

ADMISSIBLE COMPLAINT - SUMMARY

COMPLAINT: 141/2023/NH

Confidentiality requested by the complainant (Article 2.2 of the Ombudsman's Statute)? No

Confidentiality necessary for the protection of the legitimate interests of the complainant or of a third party (in accordance with the Implementing Provisions)? No

EO ARES related correspondence ? N/A

Surname(s)

■■■■■

First name(s)

■■■■■

Legal person name

'Represented by' (if applicable)

Institution, body, office, or agency complained against

("Top ten" list for the last two years.)

European External Action Service

Please remember to select keywords on last page. Please remember that Keyword 2 should be the appropriate keyword for your topic/team.



SUMMARY

Title

The refusal by the European External Action Service (EEAS) to give full public access to documents related to the EU-Israel dialogue on counter-terrorism

Key issues, facts and background

[Link to the complaint](#)

The complainant made a request for public access to documents held by the EEAS **on 26 October 2022** (EEAS reference number: 2022/149). His request was the following:

The lists of officials, experts and others invited to attend and/or who did attend all "counter-terrorism dialogues" between the European Union and Israel held between 1 January 2015 and 26 October 2022.

In his request, the complainant argued that the provision of names should not compromise the EU's data protection rules because the persons attended these meetings in an official/professional capacity. He added that the public has a right to know which institutions or organisations are involved in dialogues about counter-terrorism.

On **10 November 2022**, the EEAS granted partial access to four documents identified as matching the complainant's request:

1. EU Israel Counter Terrorism Dialogue Draft Agenda 2022;
2. EU Israel Counter Terrorism Dialogue Participants List 2019;
3. EU Israel Counter Terrorism Dialogue Draft Programme 2016;
4. EU Israel Counter Terrorism Dialogue Draft Agenda 2015.

The EEAS said it had redacted personal data in line with Article 4(1)(b) of Regulation 1049/2001. In addition, some redactions were made to information exceeding the scope of his request.

The EEAS added that "*The full disclosure of these documents to the general public would gravely damage the relationship of trust between all EU actors and the Israeli partners, both at political and operational levels.*"

On **10 November 2022**, the complainant submitted a confirmatory application challenging the EEAS's decision to disclose the documents only partially. He argued that the EEAS was wrong to redact the names and positions of Israeli participants. Specifically, he said that disclosing the list of governments departments or authorities that attended the meetings should not imperil data protection or privacy rights, nor the EU's relations with a foreign state.

On **1 December 2022**, the EEAS replied to the confirmatory application and disclosed a certain number of personal data of participants having consented to their names being disclosed. The EEAS explained the following:

- The EEAS asked for the consent of the participants in the dialogues for the disclosure of their personal data. In spite of various attempts, it proved impossible to find current contact details for certain participants. Following the replies



received, the EEAS has now disclosed the personal data of the participants, including the EU officials, who have provided consent. A complete disclosure is prevented by the exceptions concerning the protection of the public interest as regards public security as per Article 4(1)(a) first indent and the protection of privacy and the integrity of the individual outlined in Article 4(1)(b) of the Regulation.

- As regards the public security exception, the EEAS argued that full public release of names of individuals working in counter-terrorism would allow actors with adverse interests to exploit these personal details for malicious purposes, thus jeopardising the EU's and Israel's security.
- The EEAS also explained that disclosure of personal data of participants would harm the mutual trust necessary for diplomatic dialogue between the EU and Israel, and thus undermine the public interests as regards the EU's internal relations with that third country (Article 4(1)(a) third indent of the Regulation).
- The complainant failed to establish the necessity to have the personal data of participants transmitted to him for a specific purpose in the public interest.

On **6 December 2022**, the complainant made a new request under Regulation 1049/2001, asking for the same documents as his previous request. He provided details about the "strong public interest" in making certain personal data available, in particular in order to give concerned citizens the possibility to check whether the EU's interlocutors are involved in the occupation of the West Bank (including East Jerusalem) and other human rights abuses.

On **8 December 2022**, the EEAS replied that the complainant's new request of 6 December was similar to his previous application handled by the EEAS under reference number 2022/149. The EEAS explained that his previous request was now closed.

