



## EUROPEAN DATA PROTECTION SUPERVISOR

LEONARDO CERVERA NAVAS  
HEAD OF EDPS SECRETARIAT

Ms Chloé Berthélémy  
by email only: [ask+request-12502-68e99aba@asktheeu.org](mailto:ask+request-12502-68e99aba@asktheeu.org)

Brussels, 16 February 2023  
LCN/TT/vd/D(2023) 0464 C 2023-0116  
Please use [edps@edps.europa.eu](mailto:edps@edps.europa.eu) for all correspondence

### **Subject: Your request for access to documents under Regulation (EC) 1049/2001<sup>1</sup>**

Dear Ms Berthélémy,

On 27.01.2023, you sent an access to documents request to the European Data Protection Supervisor (“EDPS”) based on Regulation (EC) No 1049/2001. On 30.01.2023, we sent you an acknowledgement of receipt for your request also mentioning the deadline in accordance with Article 7(1) of Regulation (EC) 1049/2001.

Your request for access to documents concerns “*The report of the inspection by the European Data Protection Supervisor’s (EDPS) inspection on the support provided by the EU’s law enforcement agency, Europol, in relation to investigations related to the take down of three large criminal communication networks, Encrochat, SKY ECC and ANOM as referred page 85 of the EDPS Annual Report 2021.*”

The EDPS has identified the following document falling within the scope of your request:

	DOC ID	DATE	NAME	SUBJECT
1	COO.6515.100.4.470452	22/12/2022	INSPECTION_REPORT - 2021-0303	INSPECTION_REPORT - 2021-0303

The EDPS has examined specifically the document in order to assess whether disclosure was possible. Following this assessment, we concluded that more than one exception of those listed in Article 4 of Regulation (EC) 1049/2001 apply to the document in scope.

The EDPS has concluded that Article 4(2) third indent, of Regulation (EC) 1049/2001

<sup>1</sup> 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 L145/43

(“**protection of the purpose of inspections, investigations and audits**”) applies to parts of the document as it is currently part of an open EDPS audit, and thus, that any disclosure of the documents at this stage of the audit will seriously undermine its outcome. In particular, its disclosure will put at risk the independency of the ongoing examination, disrupt the normal flow of EDPS’s audit policies and procedures, and finally, it could create distrust in the auditee during the course of the audit, and hinder collaboration. Following this conclusion, and in line with Regulation (EC) 1049/2001, we have examined whether there could be an overriding public interest in disclosing these parts of the document, but have not been able to identify such an interest.

Consequently, we have redacted the following parts of the document:

- Page 10, paragraph 1 and footnotes - containing information on documents collected during the audit.
- Section “4.1.3. *Actions, findings and recommendations*”, pages 10-22 - containing detailed information regarding the particular audit procedures, actions taken, analysis and recommendation.
- Page 25, paragraph 2 - containing information on documents collected during the audit.
- Section “4.2.3. *Actions, findings and recommendations*”, pages 25-29 - containing detailed information regarding the particular audit procedures, actions taken, analysis and recommendation.
- Page 31, paragraph 3 - containing information on documents collected during the audit.
- Section “4.3.3. *Actions, findings and recommendations*”, pages 31-38 - containing detailed information regarding the particular audit procedures, actions taken, analysis and recommendation.
- Section “5.1. *List of recommendations*”, pages 38-40 - containing a list of all audit’s findings and recommendations.
- Page 40, paragraph 3 - containing detailed information of audit’s recommendations.
- “Annex 3 – *Documents collected during the inspection*”, page 43 - containing information on documents collected during the audit.
- “Annex 4 - *Documents requested during the on-site inspection and provided afterwards*” - containing information on supplementary audit documents.

