



UNITED STATES OF AMERICA  
Federal Trade  
Commission  
Washington, D.C. 20580

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BY ELECTRONIC MAIL

Jeffery M. Harris  
Consovoy McCarthy PLLC  
1600 Wilson Blvd.  
Suite 700  
Arlington, VA 22209

**Re: *Chamber of Commerce of the United States of America v. FTC*, 1:22-cv-02070  
(D.D.C.) (Count III); FTC FOIA No. 2022-00588**

Dear Mr. Harris:

With this letter, the Federal Trade Commission makes a supplemental release of responsive, non-exempt records (Bates numbered FTC-00000001 through FTC-00000679) to the U.S. Chamber of Commerce in response to the Chamber's Freedom of Information Act, 5 U.S.C. § 552, request for all records related to communications between the FTC and the European Commission or other foreign jurisdictions regarding the Illumina-Grail transaction. As noted in the parties' Joint Status Report dated December 7, 2022, "[t]he FTC has agreed to reprocess the records containing consultant corollary withholdings to take a second look at the withholdings made and exemptions asserted." Portions of these pages fall within the exemptions to the FOIA's disclosure requirements, as explained below.

Please note that we are withholding certain information within the responsive records under FOIA Exemption 3, 5 U.S.C. § 552(b)(3), because they are exempt from disclosure by another statute. Specifically, Section 21(f) of the FTC Act provides that the FTC may withhold any material obtained from a foreign source if that foreign source has requested confidential treatment. 15 U.S.C. § 57b-2(f)(2)(A). In this case, the FTC has received information from foreign agencies pursuant to international agreements that obligate the FTC to safeguard the confidentiality of that information. For example, a 1991 agreement between the United States

and the European Commission provides as follows:

Each Party agrees to maintain, to the fullest extent possible, the confidentiality of any information provided to it in confidence by the other Party under this Agreement and to oppose, to the fullest extent possible, any application for disclosure of such information by a third party that is not authorized by the Party that supplied the information.

*See* Agreement Between the Government of the United States of America and the Commission of the European Communities Regarding the Application of their Competition Laws, Art. VIII, § 2 (Sep. 23, 1991), [https://www.ftc.gov/system/files/agree\\_eurocomm.pdf](https://www.ftc.gov/system/files/agree_eurocomm.pdf).

Many of these records also contain staff analysis, opinions, and recommendations. Those portions are deliberative and pre-decisional and are an integral part of the agency's decision-making process. They are exempt from the FOIA's disclosure requirements by FOIA Exemption 5, 5 U.S.C. § 552(b)(5). Furthermore, some of the materials are protected by the consultant corollary doctrine, which extends Exemption 5 protection to communications between agencies and qualifying third parties. Likewise, some of the materials consist of litigation work product, which is protected by the common-interest doctrine (and Exemption 5) when exchanged with foreign agencies that share the FTC's interest in investigating or prosecuting claims against the very same merger. *See Hunton & Williams v. DOJ*, 590 F.3d 272, 277-81 (4th Cir. 2010).

We have also redacted portions of the records under FOIA Exemption 7(A), 5 U.S.C. § 552(b)(7)(A), because disclosure of that material could reasonably be expected to interfere with the conduct of the Commission's law enforcement activities. Further, some records were obtained on the condition that the agency keep the source of the information confidential. These records are exempt from disclosure under FOIA Exemption 7(D), 5 U.S.C. § 552(b)(7)(D). This exemption is intended to ensure that "confidential sources are not lost because of retaliation against the sources for past disclosure or because of the sources' fear of future disclosure." *Brant Constr. Co. v. EPA*, 778 F.2d 1258, 1262 (7th Cir. 1985).

Finally, portions of the responsive records contain personally identifiable information. This information is exempt from release under FOIA Exemption 6, 5 U.S.C. § 552(b)(6), because individuals' right to privacy outweighs the general public's interest in seeing personal identifying information.

Given the litigation status of this matter, please address any questions or concerns to the FTC's DOJ counsel, Assistant U.S. Attorney Douglas C. Dreier.

Sincerely,

/s/ Bradley Grossman  
Bradley D. Grossman

COPY TO:

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