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
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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
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

- **2238** complaints handled
- **348** inquiries opened

- **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
• 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.
• **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
• 15 working days

• in complicated cases: extension by 15 working days

• If no reply within time limit, the application is considered to be refused
• Applications for access to documents are almost always free of charge
2. ACCESS TO EU DOCUMENTS

How to apply for access to documents

https://ec.europa.eu/transparency/documents-request/home
2. ACCESS TO EU DOCUMENTS
Processing of an application

- Application
  - Full access
  - Partial access
  - Access denied
  - Confirmatory application
Guide on the Ombudsman website: public access to EU documents

Q&A on the right of public access to documents

This guide aims to provide information and guidance on the right of public access to EU documents and how to apply for public access to EU institutions and bodies. It includes questions and answers on the following topics:

1. What is the right of public access to EU documents?
2. How does the right of public access apply to the EU administration?
3. Who can make a request for public access to documents?
4. To what extent can the public request access?
5. In what languages can a request be made and documents received?
6. What is the procedure and timeline for...
3. COMPLAINT TO THE OMBUDSMAN
3. COMPLAINT TO THE OMBUDSMAN

Requirements

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

If refused or the deadlines are not respected
Complaint to the Ombudsman

Request to EU institution

If refused
Request the institution to review its decision
('confirmatory application')
3. COMPLAINT TO THE OMBUDSMAN

Fast-Track procedure

Help in accessing EU documents faster
European Ombudsman 'Fast-Track'

1. EU institution/body confirms it will not give you access to a document
2. You submit a complaint to the European Ombudsman
3. Ombudsman decides within five working days if she can inquire into it
4. Ombudsman aims to take a decision within 40 working days
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.
4. CASES

Text messages

• Are text messages documents according to EU law?
  • Yes
  • No
  • It depends
4. CASES

Text messages

• 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
Access to documents concerning the quality of COVID-19 protection masks
Delayed responses to requests for access to documents
6. Discussion

Your questions
@EUombudsman

www.ombudsman.europa.eu