Reports of Cases

OPINION OF ADVOCATE GENERAL
BOBEK
delivered on 21 September 2016[1]

Case C-491/15 P

Typke
v

Commission

(Appeal — Access to documents of the institutions — Regulation No 1049/2001 — – European Personnel Selection Office (EPSO) competitions — Databases — Request for a table containing a series of anonymised data — Notion of document — New or existing document)

I – Introduction

1. Mr Rainer Typke (the appellant) took part in the admission tests for two open European Personnel Selection Office ('EPSO') competitions. After being informed of his results, he sought access, pursuant to Regulation (EC) No 1049/2001 ('the Regulation'),[2] to a table containing a series of anonymised data relating to those tests in order to allay his suspicions of discrimination. The European Commission rejected his applications for access to that data. The appellant challenged the Commission's decision before the General Court.

2. By the present appeal, the appellant contests the judgment of the General Court dismissing his action. In particular, he challenges the General Court's conclusion that the document he requested did not exist and its conclusion that Regulation No 1049/2001 did not oblige EPSO to generate a new document.

3. In accordance with the request made by the Court of Justice, this Opinion focuses on the interpretation of the notion of 'existing document' in relation to electronic databases — the key legal issue arising in the present case.

II – Legal framework

4. Regulation No 1049/2001 aims at introducing transparency into the work of the EU institutions, thereby bringing into life the principle of openness enshrined in Article 1(2) TEU.

1 — Original language: English.

2 — Regulation of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents (OJ 2001 L 145, p. 43).

5. Article 2 of the regulation is entitled 'Beneficiaries and scope'. Article 2(1) provides that 'any citizen of the Union, and any natural or legal person residing or having its registered office in a Member State, has a right of access to documents of the institutions, subject to the principles, conditions and limits defined in this Regulation'. Pursuant to Article 2(3), 'this Regulation shall apply to all documents held by an institution, that is to say, documents drawn up or received by it and in its possession, in all areas of activity of the European Union'.

6. Article 3 lays down a number of definitions. In particular, Article 3(a) provides that '"document" shall mean any content whatever its medium (written on paper or stored in electronic form or as a sound, visual or audiovisual recording) concerning a matter relating to the policies, activities and decisions falling within the institution's sphere of responsibility'.

7. Article 6 contains the rules on applications for access to a document. According to that provision:

'1. Applications for access to a document shall be made in any written form, including electronic form, in one of the languages referred to in Article 314 of the EC Treaty and in a sufficiently precise manner to enable the institution to identify the document. The applicant is not obliged to state reasons for the application.

2. If an application is not sufficiently precise, the institution shall ask the applicant to clarify the application and shall assist the applicant in doing so, for example, by providing information on the use of the public registers of documents.

3. In the event of an application relating to a very long document or to a very large number of documents, the institution concerned may confer with the applicant informally, with a view to finding a fair solution.

4. The institutions shall provide information and assistance to citizens on how and where applications for access to documents can be made.'

8. Finally, Article 10 deals with the practicalities of actually accessing documents once an application has been accepted. Under Article 10(1), 'the applicant shall have access to documents either by consulting them on the spot or by receiving a copy, including, where available, an electronic copy, according to the applicant's preference …'. Pursuant to Article 10(3), 'documents shall be supplied in an existing version and format (including electronically or in an alternative format such as Braille, large print or tape) with full regard to the applicant's preference'.

III – Facts and legal proceedings

9. Mr Typke is a member of staff of the European Commission. He took part in the admission tests for two open EPSO competitions for the recruitment of, respectively, grade AD 5 and AD 7 officials. After being informed of his results, the appellant made two successive applications to EPSO for access to documents with a view to verifying whether the tests he took had been organised in a manner consistent with the principle of equal treatment. In particular, the appellant suspected that translation errors might have had a negative impact on certain language groups.

10. In his first application (Procedure Gestdem 2012/3258), the appellant sought access to a 'table' containing a series of anonymised data on the tests that were taken by approximately 45 000 candidates. That table would have contained information in the form of identifiers for each candidate relating the candidate to the questions which he or she had to answer; identifiers for each question asked without revealing the content thereof; the type of question; the language in which each question was presented to each candidate; and the time spent by each candidate on answering each question.

