

Our Reference: FPL/624/03172/2

Your Reference: 2024/2943

30 September 2024

**By email only**

Secretary General  
European Commission  
[sg-acc-doc@ec.europa.eu](mailto:sg-acc-doc@ec.europa.eu)

**Re: Warning of court action due to failure to provide an express confirmatory decision**

**Our clients: Public.Resource.Org Inc and Right to Know CLG**

Dear Sir or Madam

We refer to our clients' application for access to documents filed on 31 May 2024. The Commission failed to make a decision within the extended time limit. On 29 July 2024 our clients made a confirmatory application against the implied negative decision of the Commission.

On 14 August 2024 the Commission extended the deadline for a reply to the confirmatory application to 10 September 2024. The Commission informed us on 10 September 2024 that it was unable to reply within the extended time limit due to the complexity of the file. It gave an assurance that it was doing its best to send a reply to the confirmatory request as soon as possible.

As the Commission is aware Article 8(3) of Regulation 1049/2001 provides that failure by the institution to reply within the prescribed time limit shall be considered as a negative reply and entitle the applicant to institute court proceedings against the institution. Nonetheless, the Court of Justice has held, that even in such a case where the institution fails to reply within the prescribe time limit, it still retains the power to make an express decision even after the deadline has passed<sup>1</sup>.

Our clients therefore call on the Commission to provide its express decision within 10 working days of the date of this letter given that the deadline for submitting an application for annulment is approaching.

Our clients hope that the Commission will reconsider its implied negative reply to our clients' confirmatory application so that court action will not be necessary.

We thank you in advance for your consideration.

---

<sup>1</sup> Judgment of 19 January 2010, Joined cases T-355/04 and T-446/04, *Co Frutta*, EU:T:2010:15 §§56 to 59

Yours faithfully

A handwritten signature in black ink, appearing to read "FP Logue". The signature is written in a cursive, flowing style.

**FP LOGUE LLP**