

FEDERAL TRADE COMMISSION  
Washington, DC 20580

In the Matter of Google LLC

**Complaint and Request for Investigation, Injunction, Penalties, and Other Relief**

**Submitted by**

**The Electronic Privacy Information Center (EPIC) and Accountable Tech**

**I. Summary**

1. This complaint concerns Google’s failure to honor its public promises to delete sensitive location data revealing whether a user has visited a medical facility. Google is a multinational technology company with access to vast troves of personal information collected through its many applications, programs, and partners. This includes massive amounts of location data, which can reveal sensitive details about a person—including health information such as a whether a person visited a doctor’s office, an addiction treatment center, or an abortion clinic. In response to the Supreme Court’s 2022 ruling in *Dobbs v. Jackson Women’s Health Organization* rescinding the constitutional right to abortion, Google announced an update to its Location History retention practices: it would delete location records of visits to certain medical facilities, like an abortion clinic, “soon after” each visit.<sup>1</sup> Yet as demonstrated in a 2022 investigation by Accountable Tech, Google routinely failed to delete such data in a timely fashion.<sup>2</sup> Follow-up research published by Accountable Tech in January 2024 confirms that this failure is still ongoing<sup>3</sup>—even as Google recently renewed its assurances to users that their sensitive

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<sup>1</sup> Jen Fitzpatrick, *Protecting People’s Privacy on Health Topics*, Google: Company News (July 1, 2022), <https://blog.google/technology/safety-security/protecting-peoples-privacy-on-health-topics/> (“Original Post – July 1, 2022”).

<sup>2</sup> Accountable Tech, *Post-Roe, Google’s Data Collection and Policies Could Endanger Those Seeking Abortions* (Nov. 9, 2022), <https://accountabletech.org/wp-content/uploads/Googles-Data-Collection-and-Policies-Could-Endanger-Those-Seeking-Abortions.pdf>; Accountable Tech, *Despite Promises, Google Continues to Track and Retain Location Data for Abortion Clinic Visits* (Apr. 11, 2023), <https://accountabletech.org/media/breaking-despite-promises-google-continues-to-track-and-retain-location-data-for-abortion-clinic-visits/>; Geoffrey Fowler, *Google Promised To Delete Sensitive Data. It Logged My Abortion Clinic Visit*, Washington Post (May 9, 2023), <https://www.washingtonpost.com/technology/2023/05/09/google-privacy-abortion-data/>.

<sup>3</sup> Accountable Tech, *As Google Rolls Out New Privacy Commitments, Research Finds Company is Still Failing to Protect Privacy of Abortion Seekers* (Jan. 17, 2024), <https://accountabletech.org/wp-content/uploads/Google-Location-History-Research.pdf>.

location data would be protected.<sup>4</sup> Google’s actions with respect to sensitive location data constitute unfair and deceptive trade practices in contravention of Section 5 of the Federal Trade Commission (FTC) Act and a violation of the FTC’s 2011 Consent Order against Google, which prohibits misrepresentations by Google concerning the company’s protection of personal data.<sup>5</sup> For the reasons set forth below, the Commission should open an investigation, secure an injunction against Google’s offending business practices, impose civil penalties, and provide other such relief as the Commission sees fit.

## II. Parties

2. The Electronic Privacy Information Center (EPIC) is a public interest research center in Washington, DC. EPIC was established in 1994 to focus public attention on emerging civil liberties issues and to secure the fundamental right to privacy in the digital age for all people through advocacy, research, and litigation. EPIC has played a leading role in developing the authority of regulators to safeguard the rights of consumers, ensure the protection of personal data, and address privacy violations.<sup>6</sup> In 2010, EPIC filed a complaint with the Commission concerning Google’s mishandling of users’ personal data during the rollout of the Google Buzz social network<sup>7</sup>—a complaint which the FTC

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<sup>4</sup> Marlo McGriff, *Updates to Location History and new controls coming soon to Maps*, Google Blog (Dec. 12, 2023), <https://blog.google/products/maps/updates-to-location-history-and-new-controls-coming-soon-to-maps/>.

<sup>5</sup> Decision and Order, *In re Google, Inc.*, FTC File No. 102-3136 (2011), <https://www.ftc.gov/sites/default/files/documents/cases/2011/10/111024googlebuzzdo.pdf>.

