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BUSINESS

Google Improperly Invoked Legal Privilege to Withhold Emails, Government Claims

Google says its practices are aboveboard and comparable to other large corporations



By [John D. McKinnon](#) [Follow](#)

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WASHINGTON—[Alphabet](#) Inc.'s [GOOG](#) **-5.42%** ▼ Google should be forced to turn over internal emails that it has withheld or redacted in the antitrust case filed against it by state and federal governments, the Justice Department said Monday.

In a filing in U.S. District Court, the Justice Department said that Google improperly invoked legal privilege to shield sensitive internal communications, a practice it said has gone on for years.

“For almost a decade, Google has trained its employees to use the attorney-client privilege to hide ordinary business communications from discovery in litigation and government investigations,” the Justice Department said.

It further claimed that “Google teaches its employees to add an attorney, a privilege label, and a generic ‘request’ for counsel’s advice to any sensitive business communications the employees or Google might wish to shield from discovery.”

Google said its practices are aboveboard and comparable to other big corporations.

“Just like other American companies, we educate our employees about legal privilege and when to seek legal advice,” a Google spokesman said in a statement. “We have produced over four million documents to the [Department of Justice] in this case alone—including many that employees had considered potentially privileged.”

Legal scholars said qualifying for attorney-client privilege requires more than copying a company lawyer on an email or seeking general legal advice.

“The historical purpose of the privilege is to give lawyers the ability to be involved in frank conversations with the client so as to deter misconduct—prevent it before it happens—not to protect misconduct against disclosure,” said Michele DeStefano, a University of Miami law professor.

The Justice Department filing came in the government’s antitrust lawsuit against Google, in a federal-district court in Washington, D.C. The Justice Department and state attorneys general contend that Google maintained unlawful monopolies in the search and search advertising markets.

The government now is asking the judge at a minimum to order Google to turn over all requested emails and other communications where a company lawyer was copied and didn’t respond.

“The court should sanction Google and order the full production of withheld and redacted emails where in-house counsel was included in a communication between non-attorneys and did not respond,” the government wrote.

“Alternatively, the Court should hold these silent-attorney emails are not privileged and immediately order their production.”

Monday’s lengthy government filing contained several examples of what the Justice Department views as examples of Google’s improper tactics.

One employee wrote in a 2020 email: “ATTORNEY CLIENT PRIVILEGED. (Adding Tristan for legal advice, since I’m about to use some trigger words.)” The rest of the email is redacted.

“Send me in a privileged email what you think we should do pls,” an employee wrote in another email chain in 2020.

When one employee wrote “PRIVILEGED” in an email thread, another employee responded, “I think you need a lawyer on the thread for this to be actually privileged.”

The Justice Department said the practice reached the highest levels of the company, citing a 2018 email about an upcoming media story from then-Google Chief Executive Officer Sundar Pichai, who is now also Alphabet’s CEO, to Susan Wojcicki, the CEO of YouTube:

“Attorney Client Privileged, Confidential, Kent pls advice,” Mr. Pichai wrote.

Google's general counsel at the time was Kent Walker. Mr. Walker "apparently never replied to the email thread," according to the government's filing. "This email was initially withheld by Google and only de-privileged after [the government] challenged."

In another email cited in the filing, "Can you pl pull together a privileged deck for this group to preview, then send it to Sundar? Thanks."

The government filing says that "generic statements such as '[attorney,] please advise,' 'adding legal,' or 'adding [attorney] for legal advice' appear in thousands of Google documents."

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