

EUROPEAN EXTERNAL ACTION SERVICE



DG Resource Management
The Director-General

Brussels, 8 June 2022
eeas.sg.2 (2022)4034284

Mr Jeroen
by electronic mail

Subject: **Your confirmatory request for access to documents**
Our ref: 2022/062

Dear Sir,

I would like to thank you for your confirmatory application of 16 May 2022 following your request for access to documents (EEAS ref: 2022/062).

As requested, I have examined the decision of 16 May 2022 not to grant you access to the “EEAS SG Note to Heads of Delegation: Terms of reference Counter-Terrorism experts in Delegations of 3 November 2015” and “mission letters addressed to the CT/Security experts”.

After carefully assessing the arguments in your confirmatory application letter, I regret to inform you that they did not lead us to reverse our position.

As our services explained in the initial reply, the public disclosure of these documents would harm the public interest as regards public security and the EU’s international relations. It would reveal EU margin of manoeuvre and undermine its positioning as regards its relations with the countries where CT/Security experts are deployed, as per Article 4(1)(a), first and third indents of Regulation 1049/2001. Further, disclosing the mission letters – which are for internal use by the Heads of Delegation and the experts – would disclose sensitive information, in particular concerning the identified priorities. Mission letters also relate to individual persons and we take into account the relevant provisions of EU law regarding the protection of personal data. Article 4(1)(b) of Regulation 1049/2001 prevents access “where disclosure would undermine [...] privacy and the integrity of the individual in particular regarding the protection of personal data”.

The public interest exceptions laid down in Article 4(1)(a) of Regulation (EC) No 1049/2001 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 Regulation (EC) No 1049/2001 could undermine the public interest”¹.

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 Regulation (EC) No 1049/2001 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”².

Therefore, while the EEAS enjoys a wide discretion in assessing the impact of the release of documents on international relations, it is barred from taking into account other legitimate interests that might override the conclusion that giving access to a document would harm the protected interest and granting access nonetheless³.

We also considered the possibility of a partial access. 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 of which is covered by the exceptions relied on, relating to the protection of the public interests as regards public security and international relations⁴.

For all these reasons, I hereby confirm that the above-mentioned documents cannot be released to the public, neither fully nor partially.

Should you not be satisfied with this response, you have a 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 of the Functioning of the EU respectively.

Yours faithfully,



Gianmarco Di Vita

¹ 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.

² 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

³ Order of 20 May 2020, *Nord Stream 2 v Parliament and Council*, T-526/19, EU:T:2020:210, paragraph 61 and the case-law cited.

⁴ See Judgment of 7 February 2018, *Access Info Europe v Commission*, T-851/16, EU:T:2018:69, paragraphs 122 and 123.