

Valletta Harbour, 12 December 2022
EUAA/ED/2022/412

Ms Kelly Bescherer
Sent by email to: ask+request-12192-f2871af2@asktheeu.org

Subject: Your application for access to EUAA documents (No 000725)

Dear Ms Bescherer,

Reference is made to your correspondence dated 19 November 2022 (registered on 23 November 2022) in which you submitted to the European Union Agency for Asylum ('EUAA') a request for access to:

"Documentation of the meeting of EASO with Frontex as co-chair on 7 and 8 October 2019, as well as documentation of meetings with member states in regard to the IDS Pilot on 26 March 2019 and 17 June 2019."

Moreover, upon the EUAA's request, you kindly provided certain written clarifications to the Agency on 23 November 2022 as regards the scope of your above-mentioned application.

Please be informed that your request (No 000725) 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.

Having carefully examined your application and after having consulted the relevant internal and external entities, please find below the Agency's comprehensive response thereto.

I. RELEVANT DOCUMENTS IDENTIFIED

The Agency identified the following documents falling under the scope of your request:

- 1)** Meeting Report of the workshop 'Last minute' asylum applications organised by EASO in Prague on 7-8 October 2019;
- 2)** Power Point presentation for the workshop 'Last minute' asylum applications organised by EASO in Prague on 7-8 October 2019;
- 3)** Minutes of the Workshop on Last Minute-and Subsequent Asylum Applications (LMA) 14-15 December 2020;

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).

- 4) Power Point presentation of the Workshop on Last Minute-and Subsequent Asylum Applications; and
- 5) Summary of the results on the Ad-Hoc Query on Last Minute Asylum Applications (LMA) by National Return Authorities.

Pursuant to Article 4(4) of Regulation (EC) No 1049/2001, as regards third-party documents, the Agency shall consult the third party concerned with a view to assessing whether an exception in paragraph 1 or 2 of the above-mentioned Article is applicable, unless it is clear that the document shall or shall not be disclosed. As **documents 3, 4 and 5** (co-)originate from the European Border and Coast Guard Agency (Frontex), the EUAA consulted Frontex in accordance with Article 4(4) of Regulation (EC) 1049/2001 on their potential disclosure.

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. As such, I am pleased to inform you that you may find **documents 1 and 2** enclosed with this present letter - in an unredacted manner.

Pursuant to the Agency's own assessment under Regulation (EC) No 1049/2001, multiple exceptions under Article 4 of Regulation (EC) No 1049/2001 do need to be taken into consideration however with regard to **documents 3, 4 and 5** - relating to:

a) 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.

As regards **documents 3, 4 and 5**: disclosing such information would expose the working methods used in ongoing and future operations, putting at risk the efforts made by the European Union and its Member States to return third-country nationals who are subject to national return decisions. This would jeopardize the orderly conduct of Frontex and Member States' return operations as well as pose a hazard to the safety of passengers, including returnees, crew and aircraft or other assets. In this light, the disclosure of such information would undermine the protection of the public interest as regards public security as laid down in Article 4(1)(a) first indent of Regulation (EC) No 1049/2001 and therefore should be refused.

In this sense, the Agency also recalls that well-established Union case law provides that "*the principle of strict interpretation of the exceptions set out in Article 4 of Regulation (EC) No 1049/2001 does not, in respect of the public interest exceptions provided for in Article 4(1)(a), preclude the institution concerned from enjoying a **wide discretion** for the purpose of determining whether disclosure of a document to the public would undermine the interests protected by that provision*"³.

³ *ClientEarth vs European Commission, Case T-644/16, 11 July 2018.*



b) The protection of personal data

The Agency further has to take into consideration the applicable personal data protection legislation and case law. Pursuant to Article 3(1) of Regulation 2018/1725⁴, 'personal data' means: *"any information relating to an identified or identifiable natural person ('data subject'); an identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person"*. Article 4(1)(b) of Regulation (EC) No 1049/2001 stipulates that the institutions shall refuse access to a document where its disclosure would undermine the protection of privacy and integrity of individuals, in particular in accordance with Community legislation regarding the protection of personal data.

As regards **document No 4**: this document contains certain personal data, such as names of individuals and/or characteristic features which could lead to the identification of individuals. The disclosure thereof would seriously undermine the protection of personal data of the natural persons whose names and/or other personal data are mentioned, in breach of the provisions of Regulation (EU) 2018/1725. Therefore, access must be refused in accordance with Article 4(1)(b) of Regulation (EC) No 1049/2001.

III. PARTIAL ACCESS

In accordance with the principle of proportionality⁵, the Agency further examined whether partial access could be granted to **documents 3, 4 and 5**. As such, it has concluded that such partial access can be provided in the present instance to **documents 3 and 4**. Therefore, I am pleased to inform you that you may find the latter documents enclosed to this letter - with certain redactions made.

However, the Agency is of the view that the exception laid down in Article 4(1)(a) first indent of Regulation (EC) No 1049/2001 applies to the entire content of **document 5**. The relevant case law provides that there is no obligation to grant partial access in case the remaining parts of the document would be meaningless and/or the administrative burden of blanking out the parts covered by exceptions would be excessive⁶. Due to the number of elements pertaining to detailed operational information, as explained above, a redaction of these numerous elements would be disproportionate in relation to the parts that are eligible for disclosure, simultaneously undermining the principle of sound administration. More specifically, the administrative burden necessary to identify and redact the releasable elements would be disproportionate to the interest in the disclosure exercise itself, while the released documents would not convey any informative value due to their significantly reduced form. In light of the above considerations, the Agency does not consider it possible nor reasonably required to grant partial access in this case.

⁴ Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 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, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC, (OJ L 295, 21.11.2018, p. 39).

⁵ *Hautala v Council*, Case T-14/98, 19 July 1999.

⁶ *Judgment of the Court of first Instance of 7 February 2002 in case T-211/00, Kuijer v Council*, & *Judgment of the General Court of 20 March 2014 in case T-181/10, Reagens v Commission*.

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 possible to accommodate your present application for public access to documents.

As regards the redactions inserted in documents 3 and 4, as well as the non-disclosure of document 5, kindly note that the Agency is not in a position to disclose information which, if made public, would jeopardise the protection of personal data and public security. Finally, I thank you for your interest in the EUAA.

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:

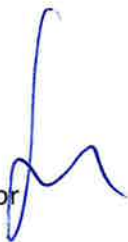
By post:

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,

Nina Gregori
Executive Director



Attachments:

- *Meeting Report of the workshop 'Last minute' asylum applications organised by EASO in Prague on 7-8 October 2019;*
- *Power Point presentation for the workshop 'Last minute' asylum applications organised by EASO in Prague on 7-8 October 2019;*
- *Minutes of the Workshop on Last Minute-and Subsequent Asylum Applications (LMA) 14-15 December 2020 (redacted);*
- *Power Point presentation of the Workshop on Last Minute-and Subsequent Asylum Applications (redacted).*