



## EUROPEAN COMMISSION

LEGAL SERVICE  
The Director General

Brussels,

*by e-mail*

Ms Sandra Conway  
PF Logue Solicitors  
8-10 Coke Lane, Smithfield  
Dublin 7  
Ireland

[Sandra.conway@fplogue.com](mailto:Sandra.conway@fplogue.com)

**Subject: Request for access to documents**

Ref.: Your request of 04 October 2017 registered under reference GestDem 2017/5714

Dear Ms Conway,

I refer to your request for access to documents, under Regulation (EC) No 1049/2001 regarding public access to European Parliament, Council and Commission documents<sup>1</sup>. Your request concerns the legal submissions made to the Court of Justice in case C-131/12 *Google Spain and Google*<sup>2</sup>.

The following parties have submitted written observations to the Court:

1. the European Commission,
2. Google Spain SL and Google Inc. (appellants in the main proceedings),
3. Mr Costeja González (respondent in the main proceedings),
4. the Greek Government,
5. the Spanish Government,
6. the Italian Government,
7. the Austrian Government and
8. the Polish Government.

Please note that the Court of Justice has not notified to the Commission the submission made by Mr Costeja González (document under number 3). In this respect, Article 2(2) of Regulation (EC) No 1049/2001 states that "*[t]his Regulation shall apply to all documents held by an institution, that is to say, documents drawn up or received by it and its possession, in all areas of activity of the European Union*". Since the Commission is not in possession of the referred document, it cannot deal with this part of your request.

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<sup>1</sup> OJ L 145, 31.05.2001, page 43.

<sup>2</sup> Judgment of the Court of 13 May 2014, *Google Spain and Google*, case C-131/12, ECLI:EU:C:2014:317.

With regards to the Commission's observations (document under number 1), I am pleased to inform you that the document concerned is already public and available at [http://ec.europa.eu/dgs/legal\\_service/submissions\\_cour\\_en.htm](http://ec.europa.eu/dgs/legal_service/submissions_cour_en.htm).

As far as the written observations submitted by other parties are concerned, the Commission has consulted, in accordance with article 4 (4) of Regulation (EC) No 1049/2001, the authors of the requested documents on their disclosure. I would like to inform you that:

- the Italian, Austrian and Polish authorities have agreed to the disclosure of their written observations (documents under numbers 6, 7 and 8);
- the Greek and Spanish authorities, as well as Google Spain SL and Google Inc. did not reply to the Commission's consultation (documents 2, 4 and 5).

With regards to the pleadings lodged to the Court of Justice, the Court has recognised in its judgment in joined cases C-514/07P, C-528/07P and C-532/07P that, in cases where the proceedings have been closed by a decision of the Court, there are no longer grounds for presuming that disclosure of the pleadings would undermine the judicial activities of the Court<sup>3</sup>.

Since case C-131/12 is now closed, and in the absence of any objection from the authors, I am pleased to inform you that access can be granted to the requested documents in accordance with Regulation (EC) No 1049/2001.

Please note that in the case of the observations submitted by the Italian, Austrian and Polish authorities (documents under numbers 6, 7 and 8) the initials of the lawyers-linguists of the Court have been expunged. Similarly, in the observations submitted by Google Spain SL and Google Inc. (document under number 2), the email addresses of the relevant law firm have been expunged since this information must be protected under the exception provided for in Article 4 (l)(b) of Regulation (EC) 1049/2001 ("*protection of personal data*")<sup>4</sup>, in accordance also with the European Union legislation regarding the protection of personal data.

Indeed, when access is requested to documents containing personal data, Regulation (EC) No 45/2001 becomes fully applicable<sup>5</sup>. According to Article 8(b) of Regulation 45/2001<sup>6</sup>, personal data shall only be transferred to recipients if they establish the necessity of having the data transferred to them and if there is no reason to assume that the legitimate rights of the persons concerned might be prejudiced. Those two conditions are cumulative.

I consider that, with the information available, the necessity of disclosing the aforementioned personal data to you has not been established and it cannot be assumed that such disclosure would not prejudice the legitimate rights of the persons concerned.

If you wish to receive the expunged personal data, I invite you to provide us with arguments showing the need to have the personal data transferred to you and the absence of adverse effects to the legitimate rights of the persons whose personal data would be disclosed.

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<sup>3</sup> Judgment of the Court of 21 September 2010 in joined cases *Sweden and Others v API and Commission*, C-514/07P, C-528/07P and C-532/07P, ECLI:EU:C:2010:541, paragraphs 130 and 131.

<sup>4</sup> "*The institutions shall refuse access to a document where disclosure would undermine the protection of: [...] (b) privacy and the integrity of the individual, in particular in accordance with Community legislation regarding the protection of personal data*".

<sup>5</sup> Judgment of the Court of 29 June 2010 in *Commission v The Bavarian Lager Co. Ltd*, C-28/08 P, EU:C:2010:378.

<sup>6</sup> OJ L 8, 12.1.2001, p. 1.

Please note that the exception of Article 4(1)(b) has an absolute character and does not envisage the possibility of demonstrating the existence of an overriding public interest.

As the Legal Service informed you by e-mail on 17 November 2017, the requested documents are available in the language of the proceedings (Spanish), in the language of the respective Member State and a translation in French has been prepared by the services of the Court for each document. According to the preferences indicated in your e-mail of the same day, you will find enclosed a copy of the documents requested in French.

#### **REUSE OF THE DOCUMENTS**

With regards to the Commission's written observations, you may reuse the disclosed document free of charge for non-commercial and commercial purposes provided that the source is acknowledged and that you do not distort the original meaning or message of the document. Please note that the Commission does not assume liability stemming from the reuse

Concerning the written observations submitted by third parties, please note that these documents were transmitted by the Court of Justice to the Commission in its capacity as participant to the Court proceedings at stake. They are disclosed for information only and cannot be re-used without the agreement of the originator, who holds a copyright on them. They do not reflect the position of the Commission and cannot be quoted as such.

#### **MEANS OF REDRESS**

Should you wish this position to be reconsidered, you should present in writing, within fifteen working days from receipt of this letter, a confirmatory application to the Commission's Secretary-General at the following address:

European Commission  
Secretary-General  
Transparency unit SG-B-4  
BERL 5/327  
B-1049 Bruxelles

or by email to: [sg-acc-doc@ec.europa.eu](mailto:sg-acc-doc@ec.europa.eu)

The Secretary General will inform you of the result of this review within 15 working days from the date of registration of your request. You will either be given access or your request will be rejected in which case you will be informed of how you can take further action.

Yours sincerely,



Luis ROMERO REQUENA

Attachments: 6