



Council of the  
European Union

Brussels, 5 September 2014

11968/14

INF 257  
API 103

**NOTE**

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From: General Secretariat of the Council  
To: Working Party on Information  
Subject: Public access to documents  
- Confirmatory application No 26/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 11 July 2014 and registered on the same day ([Annex 1](#))
- reply from the General Secretariat of the Council dated 28 August ([Annex 2](#))
- confirmatory application dated 29 August 2014 and registered the same day, including an exchange of emails ([Annex 3](#)).

[E-mail message sent to [access@consilium.europa.eu](mailto:access@consilium.europa.eu) on 11 July 2014 - 2:13pm using the electronic form available in the Register application]

**From:** **DELETED**

**Sent:** Friday, July 11, 2014 2:13 PM

**To:** SECRETARIAT DGF Access

**Subject:** Electronic Request for Access

Title/Gender: Mr - Monsieur

Family Name: **DELETED**

First Name: **DELETED**

E-Mail: **DELETED**

Occupation:

On behalf of:

Address: **DELETED**

Telephone: **DELETED**

Mobile: **DELETED**

Requested document(s): Sir/Madam,

Staff Note 55/2013 of 2 September 2013 states that the GSC signed a service contract with Mercuri Urval.

I would like to have a copy of that contract or a reply to this request, which I am making following the judgment of the Court of Justice of 3 July 2014 (Case C-350/12). In that judgment the Court concludes as follows:

"Indeed, if the institution concerned decides to refuse access to a document which it has been asked to disclose, it must, in principle, first explain how disclosure of that document could specifically and actually undermine the interest protected by the exception — among those provided for in Article 4 of Regulation No 1049/2001 — upon which it is relying.

In addition, the risk of the interest being undermined must be reasonably foreseeable and must not be purely hypothetical (Council v Access Info Europe, EU:C:2013:671, paragraph 31 and the case-law cited)." "Moreover, if the institution applies one of the exceptions provided for in Article 4(2) and (3) of Regulation No 1049/2001, it is for that institution to weigh the particular interest to be protected through non-disclosure of the document concerned against, inter alia, the public interest in the document being made accessible, having regard to the advantages of increased openness, as described in recital 2 to Regulation No 1049/2001, in that it enables citizens to participate more closely in the decision-making process and guarantees that the administration enjoys greater legitimacy and is more effective and more accountable to the citizen in a democratic system (Council v Access Info Europe, EU:C:2013:671, paragraph 32 and the case-law cited)."

(Complimentary close)

**DELETED**



**Council of the European Union**  
General Secretariat

Directorate-General Communication and Document Management  
Directorate Document Management  
Transparency and Access to Documents Unit

E-mail: **DELETED**  
**DELETED**

Brussels, 28 August 2014

**Ref. 14/1267-ws/mjb/mi**

Sir,

We have registered your request of 11 July 2014 for access to the service contract signed by the GSC with Mercuri Urval (see Staff Note 55/2013 of 2 September 2013). We 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> ("the Regulation") and the specific provisions concerning public access to Council documents<sup>2</sup>. On 4 August 2014, the time-limit for replying to your application was extended by 15 working days. Having examined the request, the General Secretariat has come to the following conclusion.

The service contract with Mercuri Urval is a contract which the General Secretariat of the Council signed with Mercuri Urval in order to support management selection boards in their work during a pilot phase. Mercuri Urval was chosen after a thorough examination of the tenders submitted to the General Secretariat of the Council. The contract contains commercial information which, if disclosed, would undermine the protection of Mercuri Urval's interests.

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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 2009/937/EU; Official Journal L 325, 11.12.2009, p. 35.

Accordingly, pursuant to the first indent of Article 4(2) of the Regulation (protection of the commercial interests of a natural or legal person, including intellectual property), the General Secretariat is unable to accede to your request.

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.

### Remedy

Pursuant to Article 7(2) of the Regulation, you may submit a confirmatory application asking the Council to reconsider this position, within 15 working days of receiving this reply<sup>1</sup>.

(Complimentary close)

For the General Secretariat

Jakob THOMSEN

Annex

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<sup>1</sup> Confirmatory applications are published in the register of Council documents. If you submit 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.

