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NOTE

From:	General Secretariat of the Council
To:	Delegations
No. prev. doc.:	9096/26
Subject:	Public access to documents - Confirmatory application No 25/c/01/26 - Draft reply

Delegations will find attached a draft reply to confirmatory application No 25/c/01/26
(see 9096/26).

REPLY TO CONFIRMATORY APPLICATION 25/c/01/26**made by email on 7 May 2026 and registered on the same day****A. INTRODUCTION**

The Council has considered the confirmatory application under [Regulation \(EC\) No 1049/2001](#) of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents and Annex II to the [Council's Rules of Procedure](#) and has come to the following conclusion:

1. On 19 March, the applicant submitted a request for public access to a digital certified copy of the following documentation: *“all documents, communications and text messages (SMS, iMessage, WhatsApp, Signal or similar) exchanged between the Council, or its officials, and other EU agencies or institutions, governments and/or institutions of EU Member States and non-EU countries, citizens and natural or legal persons, concerning the disclosure by the government of the United States of America of the ‘Epstein files’, i.e. the documents gathered during the judicial proceedings against the late Jeffrey Epstein; all documents, communications and text messages (SMS, iMessage, WhatsApp, Signal or similar) exchanged between the Council, or its officials, and other EU agencies or institutions, governments and/or institutions of EU Member States and non-EU countries, citizens and natural or legal persons, that shed light on any relationships of a financial and/or personal nature between the late Jeffrey Epstein and senior officials of the EU institutions, the EU Member States, and/or third countries; all documents, communications and text messages (SMS, iMessage, WhatsApp, Signal or similar) exchanged between the Council, or its officials, and other EU*

agencies or institutions, governments and/or institutions of EU Member States and non-EU countries, citizens and natural or legal persons, regarding internal and/or external investigations launched by the Council into any relationships of a financial and/or personal nature between the late Jeffrey Epstein and senior officials of the EU institutions, the EU Member States, and/or third countries”.

2. The applicant specified that his request concerns both documents drawn up by the Council and documents it holds of the abovementioned nature received from third parties.
3. On 7 May, the General Secretariat of the Council (GSC) answered to the applicant, providing a partially accessible version of a document identified by the General Secretariat of the Council as relevant for his request. Having duly consulted the European External Action Service (EEAS) and analysed the content of the document, the GSC granted a partial access to this document, informing the applicant that full disclosure of the information contained therein would undermine relations between the European Union and third countries (Article 4(1)(a), third indent, of Regulation No 1049/2001 - protection of the public interest as regards international relations).
4. On 7 May, the applicant submitted a confirmatory application requesting that the Council reconsider the request for access, assess the existence of additional documents, and grant full access to the document to which the Council has granted partial access, on the grounds that the public interest in having access to the information concerned outweighs the exceptions set out in Regulation 1049/2001.
5. In his confirmatory application, the applicant did not invoke new arguments and referred to the ones invoked at initial stage. In its initial application, the applicant argued that the request is based “*on an overriding public interest*”, as it concerns documents and communications that have a significant institutional and reputational impact on the EU. The applicant argued that access to the documents is necessary to evaluate “*the degree to which the EU’s action is*

consistent with the principles of transparency, institutional responsibility and protection of the integrity of its own institutions”, to “assess the compliance of the Council’s work with the principles enshrined in EU law” and to verify “whether the Council has adopted institutional monitoring, evaluation or communication measures in relation to the disclosure of the ‘Epstein files’”, as well as “the possible implications of those events for the reputation and integrity of the EU institutions”.

B. ASSESSMENT OF THE APPLICATION UNDER REGULATION (EC) NO 1049/2001

6. Following this confirmatory application, the Council has reassessed the GSC’s reply to the initial request, in full consideration of the principle of transparency underlying Regulation (EC) No 1049/2001 and considering the applicant’s confirmatory application.
7. Further to the confirmatory application, the Council has conducted a new analysis of the document covered by the initial request. The Council has also again consulted the EEAS, which provided its input.
8. The Council has come to the conclusion that further partial access cannot be granted to the requested document, on the basis of the exception related to the protection of the public interest as regards international relations (Article 4(1)(a), third indent, of Regulation No 1049/2001).
9. In accordance with the established case-law of the Court of Justice, the public interest exceptions laid down in Article 4(1)(a) of Regulation (EC) No 1049/2001 are subject to a particular regime as compared to the other exceptions included in Article 4. The Council enjoys “*a wide discretion for the purpose of determining whether disclosure of a document to the public would undermine the interests protected by that provision*”.¹ Consequently, once the Council has come to the conclusion that any release would indeed undermine the public interest in this area, it has no choice but to refuse access, because “*it is clear from the wording of Article 4(1)(a) of Regulation No 1049/2001 that, as regards the exceptions to the*