<sup>6</sup> *See, e.g.*, Complaint and Request for Investigation, Injunction, Penalties, and Other Relief, *In re Grindr*, EPIC (Oct. 4, 2023), <https://epic.org/wp-content/uploads/2023/10/EPIC-FTC-Grindr-Complaint.pdf>; Comments of EPIC, *In re Global Tel\*Link* (Dec. 21, 2023), <https://epic.org/documents/comments-of-epic-in-re-the-federal-trade-commissions-proposed-order-settlement-with-global-tellink/>; Comments of EPIC, *In re Chegg, Inc.* (Dec. 12, 2022), <https://epic.org/documents/comments-of-epic-in-re-the-federal-trade-commissions-proposed-order-settlement-with-chegg-inc/>; Comments of EPIC, *In re Support King, LLC (SpyFone.com)* (Oct. 8, 2021), <https://epic.org/documents/in-the-matter-of-support-king-llc-spyfone-com/>; Comments of EPIC et al., *In re Zoom Video Communications, Inc.* (Dec. 14, 2020), <https://epic.org/apa/comments/EPIC-FTC-Zoom-Dec2020.pdf>; Complaint of EPIC, *In re Online Test Proctoring Companies* (Dec. 9, 2020), <https://epic.org/privacy/dccppa/online-test-proctoring/EPIC-complaint-in-re-online-test-proctoring-companies-12-09-20.pdf>; Complaint of EPIC, *In re Airbnb* (Feb. 26, 2020), [https://epic.org/privacy/ftc/airbnb/EPIC\\_FTC\\_Airbnb\\_Complaint\\_Feb2020.pdf](https://epic.org/privacy/ftc/airbnb/EPIC_FTC_Airbnb_Complaint_Feb2020.pdf); Petition of EPIC, *In re Petition for Rulemaking Concerning Use of Artificial Intelligence in Commerce* (Feb. 3, 2020), <https://epic.org/privacy/ftc/ai/epic-ai-rulemaking-petition/>; Complaint of EPIC, *In re HireVue* (Nov. 6, 2019), [https://epic.org/privacy/ftc/hirevue/EPIC\\_FTC\\_HireVue\\_Complaint.pdf](https://epic.org/privacy/ftc/hirevue/EPIC_FTC_HireVue_Complaint.pdf); Comments of EPIC, *In re Unrollme, Inc.* (Sept. 19, 2019), <https://epic.org/apa/comments/EPIC-FTC-Unrollme-Sept2019.pdf>; Comments of EPIC, *In re Aleksandr Kogan and Alexander Nix* (Sept. 3, 2019), <https://epic.org/apa/comments/EPIC-FTCCambridgeAnalytica-Sept2019.pdf>; Complaint of EPIC, *In re Zoom Video Commc’ns, Inc.* (July 11, 2019), <https://epic.org/privacy/ftc/zoomEPIC-FTC-Complaint-In-re-Zoom-7-19.pdf>.

<sup>7</sup> Complaint of EPIC, *In re Google, Inc.* (2010), [https://epic.org/wp-content/uploads/privacy/ftc/googlebuzz/GoogleBuzz\\_Complaint.pdf](https://epic.org/wp-content/uploads/privacy/ftc/googlebuzz/GoogleBuzz_Complaint.pdf).

credited when it announced in 2011 that it was adopting a Consent Order restricting Google’s handling of personal data.<sup>8</sup>

3. Accountable Tech is a nonpartisan, nonprofit organization that advocates for structural reforms to repair our information ecosystem and foster a healthier and more equitable democracy.<sup>9</sup>
4. Google LLC is a Delaware corporation headquartered in California. Google is a subsidiary of Alphabet Inc., the world’s third largest technology company. Google develops, markets, and furnishes many digital products and services, including Google Search, Google Maps, Gmail, Google Ads, Google Drive, Google Workspace, Google Photos, Google Cloud, Google Assistant, YouTube, Fitbit, Android, Waze, and Nest.
5. The FTC is an independent agency of the United States government given statutory authority and responsibility by, *inter alia*, the FTC Act, 15 U.S.C. §§ 41–58. In particular, the Commission is charged with enforcing section 5(a) of the FTC Act, 15 U.S.C. § 45(a), which prohibits unfair and deceptive acts or practices in or affecting commerce. The Commission’s recent enforcement actions and complaints underscore its commitment to protecting sensitive location information. Location data is both sensitive in its own right and can reveal other sensitive characteristics like health conditions or religious affiliations; as the Commission has explained, the commercial exploitation of such data poses “an unwarranted intrusion into the most private areas of consumers’ lives and causes or is likely to cause substantial injury to consumers.”<sup>10</sup>

### **III. Factual Background**

#### **A. Google has access to extensive and granular user location data.**

6. Google aggregates a variety of data to form a user’s Location History. Google collects and stores user location information from “several sources”<sup>11</sup> by drawing from “Global Positioning System (“GPS”) information, Bluetooth beacons, cell phone location

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<sup>8</sup> *FTC Charges Deceptive Privacy Practices in Googles Rollout of Its Buzz Social Network*, Fed. Trade Comm’n (Mar. 30, 2011), <https://www.ftc.gov/news-events/news/press-releases/2011/03/ftc-charges-deceptive-privacy-practices-googles-rollout-its-buzz-social-network>.

