

**REPLY ADOPTED BY THE EUROPEAN COUNCIL
BY WRITTEN PROCEDURE ON 9 NOVEMBER 2021
TO CONFIRMATORY APPLICATION 35/c/01/21
for public access to documents,
pursuant to Article 7(2) of Regulation (EC) No 1049/2001**

The European 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 (OJ L 145, 31.5.2001, p. 43) (hereafter referred to as "Regulation (EC) No 1049/2001") and Article 10(2) of its Rules of Procedure (European Council Decision No 2009/882/EU, OJ L 315, 2.12.2009, p. 51), which makes Annex II to the Council's Rules of Procedure (Council Decision 2009/937/EU, Official Journal L 325, 11.12.2009, p. 35) applicable *mutatis mutandis*, and has come to the following conclusion:

1. On 21 August 2021, the applicant made an initial application for access to "*all documents, files, folders, notes, memos, correspondence on UAPs/UFOs*".
2. In its reply of 1 September 2021, the General Secretariat of the Council (GSC) informed the applicant that it does not hold any document related to the matter.
3. On 5 September 2021, the applicant made a confirmatory application stating the following: "*Earlier this year I sent documents to several members of the European Council expressing my concerns that the United States Department of Defence confirmed that UAPs are real and established the UAP Task Force to investigate these encounters between UAPs and the United States Military. I asked why the European Union does not have a body to investigate or receive reports of incursions in EU airspace by UAP. Therefore, I can state as a fact that the European Council does have documents regarding UFOs/UAP. As you are aware, it is an offence to supply false or misleading information in reply to a FOIA request. Please be kind enough to honour your reasonability to me and furnish me with the information requested.*"

4. Following the confirmatory application, the European Council has reassessed the application in full consideration of the principle of transparency underlying Regulation (EC) No 1049/2001 and in light of the applicant's comments.
5. The right of access to documents held by the institutions within the meaning of Article 2(3) of Regulation (EC) No 1049/2001 applies only to existing documents in the possession of the institution concerned. The Regulation does not oblige an institution to create a document for which it has been asked to grant access but which does not exist.¹
6. Nevertheless, the Court has stated that the fact that a document to which access has been requested does not exist or the fact that it is not in the possession of the institution concerned does not make Regulation (EC) No 1049/2001 inapplicable.²
7. Therefore, the competent services of the GSC³ have conducted a new thorough investigation in order to ensure that the initial research had been exhaustive and that the initial request had been handled properly. Those services have confirmed that they do not hold any documents or information exchanges on the topic of interest to the applicant.
8. The applicant claims however that he has sent documents on the subject of UAPs/UFOs to several members of the European Council and that this would prove that the European Council is in possession of documents on UAPs/UFOs. It should be pointed out that even if the applicant has addressed letters to heads of State or government of EU Member States as “Members of the European Council”, that does not mean that the European Council as an institution currently holds such letters.

Conclusion

9. In light of the above, the European Council can only confirm the General Secretariat's information that it does not hold any documents containing information on UAPs/UFOs.

¹ Judgment of 2 October 2014, Case C-127/13 P, Strack v Commission, ECLI:EU:C:2014:2250, paragraphs 38 and 46.

² Idem, paragraph 41.

³ The General Secretariat of the Council, under the authority of its Secretary-General, assists the European Council and its President in accordance with Article 13(1) of the European Council Rules of Procedure (OJ, L 315/55 of 2.12.2009).