



Council of the
European Union

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Eingelangt am 31/07/23

Brussels, 31 July 2023
(OR. en)

12262/23

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API 131

NOTE

From:	General Secretariat of the Council
To:	Delegations
Subject:	Public access to documents - Confirmatory application No 26/c/03/23

Delegations will find attached:

- the request for access to documents sent to the General Secretariat of the Council on 12 June 2023 and registered on the same day (Annex 1);
- the reply from the General Secretariat of the Council dated 25 July 2023 (Annex 2);
- the confirmatory application dated 28 July 2023 and registered on the same day (Annex 3).

[E-mail message sent to access@consilium.europa.eu on Monday 12 June 2023, 12:59]

From: **DELETED**

Sent: 12 June 2023 12:59

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

Subject: access to documents request - Guidelines concerning the use of modern communication tools such as text and instant messages

Hello,

under Regulation 1049/2001, I would like to request all documents held regarding a proposal by the Commission for new common guidelines concerning the use of modern communication tools such as text and instant messages. The Commission has sent out an initial note, registered as Ares(2022)6527884, as well as a scoping note, Ares(2023)1595460. I would like to request these documents, the reply or replies sent by your institution, as well as any other document held by your institution on this matter.

Yours faithfully,

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, 25 July 2023

DELETED

Email: **DELETED**

Ref. 23/1777-ws/ns

Request made on: 12.06.2023

Deadline extension: 03.07.2023

Dear **DELETED**,

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

The General Secretariat of the Council (GSC) has identified the following documents in its possession as covered by your request:²

1. Letter from the Director-General for General and Institutional Policy of the GSC to the Deputy Secretary-General of the European Commission of 17 October 2022
2. Letter from the Secretary-General of the GSC to the Ombudsman of 23 November 2022
3. Letter from the Secretary-General of the GSC to the Ombudsman of 15 November 2021
4. GSC (SMART) Internal Note 21/0021 of 28 January 2021 on the use of commercial messaging apps
5. Note from the Commission signed on 17 November 2022 – invitation to a meeting of services
6. Note from the Commission signed on 21 September 2022 (Ares(2022)6527884)
7. Summary record of the meeting on 9 December 2022 of 21 December 2022 (and a cover note)

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).

² This relates to the situation at the date of submission of your request (12 June 2023).

At the date of submission of your request, the Council did not hold document Ares(2023)1595460 (scoping note) mentioned in your request.

You will find enclosed document 4 mentioned above, as well as documents 1, 2 and 3, only redacted for protected personal data (signatures). This document contains personal data about identified persons. Indeed, EU data protection rules³ provide that when the personal data collected is to be used for a different purpose, including disclosure to the public, a balance needs to be established between the public interest in having access to such data and the legitimate right of individuals to protect their personal data.⁴ The GSC has concluded that on balance disclosure of the personal data concerned would undermine the protection of privacy and the integrity of the identified individuals. Therefore, the General Secretariat has to refuse access to this data.⁵

Concerning **documents 5, 6 and 7** mentioned above, the discussions around this issue are still not closed – both interinstitutionally and internally – and release of the documents to the public of the information contained in them would seriously affect that negotiating process.

Disclosure of the documents at this stage would therefore seriously undermine the decision making-process of the institution.

Having examined the context in which the documents were drafted and the current state of play on this matter, on balance the General Secretariat could not identify any evidence suggesting an overriding public interest in their disclosure.

As a consequence, the General Secretariat has to refuse access to these documents at this stage.⁶

We have also looked into the possibility of releasing parts of the documents.⁷ However, as the information contained in each of the documents forms an inseparable whole, the General Secretariat is also unable to give partial access to them.

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

Enclosures

³ Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data (OJ L 295 21.11.2018, p. 39).

⁴ Article 9 of Regulation (EU) No 2018/1725.

⁵ Article 4(1)(b) of Regulation (EC) No 1049/2001.

⁶ Article 4(3), first subparagraph, of Regulation (EC) No 1049/2001.

⁷ Article 4(6) of Regulation (EC) No 1049/2001.

[E-mail message sent to access@consilium.europa.eu on Friday, 28 July 2023, 13:06]

From: **DELETED**

Sent: 28 July 2023 13:06

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

Subject: Internal review of access to documents request - Guidelines concerning the use of modern communication tools such as text and instant messages

Dear Council of the European Union,

Please pass this on to the person who reviews confirmatory applications.

I am filing the following confirmatory application with regards to my access to documents request 'Guidelines concerning the use of modern communication tools such as text and instant messages'.

I was denied access to several documents with reference to the ongoing decision-making process. However, I argue that the reply did not sufficiently substantiate why disclosure would undermine decision-making in a serious and non-hypothetical manner. Furthermore, I argue an overriding public interest in disclosure. The documents in question concern the institutional framework for access to documents, which is recognised as fundamental right under the Charter. Failure to give public access to these documents risks depriving the public of an opportunity to participate in the debate about the exercise of this fundamental right. I therefore argue that full disclosure be considered. As an additional note, it would be ironic and amusing to the public if documents concerning a matter of transparency, of all things, should remain a secret.

Yours faithfully,

DELETED
