



**EUROPEAN COMMISSION**  
DIRECTORATE-GENERAL JUSTICE and CONSUMERS

Director-General

Brussels,  
JUST/C1/Ares(2016)2138885s

***By registered mail with receipt:***

Mr James Panichi  
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Rue de la Loi 62  
1040 Brussels  
Belgium

***Advance copy by e-mail:***

<mailto:ask+request-2599-2d1ff5da@asktheeu.org>

Dear Sir,

**Subject: Your application for access to documents – Ref GestDem No 2016/0807**

I refer to your e-mail dated 15 February 2016 in which you make a request for access to documents, registered on 18 February 2016 under the above mentioned reference number.

In this request you refer to *"All correspondence to, from and about whistle-blowers at the Fundamental Rights Agency in Vienna, to, from or in reference to Commission official Paul Nemitz and/or Martin Selmayr, the Chef de Cabinet of Commission President Jean-Claude Juncker."*

Please note that this request has been split into two: firstly, GESTDEM No 2016/1142 limited to *"All correspondence to, from and about whistle-blowers at the Fundamental Rights Agency in Vienna, to, from or in reference to Martin Selmayr, the Chef de Cabinet of Commission President Jean-Claude Juncker."* This request has already been answered by the Secretariat-General of the European Commission by letter of 4 April 2016.

My reply concerns the second request, GestDem No 2016/0807, as regards *"All correspondence to, from and about whistle-blowers at the Fundamental Rights Agency in Vienna, to, from or in reference to Commission official Paul Nemitz"*.

We have identified a number of documents as relevant to your request. They are listed in Annex 1.

**Documents number 1 to 18, 20 to 25, 27 and 28** originate wholly or partially from third parties. The originators of the documents have been consulted.

As regards the documents identified in Annex 1, please note that they fall into two categories: those for which partial access is given to and those for which access must be refused as explained below.

**1. Documents for which partial access is given:**

I enclose a copy of the following documents, which have been partially redacted:

19. *e-mail: Fundamental rights agency - Letter containing allegations of irregularities (reg.30/03/2012)*
26. *Letter by Paul Nemitz to 3rd party 17/07/2012*
27. *e-mail 11/07/2012, FW: new draft - FRA (different case)- FW: Claim for compensation for constructive dismissal and harassment*
28. *e-mail, reg. 20/06/2012, FW: Claim for compensation for constructive dismissal and harassment*
29. *Letter, 14/05/2012, RE Your correspondence of 9 and 12 April 2012*
30. *Letter to 3rd party 20/11/2012, Subject: "Reply to your mail of 23 October and 5 November"*
31. *Letter 04/04/2012, Subject: "Your letter to the Members of the management board of the European Fundamental Rights agency of 28 March"*
32. *Letter 29/05/2012, Subject: "Your e-mail of 15 and 22 May 2012"*
33. *Letter 23/07/2012, Subject: "Your emails of 13, 15 and 19 July 2012"*
34. *Letter to 3rd party, 4/10/2012, Subject: "Reply to mails you have sent on 20, 21 and 28 August"*

These documents to which you have requested access contain personal data. Pursuant to Article 4(1) (b) of Regulation (EC) No 1049/2001, access to a document has to be refused if its disclosure would undermine the protection of privacy and the integrity of the individual, in particular in accordance with Community legislation regarding the protection of personal data. The applicable legislation in this field is Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data<sup>1</sup>.

When access is requested to documents containing personal data, Regulation (EC) No 45/2001 becomes fully applicable<sup>2</sup>. According to Article 8(b) of this Regulation, personal data shall only be transferred to recipients if they establish the necessity of having the data

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<sup>1</sup> Official Journal L 8 of 12.1.2001, p. 1

<sup>2</sup> Judgment of the Court of Justice of the EU of 29 June 2010 in case 28/08 P, Commission/The Bavarian Lager Co. Ltd, ECR 2010 I-06055.

transferred to them and if there is no reason to assume that the legitimate rights of the persons concerned might be prejudiced.

I consider that, with the information available, the necessity of disclosing the aforementioned personal data to you has not been established and that it cannot be assumed that such disclosure would not prejudice the legitimate rights of the persons concerned. Therefore, we are disclosing the documents requested expunged from these personal data.

If you wish to receive these personal data, we invite you to provide me with arguments showing the need for having these personal data transferred to you and the absence of adverse effects to the legitimate rights of the persons whose personal data should be disclosed.

Furthermore, please note that **documents 23 to 25 have already been made available** to you in a redacted version by my reply of 8 March 2016 to your request GESTDEM 2016/285. They were annexed to my previous reply as documents 1 (= Doc 23), 17 (= Doc 24) and 15 (= Doc 25).

### **3. Documents to which access must be refused**

I regret that I must **refuse access to documents 1 to 18 and 20 to 22 listed in Annex 1** for the following reasons.

These documents originate from a third party. Following an examination of these documents under the provisions of Regulation (EC) No 1049/2001 regarding public access to documents and taking into account the opinion of the third party, I regret to inform you that your application cannot be granted, as disclosure is prevented by exceptions to the right of access laid down in Article 4 of this Regulation. This concerns the documents and the attachments as they form part of the personal communication of the third party with the Commission.

These documents concern an individual staff matter. Their disclosure would undermine the privacy and the integrity of the individual concerned, in particular in view of European Union legislation concerning the protection of personal data (Article 4 (1) b Regulation EC 1049/2001). Furthermore the document concerns an investigation in the sense of Article 4 (2) third indent of Regulation EC 1049/2001), in a staff matter that has not been concluded and the purpose of which would be undermined through its disclosure.

Hence, I cannot grant access to the aforementioned documents. Please note, however, that document 3 is the same as document 34, which is supplied to you in a redacted version.

### **4. Confirmatory application**

In accordance with Article 7(2) of Regulation 1049/2001, you are entitled to make a confirmatory application requesting the Commission to review the positions taken in this letter. A confirmatory application should be addressed within 15 working days upon receipt of this letter to the Secretary-General of the Commission at the following address:

European Commission  
Secretary-General  
Transparency unit SG-B-4  
BERL 5/282  
B-1049 Bruxelles  
or by email to: [sg-acc-doc@ec.europa.eu](mailto:sg-acc-doc@ec.europa.eu)

## Disclaimer

You have lodged your application via the AsktheEU.org website. Please note that this is a private website which has no link with any institution of the European Union. Therefore the European Commission cannot be held accountable for any technical issues or problems linked to the use of this system.

Yours sincerely,



Tiina ASTOLA

*Enclosure: Annex 1: list of documents identified as relevant to request GestDem 2016/0807*

*Documents 19, 26-34 as listed in Annex 1*