On the same day, the complainant insisted that the EEAS should treat his request as a new 1049 request, as it included his arguments concerning the public interest in disclosing the redacted personal data. The complainant added that *"I have previously been informed by officials working for the European Union's Ombudsman that there is nothing to prevent citizens from submitting access to document requests, even if they have already made similar requests."*

The EEAS confirmed on 9 December 2022 that it would not handle his new request because it was purely repetitive, in line with EU case law.¹

On 13 December 2022, the complainant submitted a new request, this time under the Code of Good Administrative Behaviour. He asked the following questions:

1. Have the following bodies been represented at meetings of the "counter-terrorism dialogues" between the European Union and Israel: the Israel Defence Force (IDF), Israel's Ministry of Defense, the Israel Police, the Coordinator of Government Activities in the Territories? If so, please specify which of these bodies have been involved in the dialogues and how many meetings they have attended of the dialogues.
2. Are any other Israeli bodies involved in the aforementioned dialogues? If so, please specify which bodies.

¹ Judgment of 27 November 2019, *Izuzquiza and Semsrott/Frontex*, T-31/18, EU:T:2019:815, paragraphs 30-32.



3. Has the European Union's External Action Service made any recommendations about whether the counterterrorism dialogues with Israel should continue following the Israeli general election which took place on 1 November 2022? If so, please summarise those recommendations and any decisions which have been taken based on them.

The EEAS replied on **19 December 2022** explaining that the same limitations of Regulation 1049/2001 remained valid for his first two questions. It added that *"Further, CT Dialogues with Israeli authorities take place within a framework of absolute confidentiality and the EEAS is not at liberty to disclose those bodies or individuals participating in the Dialogues. Disclosure of this information would gravely damage relations between the EU and Israel, as set out in the above-mentioned Regulation."*

Dissatisfied with the handling of his requests, the complainant turned to the Ombudsman on 11 January 2023, by post (the complaint was received by the Ombudsman on **19 January 2023**).

Object of the complaint

The complaint concerns two issues:

- the decision by the EEAS to deny public access to the full documents identified as falling within the scope of the complainant's request, in particular the personal data of participants to the EU-Israel Counter Terrorism Dialogues between 2015 and 2022 and the institution or organisations they represented.
- the EEAS's decision to consider the complainant's second request for public access, dated 6 December 2022, as purely repetitive.

Supporting arguments by the complainant

- *"Israel's military, police and ministry of defence all take part in an occupation of the West Bank, including East Jerusalem, and Gaza, which involves routine violations of international law. The European Union stated during its Association Council meeting with Israel in October 2022 that it was "gravely concerned" about how the occupation dating from June 1967 has endured. It is surely reasonable for citizens to enquire if bodies directly or indirectly involved in the occupation about which the EU is "gravely concerned" are taking part in dialogues."*
- The EEAS said in the confirmatory decision that the complainant had failed to establish the necessity to have the personal data of participants transmitted to him for a specific purpose in the public interest. That is why the complainant made a new request on 6 December 2022, in which he included an argument about why he believed there was indeed a public interest in obtaining the information requested. *"Yet the EEAS refused to accept or even register my fresh request. I believe that the EEAS was completely wrong to do so. The EEAS alleged that my request was "purely repetitive". That was manifestly incorrect as it contained new arguments that I had not made in previous correspondence concerning my efforts to obtain basic information about the counter-terrorism dialogues. I have been told by staff working for the European Union's*



Ombudsman in the past that citizens may submit fresh requests for access to documents if an initial request is rejected."

Claim(s)

As regards the partial disclosure: in the complaint form, in reply to the question about what the institution should do to put things right, the complainant says: *"Provide the details I requested"*.

As regards how the EEAS handled his second request of 6 December 2022: *"I hereby urge the EU Ombudsman to take a strong position in this case."*

Relevant Ombudsprudence and/or CJEU case law

N/A

Internal analysis and proposal

Admissibility:

The complainant is an Irish citizen residing in Brussels, he has lodged his complaint within the two year time limit, it concerns an administrative matter, it does not seem - to the best of the inquiries officer's knowledge - that the complainant has gone to court on that aspect and he has followed the procedure set out in Regulation 1049/2001 before complaining to the Ombudsman. As such, his complaint is **admissible**.

Assessment and way forward:

As regards the first object of the complaint, the complainant has received the documents he requested, but with redactions of some personal data (of the participants in the meetings). The complainant is not satisfied with the explanations provided by the EEAS: he argues that there is a public interest in having the personal data disclosed. However, he has not done so in the confirmatory application (or rather, in too general terms). In his confirmatory application, he instead argued that, at the very least, the institution or organisation for which the representatives work should be disclosed. The EEAS did not address that argument in the confirmatory decision: rather, it insisted that the names could not be disclosed for data protection reasons.

