



**COUNCIL OF
THE EUROPEAN UNION**

GENERAL SECRETARIAT

*Directorate-General F
Communication
Transparency*

The Director General

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CONSILIUM

Brussels, 9 July 2013

Ms Rachel Tansey

e-mail:

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Ref. 10/c/01/13

Dear Ms Tansey,

Please find enclosed the reply from the Council to your confirmatory application dated 19 April 2013.

Pursuant to Article 8(1) of Regulation (EC) No 1049/2001, we draw your attention to the possibility to institute proceedings against the Council before the General Court or to make a complaint to the Ombudsman. The conditions for doing so are laid down in Articles 263 and 228 of the Treaty on the Functioning of the European Union respectively.

Yours sincerely,

Reijo KEMPPINEN

Enclosure

**REPLY ADOPTED BY THE COUNCIL ON 9 July 2013
TO CONFIRMATORY APPLICATION No 10/c/01/13,
made by e-mail on 19 April 2013,
pursuant to Article 7(2) of Regulation (EC) No 1049/2001,
for public access to documents regarding the implementation of Article 16 of the Regulations
and Rules applicable to officials and other servants of the European Union
in relation to Ms Gayle Kimberley**

The Council has considered this 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 (OJ L 145 of 31.5.2001, p. 43) (hereafter "Regulation No 1049/2001") and Annex II to the Council's Rules of Procedure (Council Decision 2009/937/EU, Official Journal L 325, 11.12.2009, p. 35) and has come to the following conclusion:

1. You request *"a note of all job titles whilst at the (European) Council's legal service between 2004 and 2011, including dates held, copies of any application(s) that Ms Kimberley made under Article 16 of the Staff Regulations to undertake a new professional activity, and all correspondence, including emails, relating to the authorisation of the role or roles"*.
2. In its reply dated 19 April 2013, the General Secretariat refused public access to the requested documents pursuant to Article 4 (1) (b) of 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 documents¹ ("protection of privacy and the integrity of the individual, in particular in accordance with Community legislation regarding the protection of personal data").

¹ OJ L 145, 31.5.2001, p. 43.

3. In the confirmatory application dated 19 April 2013, you ask the Council to reconsider this position. You claim to have obtained similar documents from the European Commission related to officials of that institution and you argue that the Council's policy on access to documents should not be more restrictive than that of the other institutions as "*the Council is bound by the same laws*".
4. The Council has considered this confirmatory application in the light of the your arguments and, having thoroughly re-examined the documents concerned, the Council has come to the following conclusions.
5. The General Secretariat of the Council identified the following documents on Mrs Kimberley's personal dossier related to the your request:
 - a. 5 notes to the attention of Ms Kimberley on appointments to posts within the Legal Service;
 - b. 3 requests for Leave on Personal Grounds;
 - c. 3 decisions granting Leave on Personal Grounds;
 - d. 1 note to the file on granting the first Leave on Personal Grounds;
 - e. 1 letter to the Belgium Ministry of Foreign Affairs;
 - f. 2 letters from the General Secretariat of the Council;
 - g. 1 email from the General Secretariat of the Council.
6. Such documents cover matters related, *inter alia*, to Mrs Kimberley's individual personal circumstances, contact details, personal professional development and relations with her employer.

7. All the documents identified above therefore contain personal data within the meaning of Article 2(a) of Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data². The dissemination of such data – including by disclosure to the public – falls within the definition of 'processing of personal data', for the purposes of that Regulation.
8. Article 4(1)(b) of Regulation (EC) No 1049/2001 lays down a specific exception for the protection of a person whose personal data is contained in a document of an institution: "*The institutions shall refuse access to a document where disclosure would undermine the protection of (...) privacy and the integrity of the individual, in particular in accordance with Community legislation regarding the protection of personal data.*"
9. According to the case-law, no automatic priority can be conferred on the objective of transparency over the right to protection of personal data³. Furthermore, where a request based on Regulation (EC) No 1049/2001 seeks to obtain public access to documents including personal data, the provisions of Regulation (EC) No 45/2001 become applicable in their entirety, including Articles 8 and 18 thereof⁴.
10. The Council has consulted Ms Kimberley, who explicitly objected to the transfer of any of her personal data to recipients other than Community institutions and bodies.
11. The Council has re-examined whether the public disclosure of the identified documents would nevertheless be in compliance with Regulation (EC) No 45/2001 and Article 4(1)(b) of Regulation (EC) No 1049/2001.

² OJ L 8, 12.1.2001, p. 1.

³ Case C-92/09 and C 93/09 Volker und Markus Schecke and Eifert [2010] ECR I-0000.

⁴ Case C-28/08 P Commission v Bavarian Lager [2010] ECR I-0000.

12. As a preliminary point, the Council notes in relation to the information requested by you concerning the *"job titles whilst at the Council's legal service between 2004 and 2011, including dates held"* that the posts held by Mrs Kimberley in the Council Legal Service are already in the public domain and can be found in the Official Directory of the European Union⁵. For ease of reference these were posts held from 1 December 2004 until 31 December 2010 in:

- Team I⁶ ("Lawyers' Division") from December 2004;
- Directorate IB (Coreper I, Enlargement) from October 2007 subsequently Directorate IB (Social Affairs, Energy, Research, Telecommunications) from January 2009;
- Directorate IV (Institutional questions, Budget, Staff Regulations) from February 2009.

13. The Council has assessed the request for access in full consideration of the principles underlying Regulation (EC) No 1049/2001 and the aim of ensuring the widest possible public access to documents, including what it understands to be the your interest in *"screening for potential conflicts of interests when employing new officials or when officials apply for permission for post-employment activities, in accordance with Article 11, 11a and 16 of the Staff regulations, respectively"*, and the requirements of Regulation (EC) No 45/2001 including the need to establish the necessity of the transfer of personal data.

14. After careful consideration the Council does not consider that such interests prevail over the interest in the protection of Mrs Kimberley's privacy and integrity under Article 4 (1) (b) of Regulation (EC) No 1049/2001, in conjunction with Articles 8 and 18 of Regulation (EC) No 45/2001.

⁵ See the EU Book Shop website (<https://bookshop.europa.eu>).

⁶ Internal Market, Industry, Telecommunications, Tourism, Energy, Civil Protection, Research, Trans-European Networks, Transport, Social Affairs, Culture, Education, Youth, Regional Policy, Environment, Harmonisation of Food Legislation, Consumer Protection, Health, Competition Rules/Public Procurement.

15. The Council has also examined the possibility of providing partial access to the said documents in accordance with Article 4(6), but concluded that, with the exception of the information already in the public domain provided above, the invoked exception applies to the documents in their entirety.
16. Finally, as to the sole argument raised by you in your confirmatory application, namely that you obtained similar documents regarding data subjects from other European Institutions, therefore, as the "*the Council is bound by the same laws*" it should disclose the requested documents, the Council points out to the fact that the Institution in question, prior to the disclosure of the documents, obtained the data subjects' explicit consent to disclose them, which is an overriding principle of Regulation (EC) No 45/2001 to authorise the transfer of personal data. Regarding this confirmatory application, Ms Kimberley - as mentioned - explicitly objected to the transfer of her personal data to recipients other than Community institutions and bodies.
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