

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 Myspace’s compliance report required by the FTC consent order issued on August 30, 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 its initial complaint against Myspace, the FTC charged the company with making users’ personally identifiable information available to advertisers while representing to users that such information would not be disclosed without their permission. The Commission’s investigation revealed that Myspace engaged in this practice by sharing users’ unique persistent

¹ *In the matter of Myspace LLC*, FTC File No. 102 3058 (2012) (Consent Order), <http://ftc.gov/os/caselist/1023058/120911myspacedo.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/fcaltr12.16.04.html>.

identifiers, called “FriendIDs,” with third-party advertisers.³ On May 14, 2012, the FTC published a proposed consent order with Myspace and solicited public comments.

On August 30, 2012, having determined that Myspace’s actions violated § 5 of the FTCA, the FTC issued a consent order establishing new privacy safeguards for Myspace users and subjecting the company to regular privacy audits.⁴ Part VII of the order requires that Facebook “within sixty (60) days after the date of service of this order file with the Commission a true and accurate report, in writing, setting forth in detail the manner and form in which respondent has complied with this order.” Based on these provisions, Myspace’s compliance report was due on October 29, 2012.

Documents Requested

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

1. The compliance report required by Part VII of the Commission’s consent order, which was due on October 29, 2012.

Request for Expedited Processing

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.”⁵

EPIC is “primarily engaged in disseminating information.”⁶

There is a particular urgency for the public to obtain information about the Commission’s supervision of MySpace and enforcement of the consent order. The Commission has relied on consent orders to resolve privacy violations by several major companies, including Facebook, MySpace, and Google. A significant provision shared by these orders is the requirement of a comprehensive privacy program and independent, biennial assessments. Thus, there is a need for prompt disclosure of these assessments in order for the public to evaluate the effectiveness of these comprehensive programs.

Request for “News Media” Fee Status

EPIC is a “representative of the news media” for fee waiver purposes.⁷ 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

³ *In the matter of Myspace LLC*, FTC File No. 102 3058 (2012) (Complaint), <http://ftc.gov/os/caselist/1023058/120911myspacecmpt.pdf>.

⁴ *In the matter of Myspace LLC.*, *supra* note 1.

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

⁶ *American Civil Liberties Union v. Department of Justice*, 321 F. Supp. 2d 24, 29 n.5 (D.D.C. 2004).

⁷ *EPIC v. Department of Defense*, 241 F. Supp. 2d 5 (D.D.C. 2003).

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 Fellow

/s/

Julia Horwitz
EPIC Open Government Fellow