



Emily O'Reilly
European Ombudsman

Decision of the European Ombudsman on Records Management in the Office of the European Ombudsman

This Decision contains the European Ombudsman's main records management policies, principles and rules. Further detailed rules are laid down in thematically organised Annexes. Annexes may be added and amended by the Secretary-General.

The Decision provides for an approach to records management that combines the structured features of conventional record keeping with elements that enable the Office to address the challenges related to the use of modern electronic communication and archiving tools.

The Decision brings the Office's records management closer to the practice of other key EU institutions and to international records management standards. It does so whilst introducing solutions specific to the organisation of the Office.

The language applicable to records management - notably including meta-data and titles of files and records - is English.

Article 1: A general records management system

1.1 The general approach

The Office operates with a general records management system, which contains a general filing plan, a common retention list, assignment and workflow features, remote access, capacity for integration with other IT systems, and reporting features.

As far as legally and practically possible, the Office's records and their processing shall be electronic. This includes the final archiving for historical purposes.

1.2 Special records management systems

The general records management system shall be used unless compelling technical, managerial or legal reasons make it necessary to use other special records management systems for the handling and keeping of documents.



The use of special records management systems shall, for each system, be separately explained and authorised in rules contained in an annex to the present Decision.

Article 2: Documents - definition

A 'document' in the present Decision refers to the following:

- (a) any content whatever its medium (written on paper or stored in electronic form or as a sound, visual or audio-visual recording) concerning a matter relating to the policies, activities and decisions falling within the European Ombudsman's sphere of responsibility;
- (b) the reference to "content" above includes content produced by the Ombudsman or any member of staff in her/his professional capacity, through office or non-office devices, or through online communication tools, including social media. The electronic or physical means of transfer and/or storage, and the point of storage, is irrelevant.

Article 3: Obligation to register, and related measures

3.1 The act of registration implies (a) separate recording of specific individual documents or (b) the inclusion of documents in registered *files*, or equivalent, that are managed through dedicated records management tools.

The registration rules below do not apply to the private spaces of staff and the separate spaces of the Staff Committee.

3.2 All final versions of documents produced in the course of the European Ombudsman's performance of the core activity of investigating possible instances of maladministration, and policy documents related thereto, shall be registered.

3.3 All incoming and outgoing paper correspondence shall be registered, subject to the following exceptions:

- a) The incoming correspondence has been identified, by relevant competent staff, as clearly being of an abusive nature.
- b) The incoming correspondence has been identified, by relevant competent staff, as clearly being for information only, including of a promotional nature, and not requiring any action by the Office.

3.4 All incoming and outgoing e-mail correspondence - the rapid and simple registration of which is technically provided for in the general records management system - shall be registered, subject to any of the following exceptions:

- a) Where access to the e-mail correspondence by other colleagues is not necessary in order to ensure completion of the work process in question (no business continuity need).



- b) Where the e-mail correspondence would not be needed for the purposes of regulatory or other checks by EU control bodies in the event that a check on the particular work were to be undertaken (no accountability need).
- c) Where the e-mail correspondence is part of inter-institutional processes in which the Office can expect the relevant lead institution to manage the related records.
- d) Where the e-mail correspondence is with other public bodies of the European Union, relates to a very short-lived work process (measured in weeks), and would be subject to no retention period at the end of that process (proportionality).

3.5 E-mail correspondence that must be registered, and which occurs through functional e-mail accounts (non-personal e-mail accounts to which one or more services have full access), may be subject to conversation/batch based registration if this does not involve a postponement of the registration of more than four weeks.

3.6 Electronic correspondence - e-mails, sms or similar - that form part of the routine activities related to contacts with the media, may be left unregistered.

3.7 Activities and correspondence that take place through social media must be registered, unless they fall under the exceptions laid out in 3.4 above.

3.8 All final versions of administrative documents that are necessary for the Office's day-to-day functioning shall be registered.

3.9 The systematic use of individual document storage spaces, notably in Windows Explorer and in e-mail systems, shall as far as possible be avoided.

3.10 The Office shall at all levels introduce day-to-day practices that from the outset facilitate a high standard of substantive and procedural compliance with the principles and rules of transparency and data protection. It shall moreover introduce practices that allow for a high standard of re-use of the documents and their related data.