It is only in the reply to the complainant's request for information, dated 19 December 2022, that the EEAS argued that *"Further, CT Dialogues with Israeli authorities take place within a framework of absolute confidentiality and the EEAS is not at liberty to disclose those bodies or individuals participating in the Dialogues. Disclosure of this information would gravely damage relations between the EU and Israel, as set out in the above-mentioned Regulation."*

At first sight, the EEAS's argument regarding the *"absolute confidentiality"* required for the counter terrorism dialogues with Israel, and its refusal to disclose the bodies participating from the side of Israel, appear not to be convincing. The institutions participating in these



meetings were probably the Ministry of the Interior of Israel, or the Ministry of Defence. The inquiries officer fails to understand how disclosing this information, without any personal data, would “*gravely damage*” the EU-Israel relations.

It is therefore proposed to **open an inquiry** into this complaint, and ask to inspect the documents. The EEAS should be invited during the inspection meeting to provide additional explanations on the reasons for not disclosing the authorities taking part in the meetings.

The inquiry will be handled as a fast-track case.

As regards the second object of the complaint, which concerns the refusal by the EEAS to handle the complainant’s second public access request because it considered it as purely repetitive, the inquiries officer sees - at first sight - no grounds to inquire into the matter. It was reasonable for the EEAS to consider that the second request was a repetition of the first, and that it had already replied to it. The complainant requested exactly the same documents in his second request; he only added additional arguments as regards the public interest in having the personal data disclosed. Regulation 1049/2001 does not set out the possibility to make a new request in order to challenge a decision taken in an earlier request; rather, it gives dissatisfied applicants the possibility to lodge a complaint with the European Ombudsman or to go to court.

The inquiries officer suggests informing the complainant in the opening letter that the Ombudsman finds no grounds to open an inquiry into the second aspect of his complaint. The EEAS should also be informed of that assessment.

UPDATE 20/03/2023

We sent a [request for the documents and for a meeting](#) to the EEAS on 25 January 2023.

The EEAS [provided the requested documents](#) on 30 January 2023 (confidential, in the eSafe).

The meeting was held at the EEAS on 23 February 2023. The draft meeting report is [available here](#).

The preliminary feeling of the inquiry team [REDACTED] after the meeting was that the EEAS had provided reasonable explanations as to why they could not share the names of Israeli participants, yet alone the bodies/ministries represented. They fear that the Israelis would be offended by disclosure, which would undermine the international relations (they have provided evidence to that effect).

A more detailed assessment (confidential) [is available here](#).

The next step of the inquiry is to ask the complainant for comments. In the request for comments, I suggest that we already inform the complainant of the preliminary assessment of the inquiry team that the EEAS had not based its decision to refuse disclosure on a manifest error of assessment.



UPDATE 18/04/2023 - complainant's comments

We asked the complainant to provide comments on [24 March 2023](#). We informed him in the request for comments that *"The decision by the EEAS to refuse disclosure is therefore, in our view, reasonable."*

On the same day, the complainant came back with a short e-mail. I asked him whether those were his final comments. On 27 March, he added additional explanations. The comments are [available here](#).

The complainant takes issue with the inquiry team's preliminary assessment that non-disclosure was reasonable. In particular, he says that he is puzzled by why the EO believes it is reasonable to preserve a "relationship of trust" between the EU and Israel. According to him, the EU-Israel relationship is based on an association agreement from 2000² where the word "trust" does not appear. The relationship is rather based, he says, on human rights and democratic principles. The whole point of his access request was to obtain information on whether EU and Israel are still respecting these rights and principles. The complainant added that, *"I would have hoped that [the EO] was more committed to human rights and democratic principles than the "relationship of trust" between the EU and Israel, a state which has demonstrably committed the crime of apartheid and other crimes against humanity."*

In my reply, I asked him if those were his final comments (he did not reply to my question but we can fairly assume that they are). I already highlighted the fact that his comments related more to the EU-Israel association agreement, an agreement that is outside the scope of the inquiry since the inquiry only concerns his request for access to documents. I explained that our assessment was whether the EEAS had acted in line with Regulation 1049/2001. The Ombudsman would look only at administrative issues and not political ones (the association agreement is a political decision).

