



European Ombudsman

Access to EU Documents

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1. Who we are – **the European Ombudsman**
2. Freedom of Information in the EU – **access to documents**
3. Access denied? **Complaints to the Ombudsman**
4. **Cases**
5. **Discussion**

1. THE EUROPEAN OMBUDSMAN

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General information

- Established by the Maastricht Treaty (1992)
- Ombudsman's Office opened in 1995
- ~75 staff in Brussels and Strasbourg (seat)
- Ensures the EU administration adheres to highest standards of transparency, ethics, and accountability
- **Handles complaints** against the **EU administration** and proactively **looks into systemic issues**

How the Ombudsman works

Two main areas of work:

- **Dealing with complaints** from individuals, journalists, businesses, civil society, or organisations involved in EU programmes
- **Strategic inquiries** on the Ombudsman's own initiative, usually into major systemic issues in the EU administration

- Far-reaching **inquiry powers**
 - Inspection of non-public documents
 - Interviewing officials
- **No binding decisions**, but **recommendations**
 - 79% acceptance rate for 2021 cases

1. THE EUROPEAN OMBUDSMAN

Ombudsman Emily O'Reilly



- Former journalist and editor
- Former Irish Ombudsman and Information Commissioner
- First elected in 2013 by European Parliament; re-elected in 2019
- Proactive and strategic approach to systemic issues with EU institutions
- Strategy: **Relevance, Visibility, Impact**

1. THE EUROPEAN OMBUDSMAN

Case handling in 2022

COMPLAINTS
HANDLED

2238

INQUIRIES
OPENED

348

- 57 % of all inquiries related to the **European Commission**
- 32 % of all inquiries related to **transparency and access to documents**

2. ACCESS TO EU DOCUMENTS

Legal basis

- **EU Charter of fundamental rights**
 - **Article 42:**
 - **Any citizen of the Union**, and any natural or legal person residing or having its registered office in a Member State, has a **right of access to documents** of the institutions, bodies, offices and agencies of the Union, whatever their medium.

Exceptions to public access to documents

- **When can public access to documents be refused?**

- Public Security
- Defence and military matters
- International relations
- The financial, monetary or economic policy of the Community or a Member State
- privacy and the integrity of the individual
- commercial interests of a natural or legal person, including intellectual property*
- Court proceedings and legal advice*
- the purpose of inspections, investigations and audits*
- decision-making processes*

*balancing exercise against the right to public access

Time limits

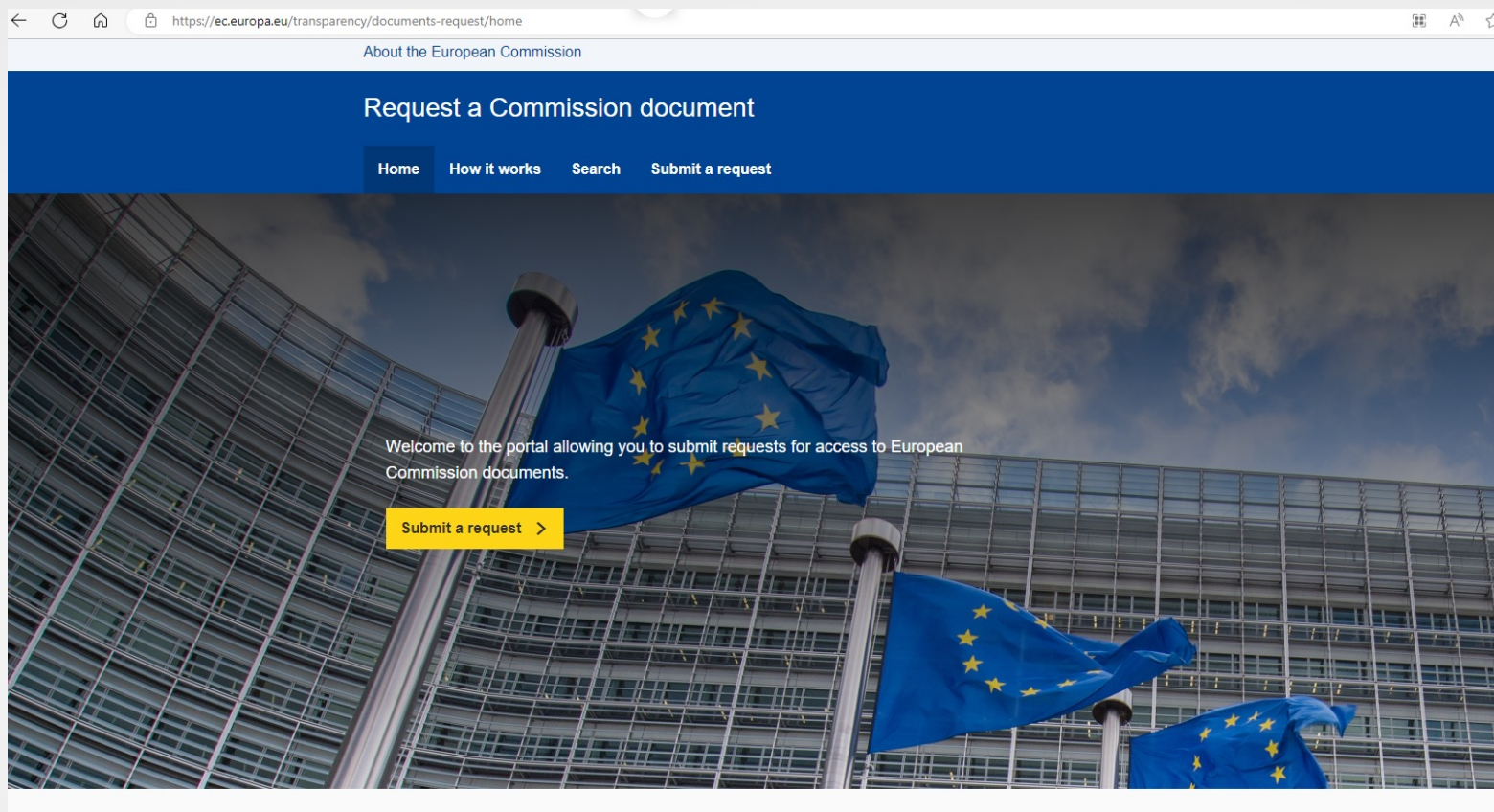
- **15 working days**
- in complicated cases: **extension** by 15 working days
- If **no reply** within time limit, the application is considered to be **refused**

