

Our ref: TO/PAD-2022-00348
Please quote when replying.

Mr/Ms Anas Ambri

Email: ask+request-11829-ee05f6ef@asktheeu.org

Warsaw, 27 October 2022

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

Dear Mr/Ms Ambri,

In reference to your application registered on 15 September 2022, for which the time-limit has been extended by 15 working days on 06 October 2022¹, asking for access to

- copies of the incident forms submitted to JORA as part of Frontex' Operational Activities in Cyprus from August 14th, 2019 until today. In 2020 alone, some 568 incidents were reported to JORA.

Please find the document herewith attached. Information pertaining to the following had to be redacted:

- the operational area. As ongoing operations tend to cover similar operational areas as the operations conducted in preceding years, disclosing details of previous operational areas would be tantamount to disclosing the current state of play. This would provide smuggling and other criminal networks with intelligence, enabling them to change their modus operandi, which would ultimately put the lives of migrants in danger. Consequently, the course of ongoing and future operations of similar nature would be hampered by depriving the operations of any strategy and element of surprise, ultimately defeating their purpose to counter and prevent cross-border crime and unauthorised border crossings. In this light, the disclosure of information containing such information would undermine the protection of the public interest as regards public security in the sense of Article 4(1)(a) first indent of Regulation (EC) No 1049/2001.

- the modus operandi of law enforcement officials performing border control and/or coast guard duties. Disclosing such information would expose the working methods applied in ongoing and future operations, thus obstructing their effectiveness in prevention of cross-border crime and unauthorised border crossings. In consequence, it would undermine the protection of the public interest as regards public security and thus cannot be disclosed, pursuant to Article 4(1)(a) first indent of Regulation (EC) No 1049/2001.

- the modus operandi of criminal networks involved in the smuggling of migrants and trafficking in human beings. Its disclosure would jeopardise the work of law enforcement officials and pose a hazard to the course of ongoing and

¹ In accordance with Article 7(3) of 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).

future operations aimed at curtailing the activities of such networks, ultimately obstructing their purpose to counter and prevent cross-border crime as well as to prevent unauthorised border crossings. The disclosure would thus undermine the protection of the public interest as regards public security as laid down in Article 4(1)(a) first indent of Regulation (EC) 1049/2001.

- 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 operations are indicative of similar numbers and types for succeeding years. 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 in the sense of Article 4(1)(a) first indent of Regulation (EC) No 1049/2001.

- debriefing interviews carried out during Joint Operations which aim at enhancing operational activities involving Frontex and participating Member States. The information collected, e.g. in regard to routes, modus operandi and involvement of facilitators and traffickers in human beings, contributes to enhancing situational awareness and supporting criminal investigations in Member States. The disclosure of information provided by the interviewees in confidence may lead to the possible identification of individual migrants by specific criminals who have been facilitating those migrants' travel from the country of origin to the embarkation points/the sea crossing. In addition, this could create the perception that participation in debriefing interviews would put the interviewee or their relatives at risk. Ultimately, the participation in debriefing interviews would decrease which, in turn, would impede planning and implementation of Frontex operational activities dependent on access to this source of intelligence. Lastly, disclosing the content of the interviews would be equivalent to the disclosure of operational information which forms the base for planning and implementation of current and future joint operations. Consequently, disclosing these documents would undermine the protection of the public interest as regards public security and hence, access is refused pursuant to Article 4(1)(a) first indent of Regulation (EC) No 1049/2001.

- the reporting tools and methods used by law enforcement officials to conduct border control tasks and counter criminal activities. Its 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, this part is not disclosed pursuant to 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 lives of migrants in danger. Hence, the disclosure of the information pertaining to this variable 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. This information 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 wholly 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, information pertaining to this variable cannot be released based on Article 4(3) of Regulation (EC) No 1049/2001.

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Pursuant to Article 7(2) of Regulation (EC) No 1049/2001, within 15 working days of the receipt of this reply, you may submit a confirmatory application.

A confirmatory application, indicating the reference of your initial application, may be submitted

electronically to: <https://pad.frontex.europa.eu/padrequests/create>,

by mail to: European Border and Coast Guard Agency, Transparency Office,
pl. Europejski 6, 00-844 Warsaw/Poland

or by email to: pad@frontex.europa.eu or frontex@frontex.europa.eu.

Based on Article 8 of Regulation (EC) No 1049/2001, Frontex will reply within 15 working days from the registration of such application.

Yours sincerely,

[Decision signed electronically]
Case Handler of the Transparency Office