



SG.2
Head of Division

Brussels, 2 March 2023
eeas.sg.2 (2023) 1340235

To
Mr Nikolaj Nielsen
by electronic mail

Subject: Your request for access to documents of 2 February 2023
EEAS ref: 2022/020

Dear Mr Nielsen,

I would like to thank you for your application for access to documents, which the EEAS has examined in the framework of Regulation (EC) No 1049/2001.¹

Following your application, we have searched for the requested document(s) “*EU mission reports on the communal violence in Gujarat in 2002*” in the EEAS filing systems and document management databases.

After a search in EEAS document management files and databases, the EEAS has identified the following documents matching your request, as referenced hereafter:

1. CFSP/PRES/Mad/0934/02 - HOMS REPORT ON THE GUJARAT EVENTS, 18 April 2002 (document 1);
2. Common report on the March/April 2002 events in the Indian State of Gujarat, 16 April 2002 (document 2).

Please be informed that document 1 is a joint report of the Heads of EU Missions in New Delhi on the Gujarat events, while document 2 is an assessment of the EU Delegation on the same events of March/April 2002, and the terms of reference for a possible confidential demarche towards the Indian authorities related to these events.

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").

In our assessment, the full public disclosure of document 1 would undermine the public interest as regards international relations between the EU and India as per Article 4(1)(a), third indent of the Regulation. More precisely, it would erode the environment of mutual trust and confidence with the Indian interlocutors that remains a prime prerequisite for the EU and its Member States to protect and promote EU interests through the existing EU-India strategic partnership. The full disclosure of the identified document to the public would hamper the EU's relations with India, both at political and operational levels, across all areas of foreign and security policy as well as sectoral cooperation.

The reaction of the Indian government to the two-part documentary series, titled *India: The Modi Question*, aired in January 2023 by the BBC, has clearly shown that the risk of EU interests being undermined by a full disclosure of the requested document is not hypothetical, but well foreseeable.

Concerning your argument "*that the requested documents ... do not refer to the position of any negotiating party and do not express any specific opinion of the Commission on any negotiating position*", I need to underline that the joint report of the Heads of Mission does in fact reflect the joint assessment of the EU and its Member States, which should be protected. This joint assessment of the Gujarat events was done in view of preparing an urgent and confidential EU Troika demarche towards the Indian authorities.

Therefore, I regret to inform you that we are not in a position to fully disclose document 1 since the full release would undermine the protection of the public interest as regards international relations as per Article 4(1)(a), third indent of the Regulation.

I take this opportunity to remind you that the partially released document provided may be reused on condition that the source is acknowledged and that you do not distort the original meaning or message of the document. Please note that the EEAS does not assume liability stemming from the reuse. In case of doubt on reuse, please do contact the EEAS for prior authorisation.

Regarding document 2, our examination concluded that this document cannot be disclosed, neither fully or partially. It contains highly sensitive elements and the assessments of the events in Gujarat that took place in 2002, as well as an updated proposal for terms of reference for a demarche towards the Indian authorities.

Disclosure of this document to the public would harm the relations between the EU and India, by undermining the confidence and trust in the EU-India partnership, thus prejudicing the EU's capacity to protect and promote its interests in this context. Furthermore, the disclosure of document 2 to the public would hamper the EU's relations with India, both at political and operational levels, across all areas of foreign and security policy as well as sectoral cooperation.

Therefore, I regret to inform you that we are not in a position to disclose document 2, neither fully nor partially, since it would undermine the protection of the public interest as regards international relations as per Article 4(1)(a), third indent of the Regulation.

We have considered whether partial access could be granted to document 2. However, since the vast majority of the substantive parts of the document is covered by the invoked exception, granting a partial access, albeit marginal, to the remaining part would entail revealing information the protection of which is covered by the exception relied on, relating to the protection of the public interest as regards international relations as explained above.²

Should you wish this position to be reviewed, you may make a confirmatory application within 15 working days in accordance with Article 7(2) of the Regulation.

Yours sincerely,

[e-signed]

Nereo Penalver Garcia

² See Judgment of 7 February 2018, *Access Info Europe v Commission*, T-851/16, EU:T:2018:69, paragraphs 122 and 123.