<sup>9</sup> *About Our Mission*, Accountable Tech, <https://accountabletech.org/about/>.

<sup>10</sup> *FTC Order Prohibits Data Broker X-Mode Social and Outlogic from Selling Sensitive Location Data*, FTC (Jan 9, 2024), <https://www.ftc.gov/news-events/news/press-releases/2024/01/ftc-order-prohibits-data-broker-x-mode-social-outlogic-selling-sensitive-location-data>; FTC’s Complaint for Permanent Injunction and Other Relief, *FTC v. Kochava*, No. 22-cv-377, 7-9 (Aug. 29, 2022), [https://www.ftc.gov/system/files/ftc\\_gov/pdf/1.%20Complaint.pdf](https://www.ftc.gov/system/files/ftc_gov/pdf/1.%20Complaint.pdf).

<sup>11</sup> Jen Fitzpatrick, *Protecting People’s Privacy on Health Topics*, (July 1, 2022) <https://blog.google/technology/safety-security/protecting-peoples-privacy-on-health-topics/> (last updated May 12, 2023).

information from nearby cellular towers, Internet Protocol (“IP”) address information, and the signal strength of nearby Wi-Fi networks.”<sup>12</sup>

7. Google Location History logs a device’s location “on average, every two minutes.”<sup>13</sup>
8. Location History allows Google “to estimat[e] where a device is in terms of elevation”<sup>14</sup> and can be accurate to a three-meter radius.<sup>15</sup>
9. Google stores user location data in a repository called the “Sensorvault,” associating each data point with a unique user account. Sensorvault receives and stores “all location history data.”<sup>16</sup> This data is not directly tied to a “personally identifiable Google ID,” but “Google can alter the data back to identify users in response to a geofence warrant.”<sup>17</sup>
10. Location History is off by default, but users may see the option to “opt into Location History multiple times across multiple apps” including “Google Assistant, Google Maps, or Google Photos.”<sup>18</sup>
11. Once a user enables Location History tracking, Google is “‘always collecting’ data and storing *all* of that data in its vast Sensorvault, even ‘if the person is not doing anything at all with [his or her] phone.’”<sup>19</sup>
12. Google’s support resources state that “[w]hen Location History is on, even when Google apps aren’t in use, your precise device location is regularly saved to” Google servers.<sup>20</sup>
13. Location history creates a “personal map” detailing the route and destination of any given trip.<sup>21</sup>
14. Location History centralizes user location data across every app and every device associated with the user’s Google account.<sup>22</sup>
15. Approximately one third of all active Google users have opted into Location History.<sup>23</sup>
16. When enabled, Google also can collect location information through Web and App Activity (“WAA”). When a user engages affirmatively in activities, like a search, Google

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<sup>12</sup> *United States v. Chatrie*, 590 F. Supp. 3d 901, 908 (E.D. Va. 2022).

<sup>13</sup> *Id.*

<sup>14</sup> *Id.* at 908.

<sup>15</sup> *Id.* at 909.

<sup>16</sup> *Id.* at 908.

<sup>17</sup> *Id.*

<sup>18</sup> *Id.* at 908–09.

<sup>19</sup> *Id.* at 909.

<sup>20</sup> Google, *Manage your Location History* (2023),

[https://support.google.com/accounts/answer/3118687?hl=en&ref\\_topic=3382296&sjid=5200037934599644114-NA](https://support.google.com/accounts/answer/3118687?hl=en&ref_topic=3382296&sjid=5200037934599644114-NA) (last visited Jan. 8, 2024).

<sup>21</sup> *Id.*

<sup>22</sup> *Chatrie*, 590 F. Supp. 3d 901 at 909.

<sup>23</sup> *Id.*

may keep a record of that search and obtain data which “can include location information.”<sup>24</sup>

17. WAA and Location History are different services that “store data in separate databases.”<sup>25</sup>
18. WAA data collection is a default setting,<sup>26</sup> and stores eighteen months of web and app activity<sup>27</sup> in its default configuration.
19. WAA can collect location information about the general area a user is in of a three-square-kilometer radius or larger until the area represents the locations of at least 1,000 people.<sup>28</sup>
20. Leaving Location History paused and WAA enabled “only prevents Google from adding [a user’s] movements to the ‘timeline,’ [its] visualization of [a user’s] daily travels.”<sup>29</sup>
21. Google “stores a snapshot of where you are when you merely open its Maps app.”<sup>30</sup>
22. Daily weather updates on Android devices can “pinpoint roughly where you are.”<sup>31</sup>
23. Searches that are irrelevant to location information—for example “chocolate chip cookies”—can pinpoint “precise latitude and longitude” data that is “accurate to the square foot” and associate it with a user’s Google account.<sup>32</sup>

**B. Google promised to protect particularly sensitive health-related location data.**

24. On July 1, 2022, following the Supreme Court’s ruling in *Dobbs v. Jackson Women’s Health Organization* rescinding the constitutional right to abortion, Google introduced several new data policies that it said would safeguard user data.<sup>33</sup>

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<sup>24</sup> *Id.*

<sup>25</sup> *Id.*

<sup>26</sup> Kelsey Fogarty, Zachary McAuliffe, *Here’s How You Can Stop Google From Following You on Vacation* (May 4, 2023) <https://www.cnet.com/tech/services-and-software/heres-how-you-can-stop-google-from-following-you-on-vacation/>.