11. Six months later, in his second application (Procedure Gestdem 2013/0068), the appellant did not seek to obtain a table combining all of the information requested. Instead, he asked for access to parts of existing documents in electronic format that would contain the same information as that covered by his first application, as well as the level of difficulty of each question set for each candidate.

12. As far as the first procedure was concerned, EPSO refused the initial application on 9 August 2012. EPSO admitted that it was in possession of the information. However, it stated that the document requested did not exist. The appellant then filed, pursuant to Article 7(2) of Regulation No 1049/2001, a confirmatory application asking the institution to reconsider its position. The Secretariat-General of the Commission essentially confirmed EPSO's view. It explained that Regulation No 1049/2001 did not oblige EPSO to perform IT operations in order to extract information stored in various databases.

13. As far as the second procedure was concerned, EPSO failed to reply to the second application made by the appellant. Subsequently, the appellant submitted a confirmatory application to the Commission.

14. By decision of 5 February 2013 (the 'first contested decision'), the Commission rejected the confirmatory application in the first procedure on the following grounds: first, the requested document did not exist. The compilation of the requested table would involve not only the extraction of information relating to tens of thousands of relevant tests from different databases, but also of information from other databases, such as the general database of questions. Second, granting access to such a document would entail too heavy an administrative workload.

15. One month later, by letter dated 13 March 2013, the Commission took 'the second contested decision'. In that letter the Commission failed to address the substance of the second confirmatory application. Therefore, the appellant interpreted the letter, in reliance on Article 8(3) of the regulation, as a negative response to his confirmatory application in the second procedure. The Commission then belatedly adopted an express refusal decision in that procedure on 27 May 2013.

IV – The judgment under appeal and the proceedings before the Court

16. Before the General Court, Mr Typke sought the annulment of the first and second contested decisions on the ground that they infringed Regulation No 1049/2001. The Commission claimed that the General Court should declare that, in view of the adoption of the express refusal decision in the second procedure on 27 May 2013, there was no need to adjudicate on the action in so far as it related to the annulment of the second contested decision. The Commission also requested the General Court to dismiss the action in so far as it related to the first contested decision.

17. The General Court upheld the Commission's arguments.[3] It declared that there was no longer any need to adjudicate on the claim for annulment of the implied decision refusing access in the second procedure (point 1 of the operative part of the judgment under appeal), dismissed the action as to the first contested decision (point 2), and ordered Mr Typke to pay the costs (point 3). The General Court notably held that the requested document in the first procedure was not an existing document to which access could be sought under Regulation No 1049/2001.

18. Before the Court, the appellant claims that points 2 and 3 of the operative part of the judgment under appeal should be set aside. He maintains that the General Court erred in law and distorted the clear sense of the evidence by stating that the appellant had not asked for access to existing documents in the first procedure. In addition, the appellant seeks the annulment of the decision adopted by the Secretariat-General of the European Commission in the first procedure (Gestdem 2012/3258).

3 — Judgment of 2 July 2015, *Typke* v *Commission* (T-214/13, EU:T:2015:448).

19. The crux of the present appeal is the alleged error of law in interpreting the notion of 'existing document' in relation to electronic databases. In this regard, the appellant raises a single plea articulated in two interrelated branches.

20. First, the appellant submits that the General Court erred in its interpretation of Regulation No 1049/2001, in particular, Articles 3(a) and 4(6) thereof. It incorrectly assumed that the application of those provisions to relational databases requires a distinction between partial access to documents stored in a relational database, and bare access to information contained in such a database.

21. Second, the appellant argues that the General Court erred in stating that the appellant's request did not refer to an existing document, but to a new one and, in any case, that it did not fall within the scope of application of the regulation. The appellant claims in particular that the requested combination of data amounts to a document, within the meaning of the regulation, as it can be obtained by searching the database using the search tools available for the database in question. The regulation would not exclude from its scope of application a request for access to a relational database requiring the formulation of Structured Query Language (SQL) queries not previously preprogrammed or used by the requested institution on a regular basis for the database at issue. Moreover, the judgment under appeal would run counter to the *effet utile* of the regulation. Access would be effectively restricted to the data that EPSO has decided *ex ante* to communicate to the general public. An institution could even wilfully preclude access to databases.

