



European Ombudsman

Emily O'Reilly
European Ombudsman

Mr Fabrice Leggeri
Executive Director
European Border and Coast Guard Agency

Strasbourg, 10/05/2021

Case 1939/2020/MAS

Subject: Proposal for a solution on how Frontex dealt with a request for public access to correspondence with journalists

Dear Mr Leggeri,

I am writing to seek a pragmatic solution to this case. It concerns Frontex's refusal of public access to correspondence between Frontex and journalists. This refusal seems to have resulted from a misunderstanding between Frontex and the complainant about the scope of his request. I believe that this case can be brought to a straightforward conclusion.

In Annex I to this letter, you will find a proposal for a solution. Annex II is a copy of the report of the meeting held between my inquiry team and Frontex representatives, which I have also shared with the complainant.

I would appreciate receiving your reply by 4 June 2021 at the latest. Once I have received your reply, we will send a copy of it to the complainant together with a copy of this letter.

Thank you for your help in swiftly resolving this issue.



Yours sincerely,

Emily O'Reilly
European Ombudsman

Enclosures:

- Ombudsman's proposal for solution in case 1939/2020/MAS
- Report on the meeting between the Ombudsman's inquiry team and Frontex representatives of 29 January 2021



Annex I

The Ombudsman's proposal for a solution¹ in case 1939/2020/MAS

In February 2020, the complainant requested access to *a list of e-mails sent from the e-mail account press@frontex.europa.eu from Frontex to journalists in which Frontex criticized their reporting or asked them to make corrections, as well as all internal documents showing how these e-mails were created, designed, sent and evaluated.*

Frontex informed the complainant that it did not hold such documents.

The complainant asked Frontex to review its decision by making a 'confirmatory application'², which Frontex did not process for procedural reasons. More specifically, Frontex said that the complainant had not made his confirmatory application within the time limit set out in the EU rules on public access to documents.

From the complainant's confirmatory application, it is evident that he is, in fact, interested in access to the correspondence as such and not, strictly speaking, in a *list* of e-mails. During a meeting between Frontex representatives and the Ombudsman's inquiry team³, the Frontex representatives confirmed that Frontex holds several e-mails that would fall within the scope of the complainant's request if understood in this way.

The Ombudsman proposes that **Frontex should, without delay, register the complainant's confirmatory application of 29 October 2020 as a new application for access to documents⁴. It should then process the application according to the relevant rules on public access to documents.**

¹ Under Article 3(5) of the Ombudsman's Statute and Article 5 of the Ombudsman's implementing provisions.

² According to Article 7 and 8 of Regulation (EC) 1049/2001.

³ The minutes of that meeting are attached to this letter.

⁴ According to Article 6 of Regulation (EC) 1049/2001.