<sup>27</sup> Sundar Pichai, *Keeping Your Private Information Private* (Jun. 24, 2020) <https://blog.google/technology/safety-security/keeping-private-information-private/>.

<sup>28</sup> *Regional Availability and Pricing*, Google Merchant Center Help, <https://support.google.com/merchants/answer/9698880?hl=en>.

<sup>29</sup> Andrew Griffin, *Google Stores Location Data ‘Even When Users Have Told It Not To’*, Independent (Aug. 14, 2018), <https://www.independent.co.uk/news/world/americas/google-location-data-privacy-android-sundar-pichai-a8490636.html>.

<sup>30</sup> *Id.*

<sup>31</sup> *Id.*

<sup>32</sup> *Id.*

<sup>33</sup> Jen Fitzpatrick, *Protecting People’s Privacy on Health Topics*, (July 1, 2022) <https://blog.google/technology/safety-security/protecting-peoples-privacy-on-health-topics/> (last updated May 12, 2023).

25. Google acknowledged that visits to “medical facilities like counseling centers, domestic violence shelters, abortion clinics, fertility centers, addiction treatment facilities, weight loss clinics, cosmetic surgery clinics” and more can be “particularly personal.”<sup>34</sup>
26. Google stated that if its systems identified visits to these locations, it would “delete these entries from [a user’s] Location History soon after they visit.”<sup>35</sup> This change was scheduled to take effect “in the coming weeks” after the announcement.<sup>36</sup>
27. Google did not disclose how its “systems” would “identif[y] visits to these locations,” how “soon after” a visit this data would be deleted, or when the changes would take effect.<sup>37</sup>
28. Nor did Google make clear in its announcement that sensitive location data revealing visits to medical facilities might still be retained via the always-on WAA feature.<sup>38</sup>
29. As of July 2, 2022, Google’s Help Center Page on “Find & control your Web & App Activity” provided that “Activity may also include info about your location from your device’s general area and IP address,” in a collapsible item list.<sup>39</sup>
30. Similarly, as of June 1, 2022, Google’s Help Center Page on “Manage Your Location History” explained that “[s]ome location data may continue to be saved in other settings, like Web & App Activity, as part of your use of other services, like Search and Maps, even after you turn off Location History.”<sup>40</sup>
31. Many news outlets reported on Google’s announcement that it would delete Location History entries revealing visits to medical facilities.<sup>41</sup> However, these reports—like

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<sup>34</sup> *Id.*

<sup>35</sup> *Id.*

<sup>36</sup> *Id.*

<sup>37</sup> *Id.*

<sup>38</sup> *Id.*

<sup>39</sup> *Find & Control your Web & App Activity*, Google, <https://support.google.com/accounts/answer/54068?hl=en&co=GENIE.Platform%3DAndroid#zippy=>. Accessed via Internet Archive’s Wayback Machine, <http://web.archive.org/web/20220702072303/https://support.google.com/websearch/answer/54068?co=GENIE.Platform%3DAndroid&oco=1#zippy=%2Cinfo-about-your-searches-and-other-activity-on-google-sites-apps-and-services%2Cinfo-about-your-browsing-and-other-activity-on-sites-apps-and-devices-that-use-google-services>.

<sup>40</sup> *Manage your Location History*, Google, <https://support.google.com/accounts/answer/3118687?hl=en>. Accessed via Internet Archive’s Wayback Machine, [http://web.archive.org/web/20220601000335/https://support.google.com/android/answer/3118687?hl=en&ref\\_topic=7340598](http://web.archive.org/web/20220601000335/https://support.google.com/android/answer/3118687?hl=en&ref_topic=7340598).

<sup>41</sup> *See, e.g.*, Taylor Hatmaker, *Google Will Start Erasing Location Data for Abortion Clinic Visits*, TechCrunch (July 1, 2022), <https://techcrunch.com/2022/07/01/google-abortion-clinic-location-data-privacy/>; Ananya Mariam Rajesh & Jeffrey Dastin, *Google to Delete Location History of Visits to Abortion Clinics*, Reuters (July 1, 2022), <https://www.reuters.com/world/us/google-delete-location-history-visits-abortion-clinics-2022-07-01/>; Olivia Lander, *Google Says it Will Delete Users’ Location*

Google’s announcement—did not make clear that WAA would keep collecting location data after Location History was turned off.