22. In its response, the Commission notably claims that the General Court correctly applied the notion of 'existing document'. Only the results of pre-written SQL queries can be considered as existing documents. The document requested, which involves the writing of new SQL queries, cannot be retrieved through a normal or routine search in the sense of the *Dufour* judgment.[4] Furthermore, the *effet utile* of the regulation would not be undermined since the regulation does not aim to serve the general information needs of citizens. According to the Commission, the appellant has not adduced evidence suggesting that the Commission would have ever wilfully deleted SQL statements so as to hide a document. On that basis, the Commission requests the Court to dismiss the appeal and to order the appellant to pay the costs.

V – Assessment

23. This Opinion is structured as follows. First, I will examine the notion of a 'document' in the context of electronic databases for the purpose of interpreting Regulation No 1049/2001 (Section A). Second, I will analyse what amounts, in the same context, to an 'existing' document, as opposed to the creation of a 'new' document (Section B). Third, turning to the case at hand, I will consider whether the table requested by the appellant could be qualified as an 'existing document' (Section C).

A – *The notion of 'document' and modalities of access in the digital era*

24. Regulation No 1049/2001 is an expression of the principle of openness enshrined in the second paragraph of Article 1 TEU.[5] It aims to give the fullest possible effect to the right of public access to documents[6] with a view to enhancing transparency in the work of the EU institutions, thereby making those institutions more legitimate and accountable to citizens.[7]

4 — Judgment of 26 October 2011, *Dufour* v *ECB* (T-436/09, EU:T:2011:634, paragraph 153).

5 — See recital 1, as interpreted by the judgment of 21 July 2011, *Sweden* v *MyTravel and Commission* (C-506/08 P, EU:C:2011:496, paragraph 72).

6 — See recital 4, as interpreted for instance in the judgments of 1 July 2008, *Sweden and Turco* v *Council* (C-39/05 P and C-52/05 P, EU:C:2008:374, paragraph 33), and of 21 September 2010, *Sweden and Others* v *API and Commission* (C-514/07 P, C-528/07 P and C-532/07 P, EU:C:2010:541, paragraph 69).

7 — See recitals 2 and 3. See also, for instance, judgment of 18 December 2007, *Sweden* v *Commission* (C-64/05 P, EU:C:2007:802, paragraph 54).

25. For the purpose of realising those objectives, the legislature has adopted a very broad understanding of the notion of 'document' in Article 3(a) of the regulation. Under that provision '"document" shall mean any content whatever its medium (written on paper or stored in electronic form or as a sound, visual or audiovisual recording) concerning a matter relating to the policies, activities and decisions falling within the institution's sphere of responsibility'.

26. From that extensive definition, it follows that a document can be: *any* content, on *any* medium, for *any* activity of the Union's institutions.

27. By analogy, a similarly broad understanding of the notion of 'document' can be found in Directive 2003/98/EC.[8] Article 2(3) of that directive defines a 'document' as 'any content whatever its medium (written on paper or stored in electronic form or as a sound, visual or audiovisual recording)', or any part of such content. Recital 11 of that directive adds that a 'document' may be 'any representation of acts, facts or information — and any compilation of such acts, facts or information — whatever its medium (written on paper or stored in electronic form or as a sound, visual or audiovisual recording), held by public sector bodies'.

28. Thus, it appears that virtually anything, any data, set of data, or bundle of information can qualify as a document for the purposes of Regulation No 1049/2001.

29. However, despite the admittedly broad notion of 'document', its actual meaning is rather unclear as regards electronic databases and/or the documents contained in those databases. Does it encompass all kinds of data coded in a database? Should access be granted to any combination of data that can possibly be retrieved from databases, following complex searches?

30. Aside from one General Court judgment,[9] little guidance is to be found in the up-to-date Union case-law on the definition of 'document' in the context of electronic databases. However, building on the helpful guidance in that General Court decision as well as on the letter and spirit of the regulation, I suggest that at least three types of information contained in electronic databases can qualify as a 'document' for the purposes of Regulation No 1049/2001:

— individual entries that form an identifiable semantic unit within a larger database or dataset; or

— raw data contained in a database, a dataset, or a defined section thereof; or

— the entire database or dataset.

