

Decision in the case 1369/2022/OAM on the European Union Aviation Safety Agency's refusal to give public access to documents related to unidentified flying objects

Decision

Case 1369/2022/OAM - Opened on 17/08/2022 - Decision on 17/08/2022 - Institution concerned European Union Aviation Safety Agency (No maladministration found) |

Dear Mr X,

You recently submitted a complaint to the European Ombudsman against the European Union Aviation Safety Agency (EASA) concerning its decision on your request for public access to documents. [1] You asked for documents regarding *unidentified flying objects, unidentified aerial phenomena and unknown airborne objects* . You are concerned that EASA has failed to identify the documents to which you are seeking public access.

After a careful analysis of all the information you provided with your complaint, we have decided to close the inquiry with the following conclusion:

There is no evidence to indicate that there was any maladministration by the European Union Aviation Safety Agency. [2]

From your correspondence with EASA, we understand that your request covers occurrence data stored in the European Central Repository (ECR) established under Regulation 376/2014 on the reporting, analysis and follow-up of occurrences in civil aviation. [3] You are also interested in documents supporting the data in a chart on Unauthorized Airspace Penetration (UAP) incidents, which is contained in EASA's Annual Safety Review of 2014.

As regards occurrence data stored in the ECR , EASA informed you that Regulation 376/2014 provides for very specific rules on accessing data and information contained in the ECR. Indeed, the EU legislators have decided that the data and information contained in the ECR, and thus by extension any documents that may be generated by an ordinary function of that electronic database, do not fall within the provisions for public access under Regulation 1049/2001. [4] The EU legislators have set out specific rules to ensure a greater protection of this information under Regulation 376/2014. [5]



In view of this, we consider that EASA is correct in its position that only privileged access can be provided to such information and data, and following the procedure set out in Regulation 376/2014.

As regards documents supporting the data in the chart on UAP incidents in EASA's Annual Safety Review of 2014, EASA informed you that it does not hold any documents falling within the scope of this part of your request. It explained to you that the relevant chapter in the 2014 Annual Safety Review was not prepared by EASA but by Eurocontrol, and that the relevant data used was not collected via the ECR occurrence reporting, but via the Eurocontrol Annual Summary Template mechanism.

The right of public access to documents applies only to documents in the possession of an institution. [6] According to EU case-law [7], where an institution says that it does not hold documents requested under Regulation 1049/2001, it must be presumed that this is true, unless the applicant puts forward evidence that unequivocally calls this into question.

We note that the 2014 Annual Safety Review mentions that specific data originates from Eurocontrol. [8] We therefore consider that the position of EASA - that it does not hold any documents falling within the scope of this part of your request, as the relevant chapter of the 2014 Annual Safety Review was prepared by Eurocontrol - is plausible. The arguments you put forward are not sufficient to demonstrate otherwise.

In light of the above, the Ombudsman considers EASA's position in the confirmatory decision to be reasonable. We have therefore closed the case. [9]

We appreciate this may not be your desired outcome but we hope you find these explanations useful. Thank you for having contacted the European Ombudsman.

Yours sincerely,

Rosita Hickey Director of Inquiries

Strasbourg, 17/08/2022

[1] Under Regulation 1049/2001 regarding public access to European Parliament, Council and Commission documents:

<https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX%3A32001R1049> [Link].

[2] Full information on the procedure and rights pertaining to complaints can be found at

<https://www.ombudsman.europa.eu/en/document/70707> [Link].

[3] Regulation 376/2014 on the reporting, analysis and follow-up of occurrences in civil aviation:

<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32014R0376> [Link].



[4] See recital 50 and Article 20(1) of Regulation 367/2014.

[5] See Articles 10 and 11 of Regulation 367/2014.

[6] In accordance with Article 2(3) of Regulation 1049/2001.

[7] See, for example, judgment of the General Court of 11 June 2015, *McCullough v Cedefop*, T-496/13:

<https://curia.europa.eu/juris/document/document.jsf?text=&docid=164964&pageIndex=0&doclang=EN&mode=lst&d>
[Link].

[8] See in particular page 116, section “Scope” of the 2014 Annual Safety Review:

<https://www.easa.europa.eu/document-library/general-publications/annual-safety-review-2014>
[Link].

[9] This complaint has been dealt with under delegated case handling, in accordance with the Decision of the European Ombudsman adopting Implementing Provisions.