



**COUNCIL OF  
THE EUROPEAN UNION**

**Brussels, 7 March 2014**

**7103/14**

**INF 49  
API 32**

**NOTE**

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Subject:       Public access to documents  
                  - Confirmatory application No 09/c/01/14

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Delegations will find attached:

- request for access to documents sent to the General Secretariat of the Council on 9 January 2014 and registered on the same day (Annex 1).
- reply from the General Secretariat of the Council dated 30 January 2014 (Annex 2)
- confirmatory application dated 10 February 2014 and registered on the same day (Annex 3).

**[E-mail message sent on 09 January 2014 13:07]**

**From:** Vicky Cann [<mailto:ask+request-1120-90e7278e@asktheeu.org>]

**Sent:** Monday, February 10, 2014 1:51 PM

**To:** SECRETARIAT DGF Access

**Subject:** Internal review of access to information request - Council investigations into Dalligate

Dear European Council,

Please pass this on to the person who conducts Freedom of Information reviews.

I am writing to request an internal review of European Council's handling of my FOI request 'Council investigations into Dalligate'.

I was very surprised to read your reply to my request dated 30 January 2014.

As you may be aware, the 'Dalligate' scandal was a huge media story in 2012 and it ultimately led to the departure of a European commissioner. It is hard to think of a bigger scandal or one more damaging in recent times for the EU institutions and the individuals connected with it.

Previously the European Council has confirmed that Gayle Kimberley, whose name has been intimately linked to the Dalligate scandal and who has been questioned by Maltese police and OLAF about her involvement in this scandal, remains a member of Council staff.

It is therefore legitimate and very much within the public interest to ask for the information from the Council about investigations that you have conducted into this affair. The letter of 30 January asserts that that "the public interest in having access to information about the administrative status of Ms Kimberley (and possible outside activities carried out while working for the Council) does not, on balance, prevail over the interest of Ms Kimberley to protect personal data of that nature as may be contained in documents in her personal file." Yet no evidence is given for this strong assertion and I reject it.

I do not consider that it is appropriate for you to apply a blanket ban to the release of the information requested. I would like to request a list of documents that fall within my request and I would furthermore ask you to reconsider your decision.

A full history of my FOI request and all correspondence is available on the Internet at this address: [http://www.asktheeu.org/en/request/council\\_investigations\\_into\\_dall](http://www.asktheeu.org/en/request/council_investigations_into_dall)

Yours faithfully,

Vicky Cann



**COUNCIL OF  
THE EUROPEAN UNION**

**GENERAL SECRETARIAT**

*Directorate-General F  
Communication  
Transparency*

*- Access to Documents/  
Legislative transparency*

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Brussels, 30 January 2014

**Ms Vicky Cann**

**e-mail:**

**ask+request-1120-90e7278e@  
asktheeu.org**

**Ref. 14/0031-csm/jj**

Dear Ms Cann,

We have registered your request of 9 January 2014. 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<sup>1</sup> (hereafter "Regulation 1049/2001") and specific provisions of the Council's Rules of Procedure<sup>2</sup> and has come to the following conclusion:

Documents held by the GSC belonging to personal files of officials of the Council contain personal data within the meaning of Article 2(a) of Regulation 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>3</sup>. When a request based on Regulation 1049/2001 concerns public access to documents that include personal data, the provisions of Regulation 45/2001 become applicable in their entirety.

In relation to your request, the GSC considers that the public interest in having access to information about the administrative status of Ms Kimberley (and possible outside activities carried out while working for the Council) does not, on balance, prevail over the interest of Ms Kimberley to protect personal data of that nature as may be contained in documents in her personal file. Accordingly, pursuant to Article 4(1)(b) of Regulation 1049/2001 (protection of privacy and the integrity of the individual), the General Secretariat is unable to accede to your request.

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<sup>1</sup> Official Journal L 145, 31.5.2001, p. 43.

<sup>2</sup> Annex II to the Council's Rules of Procedure – Council Decision No 2009/937/EU; Official Journal L 325, 11.12.2009, p. 35.

<sup>3</sup> OJ L 8, 12.1.2001, p. 1.

Statutory remedy notice

Pursuant 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 reply<sup>4</sup>.

Yours sincerely,

For the General Secretariat

Jakob Thomsen

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<sup>4</sup> Confirmatory applications are published in the Council's Register of documents. If you introduce a confirmatory application, your personal data will be published in the documents related to your confirmatory application only if you have given your explicit consent for this. Your reply relating to the publication of your personal data will in no way prejudice your rights under Regulation (EC) No 1049/2001.

**[Confirmatory application - sent by e-mail on 10 February 2014 - 13:51]**

**From:** Vicky Cann [<mailto:ask+request-1120-90e7278e@asktheeu.org>]

**Sent:** Monday, February 10, 2014 1:51 PM

**To:** SECRETARIAT DGF Access

**Subject:** Internal review of access to information request - Council investigations into Dalligate

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