



**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 7 May 2012

8771/12

**INF 65
API 46
JUR 222**

NOTE

from : General Secretariat of the Council
to : Working Party on Information

Subject : Public access to documents
- Confirmatory application made by Ms Helen Darbishire (No 11/c/01/12)

Delegations will find attached:

- request for access to document sent to the General Secretariat of the Council on 13 March 2012 and registered on the same day ([Annex 1](#))
- reply from the General Secretariat of the Council dated 20 March 2012 ([Annex 2](#))
- confirmatory application dated 13 April 2012 and registered on 16 April 2012 ([Annex 3](#))

[E-mail message sent on 13 March 2012 - 13:17]

Subject: access to information request - Working Party Information Participants List

Dear Council of the EU,

Under the right of access to documents in the EU treaties, as developed in Regulation 1049/2001, I am requesting documents which contain the following information:

The participants in the Working Party on Information meeting held on Friday 9 March 2012.

Yours faithfully,

Helen Darbshire



**COUNCIL OF
THE EUROPEAN UNION**

GENERAL SECRETARIAT

*Directorate-General F
Press
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
E-MAIL:

access@consilium.europa.eu

Brussels, 20 March 2012

Ms Helen Darbshire

e-mail:

**ask+request-81-ba25b523
@asktheeu.org**

12/0470-mi/jj

Dear Ms Darbshire,

Your request of 13 March 2012 for access to the list of participants of the Working Party on Information meeting held on Friday 9 March 2012 has been registered by the "Access to Documents" unit. Thank you for your interest.

The General Secretariat of the Council has examined your request on the basis of Regulation (EC) No 1049/2001 of the European Parliament and of the Council regarding public access to European Parliament, Council and Commission documents (Official Journal L 145, 31.5.2001, p. 43) and the specific provisions concerning public access to Council documents set out in Annex II to the Council's Rules of Procedure (Council Decision No 2009/937/EU, Official Journal L 325, 11.12.2009, p. 35) and has come to the following conclusion:

The requested document contains personal data of the participants of the meeting of the Working Party on Information held on 9 March 2012 which have been compiled for internal administrative purposes. Pursuant to 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, data of this kind may not be published without the consent of the individuals concerned.

The General Secretariat has therefore consulted the participants of the above-mentioned meeting.

You may have access to those parts of the document for which consent was obtained, pursuant to Article 4(6) of the Regulation. However, in accordance with the provisions of Article 4(1)(b) of Regulation No 1049/2001 (protection of the privacy and the integrity of the individual), the General Secretariat is unable to grant you access to those parts of the document which contain data relating to persons whose consent was not obtained.

According to Article 7(2) of the Regulation, you may submit a confirmatory application requesting the Council to reconsider this position, within 15 working days of receiving this reply¹.

Yours sincerely,

For the General Secretariat

Jakob Thomsen

Enclosure

¹ Should you decide to do so, then 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 reply or reply in the negative, then 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 13 April 2012 - 18:54]

Subject: Internal review of access to information request - Working Party Information Participants List

Attn: Secretariat General of the Council of the EU

Your reference: 12/0470-mi/jj

Dear Jakob Thomsen

Thank you for your letter of 20 March 2012.

This is a confirmatory application to the Secretariat of the Council of the EU, which seeks full access to the document in the request I presented on behalf of the organisation Access Info Europe on 13 March 2012 for a list of the participants in the Working Party on Information meeting held on Friday 9 March 2012. A full history of the request and all correspondence is available on the Internet at this address:

http://www.asktheeu.org/request/working_party_information_partic

The requested list is a list of persons attending a meeting of the European Union in their capacity as representatives of Member State governments to discuss a matter which is a legislative matter and part of a legislative process. The list contains data which allows for the identification of the persons who participated in the meeting (including in most cases, their names, functions, emails, and phone numbers).

The sign-in form for the meeting advises that the information is susceptible to being made public under Regulation 1049/2001 and requests government representatives to inform the General Secretariat of the Council if they feel that “the acceptance of such a request might affect your legitimate interests.”

