



**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 28 June 2002

10036/02

**INF 113
API 86
JUR 219**

"I/A" ITEM NOTE

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

No. prev. doc.: 10035/02

Subject : Public access to documents
- confirmatory application by Mr Tony BUNYAN (4/02)

Delegations will find enclosed a draft reply from the Council, approved by the Working party on Information at its meeting on 28 June 2002, to the confirmatory application 4/02 made by Mr Tony BUNYAN for access to documents.

The Permanent Representatives Committee is accordingly asked to suggest that the Council, at its next meeting, record its agreement on the draft reply as an "A" item.

The Annex is available in English only.

DRAFT
REPLY ADOPTED BY THE COUNCIL ON
TO CONFIRMATORY APPLICATION BY MR TONY BUNYAN (04/02)
made to the Council by e-mail dated 13 June 2002,
pursuant to Article 7(2) of Regulation (EC) No 1049/2001,
for access to document 8784/02

The Council has carefully considered the application under Regulation (EC) No 1049/2001 (OL L 145 of 31.5.2001, p. 43) and Annex III to the Council's Rules of Procedure, as amended by Council Decision 2001/840/EC of 29 November 2001 (OJ L 313 of 30.11.2001, p. 40) and has come to the following conclusion:

- 1) The applicant's request concerns a note from the German delegation on additional measures to combat terrorism.

In its reply of 13 June 2002 the General Secretariat has granted partial access to this document, withholding those parts which, in its view, could harm the protection of public interest with regard to public security and seriously undermine the decision-making process on the several issues dealt with (exceptions 4(1) and 4(3) of Regulation No 1049/2001).

- 2) The Council has re-examined the document in the light of the applicant's arguments and has come to the conclusion that, in respect of the above document, the partial access granted to the applicant by the General Secretariat in its reply of 13 June 2001 strikes the right balance between, on the one hand, the public interest and, on the other hand, the interest of protecting a delegation's reflections on the way to proceed on complex and sensitive issues which are currently being discussed in the Council's preparatory bodies and on which no final decision has yet been taken.

As the Council has repeatedly stated, the possibility for delegations to freely express their views especially on particularly sensitive issues constitutes an essential precondition for the Council's capacity to find compromise solutions and achieve progress on difficult questions. The immediate release of those parts of the document which make it possible to identify delegations' positions on particular subject matters which are still under discussion would jeopardize this capacity, as it could considerably reduce the flexibility of delegations to reconsider their respective positions in the light of the arguments exchanged in the debate. In the Council's view, this could seriously undermine its decision-making process.

In the light of the above, the Council holds the view that disclosure, at the present stage, of those parts of the document containing suggestions for strategic options for coordinated European Union's campaign against terrorism would seriously hamper the Council's decision-making process.

Access to those parts of document 8784/02 must therefore be refused on the basis of Article 4(3), first subparagraph, of Regulation No 1049/2001.
