

## Subject: Access to documents application

Dear [REDACTED]

Thank you for your interest in the activities of the European Maritime Safety Agency (EMSA).

This is a reply to your application for access to documents registered on 18 May 2022, whereby you requested: ***“The accident report for the EMSA drone, which crashed into the Baltic Sea on May 4th, 2022 off the coast of Fehmarn in the area of the Staberhuk radar station. I would also like the investigation report on the cause of the accident, insofar as it has already been prepared. Finally, I would like to see the written communications (emails, letters, text messages) that took place between the European Maritime Safety Agency and the Lübeck Police Directorate regarding the incident after the incident.”***

Please be informed that your application has been processed in line with the provisions of Regulation (EC) No 1049/2001 of the European Parliament and of the Council regarding public access to documents.

The following document (third party document) has been identified as held by EMSA and within the scope of your application: Draft Incident Report.

Note that the above referenced document fully falls under the exceptions stipulated by Article 4(2) first and third indents of the Regulation No.1049/2001.

The respective draft document cannot be disclosed for the following reasons:

- ✓ Content includes information relating to contract implementation (operational details) and the contractor's commercial solution (i.e., technical details of the type of drone used), which is information carrying a commercial value. In this sense, specifics of the technical equipment used clearly constitute commercial information of the contractor. The provisions of Article 4.2 of the Regulation foresee that access shall be refused “where disclosure would undermine the protection of [...]: commercial interests of a natural or legal person [...]”. As such, the information carrying a commercial value, relating to the execution of a service or of an action falls under this exception, given that the disclosure of such information to the general public, including a potential competitor on the market, would undermine the protection of the respective legal person's expertise, strategy and thus their commercial strength.
- ✓ Content is fully related to an ongoing investigation. As the investigation is in progress, disclosure of any preliminary facts could jeopardise the conduct of the investigation itself or may not even be found relevant in the end, depending on the outcome of the investigative actions undertaken. The provisions of Article 4.2 of the Regulation foresee that access shall be refused “where disclosure would undermine the protection of [...]: the purpose of inspections, investigations and audits [...]”.

As such, disclosing even partially this draft document could compromise the effective use of those elements/facts by the contractor and/or national authorities, resulting in preventing the proper conduct of the various procedures which the investigative parties/ authorities might decide to perform, and ultimately impact their final findings.

In conclusion, all related information falling under the above - mentioned exceptions shall be protected as it is very likely that the disclosure of it would be liable to undermine the interest protected by the exceptions in question.

Additionally, a separate assessment of the application for access to documents was performed in order to assess if there is an overriding public interest in disclosure that would justify non-application of the exception in Article 4.2. With regards to this aspect, it was found that there is no such interest at stake as to justify public disclosure overriding the mentioned exceptions.

Note that, in line with Article 7(2) of Regulation (EC) No.1049/2001 of the European Parliament and of the Council regarding public access to documents, you may file a confirmatory application within 15 working days of receiving this email.

Kind regards,  
EMSA Document Access Coordinator