



EUROPEAN COMMISSION
DIRECTORATE-GENERAL FOR MIGRATION AND HOME
AFFAIRS

The Director-General

Brussels
HOME.D1/LPM

Dr Patrick Breyer
Rue Wiertz 60,
1047 Brussels, B [REDACTED]

**To the applicant's email addresses with
acknowledgement of receipt:**

[REDACTED]

and

[REDACTED]

Subject: Your application for access to documents – EASE 2023/5384 and EASE 2023/6094

Dear Dr Patrick Breyer,

I refer to your requests for access to European Commission documents registered on 18-09-2023 and on 16-10-2023 under the above-mentioned reference numbers.

Your requests are worded as follows:

EASE 2023/5384:

“With regard to the meeting of the »High-Level Expert Group on access to data for effective law enforcement« on 19 June 2023 and 21 November 2023, please send me all relevant documents as described below:

- *documents relevant for the following topics: data retention, IP addresses, encryption and access to communication data,*
- *documents that have been discussed or are scheduled for discussion,*
- *documents on the group's subgroups including members and scope of subgroups,*
- *presentations that have been given or are planned,*
- *documents on the schedule of the meetings of the group and subgroups and*
- *conclusions, draft conclusions, reports, interim reports and all other documents that reflect the state of affairs in this group and in the subgroups.*

Please include all types of documents, in particular, but not limited to: presentations, work papers, notes, emails, drafts, summaries, answers and announcements of dates for further meetings related to the group's work”.

EASE 2023/6094:

“With regard to the meetings of the technical sub-groups (‘working groups’) of the »High-Level Expert Group on access to data for effective law enforcement«, please send me all relevant documents as described below:

- *documents concerning Working Group 1 (access to data at rest in a user’s device), 1st Meeting on 19 July 2023*
- *documents concerning Working Group 2 (access to data at rest in a provider’s system), 1st Meeting on 6 September 2023*
- *documents concerning Working Group 3 (access to data in transit), 1st Meeting on 4 October 2023*

Please include all types of documents, in particular, but not limited to: a list of participating authorities, organisations and persons, schedules, presentations, work papers, documents that have been discussed or are scheduled for discussion, conclusions, draft conclusions, reports, interim reports and all other documents that reflect the state of affairs in this group and in the subgroups, notes, emails, drafts, summaries, answers and announcements of dates for further meetings related to the group's work”.

I consider your requests to cover documents held up to the date of this response.

The following documents fall within the scope of your applications:

1. Draft Agenda, Plenary meeting, Swedish Presidency of the Council of the European Union and European Commission, 19 June 2023, reference Ares(2023)7211671 (hereafter ‘document 1’),
2. Background document. Operational challenges faced by law enforcement related to access to data. Input to the first plenary meeting of the High-Level Group (HLG) on access to data for effective law enforcement, Presidency of the Council of the European Union and European Commission, 19 June 2023, reference Ares(2023)7092561 (hereafter ‘document 2’),
3. Room document on working groups, Presidency of the Council of the European Union and European Commission, 19 June 2023, reference Ares(2023)7092884 (hereafter ‘document 3’),
4. Draft agenda. Working Group 1 – Access to data at rest in a user’s device, European Commission, 19 July 2023, reference Ares(2023)7211798 (hereafter ‘document 4’),
5. Background document. Working Group 1. Access to data at rest in a user’s device, European Commission, 19 July 2023, reference Ares(2023)7093740 (hereafter ‘document 5’),
6. Draft agenda. Working Group 2 – Access to Data at Rest in a Provider’s System, European Commission, 6 September 2023, reference Ares(2023)7211884 (hereafter ‘document 6’),
7. Background document. Working Group 2. Access to Data at Rest in a Provider’s System, European Commission, 6 September 2023, reference Ares(2023)7094194 (hereafter ‘document 7’),
8. Draft agenda. Working Group 3 – Real time access to data in transit, 4 October 2023, European Commission, reference Ares(2023)7211943 (hereafter ‘document 8’),

