



March 25, 2015

**VIA FACSIMILE (202) 326-2477**  
 Freedom of Information Act Request  
 Office of General Counsel  
 Federal Trade Commission  
 600 Pennsylvania Ave, N.W.  
 Washington, D.C. 20580

1718 Connecticut Ave NW  
 Suite 200  
 Washington DC 20009  
 USA  
 +1 202 483 1140 [tel]  
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 www.epic.org

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

Dear FOIA Officer:

This letter constitutes a request under the Freedom of Information Act (“FOIA”), 5 U.S.C. 522, and it is submitted on behalf of the Electronic Privacy Information Center (“EPIC”) to the Federal Trade Commission (“FTC”).

EPIC seeks records regarding the FTC’s 2012 antitrust investigation of Google.

Factual Background

On March 24, 2015, the *Wall Street Journal* reported that during the FTC’s 2012 Google antitrust investigation, Jon Leibowitz, then the Chairman of the Federal Trade Commission, and several Google lobbyists and lawyers attended meetings at the White House on the same day and at the same time.<sup>1</sup> Specifically, the *Journal* reported, “According to the visitor logs and emails reviewed by the Journal, on Dec. 12, 2011, Ms. Shelton, the Google lobbyist, and Google General Counsel Kent Walker met with Jason Furman, the chairman of the Council of Economic Advisers. Later that day, Mr. Furman met with several FTC officials, including the chairman of the commission, Jon Leibowitz.”<sup>2</sup> On the same day, Google’s president “and Google’s chief legal officer, David Drummond, joined other technology companies for a meeting with then-White House Chief of Staff Bill Daley. Mr. Daley met with the FTC chairman at the White House the next day, while Ms. Shelton and Mr. Drummond met with Obama senior adviser Valerie Jarrett, visitor logs show.”<sup>3</sup>

More than two years ago, on January 4, 2013, following the FTC’s decision not to file an antitrust lawsuit against Google, EPIC filed a FOIA request for “[a]ll

<sup>1</sup> Brody Mullins, *Google Makes Most of Close Ties to White House*, Wall St. J. (Mar. 24, 2015), available at <http://www.wsj.com/articles/google-makes-most-of-close-ties-to-white-house-1427242076?mod=djemalertTECH>, attached as Appendix 1.

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

communications including but not limited to e-mail, letters, analyses, talking points, and memos, between the White House and the FTC regarding the Commission’s antitrust inquiry into Google.”<sup>4</sup>

The agency responded to EPIC that the search for records of communications between the FTC and the White House concerning the Google investigation had produced no responsive records.<sup>5</sup>

#### Documents Requested

1. “All communications including but not limited to e-mail, letters, analyses, talking points, and memos, between the White House and the FTC regarding the Commission’s antitrust inquiry into Google;”
2. All meeting notes, memoranda, and other related materials, including appointment book entries, for Chairman Leibowitz for all meetings on December 12, 2011, including with staff.

#### Request for Expedited Processing

This request warrants expedited processing because it is made by “a person primarily engaged in disseminating information” and pertains to a matter about which there is an “urgency to inform the public about an actual or alleged federal government activity.”<sup>6</sup> EPIC is “primarily engaged in disseminating information.”<sup>7</sup>

There is a particular urgency to inform the public about the FTC’s 2012 decision to close the antitrust investigation into Google, given the Wall Street Journal disclosure about the contents of the Staff Report; the Wall Street Journal disclosure about the meetings between Google lobbyists, the FTC, and the White House; and the FTC’s response to EPIC’s January 4, 2013 FOIA request.<sup>8</sup> Those articles have sparked widespread national and international discussion with immediate ramifications for more than a billion users of the Internet who are now dependent on the companies services.<sup>9</sup>

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<sup>4</sup> See Appendix 2.

<sup>5</sup> See Appendix 3.

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

<sup>7</sup> *ACLU v. Dep’t of Justice*, 321 F. Supp. 2d 24, 29 n.5 (D.D.C. 2004).

<sup>8</sup> See Appendix 1; Appendix 2; and Brody Mullins, Rolfe Winkler, and Brent Kendall, *Inside the U.S. Antitrust Probe of Google*, Wall Street J. (Mar. 19, 2015), available at <http://www.wsj.com/articles/inside-the-u-s-antitrust-probe-of-google-1426793274>.

