

Google LLC  
Amphitheatre Parkway,  
Mountain View, CA 94043  
USA

## Request for Reply and Further Clarification

### 1. Summary and Notice

Datainspektionen, the Swedish Data Protection Authority (DPA), has along with several other Supervisory Authorities of the European Union's General Data Protection Regulation (GDPR)<sup>1</sup>, received complaints against you, Google LLC (Google), based on a report called *Every Step You Take etc.* ("the report")<sup>2</sup> by *Forbrukerrådet* (the Norwegian Consumer Council).

After having reviewed the complaint,<sup>3</sup> filed with us on the 27<sup>th</sup> of November 2018, by a representative of *Sveriges Konsumenter* (the Swedish Consumer Association) on behalf of a data subject ("the complainant"), Datainspektionen has decided to open an investigation into the matter in light of its competence under article 55.1 and 56.1 of the GDPR.

Datainspektionen, invoking its investigative powers pursuant to Article 58.1 of the GDPR, hereby order you to provide the below specified information and documents (specified in section 3) and answer the questions below (set out in section 4) **no later than on the 1st of February 2019**. You may, if you wish, submit your answer in English. Please note that Datainspektionen welcomes you to email us, but not if you are sending sensitive information. See contact details in the footer.

---

<sup>1</sup> Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC.

<sup>2</sup> Please see Appendix 1 (The Norwegian Consumer Council, the 27<sup>th</sup> of November 2018, *Every step you take - How deceptive design lets Google track users 24/7*).

<sup>3</sup> Please see Appendix 2.

## 2. Summary of the complaint before this Authority

In summary, the complainant holds that the way Google provides itself access to the location data of users of its mobile operative system Android by ways of its so called "Location History" and "Web & App Activity" ("the services") is in breach of the GDPR. According to the complainant, the report by *Forbrukerrådet* states that Google use deceptive design, misleading information and repeated pushing to manipulate users into allowing constant tracking of their movements. In essence, the complainant holds that the processing of location data in this way is unlawful and that Google is in violation of Articles 5, 6, 7, 12, 13 and 25 of the GDPR.

## 3. Information and documents that Google must provide

Datainspektionen order Google to submit the following.

*Information:* A summary, with regard to the period 25th of May 2018 – 27th of November 2018 ("the relevant period"), that must include a) the total number of Swedish data subjects about which you have obtained location data through the services and b) an approximation of how many data points that are gathered on average on an individual, broken down for each of the 24 hours of the day, presented in a structured and clear manner.

*Document(s)*, in the version that were in effect during the relevant period:

1. Record(s) of processing activities pursuant to Article 30 of the GDPR, limited to those relevant to your processing of the location data of the Swedish data subjects obtained through the services during the relevant period,
2. Privacy policies for the services, and
3. Data Impact Assessment(s) that you have finalised pursuant to Article 35, during or before the relevant period, limited to those relevant to your processing of the location data of the Swedish data subjects obtained through the services during the relevant period.

## 4. Questions that Google must answer

Datainspektionen request that you in general comment on the complaint and the report. Your answer should particularly clarify (in relation to the GDPR):

1. For what purpose(s) you have processed location data of the Swedish data subjects obtained through the services during the relevant period and what your legal basis (Article 6) for each type of processing was,
2. If applicable, when and how you provided the Swedish data subjects with the information regarding the processing in the previous questions (Article 12 and 13), which should include the information that was provided,
3. Whether your answers to the previous two questions is representative of how you fulfil your obligations to inform and obtain legal basis (Article 6) for the processing of location data of data subjects in general through the use of the services,
4. If the legal basis for any of the processing is consent (Article 6.1.a), an explanation and evidence that show how the conditions for consent (Article 7) have been fulfilled,
5. If the legal basis for any of the processing is legitimate interests (Article 6.1.f), an explanation of how it constitutes an appropriate legal basis with regard to the location data being processed,
6. Whether the so called “design patterns” you have allegedly used for obtaining legal basis for the processing of location data of users, as they have been described in the report (pp. 26-31), is accurate with regard to the Swedish data subjects of whom you have been processing location data obtained through the services during the relevant period, and if not, your own corrections in that regard, preferably in a visually comparable and clear material such as those in the report (e.g. p. 28),
7. If you consider your answers to the previous question compatible with the principles of lawfulness, fairness and transparency (Article 5.1.a) and data protection by design and by default (Article 25), your argument(s) for that position,
8. Any comments you would like to make, in light of your answers to the previous questions and the recommendations allegedly put forth to you within the documents referred to in the report (footnote 51, p. 33)<sup>4</sup>,

---

<sup>4</sup> Which states “[a]s a result of an investigation done by the EU Data Protection Authorities, Google was already in 2012 urged to clarify which legal basis it uses for processing of

9. Whether you consider any of the location data of the Swedish data subjects that you have processed during the relevant period to be such special category data as referred to in Article 9, and if so, which legal basis you have identified for the processing of such data under Article 6 as well as Article 9,
10. What measures in general you have made to protect the location data of the Swedish data subjects pursuant to article 25 and 32, and
11. If applicable, in light of your answers to the previous questions, any changes to your practises in this regard in the period 28<sup>th</sup> of November 2018 – 18<sup>th</sup> of January 2019, that you wish to put forward.

On behalf of Datainspektionen,

Ulrika Bergström, Legal Advisor

Nazli Pirayehgar, Legal Advisor

Olle Pettersson, Legal Advisor

*Olle Pettersson, 2019-01-18 (Det här är en elektronisk signatur)*

---

personal data. See [https://www.cnil.fr/sites/default/files/typo/document/20121016-letter\\_google-article\\_29-FINAL.pdf](https://www.cnil.fr/sites/default/files/typo/document/20121016-letter_google-article_29-FINAL.pdf) and [https://www.cnil.fr/sites/default/files/typo/document/GOOGLE\\_PRIVACY\\_POLICY\\_RECOMMENDATIONS-FINAL-EN.pdf](https://www.cnil.fr/sites/default/files/typo/document/GOOGLE_PRIVACY_POLICY_RECOMMENDATIONS-FINAL-EN.pdf).”