



P. Nikiforos Diamandouros
European Ombudsman

Mr Tony Bunyan
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Strasbourg, 19 -11- 2012

Complaint 2166/2012/BEH

Dear Mr Bunyan,

On 22 October 2012, you submitted a complaint to the European Ombudsman against Europol concerning its rules on access to documents.

I have asked Europol to submit an opinion on the following allegations and claims.

Allegations:

1. Contrary to its obligation to provide for a public register of documents which stems from the Decision of Europol's Management Board laying down the rules concerning access to Europol documents and/or Article 15(3) TFEU, Europol has failed to make available such register.

2. Contrary to its obligation to take account of the principles and limits set out in Regulation 1049/2001 (see Article 45 of the Europol Founding Decision) and/or Article 15(3) TFEU, the Decision of Europol's Management Board laying down the rules concerning access to Europol documents deviates fundamentally from the principles contained in Regulation 1049/2001.

In support of your second allegation, you argue that, unlike Regulation 1049/2001, the aforesaid Management Board Decision: (i) provides for a public register, which only extends to "publicly accessible documents"; (ii) provides for a time limit for processing initial and confirmatory applications for access of 30 working days; (iii) does not foresee the possibility of instituting court proceedings or complaining to the Ombudsman in case of a negative decision on a confirmatory application; and (iv) does not include an obligation to prepare an annual report on access to documents as a consequence of which the number of cases in which access is refused, the grounds on which access is



refused and the number of sensitive documents are not recorded.

Claims:

1. Europol should make available a public register of documents.
2. Europol should bring the Decision of its Management Board laying down the rules concerning access to Europol documents into line with the principles contained in Regulation 1049/2001.

In accordance with Articles 2(2) and 3(1) of the Statute of the European Ombudsman, I informed the Director of Europol of your complaint and invited him to submit an opinion on the allegations and claims included in my inquiry by 28 February 2013.

As soon as I receive Europol's opinion, I will forward it to you with an invitation to make observations. Any observations you wish to make should be submitted to my office within one month of receiving the opinion.

Once my office receives your observations, or the deadline has passed, the Legal Officer responsible for your case, Mr Bernhard Hofstötter (+33 388 17 81 05), will then examine your file. Mr Hofstötter is the acting Head of Complaints and Inquiries Unit 4, which is part of Directorate B. I will inform you if I need to inquire further into your complaint before making a decision on it.

Every effort is made to deal with cases as quickly as possible. I try to reach a preliminary conclusion in an inquiry on a complaint within one year of opening it.

Yours sincerely,

P. Nikiforos Diamandouros