



Council of the  
European Union

**Brussels, 27 April 2023**  
**(OR. en)**

**8788/23**

**INF 93**  
**API 66**

**NOTE**

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From:	General Secretariat of the Council
To:	Delegations
Subject:	Public access to documents - Confirmatory application No 10/c/01/23

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Delegations will find attached:

- the request for access to documents sent to the General Secretariat of the Council on 13 March 2023 and registered on the same day (Annex 1);
- the replies from the General Secretariat of the Council dated 3 and 5 April 2023 (Annex 2);
- the confirmatory application dated 26 April 2023 and registered on the same day (Annex 3).

[E-mail message sent to [access@consilium.europa.eu](mailto:access@consilium.europa.eu) on Monday, 13 March 2023 at 14:20 using the electronic form available in the Register application]

**From:** **DELETED**

**Sent:** lundi 13 mars 2023 14:20

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

**Subject:** Consilium - Electronic Request for Access to documents [ENGLISH]

Ms

**Family name**

**DELETED**

**First name**

**DELETED**

**E-mail**

**DELETED**

**Occupation**

Industry and commerce

**On behalf of**

TikTok Technology Ltd (Ireland)

**Full postal address**

10 Earlsfort Terrace

Dublin

Ireland

**Telephone**

**Mobile telephone**

**DELETED**

**Fax**

**Requested document(s)**

This request relates to the decision of the Council of the EU (“the Council”) to implement measures “similar to those taken by the Commission” to suspend the use of the TikTok application on work devices and personal devices with work-related applications installed, as reported in an article by Politico on 23 February 2023, available here:

<https://www.politico.eu/article/european-commission-to-staff-dont-use-tiktok/>

We request access to four sets of documents:

A. The Council’s decision to implement measures “similar to those taken by the Commission” to suspend the use of the TikTok application on work devices and personal devices with work-related applications installed, as reported in an article by Politico on 23 February 2023, available here:

<https://www.politico.eu/article/european-commission-to-staff-dont-use-tiktok/>

Please provide a copy of the Council’s decision to implement measures “similar to those taken by the Commission” to suspend the use of the TikTok application on work devices and personal devices with work-related applications installed, as reported in the Politico article referenced above. We understand that this suspension may have taken the form of a decision by the Secretariat, but may also (or alternatively) comprise other documents.

B. Documents relating to the Council’s decision to implement measures “similar to those taken by the Commission” to suspend the use of the TikTok application on work devices and personal devices with work-related applications installed.

Please provide all documents relating to, supporting, justifying, and/or otherwise considered or taken into account as part of the process culminating in, the Council's decision to implement measures “similar to those taken by the Commission” to suspend the use of the TikTok application on work devices and personal devices with work-related applications installed, including, but not limited to, memoranda, advice, minutes, emails, notes, drafts, reports, analyses, and proposals.

These documents may relate to, among other topics, alleged cybersecurity or data protection risks of using the TikTok application on work devices and personal devices with work-related applications installed. Please also provide all documents addressing the number of work devices affected or potentially affected by the decision, the total number of devices affected or potentially affected by the decision, and the number of Council personnel affected or potentially affected by the decision.

C. Documents containing policies and procedures relevant to work devices and personal devices with work-related applications installed.

Please provide copies of all of the Council's policies, guidance and procedures that apply to work devices and personal devices with work-related applications installed. This includes, but should not be limited to, policies, guidance and procedures relating to the permitted uses of such devices and the types of applications permitted to be downloaded and/or used on such devices, and relating to the security of these devices and/or of the personal data stored or processed on these devices.

D. Documents relating to other applications that the Council has considered suspending the use of on work devices and personal devices with work-related applications installed.

Please provide all documents that relate to consideration given to banning or suspending the use of any other applications on work devices and personal devices with work-related applications installed.

In relation to each application mentioned in these documents, please provide:

1. a copy of any decision on whether or not to ban or suspend the use of the application on such devices; and

2. all documents relating to, supporting, justifying, and/or otherwise considered or taken into account as part of the process culminating in, the decisions falling within the scope of request D(1) above, including, but not limited to, memoranda, advice, minutes, emails, notes, drafts, reports, analyses, and proposals. These documents may relate to, among other topics, alleged cybersecurity or data protection risks of using the relevant application on work devices and personal devices with work-related applications installed.



