



EUROPEAN COMMISSION  
DIRECTORATE-GENERAL FOR MIGRATION AND HOME AFFAIRS

Directorate D: Law Enforcement and Security  
Unit D.4 : Cybercrime

Brussels  
HOME.D.4/AP

**Subject: Your application for access to documents – GESTDEM 2021/0614**

Dear Mr Stolton,

We refer to your e-mail of 9 February 2021 in which you make a request for access to documents, registered on 10 February 2021 under the above-mentioned reference number.

Your application concerns a very large number of documents, which need to be assessed individually. Additionally, some of the documents requested originate from third parties, which have to be consulted. Such a detailed analysis cannot be carried out within the normal time limits set out in Article 7 of Regulation (EC) No 1049/2001.

However, Article 6(3) of Regulation (EC) No 1049/2001 also provides for a possibility to confer with an applicant informally with a view to finding a fair solution when an application relates to a very long document or concerns a very large number of documents.

In accordance with the case law of the EU Courts, such a solution can only concern the content or the number of documents requested, not the deadline for replying<sup>1</sup>. This means that the scope of the request must be reduced in a way that would enable its processing within the extended deadline of 15 + 15 working days.

Based on the above-mentioned provision, we would kindly ask you to specify the objective of your application and your specific interest in the documents requested<sup>2</sup>, and whether you could narrow down the scope of your application (i.e. the subject matter(s) and/or timeframe covered), so as to reduce it to a more manageable amount of documents.

In order to help you to narrow down your application, please note that the following categories of documents have been identified as falling under the scope of your request. Please note that the listing of documents in this table does not indicate that the documents can be disclosed fully or partially, as the possibility to disclose any or all information contained in the relevant document still needs to be assessed.

| No | Category of document  | Approximate contents/relevance for the request | Date | Indicative nr of relevant pages |
|----|-----------------------|--|------|---------------------------------|
|    | Informal exchanges of | Messages pertaining to a number of             |      | 35                              |

<sup>1</sup> Judgment of the Court of Justice of 2 October 2014, *Strack v European Commission*, C-127/13, (hereinafter referred to as the '*Strack v Commission* judgment'), EU:C:2014:2250, paragraphs 26-28.

<sup>2</sup> *Strack v Commission* judgment, paragraph 28; Judgment of the General Court (then 'Court of First Instance') of 22 May 2012, *EnBW Energie Baden-Württemberg v European Commission*, T-344/08, EU:T:2012:242, paragraph 105.

|   |   |                             |    |
|---|---|-----------------------------|----|
| e-mail between Commission officials.  | <p>different issues:</p> <ul style="list-style-type: none"> <li>- negotiations of e-Privacy regulation in 2019,</li> <li>- exchanges related to Child sexual abuse Interim Regulation</li> <li>- preparation of press releases related to the work on CSA,</li> <li>- internal discussion on presentation of CSA Strategy,</li> <li>- preparation of the work on CSA in the framework on the EU Internet Forum</li> </ul> <p>that may include information about PhotoDNA or references to Photo DNA as an example of a technology used.</p> |                             |    |
| Written replies to follow-up questions from the European Parliament on the Child sexual abuse Interim Regulation                  | Information about how PhotoDNA is used (what type of services it is used in)  | 10/11/2020                  | 35 |
| Discussion papers and minutes from meetings between services and Cabinet on issues around fighting child sexual abuse             | Discussion papers contain references to PhotoDNA as an example of a technology used as part voluntary measures to detect child sexual abuse material.   | March 2020 – July 2020      | 25 |
| Briefings prepared by DG HOME (HOME internal and for Cabinets)  | References to PhotoDNA as an example of a technology used as part voluntary measures to detect child sexual abuse material, outline of what photoDNA is and how it works.   | January 2020 – January 2021 | 70 |
| Reports and technical papers for the Council: E-privacy Regulation; Child sexual abuse Interim Regulation meetings in the Council | Summary of exchanges in the Telecom Working Party   | 15 and 28 September 2020    | 40 |