<sup>9</sup> See Rebecca R. Ruiz and Conor Dougherty, *Take Google to Court, Staff Report Urged F.T.C.*, N.Y. Times (Mar. 19, 2015), <http://www.nytimes.com/2015/03/20/technology/take-google-to-court-staff-report-urged-ftc.html>; Rolfe Winkler and Brody Mullins, *How Google Skewed Search Results*, Wall Street J. (Mar. 19, 2015), <http://www.wsj.com/articles/how-google-skewed-search-results-1426793553>; Jose Pagliery, *Google abused its monopoly power, FTC experts found*, CNN Money (Mar. 19, 2015), <http://money.cnn.com/2015/03/19/technology/google-monopoly-ftc/>; Alexei Oreskovic, *Confidential FTC report found Google anticompetitive tactics: WSJ*, Reuters (Mar. 19, 2015), <http://www.reuters.com/article/2015/03/19/us-google-ftc-idUSKBN0MF2M220150319>; Matt Weinberger, *Government investigators wanted to sue Google after finding 'real harm to consumers' back in 2012*,

Oversight hearings in Congress are likely as is further action by lawmakers outside of the United States.<sup>10</sup> To fully understand the nature of the relationship between Google, the FTC and the White House regarding this important investigation, it is vital to make information about the December 2011 meetings available for review as soon as possible.

Request for “News Media” Fee Status and Fee Waiver

EPIC is a “representative of the news media” for fee waiver purposes. *EPIC v. Dep’t of Defense*, 241 F. Supp. 2d 5 (D.D.C. 2003). 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 response within 20 business days. Should you require additional information, please contact me at 202-483-1140 or by email at FOIA@epic.org.

Respectfully Submitted,

  
\_\_\_\_\_  
Julia Horwitz  
Director, EPIC Consumer Privacy Project

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Business Insider (Mar. 19, 2015), <http://www.businessinsider.com/the-ftc-wanted-antitrust-charges-against-google-2015-3#ixzz3UwA7iFkU>; Jessica Guynn, *FTC staff recommended suing Google for abusing monopoly: WSJ*, USA Today (Mar. 19, 2015), <http://americasmarkets.usatoday.com/2015/03/19/ftc-staff-recommended-suing-google-for-abusing-monopoly-wsj/>.

<sup>10</sup> James Kanter, “European Lawmaker Pushes Europe to Take Stronger Stance on Google,” N.Y. Times, Mar. 20, 2015, available at [http://bits.blogs.nytimes.com/2015/03/20/european-lawmaker-pushes-europe-to-take-stronger-stance-on-google/?\\_r=0](http://bits.blogs.nytimes.com/2015/03/20/european-lawmaker-pushes-europe-to-take-stronger-stance-on-google/?_r=0)

# APPENDIX 1



**MIKE MCCUE MAKES TIME TO READ  
THE WALL STREET JOURNAL.**

**FIND OUT WHY**

**THE WALL STREET JOURNAL.**  
Read ambitiously

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## TECHNOLOGY

# Google Makes Most of Close Ties to White House

Search giant averages a White House meeting a week during Obama administration

By **BRODY MULLINS**

Updated March 24, 2015 9:24 p.m. ET

WASHINGTON—As the federal government was wrapping up its antitrust investigation of Google Inc., company executives had a flurry of meetings with top officials at the White House and Federal Trade Commission, the agency running the probe.

Google co-founder Larry Page met with FTC officials to discuss settlement talks, according to visitor logs and emails reviewed by The Wall Street Journal. Google Chairman Eric Schmidt met with Pete Rouse, a senior adviser to President Barack Obama, in the White House.

The documents don't show exactly what was discussed in late 2012. Soon afterward, the FTC closed its investigation after Google agreed to make voluntary changes to its business practices. (See the FTC document on Google).

Google's access to high-ranking Obama administration officials during a critical phase of the antitrust probe is one sign of the Internet giant's reach in Washington. Since Mr. Obama took office, employees of the Mountain View, Calif., company have visited the White House for meetings with senior officials about 230 times, or an average of roughly



Google's access to high-ranking Obama administration officials during a critical phase of the antitrust probe is one sign of the Internet giant's reach in Washington. *PHOTO: MARCIO JOSE SANCHEZ/ASSOCIATED PRESS*

once a week, according to the visitor logs reviewed by the Journal.