**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, 3 April 2023

**DELETED**

Email: **DELETED**

Ref. 23/0754-ws/vk

Request made on: 13.03.2023

Dear **DELETED**,

Thank you for your request for access to documents of the Council of the European Union.<sup>1</sup>

Please find enclosed the email to staff announcing the decision to suspend use of the TikTok app.

Concerning the remainder of the request, the General Secretariat is still conducting consultations necessary to the examination of the documents concerned. Therefore, we have to extend the deadline to reply to your request by 15 working days, until 27 April 2023.<sup>2</sup>

Yours sincerely,

Fernando FLORINDO

Enclosure

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<sup>1</sup> 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).

<sup>2</sup> Article 7(3) of Regulation (EC) No 1049/2001.



**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, 5 April 2023

**DELETED**

Email: **DELETED**

Ref. 23/0754-ADD-ws/ns

Request made on: 13.03.2023

First reply sent on: 03.04.2023

Dear **DELETED**,

I refer to my letter of 3 April 2023, with which we sent you a first document (email from the Helpline to staff on the *Removal of TikTok app*) and extended the deadline concerning the remaining documents. The General Secretariat of the Council (GSC) has now finalised the examination of your request.<sup>3</sup>

As regards points A and B of your request which refer to “the Council’s decision to implement measures ‘similar to those taken by the Commission’ to suspend the use of the TikTok”, please allow me to clarify that there is no such Council decision. There rather is an internal instruction from the Secretary-General in this regard. We therefore understand your request as referring to this internal instruction.

In relation to these points, the General Secretariat of the Council (GSC) has identified the following further documents:

- 1) an email from Commission services of 23 February 2023 informing about the Commission’s action related to TikTok (and containing a copy of the message informing its staff about this)
- 2) an internal GSC email of 23 February 2023 containing *lines to take* on the issue

<sup>3</sup> 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).

3) a note (ref. 23/0052) of 23 February 2023 from the GSC's Digital Services concerning the security of the Council and the GSC, classified as RESTREINT UE/EU RESTRICTED.<sup>4</sup>

Please note that your email of 24 February 2023 (with history) related to a meeting request is also covered by your request. As you are the author of the document yourself, we nevertheless do not include it in the present reply.

In relation to point C of your request, the following documents have been identified:

4) The IOLAN<sup>5</sup> code of practice from December 2014

5) The GSC IT device policy from May 2019

6) The user agreement for corporate mobile IT services from February 2023

7) The user agreement for BYOD devices from February 2023

8) Personal data record 379R00 and the accompanying privacy statement on mobile devices and mobile subscriptions

Finally, in relation to point D of your request, please note that there are no other applications that the Council has until now considered suspending the use of; consequently there are no documents related to this point.

You will find attached the email from Commission services of 23 February 2023 (**document 1 above**), the GSC IT device policy from May 2019 (**document 5 above**) and personal data record 379R00 (**document 8 above**).

Concerning the internal GSC email of 23 February 2023 (**document 2 above**), you will find it enclosed, only redacted for personal data.<sup>6</sup> Indeed, taking into account all the principles concerned and making up the balance between the public interest in having access to such data and the legitimate right of individuals to protect their personal data, the GSC has come to the conclusion that personal data other than the names of senior managers has to be withheld.<sup>7</sup>

The note from the GSC's Digital Services (**document 3 above**) contains an assessment of the risks to the Council's IT infrastructure due to the presence of the TikTok app on various devices.

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<sup>4</sup> Which means that the unauthorised disclosure of its contents could be disadvantageous to the interests of the European Union or of one or more of its Member States – Council Decision of 23 September 2013 on the security rules for protecting EU classified information (2013/488/EU), OJ L 274, 15.10.2013, p. 1.

<sup>5</sup> The GSC's "Inter-building Office Local Area Network".

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

<sup>7</sup> Article 4(1)(b) of Regulation (EC) No 1049/2001 and Article 9 of 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).



The IOLAN code of practice (**document 4 above**) is an internal document from December 2014 which sets out the principal duties and responsibilities of IOLAN users.

The user agreement for corporate mobile IT services (**document 6 above**) is an internal document from February 2023 that defines accepted practices, responsibilities and conditions for the secure use of mobile devices provided by the GSC.