|  |   |   |   |    |
|--|---|---|---|----|
|  | Informal reports from the discussion on the Child sexual abuse Interim Regulation meetings in European Parliament | Summary of exchanges in the trilogue, including the discussion of error rate of PhotoDNA  | 17 December 2020                            | 15 |
|  | Reports from meetings / exchanges with the creators of photoDNA   | Meetings/exchanges related to a range of topics including fight against disinformation, radicalisation and child sexual abuse that may include information about PhotoDNA or references to Photo DNA as an example of a technology used.<br><br>Letters exchanged between Microsoft & Commissioner Johansson (Ares(2020)6100804, Ares(2020)4589540), containing a brief outline of history of photo DNA creation and use. | April 2020<br>29/10/2020<br>e-mail 8/4/2020 | 15 |
|  | Reports from meetings with industry representatives, and other exchanges where Photo DNA was mentioned            | This category includes meeting reports/notes, exchanges of messages and letters, feedback submitted to Inception Impact Assessment  | Feb 2020 - Dec 2020                         | 25 |
|  | Background paper/discussion papers from expert meetings   | Reference to PhotoDNA in a footnote explaining hashing tools.   | 28/1/2/21                                   | 30 |

According to our first estimation, your request for access to documents would imply the detailed assessment of at least 280 pages, probably significantly more.

According to our very first estimates, the handling of your request would take at least 42 working days<sup>3</sup>, broken down as follows:

- retrieval and establishment of a complete list of the documents identified: [5] working days;
- assessment of the content of the documents in light of the exceptions of Article 4 of Regulation (EC) No 1049/2001: [12] working days:

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<sup>3</sup> Taking into account other applications for access to documents and other tasks that the staff concerned are likely to have to deal with during the same period.

- third party consultations: [10] working days;
- final assessment of the documents in light of the comments received: [5] working days;
- drafting of the reply: [1] working day;
- redaction of those parts of the documents to which one or several exceptions apply: [5] working days;
- internal review and approval of the draft decision: [2] working days; and
- preparation of the reply and the documents for dispatch (scanning of the redacted versions, administrative processing etc.): [2] working days.

Therefore, in accordance with Article 7 of Regulation (EC) No 1049/2001, it is not possible to process and reply to your request within the prescribed time limits.

We would like to draw your attention to the fact that informal e-mails are automatically deleted after 6 months, therefore we are not able to retrieve exchanges older than 6 months. We would like to point out that the search for informal notes and communication may not be complete. References to PhotoDNA appear in a different contexts on a variety of topics. The workload involved in tracing every reference to PhotoDNA in mailboxes and files of numerous units in DG HOME is therefore very high.

It is important to note that the content of exchanges, reports, discussion papers etc., refer to many topics, of which your request would only concern a part. Some documents include a reference to PhotoDNA merely as an example of a hashing technology, without presenting any information about the technology itself. It is therefore necessary to thoroughly evaluate each document to assess to what extent the individual information is relevant and whether it can be made public.

Additionally, some of the documents requested originate from third parties, which have to be consulted in case the European Commission comes to the conclusion that (part of) a document can be released. The workload is therefore very high and cannot be dealt with within the legal deadlines.

As a result, we have attempted to identify those documents which a priori would seem to be most relevant to your request as they contain the most detailed information. We would be in a position to assess and give you an answer to your request on the following documents:

- letters exchanged between the Commissioner and Microsoft
- reports from calls/meetings with the creators of PhotoDNA
- technical information provided to the Council in 2019 during e-Privacy Regulation Negotiations
- technical information provided to the European Parliament and the Council in 2020.

In order to enable us to respect the time-limits of Regulation (EC) No 1049/2001, we would ask you for a swift reply to our invitation to propose a fair solution, **within five working days at the latest:**

- by e-mail to: [HOME-NOTIFICATIONS-D4@ec.europa.eu](mailto:HOME-NOTIFICATIONS-D4@ec.europa.eu)

If you have any questions concerning the invitation, you can contact us:

- by e-mail at: [HOME-NOTIFICATIONS-D4@ec.europa.eu](mailto:HOME-NOTIFICATIONS-D4@ec.europa.eu)

In the absence of a reply within five working days, we will unilaterally restrict the scope of your application to those parts that can be dealt with within the extended deadline of 30 working days, counting from the registration of your application on 10 February 2021.

Thank you in advance for your understanding.

Yours sincerely,

(e-signed)  
Cathrin BAUER- BULST  
Head of Unit