

How the European Border and Coast Guard Agency (Frontex) dealt with a request for public access to documents concerning social media monitoring

Case opened

Case 344/2023/PVV - **Opened on** 28/02/2023 - **Institution concerned** European Border and Coast Guard Agency |

Head of the Inspection and Control Office

European Border and Coast Guard Agency

(Frontex)

Dear Dr X,

The Ombudsman has received a complaint against the European Border and Coast Guard Agency (Frontex). She has asked me to deal with the case on her behalf.

The complainant asked for public access to documents concerning social media monitoring (SMM) for the period from 1 January 2021 to 27 September 2022. In particular, the complainant requested access to (i) meeting minutes and correspondence between Frontex and the EU Agency for Law Enforcement Cooperation (Europol), and (ii) Frontex's internal documents concerning SMM. Frontex identified five documents concerning the first aspect of the complainant's request but stated that it did not hold any documents concerning the second aspect. It refused access to the five documents in their entirety, arguing that their disclosure would undermine the protection of the public interest as regards international relations [1] and public security [2], undermine the protection of personal data [3] and seriously undermine an ongoing decision-making process [4].

The complainant made a confirmatory application arguing that Frontex's reliance on the exceptions set out in the EU legislation on public access to documents (Article 4 of Regulation 1049/2001) was excessive, disproportionate and contrary to the spirit and the letter of the Regulation and the applicable case-law. The complainant considered that Frontex failed to disclose even basic information about the documents. Furthermore, they deemed it *"highly*



improbable” that there were no internal documents falling within the scope of the request and asked Frontex to conduct another search.

In its confirmatory decision, Frontex identified 50 additional documents as falling within the complainant’s request. It maintained its refusal to grant access to the five documents it identified at the initial stage and refused access to some of the additional documents. In doing so, it argued that their disclosure would undermine the protection of the public interest as regards public security and international relations, the protection of legal advice [5] and the purpose of an ongoing investigation [6] and would seriously undermine an ongoing decision-making process.

We have decided to open an inquiry into this complaint against Frontex’s decision to grant only partial access under Regulation 1049/2001.

Regulation 1049/2001 states that applications for access should be handled promptly. It is in line with this principle that the Ombudsman also seeks to deal with cases such as this as quickly as possible.

As a first step, we consider it necessary to review the documents at issue in the complainant’s request. We would be grateful if Frontex could provide us with the following documentation, preferably in electronic format through encrypted e-mail, [7] by **7 March 2023** :

- copies of the **five documents** identified at the **initial stage** ;
- copies of the **50 additional documents** identified at **confirmatory stage** ;
- a **list of all 55 documents identified** in relation to the request **clearly indicating** which documents have been disclosed fully or partially to the complainant and which documents have not been disclosed.

The documents subject to the public access request will be treated confidentially, along with any other material Frontex chooses to share with us that it marks confidential. Documents of this kind will be handled and stored in line with this confidential status and will be deleted from the Ombudsman’s files shortly after the inquiry has ended.

Frontex’s position has been set out in its confirmatory decision of 15 December 2022. However, should Frontex wish to provide **additional views** , to be taken into account by the European Ombudsman during this inquiry, we would be grateful if they could be provided to us within fifteen working days from the receipt of this letter, that is, **21 March 2023** . In addition, it would be helpful if Frontex could inform us why it was not in a position to identify the 50 additional documents at the initial stage.

A meeting between Frontex and the Ombudsman inquiry team at which we can discuss this case could be envisaged at a later stage, once the documents have been reviewed.

If you have any further questions, please feel free to contact the responsible inquiries officer, Ms Paulien Van de Velde-Van Rumst.



Yours sincerely,

Rosita Hickey Director of Inquiries

Strasbourg, 28/02/2023

[1] Article 4(1)(a) Regulation 1049/2001 regarding public access to European Parliament, Council and Commission documents:

<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:32001R1049> [Link].

[2] Article 4(1)(a) Regulation 1049/2001.

[3] Article 4(1)(b) Regulation 1049/2001.

[4] Article 4(3) Regulation 1049/2001.

[5] Article 4(2) Regulation 1049/2001.

[6] Article 4(2) Regulation 1049/2001.

[7] Encrypted emails can be sent to our dedicated mailbox.