



Council of the
European Union

140848/EU XXVII. GP
Eingelangt am 15/05/23

Brussels, 15 May 2023
(OR. en)

9402/23

INF 106
API 76

NOTE

From:	General Secretariat of the Council
To:	Delegations
Subject:	Public access to documents - Confirmatory application No 12/c/01/23

Delegations will find attached:

- the request for access to documents sent to the General Secretariat of the Council on 31 March 2023 and registered on 3 April 2023 (Annex 1);
- the reply from the General Secretariat of the Council dated 24 April 2023 (Annex 2);
- the confirmatory application dated 13 May 2023 and registered on 15 May 2023 (Annex 3).

[E-mail message sent to **DELETED** on Friday 31 March 2023, 18:48]

From: **DELETED**

Sent: vendredi 31 mars 2023 18:48

To: **DELETED**

Subject: RE: CONS 290-INT 2022 AD5 - final results

Dear Ms Serlet,

Thank you very much for your detailed answer.

I would now wish to request access to all minutes of the selection board taken during my interview within the time limits laid down in Article 7(1) of Regulation (EC) No 1049/2001.

In particular, I wish to obtain access to i) the minutes/notes taken by the members of the selection panel, and ii) the minutes recorded in electronic format.

I would like to have access to those documents by receiving an electronic copy. In the event that it is not possible to provide a copy of the handwritten minutes taken by the members of the selection panel, I would like to consult them on the spot.

Yours sincerely,

DELETED



Council of the European Union

General Secretariat

Directorate-General Communication and Information - COMM

Directorate Information and Outreach

Information Services Unit / Transparency

Head of Unit

Brussels, 24 April 2023

DELETED

Email: **DELETED**

Ref. 23/1103-ws/nb

Request made on: 31.03.2023

Registered on: 03.04.2023

Dear **DELETED**,

Thank you for your request for access to documents of the Council of the European Union.¹

You requested “access to all minutes of the selection board taken during [your] interview”, being understood that this includes “minutes/notes taken by the members of the selection panel” and “minutes recorded in electronic format”.

I should clarify that when the Selection Board drafts “minutes”, these are formal documents that never refer to the assessment of individual candidates. In any case, no such minutes exist concerning the day of your exam.

Selection panel members do, however, fill in individual “evaluation grids” for each candidate. Irrespective of their digital or paper format, they are kept by the General Secretariat of the Council in a secure place with strictly limited access.

¹ The General Secretariat of the Council has examined your request on the basis of the applicable rules: 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) 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, OJ L 325, 11.12.2009, p. 35).

These evaluation grids are indeed covered by the secrecy of proceedings of the Selection Board mandated by the Staff Regulations.²

Thereby the legislator itself has provided for such secrecy and it is to be presumed that release would seriously undermine the institution's decision-making process, without there being an overriding public interest in release in this regard.³

While there thus is such an evaluation grid covered by your request, the General Secretariat therefore has to refuse access to it.

We have also looked into the possibility of releasing parts of the document.⁴ However, as the exception to the right of access applies to its entire content, the General Secretariat is also unable to give partial access to it.

No other documents have been identified as covered by your request.

Pursuant to Article 7(2) of Regulation (EC) No 1049/2001, you may ask the Council to review this decision within 15 working days of receiving this reply. Should you see the need for such a review, you are invited to indicate the reasons thereof.

Yours sincerely,

Fernando FLORINDO

² Annex III Article 6 of the Staff Regulations (Regulation No 31 (EEC), 11 (EAEC), laying down the Staff Regulations of Officials and the Conditions of Employment of Other Servants of the European Economic Community and the European Atomic Energy Community, OJ P 045, 14.06.1962, p. 1385, as amended).

³ Article 4(3) of Regulation (EC) No 1049/2001. Concerning the presumption, see judgment of the General Court of 1 December 2021 in case T-265/20, paragraph 103.

⁴ Article 4(6) of Regulation (EC) No 1049/2001.

[E-mail message sent to access@consilium.europa.eu on Saturday, 13 May 2023, 13:33]

From: **DELETED**

Sent: 13 May 2023 13:33

To: TRANSPARENCY Access to documents (COMM) <Access@consilium.europa.eu>

Subject: RE: Ref. 23/1103-ws/nb

Dear Mr Florindo,

Thank you for your response to my request of 31.03.2023. I hereby apply for the review of the decision (Ref. 23/1103-ws/nb) setting out below the reasons for my request.

Refusal to my request was justified with the statement that “[...] no [...] minutes exist concerning the day of [my] exam” and that panel members only “fill[ed] in individual ‘evaluation grids’ for each candidate”. I should point out that there is a factual error in this response. The fact is that one member of the selection board was charged with recording candidates’ answers throughout the interview. That member had no active role in the process, i.e. posed no question, but solely recorded in writing candidates’ responses. This is a fact acknowledged by all colleagues who took part in the competition. Releasing these notes, which are not covered by the secrecy of proceedings, would not undermine the institution’s decision-making process.

Secondly, according to your response, you “have also looked into the possibility of releasing parts of the document. However, as the exception to the right of access applies to its entire content, the General Secretariat is also unable to give partial access to it.” It is clear from the wording that the examination of the possibility of partial access to the requested document was not carried out in the light of the principle of proportionality. If the aim pursued by the Council in refusing access to the requested document is the protection of institution’s decision-making process, this could be achieved by merely sticking out the passages which might harm this process. By refusing access to the entire content, it is impossible for me to confirm that my grades correspond indeed to the answers actually given by me during the exam.

Yours sincerely,

DELETED
