

Reply of the European Commission to the proposal for a solution from the European Ombudsman on how the Commission dealt with a request for public access to documents related to the Commission’s practice of publishing names of EU officials on the EU Whoiswho website
- Complaint by Mr ██████████, ref. 1647/2023/NH

I. BACKGROUND

The applicant requested public access to a copy of the decision to remove the names of the European Commission’s staff under Head of Unit level from the EU Whoiswho Directory, and copies of any supporting documents that influenced this decision¹. At initial stage, the Directorate A ‘Strategy, Better Regulation & Corporate Governance’ of the Secretariat-General, identified two documents as falling within the scope of the request and granted full access to one (document 1) and wide partial access to the other (document 2).

The applicant lodged a confirmatory application, contesting, among others, the full identification of documents.

At confirmatory level, the Secretariat-General identified five additional documents. It granted further partial access to document 2, wide partial access to four of the new documents (documents 4 to 7) and refused access to document 3 based on the exception of Article 4(1)(b) (protection of privacy and integrity of the individual) and the second subparagraph (protection of the decision-making process) of Article 4(3) of Regulation (EC) No 1049/2001.

Dissatisfied with this decision, the applicant turned to the European Ombudsman.

III. THE EUROPEAN OMBUDSMAN’S INQUIRY AND THE PROPOSAL FOR A SOLUTION

In the course of its inquiry, the Ombudsman examined the documents concerned. On 24 November 2023, the inquiry team met with representatives of the Commission.

On 25 March 2024, the Ombudsman sent a letter to the Commission asking the latter to reconsider its confirmatory decision on this public access request, with a view to disclosing document 3 to the widest extent possible and to carry out a more thorough search for documents, beyond its document management system ARES.

In the Ombudsman’s view, the Commission has not explained in a convincing way why the disclosure of document 3 would seriously undermine its decision-making. Moreover, the Ombudsman considers that the Commission failed to identify all the documents falling within the scope of the request.

¹ The request was registered with reference EASE 2023/2252.

III. THE REPLY OF THE COMMISSION TO THE PROPOSAL FOR A SOLUTION OF THE OMBUDSMAN

As regards the identification of other possible documents and the Ombudsman's request to carry out a more thorough search for documents in other repositories, the Commission would like to underline that no further documents exist that would fall within the scope of the request.

As per common and continuous practice, the Commission performs a thorough search at confirmatory stage to identify the documents falling within the scope of the request. Following this confirmatory application, the Commission assessed the arguments of the applicant on the purported existence of further documents and performed a renewed search.

As the Commission explained in its confirmatory decision, five additional documents (e-mails) were identified at the confirmatory stage. Except for the record of processing which is public (document 1), documents 2-7 consist of e-mails exchanged between the Secretariat-General and other institutions or Directorates-General, or within the Secretariat-General itself. Contrary to the Ombudsman's view that the Commission's search may have been limited to the ARES electronic document management system, the search of documents was performed also by consulting the staff members concerned who led the work on the revision of the Whoiswho policy. Moreover, it should be recalled that the applicant submitted a request for access to documents under Regulation (EC) No 1049/2001, by requesting "a copy of the decision [to remove the names of European Commission staff under Head of Unit level of the EU Whoiswho Directory] and copies of any supporting documents that influenced the decision". To that end, the Commission once again reiterates that the identified documents (documents 1-7) are the only documents that respond to the applicant's request, and considers the Ombudsman's views related to her inquiry in 1983/2023/ET as beyond the scope of the review of reply provided in EASE 2023/2252.

Therefore, any additional information, concerning for instance requests from Commission staff members to have their names removed from EU Whoiswho directory or other concerns expressed orally, falls outside of the remit of the request, and does not fall within the concept of 'document' as established by the Regulation². Moreover, in the confirmatory request, the applicant conceded that they did not 'at all' request the transfer of personal data such as the names of the officials. This is at odds with the request, now formulated outside the confirmatory review, from Commission staff members to have their names removed from the directory. Therefore, even if there were such *documents* (quod non), they could not have reasonably fallen within the scope of the initial request, as conceded in the confirmatory application.