The user agreement for BYOD devices (**document 7 above**) is an internal document from February 2023 that defines accepted practices, responsibilities and conditions for the secure use of personally owned mobile devices on which the user receives mobile IT services made available by the GSC.

These four documents contain internal information on the Council's IT infrastructure. Their release would make this infrastructure more vulnerable to cyberattacks. Their disclosure would therefore undermine the protection of the public interest as regards public security. As a consequence, the GSC has to refuse access to these documents.<sup>8</sup> We have also looked into the possibility of releasing parts of them.<sup>9</sup> However, as the information contained in each of the documents forms an inseparable whole, the GSC 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

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<sup>8</sup> Article 4(1)(a), first indent, of Regulation (EC) No 1049/2001.

<sup>9</sup> Article 4(6) of Regulation (EC) No 1049/2001.

[E-mail message sent to [access@consilium.europa.eu](mailto:access@consilium.europa.eu) on Wednesday, 26 April 2023 15:27]

**From:** **DELETED**

**Sent:** mercredi 26 avril 2023 15:27

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

**DELETED**

**Subject:** Ref. 23/0754-ADD-ws/ns - TikTok reply letter (26 April)

Dear Sir/Madam,

Please find attached a reply from TikTok, to the letter from the General Secretariat.

Grateful if you would kindly confirm receipt of our letter.

Kind regards

**DELETED**



Council of the European Union  
General Secretariat  
Directorate-General Communication and Information - COMM  
Directorate Information and Outreach  
Information Services Unit / Transparency  
Rue de la Loi/Wetstraat 175  
B-1048 Brussels  
Belgium  
access@consilium.europa.eu

Date: 26 April 2023

**RE: Confirmatory application concerning request for access to documents, Ref. 23/0754-ADD-ws/ns and 23/0754-ws/vk**

Dear Sir/Madam:

We refer to the above matter, and to your letters of 3 and 5 April 2023.

This confirmatory application relates to the decision ("**Decision**") of the Council of the EU ("**Council**") of 24 February 2023, stating that *"the Secretary General has decided to suspend use of the TikTok app on devices that have access to GSC corporate services"*; notifying staff that *"SMART will remove the app from any users that have it on their corporate devices (smartphones and tablets) and will block web access to TikTok through our corporate network (IOLAN and WIOLAN)"*; requiring *"all users who receive GSC corporate services through our Bring Your Own Device (BYOD) programme to remove the TikTok app from their smartphones"*; and stating that *"[s]taff should bring their devices into compliance with this decision at their earlier convenience and no later than 14 March"*.

On 13 March 2023, TikTok filed a request, pursuant to Regulation (EC) 1049/2001 ("**Regulation**"), for the Council to disclose all documents relating to this decision ("**Request**"), in particular:

A. *"The Council's decision to implement measures "similar to those taken by the Commission" to suspend the use of the TikTok application on work devices and personal devices with*

work-related applications installed, as reported in an article by Politico on 23 February 2023, available here: <https://www.politico.eu/article/european-commission-to-staff-dont-use-tiktok/>

*Please provide a copy of the Council's decision to implement measures "similar to those taken by the Commission" to suspend the use of the TikTok application on work devices and personal devices with work-related applications installed, as reported in the Politico article referenced above. We understand that this suspension may have taken the form of a decision by the Secretariat, but may also (or alternatively) comprise other documents.*

*B. Documents relating to the Council's decision to implement measures "similar to those taken by the Commission" to suspend the use of the TikTok application on work devices and personal devices with work-related applications installed*

*Please provide all documents relating to, supporting, justifying, and/or otherwise considered or taken into account as part of the process culminating in, the Council's decision to implement measures "similar to those taken by the Commission" to suspend the use of the TikTok application on work devices and personal devices with work-related applications installed, including, but not limited to, memoranda, advice, minutes, emails, notes, drafts, reports, analyses, and proposals. These documents may relate to, among other topics, alleged cybersecurity or data protection risks of using the TikTok application on work devices and personal devices with work-related applications installed. Please also provide all documents addressing the number of work devices affected or potentially affected by the decision, the total number of devices affected or potentially affected by the decision, and the number of Council personnel affected or potentially affected by the decision.*

*C. Documents containing policies and procedures relevant to work devices and personal devices with work-related applications installed*

