

Decision in case 416/2018/THH concerning the European Research Council Executive Agency's (ERCEA) refusal to publish abstracts of unsuccessful grant applications on its website

Decision

Case 416/2018/THH - Opened on 20/03/2018 - Decision on 20/03/2018 - Institution concerned European Research Council Executive Agency (No maladministration found) |

Background to the complaint

1. On 27 August 2017, the complainant asked the European Research Council Executive Agency's (ERCEA) to give him public access to “all information submitted by applicants since 2014 for ERC grants ... in particular the description of the proposals themselves as intended for the peer reviewer panel, independently of whether the application was successful or not, with any information that cannot be given due to legal requirements overriding the freedom of information request (e.g. privacy laws) blanked out”.
2. On 23 November 2017, the ERCEA refused to release the documents on the basis that to do so would breach the rights of privacy of the grant applicants, as well as their commercial interests.
3. On 26 December 2017, the complainant submitted a request for a review of ERCEA's decision (a “confirmatory application”) arguing that transparency in the ERCEA's decision making in grant matters was in the public interest.
4. On 26 January 2018, the ERCEA informed him that it maintained its view that disclosure would undermine the rights of privacy and commercial interests of the grant applicants.
5. The complainant then submitted a revised request on 1 February 2018 requesting access to “anonymised abstracts of all grant applications submitted between 2014 and 2016 for so-called “ERC Starting Grant” as in the Horizon 2020 program, whether successful or not, except for applications where research involved an industrial partner”.
6. The ERCEA considered this to be a repetition of the original requests (since abstracts of grant applications fall within the scope of the original request) and refused the applicant's



request for access on 19 February 2018. The complainant then turned to the Ombudsman.

The European Ombudsman's findings

7. In the course of the inquiry, in addition to the information provided by the complainant when lodging his complaint, the Ombudsman received details of email correspondence between the parties. She also viewed the abstracts of successful grant applications published on the ERCEA's website.

8. The European Ombudsman considers that it is reasonably foreseeable that the publication of unsuccessful grant applications, including the abstracts thereof, would constitute a breach of the commercial interests and intellectual property of the applicants [1] .

9. First, it is reasonably foreseeable that public disclosure of the fact that a research proposal was rejected for funding by the ERCEA could, at least to some extent, damage the reputation of the research proposal and the researchers associated with that research proposal. That reputational damage could have commercial consequences, since other potential funders, and potential employers of researchers, might be influenced by that information.

10. As regards the identification of researchers, the Ombudsman notes that the anonymisation of grant applications may not resolve this problem. Research projects are normally very specific and detailed. While it might not be possible for many members of the public to identify who a researcher is from anonymised versions of unsuccessful grant applications and the abstracts thereof, it is reasonably foreseeable that at least some persons working in the scientific fields in question could do so. In particular, if the same research project were submitted to another scientific funding body, that funding body could readily link the proposal submitted to it with the information made public by the ERCEA.

11. Second, even if a research proposal is rejected by ERCEA, it may contain many useful ideas. It cannot therefore be excluded that publication of details of proposed research projects could lead to plagiarism of the research proposals.

12. Even if the disclosure of the unsuccessful grant applications would undermine the commercial interests of the grant applicants, including their intellectual property rights, it should be examined if there is any overriding public interest in disclosure. There will be a case for publishing information on successful grant proposals they receive public funding and the public has, in principle, a right to know how public money is spent. As such, ERCEA requires, under the grant agreement between the successful applicant and the ERCEA, that certain information on funded projects be published. However, in the absence of a decision to provide public funding for a proposed research project, it is difficult to argue that there is an overriding public interest in disclosure.

13. The complainant argues that providing information on unsuccessful requests for funding will help the public understand how ERCEA arrives at its decisions on the projects it does fund.



However, the Ombudsman does not agree that this benefit, to the extent that it exists, is sufficient to outweigh the harm to reputations that publication would cause.

14. Therefore, the European Ombudsman concludes that in this case the interests of the unsuccessful grant applicants override the public interest in publication of unsuccessful grant applications.

15. The disclosure of the details of unsuccessful grant applications could also breach the personal data and privacy rights of researchers who, despite anonymisation, might be identifiable. The Ombudsman does not agree that the need for access put forward by the complainant is sufficient to outweigh the legitimate interests of the researchers in question to safeguard their professional reputations.

16. In light of the above, the complaint appears not to reveal maladministration. [2]

Fergal Ó Regan

Coordination of Public Interest Inquiries ▫ Unit 2

Strasbourg, 20/03/2018

[1] As above, Article 4(2) first indent.

[2] This complaint has been dealt with under delegated case handling, in accordance with Article 11 of the [Decision of the European Ombudsman adopting Implementing Provisions](#) [Link]