Ms Margarida da Silva
by electronic mail

**Subject:** Your confirmatory request for access to documents
EEAS Ref: 2022/143

Dear Ms da Silva,

Thank you for your e-mail of 28 October 2022, 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

I have re-examined your initial request from 21 September 2022, where you requested access to documents which contain “the following information regarding the EU’s San Francisco office:

- mandate / terms of reference / job description of the EU Ambassador to Silicon Valley;
- mission letter/objectives of the office;
- budget & resources of the office;
- policies for handling interactions with interest representatives.”

In its reply of 12 October 2022 with the reference 2022/143, the relevant service of the EEAS in charge of handling requests for access to documents (SG.2 “Parliamentary Affairs”) informed you that on the basis of the information you provided, a search for documents had been conducted in the EEAS filing systems and document management databases.

Following this search, the EEAS has identified the “Information Note for the attention of Mr. Josep Borrell Fontelles High Representative Vice-President of the Commission, “Scope and tasks of the EU Office in the San Francisco Bay Area – Draft Concept” (document 1) from 28 July 2022, which was partially released.

In your confirmatory application, which we have received on 28 October 2022, you reiterated your request regarding the documents mentioned above and asked us to review our decision to grant only partial access to that document.

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Following your confirmatory request, the relevant EEAS Divisions have been contacted and asked to (1) reassess if additional documents may be identified as falling within the scope of your request and (2) to re-assess whether the previously identified Information Note could be fully disclosed. After a new search in the EEAS filing systems and document management databases, one additional document matching your request was found:

- **Note for the attention of SG Helga Maria Schmid, Subject: European Union Presence in the San Francisco Bay Area, 18 November 2020. (document 2)**

After carefully assessing the arguments in your confirmatory application, I regret to inform you that they did not lead us to reverse our position with regard to document 1.

As our services explained in the initial reply, the full disclosure of the Information Note would affect the capacity of the EU to pursue its strategic goals and actions in the field of digital diplomacy, undermining as such the protection of the public interest as regards international relations as per Article 4(1)(a), third indent of the Regulation. This decision was taken after a thorough analysis of the content of the document.

Document 1, which is an internal document, contains detailed information on tasks and actions envisaged for the San Francisco office to be carried out with a view to contribute to the goals and objectives of the EU’s digital diplomacy, including with government representatives of the host country. Against this background, I consider that full public disclosure of document 1 would negatively affect the ability of the EEAS to effectively promote EU interests in the field of digital diplomacy as it would reveal the institution’s approaches and preferences, as well as political analysis, thus weakening its position towards its counterparts.

In addition, containing internal positions with regards to actions and intentions in the host country, the full disclosure would harm the possibility of maintaining an environment of mutual trust in upcoming diplomatic dialogues and risk to undermine the EU’s bilateral relations.

As regards document 2, our examination concluded that it contains preliminary deliberations and consultations on the opening of the San Francisco office, including initial estimations with regard to staffing, costs, possible location of the office and related matters, before any decision was taken on such matters. It also contains internal reflections with regard to EU Member States as well as well in relation to the United States and other third countries.

Our careful assessment of the document concluded that, as in the case of document 1, its disclosure would affect the current and future capacity of the EU to pursue its strategic goals in the field of digital diplomacy, both in the US and in other parts of the world, undermining as such the protection of the public interest as regards international relations as per Article 4(1)(a), third indent of the Regulation. I therefore regret to inform you that the EEAS is not in a position to disclose, fully or partially, document 2. Although I share your view regarding the importance of transparency for the sake of public interest, the protection of the public interest as regards international relations must also be preserved.

In particular, 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 Regulation (EC) No 1049/2001 could undermine the public interest”. ²

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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 ‘international relations’ are absolute exceptions, the EEAS is barred from balancing these exceptions against an overriding public interest in disclosure.

For all these reasons, I hereby confirm that document 1 cannot be further disclosed, and document 2 cannot be disclosed, neither fully nor partially. In particular, I considered the possibility of partial access for document 2, in line with Article 4(6) of the Regulation. However, since the vast majority of the substantive part of the document is covered by the invoked exception, partial access to document 2, albeit marginal, to the remaining part would entail revealing information the protection of which is covered by the exception relied on, relating to the protection of the public interests as regards international relations. \(^4\)

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 on the Functioning of the EU respectively.

Yours sincerely,

Gianmarco Di Vita

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