

EUROPEAN EXTERNAL ACTION SERVICE



DG Resource Management
The Acting Director-General

Brussels, 18 October 2023
eeas.sg.ld (2023) 10681791

[REDACTED]

Subject: Your confirmatory application for access to documents

Ref: 2023/131

Dear [REDACTED]

I would like to thank you for your e-mail of 7 October 2023, in which you make a confirmatory application, in accordance with Article 7(2) of Regulation (EC) No 1049/2001 regarding public access to documents.¹

As requested, I have examined the decision of 6 October 2023 of the EEAS service in charge of access to documents (SG.LD.ATD - Transparency) taken after the assessment of the division holding the document, not to grant you access to the document "Handbook for Maritime Operations of the Libyan Coast Guard and Port Security", which was identified as falling within the scope of your request (hereafter "the document").

As already outlined in the initial reply to your application, the identified document has been developed by the Libyan authorities with the support of the EUBAM Libya Mission. Therefore, it qualifies as third party document as per Article 4(4) of the Regulation. The EEAS does not deny neither the existence of this document, nor of being in its possession.

After carefully assessing the arguments in your confirmatory application, I regret to inform you that they did not lead me to reverse the position taken in the initial reply to your request. Indeed, as our services explained in the initial reply, any disclosure of the identified document – as a whole or partially – would undermine the protection of the public interest as regards public security and international relations, as per Article 4(1)(a), first and third indent, of the Regulation.

This decision was taken after a thorough analysis of the content of the document. The analysis showed that the identified document is a guide for the conduct of search and rescue and law enforcement operations at sea. Disclosing the details of the conduct of such operations would give both migrants and smugglers information that would be used to improve their strategies for illegal migration and smuggling. The release of this information would result in an increase of the illegal migratory flows by sea and, consequently, an increase in the risk for the life of individuals since the patrol and rescue capacity of the Coast Guards and Port Security would

¹ Regulation (EC) No 1049/2001 of the European Parliament and of the Council regarding public access to European Parliament, Council and Commission documents (OJ L 145, of 31.5.2001, p. 43, hereafter the "Regulation"), as applied by the EEAS pursuant to Article 11(1) of the Council Decision 2010/427/EU of 26 July 2010 establishing the organisation and functioning of the European External Action Service (OJ L 201, of 3.8.2010, p. 30).

be overwhelmed. The public disclosure of the information contained in this document would also impact the preparedness of the Coast Guards and Port Security and impact on the success of the rescue operations. Against this background, I confirm that the public disclosure of the document would undermine the public interest as regards public security as per Article 4(1)(a), first indent, of the Regulation.

As mentioned above, the requested handbook is a third party document of the Libyan Coast Guard. The services in charge of the initial reply analysed the document and concluded that it is clear that it should not be disclosed to the public. I agree with the conclusions of the EEAS services, that the public disclosure of this document, developed by the Libyan authorities for the use of their own law enforcement authorities, would undermine the cooperation between the EU (notably, the EUBAM Libya Mission) and Libya in the field of control of migratory flows and fight against migrant smuggling. Such unilateral disclosure would have a substantial negative impact on the work of the Libyan law enforcement authorities and it be perceived as a hostile act in breach of the relationship of trust built between the EU and the Libyan authorities. Therefore, I confirm that the public disclosure of the requested document would undermine the EU international relations as per Article 4(1)(a), third indent, of the Regulation.

I take this opportunity to recall that the public interest exceptions laid down in Article 4(1)(a) of the Regulation are subject to a particular regime as compared to the other exceptions included in Article 4.

On the one hand, the Institution “must be recognised as enjoying a wide discretion for the purpose of determining whether the disclosure of documents relating to the fields covered by those exceptions relating to the public interest provided for in Article 4(1)(a) of the Regulation could undermine the public interest.”²

On the other hand, once the Institution has come to the conclusion that release would indeed undermine the public interest in this area, it has no choice but to refuse access, because “it is clear from the wording of Article 4(1)(a) of the Regulation that, as regards the exceptions to the right of access provided for by that provision, refusal of access by the institution is mandatory where disclosure of a document to the public would undermine the interests which that provision protects, without the need, in such a case and in contrast to the provisions, in particular, of Article 4(2), to balance the requirements connected to the protection of those interests against those which stem from other interests.”³

Therefore, while the EEAS enjoys a wide discretion in assessing the impact of the release of documents since the exceptions in Article 4(1)(a) of the Regulation, protecting a public interest such as public security and international relations, falls under the category of absolute exceptions, the EEAS is barred from balancing these exceptions against an overriding public interests in disclosure.⁴

For all these reasons, I hereby confirm that the above-mentioned document cannot be released to the public, neither fully nor partially. Indeed, I considered the possibility of a partial access, in accordance with Article 4(6) of the Regulation. However, since the vast majority of the substantive part of the document is covered by the invoked exceptions, granting a partial access, albeit marginal, to the remaining part would entail revealing information the protection

² Judgments of 1 February 2007, *Sison v Council*, C-266/05 P, EU:C:2007:75, paragraph 34; of 12 September 2013, *Besselink v Council*, T-331/11, EU:T:2013:419, paragraph 32; and of 3 October 2012, *Jurašinović v Council*, T-63/10, EU:T:2012:516, paragraph 32.

³ Judgments of 7 February 2018, *Access Info Europe v Commission*, T-851/16, EU:T:2018:69, paragraph 40, and *Access Info Europe v Commission*, T-852/16, EU:T:2018:71, paragraph 40 and the case-law cited

⁴ See Judgment of 7 February 2018, *Access Info Europe v Commission*, T-851/16, EU:T:2018:69, paragraph 38 and cited case-law

of which is covered by the exceptions relied on, relating to the protection of the public interests as regards public security and international relations.⁵

You have the right, in accordance with Article 8 of the Regulation, to institute court proceedings against the European External Action Service and/or make a complaint to the Ombudsman, under the conditions laid down in Articles 263 and 228 of the Treaty on the Functioning of the EU respectively.

Yours sincerely,

[e-signed]

Kristin de Peyron

⁵ See Judgment of 7 February 2018, *Access Info Europe v Commission*, T-851/16, EU:T:2018:69, paragraphs 122 and 123.