Cost

- **Applications** for access to documents are almost always **free of charge**

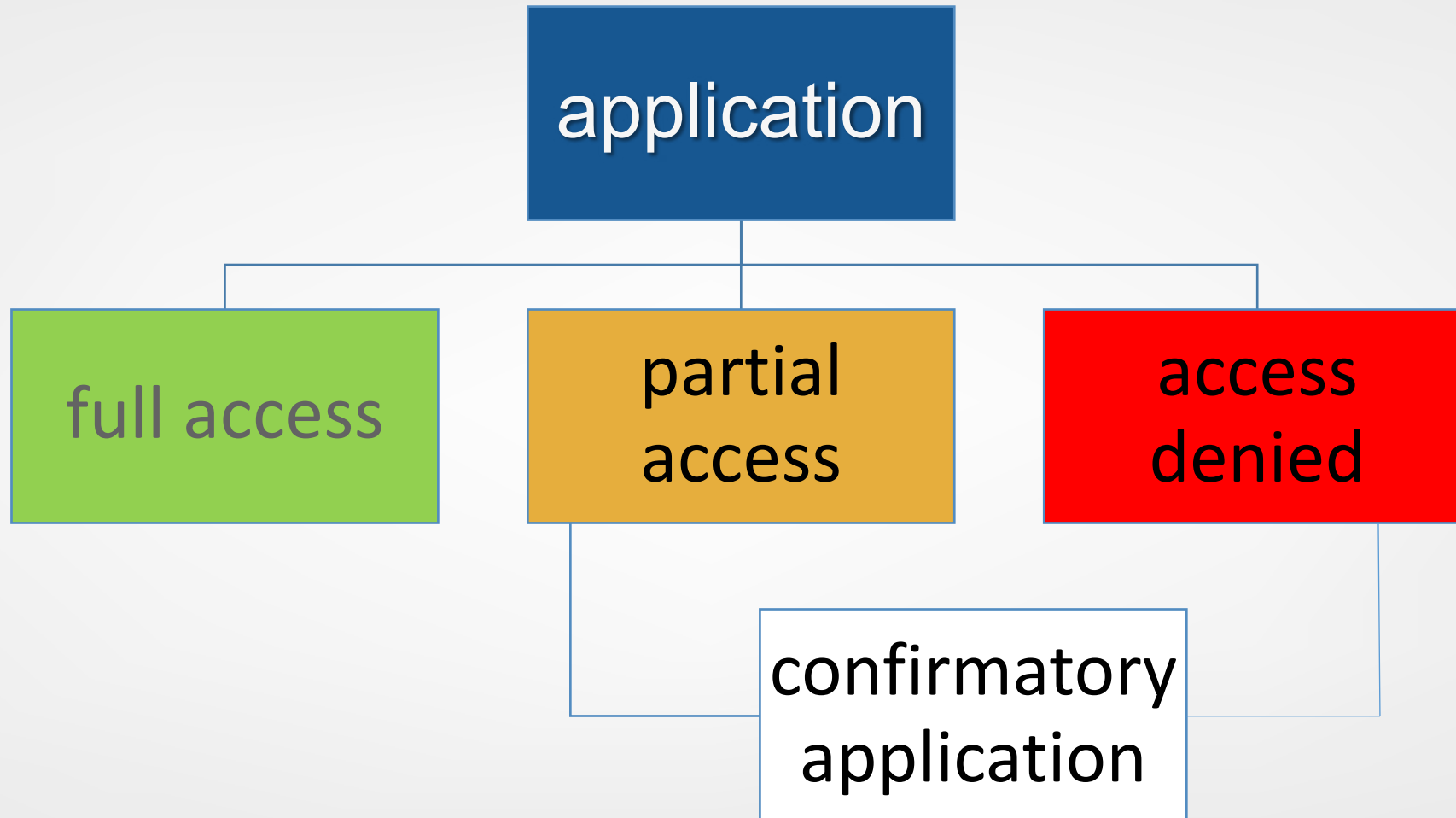


How to apply for access to documents

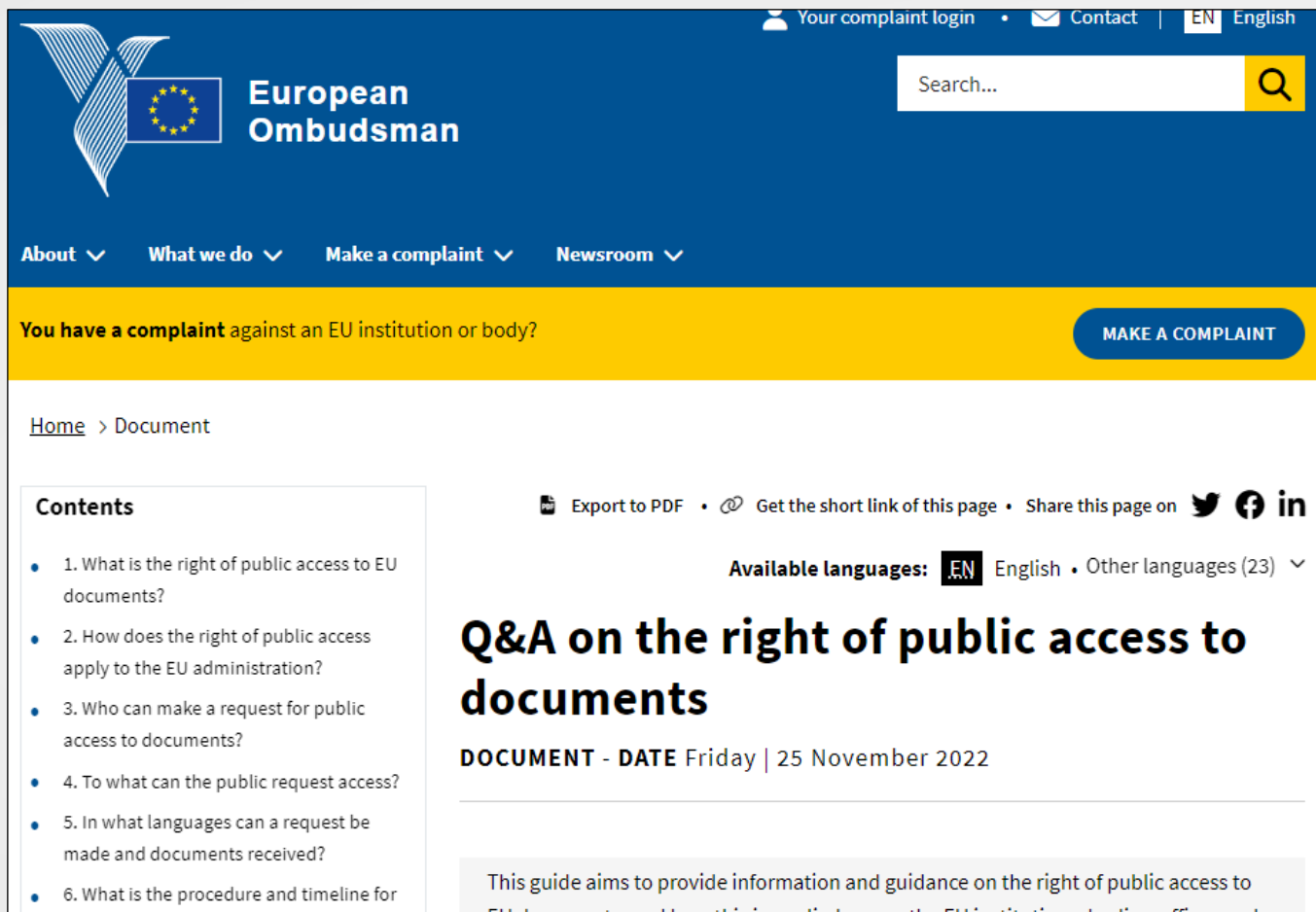


<https://ec.europa.eu/transparency/documents-request/home>

Processing of an application



Guide on the Ombudsman website: public access to EU documents



The screenshot shows the European Ombudsman website interface. At the top, there is a navigation bar with the logo, a search bar, and links for 'Your complaint login', 'Contact', and 'English'. Below the navigation bar, there are menu items: 'About', 