¹ Judgments of 11 July 2018, *ClientEarth v Commission*, T-644/16, EU:T:2018:429, paragraph 25, and of 27 November 2019, *Izuzquiza and Semsrott v European Border and Coast Guard Agency (FRONTEX)*, T-31/18, EU:T:2019:815, paragraph 65

*right of access provided for by that provision, refusal of access by the institution is mandatory where disclosure of a document to the public would undermine the interests which that provision protects, without the need, in such a case and in contrast to the provisions, in particular, of Article 4(2), to balance the requirements connected to the protection of those interests against those which stem from other interests”.*² Therefore, the Council enjoys a wide discretion in assessing the impact of the release of a document on international relations and is barred from taking into account other legitimate interests in order to override the conclusion that giving access to a document or parts of a document would harm the protected interest.

10. For the purpose of the assessment of a request for access to documents under Regulation (EC) No 1049/2001, it is not required to establish the existence of a definite risk of undermining the protection of the European Union’s international relations, but merely the existence of a reasonably foreseeable and not purely hypothetical risk³ for which, as previously recalled, the institution enjoys a margin of discretion.
11. In addition, according to settled case-law, the risk of negative repercussions which disclosure of documents might entail for the EU relations with third countries justifies the use of the exception under Article 4(1)(a), third indent of Regulation (EC) No 1049/2001⁴. Moreover, the way in which the authorities of a third country perceive the decisions of the EU is a component of the relations established with that third country, as “*the pursuit and the quality of those relations depend on that perception*”. This may therefore warrant the application of the exception concerned⁵.

² Judgment of 1 February 2007, *Sison v Council*, C-266/05, EU:C:2007:75, paragraph 46; and similarly judgment of 7 February 2018, *Access Info Europe v Commission*, T-851/16, EU:T:2018:69, paragraph 38.

³ Judgment of 13 March 2024, *ClientEarth v Council*, T-682/21 and T-683/21, EU:T:2024:165, paragraph 118; and similarly judgment of 25 November 2020, *Bronckers v Commission*, T-166/19, EU:T:2020:557, paragraph 60.

⁴ Judgment of 25 April 2007, *WWF European Policy Programme v Council*, T-264/04, paragraph 41.

⁵ Judgment of 27 February 2018, *CEE Bankwatch Network v Commission*, T-307/16, paragraphs 89-90.

12. The requested document is a document containing a compilation of open-source information, as well as considerations related to the US, in general, and the Epstein files, in particular, and reports from the EU Delegation in Washington pertaining to the same topics. This includes references to publicly known events, relayed by the press, as well as assessments of the unfolding events.
13. More in detail, the document contains a section I “USA flash” (made up of input from the media and social media), a section II “WKs sent to COTRA”, a section III “COTRA reports”, section IV “Read-out US information sharing”, as well as a section V “EUDEL reports in our files” (containing reports from the Delegation of the European Union to the United States, dated 6 June 2025 - 27 February 2026). COTRA is the acronym used for the Council’s Working Party of Transatlantic Relations. WK documents are “Working papers” for specific communities of users created on the basis of the Council’s preparatory body or a subject.
14. The parts of the document that have been redacted at initial stage are politically sensitive as they reveal internal views concerning the events taking place in the US in the period of concern.
15. In particular, the requested document in Sections III and IV, contains internal assessments, conducted by GSC services, by EEAS services and by the EU delegation to the US, on the political situation in the US in the concerned period and on the Epstein files and the related judicial inquiries within the US. In addition, the document contains elements of political forecasting conducted by the GSC services and by the EU delegation in the US. Due to the sensitivity of the topic addressed, to ensure the preservation of mutual trust, it is necessary to preserve the confidentiality of any such assessments.. The disclosure of such information would negatively affect the international relations of the European Union with the US. In some instances, even if the information contained in the requested document is in itself publicly available, the selection of such information and the internal assessments on it could

be negatively perceived and could negatively affect the international relations of the EU with the US. In section I, the selection of the specific quote of the week constitutes in itself an internal assessment conducted by the GSC and EEAS service on the content of such quote. This entails a reasonably foreseeable and not purely hypothetical risk that the disclosure of the information contained in the requested document assessment would jeopardise the international relation between the EU and the US.