It would seem that up to 5 persons (2 from Austria and 3 from the UK) have objected to the publication of their names. The UK delegation has asserted (in handwriting on the sheet) that the disclosure of their names would “seriously affect their legitimate interests” and note that this assertion is made in accordance with UK law although no further specificities are given about which interests are affected nor which provisions of UK law are being invoked.

Based upon these objections the Council has withheld from Access Info Europe the names of these persons, in compliance with the provisions of Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 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, which require that the consent of the persons must be obtained before processing personal data.

It does not seem that the Council has taken into account Article 5.1.a of Regulation 45/2001 which permits the processing of personal data “for the performance of a task carried out in the public interest on the basis of the Treaties establishing the European Communities or other legal instruments adopted on the basis thereof or in the legitimate exercise of official authority vested in the Community institution or body or in a third party to whom the data are disclosed” and Article 5.1.b which permits processing when it is “necessary for compliance with a legal obligation to which the controller is subject”.

Given that responding to requests for information is a legal obligation of the Council and that the right of access to information a right protected by the EU treaties and Regulation 1049/2001, this legal obligation should have been taken into account when deciding whether or not to release the information. In other words, further consideration should have been given to Article 4.1.b of Regulation 1049/2001 which permits withholding of personal data only where disclosure would “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.”

It is our assertion that the members of the Working Party on Information are acting in their capacity as public officials and therefore not acting in a private capacity. Indeed, the last paragraph of Article 15 of the TFEU requires that “the Council shall ensure publication of the documents relating to the legislative procedures”, a requirement which should also be read in the light of Article 15 paragraph 1 which states that “In order to promote good governance and ensure the participation of civil society, the Union institutions, bodies, offices and agencies shall conduct their work as openly as possible” and Article 15 paragraph 2 which requires that “The European Parliament shall meet in public, as shall the Council when considering and voting on a draft legislative act.” Hence, full information of the process in the Working Parties should be public and disclosure of the names of the participants cannot be construed as undermining the privacy of these individuals, as the data provided is data which relates exclusively to their public function: their names as public officials and work-related contact information.

Furthermore, Article 8 of Regulation 45/2001 permits the transfer of personal data to recipients, other than Community institutions and bodies, if either (a) if the recipient establishes that the data are necessary for the performance of a task carried out in the public interest or subject to the exercise of public authority, or (b) if the recipient establishes the necessity of having the data transferred and if there is no reason to assume that the data subject's legitimate interests might be prejudiced. The refusal of this information prejudices the ability of Access Info Europe to provide views and to participate in legislative decision making, which is contingent upon such openness.

As a non-governmental organisation whose mandate it to promote the right of access to information and public participation in decision making, and which works specifically on the EU access to documents rules, Access Info Europe has a strong interest in knowing about and participating in the decision-making processes around the reform of Regulation 1049 which is one of the main agenda items being considered at the meeting for which we are seeking the participants list.

The possibility to form an opinion about the process of reform of Regulation 1049/2001 and to exercise the right to freedom of expression is hampered by not knowing who attends the meeting, information which would tell what level of government representative is participating, and who the individuals are so that we can assess their competence and stance on this issue.

Furthermore, the denial of this information blocks the right to participate because Access Info Europe is unable to provide the participants with materials containing our expert analysis of the process of the reform of Regulation 1049, materials summarizing the position of the organisation which I direct, Access Info Europe, and that of other organisations which have also expressed an opinion on the reform of Regulation 1049 /2001, a legal text which regulates a fundamental human right.

I request that the Secretariat General of the Council therefore gives due weight to these considerations and accepts that there is a necessity and prevailing interest in full access to the requested document.

I confirm that I am happy for my confirmatory application, my name, and any related documents and data pertinent to this request to be made public by the Council of the EU.

Yours sincerely

Helen Darbishire
Executive Director
Access Info Europe
