



Emily O'Reilly
European Ombudsman

Decision

in the joint inquiry in cases 1500/2019/TM and 1600/2019/TM concerning Frontex's practice to require an official identification document from applicants for public access to its documents

The case concerned the European Border and Coast Guard Agency's (Frontex) practice to ask applicants for public access to documents for a copy of an official identification document or for their electronic signature.

The complainants considered that this practice does not ensure the easiest public access possible in a manner consistent with EU good administrative practice.

The Ombudsman inquired into the issue and found that the requirements imposed by Frontex were justified and were not applied in a disproportionate manner.

Background to the complaints

1. The two complainants requested Frontex to give them public access to documents in accordance with the EU rules on public access to documents¹. The complainant in case 1500/2019/TM asked Frontex to grant access to documents containing information on amount of fuel used by ships deployed in Frontex operations during the past five years. The complainant in case 1600/2019/TM asked Frontex to grant access to emails Frontex sent to a journalist concerning a publication about Frontex.

2. According to its rules on handling access to documents requests², Frontex requires applicants for public access either to provide an identity document or

¹ Regulation 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents, available at: <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=celex%3A32001R1049>

² Article 5(3) of Frontex's Management Board Decision adopting practical arrangements regarding public access to documents provides:
"All initial applications must be accompanied by an identity document or, in the case of legal persons, the proof of registered office along with the proof of the bond between the individual presenting the application and the legal person."



to identify with an electronic signature³. Frontex asked each of the complainants to provide such proof of identification in order to “enable Frontex to establish eligibility of [the] beneficiaries” to the right of access in accordance with Article 2(1) of Regulation 1049/2001⁴.

3. Both complainants argued that Regulation 1049/2001 does not require a public authority to ask for such identification and they therefore refused to provide copies of their identity documents to Frontex.

4. Frontex informed the complainants that their requests would not be processed, as they did not provide a “proof of eligibility” for the right of access. Both complainants turned to the Ombudsman.

The inquiry

5. The Ombudsman opened a joint inquiry into the complaints, obtained Frontex’s reply and the complainants’ comments in response.

Arguments presented to the Ombudsman

6. The complainants argued that the requirement on them to give Frontex copies of their IDs hinders their right of access to documents and is contrary to the purpose of Regulation 1049/2001 “to establish rules ensuring the easiest possible exercise of this right”⁵. The complainants also said that Article 2(2) of Regulation 1049/2001 provides for the extension of the scope of the right of access to include access by nationals of non-EU countries. One of the complainants questioned the compliance of the identification requirement with the EU rules on data protection⁶.

https://frontex.europa.eu/assets/Key_Documents/MB_Decision/2016/MB_Decision_25_2016_on_adopting_practical_arrangements_regarding_PAD.pdf

³ Electronic identification is regulated by Regulation 910/2014 of the European Parliament and of the Council of 23 July 2014 on electronic identification and trust services for electronic transactions in the internal market and repealing Directive 1999/93/EC, available at: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv%3AAOJ.L_2014.257.01.0073.01.ENG.

⁴ Article 2 of Regulation 1049/2001 reads as follow:

“Beneficiaries and scope

1. *Any citizen of the Union, and any natural or legal person residing or having its registered office in a Member State, has a right of access to documents of the institutions, subject to the principles, conditions and limits defined in this Regulation.*

2. *The institutions may, subject to the same principles, conditions and limits, grant access to documents to any natural or legal person not residing or not having its registered office in a Member State.”*

⁵ Article 1 of Regulation 1049/2001 reads, in relevant part, as follows:

“The purpose of this Regulation is: ...

(b) to establish rules ensuring the easiest possible exercise of this right ...”

Article 15(1) provides *“The institutions shall develop good administrative practices in order to facilitate the exercise of the right of access...”*

⁶ Regulation 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1543484984668&uri=CELEX:32018R1725>



7. Frontex said that its implementing rules on access to documents⁷ provide for the possibility to extend the scope of beneficiaries in accordance with Article 2(2) of Regulation 1049/2001. *“Such extension of the scope to non-EU countries however has to be distinguished from beneficiaries’ necessity to prove their eligibility [to the right of public access]”*. To ensure good administrative practice, Frontex asks for identification only at the time of initial applications, and not review requests (so-called *“confirmatory applications”*). Since 2018, Frontex has also offered the possibility of signing applications electronically with an e-signature. Frontex said that it had accepted copies of identity documents that showed only the issuing country and the applicants’ names, after applicants had redacted all the other information. Frontex said it also accepts any other official document issued by an EU Member State’s national authority indicating the applicant’s name and citizenship/residence.

