

Mr/Ms [REDACTED]

Email: [REDACTED]

Our ref: TO/PAD-2021-00003
Please quote when replying.

Warsaw, 4 February 2021

Your application for access to European Border and Coast Guard Agency (Frontex) documents

Dear Mr/Ms [REDACTED],

In reference to your application registered on 15 January 2021, asking for access to:

all documents regarding an incident on 10.08.2020 close to Samos

This includes:

- E-mails, letters, fax-messages, memos and phone logs, including all attachments - regarding, mentioning or discussing the incident, and/or Frontex's role in this incident;*
- All operational plans, including all annexes, pertaining to JO Poseidon 2020;*
- All reports, evaluations, studies and analysis of any kind conducted by Frontex regarding or in response to the incident, and/or Frontex's role in this incident;*
- A list of all meetings held where the incident and/or Frontex's role in this incident were discussed or mentioned, as well as all minutes of these meetings.*

Please be informed that in regard to **indents 1 and 3**, 18 documents and in regard to “all minutes of these meetings” forming the second part of **indent 4**, five documents were identified. However, access to these has to be refused as they:

- contain personal data, such as names of individuals and/or characteristic features which could lead to the identification of individuals. The disclosure would undermine the protection of privacy and the integrity of the individual, in particular in accordance with European Union legislation regarding the protection of personal data and therefore is to be precluded pursuant to Article 4(1)(b) of Regulation (EC) No 1049/2001¹;
- refer to details of the operational area and cannot be released. A release of these pieces of information 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

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).

- 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;
- contain detailed information on the means of communication used by law enforcement officials. The disclosure of this information would put law enforcement officials' work in jeopardy and harm the course of future and ongoing operations aimed at curtailing the activities of organized criminal networks involved in the smuggling and migrants and trafficking in human beings. As the disclosure of such pieces of information would undermine the protection of the public interest as regards public security, it must therefore be refused as laid down in Article 4(1)(a) first indent of Regulation (EC) No 1049/2001;
 - contain Information regarding technical equipment deployed in the operational area by Frontex and Member States. Disclosing such information would be tantamount to disclosing the exact type and capabilities of the equipment and would enable third parties, e.g. by combining this information with other sources, to draw conclusions regarding usual positions and movement patterns. This would open way for abuse, as numbers and types of equipment used in previous operations are indicative of similar numbers and types for succeeding years. Releasing such information would thus benefit criminal networks, enabling them to change their modus operandi and, consequently, result in hampering the course of ongoing and future operations of a similar nature. This would ultimately obstruct the purpose of such operations: to counter and prevent cross-border crime and unauthorized border crossings. In this light, the disclosure of information regarding the technical equipment deployed would undermine the protection of the public interest as regards public security within the meaning of Article 4(1)(a) first indent of Regulation (EC) No 1049/2001.

In addition, these documents pertain to ongoing investigations and their disclosure at the present stage would jeopardise the ability of Frontex and Member States to evaluate any irregularities and to verify facts and information with a view to make a decision. Consequently, access to them has to be refused based on Article 4(2) third indent of Regulation (EC) No 1049/2001 as their disclosure would undermine the protection of the purpose of investigations. No overriding public interest that is objective and general in nature and not indistinguishable from individual or private interests for the release of these documents is ascertainable in the present case. It is thus that no partial release is possible.

As regards **indent 2**, two documents were identified. Access to these must be refused pursuant to Article 4(1)(a) first indent of Regulation (EC) No 1049/2001 as while the operation is about to be concluded, the evaluation phase will commence. Findings of evaluations flow into the adjustment of currently ongoing joint operations and planned for the near future. Thus, granting access to the documents at this stage would hamper its evaluation and ultimately jeopardize the European Union's and Member State's endeavours to counter and prevent cross-border crime and unauthorized border crossings. This would benefit criminal networks, enabling them to change their modus operandi and consequently result in hampering the course of ongoing and future similar operations, which would ultimately put the life of migrants in danger. Consequently, releasing the operational plans and all annexes at this stage would undermine the protection of the public interest as regards public security as laid down in Article 4(1)(a) first indent of Regulation (EC) No 1049/2001. A partial release of these documents could not be undertaken as their redaction 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 be informed that Frontex does not hold “A list of all meetings ...” you applied for in the first part of indent 4.

Pursuant to Article 7(2) of Regulation (EC) No 1049/2001, within 15 working days of the receipt of this letter, you may submit a confirmatory application to Frontex to reconsider its position. Based on Article 8 of Regulation (EC) No 1049/2001, Frontex will reply to you within 15 working days from the registration of such application. You can submit your confirmatory application by post or electronically.

Yours sincerely,