32. On May 12, 2023, Google partially backtracked on its July 2022 Location History announcement, stating that visits to “general purpose medical [facilities] (like a hospital) . . . may persist” and that when users “manually add or confirm a visit” to a particularly personal place, those entries may persist.<sup>42</sup> Google stated that users would be “prompted to confirm” such visits in the future.<sup>43</sup>

### **C. Google continues to retain sensitive location data revealing abortion clinic visits.**

33. Eight weeks after Google announced its policy, an Accountable Tech staff member traveled from Cleveland, Ohio to a Planned Parenthood in Pittsburgh, Pennsylvania.<sup>44</sup> Her search query for the Planned Parenthood clinic and directions mapping her to it through Google Maps remained in her Web and App Activity more than thirty days after these visits were conducted.<sup>45</sup> The test Android device and Google account accepted all of Google’s default settings, with Location History turned off by default.<sup>46</sup>
34. A test conducted on October 7, 2022 revealed that with Location History enabled, accounts still stored granular map data that placed users at points of Planned Parenthood locations they navigated to with Google Maps.<sup>47</sup> “Planned Parenthood” was not named explicitly in the user’s Location History.<sup>48</sup> Instead, the clinics appeared under the names of the establishments next door.<sup>49</sup> The user’s map history displayed routes navigating to the restaurants directly next door to two different Planned Parenthood clinics.

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*History at Abortion Clinics, Other ‘Personal’ Data*, Politico (July 1, 2022), <https://www.politico.com/news/2022/07/01/google-abortion-delete-history-00043841>; Nico Grant, *Google Says It Will Delete Location Data When Users Visit Abortion Clinic*, N.Y. Times (July 1, 2022), <https://www.nytimes.com/2022/07/01/technology/google-abortion-location-data.html>; Jennifer Elias, *Google Says It Will Delete Location History for Visits to Abortion Clinics After Overturning of Roe v. Wade*, CNBC (July 1, 2022), <https://www.cnbc.com/2022/07/01/google-will-delete-location-history-for-visits-to-abortion-clinics.html>; Gerrit De Vynck, *Google Will Delete User Location History for Abortion Clinic Visits*, Washington Post (July 1, 2022), <https://www.washingtonpost.com/technology/2022/07/01/google-abortion/>.

<sup>42</sup> Jen Fitzpatrick, *Protecting People’s Privacy on Health Topics*, (July 1, 2022) (last updated May 12, 2023) <https://blog.google/technology/safety-security/protecting-peoples-privacy-on-health-topics/> (last updated May 12, 2023).

<sup>43</sup> *Id.*

<sup>44</sup> Accountable Tech, *Post-Roe, Google’s Data Collection and Policies Could Endanger Those Seeking Abortions* (Nov. 29, 2022), <https://accountabletech.org/research/googles-data-collection-and-policies-could-endanger-those-seeking-abortions/>.

<sup>45</sup> *Id.*

<sup>46</sup> *Id.*

<sup>47</sup> *Id.*

<sup>48</sup> *Id.*

<sup>49</sup> *Id.*

35. In a similar test, Google retained trip data to an abortion provider by labeling “Planned Parenthood – Highland Park” as the neighborhood “Highland Park.”<sup>50</sup> Though this trip did not record a visit to Planned Parenthood, the map preview associated with it exposes a route terminating at a pin at the intersection where the Planned Parenthood clinic is located.<sup>51</sup> Upon interacting with this data, Google surfaced recommendations for users to relabel the trip with more specificity. Google suggested Planned Parenthood in a list of four location recommendations.<sup>52</sup>
36. As of November 29, 2022, these data points were still listed under the test user’s Location History.<sup>53</sup>
37. Privacy advocate Tom Kemp conducted further searches including “get an abortion near me” and “abortion clinic” on November 22, 2022.<sup>54</sup> He scheduled a calendar event titled “Get an abortion” tagging the location of the nearest clinic.<sup>55</sup> He searched for and downloaded a period tracking app, Clue, on the Google Play Store.<sup>56</sup> All of this activity was stored in his WAA timeline with timestamps.<sup>57</sup> The search queries were associated with geospatial data.<sup>58</sup> On November 22, shortly before the scheduled calendar event, Google Assistant shared a notification: “Time to leave for Get an abortion.”<sup>59</sup> The timeline collected and reconstructed by Google painted a detailed picture of how a user might have sought an abortion using Google services.
38. In May 2023, nearly a year after Google’s new policy announcement, journalist Geoffrey Fowler conducted updated tests of Google’s Location History retention practices.<sup>60</sup> His visits to a Planned Parenthood clinic and two nearby hospitals remained logged in his Location History a week after they were recorded.<sup>61</sup> The map of Fowler’s location data surfaced a pin for “Planned Parenthood – San Francisco Health Center” and marked it as “recently viewed.”<sup>62</sup>
39. Google’s retention of clinic visits is inconsistent. After remaining in the parking lots of two clinics for fifteen minutes, Google deleted Fowler’s within twenty-four hours.<sup>63</sup>

