

REPLY ADOPTED BY THE COUNCIL ON 9 December 2021
TO CONFIRMATORY APPLICATION 41/c/02/21,
made by email on 18 November 2021
for public access to documents
pursuant to Article 7(2) of Regulation (EC) No 1049/2001

The Council of the EU 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, 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) and has come to the following conclusion:

1. On 3 October 2021, the Applicant made an initial application for access to "*all notes/files/folders/letters/emails/correspondence / documents on the subject of UAP/UFO/ radar UCT and incursions into European Airspace by unknown craft*", addressing the "*European Union Political and Security Committee*".
2. In its reply on 17 November 2021, the General Secretariat of the Council (GSC) informed the Applicant that it does not hold any document related to the matter.
3. On 17 November 2021, the Applicant made a confirmatory application stating: "*My request is for the European Political and Security Committee and NOT the European Council*". The same Applicant had already introduced a confirmatory application addressed to the European Council¹.

4. On 17 November 2021, the GSC informed the applicant that the Political and Security Committee (PSC) is a preparatory body of the Council of the EU (https://eur-lex.europa.eu/summary/glossary/political_security_committee.html). It had therefore examined his request consulting specifically with the services responsible for the Political and Security Committee and also with other services of the General Secretariat. It concluded more comprehensively that there are no documents held by the Council on the subject of his request.
5. The 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.
6. 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. ²
7. Therefore, the competent services of the GSC have conducted a new thorough investigation in order to ensure that the initial research had been exhaustive. It has again concluded that, apart from the applications for access to documents from the Applicant and the replies, the Council does not hold any documents on the topic covered by the request of the Applicant.
8. The Applicant claims that he has "evidence that they (our note: members of the PSC) are in possession of documents sent to them earlier this year on the subject of UAPs/UFOs. It should be pointed out that even if the Applicant had addressed such letters to representatives of Member States in the PSC, that does not mean that the Council of the EU as an institution currently holds such letters.

Conclusion

9. In light of the above, the Council confirms the General Secretariat's information provided in reply to the Applicant's initial request that it does not hold any documents containing information on UAP/UFO/ radar UCT and incursions into European Airspace by unknown craft.

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

