



May 27, 2023

Jessica Herron
Legislative Clerk
Subcommittee on Innovation, Data, and Commerce
House Committee on Energy and Commerce
2125 Rayburn House Office Building
Washington, DC 20515-6115

Re: Donald Codling's Responses to Additional Questions for the Record

Dear Ms. Herron:

I want to thank the Subcommittee for inviting me to appear before it on April 27, 2023, at the Innovation, Data, and Commerce hearing entitled, "Addressing America's Data Privacy Shortfalls: How A National Standard Fills Gaps To Protect Americans' Personal Information."

Pursuant to the Rules of the Committee on Energy and Commerce, I am attaching my answers to additional questions for the record, in the required format.

Thank you again for your help, and please let me know if you have any questions.

Sincerely,

Donald Codling
Rego Senior Policy Advisor

Attachment —Additional Questions for the Record

The Honorable Kelly Armstrong

1. The Federal Trade Commission (FTC) advance notice of proposed rulemaking (ANPR) on “Trade Regulation Rule on Commercial Surveillance and Data Security” refers to “different kinds of consumers” and appears to consider employees as a type of consumer. The statement of Chair Khan regarding the ANPR also references “...tracking, collection, and analysis of consumer data in the workplace...”, which seems to be a reference to employee data. The dissenting statement of then-Commissioner Noah Phillips disagrees that the Federal Trade Commission Act confers jurisdiction on the FTC to “regulate any aspect of the employer-employee relationship that happens to involve data.” It is evident that the employer-employee relationship is fundamentally different compared to a business-consumer relationship. An employer must process employee data for several purposes, including compliance with state and federal labor laws and other purposes related to professional activities. How would FTC action to regulate employee data impose challenges on the employer-employee relationship and existing laws governing that relationship?
- A. Thank you for your question. However, we do not possess the necessary subject matter expertise and thus are unable to provide a view to answer this specific question.