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<sup>50</sup> *Id.*

<sup>51</sup> *Id.*

<sup>52</sup> *Id.*

<sup>53</sup> *Id.*

<sup>54</sup> Johana Bhuiyan, *Googling Abortion? Your Details Aren’t as Private as You Think* (Nov. 29, 2022), <https://www.theguardian.com/world/2022/nov/29/abortion-rights-us-google-roe-dobbs>.

<sup>55</sup> *Id.*

<sup>56</sup> *Id.*

<sup>57</sup> *Id.*

<sup>58</sup> *Id.*

<sup>59</sup> *Id.*

<sup>60</sup> Geoffrey A. Fowler, *Google Promised to Delete Sensitive Data. It Logged My Abortion Clinic Visit.* (May 9, 2023) <https://www.washingtonpost.com/technology/2023/05/09/google-privacy-abortion-data/>.

<sup>61</sup> *Id.*

<sup>62</sup> *Id.*

<sup>63</sup> *Id.*



Another trip to a Planned Parenthood was retained but under the name of the coffee shop next door.<sup>64</sup>

40. Before Google’s policy was announced, malware intelligence researcher Pieter Arntz and the Technology Transparency Project both found that Google location tracking could be used to allow people to spy on others’ locations after having brief access to their phones.<sup>65</sup> Logging into one Google app on a user’s Android phone enabled researchers to quietly track that user’s location remotely.<sup>66</sup> This data could be used to infer whether a user was searching for abortion clinics, domestic violence shelters, and track their physical movements, even with Location History turned off.<sup>67</sup>

#### **D. Google promised more location data protections in a December 2023 announcement.**

41. In December 2023, nearly a year and a half after announcing its first post-*Dobbs* location data policy update, Google announced new updates to its location data collection and storage practices to give users “more control over this important, personal information.”<sup>68</sup>
42. Among the updates, Google stated that a user’s Timeline would be saved on their device with the option to back up their encrypted data to the cloud.<sup>69</sup>
43. Google further promised to change the auto-delete control period for location data to three months instead of the previous default of 18 months.
44. The update included giving users the option to delete activity related to specific places from Maps.
45. Similar to the July 2022 promises, Google provided no date certain for when the updates would go into effect.

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<sup>64</sup> *Id.*

<sup>65</sup> Pieter Arntz, *Google Play Sign-Ins Can Be Abused to Track Another Person’s Movements*, Malware Bytes Labs (Sept. 1, 2021) <https://www.malwarebytes.com/blog/news/2021/09/google-play-sign-ins-can-be-abused-to-track-another-persons-movements>; Tech Transparency Project, *Google Has a Stalking Problem* (July 21, 2022) <https://www.techtransparencyproject.org/articles/google-has-stalking-problem>.

<sup>66</sup> Tech Transparency Project, *Google Has a Stalking Problem* (July 21, 2022) <https://www.techtransparencyproject.org/articles/google-has-stalking-problem>.

<sup>67</sup> Stephanie Kirchaessner, *Google Under Scrutiny Over Pledge to Protect Abortion Location Data* (July 21, 2022) <https://www.theguardian.com/technology/2022/jul/21/google-abortion-privacy-location-history>.

<sup>68</sup> Marlo McGriff, *Updates to Location History and New Controls Coming Soon to Maps*, Google Blog (Dec. 12, 2023), <https://blog.google/products/maps/updates-to-location-history-and-new-controls-coming-soon-to-maps/>.

<sup>69</sup> *Id.*

**E. Follow-up research by Accountable Tech confirms that Google has still failed to uphold its location data promises.**

46. A recent follow-up experiment from Accountable Tech found that Google scrubbed “Planned Parenthood” from a user’s Location History map but retained the route to the clinic itself in four out of eight of its tests.<sup>70</sup>
47. Google continues to retain location search query data for all visits to Planned Parenthood clinics.<sup>71</sup>
48. As Accountable Tech explained: “In the eight experiments [Accountable Tech] ran across the country, Google retained Location History data about 50% of the time. . . . With the same odds as a coin flip, an abortion seeker’s location data might still be retained and used to prosecute them. On top of that, as we’ve seen through the experiments, Google still retains location search query data, and likely other incriminating data as well – from email to Google search data.”<sup>72</sup>

