

[REDACTED]

Our ref: TO/PAD-2021-00139
Please quote when replying.

Warsaw, 9 July 2021

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

Dear M [REDACTED]

In reference to your application registered on 21 June 2021, asking for access to

Dokumenten, die folgende Informationen enthalten

WhatsApp-Nachrichten, die Frontex-Mitarbeiter oder an Frontex-Missionen beteiligte Einheiten aus Mitgliedstaaten in den Jahren 2020 und 2021 an die libysche Küstenwache geschickt haben.

Thus

Documents containing the following information

WhatsApp messages sent by Frontex staff or units from Member States involved in Frontex missions to the Libyan Coast Guard in 2020 and 2021.

Please be informed that Frontex has identified seven documents falling within the scope of your application, three of which you can find herewith attached. Please note, however, that some limited parts of these documents fall under exceptions under Article 4 of Regulation (EC) No 1049/2001¹ and therefore had to be expunged with detailed justifications explained in the attached legend.

Access to the four other documents must be refused as they contain:

- detailed information related to reporting tools and methods used by law enforcement officials to conduct border control tasks and counter criminal activities. Their disclosure would jeopardise the implementation of ongoing and future operations, and thus facilitate irregular migration and trafficking in human beings as the effectiveness of law enforcement measures would be significantly reduced. As disclosing this information would undermine the protection of the public interest as regards public security, these documents are not to be disclosed pursuant to Article 4(1)(a) first indent of Regulation (EC) No 1049/2001;
- information regarding the technical equipment deployed in the operational area by Frontex and Member States. Disclosing such information would be tantamount to disclosing the exact type and capabilities of the equipment and would enable third parties, e.g. by combining this information with other sources, to draw conclusions regarding usual positions and movement patterns. This would open way for abuse, as numbers and types of equipment used in previous

¹ 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).

operations are indicative of similar numbers and types for succeeding ones. Releasing such information would thus benefit criminal networks, enabling them to change their modus operandi and, consequently, result in hampering the course of ongoing and future operations of a similar nature. This would ultimately obstruct the purpose of such operations: to counter and prevent cross-border crime and unauthorised border crossings. In this light, the disclosure of information regarding the technical equipment deployed would undermine the protection of the public interest as regards public security within the meaning of Article 4(1)(a) first indent of Regulation (EC) No 1049/2001;

- information regarding the number and profiles of officers deployed in the operational area. Disclosing such information would be tantamount to disclosing the weaknesses and strengths of Frontex operations and pose a risk to their effectiveness. As a result, the course of ongoing and future similar operations would be hampered, ultimately defeating their purpose to counter and prevent cross-border crime and unauthorised border crossings. Consequently, the disclosure of such information would undermine the protection of the public interest as regards public security as laid down in Article 4(1)(a) first indent of Regulation (EC) No 1049/2001;
- details crucial for situational awareness at the external borders of the European Union which is used by Frontex to conduct its operational activities and to develop risk analyses. The disclosure of this information would hamper the effectiveness of Frontex operations and jeopardise the efforts carried out by the European Union and Member States to curtail criminal activities at the external borders. It would thus benefit criminal networks especially those involved in people smuggling and trafficking in human beings, which would put the life of migrants in danger. Hence, the disclosure of these documents would undermine the protection of the public interest as regards public security and has to be refused based on Article 4(1)(a) first indent of Regulation (EC) No 1049/2001.
- Personal data, such as names of individuals and/or characteristic features which could lead to the identification of individuals. The disclosure would undermine the protection of privacy and the integrity of the individual, in particular in accordance with European Union legislation regarding the protection of personal data and therefore has to be precluded pursuant to Article 4(1)(b) of Regulation (EC) No 1049/2001.

Furthermore, the information contained in the documents in question is also used for the development of risk analyses, which constitute a specific form of internal decision-making processes based on the intelligence derived from previous and presently ongoing activities and have a bearing on the conduct of current and future operations. Being an important base for determining the strategic orientation of the Agency, the possibility to conduct such analyses without interference is crucial for Frontex to effectively exercise its mandate. Consequently, releasing this information would enable third parties to gain insights into this decision-making process and, with ascertainable likelihood, result in depriving Frontex of the possibility to conduct such analyses independently, free from any external pressure or third-party influence. In sum, releasing this information would seriously undermine Frontex internal decision-making processes. As no overriding public interest that is objective and general in nature and not indistinguishable from individual or private interests for the release of this information is ascertainable in the present case, the documents cannot be released based on Article 4(3) of Regulation (EC) No 1049/2001.

A partial release of the non-disclosed documents could not be undertaken, as their redaction would be disproportionate in relation to the parts that are eligible for disclosure, simultaneously undermining the principle of sound administration. More specifically, the administrative burden necessary to identify and redact the releasable elements would be disproportionate to the interest in the disclosure exercise itself, while the released documents would not convey any informative value due to their significantly reduced form. Consequently, a partial disclosure of the documents at issue must be refused owing to the particular circumstances of the present case.

Kindly be reminded that the copyright of the documents rests with Frontex and making these works available to third parties in this or another form without prior authorisation of Frontex is prohibited. Please also note that Frontex does not assume liability stemming from the use of the documents.

Pursuant to Article 7(2) of Regulation (EC) No 1049/2001, within 15 working days of the receipt of this letter, you may submit a confirmatory application to Frontex to reconsider its position. Based on Article 8 of Regulation (EC) No 1049/2001, Frontex will reply to you within 15 working days from the registration of such application. You can submit your confirmatory application by post or electronically.

Yours sincerely,



Simon Drew

Acting Head of Legal Services Sector