

# Congress of the United States

Washington, DC 20515

March 10, 2023

The Honorable Lina M. Khan  
Chair  
Federal Trade Commission  
600 Pennsylvania Avenue, N.W.  
Washington, DC 20580

Dear Chair Khan:

We write regarding new evidence that the Federal Trade Commission (“FTC”) is abusing its authorities in investigating Twitter. Recent news,<sup>1</sup> and a report from the House Judiciary Committee’s Select Subcommittee on the Weaponization of the Federal Government,<sup>2</sup> reveal the FTC made inappropriate and burdensome demands coinciding with Elon Musk’s acquisition of the company. The Select Subcommittee’s report revealed how FTC harassed Twitter in wake of Mr. Musk’s acquisition, demanding among other things the identities of the journalists with whom it was engaging and all communications relating to Mr. Musk. We therefore write to seek information about the FTC’s actions against Twitter.

Following two data breaches in 2009, Twitter entered into a consent decree with the FTC in 2011.<sup>3</sup> In May 2022—prior to Mr. Musk’s acquisition of the company—Twitter entered into a revised consent decree in which it agreed to implement additional requirements, including establishing a privacy and information security program by November 22, 2022.<sup>4</sup>

On November 10, 2022, after Elon Musk bought the company, an FTC spokesperson stated: “We are tracking recent developments at Twitter with deep concern. No CEO or company is above the law, and companies must follow our consent decrees. Our revised consent order gives us new tools to ensure compliance, and we are prepared to use them.”<sup>5</sup> According to a *New York Times* report, less than a month later, the FTC “sent Twitter letters asking whether it still has the resources

---

<sup>1</sup> See, e.g., Ryan Tracy, *FTC Twitter Investigation Sought Elon Musk’s Internal Communications, Journalist Names*, WALL ST. J. (Mar. 7, 2023).

<sup>2</sup> H. Comm. on Judiciary and Select Subcomm. on the Weaponization of the Federal Gov’t, 118th Cong., Interim Staff Rep. on *The Weaponization of the Federal Trade Commission: An Agency’s Overreach to Harass Elon Musk’s Twitter* (Mar. 7, 2023) (hereinafter “House Staff Report”).

<sup>3</sup> See Press Release, *FTC Accepts Final Settlement with Twitter for Failure to Safeguard Personal Information*, FTC (Mar. 11, 2011); see also House Staff Report at 12.

<sup>4</sup> Press Release, *FTC Charges Twitter with Deceptively Using Account Security Data to Sell Targeted Ads*, FTC (May 25, 2022); see *Twitter, Inc.*, Decision and Order, C-4316, FTC (May 26, 2022).

<sup>5</sup> Brad Dress, *FTC Says It’s “Tracking the Developments at Twitter with Deep Concern,”* THE HILL (Nov. 10, 2022), available at <https://thehill.com/policy/technology/3729355-ftc-says-its-tracking-the-developments-at-twitter-with-deep-concern/>.

and staff to adhere to the consent decree.”<sup>6</sup> On December 20, 2022, *Bloomberg* reported that the FTC “is deepening an investigation it opened this fall into Twitter Inc.’s privacy and data security practices in the wake of the company’s takeover by billionaire Elon Musk.”<sup>7</sup> According to *Bloomberg*, FTC lawyers had “interrogated two former top Twitter executives in the past month.”<sup>8</sup> Around the same time that the FTC “deepened” its investigation, journalists began releasing editions of the “Twitter Files,” which revealed extensive government attempts to suppress free speech on Twitter.<sup>9</sup>

As documented in the Select Committee’s report, the FTC’s investigation of Twitter tracked public pressure from congressional Democrats and left-wing activists.<sup>10</sup> For example, three weeks after Mr. Musk’s acquisition of Twitter was finalized, seven Senate Democrats urged the FTC to investigate “any breach of Twitter’s consent decree or violation of our consumer protection laws.”<sup>11</sup> The senators urged the FTC to “bring enforcement actions” against Twitter, including “civil penalties and imposing liability on individual Twitter executives.”<sup>12</sup> Likewise, the day before the Democrat senators’ letter, your former employer, the Open Markets Institute (OMI), similarly urged you to take action against Twitter.<sup>13</sup>

In order for Congress to conduct its oversight responsibilities of the FTC, we ask that you provide the following information by no later than March 24, 2023:

1. All documents and communications between or among FTC officials, employees, or consultants referring or relating to the FTC’s investigation(s) of Twitter for the period April 1, 2022, to the present.
2. All communications between or among officials, employees, or consultants of the FTC and employees of any third-party organizations referring or relating to Mr. Musk’s purchase of Twitter or the FTC’s investigation of Twitter.

