

April 26, 2013

VIA FAX (202) 326-2477

Freedom of Information Act Request
Office of General Counsel
Federal Trade Commission
600 Pennsylvania Ave, N.W.
Washington, D.C. 20580

Re: Freedom of Information Act Request and Request for Expedited Processing

Dear FOIA Officer:

This letter constitutes a request under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, and is submitted on behalf of the Electronic Privacy Information Center (“EPIC”) to the Federal Trade Commission (“FTC”).

As detailed below, EPIC seeks agency records concerning Facebook’s compliance report and Initial Assessment required by the FTC consent order issued on July 27, 2012.¹

Factual Background

The Electronic Privacy Information Center (“EPIC”) is a public interest research center located in Washington, D.C. EPIC focuses on emerging privacy and civil liberties issues and is a leading consumer advocate before the FTC. EPIC has a particular interest in protecting consumer privacy, and has played a leading role in developing the authority of the FTC to address emerging privacy issues and to safeguard the privacy rights of consumers.²

In 2009, Facebook changed its users’ privacy settings in a way that made users’ personal information, such as Friend lists and application usage data, more widely available to the public and to Facebook’s business partners.³ In response, EPIC, and a coalition of consumer and civil liberties organizations, filed a complaint with the Federal Trade Commission urging the

¹ *In the matter of Facebook, Inc.*, FTC File No. 092 3184 (2012) (Consent Order), <http://www.ftc.gov/os/caselist/0923184/120810facebookdo.pdf>.

² *See, e.g.*, Letter from EPIC Executive Director Marc Rotenberg to FTC Commissioner Christine Varney, EPIC (Dec. 14, 1995) (urging the FTC to investigate the misuse of personal information by the direct marketing industry), http://epic.org/privacy/intemet/ftc/ftc_letter.html; *DoubleClick, Inc.*, FTC File No. 071-0170 (2000) (Complaint and Request for Injunction, Request for Investigation and for Other Relief), http://epic.org/privacy/intemet/ftc/DCLK_complaint.pdf; *Microsoft Corporation*, FTC File No. 012 3240 (2002) (Complaint and Request for Injunction, Request for Investigation and for Other Relief), http://epic.org/privacy/consumer/MS_complaint.pdf; *Choicepoint, Inc.*, FTC File No. 052-3069 (2004) (Request for Investigation and for Other Relief), <http://epic.org/privacy/choicepoint/feraltr12.16.04.html>.

³ *In the matter of Facebook, Inc.*, FTC File No. 092 3184 (2012) (Complaint), <http://www.ftc.gov/os/caselist/0923184/120810facebookcmpt.pdf>.

Commission to investigate Facebook, require Facebook to restore privacy settings that were previously available, and require Facebook to give users meaningful control over their personal information.⁴

In the complaint, EPIC alleged that Facebook changed the privacy settings available to users in a way that made personal information, such as their Friend lists, publicly available; that Facebook made personal information available to application developers without users' knowledge or consent; that Facebook Connect decreased users' control over disclosure of personal information; that Facebook's iPhone syncing secretly disclosed personal information; that Facebook's social plugins revealed user information without user consent; and that Facebook allowed developers to retain user data indefinitely.⁵ Section 5 of the Federal Trade Commission Act ("FTCA") allows the FTC to investigate "unfair methods of competition in or affecting commerce, and unfair or deceptive acts or practices in or affecting commerce."⁶

On July 27, 2012, having determined that Facebook's actions violated § 5 of the FTCA, the FTC issued a consent order establishing new privacy safeguards for Facebook users and subjecting the company to regular privacy audits.⁷ Part IX of the order requires that Facebook "within ninety (90) days after the date of service of this order, shall file with the Commission a true and accurate report, in writing, setting forth in detail the manner and form of their own compliance with this order."⁸ Based on these provisions, Facebook's compliance report was due on October 25, 2012.

Part V of the order requires Facebook to "obtain initial and biennial assessments and reports ("Assessments") from a qualified, objective, independent third-party professional."⁹ The Initial Assessment covers the period of "the first one hundred and eighty (180) days after service of the order,"¹⁰ and must be filed with the Commission 70 days after the end of the reporting period to which the Assessment applies. Based on these provisions, Facebook's Initial Assessment was due on April 3, 2013.

Documents Requested

EPIC requests copies of the following agency records in possession of the FTC:

1. The compliance report required by Part IX of the Commission's consent order, which was due on October 25, 2012.
2. The Initial Assessment required by Part V of the Commission's consent order, which was due on April 3, 2013.

Request for Expedited Processing

⁴ *Id.*

⁵ *Id.*

⁶ Federal Trade Commission Act, 15 U.S.C. § 45.

⁷ *In the matter of Facebook, Inc., supra* note 1.

⁸ *Id.* at 8.

⁹ *Id.* at 6.

¹⁰ *Id.*

This request warrants expedited processing because it is made by “a person primarily engaged in disseminating information ...” and it pertains to a matter about which there is an “urgency to inform the public about an actual or alleged federal government activity.”¹¹

EPIC is “primarily engaged in disseminating information.”¹²

There is a particular urgency for the public to obtain information about the Commission’s supervision of Facebook and enforcement of the consent order. Recently reports indicate the Facebook submitted its independent assessment on Monday, April 22, and that the assessment “confirm[s] that the controls set out in our privacy program are working as intended.”¹³ The Commission has relied on consent orders containing independent assessments to resolve privacy violations by several major companies, including Facebook, MySpace, and Google. Thus, transparency and accountability surrounding these settlements is important, and the public has an interest in prompt evaluation of the assessment’s effectiveness.

Request for “News Media” Fee Status

EPIC is a “representative of the news media” for fee waiver purposes.¹⁴ Based on our status as a “news media” requester, we are entitled to receive the requested record with only duplication fees assessed. Further, because disclosure of this information will “contribute significantly to public understanding of the operations or activities of the government,” any duplication fees should be waived.

Thank you for your consideration of this request. As provided in 5 U.S.C. § 552(a)(6)(E)(ii)(I), I will anticipate your determination on our request for expedited processing within ten (10) business days.

Respectfully Submitted,

/s/

Ginger McCall
Director, EPIC Open Government Project

/s/

David Jacobs
EPIC Consumer Privacy Counsel

/s/

Julia Horwitz
EPIC Open Government Fellow

¹¹ 5 U.S.C. § 552(a)(6)(E)(v)(II) (2008); *Al-Fayed v. CIA*, 254 F.3d 300, 306 (D.C. Cir. 2001).

¹² *American Civil Liberties Union v. Department of Justice*, 321 F. Supp. 2d 24, 29 n.5 (D.D.C. 2004).

¹³ Barbara Ortutay, *Facebook: Audit finds privacy practices sufficient*, ASSOCIATED PRESS, Apr. 25, 2013.

¹⁴ *EPIC v. Department of Defense*, 241 F. Supp. 2d 5 (D.D.C. 2003).