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Brussels, 19 November 2008

**Mr Martin Ottmann**

**08/1176-ADD-jp/jj  
08/1219-ADD-jp/jj**

Dear Mr Ottmann,

Thank you for your e-mail of 16 September 2008 in response to our letter of 28 August 2008 in which you have clarified the scope of your requests.

Due to a clerical error, for which the General Secretary of the Council sincerely apologize, your request of 22 July was erroneously considered to be identical to the request introduced on 15 July. The reply to your request of 22 July is set out below.

As regards your first request, dated 15 July 2008, the General Secretariat has - as a result of the extensive research carried out during the examination of your second request - identified one document, which, in view of its content, is covered by your first request. The document concerned is a letter of 29 November 2005, addressed by UK Foreign Secretary Jack Straw to US Secretary of State Condoleezza Rice.

Following its examination of the document on the basis of Regulation (EC) No 1049/2001 of the European Parliament and of the Council regarding public access to European Parliament, Council and Commission documents (Official Journal L 145, 31.5.2001, p. 43) and the specific provisions concerning public access to Council documents set out in Annex II to the Council's Rules of Procedure (Council Decision No 2006/683/EC, Euratom, Official Journal L 285, 16.10.2006, p. 47), the General Secretariat has come to the conclusion that you may have access to this letter.

The second request concerns:

- a listing of all written/electronic reports, memoranda, protocols, minutes and notes by the EU Council, which have been written between September 11th, 2001 and July 22nd, 2008 with regard to all aspects of the so-called 'extraordinary U.S. rendition program', i.e.

- a) the illegal kidnapping of individuals by federal agencies of the U.S. government on the territory of the European Union,
- b) the illegal detention by or on behalf of federal agencies of the U.S. government on the territory of the European Union,
- c) the illegal transportation of so-called 'battlefield detainees'/'unlawful combatants' and 'terror suspects' by federal agencies of the U.S. government using airspace and airports belonging to the territory of the European Union.

The General Secretariat has examined this request on the basis of Regulation (EC) No 1049/2001 of the European Parliament and of the Council regarding public access to European Parliament, Council and Commission documents (Official Journal L 145, 31.5.2001, p. 43) and the specific provisions concerning public access to Council documents set out in Annex II to the Council's Rules of Procedure (Council Decision No 2006/683/EC, Euratom, Official Journal L 285, 16.10.2006, p. 47), and has come to the following conclusion:

Preliminary remark:

Pursuant to Council Decision 2001/264/EC of 19 March 2001 adopting the Council's security regulations (OJ L 101, 11.4.2001, p. 12), the following level of classification applies:

"RESTREINT UE": this classification shall be applied to information and material the unauthorised disclosure of which could be disadvantageous to the interests of the European Union or of one or more of its Member States.

Altogether 24 documents have been identified as being covered by your request. The documents concerned can be divided into three categories:

*Documents to which you may have full access:*

- 1) 16821/06
- 2) 11644/06
- 3) 10228/06
- 4) 10496/06
- 5) 11313/06
- 6) 11513/06
- 7) 12539/06
- 8) 13038/06
- 9) 13289/06
- 10) 13857/06
- 11) 13857/1/06 REV 1
- 12) 14000/06
- 13) 15377/06
- 14) 15860/06
- 15) 15859/06
- 16) 15908/06
- 17) 16204/06
- 18) 16376/06
- 19) 17087/06
- 20) 5448/07
- 21) 5670/07.

*Documents to which you may have partial access:*

22) Document 14396/06 is a letter from Mr Carlos Coelho, President of the TDIP Temporary Committee of the European Parliament to Mr Erkki Tuomioja, President of the Council of the European Union

You may have access to this document except for one part, the disclosure of which would prejudice relations between the European Union and the United States and to which the General Secretariat is unable to grant you access pursuant to Article 4 (1)(a), third indent, of the Regulation (protection of the public interest with regard to international relations).

23) Document 15509/07 is a note from COJUR to the Political and Security Committee on the EU-US dialogue on international law and the fight against terrorism (classified as RESTREINT UE)

You may have access to this document except for those parts, the disclosure of which would hamper the on-going discussions with the US on these issues and prejudice relations between the European Union and the United States. Pursuant to Article 4(1)(a), third indent, of the Regulation (protection of the public interest with regard to international relations) the General Secretariat is unable to grant you access to these parts of the document. However, pursuant to Article 4(6) of the Regulation, you may have access to those parts of the document which are not covered by this exception. You will find them in document 15509/07 EXT 1.

*Documents to which access must be refused:*

24) Document 14483/06 is an "I" item note from the Presidency to the Permanent Representatives Committee (Part 2) concerning a letter of the European Parliament on transmission of information to the Temporary Committee on the alleged use of European Countries by the CIA for the transportation and illegal detention of prisoners = Approval of a reply (classified as RESTREINT UE)

Disclosure of the content of this document would prejudice relations between the European Union and the United States. Pursuant to Article 4 (1)(a), third indent, of the Regulation (protection of the public interest with regard to international relations) the General Secretariat is unable to grant you access to this document.

Under Article 7(2) of the Regulation, you have 15 working days to submit a confirmatory application for the Council to review its position <sup>1</sup>.

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<sup>1</sup> Should you decide to do so, then please indicate whether you permit the Council to make your confirmatory application fully public in the Council's Register of documents. If you do not reply or reply in the negative, then your application will be dealt with confidentially. Your reply will in no way prejudice your rights under Regulation (EC) No 1049/2001.

The General Secretariat sincerely apologizes for the exceptionally long delay in answering to your request. It has conducted extensive internal consultations within its relevant services in order to identify documents which could be of interest to you and this has unfortunately taken much longer than usual. However, the General Secretariat can assure you that your request has been dealt with as thoroughly as possible.

Yours sincerely,

For the General Secretariat

Ramón Jiménez Fraile

Annexes