

## **Decision in the case 1532/2022/NK on how the European Commission handled a request for public access to documents related to unidentified flying objects**

Decision

**Case 1532/2022/NK - Opened on 16/09/2022 - Decision on 16/09/2022 - Institution concerned** European Commission ( No maladministration found ) |

Dear Mr X,

You recently submitted a complaint to the European Ombudsman against the European Commission concerning its decision on your request for public access to documents. [1] You asked the Joint Research Centre (JRC) and the Directorate-General for Mobility and Transport (DG MOVE) for documents regarding unidentified flying objects, unidentified aerial phenomena and unknown airborne objects. You are concerned that the Commission 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 Commission.** [2]

From your correspondence with the Commission, 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 seeking data collected by the JRC concerning 'Big Data from Space'.

As regards occurrence data stored in the ECR , the Commission informed you that Regulation 376/2014 provides for very specific rules on accessing data and information contained in the ECR.

As we noted in our decision closing case 1369/2022/OAM, 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]

You argued that the Commission finds conformity between Regulation 376/2014 and Regulation 1049/2001 by ignoring the latter one. We note that the provisions of Regulation 376/2014 explicitly mention when the stricter rules in Regulation 376/2014 take precedence over the general rules on access to data as laid down in Regulation 1049/2001. [6]

In view of this, we consider that the Commission is correct in its position that a request for access to the information stored in the ECR has to be submitted in accordance with Regulation 376/2014.

As regards 'Big Data from Space' held by the JRC, the Commission informed you that the JRC conducts no activities concerning 'Big Data from Space'. Therefore, the JRC would not hold any further documents corresponding to the description provided in your application.

The right of public access to documents applies only to documents in the possession of an institution. [7] According to EU case-law [8], 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 evidence you provided indicates that the JRC co-hosted a conference on the topic in 2019. This, however, is not sufficient to demonstrate that the JRC holds any documents containing such data.

In light of the above, the Ombudsman considers the Commission's position in its decision on your request for access to documents 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, 16/09/2022

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

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

[8] 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].

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