31. In general, any or all of those three can be seen as documents in the sense of Article 3(a) of the regulation. Whether they will qualify as 'documents' in an individual case cannot be stated abstractly. It will depend on a number of variables, notably the specific type and structure of the particular database and the formulation of the actual request in the individual case. There is, naturally, a vast difference between, on the one hand, a simple spreadsheet containing 10 rows in 2 columns of mere figures and, on the other, a complex relational database with extensive coding needed to structure the raw data and potentially running on a number of servers.

32. However, a few general remarks ought to be made in order to put that (at least at first glance) broad notion of 'document' in relation to electronic databases into its proper context.

8 — Directive of the European Parliament and of the Council of 17 November 2003 on the re-use of public sector information (OJ 2003 L 345, p. 90), as amended by Directive 2013/37/EU (OJ 2013 L 175, p. 1).

9 — See judgment of 26 October 2011, *Dufour* v *ECB* (T-436/09, EU:T:2011:634).

33. It is clear that the fact that a collection of information qualifies as a '*document*' under the regulation does not automatically mean that there is a right of *access* to that document. It is also common ground that access to documents may be lawfully limited for substantive or for practical reasons. Moreover, those two types of reason are not mutually exclusive.

34. On the one hand, access may be limited or even prohibited for substantive reasons. Article 4 of the regulation enumerates those reasons. They constitute lawful exceptions to (full) access to documents. Those substantive exceptions are connected with a number of overriding interests or values, such as the public interest,[10] privacy and the integrity of the individual and the protection of personal data[11] and intellectual property rights.[12]

35. However, it ought to be clearly stressed that the existence of such an exception in a concrete case has no bearing on the definition of the notion of 'document' itself. That is notably reflected by the fact that the procedure to obtain access to documents is made up of two distinct stages that are to be assessed autonomously.[13] First, is there a document within the meaning of Article 3(a) of the regulation? Second, are there any substantive reasons justifying a restriction or even a prohibition of access? Exceptions are distinct from definitions. The existence of potential exceptions should not narrow the scope of the notion of 'document'. In other words, reasoning backwards is not permitted: the fact that a part of or the whole document may not be accessible because of the applicability of any of the Article 4 exceptions does not mean that there is no 'document'.

36. On the other hand, access to a 'document' may be limited for practical reasons. Three of them will be mentioned as being of particular relevance in the context of access to electronic documents.

37. First, access is conditional upon the filing of a precise request. In general, it is for the applicant to identify the precise 'document' that he or she wishes to obtain. That requirement derives from Article 6(1) and Article 6(2) of the regulation. Pursuant to those provisions, applications for access to a document shall be made 'in a sufficiently precise manner to enable the institution to identify the document … If an application is not sufficiently precise, the institution shall ask the applicant to clarify the application and shall assist the applicant in doing so, for example, by providing information on the use of the public registers of documents'.

38. It is understandable that the requirement of precision might pose practical problems in cases where an applicant is requesting access to datasets or raw data without knowing the exact structure of the database at issue. In such cases, perhaps greater stress should be put on the requirement of Article 6(2) of the regulation which states that the institution shall reasonably assist the applicant in clarifying his request. In any case, nothing precludes a new request for access to documents being made by the same applicant, in better knowledge of the structure of the database in question, based on previous rejection(s).

10 — See Article 4(1)(a) of the regulation.

11 — See Article 4(1)(b) of the regulation.

12 — See Article 4(2) of the regulation.

13 — See, in that sense, judgment of 2 October 2014, *Strack* v *Commission* (C-127/13 P, EU:C:2014:2250, paragraph 40); judgment of 1 July 2008, *Sweden and Turco* v *Council* (C-39/05 P and C-52/05 P, EU:C:2008:374, paragraphs 35-36).

39. Second, the size of the document has no bearing on its classification as a 'document'. It may, nevertheless, have an impact on the ways in which access is granted. That follows from Article 6(3) and, also, from Article 10(1) of Regulation No 1049/2001. The former provides that the institution concerned may confer with the applicant informally, with a view to finding a fair solution,[14] in the event of an application relating to a very long document or to a very large number of documents. The latter sets out a range of methods by which documents can be accessed such as consultation on the spot (arguably for extensive or sensitive documents).