8. Frontex argued that it provides many options for applicants to show that they are either EU citizens or residents. It said it complies with the requirement to develop good administrative practice facilitating public access. In Frontex’s view, the identification requirement stems from Article 2(1) of Regulation 1049/2001 and does not disproportionately interfere with the right of access.

9. Concerning compliance with data protection rules, Frontex referred to the Privacy Statement available on its website⁸. This information is again made available to applicants when they are asked to provide their identity document. Frontex said that Article 2(1) of Regulation 1049/2001 implies that processing of personal data is necessary to verify the eligibility of the applicant and is therefore in accordance with the relevant data protection rules⁹.

10. Frontex said that it would amend both the Privacy Statement and the information provided to applicants upon receipt of their application, to specify that applicants may redact their identity documents leaving available only the names and the issuing country. The Ombudsman is concerned to note, however, that it has not yet done so.

11. In their comments on Frontex’s reply, the complainants reiterated their disagreement with the requirement imposed on an applicant for public access to documents to provide evidence of their identity.

⁷ Article 3(2) of Frontex’s Management Board Decision provides:

“On a case-by-case decision, the Agency may, subject to the same principles, conditions and limits set forth in the Regulation, grant access to documents to any natural or legal person not residing or not having its registered office in a Member State or in a Schengen Associated Country.”

⁸ <https://frontex.europa.eu/contact/public-access-to-documents-applications/>

⁹ Articles 4 and 5(1)(b) of Regulation 2018/1725, see footnote 6.



The Ombudsman's assessment

12. EU legislation on public access to documents was enacted to ensure the widest and the easiest access possible in a manner consistent with good administrative practice¹⁰.

13. The right of public access applies to EU citizens and residents. While it is within the discretion of an EU public authority to extend this right of public access to cover non-EU nationals and non-residents, there is no legal obligation to do so. Frontex has, exercising its discretion, decided to extend the right of public access to documents to non-EU nationals **on a case-by-case basis only**. It is not relevant that other EU institutions and bodies may have decided to exercise their discretion in a different manner, for example by extending the right of public access generally to all non-EU nationals and non-residents.

14. Since an EU public authority is entitled to distinguish between requests for public access to documents made by EU citizens or residents and those made by persons who are not EU citizens or residents, it is also entitled to ask those making such requests to provide evidence confirming whether they are EU citizens or residents.

15. It is important that any such requirement does not infringe data protection rules. These rules require that any processing of personal data is both necessary and proportionate. Frontex allows an applicant to redact, from the copy of the identity document provided, information other than the name of the applicant and the authority issuing the identity document.

16. The Ombudsman thus concludes that the requirement to provide a copy of an identity document does not go beyond what is necessary to show that an applicant is an EU citizen or a resident and therefore has the right to make a request for public access to documents.

17. A requirement will not be proportionate if it effectively prevents a person from exercising the right of public access to documents. Frontex has explained that it is flexible as regards the precise nature of the identity documents that it requires from applicants. It is therefore not likely that a person who is an EU citizen or resident would not have *any* appropriate identity document to submit to Frontex. The Ombudsman thus concludes that the requirement to provide evidence of identity is proportionate and does not prevent applicants from exercising their right of access to documents.

18. Data protection rules require that personal data be used only for the purpose for which it was collected. Provided Frontex uses the copy of the identity document only for the purpose of processing the access to documents request, the requirement to provide a copy of the identity document will not infringe these data protection rules. The complainants have not put forward

¹⁰ See footnote 5.



any evidence or arguments to show that Frontex may be using the copies of the identity documents it obtains for any other purpose.

19. Frontex has explained that it asks for a copy of an identity document only when a person makes an initial application for documents. It does not request the applicant to resubmit a copy of an identity document if a confirmatory application is made. This is good practice.

Conclusion

Based on the inquiry, the Ombudsman closes these cases with the following conclusion:

There has been no maladministration by Frontex in requiring applicants for public access to documents to provide evidence of their identity.

The complainants and Frontex will be informed of this decision.

Emily O'Reilly
European Ombudsman

Strasbourg, 17/03/2020