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One  
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- Google's Business and the FTC (<http://blogs.wsj.com/corporate-intelligence/2015/03/24/googles-business-and-the-ftc/?mod=capitaljournalrelatedbox>)
- Google Taps Wall Street CFO (<http://www.wsj.com/articles/google-turns-to-wall-street-for-new-finance-chief-1427217571?mod=capitaljournalrelatedbox>)
- Key FTC Staff Sought Google Antitrust Suit (March 19) (</articles/SB10142443966604104112404580527930319366618>)
- How Google Skewed Search Results (March 19) (</articles/SB10142443966604104112404580528002130205826>)

lobbyist at Google, Johanna Shelton, has had more than 60 meetings at the White House. In comparison, employees of rival Comcast Corp., also known as a force in Washington, have visited the White House a total of about 20 times since Mr. Obama took office.

“We think it is important to have a strong voice in the debate and help policy makers understand our business and the work we do to keep the Internet open, to build great products, and to fuel economic growth,” says Google spokeswoman Niki Christoff.

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Jennifer Friedman, a White House spokeswoman, said the FTC “is an independent agency and we respect their independent decision-making.”

She added: “White House officials meet with business executives on a range of issues on a regular basis. These meetings help keep the White House apprised of outside perspectives on important policy issues. Our staff is cognizant that it is inappropriate to discuss issues relating to regulatory enforcement.”

Justin Cole, an FTC spokesman, said: “The FTC is an independent law enforcement agency. Its enforcement decisions are driven by the applicable law and evidence in each case.”

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### **The FTC Report on Google’s Business Practices**

Scan the document from the U.S. antitrust investigation of the Internet giant

This report was prepared in 2012 by staffers at the Federal Trade Commission’s competition unit after a lengthy antitrust investigation into Google Inc. The staff recommended bringing a lawsuit challenging certain Google practices. The Commission ultimately voted, 5-0, not to bring charges against Google.

The company has defended its search engine and business practices. “We understand that what was sent to the Wall Street Journal represents 50% of one document written by 50% of the FTC case teams. Ultimately both case teams (100%) concluded that no action was needed on search display and ranking. Speculation about consumer or competitor harm turned out to be entirely wrong. On the other issues raised, we quickly made changes as agreed with the FTC.”

The 160-page document was supposed to remain private but half of the pages were

Google’s knack for getting in the room with important government officials is gaining new relevance as scrutiny grows over how the company avoided being hit by the FTC with a potentially damaging antitrust lawsuit. Last week, the Journal reported that the FTC’s competition staff concluded that Google used anticompetitive tactics and abused its monopoly power in ways that harmed Internet users and rivals.

The staff recommended a lawsuit, which would have triggered one of the highest-profile antitrust cases since the Justice Department sued Microsoft Corp. in the 1990s. FTC commissioners voted unanimously to end the probe.

Visitor logs and internal emails reviewed by the Journal describe meetings involving Google, senior White House advisers and top FTC officials between the staff’s recommendation in August 2012 and the vote in January 2013.

On Nov. 6, 2012, the night of Mr. Obama’s re-election, Mr. Schmidt was personally

remain private but half of the pages were inadvertently disclosed in an open-records request. The FTC declined to release the remaining pages. The Journal has redacted names of FTC staff and company lawyers from the first page of the report. The drawings and notations were in the documents that were provided by the FTC.

Open the document in a new window (<img/ftc-ocr-watermark.pdf>).

overseeing a voter-turnout software system for Mr. Obama. A few weeks later, Ms. Shelton and a senior antitrust lawyer at Google went to the White House to meet with one of Mr. Obama's technology advisers.

By the end of the month, the FTC had decided not to file an antitrust lawsuit against the company, according to the agency's internal emails.

It is unusual for White House aides to talk with officials at a company or agency about law-enforcement matters involving the

company or agency. Officials in the Justice Department's Antitrust Division typically don't meet with the White House during major investigations.

Google's efforts in Washington also include a well-funded lobbying operation. Last year, Google spent \$16.8 million on lobbyists, more than any other company except for Comcast, according to lobbying disclosures.

The 2014 total by Google is more than triple the company's lobbying spending in 2010, the year before the FTC antitrust probe began, according to the Center for Responsive Politics. Google has about 100 individual lobbyists at 20 lobbying firms.

During Mr. Obama's 2012 re-election campaign, Google employees were the second-largest source of campaign donations to his campaign by any single U.S. company, trailing only Microsoft.

