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|  | Brussels, 11 November 2015 |
| Mr Diego NaranjoEmail: ask+request-2199-61f031ea@asktheeu.org |
| Ref. 15/1972-ADD2-mjb/jjRequest made on: 07.08.2015 |
| Dear Mr Naranjo*,* |

Thank you for your request for access to documents of the Council of the European Union of 7 August 2015 regarding the Proposal for a Directive of the European Parliament and of the Council on the protection of individuals with regard to the processing of personal data by competent authorities for the purposes of prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and the free movement of such data.[[1]](#footnote-1)

In addition to our letters of 28 August and 18 September 2015 concerning your request, please find attached a partially accessible version of document **7507/14**.[[2]](#footnote-2) However, I regret to inform you that full access cannot be given for the reasons set out below.

Document 7507/14 is a note from the General Secretariat of the Council to the Working Party on Information Exchange and Data Protection on the above mentioned proposal for a Directive.

On 9 October 2015 the Council adopted its General Approach on the draft Directive,**[[3]](#footnote-3)** thereby giving to the Presidency a negotiating mandate to enter into trilogues with the European Parliament. Negotiations are still ongoing and no formal agreement has yet been reached between the Council and the European Parliament.

Document 7507/15 contains, at its pages 44/45, a partial reference to an oral statement of the Council Legal Service at the meeting of the Working Party on Information Exchange and Data Protection and the views expressed by a Delegation about it. The legal issue dealt with in this part of the document is still under discussion and controversial.

Release of this part of the document containing a delegation's reference to part of an oral statement of the Legal Service intended only for the members of the Council would undermine the protection of legal advice. In addition, this part of the document refers to on-going discussions and its release would also affect the negotiating process and diminish the chances of reaching an agreement with the European Parliament. Full disclosure of document 7507/15 would therefore seriously undermine the on-going decision making-process.

Having examined the context in which the document was 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 its full disclosure.

As a consequence, the General Secretariat has to refuse full access to this document at this stage.[[4]](#footnote-4)

I would also like to inform you that once the legislative act in question is adopted, this document and any other legislative document relating to this Regulation will be made available to the public.[[5]](#footnote-5)

You can ask the Council to review this decision within 15 working days of receiving this reply.[[6]](#footnote-6)

The General Secretariat of the Council has identified a new document for which the necessary consultations are still on-going. You will receive a reply as soon as possible.

Yours sincerely,

Jakob THOMSEN

Enclosure

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). [↑](#footnote-ref-1)
2. Article 4(6) of Regulation (EC) No 1049/2001. [↑](#footnote-ref-2)
3. 12555/15. [↑](#footnote-ref-3)
4. Article 4(2), second indent and Article 4(3), first subparagraph, of Regulation (EC) No 1049/2001. [↑](#footnote-ref-4)
5. According to Article 11(6) of Annex II to the Council Rules of Procedure (Council Decision No 2009/937/EU, OJ L 325, 11.12.2009, p. 35). [↑](#footnote-ref-5)
6. Article 7(2) of Regulation (EC) No 1049/2001.

Council documents on confirmatory applications are made available to the public. According to data protection rules at EU level (Regulation (EC) No 45/2001), if you make a confirmatory application your name will only appear in related documents if you have given your explicit consent. [↑](#footnote-ref-6)