Complaint:		Complaint: 23/29-6/P3
Letter of inadmissibility Rocchures:		LO:
Letter of inadmissibility Rocchures:		Date: 19/02/08
Prochares O EO		
Prochares O EO	A	Letter of inadmissibility
O Committee on Petitions of the European Parliament O OTHER	- \	\
O OTHER		
Original complaint (Copy the complaint for the EO's file - Send by registered post) Transfer of a complaint Letter to Institution + Original of the complaint (Send by registered post) Letter to inform the complainant Letter to inform the complainant Copy the complain for the EO's file) Opinion Request Letter to inform the complainant Letter to President of the Institution Copy of the complaint (sec:		_
Transfer of a complaint Letter to Institution + Original of the complaint (Send by registered post) Letter to inform the complainant Copy the complainant Copy of the Complainant Copy of the Institution Copy of the Complainant Letter to inform the complainant Letter to inform the complainant Copy of the Institution Copy of the Institution Copy of the Complainant Letter to president of the Institution Copy of the Complainant Letter to President of the Institution Copy of the Complainant Letter to President of the Institution Copy of the Complainant Letter to President of the Institution Copy of the Complainant Letter to President of the Institution Copy of the Complainant Letter to President of the Institution Copy of the Complainant Letter to President of the Institution Copy of the Complainant Letter to President of the Institution Copy of the Complainant Letter to President of the Institution Letter to Institution		O OTHER
Transfer of a complaint Letter to Institution + Original of the complaint (Send by registered post) Letter to inform the complainant (Copy the complaint for the EO's file) Opinion Request Letter to inform the complainant Letter to President of the Institution Copy of the complaint (cc:		
Letter to Institution + Original of the complaint (Send by registered post) Letter to inform the complainant (Copy the complainant Letter to inform the EO's file) Opinion Request		(Copy the complaint for the EO's file – Send by registered post)
Letter to Institution + Original of the complaint (Send by registered post) Letter to inform the complainant (Copy the complainant Letter to inform the EO's file) Opinion Request		
Letter to Institution + Original of the complaint (Send by registered post) Letter to inform the complainant (Copy the complainant Letter to inform the EO's file) Opinion Request		Transfer of a complaint
Letter to inform the complainant (Copy the complainant for the EO's file) Opinion Request		Letter to Institution + Original of the complaint (Send by
Copy the complaint for the EO's file) Definion Request		
□ Opinion Request □ Letter to inform the complainant □ Letter to President of the Institution □ Copy of the complaint □ (cc:		_
Letter to inform the complainant Letter to President of the Institution Copy of the complaint (cc:		(Copy the complaint for the EO's file)
Letter to inform the complainant Letter to President of the Institution Copy of the complaint (cc:		
□ Letter to President of the Institution □ Copy of the complaint □ (cc:		Opinion Request
Copy of the complaint cc:		Letter to inform the complainant
Cot		Letter to President of the Institution
Observations request Determinent Determ		\
□ Further Inquiries / Friendly solution / Draft recommendation (circle as appropriate) □ Letter to inform the complainant □ Letter to President of the Institution □ Copy of the complaint's observations □ (cc:		(cc:)
□ Letter to complainant □ Copy of the Institution's opinion □ Annexes □ Further Inquiries / Friendly solution / Draft recommendation (circle as appropriate) □ Letter to inform the complainant □ Letter to President of the Institution □ Copy of the complaint's observations □ (cc:		
Decision		Observations request
Further Inquiries / Friendly solution / Draft recommendation (circle as appropriate) Letter to inform the complainant Letter to President of the Institution Copy of the complaint's observations (cc:) Direct transmission to Commissioner's cabinet: Yes If yes, contact person: No Original Decision to the complainant		_ \
Further Inquiries / Friendly solution / Draft recommendation (circle as appropriate) Letter to inform the complainant Letter to President of the Institution Copy of the complaint's observations (cc:) Direct transmission to Commissioner's cabinet: Yes If yes, contact person: No		Copy of the Institution's opinion
Letter to inform the complainant Letter to President of the Institution Copy of the complaint's observations (cc:) Direct transmission to Commissioner's cabinet: Yes If yes, contact person: No Original Decision to the complainant		☐ Annexes
Letter to inform the complainant Letter to President of the Institution Copy of the complaint's observations (cc:) Direct transmission to Commissioner's cabinet: Yes If yes, contact person: No Original Decision to the complainant		
Letter to inform the complainant Letter to President of the Institution Copy of the complaint's observations (cc:) Direct transmission to Commissioner's cabinet: Yes If yes, contact person: No Original Decision to the complainant		Further Inquiries / Friendly solution / Draft recommendation (circle as appropriate)
Letter to President of the Institution Copy of the complaint's observations (cc:) Direct transmission to Commissioner's cabinet: Yes If yes, contact person: No Original Decision to the complainant		
Direct transmission to Commissioner's cabinet: Yes		\
Direct transmission to Commissioner's cabinet: Yes		☐ Copy of the complaint's observations
Decision Original Decision to the complainant		□ (cc:)
Decision Original Decision to the complainant		Direct transmission to Commissioner's cabinet: Yes If yes, contact person:
Original Decision to the complainant		No 🗆
Original Decision to the complainant		
Original Decision to the complainant	D.,	
	Dec	_
		Original Decision to the complainant Letter to President of the Institution
Copy of the decision in EN		_
· · · · · · · · · · · · · · · · · · ·		(cc:)
□ / . \		□ (cc:)

