle of transparency and the fundamental right of access to documents.

I am fully aware that the Lisbon Treaty provides, in summary, that general rules on public access to documents shall apply to all EU institutions, bodies, offices and agencies. I share your implicit view that this essentially means that Regulation 1049/2001 should be taken to apply to the whole EU administration. However, the Lisbon Treaty does not appear to repeal implicitly legislation that provides, in specific areas for different rules on disclosure, as in the case of Article 4 (1) of the Ombudsman's Statute. I hope you appreciate that, as European Ombudsman, it is beyond my remit to assess the compatibility with the Treaties of legislation adopted by the EU legislator.

With regard to the second main point in your correspondence, namely, the interpretation and handling of your previous correspondence, I would like to briefly recall the following.

In my letter of 4 July 2013, we presented the results of a brief search for cases that may be relevant to your initially not very precise request. I indicated that a response, if sufficiently precise, would result in the registration of a *"separate request for access to documents under the relevant access provisions of the European Ombudsman's Statute"*. In your response of 5 July 2013, you referred to three cases. The Head of Registry took the reasonable view that your request remained insufficiently precise, and he immediately asked you to clarify whether we should from then on understand your request *"to imply that you would like to register, in your name, a request for public access to any audit reports in the case files of the complaints that you mention"*. Your response appeared to be positive. A separate request was therefore registered and decided on by letter of 17 July 2013.

I would finally like to add that, having conducted additional searches, we have not identified further cases that are likely to contain the kind of documents that you are looking for².

In terms of redress, I understand from your correspondence that you are aware of your right to ask for judicial review of my decision. I would like also to mention your right to petition the European Parliament in case you would like to suggest amendments to the European Ombudsman's Statute.

¹ *"The Ombudsman and his staff shall deal with requests for public access to documents, other than those referred to in Article 4(1), in accordance with the conditions and limits provided for in Regulation (EC) No 1049/2001"* (our underlining).

² I would also like to inform you that, out of the two confidential case files, only case 2415/2006/ELB appears to contain a document that might correspond to your request.



Yours sincerely,

P. Nikiforos Diamandouros