The complainant reacted by arguing that the issues concerned were administrative; in fact, he did not believe it was possible to "neatly" separate administrative and political issues. He said the EEAS was under an administrative obligation to respect the terms of the association agreement with Israel. He also underlined that the EO had already looked at human rights clauses in the EU's relationship with Vietnam.³

Assessment:

As I already explained to the complainant, I do not believe his comments are relevant for this case, as they challenge the EU-Israel agreement (a "political" decision outside the scope of the inquiry and even the EO's mandate) and how Israel respects it. The scope of our inquiry is his access request only, and how the EEAS dealt with it. The EU-Israel association agreement does not set out any rules on access to documents or transparency in general; the only rules that the EEAS must follow in this case are set in Regulation 1049/2001. The complainant may also have misunderstood our preliminary view, thinking that the inquiry team took a position on the "trust" between the EU and Israel when, in

² Available at : https://eeas.europa.eu/archives/delegations/israel/documents/eu_israel/asso_agree_en.pdf

³ He provided the following link: <https://www.ombudsman.europa.eu/en/decision/en/64308>, it concerns case 1409/2014/MHZ on the European Commission's failure to carry out a prior human rights impact assessment of the EU-Vietnam free trade agreement.



fact, we merely assessed whether the EEAS had used correct arguments when it referred to the international relations exceptions.

I would therefore suggest **closing the case with No MA.**

Additional EU case law supporting the EO's preliminary views:

Judgment of the Court of first Instance of 26 April 2005 in case T-110/03, Sison v Council

80. That **international cooperation concerning terrorism presupposes a confidence on the part of States in the confidential treatment** accorded to information which they have passed on to the Council. In view of the nature of the document requested, the Council was therefore able to consider, rightly, that disclosure of that document could compromise the position of the European Union in international cooperation concerning the fight against terrorism.

81. In that regard, the applicant's argument – to the effect that the mere fact that third States are involved in the activities of the institutions cannot justify application of the exception in question – must be rejected for the reasons set out above. Contrary to what that argument assumes, the cooperation of third States falls within **a particularly sensitive context, namely the fight against terrorism**, which justifies keeping that cooperation secret. Moreover, read as a whole, the decision makes it clear that **the States concerned even refused to allow their identity to be disclosed.**



DETAILED DATA RELATED TO COMPLAINANT

Language of complaint

EN

Country of address

BE

Nationality

IE

'Kind' of complainant (exhaustive lists)

If natural person: Kind specific: **Media**

If legal person: - **CHOOSE ITEM** - Kind specific: - **CHOOSE ITEM** -



PERSONAL DATA OF THIRD PARTIES

Article 16(1) and (2) of [Regulation 2018/1725](#) provides for a duty to inform third parties individually about the processing of their personal data. Please carefully check the points below and consult the relevant policy and [guidelines for CHs](#)

Are there any personal data of third parties in the complaint? yes ☒ no
☐

If the answer is no: no need to assess any further.

If the answer is yes: is the data relevant for the inquiry? yes ☐ no
☒

Please explain which categories of third-party personal data are deemed relevant or irrelevant for the inquiry:

The third-party data is irrelevant because it concerns names and contact details of the officials of the institution and the complaint is against the institution and not against the officials. ☒

If other, please explain:

If only **irrelevant** data are present, no need to assess any further.

If **relevant** data are present, do you have evidence that the third-party data subject has full knowledge about the complaint to the Ombudsman, including his or her personal data, and which is the institution complained about (Article 16(5)(a) of [Regulation 2018/1725](#))?

yes ☐ no ☐

Please explain:

If the answer is yes: no need to assess any further.

If the answer is no, would it be impossible or disproportionate to inform the third-party data subject individually about the processing of his/her personal data (Article 16(5)(b) of [Regulation 2018/1725](#)) by the Ombudsman? yes ☐ no ☐

Please explain:

If the answer is yes: no need to assess any further.

If the answer is no, is informing the third-party data subject likely to render impossible or seriously impair the Ombudsman's inquiry and the ability of reaching a decision on the allegations of maladministration (Article 16(5)(b) of [Regulation 2018/1725](#))?

yes ☐ no ☐

Please explain (be as detailed as possible):

If the answer is yes: no need to assess further.



If the answer is no: provide the third-party data subject with the information of Article 16(1) and (2) of Regulation 2018/1725 at the latest when contacting the institution for the first time (use the Third Party Information letter, available in the CMS).

NB: At the end of the inquiry, you will have to revisit this data protection issue by filling in the form of which you see a copy here below. The form is contained in the decision template itself.



KEYWORDS

All keyword groups 1-3 must be used. For each keyword group, you yourself determine how many keywords should be recorded.