*Please provide copies of all of the Council's policies, guidance and procedures that apply to work devices and personal devices with work-related applications installed. This includes, but should not be limited to, policies, guidance and procedures relating to the permitted uses of such devices and the types of applications permitted to be downloaded and/or used on such devices, and relating to the security of these devices and/or of the personal data stored or processed on these devices.*

*D. Documents relating to other applications that the Council has considered suspending the use of on work devices and personal devices with work-related applications installed*

*Please provide all documents that relate to consideration given to banning or suspending the use of any other applications on work devices and personal devices with work-related applications installed.*

*In relation to each application mentioned in these documents, please provide:*

*(1) a copy of any decision on whether or not to ban or suspend the use of the application on*

such devices; and

*(2) all documents relating to, supporting, justifying, and/or otherwise considered or taken into account as part of the process culminating in, the decisions falling within the scope of request D(1) above, including, but not limited to, memoranda, advice, minutes, emails, notes, drafts, reports, analyses, and proposals. These documents may relate to, among other topics, alleged cybersecurity or data protection risks of using the relevant application on work devices and personal devices with work-related applications installed."*

By letter dated 3 April 2023 (Ref. 23/0754-ws/vk), the General Secretariat of the Council ("**General Secretariat**") disclosed the 24 February 2023 email quoted above. By letter dated 5 April 2023 (Ref. 23/0754-ADD-ws/ns), the General Secretariat disclosed four additional documents and identified, but refused to disclose, four further documents (documents 3, 4, 6 and 7), even in redacted form, stating:

*"These four documents contain internal information on the Council's IT infrastructure. Their release would make this infrastructure more vulnerable to cyberattacks. Their disclosure would therefore undermine the protection of the public interest as regards public security. As a consequence, the GSC has to refuse access to these documents. We have also looked into the possibility of releasing parts of them. However, as the information contained in each of the documents forms an inseparable whole, the GSC is also unable to give partial access to them" (p. 3).*

For the reasons set out below, this confirmatory application respectfully requests the General Secretariat to reconsider the following aspects of its responses to the Request in accordance with Article 7(2) of the Regulation:

1. The failure to identify or disclose all documents responsive to the Request or, in the alternative, the failure to confirm that the responses did in fact identify or disclose all responsive documents;
2. The failure to acknowledge or address certain specific requests set out in the Request;
3. The refusal to disclose four documents on public security grounds; and
4. The failure to grant partial access to documents responsive to the Request.

#### **1. Failure to identify or disclose all responsive documents**

The Regulation requires the EU institutions, including the Council, "**to ensure the widest possible access to documents**" (Art. 1(1), emphasis added). This obligation applies to "**all documents held by an institution, that is to say, documents drawn up or received by it and in its possession**" (Art. 2(3), emphasis added). "**In principle, all documents of the institutions should be accessible to the public**" (Recital 11, emphasis added).



In response to the Request, the General Secretariat has disclosed or identified nine documents in total. At no point, however, has the General Secretariat stated or suggested that these documents comprise all documents in the Council's possession that are responsive to the Request.

In light of the Council's obligation to disclose (or identify) "*all documents . . . in its possession*" (Art. 2(3)), we respectfully request the General Secretariat to reconsider its prior responses and to disclose (or identify) "*all documents*" that are responsive to the Request.

To the extent the General Secretariat is of the view that it has in fact disclosed or identified all documents in the Council's possession that are responsive to the Request, we ask the General Secretariat to confirm this point in writing, as required both by the Regulation (see Art. 7(1)) and as a general principle of EU law (see Art. 296 of the TFEU and Art. 41(1) of the Charter of Fundamental Rights of the European Union).

## **2. Failure to acknowledge or address certain requests for documents**

Article 7(2) of the Regulation states that EU institutions, in response to a request for documents, "*shall either grant access to the document requested . . . or, in a written reply, **state the reason for the total or partial refusal***" (emphasis added). The Court of Justice of the EU ("**CJEU**") has held that this statement of reasons must provide individuals with "*sufficient information to make it possible to determine whether the decision is well founded or whether it is vitiated by an error which may permit its validity to be contested and, secondly, to enable the Courts of the European Union to review the lawfulness of the decision.*"

The General Secretariat has not disclosed (or identified) any documents responsive to certain requests set out in the Request. It has not provided any reason for this failure to disclose, nor has it stated that no responsive documents exist. In particular, the responses from the General Secretariat did not address TikTok's request for access to: (i) all documents "*relating to, . . . considered or taken into account as part of the process culminating in*" the Decision; and (ii) all documents "*addressing the number of work devices affected or potentially affected by the decision, the total number of [such] devices . . . and the number of Council personnel affected or potentially affected by the decision.*"

We therefore respectfully request that the General Secretariat discloses all documents responsive to the items identified at (i) and (ii) above or, in the alternative, confirms that there are no documents responsive to these parts of the Request (as the General Secretariat did in its letter of 5 April in relation to Point D of the Request).

