



**COUNCIL OF  
THE EUROPEAN UNION**

**Brussels, 19 March 2008**

**6650/08**

**INF 36  
API 14  
JUR 84**

**"I/A" ITEM NOTE**

---

from : Working Party on Information  
to : Coreper (part 2)/Council

---

No. prev. doc.: 6649/08 INF 35 API 13 JUR 83

---

Subject : Public access to documents  
- Confirmatory application made by Mr David CRONIN (04/c/01/08)

---

Delegations will find enclosed a draft reply from the Council, as it stands after examination by the Working Party on Information at its meeting on 18 March 2008, to the confirmatory application made by Mr David CRONIN (04/c/01/08).

The Finnish and Swedish delegations indicated that they would vote against the draft reply. A majority of delegations agreed to publish the result of the vote.

Furthermore, the following statements have been made:

- by the Finnish delegation: "Releasing the names of the persons on the list at annex to document 5172/08 would not undermine the protection of privacy and the integrity of the persons concerned in the meaning of Article 4(1)(b) of Regulation 1049/2001.";
- by the Swedish delegation: " Article 4 (1)(b) does not apply to the list of participants at annex to document 5172/08. This list should therefore be released in its entirety."

The Permanent Representatives Committee is accordingly asked to suggest that the Council, at its next meeting:

- record its agreement to the draft reply annexed to this document, as an "A" item , with the Finnish and Swedish delegations voting against ;
- decide to publish the result of the vote.

The Annex is available in English only.

---

**DRAFT**

**REPLY ADOPTED BY THE COUNCIL ON .....**  
**TO CONFIRMATORY APPLICATION 04/c/01/08**  
**made by Mr David CRONIN to the Council by e-mail on 15 February 2008**  
**pursuant to Article 7(2) of Regulation (EC) No 1049/2001,**  
**for access to document 5172/08**

The Council has carefully considered this confirmatory application under Regulation (EC) No 1049/2001 (OJ L 145 of 31.5.2001, p. 43) and Annex II to the Council's Rules of Procedure (Council Decision 2006/683/EC, Euratom - OJ L 285 of 16.10.2006, p. 47).

1. The applicant refers to document 5172/08 containing the outcome of proceedings of the EU-US "Justice and Home Affairs" senior level meeting, which took place in Ljubljana on 9 and 10 January 2008.
2. The General Secretariat provided the applicant with a partial version of the document. Public access to detailed comments made by the US delegation and the Annex to the document, which contains the list of participants to that meeting, was refused pursuant to Article 4(1)(a), third indent, and Article 4(1)(b) of the Regulation (protection of the public interest with regard to international relations and protection of privacy and the integrity of the individual).
3. The Council has thoroughly re-examined the document concerned and carried out new consultations with the department of its General Secretariat in charge of this matter. It has come to the following conclusion.

4. Document 5172/08 comprises the report of the EU-US senior level meeting held in the framework of the Transatlantic Dialogue, during which issues in the field of justice and home affairs were discussed. It reports in detail on the positions taken by both sides. It contains an analysis and comments on this area of co-operation and an assessment on how the issues have so far been addressed by the two parties.
5. Given the sensitive content of the document, the Council considers that its full disclosure would be detrimental to the good functioning of the relations between the EU and the US. Such disclosure would hinder the diplomatic efforts being made by the two sides to find constructive solutions to the outstanding issues in this area. If the United States had reason to believe that the positions it has taken in meetings not open to the public may be made public unilaterally by the EU side, it would be difficult, if not impossible, to address controversial issues in this format. This would not only breach the mutual confidence in the future negotiations but also, in turn, make it considerably more difficult to reach agreement between the two sides.
6. Moreover, as specified by the General Secretariat in its reply to the applicant in the initial phase, the annex to document 5172/08 contains the names of delegates who participated in the meeting. Such names constitute 'information relating to an identified or identifiable natural person' and thus personal data within the meaning of Article 2(a) of Regulation 45/2001.<sup>1</sup> At the time the document was drawn up, it was not envisaged that this information be put in the public domain. Releasing this information at this stage would equal processing for a different purpose than that for which the data have been collected, which is prohibited under Article 6 of the same Regulation. In view of the deadline foreseen by Article 8 of Regulation (EC) No 1049/2001, it is impossible for the institution to obtain the explicit consent of the persons concerned. Article 4(1)(b) of Regulation (EC) 1049/2001 requires the Council to refuse access to those parts of the document that cover privacy and the integrity of the individual, in particular in accordance with Community legislation regarding the protection of personal data.

---

<sup>1</sup> 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 data, OJ (2001) L8/1.

7. In the light of the above, the Council confirms the General Secretariat's approach in reply to the applicant's initial request. Full access to document 5172/08 must be refused by virtue of Article 4(1)(a), third indent, and Article 4(1)(b) of the Regulation (protection of the public interest with regard to international relations and protection of privacy and the integrity of the individual).
8. Nevertheless, in the light of further internal consultations, the Council has decided to extend partial access to the document, releasing the following additional parts:
- point 5, last sentence and part of the second sentence;
  - point 9, part of the third and fourth sentences;
  - point 12, second sentence;
  - point 13, part of the third sentence;
  - point 15, second sentence;
  - page 10 of the document, part of the second sentence of the text concerning the EU update on the Prüm Decision,

which, in the Council's view, are no longer covered by any exception.

---