

Mr Arne Semsrott

Email: [REDACTED]

Our ref: TO CMS-2019-00006-0578
Please quote when replying.

Warsaw, 6 August 2019

Your application for access to Frontex documents

Dear Mr Semsrott,

In reference to your application for

Sämtliche Serious Incident Reports (SIRs) von Nr. 604 aus dem Jahr 2017 bis zur neuesten SIR,

thus “all Serious Incident Reports (SIRs) as of no 604 of 2017 up to the latest SIR”, the receipt of which was acknowledged on 18 June 2019, and for which, after your reply of 9 July 2019, a commonly acceptable fair solution was found on 16 July 2019. This solution consists of considering your application as two separate applications for

- SIRs 604 to 664 (CMS-2019-00006-0578)
- SIRs 665 to 725 (CMS-2019-00007-0719)

The application for SIRs 665 to 725 will be considered once this application is concluded. Regulation (EC) No 1049/2001¹, is applicable for both consecutive applications.

Kindly be informed that 67 documents were identified.

However, please be informed that access to one of these documents has to be refused as their disclosure would undermine the protection of the public interest as regards international relations as laid down in Article 4(1)(a) third indent of Regulation (EC) No 1049/2001. Effective cooperation with international partners is crucial for Frontex. Therefore, the unilateral disclosure of this document must be refused as such would jeopardize the mutual trust of all parties, an essential prerequisite for establishing international relations and cooperating/engaging in this framework. Consequently, the disclosure of the document would negatively effect on the Agency’s and other parties’ ability to establish a meaningful cooperation or engagement. In this regard, it is not possible to provide further information as to further reason impeding the disclosure of the document without revealing its contents and thereby depriving this exception of its very purpose.

Furthermore, the non-disclosed document contains personal data, in particular, the name of individuals. The disclosure would undermine the protection of privacy and the integrity of these individuals, in particular in accordance with European Union legislation regarding the protection of personal data and therefore has to be precluded pursuant to Article 4(1)(b) of Regulation (EC) No 1049/2001.

Finally, making this document available would undermine the protection of investigations as such release would preclude the evaluation of irregularities and the verification of facts and information

¹ Regulation (EC) No 1049/2001 of 30 May 2001 regarding public access to European Parliament, Council and Commission documents (OJ L 145, 31.5.2001, p. 43).

with a view to make a decision. Consequently, access to this document has to be refused based on Article 4(2) third indent of Regulation (EC) No 1049/2001. As the information contained therein is also subject to a non-release based on Article 4(1)(a) first indent of Regulation (EC) 1049/2001, an overriding public interest that is objective and general in nature and not indistinguishable from individual or private interests for the release of this document is - in particular - not ascertainable in the present case.

In regard to one further document, please be informed that its disclosure would seriously undermine internal decision-making processes based on previous and presently ongoing activities and have a bearing on the conduct of investigations and current and future operations. The possibility to conduct such processes without interference is crucial for Frontex to effectively exercise its mandate. Consequently, releasing this document would enable third parties to gain insights into this decision making process and, with ascertainable likelihood, result in depriving Frontex to conduct such a process. In addition it would deprive Frontex and Member States of the possibility to conduct investigations. Yet, both, decision making processes and investigations, have to be conducted wholly independently, free from any external pressure or third-party influence. In sum, releasing this document would seriously undermine Frontex internal decision making-processes and undermine the possibility of Frontex and Member States to conduct investigations and thus undermine the protection of such investigations. As no overriding public interest that is objective and general in nature and not indistinguishable from individual or private interests for the release of this information is ascertainable in the present case, information pertaining to this variable cannot be released based on Article 4(2) third indent and (3) of Regulation (EC) No 1049/2001.

A partial release of these two documents cannot be undertaken, as the redacting would be disproportional in relation to the parts that are eligible for disclosure, simultaneously undermining the principle of sound administration. More specifically, the administrative burden necessary to identify and redact the releasable materials would be disproportionate to the public interest in the disclosure exercise itself, while the released documents would not convey any informative value due to their significantly reduced form. Consequently, the partial disclosure of the documents at issue must be refused owing to the particular circumstances of the present case.

Please find the remaining 65 documents herewith attached. Please note however that some limited parts of these documents fall under exceptions under Article 4 of Regulation (EC) No 1049/2001 and therefore had to be expunged with detailed justifications explained in the legend also attached to this letter.

Kindly be reminded that the copyright of the documents rests with Frontex and making these works, communicated solely to you in this form and forum, available to third parties in this or another form without prior authorisation of Frontex is prohibited. Please note that Frontex does not assume liability stemming from the use or misuse of these documents

Yours sincerely,

signed

Hervé Caniard
Head of Transparency Office

Attachments: 65 documents

Disclaimers of Non-disclosure

1	Personal Data	<p>Names and/or contact details</p> <p>The non-disclosed text contains personal data, in particular, the name of an individual. Its disclosure would affect the privacy and integrity of the individual and is therefore precluded pursuant to the exception laid down in Article 4(1)(b) of Regulation (EC) No 1049/2001.¹</p> <p>Medical data</p> <p>The non-disclosed text contains information about the medical condition of an individual participating in Frontex activities. The disclosure of such information would undermine the protection of the privacy and the integrity of the individual as protected by European Union laws regarding the protection of personal data. In this regards the text is not disclosed pursuant to the exception laid down in Article 4(1) (b) of Regulation (EC) No 1049/2001.²</p> <p>(plural)</p> <p>Names and/or contact details</p> <p>The non-disclosed text contains personal data, in particular the names of individuals. Its disclosure would affect the privacy and integrity of the individuals and is therefore precluded pursuant to the exception laid down in Article 4(1)(b) of Regulation (EC) No 1049/2001.³</p> <p>Medical data</p> <p>The non-disclosed text contains information about the medical condition of the individuals participating in Frontex activities. The disclosure of such information would undermine the protection of the privacy and the</p>
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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, 31.5.2001, p. 43).