9. Background document. Working Group 3. Real time access to data in transit, European Commission, 4 October 2023, reference Ares(2023)7094431 (hereafter ‘document 9’),
10. Scoping paper for the High-Level Expert Group on access to data for effective law enforcement, Council of the European Union, 13 April 2023, reference Ares(2023)7093511 (hereafter ‘document 10’),
11. Commission Decision C(2023) 3645 final setting up a high-level group on access to data for effective law enforcement, European Commission, 6 June 2023, reference Ares(2023)7092292 (hereafter ‘document 11’),
12. Rules of procedure of the high-level group on access to data for effective law enforcement, Presidency of the Council of the European Union and European Commission, 19 June 2023, reference Ares(2023)7093219 (hereafter ‘document 12’),
13. Internal report, 1st Plenary Meeting, European Commission, reference Ares(2023)7246860 (hereafter ‘document 13’),
14. Internal report, Working Group 1, European Commission, reference Ares(2023)7246968 (hereafter ‘document 14’),
15. Internal report, Working Group 2, European Commission, reference Ares(2023)7247056 (hereafter ‘document 15’),
16. Internal report, Working Group 3, European Commission, reference Ares(2023)7247162 (hereafter ‘document 16’),
17. Participants List, 1st Plenary Meeting, European Commission, reference Ares(2023)7247443 (hereafter ‘document 17’),
18. Participants List, Working Group 1, European Commission, reference Ares(2023)7247220 (hereafter ‘document 18’),
19. Participants List, Working Group 2, European Commission, reference Ares(2023)7247240 (hereafter ‘document 19’),
20. Participants List, Working Group 3, European Commission, reference Ares(2023)7247269 (hereafter ‘document 20’),
21. Presentation 1, Working Group 1, European Commission, reference Ares(2023)7112139 (hereafter ‘document 21’),
22. Presentation 2, Working Group 1, European Commission, reference Ares(2023)7111557 (hereafter ‘document 22’),
23. Presentation 3, Working Group 1, European Commission, reference Ares(2023)7111752 (hereafter ‘document 23’),
24. Presentation 1, Working Group 2, European Commission, reference Ares(2023)7112307 (hereafter ‘document 24’),
25. Presentation 2, Working Group 2, European Commission, reference Ares(2023)7112457 (hereafter ‘document 25’),
26. Presentation 3, Working Group 2, European Commission, reference Ares(2023)7112557 (hereafter ‘document 26’),
27. Presentation 4, Working Group 2, European Commission, reference Ares(2023)7112620 (hereafter ‘document 27’),

28. Presentation 5, Working Group 2, European Commission, reference Ares(2023)7112702 (hereafter ‘document 28’),
29. Presentation 6, Working Group 2, European Commission, reference Ares(2023)7112765 (hereafter ‘document 29’),
30. Presentation 7, Working Group 2, European Commission, reference Ares(2023)7112836 (hereafter ‘document 30’),
31. Presentation 1, Working Group 3, European Commission, reference Ares(2023)7112931 (hereafter ‘document 31’),
32. Presentation 2, Working Group 3, European Commission, reference Ares(2023)7113374 (hereafter ‘document 32’),
33. Presentation 3, Working Group 3, European Commission, reference Ares(2023)7113505 (hereafter ‘document 33’),
34. Presentation 4, Working Group 3, European Commission, reference Ares(2023)7113564 (hereafter ‘document 34’).

Having examined the identified documents under the provisions of 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 (hereafter ‘Regulation (EC) No 1049/2001’)⁽¹⁾, and taking into account the results of third-party consultations, I have come to the conclusion that, for the reasons set out below,

- I. Documents 1–12 and 22 and 24 can be made public,
- II. Documents 17–20 and 23, 25, 28, 30–31 and 33 can be partially disclosed,
- III. Documents 13–16 and 21, 26–27, 29, 32 and 34 are to be withheld.

I. Full disclosure

With regard to documents 1 to 12, I wish to draw your attention to the fact that they are publicly available through the following dedicated webpage [High-Level Group \(HLG\) on access to data for effective law enforcement \(europa.eu\)](#) aiming to ensure an equivalent degree of transparency to that applicable to Commission expert groups within the meaning of the Commission Decision C(2016) 3301, as provided in Article 11 of the Commission Decision C(2023) 3645 setting up the HLG.

As regards documents 22 and 24, since they originate from a third party, the authors of the documents have been consulted pursuant to Article 4(4) of Regulation (EC) 1049/2001, according to which “[a]s regards third-party documents, the institution shall consult the third party with a view to assessing whether an exception in paragraph 1 or 2 is applicable, unless it is clear that the document shall or shall not be disclosed”.

The consulted third parties agreed to their full release. Consequently, please find attached documents 22 and 24.

⁽¹⁾ OJ L 145, 31.5.2001, p. 43.

II. Partial disclosure

With regard to documents 17–20, 23, 25, 28, 30, and 31, they contain the names of participants of the meetings or the names and contact information of the authors of the documents.

In accordance with Article 4(1)(b) of Regulation (EC) No 1049/2001 “[t]he institutions shall refuse access to a document where disclosure would undermine the protection of [...] privacy and the integrity of the individual, in particular in accordance with Community legislation regarding the protection of personal data”.

Article 9(1)(b) of Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data⁽²⁾ does not allow the transmission of these personal data, except if you prove that it is necessary to have the data transmitted to you for a specific purpose in the public interest and where there is no reason to assume that the legitimate interests of the data subject might be prejudiced. In your request, you do not express any particular interest to have access to these personal data nor do you put forward any arguments to establish the necessity to have the data transmitted for a specific purpose in the public interest. Moreover, I have examined whether there could be an overriding public interest in disclosure, but I have not been able to identify such an interest.

Consequently, I conclude that, pursuant to Article 4(1)(b) of Regulation (EC) No 1049/2001, access cannot be granted to the personal data contained in documents 17–20, 23, 25, 28, 30–31 and 33.

In addition, concerning document 33, since it was drawn up by Eurojust, the originator of the document has been consulted in line with the requirement laid down in Article 4(4) of Regulation (EC) No 1049/2001. In response to the consultation, Eurojust has agreed to partially disclose the document, but observed that the disclosure of some of its content would undermine public security and the protection of legal advice, because it contains information about Europol’s work in a sensitive domain and includes sensitive legal assessments.

