



Council of the
European Union

**Brussels, 5 September 2022
(OR. en)**

12090/22

**INF 143
API 78**

NOTE

From:	General Secretariat of the Council
To:	Delegations
Subject:	Public access to documents - Confirmatory application No 15/c/01/22

Delegations will find attached:

- the request for access to documents sent to the General Secretariat of the Council on 15 July 2022 and registered on the same day (Annex 1);
- the reply from the General Secretariat of the Council dated 26 August 2022 (Annex 2);
- the confirmatory application dated 30 August 2022 and registered on 31 August 2022 (Annex 3).

[E-mail message sent to access@consilium.europa.eu on Friday 15 July, 2022 10:31]

From: **DELETED**

Sent: vendredi 15 juillet 2022 10:31

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

Subject: Access to documents: CCTV

To whom it may concern:

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 number of CCTV cameras in operation in your buildings presently and the number of CCTV Cameras procured since 2017;;
- The make and model of these CCTV cameras. Aggregate is sufficient (e.g., Company A model 1: 10 cameras, Company B model 2: 5 cameras ...);
- Datasheets provided by the vendor/manufacture of these CCTV cameras;
- Invoices, contracts, tenders, service agreements, purchases, orders, procurement documents, offers etc. concerning products and services related to CCTV cameras;

Please note this request does not seek the location of the cameras or to which buildings and where they are affixed. I believe such this may allay any/all security concerns.

I prefer to receive this information electronically.

Kind regards,

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, 26 August 2022

DELETED

Email: **DELETED**

Ref. 22/1598-mj/ns

Request made on: 15.07.2022

Deadline extension: 08.08.2022

Dear **DELETED**,

Thank you for your request for access to “documents which contain the following information:

- *The number of CCTV cameras in operation in your buildings presently and the number of CCTV Cameras procured since 2017;;*
- *The make and model of these CCTV cameras. Aggregate is sufficient (e.g., Company A model 1: 10 cameras, Company B model 2: 5 cameras ...);*
- *Datasheets provided by the vendor/manufacture of these CCTV cameras;*
- *Invoices, contracts, tenders, service agreements, purchases, orders, procurement documents, offers etc. concerning products and services related to CCTV cameras”.*¹

We would like to point out that CCTV cameras constitute a key component of the whole security system put in place in the General Secretariat of the Council (GSC). Knowing the number, make/model and performance of the cameras is information that can help a malicious person to design plans to penetrate our perimeter, to break in or to commit sabotage.

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).

Security systems, in general, are not impenetrable. Disclosure to the public of technical elements would provide them with the possibility of finding weaknesses in the system and would undermine any investment and efforts the GSC does in this area. The potential malicious actions following such disclosure of information could happen in the fields of crime, public order, terrorism, espionage and cyber-attacks.

Any information about the number, brand and technical specifications of CCTV cameras would thus allow the identification of any possible vulnerabilities in our systems and put at risk our security devices.

Disclosure of the requested information would therefore undermine the protection of the public interest as regards public security. As a consequence, the General Secretariat has to refuse access to it.²

Concerning your request for access to any invoices, contracts, tenders, service agreements, purchases, orders, procurement documents and offers, since these documents also contain technical specifications the disclosure of which could be harmful for the GSC's security, the General Secretariat has to refuse access to these documents on the same grounds (protection of the public interest as regards public security).³

In addition, disclosure of commercial information regarding pricing and invoicing contained in these documents would undermine the commercial interests of the current contractor. As a consequence, access to these documents has also to be denied on the basis of the protection of commercial interest, pursuant to Article 4(2), first indent of Regulation (EC) No 1049/2001 which provides that *"The institutions shall refuse access to a document where disclosure would undermine the protection of commercial interests of a natural or legal person, including intellectual property"*.

We have also looked into the possibility of releasing parts of the documents.⁴ However, as the exceptions to the right of access apply to their entire content, the General Secretariat is unable to give partial access.

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 Article 4(1)(a), first indent, of Regulation (EC) No 1049/2001.

³ Article 4(1)(a), first indent, of Regulation (EC) No 1049/2001.

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

[E-mail message sent to access@consilium.europa.eu on Tuesday, 30 August, 2022 17:07]

From: **DELETED**

Sent: mardi 30 Août 2022 17:07

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

Subject: Re: Ref. 22/1598-mj/ns

To whom it may concern:

I would like to file a confirmatory application for my request.

Pursuant to settled case-law, the institution has a duty to identify and list the documents falling under the scope of the request, usually by titles, dates, authors and, if applicable, registration references.

Please list the documents in your possession and state the reason for refusal for each document. A summary refusal is not in line with the legal requirements of Regulation 1049/2001.

As regards the refusal to release documents under Article 4(1)(a), you state that the identification of particular equipment would allow exploitation of possible vulnerabilities in Council systems and put security devices at risk. However, I would like to remind the Council that the General Court ruled in the *Evropaïki Dynamiki* case (T-167/10) in regard to a matter of public security that the Commission had to show how disclosure "could specifically and actually undermine that objective in a way that is reasonably foreseeable and not purely hypothetical". In the *Steinberg* case (T-17/10), the General Court established that there was a concrete risk of disclosure as the documents might be used to exert pressure on the relevant persons, even to make threats to their physical or moral integrity. I would like to contend that in the present case, the Council must examine whether this high standard of the exception is met, namely that disclosure would result into an actual threat. General considerations you give in your reply do not, according to the case law, suffice to deny access.

As regards the refusal to release documents under Article 4(2), you fail to list specific documents and give a reasoned refusal. However, according to case law the General Court requires that the institution undergoes an individual, specific examination to provide a judgment on a case-by-case basis. On the substance of the refusal, the European Ombudsman has repeatedly pointed out that not all information about a company is commercially sensitive, so a test should be performed each time to conclude whether the exception applies (European Ombudsman Case: 1701/2011/ANA 24 June 2013; Case: 676/2008/RT 07 July 2010). Disclosure must be granted if it does not undermine the commercial interest of the company, and refusal must be reasoned substantially and sufficiently.

The institution is not bound by opposition to disclosure by the economic operator. In this light, I would like to ask the Council to re-evaluate my request and grant widest possible disclosure.

DELETED