40. Both provisions also make clear that Regulation No 1049/2001 is about the right to *access* documents, but not necessarily about the right to *obtain* copies of documents. Both provisions are of considerable importance for electronic documents, with regard to which a number of 'physical' limitations relating to how much may be reasonably requested[15] fall away to a great extent. Those provisions imply that some reasonable and proportionate limitations may be imposed on the quantity of copies of electronic documents that may be obtained from the public administration.

41. Third, the administrative burden that comes with granting access to documents may also be a factor. The institutions must make sure that some kind of access to a 'document' covered by Regulation No 1049/2001 is granted unless, in truly exceptional circumstances, the workload that it entails is disproportionate.[16] The institutions may balance the interest of the applicant for access against the workload resulting from the processing of the application for access in order to safeguard the interests of good administration.[17]

B – *An existing document*

42. The notion of 'document', including documents in electronic form, under Regulation No 1049/2001 is broad. However, the Court stated that the right to access 'documents' held by an institution applies only to *existing* documents in the possession of the institution concerned.[18]

43. Limiting access to 'existing documents' clearly follows from both the letter and spirit of the regulation. As to the text, Article 6(1) of the regulation requires the applicant to indicate precisely which documents he seeks so as to 'enable the institution *to identify the document*'.[19] Equally, pursuant to Article 10(3), 'documents shall be supplied in an *existing version and format*'.[20] The text of those provisions demonstrates that access to documents shall be limited to *existing* documents.

44. The spirit of the regulation aims at enhancing transparency. Transparency requires the sharing of documents that are on file with the institutions. As submitted by the Commission in the present case, the whole purpose of transparency is to put the citizen on the same footing as an official of the institutions. Accordingly, both citizens and officials are, in principle, given access to the same documents. That means in practice that a citizen can read the same files and documents as an official working in the EU institutions, be it on paper or on screen, on the spot or at a more distant location. Conversely, the regulation cannot be interpreted as obliging the institutions to start generating documents that they do not already have at their disposal.

14 — That solution can concern only the content or the number of documents applied for. See judgment of 2 October 2014, *Strack* v *Commission* (C-127/13 P, EU:C:2014:2250, paragraph 26).

15 — Cf. the last sentence of Article 10(1) of the regulation, which states that copies of *less than* 20 A4 pages are free of charge.

16 — Judgment of 2 October 2014, *Strack* v *Commission* (C-127/13 P, EU:C:2014:2250, paragraph 28).

17 — Judgment of 2 October 2014, *Strack* v *Commission* (C-127/13 P, EU:C:2014:2250, paragraph 27).

18 — See judgment of 2 October 2014, *Strack* v *Commission* (C-127/13 P, EU:C:2014:2250).

19 — Emphasis added.

20 — Emphasis added.

45. However, the distinction between an 'existing' and a 'new' document becomes more blurry in the context of electronic databases. When it comes to paper, whether or not a particular text or a portion thereof is already written down somewhere might be sometimes problematic in terms of proof, but not once it has been established that such a document physically exists. However, when it comes to electronic databases, the term 'existing document' is harder to conceptualise. Depending on its structure and internal organisation, a lot of information might be obtained from an electronic database, often with minimal effort. Much like looking through a kaleidoscope, a small rotation (a command or a click) may completely change the picture. However the question is: did that precise 'document' in its specific data configuration exist before the click, thus constituting an 'existing document', to which an applicant is entitled to have access, or is a 'new document' generated by virtue of the click, to which the applicant has no right of access?

46. Without wishing to enter into profound ontological debates on the nature of being and existence at this stage, it is perhaps clear that against such differentiated technological background, a *static* distinction between 'existing' as opposed to 'new' documents, originating in the material paper world, may not be entirely helpful. A document that can be generated very easily from a database may, strictly speaking, at the moment of the filing of the application for access, not 'exist' in that particular configuration. However, the source data necessary for generating it is contained in a larger dataset. Thus, in the particular context of electronic databases, the analysis fuelling the distinction between 'existing' and 'new' documents should perhaps focus on the assessment of the degree of the *dynamic*, creative side of the process of generating the requested document.

47. In my view, the notion of 'existing document' in the context of electronic databases could be delineated in two ways: positively and negatively. The positive definition draws on an analogy with the *sui generis* right in intellectual property.[21] It means that, in the realm of electronic databases, a document shall be considered as 'new' if it is the result of a *substantial investment* which would alter the database itself. In other words, the amount of work needed for generating the requested document in the form of a database or dataset is so significant so as to amount, de facto, to a different, and thus new, database or dataset.

