



## Decision in case 66/2016/DK on the European Research Council Executive Agency's action concerning a request for access to documents

Decision

**Case 66/2016/DK - Opened on 18/02/2016 - Decision on 21/12/2017 - Institution concerned** European Research Council Executive Agency ( No maladministration found ) |

The case concerned the complainant's request for access to two e-mails sent from the private e-mail account of the President of the Governing Board of the European Research Council Executive Agency to the members of the Scientific Council of the Agency. When the Agency refused access on the basis that the two e-mails were not in its possession as they were sent from a private account, the complainant turned to the European Ombudsman.

The Ombudsman opened an inquiry into the issue, after which the President of the Governing Board provided the Agency with copies of the two e-mails. Thus, the Agency could assess the complainant's request for access to the e-mails under Regulation 1049/2001 [1]. The Agency then granted the complainant partial access to the documents. The Ombudsman obtained full copies of the two e-mails and was able to verify that the redactions made in the copies disclosed to the complainant were justified.

The Ombudsman therefore closed the inquiry with a finding of no maladministration.

Background to the complaint

- 1.** In October 2015, the complainant requested the European Research Council Executive Agency [2] ('the Agency') to grant him access to certain documents under Regulation 1049/2001. The Agency granted partial access to seven documents and full access to one document. It stated that that only documents held by the Agency, that is to say, documents originating from the Agency or received by it and in its possession, can be taken into consideration under Regulation 1049/2001.
- 2.** In November 2015, the complainant asked the Agency to grant him access, among other documents, to two e-mails sent from the private e-mail account of the President of the Agency's Scientific Council to members of the Scientific Council. [3]
- 3.** In December 2015, the Agency replied to the complainant stating that the two e-mails in question were not in its possession as they had been sent from the President's private e-mail account. Therefore, the Agency could not grant access to this correspondence to the complainant.



**4.** Dissatisfied with the Agency's reply, and considering that the e-mails sent from the President's private e-mail account were work related, the complainant turned to the European Ombudsman to complain about the Agency's refusal to disclose the e-mails. The inquiry

**5.** The Ombudsman opened an inquiry into the following issues that the complaint raised:

1) ERCEA should request the disputed e-mails sent from the President's private e-mail account to members of the Scientific Council.

2) ERCEA should thereafter grant the complainant access to those e-mails.

**6.** In the course of the inquiry, the Agency obtained the copies of the two e-mails in question from the President and subsequently granted partial access to them. Further to this information being communicated to the Ombudsman, the Ombudsman's inquiry team carried out an inspection at the Agency's premises.

## The Ombudsman's assessment

**7.** In accordance with principles of good administration the Agency obtained from the President copies of the two e-mails in question and released them to the complainant, albeit in a redacted version. As such, the Agency has settled the issues initially identified.

**8.** However, the question remains as to whether the Agency was correct to grant the complainant only partial access to the two e-mails in question.

**9.** The Agency stated that the partial disclosure was justified on the basis of Article 4(1)(b) of Regulation 1049/2001. This provision says that the institutions shall refuse access to a document where its disclosure would undermine the protection of the privacy and the integrity of the individual, in particular in accordance with EU legislation regarding the protection of personal data. The Agency, having obtained copies of the two e-mails, consulted the President concerning their possible disclosure. The President agreed in principle with the disclosure of the emails. The Agency further had to redact certain parts of the e-mails in order to protect the personal data of other persons, notably the names and the e-mail addresses of the recipients of the emails, as well as the names of persons mentioned in the text of the e-mails.

**10.** In his observations on the Agency's above reply, the complainant acknowledged receipt of the two e-mails in a redacted version. He thought, however, that the two e-mails were so heavily redacted that it was difficult to make sense of them. He also suspected that much more was redacted than personal data, and therefore wished to obtain the e-mails in full, except personal data, in view of the public interest in this matter.

**11.** The Ombudsman's inquiry team then carried out an inspection of the Agency's file, containing the non-redacted versions of the two e-mails in question and also held a meeting with the representatives of the Agency to ask certain questions connected to the inspection.



**12.** Having inspected the full version of the two e-mails, the Ombudsman notes that the redacted parts indeed constitute the kind of information and statements that may be covered by the exception intended to protect the privacy and the integrity of individuals. In this context, it should be noted that this is framed in mandatory terms and the institutions are thus obliged to refuse access to documents falling within it. Regarding the duty to state reasons concerning the applicability of the exception invoked, the Ombudsman points out that, while it is for the institution concerned to demonstrate that the documents to which access is sought do indeed fall within the exception invoked, it may sometimes be impossible to give full reasons justifying the need for confidentiality without disclosing the excepted content of the document and, thereby, depriving the exception of its very purpose.

**13.** Regarding the complainant's wish that the two e-mails should be disclosed entirely in view of the public interest in the matter, the Ombudsman notes that the relevant exception, in Article 4(1)(b), is not, unlike some other exceptions in Regulation 1049/2001, subject to an overriding public interest in disclosure. It is an absolute exception. [4]

**14.** Therefore, the Ombudsman considers that the Agency correctly applied the provisions of Regulation 1049/2001 when it decided to grant only partial access to the two e-mails in question. The Ombudsman thus finds no maladministration by Agency.

**15.** Finally, the Ombudsman notes that the Agency was correct to treat e-mails sent and received from private e-mail accounts as falling within Regulation 1049/2001 if they concern professional matters related to the functions of the Agency. She welcomes the Agency's stated commitment to the principles of openness and transparency.

Conclusion

Based on the inquiry, the Ombudsman closes this case with the following conclusion :

**The Ombudsman finds no maladministration by the Agency.**

The complainant and the European Research Council Executive Agency will be informed of this decision .

Emily O'Reilly European Ombudsman

Strasbourg, 21/12/2017

[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 L 145/43 of 31.05.2001. Available at:



<http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:32001R1049> .

[2] The European Research Council Executive Agency (ERCEA) implements the strategy of the European Research Council (ERC), as set by the Scientific Council, and is in charge of the day-to-day grant administration. Further information available at: <https://erc.europa.eu/about-erc/erc-executive-agency-ercea> .

[3] The Scientific Council is the governing body of the European Research Council, and defines the scientific funding strategy and methodologies. It acts on behalf of the scientific community in Europe to promote creativity and innovative research. The members of the Scientific Council are appointed by the European Commission, on the recommendations of an independent committee. The Chair of the Scientific Council is the President of the European Research Council. The ERC Executive Agency implements the ERC strategy as set by the Scientific Council, and is in charge of the day to day grant administration.

[4] Disclosure may be made if it is in accordance with Regulation 45/2001 on data protection.