As a result, I consider that additional redactions of document 33 are supported by the exceptions to the right of access laid down in Article 4(1)(a) and Article 4(2) of the Regulation (EC) No 1049/2001, according to which “[t]he institutions shall refuse access to a document where disclosure would undermine the protection of [...] the public interest as regards [...] public security” and “[t]he institutions shall refuse access to a document where disclosure would undermine the protection of [...] court proceedings and legal advice”.

In the light of the above, please find attached documents 17–20 and 23, 25, 28, 30–31 and 33 in a redacted format.

Disclaimer

Please note that documents originating from third parties are disclosed to you based on Regulation (EC) No 1049/2001. However, this disclosure is without prejudice to the rules on intellectual property, which may limit your right to reproduce or exploit the released documents, who may hold an intellectual property right on them. The European Commission does not assume any responsibility from their reuse.

⁽²⁾ OJ L 295, 21.11.2018, p. 39.

III. Rejection of disclosure

Having examined documents 13, 14, 15, and 16, I regret to inform you that your application cannot be granted, as disclosure is prevented by exception to the right of access laid down in Article 4(3) first indent of Regulation (EC) No 1049/2001, according to which “[a]ccess to a document, drawn up by an institution for internal use or received by an institution, which relates to a matter where the decision has not been taken by the institution, shall be refused if disclosure of the document would seriously undermine the institution's decision-making process, unless there is an overriding public interest in disclosure”.

The documents which you seek to obtain are internal documents that relate to the ongoing deliberations of the High-Level Group, for which a decision has not yet been taken by the Commission.

The disclosure of these internal documents would seriously undermine the protection of the decision-making process of the Commission in relation to the High-Level Group, as it would reveal preliminary views and policy options which are currently under consideration, while the deliberations of the High-Level Group are in progress. More specifically, these internal reports do not constitute the reports and minutes of the meetings, as referred in article 5 of the Commission Decision setting up the HLG, which in fact have not been drafted yet, but refer to the opinion and main take-aways of participants from the Commission concerning the deliberations of the High-Level Group and its Working Groups. The Commission's services must be free to explore all possible options in preparation of a decision for the future steps free from external pressure, especially considering that the High-Level Group aims to formulate a strategic forward-looking vision on how to address in a proportionate way the current and anticipated future challenges and put forward recommendations on ways to address the identified challenges.

Having examined documents 21, 26, 27, 29, 32, and 34, and taking into account the results of third-party consultations, I regret to inform you that your application cannot be granted, since it is prevented by the exceptions laid down in first indent of Article 4(1)(a) of Regulation 1049/2001 (protection of public security) as well as in third indent of Article 4(2) of Regulation (EC) No 1049/2001, according to which “[t]he institutions shall refuse access to a document where disclosure would undermine the protection of [...] the purpose of inspections, investigations and audits”.

First, those documents were drawn up by third parties, namely experts from Poland, Spain, and Sweden, which were therefore consulted on their potential release. The consulted Member States objected to their disclosure pursuant to Article 4(5) of Regulation 1049/2001, according to which “[a] Member State may request the institution not to disclose a document originating from that Member State without its prior agreement”.

Second, I agree with the consulted Member States’ assessment that the requested documents contain information about on-going investigations and their disclosure is likely to compromise law enforcement operations in progress, putting officers' safety at risk and jeopardizing the chances of a successful outcome.

IV. No documents held

Finally, concerning the 21 November meeting, which has not yet taken place, I inform that no documents are held by the European Commission.

As specified in Article 2(3) of Regulation (EC) No 1049/2001, the right of access as defined in that regulation applies only to existing documents in the possession of the institution.

Given that no such documents, corresponding to the description given in your application, are held by the Commission, the Commission is not in a position to fulfil your request.

V. Means of redress

In accordance with Article 7(2) of Regulation (EC) No 1049/2001, you are entitled to make a confirmatory application requesting the Commission to review this position.

Such a confirmatory application should be addressed to the Secretariat-General of the Commission within 15 working days upon receipt of this letter. You can submit it in one of the following ways:

by asking for a review via your portal ⁽³⁾ account (available only for initial requests submitted via the portal account)

or by mail:

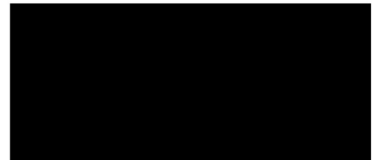
European Commission
Secretariat-General
Transparency, Document Management & Access to Documents (SG.C.1)
BERL 7/076
B-1049 Bruxelles

or by email to: sg-acc-doc@ec.europa.eu

VI. Acknowledgment of receipt

Finally, I note that your request has been submitted outside the EASE portal. Therefore, I would appreciate, if you could **acknowledge receipt of the present letter by sending an email to HOME-ACCESS-DOCUMENTS@ec.europa.eu**.

Yours faithfully,



Annex(es): 24 documents

⁽³⁾ <https://www.ec.europa.eu/transparency/documents-request>