## **3. Refusal to disclose documents on public security grounds**

The General Secretariat's letter of 5 April identified, but refused to disclose, four documents responsive to the Request:

- A note (ref. 23/0052) of 23 February 2023 from the GSC's Digital Services purporting to contain an assessment of risks relating to the TikTok app on various devices (document 3);
- The IOLAN code of practice from December 2014 (document 4);
- The user agreement for corporate mobile IT services from February 2023 (document 6); and
- The user agreement for BYOD devices from February 2023 (document 7).

The 5 April letter asserts that disclosure of these documents would “*undermine the protection of the public interest as regards public security*” (citing Article 4(1)(a) of the Regulation), and justifies its reliance on this exception on the ground that disclosure “*would make [the Council's IT infrastructure] more vulnerable to cyberattacks*” (p. 3).

While the Regulation affords EU institutions discretion in applying the public interest exception in Article 4(1), the CJEU has held that these exceptions “*must be interpreted and applied strictly*.” Also, an exception applies “*only if the institution has previously assessed . . . whether access to the document would specifically and actually undermine the protected interest*.” Further, “*the risk of the public interest being undermined must . . . be reasonably foreseeable and not purely hypothetical*.”

The Council has not provided any specific ground for why disclosure of these four identified documents “*would make [the Council's IT] infrastructure more vulnerable to cyberattacks*.” Equally, it has not provided sufficient information to permit TikTok to contest the validity of the Council's reliance on this exception, or the courts to review its lawfulness.

This confirmatory application therefore respectfully requests the General Secretariat to reconsider its decision to refuse access to the four documents set out in its letter of 5 April (and any others identified in response to point (I) above) on the grounds of public security or, in the alternative, to provide sufficiently detailed reasons as to why this exception applies so as to allow TikTok to contest its validity and the courts to review its lawfulness.

#### 4. Failure to provide partial access to documents

The Regulation provides that, even in cases where a public interest exception applies, “[i]f only parts of the requested document are covered by any of the exceptions, the remaining parts of the document **shall be released**” (Art. 4(6), emphasis added). This provision advances the general purpose of the Regulation to ensure the broadest possible access to documents of EU institutions.

The letter of 5 April refuses to grant even partial access to the four withheld documents on the ground that “*the information contained in each of the documents forms an inseparable whole*” (p. 3). The letter, however, does not provide any explanation to support that conclusion. It therefore deprives TikTok of the ability to contest its validity or the courts to review its lawfulness.

We would expect that these documents must contain at least some information that could be disclosed without *"mak[ing] [the Council's IT] infrastructure more vulnerable to cyberattacks."* For instance, to the extent the undisclosed documents contain information on aspects of the TikTok app or service, or TikTok's business model or practices, that the Council considered in reaching its decision, it seems unlikely that disclosure of this TikTok-specific information would endanger the Council's IT infrastructure. Also, to the extent any information in these documents is in the public domain, *"far from being capable of justifying a refusal of partial access,"* this *"constitutes . . . an admission . . . that certain parts of the [documents] could be disclosed and, consequently, that partial access should be granted."* Moreover, the GSC elected to disclose GSC IT Device Policy from May 2019 (document 5), which presumably contains more detailed information on the Council's IT infrastructure than device user agreements (documents 6 and 7) to which the GSC applied the exception.

We therefore respectfully request the General Secretariat to disclose the documents identified but not disclosed in its letter of 5 April, or, in the alternative, to provide appropriately redacted copies of these documents.

## 5. Conclusion

For the reasons set out in this confirmatory application, we request that the GSC review its response to the Request on the grounds set out in Part I - IV above.

We look forward to your response.

Yours faithfully,

A black rectangular redaction box covering the signature of the sender.

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