

EUROPEAN EXTERNAL ACTION SERVICE



DG Resource Management
The Director-General

Brussels, 6 June 2024

Mr Ayaz Ahmed Siddiqui
by electronic mail

Subject: Your confirmatory application for access to documents
Ref: 2024/77

Dear Mr Siddiqui,

I would like to thank you for your e-mail of 2 May 2024, 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

As requested, I have examined the decision of 22 April 2024 of the EEAS service in charge of access to documents (SG.LD.ATD - Transparency) taken after the assessment of the Division holding the document, not to grant you full or partial access to the requested document:

- “*Election Expert Mission report for Pakistan 2024*”.

After carefully assessing the requested document and the arguments put forward in your confirmatory application, I regret to inform you that I cannot revert the position taken by the EEAS in its initial reply. Indeed, my assessment confirms that the disclosure to the general public of the above document would undermine the EU 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. As explained in the initial reply, Election Expert Mission (EEM) reports are documents meant for the EU and its Member States. They are made public only if the country allowing the Mission had previously and expressly authorised such disclosure. As this was not the case for the 2024 EEM to Pakistan, and considering the written commitment from the side of the EU not to disclose the document without the express consent of Pakistan, any unilateral release of the requested document from the EU side would be contrary to the diplomatic practice and therefore negatively perceived by the Government of Pakistan. This could, in effect, harm the climate of trust and cooperation between the EU and Pakistan, thereby undermining the public interest as regards

¹ Regulation (EC) No 1049/2001 of the European Parliament and of the Council regarding public access to European Parliament, Council and Commission documents (OJ L 145, of 31.5.2001, p. 43, hereafter the "Regulation"), as applied by the EEAS pursuant to Article 11(1) of the Council Decision 2010/427/EU of 26 July 2010 establishing the organisation and functioning of the European External Action Service (OJ L 201, of 3.8.2010, p. 30).

international relations, as per Article 4(1)(a), third indent, of the Regulation. I consider the risk concrete and not purely hypothetical as, in the event of undermined trust towards the EU, the Election Commission and the Government of Pakistan could be reluctant to invite the EU to observe future general elections.

You request, in your confirmatory application, to be granted at least partial access to this document, notably to its executive summary, abstract or conclusions so as to provide Pakistan's civil society with information about the EU expert assessment of Pakistan's elections. I have considered the possibility to grant you partial access to the document. However, I concur with the assessment given in the initial reply that even a partial disclosure of this document would be negatively perceived by the non-EU country at stake thereby undermining the EU international relations as mentioned above.

Although I share your opinion on the importance of transparency for the sake of public interest, in particular in the context of electoral results, the protection of public interest regarding international relations must also be preserved.

In particular, the public interest exception regarding international relations laid down in Article 4(1)(a) of the Regulation is 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 the Regulation could undermine the public interest."²

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 exception in Article 4(1)(a), third indent, of the Regulation, protecting a public interest such as the EU international relations falls under the category of absolute exceptions, the EEAS is barred from balancing these exceptions against an overriding public interest in disclosure.⁴

In light of the considerations explained above, I hereby confirm that the above-mentioned document cannot be fully released to the public and that partial access in line with Article 4(6) of the Regulation cannot be granted as it would entail revealing information, protection of which is covered by the exception relied on, relating to the protection of the public interest as regards international relations.⁵

² Judgments of 1 February 2007, *Sison v Council*, C-266/05 P, EU:C:2007:75, paragraph 34; of 12 September 2013, *Besselink v Council*, T-331/11, EU:T:2013:419, paragraph 32; and of 3 October 2012, *Jurašinović v Council*, T-63/10, EU:T:2012:516, paragraph 32.

³ Judgments of 7 February 2018, *Access Info Europe v Commission*, T-851/16, EU:T:2018:69, paragraph 40, and *Access Info Europe v Commission*, T-852/16, EU:T:2018:71, paragraph 40 and the case-law cited

⁴ See Judgment of 7 February 2018, *Access Info Europe v Commission*, T-851/16, EU:T:2018:69, paragraph 38 and cited case-law

⁵ See Judgment of 7 February 2018, *Access Info Europe v Commission*, T-851/16, EU:T:2018:69, paragraphs 122 and 123.

You have the right, in accordance with Article 8 of the Regulation, to institute court proceedings against the European External Action Service before the Court of Justice of the European Union 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,

[e-signed]

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Director-General