---

<sup>6</sup> Ryan Mac, Mike Issac, and Kate Conger, *Musk Shakes Up Twitter’s Legal Team as He Looks to Cut More Costs*, N.Y. TIMES (Dec. 13, 2022), available at <https://www.nytimes.com/2022/12/13/technology/elon-musk-twitter-shakeup.html>.

<sup>7</sup> Kurt Wagner and Leah Nylen, *FTC Expands Scrutiny of Musk’s Twitter over Security Concerns*, BLOOMBERG NEWS (Dec. 20, 2022), available at <https://www.bgv.com/next/news/RN76QMDWX2PT>.

<sup>8</sup> *Id.*

<sup>9</sup> See, e.g., Matt Taibbi (@mtaibbi), TWITTER (Dec. 2, 2022, 6:34 PM), <https://twitter.com/mtaibbi/status/1598822959866683394?lang=en>; Bari Weiss (@bariweiss) TWITTER (Dec. 8, 2022, 7:15 PM), [https://twitter.com/bariweiss/status/1601007575633305600?s=20&t=ilqbULlreQtFhJ\\_mVOC0oQ](https://twitter.com/bariweiss/status/1601007575633305600?s=20&t=ilqbULlreQtFhJ_mVOC0oQ); Matt Taibbi (@mtaibbi), TWITTER (Dec. 9, 2022, 6:04 PM), <https://twitter.com/mtaibbi/status/1601352083617505281>; Michael Shellenberger (@ShellenbergerMD), TWITTER (Dec. 10, 2022, 6:28 PM), <https://twitter.com/ShellenbergerMD/status/1601720455005511680?s=20&t=jppprcOnLGDKC426tJ0uLA>.

<sup>10</sup> See *id.* at 14-17.

<sup>11</sup> Nov. 17, 2022 Ltr. From Sen. Blumenthal et. al. to L. Khan, available at <https://www.blumenthal.senate.gov/imo/media/doc/111722ftctwitterletter.pdf>.

<sup>12</sup> *Id.*


<sup>13</sup> Letter from OMI to FTC, DOJ, and FCC (Nov. 16, 2022), available at <https://static1.squarespace.com/static/5e449c8c3ef68d752f3e70dc/t/63754d1ba9540f651d2ef646/1668631835775/OMI+-+Musk-Twitter+-+FINAL.pdf>; see also House Staff Report, *supra* n.2, at 15-17.

3. All documents and communications between or among officials, employees, or consultants of the FTC and members and staff of the Executive Office of the President referring or relating to Mr. Musk’s purchase of Twitter or any federal agency’s investigation of Twitter.
4. All documents and communications between or among officials, employees, or consultants of the FTC and officials, employees, or consultants of the Consumer Financial Protection Bureau or any other Executive Branch agency referring or relating to Mr. Musk’s purchase of Twitter or any federal agency’s investigation of Twitter.
5. The FTC has demanded that Twitter “[i]dentify all journalists and other members of the media to whom [Twitter] ha[s] granted any type of access to the Company’s internal communications (e.g., Slack, emails), Resources, internal documents, and/or files since October 27, 2022.”<sup>14</sup> Please explain, in writing, your justification for this request.

The protection of Americans’ personal data is important, and the FTC has a role in ensuring that companies do not mislead consumers about how their information is handled. But the FTC’s legal authority does not include dictating entire swaths of corporate behavior under the guise of consent decree enforcement. Nor could it justify infringing on the First Amendment. Any agency potentially abusing its authority, including by misusing the consent decree process, warrants investigation and potential action from Congress. Congress will not tolerate any retaliation against whistleblowers.


Thank you for your prompt attention to this matter.

Sincerely,



---

Jim Jordan  
Chairman  
House Judiciary Committee



---

Ted Cruz  
Ranking Member  
Senate Commerce Committee

cc: The Honorable Maria Cantwell, Chairwoman, Senate Commerce Committee  
cc: The Honorable Jerrold L. Nadler, Ranking Member, House Judiciary Committee

---

<sup>14</sup> See House Staff Report *supra* n.2, at 5-7 (quoting Request 1, Letter from FTC Staff Attorney, FTC Division of Enforcement to Counsel for Twitter, *Twitter, Inc.*, No. C-4316 (Dec. 13, 2022)).