

Mr/Ms [REDACTED]

Email: [REDACTED]

Our ref: DCGO/TO/PAD-2021-00048
Initial application: TO/PAD-2021-00003

Warsaw, 9 June 2021

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

Dear Mr/Ms [REDACTED],

In reference to your confirmatory application registered on 15 February 2021, for which the time-limit has been extended by 15 working days on 8 March 2021¹, for which due to request for clarification the time limit has been suspended from 12 March 2021 to 21 May 2021, and in which you confirmed your initial application registered on 15 January 2021, to which Frontex had replied on 4 February 2021. In your initial application you applied for:

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.*

I note your arguments in your confirmatory application

Access to documents in regard to indents 1, 3 and 4 was refused because they contain personal data, refer to details of the operational area, contain details on the means of communication used by law enforcement officials and contain information regarding technical equipment deployed in the operational area. On the assumption that this is not the only information contained in these documents, a partial release should be performed, in accordance with Article 4.6 of Regulation 1049/2001.

You state, that a partial release of any of these documents is prevented because all these documents pertain to ongoing investigations. However, no reason is given in what way disclosure

¹ In accordance with Article 8(2) of 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).

of a document or of certain redacted parts thereof would specifically and effectively undermine the protection of the purpose of an ongoing investigation. This should be explained for all documents, as stated by the Ombudsman in their comment for decision 1616/2016/MDC. There is also no reasonable explanation given on why this justifies not releasing the documents at all instead of releasing them partially.

Access to documents in regard to indent 2 was refused, with the provided reason being that granting access to these documents would hamper the evaluation of the mission. Operational plans, including operational plans for Joint Operation Poseidon with all Annexes were released in the past in response to information requests. Examples for that can be found at https://eur02.safelinks.protection.outlook.com/?url=https%3A%2F%2Fwww.asktheeu.org%2Fde%2Frequest%2Flatest_available_operational_pla&data=04%7C01%7Cpad%40frontex.europa.eu%7C86b056071a5543c7cd4708d8cea1ac4c%7C1a17d6bf51554e22bf292ba5da77f037%7C0%7C0%7C637486541929188220%7CUnknown%7CTWFpbGZsb3d8eyJWIjoiMC4wLjAwMDAiLCJQIjoiV2luMzliLCJBTiI6I1haWwiLCJXVCI6Mn0%3D%7C3000&sdata=Q3VdDiq5OLzWp9DWbtAI9eSgrzhv3zDtesgm9LTjqs%3D&reserved=0 and <https://eur02.safelinks.protection.outlook.com/?url=https%3A%2F%2Ffragdenstaat.de%2Fanfrage%2Foperational-plans-for-joint-operation-poseidon-2018-and-2019%2F&data=04%7C01%7Cpad%40frontex.europa.eu%7C86b056071a5543c7cd4708d8cea1ac4c%7C1a17d6bf51554e22bf292ba5da77f037%7C0%7C0%7C637486541929188220%7CUnknown%7CTWFpbGZsb3d8eyJWIjoiMC4wLjAwMDAiLCJQIjoiV2luMzliLCJBTiI6I1haWwiLCJXVCI6Mn0%3D%7C3000&sdata=xtsFedKSnTVCY9aapjNDCdAckv0w564nuNDd2TqYnaM%3D&reserved=0> (PAD-2020-00084). Because of that, the explanation does not justify the refusal to release such documents. In addition to that, the documents provided in the examples are not “significantly reduced”.

You further clarified regarding the latter paragraph:

Your argument was, that granting access to documents such as operational plans would undermine the protection of the public interest. In both listed examples/ PAD cases, such plans - including these for JO Poseidon - were already disclosed. In conclusion, it seems like disclosing such documents should also be possible in this case, as there is no major difference.

Further to the documents considered under **indents 1 and 3 of your initial application**, five additional documents under **indent 1** and one additional document under **indent 3** of your initial application were identified. Therefore, a total of 24 documents falling under **indents 1 and 3 of your initial application** was identified.

In regard to the **second part of indent 4 of your initial application**, the five documents previously considered under this item of your initial application do in fact not fall within the scope of your initial application. Consequently, Frontex does not hold documents under the **second part of indent 4 of your initial application**. As stated on 4 February 2021, Frontex does not hold documents regarding the **first part of indent 4 of your initial application**.

The total number of documents falling under **indents 1, 2, 3 and 4 of your initial application** thus amounts to 26.

Please find attached seven documents regarding **indents 1 and 3 of your initial application**. Kindly find further attached two documents concerning **indent 2 of your initial application**: “All operational plans, including all annexes, pertaining to JO Poseidon 2020.”

Consequently, a total of nine documents are herewith attached.

Kindly note that 17 documents under **indents 1 and 3 of your initial application** cannot be released, as although the exception under Article 4(2) third indent of Regulation (EC) No 1049/2001² (regarding the protection of the purpose of investigations) is no longer applicable, the exceptions under Article

² 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).

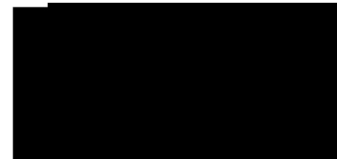
4(1)(a) first indent and Article 4(1)(b) of Regulation (EC) No 1049/2001 remain valid. The number of elements in these documents falling under Article 4(1)(a) first indent and Article 4(1)(b) of Regulation (EC) No 1049/2001, for which detailed justifications were provided on 4 February 2021, led me, while balancing all interests, to decide against their partial release within the meaning of Article 4(6) of Regulation (EC) No 1049/2001. This was and is motivated by “the administrative burden of blanking out the parts that may not be [disclosed, which] proves to be significant, thereby exceeding the limits of what may reasonably be required”³ combined with the fact that a “partial access would be meaningless because the parts of the document[s] that could be disclosed would be of no use”⁴. Therefore, no partial release of these documents within the meaning of Article 4(6) of Regulation (EC) No 1049/2001 is possible.

In sum, I amend the decision of 4 February 2021 as explained above.

In accordance with Article 8(1) of Regulation (EC) No 1049/2001, you are entitled to institute court proceedings and/or make a complaint to the European Ombudsman under the relevant provisions of the Treaty on the Functioning of the European Union.

Yours sincerely,

[signed electronically]



³ Applicable also for Regulation (EC) No 1049/2001: Judgment of 7 February 2002 in case T-211/00, *Kuijjer v Council*, para. 57.

⁴ Judgment of 5 December 2018 in case T-875/16, *Falcon Technologies v Commission*, para. 103, et seq.