A former Google vice president, Megan Smith, is now the U.S.'s chief technology officer and a high-tech adviser to Mr. Obama. Mr. Schmidt and other Google executives have been part of White House advisory panels, as have officials from other technology companies. Former Google employees helped fix problems with the [healthcare.gov](http://healthcare.gov) website, and Mr. Obama has mentioned the company in half of his State of the Union addresses.

The company's win-loss record on policy is mixed. The Federal Communications Commission's rules on net neutrality were stricter than Mr. Schmidt wanted, and Google has been an antagonist of the National Security Agency and its eavesdropping

## Big Spenders

2014 lobbying spending by the biggest U.S. companies by market cap

COMPANY	MARKET CAP	LOBBYING
Apple	\$740.97 billion	\$4.1 million
Google	\$382.57	\$16.8
Berkshire Hathaway	\$359.00	\$7.2
Exxon Mobil	\$358.35	\$12.7
Microsoft	\$351.57	\$8.3
Wells Fargo	\$287.02	\$6.4
Johnson & Johnson	\$286.34	\$7.7
Wal-Mart	\$268.52	\$7.0

Sources: FactSet (market cap),  
Center for Responsive Politics (lobbying)

THE WALL STREET JOURNAL.

operations. But Google and other Silicon Valley firms prevailed over Hollywood on tough copyright protections.

One of Google's biggest victories is the defeat of the FTC's antitrust probe. A lawsuit would have challenged the core of some Google business strategies. In a sign of the stakes, Google announced the hiring of 12 additional lobbying firms one week after news broke that the FTC had begun subpoenaing documents

related to the investigation.

According to the visitor logs and emails reviewed by the Journal, on Dec. 12, 2011, Ms. Shelton, the Google lobbyist, and Google General Counsel Kent Walker met with Jason Furman, the chairman of the Council of Economic Advisers. Later that day, Mr. Furman met with several FTC officials, including the chairman of the commission, Jon Leibowitz.

People familiar with the meetings say Google talked with Mr. Furman about copyright issues. Messrs. Furman and Leibowitz discussed competition in the pharmaceutical industry, according to a person in the meeting.

The same day, Mr. Schmidt and Google's chief legal officer, David Drummond, joined other technology companies for a meeting with then-White House Chief of Staff Bill Daley. Mr. Daley met with the FTC chairman at the White House the next day, while Ms. Shelton and Mr. Drummond met with Obama senior adviser Valerie Jarrett, visitor logs show.

Google's meeting with Mr. Daley was about online privacy, say people familiar with the meeting. Messrs. Daley and Leibowitz talked about judicial nominations. It isn't clear what was discussed at the other White House meetings.

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- In Search of a Printer You Won't Want to Destroy (<http://www.wsj.com/articles/in-search-of-a-not-so-terrible-horrible-printer-1427217414>)
- Google Turns to Wall Street for New Finance Chief (<http://www.wsj.com/articles/google-turns-to-wall-street-for-new-finance-chief-1427217571>)
- Amazon Says FAA Approval to Test Drones Already Obsolete (<http://www.wsj.com/articles/amazon-says-its-approval-to-test-delivery-drones-already-obsolete-1427219327>)
- Mims: A New Dawn for Breast Pumps and Other Hardware (<http://www.wsj.com/articles/a-new-dawn-for-gadgets-1427065972>)

Leibowitz says he “would never discuss any investigative matter with anyone at the White House, including the Google investigation,” adding that he never spoke to Messrs. Furman or Daley about it.

“The FTC is an independent agency and Commissioners take their obligations of independence and confidentiality very seriously,” Mr. Leibowitz says.

The FTC staff report in August 2012 recommended against pursuing an antitrust case related to Google's search-engine business—and in favor of a lawsuit in three other areas. A separate report from the FTC's economic bureau didn't favor legal action.

A string of meetings, emails and phone calls followed the staff report. While it is common for companies to communicate with government agencies, especially as investigations near a conclusion, the records reviewed by the Journal suggest more contact than was previously known publicly.

On Nov. 7, a top Google lawyer sent a defense of Google's business to Mr. Leibowitz and the other FTC commissioners. Two days later, Mr. Drummond of Google spoke with Mr. Leibowitz, emails show.

“Am traveling back home but had a quick question,” wrote Mr. Drummond, Google's chief legal officer. “Do you have five minutes to chat over the weekend?”