**IV. Legal Analysis**

49. Section 5 of the FTC Act prohibits unfair and deceptive acts and practices and empowers the Commission to enforce the Act’s prohibitions.<sup>73</sup>
50. A deceptive trade practice is a material representation or omission that likely misleads a reasonable consumer.<sup>74</sup> Deception occurs when a business makes a representation to consumers but “lacks a ‘reasonable basis’ to support the claims made.”<sup>75</sup>
51. A trade practice is unfair if it “causes or is likely to cause substantial injury to consumers which is not reasonably avoidable by consumers themselves and not outweighed by countervailing benefits to consumers or competition.”<sup>76</sup>
52. The Commission has stated that failing to implement adequate data protection measures to safeguard sensitive personal information—including in particular sensitive location

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<sup>70</sup> Accountable Tech, *As Google Rolls Out New Privacy Commitments, Research Finds Company is Still Failing to Protect Privacy of Abortion Seekers* (Jan. 17, 2024) at 2, <https://accountabletech.org/wp-content/uploads/Google-Location-History-Research.pdf>.

<sup>71</sup> *Id.* at 3.

<sup>72</sup> *Id.* at 7.

<sup>73</sup> 15 U.S.C. § 45.

<sup>74</sup> FTC, *Policy Statement on Deception* (1983),

[https://www.ftc.gov/system/files/documents/public\\_statements/410531/831014deceptionstmt.pdf](https://www.ftc.gov/system/files/documents/public_statements/410531/831014deceptionstmt.pdf).

<sup>75</sup> *Daniel Chapter One v. FTC*, 405 F. App’x 505, 506 (D.C. Cir. 2010) (quoting *Thompson Med. Co., Inc., v. FTC*, 791 F.2d 189, 193 (D.C. Cir. 1986)).

<sup>76</sup> 15 U.S.C. § 45(n).

data—constitutes an unfair or deceptive act or practice in violation of Section 5 of the FTC Act.<sup>77</sup>

53. Commission statements also make clear that failing to uphold promises made to users in privacy policies constitutes an unfair or deceptive act or practice in violation of Section 5 of the FTC Act.<sup>78</sup>
54. In addition to its baseline obligation to comply with Section 5, Google remains under a 2011 Consent Order arising from the company’s deceptive privacy practices during its rollout of the Google Buzz social network.<sup>79</sup>
55. The 2011 Consent Order prohibits Google from “misrepresent[ing] in any manner, expressly or by implication . . . the extent to which [Google] maintains and protects the privacy and confidentiality of any covered information, including, but not limited to, misrepresentations related to: (1) the purposes for which it collects and uses covered information, and (2) the extent to which consumers may exercise control over the collection, use, or disclosure of covered information.”<sup>80</sup>
56. The Order defines “covered information” to include “information [Google] collects from or about an individual, including, but not limited to, an individual’s . . . physical location[.]”<sup>81</sup>

#### **A. Google’s deceptive retention of location data**

57. As set forth above, Google logs extensive user Location History from multiple sources.
58. In addition to maintaining Location History, Google also collects location information through Web and App Activity.

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<sup>77</sup> See, e.g., Complaint, *In re X-Mode Social and Outlogic* (Jan. 9, 2024), [https://www.ftc.gov/system/files/ftc\\_gov/pdf/X-Mode-Complaint.pdf](https://www.ftc.gov/system/files/ftc_gov/pdf/X-Mode-Complaint.pdf); Complaint, *In re Chegg, Inc.* (Jan. 26, 2023), [https://www.ftc.gov/system/files/ftc\\_gov/pdf/Chegg-Complaint.pdf](https://www.ftc.gov/system/files/ftc_gov/pdf/Chegg-Complaint.pdf); Complaint, *In the Matter of Zoom Video Communications* (Feb. 1, 2021), [https://www.ftc.gov/system/files/documents/cases/1923167zoomcomplaint\\_0.pdf](https://www.ftc.gov/system/files/documents/cases/1923167zoomcomplaint_0.pdf); Complaint, *In re Retina-X Studios, LLC and James N. Johns, Jr.* (Mar 27, 2020), [https://www.ftc.gov/system/files/documents/cases/172\\_3118\\_retina-x\\_studios\\_complaint\\_0.pdf](https://www.ftc.gov/system/files/documents/cases/172_3118_retina-x_studios_complaint_0.pdf).

<sup>78</sup> See, e.g., Complaint, *In re Flo Health, Inc.* (Jun. 22, 2021), [https://www.ftc.gov/system/files/documents/cases/192\\_3133\\_flo\\_health\\_complaint.pdf](https://www.ftc.gov/system/files/documents/cases/192_3133_flo_health_complaint.pdf); Complaint of Commissioners Simons, Phillips, Chopra, Slaughter, & Wilson, *In the Matter of Zoom Video Communications* (Feb. 1, 2021), [https://www.ftc.gov/system/files/documents/cases/1923167zoomcomplaint\\_0.pdf](https://www.ftc.gov/system/files/documents/cases/1923167zoomcomplaint_0.pdf).