Article 4: Private spaces for staff

The Office provides clearly defined private spaces for staff members in their Outlook account and in Windows Explorer respectively. Content which is legitimately held in these private spaces shall not be considered to be held by the European Ombudsman for the purpose of legislation on access to documents, data protection, archiving, or other related legislation or rules.

Additional related rules shall be laid down in annexes to this Decision.

Article 5: Separate spaces for the Staff Committee

The Office provides clearly defined spaces for the Staff Committee in its Outlook account and in Windows Explorer respectively. Content which is legitimately held in these spaces shall not be considered to be held by the



European Ombudsman for the purpose of legislation on access to documents, data protection, archiving, or other related legislation or rules.

Additional related rules shall be laid down in annexes to this Decision.

Article 6: Retention of documents and data

6.1 Records retention periods are managed through the rules laid down in this Decision and the 'Common Retention List'. The use of a 'Common Retention List' reflects standard international practice and facilitates the full or partial automation of the management of retention periods.

6.2 Retention periods cover two main time issues: 'Administrative retention periods' and indefinite archiving.

The *administrative retention period* reflects the period during which the Office can reasonably anticipate that it, or other persons or bodies, may need to consult the documents. The *indefinite archiving* refers to the permanent archiving of documents for the purpose of long-term accountability, transparency and historical recording of the Office's activities.

6.3 The retention periods referred to in this Article shall apply retroactively.

6.4 The following are the basic principles for the retention practices that are implemented in detail in the records management system. They may be subject to further elaboration in corresponding annexes.

6.5 The Office's retention of administrative documents and data shall as far as appropriate reflect the established and evolving rules and practices that core institutions of the European Union apply by way of good practice or on the basis of inter-institutional agreements¹.

6.6 The final versions of documents for the following categories shall, subject to any special provisions including provisions for the protection of personal data, be kept indefinitely:

- a) policy and strategy
- b) documents in investigations into possible instances of maladministration in which the Ombudsman herself/himself has had significant direct involvement.

6.7 Complaint related documents (including records of internal discussions) shall be subject to a five years retention period when:

- a) the complaint was outside the Office's mandate; or
- b) the complaint was inadmissible; or
- c) the complaint was rejected for lack of grounds to open an inquiry; or

¹ This is already to a very large extent the case for the Office's retention rules for documents related to staff management and finance.



- d) a complaint was fully dealt with under delegation, and the decision concluded that no maladministration had occurred.

6.8 In the interests of adequate risk management of confidential information, and in line with Article 9(4) of the Office's Implementing Provisions, the Ombudsman shall retain possession of documents obtained from an institution or a Member State during an inquiry, and declared by that institution or Member State to contain confidential information, only for so long as the inquiry is ongoing.

6.9 In line with the above-mentioned interests, confidential material in case files shall generally but subject to the provisions below, and shall not be retained in the case files once the case has been closed.

6.10 In relation to investigations in which the Ombudsman herself/himself has had significant direct involvement, or in cases of delegated case handling which lead to outcomes other than the finding that no maladministration had occurred, or where the case is discontinued, the rules below shall apply.

Documents disclosing information provided by a complainant which the Office itself has classified as confidential, or disclosing information which a complainant has identified to be confidential in line with Article 2(2) of the Office Implementing Provisions, and which the Ombudsman considers to be confidential at the time of closing the case concerned, shall be returned to the complainant, or removed from the file in agreement with the complainant, with the following exception:

A document disclosing such confidential information shall be retained (a) where it is clear that the information in question is, or may well be, important for an understanding of the case in the future, including circumstances in which the case has precedence or training value; (b) where retention of the document is likely to serve future historical or public interests; or (c) where retention of the document may be relevant in the context of actual or possible future formal procedures, including audits or court proceedings.

The above-mentioned decisions and actions in relation to the handling of confidential documents shall be duly recorded on the case file.

6.11 Documents related to staff, finance and communications/media shall be covered by the retention periods that are common to the EU institutions' related practices.

6.12 Ad hoc removal/deletion of documents and related data shall be authorised only by the Secretary-General on proposal by the Office's Document Management Officer.