'What we do', 'Make a complaint', and 'Newsroom'. A yellow banner contains the text 'You have a complaint against an EU institution or body?' and a 'MAKE A COMPLAINT' button. The main content area features a breadcrumb trail 'Home > Document', a 'Contents' sidebar with a list of six questions, and a main heading 'Q&A on the right of public access to documents'. Below the heading, it says 'DOCUMENT - DATE Friday | 25 November 2022'. There are also options to 'Export to PDF', 'Get the short link of this page', and 'Share this page on' social media. The text 'Available languages: EN English • Other languages (23)' is visible. The start of the document text is visible: 'This guide aims to provide information and guidance on the right of public access to EU documents, and how this is applied across the EU institutions, bodies, offices and'.



3. COMPLAINT TO THE OMBUDSMAN

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Requirements

Public access to EU documents and the role of the European Ombudsman

Request to
EU institution



If refused

Request the institution
to review its decision
(‘confirmatory application’)



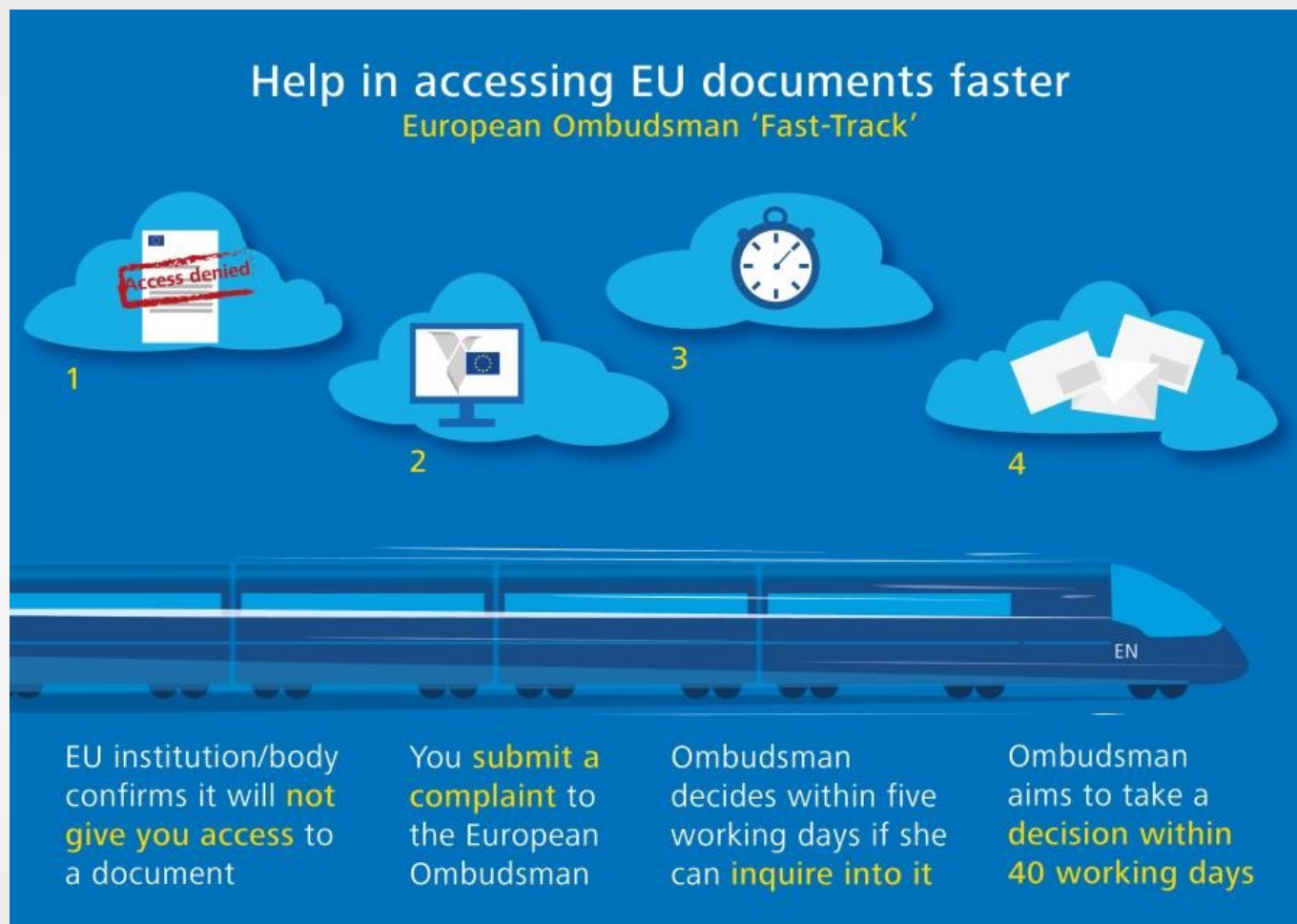
**If refused or the deadlines
are not respected**