[E-mail message sent to [access@consilium.europa.eu](mailto:access@consilium.europa.eu) on 29 August 2014 - 7:58am]

**From:** DELETED

**Sent:** Friday, August 29, 2014 7:58 AM

**To:** SECRETARIAT DGF Access

**Subject:** Ref. 14/1267-ws/mjb/mi

Sir,

Thank you for your message and your note regarding the confirmatory application.

I indicated on 5 August and again on 26 August that, if access should be denied (and in the case of partial access), I would make a confirmatory application.

I reconfirm the confirmatory application made on 5 and 26 August.

(Complimentary close)

DELETED

For reference

"Indeed, if the institution concerned decides to refuse access to a document which it has been asked to disclose, it must, in principle, first explain how disclosure of that document could **specifically and actually undermine** the interest protected by the exception — among those provided for in Article 4 of Regulation No 1049/2001 — upon which it is relying. In addition, the risk of the interest being undermined must be reasonably foreseeable and must not be purely hypothetical (Council v Access Info Europe, EU:C:2013:671, paragraph 31 and the case-law cited)."

"Moreover, if the institution applies one of the exceptions provided for in Article 4(2) and (3) of Regulation No 1049/2001, it is for that institution to weigh the particular interest to be protected through non-disclosure of the document concerned against, inter alia, the public interest in the document being made accessible, having regard to the advantages of increased openness, as described in recital 2 to Regulation No 1049/2001, in that it enables citizens to participate more closely in the decision-making process and guarantees that the administration enjoys greater legitimacy and is more effective and more accountable to the citizen in a democratic system (Council v Access Info Europe, EU:C:2013:671, paragraph 32 and the case-law cited)."

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Message sent on 28 August 2014 - 9:42am

From: "SECRETARIAT DGF Access"

To: **DELETED**

Subject: Ref. 14/1267-ws/mjb/mi

Please find attached a letter from the General Secretariat of the Council concerning your request for access on the basis of Regulation No 1049/2001.

On receipt of this reply, we would be grateful if you could confirm whether you wish to uphold your confirmatory application.

(Complimentary close)

General Secretariat of the Council of the European Union  
Transparency and Access to Documents Unit

**From:** **DELETED**

**Sent:** Tuesday, August 26, 2014 10:06 PM

**To:** SECRETARIAT DGF Access

**Subject:** Ref. 14/1267-ws

Sir,

Following my request for access to the Mercuri Urval contract (and of course any amendments and annexes), you wrote to me as follows: "The necessary consultations concerning this document are still in progress. Therefore, the time-limit for the General Secretariat to reply to your application has to be extended by 15 working days (26 August 2014), in accordance with Article 7(3) of Regulation (EC) No 1049/2001 of the European Parliament and of the Council regarding public access to European Parliament, Council and Commission documents."

According to that article, "In exceptional cases, for example in the event of an application relating to a very long document or to a very large number of documents, the time-limit provided for in paragraph 1 may be extended by 15 working days, provided that the applicant is notified in advance and that detailed reasons are given".

In consideration of the time-limit (provided for in the circumstances set out above), I asked you to note that, if access should be denied, I would make a confirmatory application.

I am resubmitting this confirmatory application, bearing in mind that the new time-limit which you refer to today is not based on an actual article of the Regulation.

Thank you in advance.

(Complimentary close)

**DELETED**

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Message sent on 26 August 2014 – 8:01 AM

From: SECRETARIAT DGF Access

To: **DELETED**

Subject: Ref. 14/1267-ws

Sir,

We have registered your request of 11 July 2014 for access to the service contract signed by the GSC with Mercuri Urval (see Staff Note 55/2013 of 2 September 2013). Thank you for your interest.

On 4 August 2014, the time-limit for replying to your application was extended by 15 working days.

However, we regret to inform you that the necessary consultations concerning your request are still in progress. We will do our best to inform you of a decision as soon as possible.

(Complimentary close)

*Transparency and Access to Documents*



**Council of the European Union**

**General Secretariat**

Communication and Document Management

Document Management

Transparency and Access to Documents

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