Article 7: electronic collaborative, individual and online tools

7.1 All Office related content produced or received through e-mails, mobile devices, social media, websites, collaborative websites, or similar tools, is a 'document' and in principle subject to the applicable rules in the Ombudsman's Decision on Records Management. The point of storage, temporary or permanent, of the content is irrelevant. Official communications handled on a



personal device shall be copied to an official office file. The related practical arrangements shall be set out in a dedicated annex to the present Decision.

7.2 In the context of requests for public access to documents, a data protection check, audits, or any other similar information needs related to regulatory rules of the European Union or any of its Member States, any person working, or having worked, for the Office may be asked to verify whether his/her (a) mobile device(s), (b) e-mail accounts, or any other equivalent tool, contains documents relevant to the subject matter in question. The Office shall respond positively to any request for assistance to carry out related searches. The reply by the person concerned shall be recorded on the file related to the subject matter of the request.

7.3 In relation to public websites, the Office shall as far as appropriate ensure coherence with the practices agreed at the European Union's Inter-institutional Editorial Committee.

Article 8: Public Register

8.1 For the purpose of coherence in the EU administration, sound financial management and service to the public users, the European Ombudsman takes steps to further the use of a corporate public documents and data register and/or portal for the EU administration.

8.2 Pending the outcome of the above-mentioned actions, the Ombudsman implements, for its organisation, the principle of online public registers through publication of core business documents on its online cases section, through direct and full publication of all documents adopted in relation to strategy, policy and high level management, and through the publication of its document filing plan.

Article 9: Document Management Officer

A member of staff shall have the role of the Office's Document Management Officer, as laid down in that person's job description. The Document Management Officer shall ensure the implementation of the present decision and the related rules and principles, provide records management training to the Office's staff, and make proposals for improvement to the Office's records management practices.

Article 10: Transparency Officer

A member of staff shall have the role of the Office's Transparency Officer, as laid down in that person's job description. S/he shall centrally handle initial requests for public access to documents, and shall promote record management practices that allow for an efficient handling of such requests.



Article 11: Entry into force

11.1 When this Decision enters into force, annexes on the following issues shall enter into force also:

- a. Annex on Staff's private spaces
- b. Annex related to the work of the Staff Committee
- c. Annex on Security
- d. Annex on internal access to documents
- e. Annex on draft documents

11.2 By adoption of this Decision, the following decisions are repealed:

- a. Framework decision on the European Ombudsman's historical archives policy (Rodeo file reference INT2013-000172)
- b. Decision of the European Ombudsman on the appointment of an Information Officer (Rodeo file reference INT2014-000348)
- c. Framework decision of the European Ombudsman on the creation of a public register (Rodeo file reference 11/08828)

11.3 The rules and principles adopted by this Decision, including in its annexes, take precedence over records management rules in other decisions or recorded practices of the Office, unless an express and reasoned deviation is introduced by the Office's Secretary-General.

Strasbourg, 06/09/2017

Emily O'Reilly



ANNEXES

Annex on Staff's private spaces

In addition to obviously private content (such as purely social communication or documents related to one's individual and personal affairs), certain Office *related* content may legitimately be considered to be personal although not private. This may for instance be the case when a staff member in a pre-draft mode is noting down her/his personal thoughts on work (text draft or other) that s/he might submit (but without at that stage having an obligation to do so) to other colleagues for comments. A legitimate personal interest may furthermore exist in relation to past work and communications that the staff member in question expects may possibly be important background material for her/his annual staff assessment exercise. Similarly, staff members' communications with the Office's Staff Committee, or similar communications (such as with a trade union), may legitimately be held in the private spaces.

In order for content to be held legitimately in private spaces, the content must be such that no other colleague could possibly have a present or future *necessity* to access the content for the purpose of *carrying out her/his professional duties*. The content may not be such that its storing or future processing could possibly infringe on any other individual's right to protection of her/his personal data.

The European Ombudsman cannot provide any guarantees as to the accessibility of the content of private spaces in relation to criminal and/or fraud investigations. Neither can the Office guarantee that a Court will accept that the content of such private spaces does not constitute documents held by the Office for the purposes of the EU's legislation related to public or privileged access to documents.



