

**COUNCIL OF
THE EUROPEAN UNION**

GENERAL SECRETARIAT

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Brussels,

**Mr Tony Bunyan
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99/065 (follow-up)

Dear Mr Bunyan,

Following your initial request of 25 January 1999 and confirmatory application of 30 March 1999 for access to "*all the documents (Restreint, Limite, Non-paper, Meeting document, Room documents, SN document and any other documents etc) considered/put before the meeting of the Police Cooperation Working party (Experts' meeting - interception of telecommunications) held on 3-4 September 1998*", the General Secretariat of the Council granted you access to Council documents ST 10102/98 (by letter of 24 March 1999), 10850/98 and 10951/98 (by letter of 8 June 1999).

In the light of these replies you lodged a complaint with the European Ombudsman, claiming *inter alia* that the Council had not given access to **all** the documents considered during that meeting.

After having studied your complaint, the European Ombudsman submitted a "Special Report to the European Parliament following the draft recommendation to the Council of the European Union in complaint 917/2000/GG", in which he stated that "*the Council of the European Union should reconsider the complainant's application and give access to the documents requested, unless one or more of the exceptions contained in Article 4 of Decision 93/731 applies*".

During a meeting of the Committee on Petitions of the European Parliament on this Special Report, which was held on 20 June 2002 in your presence, the representative from the General Secretariat of the Council stated that your application would be re-examined. The purpose of this letter is to inform you of the outcome of this re-examination.

Since Council Decision 93/731/EC regarding public access to Council documents was replaced by 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 (Official Journal L 145 of 31.05.2001, page 43), the General Secretariat has re-examined your request on the basis of that Regulation and the specific provisions regarding public access to Council documents in Annex III to the Council's Rules of Procedure, as amended by Council Decision 2001/840/EC of 29 November 2001 (Official Journal L 313 of 30.11.2001, page 40) and has come to the following conclusions:

During its meeting on 3-4 September 1998, the Police Cooperation Working Party (Experts' meeting - interception of telecommunications) discussed three official Council (ST) documents, which were released to you. In the course of that meeting, room documents were circulated by the German, the French and the United Kingdom delegations. These documents are mentioned in the footnotes on pages 1 and 2 of the outcome of proceedings of that meeting, doc. 11614/98 ENFOPOL 108, under the following items:

1) Draft joint action to combat child pornography on the Internet :

- a Note from the French delegation of 2 September 1998, entitled " "Projet d'action commune pour la lutte contre la pornographie infantile sur Internet";

2) Examination of telecommunications interception requirements with reference to new technologies such as INTERNET, cryptography, anonymous SIM cards, etc., established at the various technical working party meetings, ILETS and the recent meeting in Rome in July 1998 :

- Notes from the German and the United Kingdom delegations.

In 1998, the relevant department of the Council Secretariat did not systematically keep in its archives all the room documents submitted by delegations. Measures have in the meantime been taken to remedy this.

As the above-mentioned notes were not kept by the General Secretariat, the delegations concerned were consulted in accordance with Article 2 of Annex III to the Council's Rules of Procedure for the purpose of applying Article 4(5) of Regulation No. 1049/2001. They gave the following replies:

- the German Ministry of the Interior no longer has the note (concerning the establishment of contact points) in its files;

- the United Kingdom Home Office no longer has copies of its notes;

- the French delegation is still in the possession of the above-mentioned note which it submitted to the Working Party, but did not agree to release it to the public. Hence, access to this document is denied on the basis of Article 4(5) of Regulation No. 1049/2001 since the Member State concerned does not agree to its disclosure.

Under Article 7(2) of the Regulation you may, within 15 working days of receiving this reply, make a confirmatory application for access to documents which have been refused.

Yours sincerely,

For the General Secretariat

Hans Brunmayr
Deputy Director-General