COMPLAINT 723/2006/(WP)PB

NOTE FOR THE FILE

Subject: further correspondence in case 723/2006/(WP)PB

(communication from Mr Guido Strack, a former Commission official (and a lawyer), dated 18 January 2008, made in response to the EO's decision on his complaint 723/2006/(WP)PB)

(1) The complainant had requested access to his personal and medical files. The first allegation examined in the above decision was that "the Commission wrongfully rejected the complainant's application for access, insofar as it was based on Regulation 1049/2001." In his decision, the Ombudsman found (in light of relevant case-law) reasonable the Commission's approach that the rules of Articles 26 and 26(a) of the Staff Regulations concerning the officials' right of access to their personal and medical files take precedence over the general provisions, regarding access to documents, laid down in Regulation 1049/2001. Hence, he concluded that the Commission's contested decision did not amount to an instance of maladministration, to the extent that the complainant's access request concerned documents contained in his personal and medical files referred to in Articles 26 and 26(a) of the Staff Regulations.

In his e-mail of 18 January 2008, states that he does not agree with the EO's above-mentioned finding. However, he states that he understands the reasoning underlying this finding. It seems that no reply to these statements is needed.

- (2) After having received the complainant's observations on the Commission's opinion on the complaint, the Ombudsman decided to extend his inquiry into the new allegation that that "the Commission removed 'the most interesting documents' from the files to which the complainant was granted access." The relevant points of the Ombudsman's decision read as follows:
- "2.2 With regard to this allegation, the Commission explained that no documents had been removed from the files shown to the complainant. It presumed that the complainant had expected to find in the said file medical reports concerning his request for the recognition of an occupational disease. However, the doctors who had examined the complainant had not yet submitted their final report. The final report would be transmitted to a doctor of the complainant's choice.
- 2.3 In his relevant observations of 10 December 2006, the complainant made a number of arguments to the effect that various documents should have been on the files to which he was granted access, and/or that documents which were covered by his access request of 25 November 2005 were not communicated to him.

The Ombudsman notes that such issues do not fall within the scope of the present inquiry. Hence, they are not examined in the present decision¹.

2.4 With regard to the complainant's allegation, [...] the Ombudsman notes that the Commission's factual statement that no documents had been removed from the files shown to the complainant carries with it a (refutable) presumption of truthfulness².

The complainant has <u>not made</u> any cogent arguments, <u>supported</u> by appropriate evidence, refuting this presumption³. Hence, the Ombudsman finds no instance <u>of maladministration</u> corresponding to the complainant's above allegation.

In light of the above, the Ombudsman finds no instance of maladministration corresponding to the complainant's above allegation."

