



Valletta Harbour, 13 January 2023
EUAA/ED/2023/008

Mr Anas Ambri

Sent by email to: ask+request-12053-53bc7970@asktheeu.org

Subject: Your application for access to EUAA documents (No 000696)

Dear Mr. Ambri,

Reference is made to your correspondence dated 21 October 2022 (registered on 16 November 2022) in which you submitted to the European Union Agency for Asylum ('EUAA') a request for access to:

*"- training material for trainings provided to staff members of the Asylum service in Cyprus, whether they are employees or temporary agency workers between January 2020 until today
- training material for trainings provided to members of the Asylum Support Team deployed to Cyprus, between January 2020 until today."*

Please be informed that your request (No 000696) has been treated as an application for public access to documents falling under the provisions of Regulation (EC) No 1049/2001¹, in accordance with Management Board Decision No 6 of 20 September 2011².

Given the wide scope of your original request, in terms of the large number of potential documents covered, the Agency conferred informally with you by email of 9 December 2022, within the meaning of Article 6(3) of Regulation (EC) No 1049/2001, to clarify the scope of your request in terms of training modules covered. Following your reply of 10 December 2022, wherein you clarified which modules should be covered by your access to documents request, the Agency proceeded to identify all the documents concerned and proposed, by means of an email dated 22 December 2022, a deadline of 16 January 2023 by which it would provide a full reply.

I. RELEVANT DOCUMENTS IDENTIFIED

Following a thorough administrative exercise, the Agency has been able to identify twenty-four documents falling under the scope of your request. Those documents are listed in the Annex to this letter, broken down by training module and document type.

Having diligently examined your request and after having consulted the relevant internal entities, please find below the Agency's own assessment of the documents against the exceptions laid down in Regulation (EC) No 1049/2001.

¹ Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents, (OJ L 145, 31.5.2001, p. 43).

² Management Board Decision No 6 of 20 September 2011 laying down practical arrangements to the documents of the European Asylum Support Office (EASO).





II. INDIVIDUAL ASSESSMENT OF THE IDENTIFIED DOCUMENTS

The EUAA is highly committed to the principle of transparency and the rights of individuals to access documents of EU institutions, bodies and agencies as laid down in both Article 15 of the TFEU and Article 42 of the Charter of Fundamental Rights of the EU.

With regard to documents 19 and 21, the Agency notes that these documents either contain information which is already in the public domain, or do not contain information which could be considered sensitive in relation to the exceptions in Article 4 of Regulation (EC) No 1049/2001. The disclosure of these documents therefore would not, in the Agency's assessment, undermine any of the protected interests listed in Article 4 of Regulation (EC) No 1049/2001. Therefore, we are pleased to inform you that you may find these documents enclosed with this present letter.

As regards the remaining documents covered by your request, two particular exceptions under Article 4 of Regulation (EC) No 1049/2001 nonetheless need to be taken into consideration in the present case, relating to:

i. The protection of public security

Article 4(1)(a) first indent of Regulation (EC) No 1049/2001 provides that the institutions **shall** refuse access to a document where its disclosure would undermine the protection of public security.

The Agency is mandated, pursuant to Article 8 of Regulation (EU) 2021/2303³, to develop training for "*members of its own staff and members of the staff of relevant national administrations, courts and tribunals, and of national authorities responsible for asylum and reception*". In accordance with paragraph 4 of that Article, "*the training offered by the Agency shall be of **high quality** and shall identify key principles and best practices with a view to ensuring **greater convergence** of administrative methods, decisions and legal practices [...]*".

Access to the training material developed by the Agency is therefore granted to members of the Agency's own staff and staff of national administrations who are individually enrolled in the relevant training activities in view of their specific tasks within their respective national administrations or in the context Agency's operational support activities of national asylum and reception systems. The training material is designed in a way which complies with high quality standards and is delivered by trained experts with a view to ensuring high quality learning outcomes and greater convergence of national practices and decisions in the fields of asylum and reception.

The public disclosure of training material which is only accessible to trainers and learners who are actively enrolled in the relevant training activities would therefore act as a disincentive for national administrations from enrolling their staff members to the Agency's training activities. Should the training material be in the public domain, the staff members concerned could opt to read the material concerned instead of following the training under the guidance and supervision of qualified

³ Regulation (EU) 2021/2303 of the European Parliament and of the Council of 15 December 2021 on the European Union Agency for Asylum and repealing Regulation (EU) No 439/2010, OJ L 468, 30.12.2021, p.1.



and experienced trainers, thereby leading to suboptimal learning outcomes. Unqualified individuals unaffiliated with and not trained by the Agency could also attempt to deliver the training in a way which would not comply with the required standards. This would undermine the achievement of the Agency's mandate in terms of contributing to greater convergence of national practices and decisions in the fields of asylum and reception, which in turn would undermine the protection of public security.

