



Mr Johannes Filter

E-mail: j.filter.dsmyrwnd4d@fragdenstaat.de

Strasbourg, 21/02/2020

Complaint 63/2020/MIG

Subject: Decision of the European Ombudsman in the above case on the European Parliament's refusal to grant public access to a picture of an MEP on the ground that it could not identify any existing document

Dear Mr Filter,

On 20 December 2020, you submitted a complaint to the European Ombudsman about the European Parliament's refusal of public access to pictures¹ of an MEP.

Your complaint is admissible. The Ombudsman has asked me to deal with your complaint and to reply to you on her behalf.

Based on the information you provided us, **there was no maladministration in how the European Parliament handled your request for public access to documents.**²

The Ombudsman considers that Parliament was justified in rejecting your request for public access on the ground that the pictures, to which you are seeking access, are not in its possession.

In November 2019, you asked Parliament to give you access to pictures of an MEP under Regulation 1049/2001³. When making that request, you referred to an interview in which the MEP concerned had mentioned that Parliament had taken pictures of him, not all of which had been provided to him afterwards. He referred to one picture in which he had posed on his desk. Parliament informed you that the pictures in question had been taken in September 2019 and that those that had not been used by Parliament and sent to

¹ It appears from the overall file that Parliament may have taken only one photo that was relevant to your request. However, to be consistent, I will exclusively refer to the plural ("pictures") in this letter.

² Full information on the procedure and rights pertaining to complaints can be found at <https://www.ombudsman.europa.eu/en/document/70707>.

³ Regulation 1049/2001 regarding public access to European Parliament, Council and Commission documents: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32001R1049&from=EN>.



the MEP were deleted shortly after they were taken. Parliament explained that they were deleted as they “*did not meet editorial and institutional requirements of [its] Audio-visual service.*”

Following your request for review of 20 December 2019, Parliament confirmed its initial position.

The right of public access to documents applies only to documents in the possession of an institution⁴ when the request for access is replied to. If an institution asserts that it does not hold a specific document, there is a legal presumption that this statement is true and accurate unless rebutted by convincing arguments.⁵

This presumption may be rebutted if the applicant provides relevant and consistent evidence and arguments that the requested document indeed exists and is currently in the possession of the institution concerned.

You consider that Parliament might have deleted the pictures at issue only after you had made your request. The reason is that officials at the Parliament informed you on 5 December 2019 that there was an ongoing internal consultation regarding your request for access.

The Ombudsman does not consider that this statement by officials at the Parliament rebuts the presumption that applies here. That Parliament conducted an internal consultation does not indicate that the photo still existed at that point in time. Rather, this illustrates that Parliament was liaising with its relevant staff to verify *if* there were any photos falling under your request for public access, and thus that Parliament dealt with your request properly.

When Parliament concluded that there were no pictures in its possession that would be relevant to your request, it informed you accordingly and provided you with further explanations as to why this was no longer the case.

Parliament’s explanations also appear to be reasonable. As the photos at issue did not meet Parliament’s internal requirements, there was no reason for Parliament to keep them. With today’s digital photography techniques, deleting an individual, unwanted photograph is a routine and straightforward task. Accordingly, the MEP concerned did not receive a copy of the pictures either. The description that the MEP gave of the context in which the pictures were taken would appear to support this view (he describes a photo being taken of him posing *on* his desk).

Parliament’s statement that it could not identify any document in its possession that corresponded to request for access was thus entirely reasonable.

⁴ In accordance with Article 2(3) of Regulation 1049/2001.

⁵ Judgment of the General Court (Second Chamber) of 23 April 2018, *Verein Deutsche Sprache v European Commission*, T-468/16, paragraph 35:
<http://curia.europa.eu/juris/document/document.jsf?text=&docid=201394&pageIndex=0&doclang=DE&mode=lst&dir=&occ=first&part=1&cid=6275817>.



Yours sincerely,

Fergal Ó Regan
Head of Inquiries - Unit 2