Annex related to the work of the Staff Committee

The work of the Staff Committee has special features with implications for records management. Staff who communicate with the Staff Committee on sensitive matters have a legitimate expectation that such matters are not accessed by, or disclosed to, anyone in the Office without their express and informed consent. The Staff Committee itself has a corresponding legitimate interest in being able to discuss sensitive staff matters in confidence.

As an exception, records related to the work of the Staff Committee therefore cannot be subject to the general right of immediate access that is otherwise held by the management, the Data Protection Officer and/or any other person/function in the Office that holds such general rights of access to documents internally.

The Staff Committee, being an organ provided for in the Staff Regulations, fulfils a number of tasks of a formal nature, and its activities are reflected in the Office's filing plan. With a view to ensuring and promoting transparency, the Staff Committee therefore will ensure regular formal registration of documents that are not covered by any staff member's legitimate expectation of confidentiality.

The European Ombudsman cannot provide any guarantees as to the accessibility of the content of the Staff Committee spaces in relation to criminal and/or fraud investigations. Neither can the Office guarantee that a Court will accept that the content of such spaces does not constitute documents held by the Office under the EU's legislation for the purposes of public or privileged access to documents.



Annex on Security

The work of the Office is technologically integrated into, or carried out through, ICT systems of other institutions, notably the European Parliament. The Ombudsman and all staff shall respect the related security rules and guidelines.

All members of staff shall sign a declaration to the effect that they have read and understood the security rules and guidelines.



Annex on internal access to documents

The Office operates with a high level of internal transparency. It is not generally necessary to demonstrate a *necessity* to access internal documents. Members and staff have access to documents of the Office, *unless* there are specific reasons to limit or prevent such access.

A basic guiding rule shall be that, if the documents concerned would be subject to disclosure following a request for public access to documents, the documents shall normally be considered accessible to all members of staff.

The rules applying to specific fields of activity are the following:

Human resources management

All documents for human resources management in relation to current, former and potential staff, are covered by a presumption of confidentiality. They are strictly covered by access on a need-to-know basis, in particular to protect personal data.

Finance management

Documents related to ad hoc procedures related to contracts shall be covered by a presumption of confidentiality. They are strictly covered by access on a need-to-know basis.

Case management

The 'file' of a case is the compilation of final recorded documents in the 'Archive' area of the Office's current case management system, and for previous systems in the equivalent of that area, with the exception of "outside mandate" cases for which the file comprises, for reasons of simplification, notes in the Case Form and correspondence that is processed and stored through the use of e-mail integration tools in the system.

As a rule, the case files are accessible to all staff involved in case handling, including staff involved in strategy, policy, communication and outreach.

By way of exception to the above rule, confidential documents may be registered as internally confidential, and accessible on a need-to-know basis only. The same exception may be applied to documents disclosing the personal data of complainants or of third parties, or disclosing other particularly sensitive material. In such instances, because of the sensitivity of the data or material, and/or because of the requirements of risk management, access may be restricted on a need-to-know basis only.

The drafts circulated between the case handlers and their superiors, and which are located in the 'Working Area' of the Office's Case Management System, shall be accessible on a need to know basis, which in the first place involves staff with the role of approving draft texts.



Annex on draft documents

Draft versions of any document in any area of activity may be produced and kept for as long as the file or similar setting is open. When the file is closed, drafts shall normally be destroyed.

The drafts submitted by staff (below Cabinet level) to the Ombudsman for her/his signature, and which concern strategy, policy and case handling, shall be registered and kept indefinitely. They shall be fully accessible internally, and disclosed in case of external requests for access.

Drafts may be kept by staff in their private space(s), if the draft has an actual or potential relevance to the assessment of their own performance or conduct.

Drafts may be kept by management staff if the drafts in question have an actual or potential relevance to its assessment of staff. Once the procedure related to that assessment has been finalised (including reviews as the case may be), the drafts shall be destroyed.

Other specific drafts may be kept by decision of the Ombudsman or of the Secretary-General, if s/he deems the documents to be of significant long-term value, of academic interest, necessary to protect essential interests of the Office or the European Union, or if the content of the draft in question is likely to be of significant use to the Office's future work.