The above reasoning applies in particular to:

- the **Manuscripts** (documents 3, 4, 8, 10, 13, 16 and 23 in the Annex) as these contain the subject matter content and learning activities for each module and are built on a Learning Management System in a structured method for the learners to guide learning activities. The same reasoning applies to documents 22 and 24 in the Annex, which can be assimilated, in terms of their purpose, to the respective module's manuscript;
- the **Trainers' Manuals** (documents 1, 2, 6, 12, 14, 15 and 20 in the Annex) as these contain the instructions for trainers to guide them in the delivery of the training and ensure uniform quality standards. The same reasoning applies to the Trainer's Notes for the Temporary Protection Directive module (document 18 in the Annex);
- the **Learners' Handbooks** (documents 5, 7, 11 and 17 in the Annex), as these are intended to be used by learners as a reference tool during and after the training and serve to recall the key elements of each module.

ii. The protection of the internal decision-making process

Article 4(3), first paragraph, of Regulation (EC) No 1049/2001 provides that access to a document, drawn up by an institution for internal use or received by an institution, which relates to a matter where the decision has not been taken by the institution, **shall** be refused if disclosure of the document would **seriously undermine the institution's decision-making process**, unless there is an **overriding public interest in disclosure**.

Learners who follow the Agency's training activities can choose, at the end of the training, to sit for an assessment in order to obtain a certification of achievement of learning outcomes. Document 9 in the Annex contains a sample of an assessment which is used in relation to the module concerned. The disclosure of this sample assessment could provide an unfair advantage to prospective learners in the assessment which is taken at the end of the training, as compared to other learners who would not have such access. The disclosure of the document would therefore undermine the Agency's decision-making process relating to the assessment and certification of learners in this module.

The exception in Article 4(3), first paragraph, of Regulation (EC) No 1049/2001 applies unless there is an overriding public interest in disclosure. In this instance however, the public interest in ensuring the integrity of the assessment process would, in the Agency's view, prevail over any public interest in disclosure.



III. PARTIAL ACCESS

Based on the principle of proportionality⁴, the Agency examined whether partial access could be granted to the relevant documents.

As regards document 9, the Agency is of the view that the exception in Article 4(3), first paragraph, applies only to that part of the document relating to the sample assessment for the module. Consequently, access can be granted to the remaining parts of the document.

As regards the remaining documents covered by your request, firstly, the EUAA is of the view that the exception under Article 4(1)(a) of Regulation (EC) No 1049/2001 referred to above applies to the entire content thereof. Secondly, the relevant case law provides that there is no obligation to grant partial access in case the remaining parts of the documents would be meaningless and/or the administrative burden of blanking out the parts covered by exceptions would be excessive⁵.

In the Agency's assessment, even if some limited parts of the relevant document could (theoretically) be disclosed, this would entail a disproportionate administrative burden. Especially when further taking into consideration that the remaining parts after inserting redactions against the exceptions under Article 4 of Regulation (EC) No 1049/2001 would be rendered meaningless. In light of the above considerations, the Agency does not consider it possible nor reasonably required to grant partial access to the remaining documents covered by your request.

IV. CONCLUDING OBSERVATIONS

The Agency is committed to upholding the principles of transparency and good administration. Please be assured that my services have tried their utmost in terms of accommodating your present application.

Therefore, I trust you will find the enclosed documents useful. However, in light of the above considerations, the Agency is not in a position to provide access to the remaining documents covered by your request or, in the case of one specific document, to provide full access thereto.

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 the EUAA asking it to reconsider its position. Pursuant to Article 8 of Regulation (EC) No 1049/2001, the EUAA will reply to you within 15 working days from registration of such an application. You can submit a confirmatory application via the following methods:

⁴ Case T-14/98, *Hautala v Council*.

⁵ Judgment of the Court of first Instance of 7 February 2002 in case T-211/00, *Kuijter v Council*, & Judgment of the General Court of 20 March 2014 in case T-181/10, *Reagens v Commission*.



By post:

The Executive Director
European Union Agency for Asylum (EUAA)
MTC Block A
Winemakers Wharf
Grand Harbour Valletta, MRS 1917
Malta

By electronic mail: pad.mailbox@euaa.europa.eu

Yours sincerely,



13 JAN 2023

Nina Gregori
Executive Director

Enclosure:

- *List of documents covered by your request*
- *Module Design Template for the module "Introduction to the Legal Framework on International Protection in the EU" (redacted)*
- *Slides for the module "Temporary Protection in the EU"*
- *Source Assessment Form for the module "Country of Origin Information"*