Furthermore, the Commission would like to express that, in its reply under EASE 2023/2252, it provided sufficient information and context to support its Decision, in full compliance with

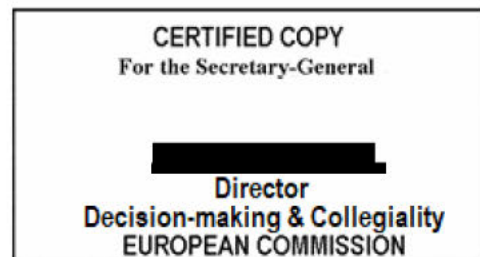
² Judgment of 2 July 2015, *Rainer Typke v European Commission*, T-214/13, EU:T:2015:448; paragraphs 53-54

its duty of good administration. In that sense, the Commission Decision detailed the logic and addressed, in a tailored way, the concerns and arguments raised by the applicant in the confirmatory application. For example, the Decision explained that the Commission has an obligation of due diligence to protect its staff, especially those dealing with sensitive files, and should avoid that these colleagues become subject to undue address from external sources to create pressure on them in their work.

While the Commission is of the view that its position expressed in the confirmatory decision of 10 August 2023 was legally and factually correct at the time of its adoption, in the spirit of furthering transparency, the Commission has re-assessed the application of the relevant exceptions to document 3. Taking into account the current factual and legal circumstances, the Commission has concluded that partial access can be granted to document 3, as proposed by the Ombudsman in its letter, with the exception of the personal data of staff members of the Commission that do not form part of the senior management of the institution. Access to this data cannot be granted on the basis of the exception of Article 4(1)(b) (protection of privacy and the integrity of the individual) of Regulation (EC) No 1049/2001.

With the present letter, the Commission sends the document concerned, to which wide partial access is hereby granted. The Commission understands that the Ombudsman will communicate the present reply to the complainant and hereby agrees to the transmission to the applicant of the document attached to this reply.

For the Commission
Věra JOUROVÁ
Vice-President



Enclosure:

Document 3 - Internal communication in the Secretariat-General of 7 March 2023, reference Ares(2023)3838050

From: SG A UNITE A6
To: SG A UNITE A6
Subject: FW: Publication Offices OP Who's Who

From: LEARDINI Pascal (SG) [REDACTED]
Sent: Tuesday, March 7, 2023 4:21 PM
To: [REDACTED]; VERRIER Tatjana (SG)
Cc: [REDACTED]; WIMMER
Michael (SG)
Subject: RE: Publication Offices OP Who's Who

This is definitely not OK and we need to revisit the policy of making public all these names, juggling with different objectives:

- Transparency
- Protection of personal data
- Due diligence towards our staff
- Inherent risks
- Equality of treatment

So we need to establish which has decided/decides on this policy (OP? each institution?). I will then talk to Hilde.

Pascal

From: [REDACTED]
Sent: Tuesday, March 7, 2023 3:30 PM
To: VERRIER Tatjana (SG); LEARDINI Pascal (SG)
Cc: [REDACTED]
Subject: FW: Publication Offices OP Who's Who

Please see below [REDACTED] e-mail. A service free of charge for all lobby organisations and foreign influencers...

From: [REDACTED]
Sent: Tuesday, March 7, 2023 3:19 PM
To: [REDACTED]
Subject: Publication Offices OP Who's Who

Dear both,

Just to illustrate what I was pointing at this morning, if you type 'sanctions russia' in the search bar of the OP Who's who, you get all the names and phone numbers of the FISMA colleagues in charge (and as a bonus some from EEAS!)

[Search Results - EU Whoiswho - Publications Office of the EU \(europa.eu\)](#)

'Rule of law hungary' will lead you to all the names and phone numbers of JUST colleagues (including one regularly attacked in the press – but also many others who work on rule of law and not Hungary in particular), and to our unit's page. And if you click on it, you have all our names and phone numbers as well (here again, now narrowed down to Hungary only)

[Search results - Publications Office of the EU \(europa.eu\)](#)

The search tool is so good (much better than Intracom) so if you try 'northern ireland' it will even suggest you 'Protocol on Ireland/Northern Ireland' and give you the names and phone numbers of colleagues in SG.H1 and TAXUD

[Search results - Publications Office of the EU \(europa.eu\)](#)

So in essence it's not always super precise, but you can identify colleagues (desks and management alike) and get names and phone numbers quite easily. Good point it's very transparent. Less good point it's so transparent that it can potentially expose colleagues working on sensitive files (much more than national administrations).

I hope this helps!

Kind regards

