



## Decision of the European Ombudsman on complaint 1922/2014/PL concerning the European Commission's refusal to grant public access to the evaluation reports of an EU-funded project

Decision

**Case** 1922/2014/PL - **Opened on** 08/12/2014 - **Decision on** 30/08/2016 - **Institution concerned** European Commission ( No maladministration found ) |

This case concerned the European Commission's refusal to grant full public access to the evaluation reports of the proposals for an EU-funded project on Roma in Albania.

The Ombudsman inquired into the issue and found that the Commission had correctly refused full access on the basis of the exception to public access which protects commercial interests. She therefore concluded that there was no maladministration by the Commission.

The background to the complaint

1. This complaint is about access to the evaluation reports of proposals for an EU-funded project on Roma in Albania. In August 2014, the complainant requested public access to these documents under Regulation 1049/2001. [1]
2. The Commission provided partial access to the reports, redacting (i) part of the comments made by the evaluation committee and (ii) the personal data of its members. It explained that the disclosure of the redacted parts would damage the commercial interests of the grant applicants or undermine the protection of the privacy of individuals. [2]
3. The complainant made an application for a review to the Commission (known as a "*confirmatory application*"). This application was also rejected on the basis that disclosing the redacted information would, in addition, risk undermining the Commission's decision making-process. [3]
4. Dissatisfied with the Commission's reply, the complainant turned to the Ombudsman on 13 November 2014.

The inquiry

5. The Ombudsman opened an inquiry into the following allegation and claim:

- 1) The Commission wrongly refused full access to the requested documents.
- 2) The Commission should grant full access to the requested documents.



**6.** The Ombudsman inspected the evaluation reports requested by the complainant. A copy of the inspection report was forwarded to the complainant. In conducting the inquiry, the Ombudsman has taken into account the arguments and opinions put forward by the parties. Allegation of wrongfully refusing full access to the requested documents.

## **Arguments presented to the Ombudsman**

**7.** The complainant did not contest the redaction of the personal data of the members of the evaluation committee, but only the Commission's redaction of the comments in the reports. He questioned the Commission's arguments that the redacted parts could give an insight into the applicants' know-how or pose a risk to their reputation. As to the need to protect the decision making process, the complainant argued that public access to the evaluation reports would render the assessment procedure more transparent, improving the process rather than undermining it.

**8.** In the course of the Ombudsman's inspection, the Commission provided copies of seven evaluation reports and the internal correspondence between the members of the Commission in charge of the complainant's request. The Ombudsman confirms that the redacted information concerned (i) the names and signatures of the members of the evaluation committee, (ii) the average score of the applications, and (iii) the committee's grounds for not recommending the unsuccessful applications for further evaluation.

## **The Ombudsman's assessment**

**9.** It should first be clarified that the comments the Commission blanked out are the reasons given by the evaluation committee for rejecting certain applications. Given the objective of these comments, it stands to reason that they point to deficiencies in the applications.

**10.** After having carefully assessed the documents, the Ombudsman can confirm that the information redacted mainly contained negative value judgements made by the evaluation committee. In the Ombudsman's view, disclosing such information would not only potentially damage the reputation of the companies concerned, but would also reveal to competitors any weaknesses in their know-how and/or working methods. Competitors could use this information to damage the reputation of these companies and thus gain a competitive advantage. This would result in a reasonably foreseeable and not only hypothetical risk [4] to the commercial interests of the grant applicants.

**11.** It should be noted that some of the comments also refer to positive aspects of the applications. Although these remarks on their own would not pose a risk to the reputation of the applicants, they cannot be read or understood independently from the critical points. A partial disclosure of these comments would thus be devoid of meaning.

**12.** In light of this, the Ombudsman concludes that the Commission was justified in withholding public access to the redacted comments invoking the protection of the commercial interests of the grant applicants under Article 4(2) first indent of Regulation



1049/2001. This protection does not apply where “there is an overriding public interest in disclosure”. The complainant has not identified any overriding public interest warranting the release of the redacted content; nor is the Ombudsman aware of the existence of such an overriding public interest.

**13.** Since the Commission was justified in basing its refusal to grant public access on this exception, the Ombudsman considers that there is no need to also examine whether the Commission erred in applying the exception concerning the protection of the decision making process under Article 4(3) of Regulation 1049/2001.

Conclusion

On the basis of the inquiry into this complaint, the Ombudsman closes it with the following conclusion:

**There was no maladministration by the Commission.**

The complainant and the Commission will be informed of this decision.

Emily O'Reilly

European Ombudsman

Strasbourg, 30/08/2016

[1] Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents, OJ 2001 L 145, p. 43.

[2] The Commission invoked the following exceptions under Article 4 of Regulation 1049/2001:

*1. The institutions shall refuse access to a document where disclosure would undermine the protection of:*

*(b) privacy and the integrity of the individual, in particular in accordance with Community legislation regarding the protection of personal data.*

*2. The institutions shall refuse access to a document where disclosure would undermine the protection of:*

*— commercial interests of a natural or legal person, including intellectual property,*

...



*unless there is an overriding public interest in disclosure.*

[3] Article 4(3) of Regulation 1049/2001: "*Access to a document, drawn up by an institution for internal use or received by an institution, which relates to a matter where the decision has not been taken by the institution, shall be refused if disclosure of the document would seriously undermine the institution's decision-making process, unless there is an overriding public interest in disclosure.*"

[4] Cases C-39/05 P and C-52/05 P *Sweden and Turco v Council* [2008] ECR I-4723, paragraph 43.