**COUNCIL OF
THE EUROPEAN UNION**

**Brussels, 27 February 2013**

**6631/13**

**INF 22
API 16**

**NOTE**

| | | |
|---|---|---|
| from | : | General Secretariat of the Council |
| to | : | Working Party on Information |
| Subject : | | Public access to documents |
| | | - Confirmatory application No 03/c/01/13 |

Delegations will find attached:

- request for access to documents sent to the General Secretariat of the Council on 28 January 2013 and registered on 29 January 2013 (Annex 1)

- reply from the General Secretariat of the Council dated 18 February 2013 (Annex 2)

- confirmatory application dated 18 February 2013 and registered on the same day (Annex 3)

_____

**[E-mail message sent on 28 January 2013 - 17:57]**

Title/Gender:

Family Name:   **DELETED**

First Name:   **DELETED**

E-Mail:   **DELETED**

Occupation:

On behalf of:

Address:

Telephone:

Mobilephone:

Fax:

Requested document(s):   Access to Council document 8448/2/12

1st preferred linguistic version:

2nd preferred linguistic version:

Corresponding question: Why has this document not (yet) been made publicly available?

_____

**COUNCIL OF THE EUROPEAN UNION**

*GENERAL SECRETARIAT*

*Directorate-General F*
*Communication*
*Transparency*

*- Access to Documents/*
*Legislative Transparency*

rue de la Loi, 175
B – 1048 BRUSSELS
Tel: (32 2) 281 67 10
Fax: (32 2) 281 63 61
Email:
access@consilium.europa.eu

Brussels, 18 February 2013

**DELETED**

**email:
DELETED**

**12/1794-mi/mf**

Dear **DELETED**,

We have registered your application of 29 January 2013 for access to document 8448/2/12 REV 2. Thank you for your interest.

The General Secretariat of the Council has examined your application on the basis of the Regulation on access to documents (hereafter "the Regulation")[1] and of the specific provisions in the Council's Rules of Procedure[2], and has come to the following conclusion:

Document **8448/2/12 REV 2** is a note from the Presidency to the delegations concerning the proposal for a Directive of the European Parliament and of the Council on the use of Passenger Name Record data for the prevention, detection, investigation and prosecution of terrorist offences and serious crime. In this note, the Presidency provided a state of play of the discussions following the meeting of the Permanent Representatives Committee (Coreper) of 18 April 2012.

---

[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, 31.5.2001, p. 43.

[2]    Annex II to the Council's Rules of Procedure – Council Decision 2009/937/EU; OJ L 325, 11.12.2009, p. 35.

---

On 6 November 2007 the Commission adopted a proposal for a Council Framework Decision on the use of Passenger Name Record (PNR) data for law enforcement purposes[1]. This proposal was discussed extensively in the Multidisciplinary Group on Organised Crime (MDG).

On the entry into force of the Treaty of Lisbon on 1 December 2009, the Commission proposal, which had at that time not yet been adopted by the Council, was no longer appropriate. The above-mentioned proposal for a Directive of the European Parliament and of the Council takes the place of the 2007 proposal and is based on the provisions of the Treaty on the Functioning of the European Union (TFEU). The new proposal was extensively discussed in the Multidisciplinary Group on Organised Crime (MDG), as well as in the Working Party on General Matters including Evaluation (GENVAL) and in Coreper. On 26 and 27 April 2012, the Justice and Home Affairs Council established a general approach on the draft Directive, which is now to serve as the basis for negotiations with the European Parliament. The Council is currently awaiting commencement of these negotiations. However, this does not mean that discussions within the Council itself have been concluded. Even after the Council has entered into negotiations with the European Parliament, discussions on this subject will continue in the Council preparatory bodies before the Directive can be finally adopted by the Council.

For the Council to find compromise solutions and achieve progress on difficult questions it is essential that delegations can express their views internally within the Council's preparatory bodies. Disclosure of the delegations' positions while negotiations are still on-going would jeopardise this possibility and, in the opinion of the General Secretariat, would significantly undermine the Council's decision-making process.

As there is no evidence suggesting an overriding public interest to warrant disclosure of the document in question, the General Secretariat has concluded that protection of the decision-making process outweighs the public interest in disclosure. The General Secretariat therefore does not consider itself to be in a position, by virtue of the first subparagraph of Article 4(3) of the Regulation (protection of the Council's decision-making process), to grant your application for full access.

---

[1]   COM(2007) 654.

However, pursuant to Article 4(6) of the Regulation, you may have access to those parts of the document which are not covered by this exception.

Information on available remedies

In accordance with Article 7(2) of the Regulation you may, within 15 days, make a confirmatory application asking the Council to reconsider its position[1].

Yours sincerely,
For the General Secretariat

Jakob Thomsen

Annex

—————————————

---

[1] Should you decide to do so, please indicate whether you permit the Council to make your confirmatory application fully public in the Council's register of documents. If you do not make any statement in this regard or if you state that you do not give such permission, your application will be dealt with confidentially. Your reply will in no way prejudice your rights under Regulation (EC) No 1049/2001.

**[Confirmatory application - sent by e-mail on 18 February 2013 - 13:03]**

Subject: 13/0148-mi/mf

Message

Dear Mr Thomsen,

In accordance with Article 7(2) of Regulation (EC) No 1049/2001 I hereby request the Council to reconsider its position, in particular with regard to footnote 5 (reference thereto in recital 5) and footnote 17 (reference thereto in Article 2(i)).

Yours sincerely,

**DELETED**

_____