[DE] Federal Administrative Court: no right of access to ministries' Twitter direct messages

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In a decision of 28 October 2021, the *Bundesverwaltungsgericht* (Federal Administrative Court – BVerwG), Germany's highest administrative court, ruled that the *Informationsfreiheitsgesetz* (Freedom of Information Act – IFG) does not entitle citizens and journalists, who enjoy the same rights under the IFG, to access direct messages sent and received by federal government ministries on Twitter.

The case concerned an information request submitted by FragDenStaat, a non-profit Internet platform, through which requests can be submitted on the basis of Germany's federal and regional freedom of information laws and then stored on the website fragdenstaat.de. The request concerned the Twitter direct messages of the *Bundesministerium des Innern, für Bau und Heimat* (Federal Ministry of the Interior, Building and Community – BMI) for the years 2016 to 2018. Since Twitter direct messages, unlike public posts, are direct communications that other users cannot read, the BMI mainly used this function during the period concerned for informal communication. This included arranging meetings, thanking citizens for their queries concerning typos and broken hyperlinks, for example, or answering journalists' queries about who was responsible for a given issue. The messages were not stored by the BMI itself, but could be downloaded on request from Twitter Inc. However, the BMI refused to grant access to the messages on the grounds that they had no official relevance and therefore did not constitute official information within the meaning of the IFG. Even though the messages had been written as part of the BMI's official remit in its broadest sense, they had served only personal (private) purposes. The online platform had asked the courts to overturn this refusal, but its application was rejected.

Unlike the *VG Berlin* (Berlin Administrative Court) in the previous instance, the BVerwG supported the BMI's position. Article 1(1)(1) of the federal IFG states that everyone is entitled to official information from the authorities of the federal government in accordance with the provisions of the Act. The *VG Berlin* had adopted a broad interpretation of the concept of "official information": only information that exclusively served clearly private (personal) purposes was excluded. However, in the BVerwG's opinion, official information was information that was stored for official purposes, so there needed to be a reason for storing it. It was not only the information itself that needed to serve official purposes, but its storage also. Although this was not out of the question where Twitter direct

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messages were concerned, messages that had so little relevance that they did not need to be formally logged, as was the case here, served no such official purpose. The messages were stored by Twitter Inc. in accordance with its business model, but this served no official purpose for the BMI. There was also no obvious purpose in the context of the *Registraturrichtlinie* (Registry Directive) of the federal ministries and the principles of proper record-keeping.

It is worth noting, however, that the BVerwG considers the IFG and the information rights that it creates to be applicable, in principle, if the messages themselves have an official relevance. However, in this case, it did not accept the platform's assertion that they might include communications with other authorities such as the federal police force or information leaked to journalists which, it claimed, were subject to the state's transparency obligations.

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