



February 1, 2012

**VIA [U.S. MAIL (CERTIFIED DELIVERY)]**

Freedom of Information Act Request  
Office of General Counsel  
Federal Trade Commission  
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Washington, D.C. 20580

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**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 Google’s reported compliance with the FTC consent order issued on October 13, 2011.<sup>1</sup>

**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>2</sup>

<sup>1</sup> *In re Google, Inc.*, FTC File No. 102 3136 (2011) (Consent Order), <http://www.ftc.gov/os/caselist/1023136/111024googlebuzzdo.pdf>.

<sup>2</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/fcraltr12.16.04.html>.

On February 9, 2010, Google introduced Buzz, a social networking service linked to Gmail, Google's email service.<sup>3</sup> Google Buzz was an online service that compiled and made public a Gmail user's social networking list based on address book and Gchat list contacts.<sup>4</sup>

In response, EPIC filed a complaint with the FTC, highlighting several aspects of the Google Buzz service that threatened Gmail users' privacy.<sup>5</sup> The complaint alleges that Google engaged in unfair and deceptive trade practices by transforming its email service into a social networking service without offering users meaningful control over their information or opt-in consent.<sup>6</sup> 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."<sup>7</sup>

On October 13, 2011, having determined that Google's actions violated § 5 of the FTCA, the FTC issued a consent order establishing new privacy safeguards for users of all Google products and services and subjecting the company to regular privacy audits.<sup>8</sup> Included in the consent order is the requirement that within ninety days Google "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."<sup>9</sup> Reports indicate that Google filed this report with the FTC on January 26, 2012.<sup>10</sup>

#### Documents Requested

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

1. All documents filed by Google concerning their compliance with the FTC consent order dated October 13, 2011, particularly the report specified in Section VIII of the consent order, which Google filed on January 26, 2012.<sup>11</sup>

#### 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."<sup>12</sup>

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<sup>3</sup> *In re Google Buzz*, ELEC. PRIVACY INFO. CTR., <http://epic.org/privacy/ftc/googlebuzz/default.html> (last visited Feb. 1, 2012).

<sup>4</sup> *Id.*

<sup>5</sup> *In re Google, Inc.*, Complaint, Request for Investigation, Injunction, and Other Relief (2010), [http://epic.org/privacy/ftc/googlebuzz/GoogleBuzz\\_Complaint.pdf](http://epic.org/privacy/ftc/googlebuzz/GoogleBuzz_Complaint.pdf).

<sup>6</sup> *Id.*

<sup>7</sup> Federal Trade Commission Act, 15 U.S.C. § 45.

<sup>8</sup> *In re Google, Inc.*, *supra* note 1.

<sup>9</sup> *Id.* at 7.

<sup>10</sup> *Politico Morning Tech: Busy Day on Google Privacy*, POLITICO, (Jan. 27, 2012), <http://www.politico.com/morningtech/0112/morningtech393.html>.

<sup>11</sup> *In re Google, Inc.*, *supra* note 1, at 7.

<sup>12</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).

EPIC is “primarily engaged in disseminating information.”<sup>13</sup>

There is a particular urgency for the public to obtain information about Google’s compliance with the consent order because on January 24, 2012, Google announced plans to consolidate user data across over sixty products and services including Gmail, Google+, Youtube, and the Android mobile operating system.<sup>14</sup> This consolidation will take effect on March 1, 2012.<sup>15</sup> A bipartisan letter from eight members of Congress to Google’s president Larry Page described the impact of this consolidation on the public, emphasizing that “Google touches the lives of nearly every person who has an Internet connection.”<sup>16</sup>

Previously, users could use one Google service, such as Google+, without having their information combined with information gathered from other services, such as Youtube.<sup>17</sup> Users cannot opt out of having their data combined unless they avoid signing into their user accounts or stop using Google’s services altogether.<sup>18</sup> Thus, this new consolidation of information creates a number of security and privacy concerns reminiscent of those brought about by the introduction of Google Buzz—concerns that eventually necessitated the FTC consent order.

With less than a month before this consolidation occurs there is an urgent need for the public to learn how Google’s new policies will impact their privacy, and how this consolidation is compatible with the stricter privacy requirements laid out in the FTC’s consent order. For this reason we request expedited processing.

#### Request for “News Media” Fee Status

EPIC is a “representative of the news media” for fee waiver purposes.<sup>19</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.

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<sup>13</sup> *American Civil Liberties Union v. Department of Justice*, 321 F. Supp. 2d 24, 29 n.5 (D.D.C. 2004).

<sup>14</sup> *Updating Our Privacy Policies and Terms of Service*, GOOGLE (Jan. 24, 2012), <http://googleblog.blogspot.com/2012/01/updating-our-privacy-policies-and-terms.html>.

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

<sup>16</sup> Letter from Cliff Stearns, Henry Waxman, Joe Barton, Edward J. Markey, Marsha Blackburn, Diane DeGette, G.K. Butterfield, & Jackie Speier, U.S. House of Representatives, to Larry Page, Chief Exec. Officer, Google (Jan. 26, 2012), *available at* [http://www.scribd.com/carl\\_franzen/d/79598759-Reps-Question-Google-About-Privacy-Policy](http://www.scribd.com/carl_franzen/d/79598759-Reps-Question-Google-About-Privacy-Policy) (listing the 350 million active Gmail users, 90+ million Google+ users, 800 million unique Youtube visitors, and over 100 million unique Google search visitors impacted by Google consolidation).

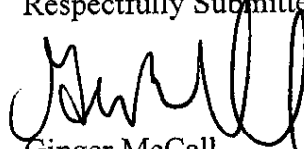
<sup>17</sup> *See Google Changes Privacy Practices, Consolidates User Data*, ELEC. PRIVACY INFO. CTR. (Jan. 25, 2012), <http://epic.org/2012/01/google-changes-privacy-practic.html>.

<sup>18</sup> *Id.*

<sup>19</sup> *EPIC v. Department of Defense*, 241 F. Supp. 2d 5 (D.D.C. 2003).

Thank you for your consideration of this request. As provided in 6 C.F.R. § 5.5(d)(4), I will anticipate your determination on our request for expedited processing within ten (10) calendar days.

Respectfully Submitted,



Ginger McCall  
EPIC Open Government Counsel



Maria Elena Stiteler  
EPIC Clerk