



EUROPEAN COMMISSION  
Secretariat-General

The Secretary-General

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*By registered mail:*

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**DECISION OF THE SECRETARY-GENERAL ON BEHALF OF THE COMMISSION PURSUANT  
TO ARTICLE 4 OF THE IMPLEMENTING RULES TO REGULATION (EC) N° 1049/2001<sup>1</sup>**

**Subject: Your confirmatory application for access to documents under  
Regulation (EC) No 1049/2001 - GESTDEM 2015/5958**

Dear Mr Panichi,

I refer to your e-mail of 4 January 2016, registered on 5 January 2016, by which you submit a confirmatory application in accordance with Article 7(2) of Regulation (EC) No 1049/2001 regarding public access to European Parliament, Council and Commission documents ('Regulation 1049/2001').

In your initial application of 12 November 2015, you requested access to:

- *All 2012 correspondence between European Commission official Paul Nemitz and former Commission official Adrian Barnett regarding the European Fundamental Rights Agency (FRA).*

In its initial reply of 23 December 2015, the Directorate-General for Justice and Consumers (DG JUST) informed you that no documents could be found as falling under the scope of your request.

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<sup>1</sup> Official Journal L 345 of 29.12.2001, p. 94.

Through your confirmatory application you request a review of this position, contesting the reply given by DG JUST at the initial stage. You substantiate your position by stating that *[t]here is correspondence between the Commission's Paul Nemitz and FRA already on the public record*, and provide the hyperlink to a disclosed e-mail exchange between Mr Nemitz and FRA's former Director, Mr Kjaerum.

Indeed, I can confirm that there is correspondence between Mr Nemitz and the FRA which qualifies as a document and therefore falls under the scope of Regulation 1049/2001 on public access to Commission documents. Please note, however, that the latter correspondence, to which you refer in your confirmatory application of 4 January 2016, does not fall under the scope of your initial request of 12 November 2015 (in which you asked for all correspondence of 2012 between Mr Nemitz and Mr Barnett concerning the FRA). You therefore enlarged the scope of your initial request beyond the alleged correspondence between Mr Nemitz and Mr Barnett, to correspondence between Mr Nemitz and the FRA.

As far as the correspondence of 2012 between Mr Nemitz and Mr Barnett regarding the FRA is concerned, the Commission has carried out a renewed, thorough search for the documents requested. Following this renewed search, I confirm that the Commission has not identified any documents held by it that would fall under this request for access to documents.

As specified in Article 2(3) of Regulation 1049/2001, the right of access as defined in that Regulation applies only to *existing* documents in the possession of the institution. Given that no such documents have been identified as falling under the scope of your (initial) application, the Commission is not in a position to handle your confirmatory application.

As regards the part of your confirmatory application of 4 January 2016 which goes beyond your initial application of 12 November 2015, i.e. the *correspondence between the Commission's Paul Nemitz and FRA*, the Commission has registered a new initial application under the reference number GESTDEM 2016/0285 which is being dealt with by DG JUST at the initial stage.

This has been done in line with the applicable procedure for access-to-documents requests under Regulation 1049/2001, which foresees a two-stage approach providing for an independent review by the Secretariat-General of the reply given by the Directorate-General or service concerned at the initial stage.

DG JUST may contact you for further specification (e.g. regarding time span or subject of such correspondence) of this new initial application (which currently potentially refers to *all* correspondence between Mr Nemitz and the FRA) in order to avoid any unnecessary search actions as well as an obsolete reply to you.

Finally, I draw your attention to the means of redress available against this decision. You may, under the conditions of Article 263 TFEU, bring proceedings before the General Court or, under the conditions of Article 228 TFEU, file a complaint with the European Ombudsman.

Yours sincerely,

A handwritten signature in black ink, consisting of a long horizontal stroke with a small upward curve at the end, and a shorter, curved stroke above it.

Alexander Italianer