Furthermore, we have concluded that Article 4(1) (a), first indent, of Regulation (EC) 1049/2001 (“**protection of the public interest as regards public security**”) applies to parts of the document requested. Specifically, the document relates to a security analysis incl. descriptive analysis of data collection processes, applications description, applicable security controls and information security protocols. Following the EDPS’s assessment, we have concluded that making public this information will expose possible system’s and processes vulnerabilities and thus put at risk the operational security and the implementation of ongoing and future EUROPOL’s operations. It will also facilitate cyberattacks on the security of EUROPOL’s ITC systems.

Consequently, we have redacted the following parts of the document:

- Page 22, paragraph 4, containing detailed description of IT application structure and characteristics.

Finally, the EDPS concluded that the exception of Article 4(1)(b) of Regulation (EC)

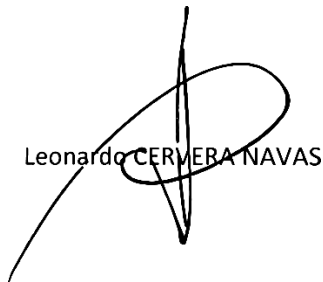
1049/2001 (“**privacy and the integrity of the individual**”) applies to the personal data in the documents in scope, as well as to other contextual information rendering the person(s) identifiable. Therefore, the information relating to the personal data of the sender(s)/recipient(s) cannot be disclosed.

Based on the above analysis, the EDPS has decided to provide you with partial access to the above listed document, which you will find redacted attached to this letter.

## Remedies

Please note that pursuant to Article 7(2) of Regulation (EC) No 1049/2001, you may submit a confirmatory application asking the EDPS to reconsider his position as regards the total or partial refusal of your request. Such a confirmatory application should be submitted within 15 working days upon receipt of this letter to the EDPS general e-mail: [edps@edps.europa.eu](mailto:edps@edps.europa.eu).

Yours sincerely,



Leonardo CERVERA NAVAS

Annexes: 1 document

## Data Protection Notice

*According to Articles 15 and 16 of Regulation (EU) 2018/1725 (the Regulation) on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, we are processing your personal data, where proportionate and necessary, for the purpose of answering your request. The legal base for this processing operation is Regulation (EC) 1049/2001 and Article 52(4) of the Regulation (EU) 2018/1725. Subject to applicable rules under EU legislation, the personal data relating to you, as provided in your request as well as personal data that might be collected while processing your request, are used solely for the purpose of replying to your request. EDPS staff members dealing with the request will have access to the case file containing your personal data on a need-to-know basis. All access to case files is logged. Your personal data are not disclosed outside the EDPS. Your personal data will be stored electronically for a maximum of ten years after the closure of the case, or as long as the EDPS is under a legal obligation to do so. You have the right to access your personal data held by the EDPS and to relevant information concerning how we use it. You have the right to rectify your personal data. Under certain conditions, you have the right to ask that we delete your personal data or restrict its use. We will consider your request, take a decision and communicate it to you. For more information, please see Articles 14 to 21, 23 and 24 of the Regulation. Please note that in some cases restrictions under Article 25 of the Regulation may apply. Any request to exercise your rights should be addressed to the EDPS at [edps@edps.europa.eu](mailto:edps@edps.europa.eu). You may contact the data protection officer of the EDPS ([EDPS-DPO@edps.europa.eu](mailto:EDPS-DPO@edps.europa.eu)), if you have any remarks or complaints regarding the way we process your personal data. You have the right to lodge a*

*complaint with the EDPS, as supervisory authority. Any such request should be addressed to the EDPS at [edps@edps.europa.eu](mailto:edps@edps.europa.eu). You can reach the EDPS in the following ways: E-mail: [edps@edps.europa.eu](mailto:edps@edps.europa.eu); EDPS postal address: European Data Protection Supervisor, Rue Wiertz 60, B-1047 Brussels, Belgium. For more information, please refer to the extended version of the data protection notice available on the EDPS website: [https://edps.europa.eu/data-protection/our-work/publications/other-documents/requests-access-documents\\_en](https://edps.europa.eu/data-protection/our-work/publications/other-documents/requests-access-documents_en).*