European Ombudsman

Alleged refusal to grant access to terrorism related document

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Related documents

- Case: 0944/2008/OV
- Decision of the European Ombudsman closing his inquiry into complaint 944/2008/OV against the Council of the European Union

Summary of decision on complaint 944/2008/OV against the Council of the European Union

The complainant requested access, on the basis of Regulation 1049/2001/EC, to document COREU CFSP/SEC/1126/06, which was classified as "RESTREINT EU". This document contained a report of the EU-Troika meeting with US authorities which was held on 3 March 2006, concerning the fight against terrorism. The Council refused to grant access to the document on the grounds that two exceptions provided for in the Regulation applied: Article 4(1)(a), third indent, protection of the public interest as regards international relations, and Article 4(3), protection of the institution's decision-making process. The complainant made a confirmatory application. The Council maintained its refusal to grant access to the document, this time referring only to the exception in Article 4(1)(a), third indent. The Council referred to the sensitive content of the document, which comprised a detailed report of US and EU positions. It argued that its disclosure would be detrimental to the good functioning of EU-US relations, and it would hinder diplomatic efforts to find constructive solutions in sensitive political areas. The Council also refused partial access, stating that the information contained in the document formed an inseparable whole.

In his complaint to the Ombudsman, the complainant claimed that the Council should grant full, or possibly partial access to the document. The Council maintained its position in its opinion. It referred to case-law which decided that the exceptions in Article 4(1)(a) of the Regulation are mandatory. The Council considered, therefore, that there was no need to balance the protected interests against other interests.

The Ombudsman's services inspected the relevant document. The Ombudsman concluded that the Council was justified in applying the exception based on the protection of the public interest as regards international relations, since releasing the document would definitely harm EU-US relations. As regards partial access, the Ombudsman's inspection confirmed that the document recorded EU and US opinions in such a way that it would be impossible to release parts of the document without infringing the protection of the interest covered by Article 4(1)(a), third indent, of the Regulation. The Ombudsman therefore concluded that the Council had legitimate reason to refuse disclosure. The Ombudsman therefore found no maladministration by the Council, and he closed the case.