16. Based on the criteria detailed above, the Council concludes that the parts of the requested document that could not be disclosed at the initial stage remain protected by the exception related to the protection of the public interest as regards international relations (Article 4(1)(a), third indent, of Regulation No 1049/2001) and that it is barred from taking into account other legitimate interests in order to override the conclusion.
17. It therefore considers that broader partial access of the requested document cannot be granted, pursuant to Article 4(1)(a), third indent, of Regulation No 1049/2001 (protection of the public interest as regards international relations). In particular, the sections of the requested document that contain, amongst other things, publicly available information, are drafted in such a way, that that public information cannot be separated from the other elements they contain, so that each of those sections constitutes an inseparable whole.
18. Furthermore, the Council has again duly verified that there are no other documents in the databases it runs nor otherwise in the files held by its services, falling within the scope of the applicant's request, other than the document that has been identified at initial stage. The Council confirms that it does not hold any document – other than the one identified in the reply to the initial application – drawn up by the Council or received by it that falls within the scope of the request.

19. It is settled case-law that, where an institution states that a document does not exist in the context of an application for access, the non-existence of that document is presumed, in accordance with the presumption of veracity attaching to that statement.⁶ By virtue of that presumption, it would be incumbent upon the applicant to rebut the GSC's statement that it does not hold any such documents by producing relevant and consistent evidence that such documents could have existed.⁷
20. According to the case-law, rebutting the presumption involves showing that the institution was, at a given time, in possession of the documents requested.⁸ In this regard, the applicant is required to put forward "relevant and consistent evidence" capable of calling into question the institution's statement.⁹
21. The right of access to documents as enshrined in Article 2(3) of Regulation (EC) No 1049/2001 applies to all documents held by the institution, "*that is to say, documents drawn up by the institution or received by it and in its possession*". Regulation (EC) No 1049/2001 cannot oblige the institution to grant access to a document that is not in its possession¹⁰.
22. The Council reiterates that, following the case law from the Court of Justice, the institutions must, in so far as possible and in a non-arbitrary and predictable manner, draw up and retain documentation relating to their activities.¹¹ However, this obligation to draw up and retain

⁶ Judgments of the General Court of 14 May 2025 in case T-36/23, *Stevi and New York Times Company v. Commission*, EU:T:2025:483, paragraph 38, and of 20 September 2019 in case T-433/17, *Dehousse v Court of Justice of the European Union*, EU:T:2019:632, paragraph 36.

⁷ See judgment of the General Court of 25 September 2018 in cases T-639/15 to T-666/15 and T-94/16, *Psara et al. v European Parliament*, EU:T:2018:602, paragraphs 33 et seq., and the case law cited.

⁸ See judgment in *Stevi and New York Times Company v. Commission*, mentioned above, paragraphs 47 to 48 and 57 to 58.

⁹ See judgment of 25 September 2018 in joined cases T-639/15 to T-666/15 and T-94/16, *Psara et al v European Parliament*, above, paragraph 34 et seq.

¹⁰ Judgment of the General Court of 26 April 2016 in case T-221/08, *Strack v Commission*, EU:T:2016:242, paragraph 66.

¹¹ See judgment of the General Court of 25 April 2007 in case T-264/04, *WWF European Policy Programme v Council*, EU:T:2007:114, paragraph 61.

documentation is not absolute - the Court found, for instance, that the purely informative nature of an item at a given meeting and the fact that it did not call for any specific implementing measure explained why it was not considered necessary to minute it and why the item was not recorded in a summary report or other subsequent document.¹²

23. In this regard, the Council notes that the applicant merely requests the re-examination of this request and the assessment of the existence of additional documents, without relying upon any concrete evidence or arguments to the existence of possible additional documents. This does not constitute 'relevant and consistent evidence' able to rebut the general presumption of inexistence of the requested documents.

C. CONCLUSION

24. For the reasons set out above, the Council concludes that broader partial access to the document identified at initial stage cannot be granted on the grounds of Article 4(1)(a), third indent (protection of the public interest as regards international relations). Moreover, the Council confirms that it does not hold any documents which fall in the scope of the applicant's request other than the one already indicated to the applicant.

¹² Idem, paragraphs 62 and 63.