



EUROPEAN COMMISSION  
RESEARCH EXECUTIVE AGENCY

Director

Brussels  
REA

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*sent by electronic mail only to:*  
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**Subject:       Reply to your complaint submitted to REA**

**Ref:            REA reply to your request for access to information  
(Ares(2020)6654931)**

Dear Mr Izrael,

We refer to your complaint submitted electronically to the Research Executive Agency (REA) on 18 November 2020 via the website AsktheEU and registered on 24 November 2020 under reference number Ares(2020)7043469.

Concerning your complaint REA recalls that:

On 8 October 2020, you submitted the following request to REA via the website AsktheEU:

*“Under the right of access to documents in the EU treaties, as developed in Regulation 1049/2001 and in Article 15 of the Treaty of the Functioning of the European Union (TFEU) , I am requesting documents which contain the following information:*

- 1) Name and grant agreement number of projects where complaint letters were filed by any participants and received funding from the Marie Skłodowska-Curie actions.*
- 2) Nature of the complaints.*
- 3) Actions taken by the REA as a response to the complaints”.*

On 22 October 2020, REA informed you that your request was registered on the same date under reference number Ares(2020)5750868.

On 12 November 2020, REA replied to your request, clarifying the nature of your request and explaining that Regulation (EC) No 1049/2001 applies to requests for access to existing documents<sup>1</sup>. REA stated that your request was related to information that was not contained in any existing documents and your question would involve compiling information from several documents or sources. Therefore, your request could be qualified as a request for information to be processed in accordance with the Code of Good Administrative Behaviour.

Concerning the requested information under the first point of your request (i.e. *Name and grant agreement number of projects where complaint letters were filed by any participants and received funding from the Marie Skłodowska-Curie actions*), REA replied to you that this information “*cannot be disclosed to third parties to protect the legitimate interests of confidentiality*”. However, we have provided you with a table including the number of complaints received by REA since January 2017, split per Marie Skłodowska-Curie action, in relation to the total number of grant agreements signed in the same period of reference.

Regarding the second point of your request (i.e. *Nature of the complaints*), we informed you that the complaints concerned researchers that have claimed possible discrepancies in the implementation of the grant agreement provisions; in particular, we referred to allegations on possible breaches of the provisions laying down the obligations of the beneficiaries towards the recruited researchers and of those on specific eligibility conditions of costs.

On the third and last point of your request (i.e. *Actions taken by REA as a response to the complaints*), we explained to you the actions undertaken by REA in the context of enquires following information on possible irregularities or inconsistencies in the recruitment procedures affecting the grant agreements.

On 24 November 2020, REA registered your request dated 18 November 2020 under reference number Ares(2020)7043469.

In this request, you stated:

*“(...) I am filing the following confirmatory application with regards to my access to documents request 'Complaint information by the Marie Skłodowska-Curie actions' participants'.*

*1) Regarding the name and the grant agreement number of the projects funded under the Marie Skłodowska-Curie actions where complaints were filed: fulfillment of this request wasn't held within the scope of Article 3 of Regulation (EC) No 1049/2001. Was the reasoning valid to remove this request from the scope of Article 3 of Regulation (EC) No 1049/2001?*

*This request was refused within the scope of the Code of Good Administrative Behaviour with reasoning to protect the legitimate interests of confidentiality. Was the reasoning of refusal valid?*

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<sup>1</sup> In accordance with Article 3 of Regulation (EC) No 1049/2001, document means “any content whatever its medium (written on paper or stored in electronic form or as a sound, visual or audio-visual recording) concerning a matter relating to the policies, activities and decisions falling within the institution's sphere of responsibility”.

As a preliminary point, we take duly note that your complaint only refers to the REA's reply on the first point of your previous request (i.e. *Name and grant agreement number of projects where complaint letters were filed by any participants and received funding from the Marie Skłodowska-Curie actions*).

In the first part of your complaint, you question that your request was not handled within the scope of Article 3 of Regulation (EC) No 1049/2001 regarding public access to European Parliament, Council and Commission documents.

Regarding this claim, we would like to stress that, as REA has already clarified in its reply of 12 November 2020, Regulation (EC) No 1049/2001 applies to requests for access to existing documents. Since your request related to information that was not contained in existing documents held by REA but you asked for information entailed in a number of different documents or sources, your request could be qualified as a request for information, to be processed in accordance with the Code of Good Administrative Behaviour. Therefore, your complaint is handled under the Code of Good Administrative Behaviour and not as confirmatory application under Regulation (EC) No 1049/2001.

The qualification of your request as a request for information was done taking into account the most favourable outcome for you and shows REA goodwill to provide you with some information on the number of complaints received by REA, the nature of the complaints and the actions taken by REA as a response to the complaints in Marie Skłodowska-Curie actions.

Since the right of access to documents as defined in Regulation (EC) No 1049/2001 applies only to existing documents in the possession of the institution, under that Regulation REA was not in position to provide you with any information in the scope of your request.

Regarding the second part of your complaint, where you question that REA did not disclose the names and the grant agreement numbers of the projects funded under Marie Skłodowska-Curie actions for which complaints were filed to protect the legitimate interests of confidentiality, I confirm that in the context of this request for information REA considers that there is the need to protect the legitimate interest of confidentiality of the beneficiaries and or individuals that submitted the complaints to REA, and therefore this information cannot be disclosed to any third parties, including yourself.

Having examined your request, I have come to the conclusion that I find no grounds for upholding your complaint.

Yours faithfully,

(Q-signed)

Marc TACHELET