<sup>79</sup> Decision and Order, *In re Google, Inc.*, FTC File No. 102-3136 (2011), <https://www.ftc.gov/sites/default/files/documents/cases/2011/10/111024googlebuzzdo.pdf>.

<sup>80</sup> *Id.* at 3.

<sup>81</sup> *Id.*

59. Google represented that it would delete location records of visits to medical facilities like abortion clinics and fertility centers from a user's Location History "soon after they visit."
60. In fact, Google has continued to collect and retain location data under users' Location History and through WAA that reveals visits to covered medical facilities, violating Google's representations concerning its revised data policies.
61. Google has therefore engaged in a deceptive trade practice in violation of the Federal Trade Commission Act, 15 U.S.C. § 45(a)(1).
62. Google lacks a "reasonable basis" to support the claim that it safeguards personal health location data by consistently and reliably deleting sensitive location records.
63. Promising to implement a policy of deleting sensitive location records (including reproductive health-related location records) and failing to effectively implement that policy is a material misrepresentation that would likely mislead a reasonable consumer.

**B. Google's unfair retention of location data**

64. Google's data practices, including its overcollection and retention of location data, constitute unfair trade practices. Such practices have caused or are likely to cause substantial injury to consumers which is not reasonably avoidable by consumers themselves and not outweighed by countervailing benefits to consumers or competition.
65. Google's location data practices have caused or are likely to cause substantial injury to its users because they expose users to excessive retention of "particularly personal" information that can reveal highly sensitive details about them, including whether an individual visited a medical treatment facility, domestic violence shelter, abortion clinic, fertility center, addiction treatment facility, or a surgery clinic. The ability of law enforcement to access such data can lead to criminal prosecution and unduly discourage individuals from seeking vital health care services—a risk of substantial injury that has dramatically increased following the *Dobbs* ruling.
66. Consumers cannot reasonably avoid Google's wrongful retention of their location data, as Google's public pledge to delete sensitive location records soon after a consumer visits a covered medical facility has created a false sense of security that there is nothing to avoid. Users reasonably rely on Google's promises to promptly delete this information.
67. Google's failure to comply with its public promises to promptly delete certain location records offers no countervailing benefits to consumers or competition that outweigh its harms. Consumers do not benefit from misleading statements about or the misuse of their highly sensitive location data. Moreover, Google's location data practices do not promote competition in the digital economy; instead, they entrench Google's considerable market power and invite an anticompetitive race to the bottom.

**C. Google’s misrepresentations concerning its protection of location data in violation of the 2011 Consent Order**

68. As noted, Google represented that it would delete location records of visits to medical facilities like abortion clinics and fertility centers from a user’s Location History “soon after they visit.”
69. In fact, Google has continued to collect and retain location data under users’ Location History and through WAA that reveals visits to covered medical facilities.
70. Google has therefore violated its obligation under the 2011 FTC Consent Order not to “misrepresent in any manner, expressly or by implication . . . the extent to which [Google] maintains and protects the privacy and confidentiality of any covered information,” which includes “information [Google] collects from or about an individual” such as “physical location.”<sup>82</sup>

**V. Prayer for Relief**

71. EPIC and Accountable Tech urge the Federal Trade Commission to initiate an investigation of Google LLC to confirm whether Google, through its handling of users’ location data, has engaged in unfair and deceptive trade practices under Section 5 of the FTC Act and has violated the 2011 FTC Consent Order. At a minimum, the FTC should investigate to what extent Google engages in the following practices:
- a. Retaining user location data after a user visits a covered medical facility;
  - b. Permitting third parties to access user location data that reveals a user visited a medical facility;
  - c. Failing to maintain adequate retention and deletion controls for location data; and
  - d. Failing to maintain adequate data security practices to safeguard user data.
72. EPIC and Accountable Tech further urge the Commission to:
- a. Impose civil penalties pursuant to 15 U.S.C. § 45(l);
  - b. Require Google to immediately disgorge any location data indicating that a user has visited a covered medical facility, consistent with Google’s representations to users;
  - c. Halt any unfair, deceptive, or otherwise unlawful collection, disclosure, and retention of personal data, including sensitive location data, by Google;

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<sup>82</sup> Decision and Order at 3, *In re Google, Inc.*, FTC File No. 102-3136 (2011), <https://www.ftc.gov/sites/default/files/documents/cases/2011/10/111024googlebuzzdo.pdf>.

- d. Require Google to implement and maintain an effective data minimization, protection, and deletion program with meaningful oversight;
- e. Provide such other relief as the Commission finds necessary and appropriate.

Respectfully Submitted,

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