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³ 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, 31.5.2001, p. 43).

	integrity of the individuals as protected by European Union laws regarding the protection of personal data. In this regards the text is not disclosed pursuant to the exception laid down in Article 4(1) (b) of Regulation (EC) No 1049/2001. ⁴
2	<p>Reporting tools and methods used by law enforcement officials</p> <p>The non-disclosed part contains detailed information related to reporting tools and methods used by law enforcement officials to conduct border control tasks and counter criminal activities. Its disclosure would jeopardize the implementation of ongoing and future operations, and thus facilitate irregular migration and trafficking in human beings as the effectiveness of law enforcement measures would be significantly reduced. As disclosing this information would undermine the protection of the public interest as regards public security, this part is not disclosed pursuant to Article 4(1)(a) first indent of Regulation (EC) No 1049/2001⁵.</p>
3	<p>Sensitive operational information</p> <p>The non-disclosed text cannot be released as it refers to details crucial for situational awareness at the external borders of the European Union which is used by Frontex to conduct its operational activities and to develop risk analyses. The disclosure of this information would hamper the effectiveness of Frontex operations and jeopardise the efforts carried out by the European Union and Member States to curtail criminal activities at the external borders. It would thus benefit criminal networks especially those involved in people smuggling and trafficking in human beings, which would put the life of migrants in danger. Hence, the disclosure of the information pertaining to this variable would undermine the protection of the public interest as regards public security and has to be refused based on Article 4(1)(a) first indent of Regulation (EC) No 1049/2001.</p> <p>The information related to this non-disclosed text is also used for the development of risk analyses, which constitute a specific form of internal decision-making processes based on the intelligence derived from previous and presently ongoing activities and have a bearing on the conduct of current and future operations. Being an important base for determining the strategic orientation of the Agency, the possibility to conduct such analyses without interference is crucial for Frontex to effectively exercise its mandate. Consequently, releasing this information would enable third parties to gain insights into this decision making process and, with ascertainable likelihood, result in depriving Frontex of the possibility to conduct such analyses wholly independently, free from any external pressure or third-party influence. In sum, releasing this information would seriously undermine Frontex internal decision making-processes. As no overriding public interest that is objective and general in nature and not indistinguishable from individual or private</p>

⁴ 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, 31.5.2001, p. 43).

⁵ 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, 31.5.2001, p. 43).

		interests for the release of this information is ascertainable in the present case, information pertaining to this variable cannot be released based on Article 4(3) of Regulation (EC) No 1049/2001.
4	Number and profile of Human Resources	The non-disclosed parts contain information regarding the number and profiles of officers deployed in the operational area. Disclosing such information would be tantamount to disclosing the weaknesses and strengths of Frontex operations and pose a risk to their effectiveness. As a result, the course of ongoing and future similar operations would be hampered, ultimately defeating their purpose to counter and prevent cross-border crime and unauthorized border crossings. Consequently, the disclosure of such information would undermine the protection of the public interest as regards public security as laid down Article 4(1)(a) first indent of Regulation (EC) 1049/2001 ⁶ .
5	Number and type of technical equipment	The non-disclosed parts contain information regarding the technical equipment deployed in each operational area. Disclosing such information would be tantamount to disclosing the exact type, capabilities and weaknesses of the equipment, as well as their usual position, opening way for abuse. The result of this would only be to hamper the course of ongoing and future similar operations, ultimately obstructing their purpose to counter and prevent cross-border crime and unauthorized border crossings. In this light, the disclosure of such information would undermine the protection of the public interest as regards public security in the sense of Article 4(1)(a) first indent of Regulation (EC) No 1049/2001. ⁷
6	Operational Area of Joint Operation	The non-disclosed parts refer to details of the operational area and cannot be released. As ongoing operations tend to cover similar operational areas as the operations conducted in preceding years, disclosing details of previous operational areas would be tantamount to disclosing the current state of play. This would provide smuggling and other criminal networks with intelligence, enabling them to change their modus operandi, which would ultimately put the life of migrants in danger. Consequently, the course of ongoing and future operations of similar nature would be hampered by depriving the operations of any strategy and element of surprise, ultimately defeating their purpose to counter and prevent cross-border crime and unauthorized border crossings. In this light, the disclosure of documents containing such information would undermine the protection of the public interest as regards public security in the sense of Article 4(1)(a) first indent of Regulation (EC) No 1049/2001 ⁸ .

⁶ Regulation (EC) No 1049/2001 of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents (OJ L 145, 31.5.2001, p. 43).

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