



EUROPEAN COMMISSION  
DIRECTORATE-GENERAL JUSTICE and CONSUMERS

Director-General

Brussels,  
JUST/CI(2016)1309342s

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

Mr James Panichi  
Politico  
Rue de la Loi 62  
1040 Brussels  
Belgium

*e-mail:*

ask+request-2398-1db1f680@asktheeu.org

Dear Sir,

**Subject: Your application for access to documents – Ref GestDem No 2016/0285 – first batch of documents**

I refer to your e-mail dated 04/01/2016 in which you make a request for access to documents, registered on 22 January 2015 under the above mentioned reference number.

In this request you refer to "correspondence between the Commission's Paul Nemitz and FRA."

My services have already replied to your request with letter of 11 February 2016 explaining that we will need more time to deal with it as large files had to be examined to retrieve all relevant documents. On 1 March they sent you a letter with a view to finding a fair solution since a large amount of documents had been identified. They explained that they would have to send the documents that are relevant to your request and that can be given access to in several batches unless you indicated a possibility to narrow down your request, for instance as regards the period concerned. So far they have not received an answer from you to that letter. Hence, my services proceed as indicated in that letter and I am now replying to your request in view of the documents of 2012 identified to fall into its scope.

I have reviewed all relevant documents in the light of your request to identify documents sent to or from Commission official Paul Nemitz to or from the European Agency for Fundamental Rights (FRA). Please note that I have not included newsletters, which my services mentioned in our letter of 1 March 2016 and of which they had included three examples. These newsletters that have been circulated to its stakeholders contain summaries of FRA news. These news events (but not their summaries) are available on FRA's website<sup>1</sup>.

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<sup>1</sup> <http://fra.europa.eu/en/news-and-events>.

However, the newsletters contain personal data of FRA contact persons which would need to be individually removed to ensure the protection of personal data as required by Regulation (EC) 45/2001. Could you please indicate if you require these newsletters as well?

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

### **1. Documents that full access is given to**

We enclose a copy of/ link to the following documents as listed in Annex 1:

12. *attachment: Schulz-FRC FRA comments of 12 December 2012 (attachment to doc 3)*
13. *ID\_request\_proposal\_HOLHRETOTS\_final draft\_07-06-2012*
14. *2013 Estimate of revenue and expenditure*
20. *FRA-2012\_Annual\_Activity\_Report\_2011\_EN*
21. *EMBARGO\_FRA-2012-Update-Antisemitism-on-2011*
22. *EMBARGO\_FRA-2012\_Annual-Report-2011\_EN*
23. *EMBARGO\_FRA\_2012\_Annual-report-Highlights-2011\_EN*
27. *2011 Amending budget Nr 2*

### **Disclaimer:**

Please note that these documents were received by the Commission from the European Agency for Fundamental Rights (FRA). They cannot be re-used without the agreement of the originator, who holds a copyright on it. They do not reflect the position of the Commission and cannot be quoted as such.

Furthermore, please note that the document

28. *e-mail from Morten Kjaerum to Paul Nemitz, RE: personal, of 19 January 2012*

is not supplied in copy as it is already publicly available under the link:

<http://www.asktheeu.org/en/request/477/response/2978/attach/html/3/e%20mailKjaerum%20Nemitz%20January2012%20pdf.PDF.pdf.html> .

### **2. Documents that partial access is given to**

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

1. *e-mail: Regarding the Letter by FRA staff member Ms. [XY] of 28th March 2012 of 30 March 2012*

2. *e-mail: proposal for training of 15 June 2012*
3. *e-mail: Fwd Schulz - FRA comments of 12 December 2012*
4. *e-mail: FRA Update on the situation of antisemitism in the EU (Embargo 18 June - 11.00 a.m.) of 15 June 2012*
5. *e-mail: FRA press release New Chairperson of the FRA Management Board elected of 28 September 2012*
6. *e-mail: FRA Annual Report 2011 FRA Annual Activity Report 2011 (Embargo 20 June - 15.45hrs) 15 June 2012*
7. *e-mail: FRA 2013 Draft Budget of 10 February 2012*
8. *e-mail: FRA - EC DG JUST.C Information on the Agency's budgetary issues of 16 March 2012*
9. *e-mail: Automatic reply My last day in C1 of 04 April 2012*
10. *e-mail: 2 new FRA reports on experiences of exclusion etc (Embargo 7 June 10 am) of 5 June 2012*
15. *Attachment: Re your note 24 Feb 2012 registered under nr 179 (attachment to doc 1)*
16. *Nemitz, Paul\_05.06.12 (1)*
17. *Letter to MB re letter from FRA staff member\_EN*
18. *Letter to Director Nemitz re Annual Report – 150612*
19. *Letter Director Nemitz – 150612*
25. *2012REF0318 FRA - DG JUST.C To Att. Mr Nemitz*
26. *2012 02 10 DB 2013 FRA*

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>2</sup>.

When access is requested to documents containing personal data, Regulation (EC) No 45/2001 becomes fully applicable<sup>3</sup>. According to Article 8(b) of this Regulation, personal data

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<sup>2</sup> Official Journal L 8 of 12.1.2001, p. 1

<sup>3</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.

shall only be transferred to recipients if they establish the necessity of having the data 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 this 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.

As regards document 15 please note that the redactions were additionally necessary in order to ensure compliance with Article 4 (2) third indent of Regulation EC 1049/2001). Disclosure of the redacted parts would in this case undermine the purpose of an investigation in a staff matter under the above mentioned provision.

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

Document 24 referred to in Annex 1 originates from a third party. The originator of the document has been consulted. Following an examination of this document requested 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.

As regards *Document 24 (Attachment to note 659 – Article 72(5) final report= Annual Report of the Director to the Discharge Authority on internal audits carried out in 2011)* please note that disclosure of this kind of audit document would undermine the purpose of inspections, investigations and audits as mapped out in Article 4 (2) third indent of Regulation EC 1049/2001).

*Document 11 (e-mail: Confidential: Launching of Written Procedure of 5 July 2012)* concerns an individual staff matter. Its phrasing and content allows identifying persons and events to persons so that its disclosure would undermine their 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 two aforementioned documents.

### **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)

## 5. Next steps

In our letter of 1 March my services asked you whether you could narrow down the scope of your request (i.e. the subject matter(s) and/or timeframe covered), so as to reduce it to a more manageable amount of documents. So far they have not received any reply. In the absence of a reply by the time-limits of Regulation 1049/2001, I will unilaterally apply a method of consecutively covering the documents you referred to, i.e. sending you the remaining documents in batches at regular intervals. In total the search will cover all years during which Paul Nemitz as Member of the Management Board at the FRA has had communication exchanges with the European Agency for Fundamental Rights (FRA), i.e. from 2011 until today.

## 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 of 2012 falling into the scope of request GestDem No 2016/0285*

*Documents 1-11, 12-23 and 25-27 as listed in Annex 1*