In his e-mail of 18 January 2008, the complainant stated that did not understand the EO's handling of the issue dealt with in point 2 of the decision (quoted above). In respect to this, he made the following remarks:

- 1. In light of the EO's examination of the main issue (first allegation) in the case, one must pose the question why the EO at all dealt with the additional allegation concerning the Commission's removal of certain documents. If Regulation 1049/2001 on *public* access to documents did not apply, the (subsidiary/collateral) issue of the Commission having removed certain documents was a staff matter, and the allegation would therefore only be admissible if Article 2(8) of the EO Statute had been respected (which was not the case, as the complainant had made no Article 90 request of complaint under the Staff Regulations).
- 2. However, since the EO decided to actually assess the matter, the complainant would at least want an examination that he could understand.
- 3. The complainant addresses, first, point 2(3) of the decision. He states that he does not understand why the EO considered the said issues to be

The complainant is free to consider submitting a new complaint to the Ombudsman about these issues. Relatedly, the Ombudsman recalls the conditions for opening an inquiry provided for in Articles 1-3 of the Statute of the European Ombudsman.

² Cf. Case T-311/00 British American Tobacco v Commission [2002] ECR II-2781, paragraph 35.

The complainant's point that the medical file shown to him (on 20 January 2005 and on 10 February 2006) did not contain a document which the Commission/PMO sent to the EDPS for the purposes of the latter's examination of complaint 2006-120 (lodged by the complainant on 9 March 2006), but did not list/number it in the relevant account of documents sent to the EDPS, cannot be considered as such an argument.

outside the scope of the inquiry, since in his relevant request to the Commission he had expressly asked for access to "all documents in connection with his occupational disease".

4. The complainant furthermore addressed the EO's finding in point 2(4) of the decision, stating that he wished a re-examination of the issue mentioned therein.

As regards the first remark made by the complainant, the following may be noted in the reply to the complainant. The above additional allegation was quite serious, insofar as it referred to a deliberate concealment of certain documents. Moreover, both the Commission and the complainant did not contest, in the course of the inquiry, the Ombudsman's decision to examine the issue, a decision which served the complainant's best interests. Under these circumstances and independently of the plausibility of the approach indicated by the complainant, it would not be justified to pursue the matter raised by him.

As regards the complainant's failure to understand point 2(3) of the decision, the following may be noted in the reply to the complainant. The issue whether various documents should have been, in accordance with the pertinent rules, in the files to which he was granted access was clearly outside the scope of the inquiry. The same is with the issue whether documents which were covered by the complainant's access request of 25 November 2005 were not communicated to him. In this regard, it must be noted that the Ombudsman's inquiry into the first allegation was clearly limited to the problem whether the Commission wrongfully rejected the complainant's application for access, insofar as this application was based on Regulation 1049/2001. The relevant inquiry did not turn on the general matter whether the Commission might have wrongly refused or failed to provide access to documents requested by the complainant (independently of the complainant's reliance on and invocation of Regulation 1049/2001, as legal basis of the request).

As regards the complainant's dissatisfaction with point 2(4) of the decision and relevant request for reconsideration, the following may be noted in the reply to the complainant. The allegation inquired into was that "the Commission removed 'the most interesting documents' from the files to which the complainant was granted access" under the Staff Regulations. The term "removed" clearly implied that (a) the documents concerned had, as a matter of fact, been on these files, and (b) that the Commission had, as a matter of fact, removed (taken away) those documents previous to granting the complainant's access to the said files. The Ombudsman remarked, in his decision, that the Commission's factual statement that no documents had been removed from the files shown to the complainant, pursuant to the Staff Regulations, carries with it a (refutable) presumption of truthfulness and also supported this remark by a reference to relevant case-law. Furthermore, he found that the complainant had not made any cogent arguments, supported by

appropriate evidence, refuting this presumption. After re-examining the relevant arguments made by the complainant, the Ombudsman can only confirm this finding.

Relatedly, it must also be noted that the existence of certain documents referred to by the complainant and not included in the file(s) shown to him does not demonstrate the two facts implied by the allegation. The problems whether these documents should have been, in accordance with the pertinent rules, in the files to which the complainant was granted access, under the Staff Regulations, and whether the same documents were (wrongly) not communicated to him, although they were covered by his access request of 25 November 2005 are distinguishable from the factual issues raised by the complainant's second allegation examined in the decision. In the decision, the Ombudsman did not examine these problems, because they did not fall within the scope of the inquiry. He also informed the complainant that he could consider submitting a new complaint to the Ombudsman about these matters and, relatedly, recalled the conditions for opening an inquiry provided for in Articles 1-3 of the Statute of the European Ombudsman.

PB 06 February 2008 (Subinsasian date; ID-approved 31/01/08)