48. The existence of such a substantial investment must be assessed on a case-by-case basis, on the facts of each individual case. However, illustrative examples that could be provided might include situations where in order to generate the document requested by an application, new values (fields, indexes, identifiers, etc.) external to the existing database have to be added; or, in order to generate the document, complex, cross-database searches and operations are necessary; or, also, in cases where the generation of the requested document would require substantial alterations to the very structure of a database, such as new coding or indexing of the database. In all of those examples, which are neither exhaustive nor mutually exclusive, it would appear that a 'new document' would have to be generated in order to comply with the information request.

49. Defined in a negative way, a 'new document' in the sense of the regulation is unlikely to be created by mere deletion or filtering out (including anonymisation) of some of the existing data on the database or dataset. Again, subject to the precise structure of the database, such operations are unlikely to involve any substantive (intellectual) investment, thus entailing not the creation of a 'new document', but merely the rearrangement of an existing one.

21 — See directive 96/9/EC of the European Parliament and of the Council of 11 March 1996 on the legal protection of databases (OJ 1996 L 77, p. 20). In particular, pursuant to Article 7, 'Member States shall provide for a right for the maker of a database which shows that there has been qualitatively and/or quantitatively a substantial investment in either the obtaining, verification or presentation of the contents to prevent extraction and/or reutilisation of the whole or of a substantial part, evaluated qualitatively and/or quantitatively, of the contents of that database'. See, in particular, judgments of 9 November 2004, *Fixtures Marketing* (C-338/02, EU:C:2004:696, paragraph 19 et seq.); of 15 January 2015, *Ryanair* (C-30/14, EU:C:2015:10, paragraph 34); and of 19 December 2013, *Innoweb* (C-202/12, EU:C:2013:850, paragraph 36).

50. Examples in that negative category include normal or routine searches that can be carried out using the search tools available for the database in question.[22] However, the deletion or filtering out of some of the data within an existing database also does not amount to the creation of a 'new document'. Anonymisation is, in my view, typically a type of filtering or deletion operation. Unless its realisation requires changes to the structure of the database, anonymisation does not generate any added value since it consists of the mere removal of certain information from the database.

51. It ought to be clearly acknowledged, by way of conclusion to this section, that the approach outlined above proposes a broader reading of the notion of 'existing document' in the context of electronic databases. The reasons are, as already explained, of a technical nature: in contrast to the material paper world, much more can be done with greater ease in the world of electronic databases. Thus, the notion of 'existing document' interpreted in the context of electronic databases ought not to focus on the static, physical existence of a document at the moment of the submission of the application, but on the question of the scope of the creative process needed to generate the requested document. The yardstick of substantial investment in the context of electronic databases then means, in practical terms, and perhaps in contrast to common parlance, that the notion of 'existing document' would include documents that might not have physically existed in the specific form or configuration at the moment the request for access for information was submitted, but the preparation of which is a matter of simple, mechanical operation.

C – *Application to the present case*

52. In the light of the aforementioned considerations, I shall now address the issue of whether the table requested in the first initial application made by the appellant, which is the subject matter of the present appeal, amounts to a 'document' within the meaning of Regulation No 1049/2001.

53. As stated by the General Court,[23] Mr Typke asked, in his first application, specifically for a table containing the following information:

— 'an identifier for each candidate which was not to give any indication of the identity of the candidate but to relate the candidate to the questions which he had to answer;

— an identifier for each question asked, without, however, revealing the content of the question;

— for each question asked, the type of question, namely a verbal reasoning, abstract reasoning, numerical reasoning or situational judgment question;

— the language in which each question was presented to each candidate;

— an indication of any neutralisation of particular questions;

— an identifier for the expected answer which, without revealing the content of the question, was to be the same for each question/answer pair; the applicant specified in this regard that, if the answer options were not presented in the same order to all the candidates, it was to be ensured that the same identifier was used for each expected answer; he also stated that, for situational judgment questions, the entire expected answer was to be indicated, that is to say the best and the worst options;

22 — In the sense of the judgment of 26 October 2011, *Dufour* v *ECB* (T-436/09, EU:T:2011:634, paragraphs 150 and 153).