KEYWORD 1 - EU competence area

1. Common Foreign and Security Policy (EEAS competences)
2. - CHOOSE ITEM -
3. - CHOOSE ITEM -
4. - CHOOSE ITEM -
5. - CHOOSE ITEM -
6. - CHOOSE ITEM -

KEYWORD 2- Issue

1. Transparency
2. - CHOOSE ITEM -
3. - CHOOSE ITEM -
4. - CHOOSE ITEM -
5. - CHOOSE ITEM -
6. - CHOOSE ITEM -

KEYWORD 3 - Possible maladministration

1. Failure to deal properly with requests for public access to documents
[Article 23 ECGAB]
2. - CHOOSE ITEM -
3. - CHOOSE ITEM -
4. - CHOOSE ITEM -
5. - CHOOSE ITEM -
6. - CHOOSE ITEM -

REASON(S) FOR CLOSING THE INQUIRY

(Exhaustive list)

Please indicate the main reason(s) applied in the decision

- ☐ Settled by the institution
- ☐ No further inquiries justified
- ☐ Dropped by the complainant after inquiry opened
- ☒ No maladministration
- ☐ Maladministration found
- ☐ Solution achieved
- ☐ Solution partly achieved
- ☐ Recommendation agreed by the institution
- ☐ Recommendation partly agreed by the institution
(This conclusion must be clearly stated in the closing letters!)
- ☐ Dealt with by a Court (Article 2.9 of the Statute of the European Ombudsman)
- ☐ Closed after Special Report to EP
- ☐ Suggestion/s accepted by the institution
- ☐ Suggestion/s partly accepted by the institution

Other information

- | | |
|-------------------------------------------------------------------------------------|------------------|
| <input type="checkbox"/> Solution proposal(s) made | <u>How many?</u> |
| <input type="checkbox"/> Solution(s) achieved/partly achieved | <u>How many?</u> |
| <input type="checkbox"/> Recommendation(s) made | <u>How many?</u> |
| <input type="checkbox"/> Recommendation(s) agreed/partly agreed | <u>How many?</u> |
| <input type="checkbox"/> Suggestions(s) made during the inquiry | <u>How many?</u> |
| <input type="checkbox"/> Suggestions(s) accepted/partly accepted during the inquiry | <u>How many?</u> |
| <input type="checkbox"/> Suggestion/s made in the decision | <u>How many?</u> |
| <input type="checkbox"/> Finding/s of maladministration | <u>How many?</u> |

If PI-case, confirm if translation of the summary (that is the summary preceding the decision text) is required (if you think that it should not be translated, you have to discuss this with your line manager, the default rule being that summaries in PI cases are translated and put on the website of the Office): ☐

PERSONAL DATA OF THIRD PARTIES

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Are there any personal data of third parties in the complaint? yes ☒ no ☐

If the answer is no: no need to assess any further.

If the answer is yes: is the data relevant for the inquiry? yes ☐ no ☒

Please explain which categories of third-party personal data are deemed relevant or irrelevant for the inquiry:

The third-party data is irrelevant because it concerns names and contact details of the officials of the institution and the complaint is against the institution and not against the officials. ☒

If other, please explain: *in the course of our inquiry into this case, we inspected the documents provided by the EEAS without the redactions; in other words, we processed the personal data of the participants, who were at the centre of the complainant's request. However, I believe the personal data are irrelevant: we have assessed whether the EEAS handled the "privacy" exception in a reasonable way, irrespective of who the person was. Knowing the identify of each participant did not have any impact on the assessment, nor on the arguments presented in the closing decision. The documents will also be deleted shortly, in line with our confidentiality rules. The data is therefore irrelevant.*

If only **irrelevant** data are present, no need to assess any further.

If **relevant** data are present, do you have evidence that the third-party data subject has full knowledge about the complaint to the Ombudsman, including his or her personal data, and which is the institution complained about (Article 16(5)(a) of [Regulation 2018/1725](#))?

yes ☐ no ☐

Please explain:

If the answer is yes: no need to assess any further.

If the answer is no, would it be impossible or disproportionate to inform the third-party data subject individually about the processing of his/her personal data (Article 16(5)(b) of [Regulation 2018/1725](#)) by the Ombudsman? yes ☐ no ☐

Please explain:

If the answer is yes: no need to assess any further.

If the answer is no, is informing the third-party data subject likely to render impossible or seriously impair the Ombudsman's inquiry and the ability of reaching a decision on the allegations of maladministration (Article 16(5)(b) of [Regulation 2018/1725](#))?

yes ☐ no ☐

Please explain (be as detailed as possible):

If the answer is yes: no need to assess further.

If the answer is no: provide the third-party data subject with the information of Article 16(1) and (2) of Regulation 2018/1725 at the latest when contacting the institution for the first time (use the Third Party Information letter, available in the CMS).

ARES related correspondence ? No