

3 February 2011

Via facsimile and post

The European Ombudsman
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Re : Complaint About Maladministration under Regulation 1049/2001

Dear European Ombudsman:

On behalf of Transport & Environment and ClientEarth (collectively “Complainants”), we submit this complaint about maladministration on the part of the European Commission in responding to our application for access to information on tar sands. The European Commission has failed to comply with its lawful obligations under Regulation (EC) No 1049/2001 and Regulation (EC) No 1367/2006.

The relevant information on the request at issue is as follows:

- On 8 July 2010, via electronic mail, Complainants submitted an application to DG CLIMA requesting access to documents containing information on tar sands, communications regarding tar sands, its associated carbon-dioxide emissions, and how these would be addressed under the Article 7a of the Fuel Quality Directive. The 8 July 2010 application is enclosed herein.
- On 12 August 2010, after requesting a time extension, DG CLIMA responded, partially rejecting our application. The Commission response is enclosed herein.
- On 5 September 2010, Complainants submitted a confirmatory application requesting reconsideration of the partial denial. The confirmatory application is enclosed herein.
- On 20 October 2010, after receiving a time extension, the Commission responded in writing stating that it would not be able to comply with the statutory time limits and otherwise committed to reply “as soon as possible.” The Commission letter is enclosed herein.

At the time of submission of this complaint, the Commission has yet to reply to our confirmatory application. Therefore, in addition to the violations of Regulation (EC) No 1049/2001 and Regulation (EC) No 1367/2006 referenced in our confirmatory application, which remain valid for purposes of this complaint, the European Commission has also failed to reply to our confirmatory application within the statutorily prescribed time limit set out in Articles 7 and 8 of Regulation (EC) No 1049/2001.

This is not the first instance of maladministration with respect to the time limits. Indeed, the European Commission has a longstanding practice of delaying indefinitely and without justification the time limit to respond to requests for access to documents under Regulation (EC)

No 1049/2001 and Regulation (EC) No 1367/2006. This has been documented by the European Ombudsman: “it is clear that the tight deadlines foreseen in Regulation 1049/2001 are meant to ensure that the right of access is fully respected. Any failure to respect these deadlines thus constitutes an instance of maladministration.”¹ Responding outside the two-stage administrative procedure also undermines effective participation in environmental decision-making since, as here, the timely provision of information—or the basis for its unavailability—would allow Complainants to ensure accountability, transparency, and accuracy in policymaking on the Fuel Quality Directive – a key piece of EU Climate legislation. As a result, we request that, even if the European Commission subsequently provides a response, the European Ombudsman continue its examination and investigation into the appropriateness of unilateral and indefinite delay beyond the time limit.

With this complaint, Complainants respectfully request that the European Ombudsman examine the conduct of the European Commission in handling our request. If you require any additional information, please do not hesitate to contact us.

Sincerely,

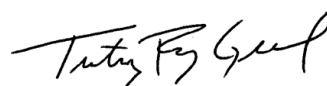


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¹ *Decision of the European Ombudsman closing the inquiry on complaint 1010/2008/(AL)DK against the European Commission, paragraphs 26, 32-33; see also Special report from the European Ombudsman to the European Parliament concerning lack of cooperation by the European Commission in complaint 676/2008/RT, paragraph 38 (further noting that, as of the date of the publication of the Special Report —over three years since the initial application —the Commission had still not fulfilled its duties in relation to the applicant’s request for documents).*