On Nov. 13, Ms. Shelton, the Google lobbyist, and the company's antitrust counsel met with one of Mr. Obama's top high-tech advisers in the White House. The meeting was related to Motorola patents, people familiar with the meeting say.

The next day, senior members of the FTC held an all hands “state of play” meeting on

the Google investigation, emails show.

Mr. Page, Google's co-founder, met with the FTC on Nov. 27 to discuss settlement talks. The next day, a senior FTC aide told other members of the agency's staff that "we're going to start our settlement discussions with Google," according to an email. Mr. Schmidt met with Mr. Rouse, the senior White House adviser, on Nov. 30.

For the next month, FTC officials and Google worked to bring the investigation to a close, emails show. Messrs. Drummond and Leibowitz exchanged emails and phone calls over the year-end holidays while on family vacations and on New Year's Eve.

"At your service to close this out," Mr. Drummond wrote to the FTC chairman on Dec. 17, 2012.

**Write to Brody Mullins at [brody.mullins@wsj.com](mailto:brody.mullins@wsj.com)**

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# APPENDIX 2

January 4, 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 News Media Status**

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 the FTC’s antitrust investigation into Google.

**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.<sup>1</sup>

On June 23, 2011, the New York Times reported that the FTC had opened a civil antitrust investigation into whether Google engaged in anticompetitive behavior through its search and advertising businesses.<sup>2</sup> One day later, Google confirmed the existence of the investigation, writing in a regulatory filing that it had “received a subpoena and a notice of civil investigative

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<sup>1</sup> 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](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](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](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>.

<sup>2</sup> Edward Wyatt & Miguel Helft, *F.T.C. Is Said Near a Move on Google*, N.Y. Times (Jun. 23, 2011), <https://www.nytimes.com/2011/06/24/technology/24ftc.html>.

demand from the U.S. Federal Trade Commission relating to a review by the FTC of Google's business practices, including search and advertising."<sup>3</sup>

On January 3, 2013, the Commission announced that it had concluded its investigation into Google's alleged anticompetitive conduct. The Commission reached a settlement with Google that would give competitors access to patents necessary to make smart phones, laptops, and other devices, and Google voluntarily agreed to stop borrowing others' content for use in its own services.<sup>4</sup> However, with respect to allegations that Google used its search algorithms to eliminate competitive threats, the Commission concluded that there was insufficient evidence that Google used its search algorithms to harm competition rather than to improve its services.<sup>5</sup>

As the investigation developed, Google devoted substantial resources to lobbying Congress, the White House, and the relevant administrative agencies, hiring 12 lobbying firms and spending more than \$25 million.<sup>6</sup> This lobbying gave rise to concerns that Google was improperly influencing the Commission's investigation. Some reports indicated that the White House was attempting to influence the outcome of the investigation so that it was more favorable to Google.<sup>7</sup> In the wake of the investigation, some wondered what had happened to the 100-page memo that the Commission's staff had prepared advocating action against Google for manipulating its search results.<sup>8</sup> Even Commissioner Rosch cited similar concerns in a concurring and dissenting statement, writing that "our 'settlement' with Google creates very bad precedent and may lead to the impression that well-heeled firms such as Google will receive special treatment at the Commission."<sup>9</sup>

### Documents Requested

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

1. All communications including but not limited to e-mail, letters, analyses, talking points, and memos, between the White House and the FTC regarding the Commission's antitrust inquiry into Google.

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<sup>3</sup> Google, Inc., Current Report (Form 8-K) (Jun. 23, 2011), <https://www.sec.gov/Archives/edgar/data/1288776/000119312511172902/d8k.htm>.

<sup>4</sup> Press Release, Federal Trade Commission, Google Agrees to Change Its Business Practices to Resolve FTC Competition Concerns In the Markets for Devices Like Smart Phones, Games and Tablets, and in Online Search (Jan. 3, 2012), <http://ftc.gov/opa/2013/01/google.shtm>.

<sup>5</sup> *Id.*

<sup>6</sup> Tony Romm, *How Google Beat the Feds*, POLITICO (Jan. 3, 2013 5:20 PM EST), <http://www.politico.com/story/2013/01/how-google-beat-the-feds-85743.html>.

<sup>7</sup> Paul Bedard, *Treasury Secretary Google?* THE EXAMINER (Dec. 4, 2012), <http://washingtonexaminer.com/treasury-secretary-google/article/2515054#.UMdZ8Xf4KSp>.