Complaint to the Ombudsman



3. COMPLAINT TO THE OMBUDSMAN

Fast-Track procedure



4. CASES

- **What is a document?**

- Article 3 of Regulation 1049/2001:
 - *"document" shall mean **any content whatever its medium** (written on paper or stored in electronic form or as a sound, visual or audiovisual recording) concerning a matter relating to the policies, activities and decisions falling within the institution's sphere of responsibility;*
- Access has to be provided only to **existing documents**; new documents do not have to be created.

- **Are text messages documents according to EU law?**
 - Yes
 - No
 - It depends



- **Ombudsman's inquiries related to text messages**
 - Text messages of the **Council president** to heads of state and heads of government
 - Text messages exchanged between the **Commission president** and the CEO of Pfizer
 - Initiative to gather best practices on **recording text messages**

4. CASES

Text messages



European Ombudsman

PRACTICAL RECOMMENDATIONS FOR THE EU ADMINISTRATION

The recording of **text and instant messages** sent/received by staff in their professional capacity



These practical recommendations can guide the EU administration in the recording of text and instant messages. They result from an information-gathering exercise carried out by the European Ombudsman and reflect good practices she identified.



European Ombudsman

PRACTICAL RECOMMENDATIONS FOR THE EU ADMINISTRATION

The recording of **text and instant messages** sent/received by staff in their professional capacity

The EU institutions, bodies, offices and agencies should:

- Take into account, in document management rules and practices, the ever increasing use of text and instant messaging.
 - Consider the need for the decision to record a certain amount of information in the administration's document management system should not be dependent on the medium – be it a letter, an email, a text or instant message – but on its content.
- Issue clear guidance to staff on how text and instant messages that meet the criteria on document recording should be extracted, transferred and recorded.
 - All staff using electronic devices for work should be able to understand how to extract and transfer text and instant messages from messaging apps or platforms to the relevant document management system.
- Make sure that the retention periods for text and instant messages held on electronic devices used for work are in line with the retention policy.
 - Recognise that work-related text and instant messages are "documents" within the meaning of Regulation 1049/2001 on public access to documents.
- Ensure that their standard search tool allows for the identification of text and instant messages (as such) once they have been registered in their document management system.
- Put in place technological solutions to enable the easy recording of text and instant messages in document management systems. In the meantime, provide for alternative ways of recording such messages.
 - Issue awareness among staff about the need to ensure that text and instant messages meeting the recording criteria are extracted, transferred and recorded regularly and routinely.
 - In addition to standard internal communication messages, this could be done by offering to help to extract staff emails and export it into their programmes for some staff members, for example.
- Have a process in place to ensure that, when a staff member leaves, any documents the staff member holds, including any text and instant messages that meet the recording criteria, are recorded.
 - When dealing with requests for public access to documents that could cover text and instant messages, consider all locations where such messages might be stored, including electronic devices used by staff and assist staff potentially holding such messages in their searches, for example by giving instructions.

Access to documents concerning the quality of COVID-19 protection masks



Delayed responses to requests for access to documents



6. Discussion

Your questions





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www.ombudsman.europa.eu