



European Ombudsman

Emily O'Reilly
European Ombudsman

Mr Arne Semsrott and Ms Luisa Izuzquiza

a.semsrott.pr2vzmxg8n@fragdenstaat.de

Strasbourg, 26/10/2020

Complaint 1219/2020/MIG

Subject: Decision of the European Ombudsman in the above case on how the European Council dealt with a request for public access to mobile phone based messages supposedly sent by its then President to heads of state and government

Dear Mr Semsrott and Ms Izuzquiza,

You submitted a complaint to my Office against the European Council concerning the refusal of access to text messages based on the ground that the institution could not identify relevant documents.

After a careful analysis of all the information submitted to me, I have decided to close my inquiry with the following conclusion:

There was no maladministration by the European Council in denying public access based on the ground that it does not hold relevant documents.

Having said that, your complaint raises important issues, notably regarding text and instant messages. While the EU's rules on public access to documents were drawn up more than two decades ago, the notion of 'document' under those rules covers "*any content whatever its medium* (...)." ¹ Thus, text and instant messages are clearly covered under these rules.

It is also clear that text and instant messaging is increasingly used for professional communication, including communication of substantive information, also by the EU administration. However, if the content of these messages is not retained and held by the institution, it will never be possible for the public to access this content.

I have therefore pointed out, in my decision, that the EU institutions should make every effort to reflect the reality of modern communications, and the increased use of text and instant messaging, in their document management

¹ Article 3(a) of Regulation 1049/2001 [emphasis added].



rules and practices. This reflects their duty to draw up and retain documentation pertaining to their activities². They should do so, as far as possible and in a non-arbitrary and predictable manner.

Please find enclosed my decision on your complaint³. Thank you for having raised this important issue.

Yours sincerely,

Emily O'Reilly
European Ombudsman

Enclosure: Decision on complaint 1219/2020/MIG

² Judgment of the Court of First Instance of 26 April 2007 in case T-264/04, *WWF European Policy Programme v Council*, paragraph 61:
<http://curia.europa.eu/juris/document/document.jsf?text=&docid=61308&pageIndex=0&doclang=en&mode=lst&dir=&occ=first&part=1&cid=5501506>.

³ Full information on the procedure and rights pertaining to complaints can be found at:
<https://www.ombudsman.europa.eu/en/document/70707>.