23 — See judgment of 2 July 2015, *Typke* v *Commission* (T-214/13, EU:T:2015:448, paragraph 4).

— the answer given by each candidate to each question, it being understood, however, that the applicant did not seek to ascertain the content of the answers, merely to identify correct and incorrect answers from the candidates; the applicant specified in this regard that a separate identifier was to be used if a candidate had not answered a question, and that the complete answer was to be indicated for situational judgment questions;

— lastly, the time spent by each candidate on answering each question.'

54. The General Court concluded that the production of the requested table would amount to the creation of a new document. The appellant's request would require 'a certain amount of computer programming work, namely the development of new SQL queries and, therefore, the creation of a new search result in the database … However, the operations involved in that programming work … are not comparable to a normal or routine search in the database concerned, carried out using the search tools available to the Commission in respect of that database'. [24]

55. In his appeal, the appellant essentially argues that the formulation of a specific SQL search query that would generate the document in the format of a table made to outline all of the information specifically requested by him, amounts to a normal or routine search and hence not to the creation of a new document.

56. On the facts as established by the General Court, relating to the type of databases used by the Commission and the specific formulation of the first application submitted by the appellant, it appears to me that in order to satisfy the specific request of the applicant, EPSO would have indeed needed to create a new document.

57. Without wishing to enter into a factual assessment as to which SQL queries are preprogrammed and what level of programming competence is to be reasonably expected from users and/or administrators of relational databases, it seems to me that the creation of the specific table requested by the appellant would require substantial investment in the sense outlined in the previous section. In particular, as described in detail by the General Court, new identifiers would have to be attributed to the selected fields of the database, with substantial coding and potentially indexing involved, and all that across several databases.

58. For these reasons, I do not think that the General Court erred in law by holding that the application made in the first procedure did not relate to access to an 'existing document'.

59. Two concluding remarks should be added. First, in the present case, there appears to be some flux as to the precise subject matter of the individual requests that were made in the two procedures, with the appellant apparently formulating his requests in different ways at different stages. As already outlined above, in point 37 of this Opinion, it is nonetheless the duty of the applicant to be specific with regard to the subject matter of the request. On the other hand, this relative [25] strictness in terms of formulating the subject matter of the request is compensated by the fact that an applicant may file another request for access at a later date.

60. Second, it ought to be recalled that the three types of documents in the context of electronic databases outlined above in point 30 of this Opinion are not mutually exclusive. Thus, the fact that the specific combination of data requested by an applicant does not qualify as an 'existing document' because its creation requires substantial investment does not mean that the applicant cannot obtain the information that he seeks through the submission of a new request asking for access to raw data, to part of the database or to the entire database.

24 — See judgment of 2 July 2015, *Typke* v *Commission* (T-214/13, EU:T:2015:448, paragraphs 67 to 68, as well as paragraphs 62 to 64).

25 — 'Relative' because the duty of reasonable assistance in clarifying imprecise requests is incumbent on the administration pursuant to Article 6(2) of Regulation No 1049/2001.

61. Thus, to put it bluntly, a person is not entitled, by virtue of the regulation, to have access to a 'tailor-made' document established according to his wishes, thereby effectively turning the administration into his private research agency. However, that does not prevent him from carrying out the necessary research himself on the basis of the raw data or dataset. Again, as already stated, the institutions must disclose what they have. They are nonetheless not obliged to start generating substantively new documents according to the wishes of the 'users'.

62. Finally, the alternative access to raw data will be governed by the same rules and exceptions already outlined in the first section of this Opinion. In particular, when granting access to larger sets of raw data or to the entire database, due regard must be paid to the protection of other candidates' data and privacy rights and to intellectual property rights of third parties relating to software and programming contained in the database. Those considerations, together with more practical ones relating to the size of the document actually requested, will determine the concrete means by which an individual can access the documents concerned (for example whether the document will be made available by way of a copy or only on the spot, possibly under the supervision of an IT specialist and/or a security person). It is for the institutions to determine the appropriate balance between the competing interests in the context of each individual case.

VI – Conclusion

63. For those reasons, and without prejudice to the argument relating to the distortion of evidence, I propose that the Court dismiss the appeal with regard to the errors of law alleged by the appellant.