<sup>8</sup> Frank Pasquale & Siva Vaidhyanathan, *Borking Antitrust: Google Secures Its Monopoly*, DISSENT (Jan. 4, 2013), <http://www.dissentmagazine.org/blog/borking-antitrust-google-secures-its-monopoly> ("The *New York Times* reported in October that the FTC staff had prepared a secret 100-page report advocating legal action against Google for manipulating search results to favor its own interests. Has the staff changed its mind completely in less than ninety days? Or have they been summarily overruled by political appointees?").

<sup>9</sup> In the Matter of Google Inc., FTC File No. 111-0163 (2013) (Concurring and Dissenting Statement of Commissioner J. Thomas Rosch Regarding Google's Search Practices), *available at* <http://ftc.gov/os/2013/01/130103googlesearchroschstmt.pdf>.

## Request for Expedited Processing and “News Media” Fee Status

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.”<sup>10</sup>

EPIC is “primarily engaged in disseminating information.”<sup>11</sup>

There is a particular urgency for the public to obtain information about the Commission’s investigation into Google’s search and advertising business. The closing of the Commission’s investigation has been followed intensely by the media, consumer organizations,<sup>12</sup> and rival technology companies.<sup>13</sup> Given the interest generated by this case, the information sought by this FOIA request should be made available to the public as quickly as possible.

EPIC is a “representative of the news media” for fee waiver purposes.<sup>14</sup> 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)(A)(i) I will anticipate your determination on our request for expedited processing within twenty (20) business days.

Respectfully Submitted,

Ginger McCall,  
EPIC Open Government Program Director  
David Jacobs,  
EPIC Consumer Protection Counsel  
Electronic Privacy Information Center  
1718 Connecticut Ave. NW Suite 200  
Washington, DC 20009  
202-483-1140 (tel)  
202-483-1248 (fax)

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<sup>10</sup> 5 U.S.C. § 552(a)(6)(E)(v)(II) (2008); *Al-Fayed v. CIA*, 254 F.3d 300, 306 (D.C. Cir. 2001).

<sup>11</sup> *American Civil Liberties Union v. Department of Justice*, 321 F. Supp. 2d 24, 29 n.5 (D.D.C. 2004).

<sup>12</sup> Press Release, Consumer Watchdog, FTC’s Settlement With Google Fails To End Key Abuse, Consumer Watchdog Says (Jan. 3, 2013), <http://www.consumerwatchdog.org/newsrelease/ftc%E2%80%99s-settlement-google-fails-end-key-abuse-consumer-watchdog-says>.

<sup>13</sup> Press Release, FairSearch, FairSearch: FTC Settlement Not the Last Word, Premature (Jan. 3, 2013), <http://www.fairsearch.org/general/fairsearch-ftc-settlement-not-the-last-word-premature/>.

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

# APPENDIX 3



United States of America  
FEDERAL TRADE COMMISSION  
WASHINGTON, D.C. 20580

Ginger McCall  
EPIC  
1718 Connecticut Ave, NW, Suite 200  
Washington, DC 20009

JAN 17 2013

Re: FOIA-2013-00302  
Google

Dear Ms. McCall:

This is in response to your request dated January 04, 2013 under the Freedom of Information Act seeking access to "All communications including but not limited to e-mail, letters, analyses, talking points, and memos, between the White House and the FTC regarding the Commission's antitrust inquiry into Google." In accordance with the FOIA and agency policy, we have searched our records, as of January 04, 2013, the date we received your request in our FOIA office. Our search of the FTC's records did not identify any record that would respond to your request.

Your request for a fee waiver is moot because we did not incur any fees in processing your request. Your request for expedited processing is moot because we are responding in full within the statutory time frame for determining expedited processing.

If you are not satisfied with this response to your request, you may appeal by writing to Freedom of Information Act Appeal, Office of the General Counsel, Federal Trade Commission, 600 Pennsylvania Avenue, N.W., Washington D.C. 20580, or by facsimile at (202) 326-2477 within 30 days of the date of this letter. Please enclose a copy of your original request and a copy of this response.

If you have any questions about the way we handled your request or about the FOIA regulations or procedures, please contact Julian Chender at (202) 326-2631.

Sincerely,

A handwritten signature in blue ink, appearing to read "Dione J. Stearns".

Dione J. Stearns  
Assistant General Counsel