

DARRELL E. ISSA, CALIFORNIA  
CHAIRMAN

JOHN L. MICA, FLORIDA  
MICHAEL R. TURNER, OHIO  
JOHN J. DUNCAN, JR., TENNESSEE  
PATRICK T. McHENRY, NORTH CAROLINA  
JIM JORDAN, OHIO  
JASON CHAFFETZ, UTAH  
TIM WALBERG, MICHIGAN  
JAMES LANKFORD, OKLAHOMA  
JUSTIN AMASH, MICHIGAN  
PAUL A. GOSAR, ARIZONA  
PATRICK MEEHAN, PENNSYLVANIA  
SCOTT DESJARLAIS, TENNESSEE  
TREY GOWDY, SOUTH CAROLINA  
BLAKE FARENTHOLD, TEXAS  
DOC HASTINGS, WASHINGTON  
CYNTHIA M. LUMMIS, WYOMING  
ROB WOODALL, GEORGIA  
THOMAS MASSIE, KENTUCKY  
DOUG COLLINS, GEORGIA  
MARK MEADOWS, NORTH CAROLINA  
KERRY L. BENTIVOLIO, MICHIGAN  
RON DeSANTIS, FLORIDA

LAWRENCE J. BRADY  
STAFF DIRECTOR

ONE HUNDRED THIRTEENTH CONGRESS

# Congress of the United States

## House of Representatives

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

2157 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515-6143

MAJORITY (202) 225-5074  
FACSIMILE (202) 225-3974  
MINORITY (202) 225-5051

<http://oversight.house.gov>

ELIJAH E. CUMMINGS, MARYLAND  
RANKING MINORITY MEMBER

CAROLYN B. MALONEY, NEW YORK  
ELEANOR HOLMES NORTON,  
DISTRICT OF COLUMBIA  
JOHN F. TIERNEY, MASSACHUSETTS  
WM. LACY CLAY, MISSOURI  
STEPHEN F. LYNCH, MASSACHUSETTS  
JIM COOPER, TENNESSEE  
GERALD E. CONNOLLY, VIRGINIA  
JACKIE SPEIER, CALIFORNIA  
MATTHEW A. CARTWRIGHT, PENNSYLVANIA  
L. TAMMY DUCKWORTH, ILLINOIS  
ROBIN L. KELLY, ILLINOIS  
DANNY K. DAVIS, ILLINOIS  
PETER WELCH, VERMONT  
TONY CARDENAS, CALIFORNIA  
STEVEN A. HORSFORD, NEVADA  
MICHELLE LUJAN GRISHAM, NEW MEXICO  
VACANCY

### Opening Statement Rep. Elijah E. Cummings, Ranking Member

### Hearing on "The Federal Trade Commission and Its Section 5 Authority: Prosecutor, Judge, and Jury"

July 24, 2014

Today's hearing will cover several new issues for this Committee. First, the Republican briefing memo says the Committee will examine "whether the FTC has the authority to pursue data security enforcement actions under its current section 5 authority."

On this point, there is no legitimate debate. In Section 5 of the FTC Act, Congress gave the FTC authority to protect American consumers and ensure that their personal, medical, financial, and other information is protected from unauthorized disclosure. The FTC has been using this authority to ensure that companies who receive this type of consumer information take appropriate steps to safeguard it. In fact, a federal District Court judge recently upheld this authority and rejected an attempt to "carve out a data-security exception."

Yesterday, Senator Rockefeller, the Chairman of the Senate Commerce Committee and an expert on this issue, sent a letter to Chairman Issa emphasizing this point. He wrote:

Another apparent purpose of your hearing is to express skepticism about the FTC's long-standing and well-established legal authority under Section 5 of the FTC Act. ... This skepticism is unfounded, and your public position was recently rejected by a federal judge in the FTC's data security case against Wyndham Corporation. Over the past 13 years, the Commission has initiated dozens of administrative adjudicatory proceedings and cases in federal court challenging practices that compromised the security of consumers' data and that resulted in improper disclosures of personal information collected from consumers.

According to the Republican memo, today the Committee will also examine "recent FTC actions related to data security practices." One of the witnesses testifying is Michael Daugherty, the CEO of a company called LabMD. The FTC has brought an enforcement action against LabMD, and Mr. Daugherty admits that more than 900 files on his billing manager's computer were accessible for public sharing and downloading, which is a major security breach.

Mr. Daugherty has written a book entitled, "The Devil Inside the Beltway." In it, he refers to the FTC as "terrorists." He also accuses the FTC of engaging in "psychological

warfare,” of “torture,” and of “administering government ‘chemotherapy’.” Of course, he has a right to his opinion, but this Committee should base its oversight work on facts rather than the extreme rhetoric of a defendant in an ongoing enforcement action.

As part of our investigation, we have also received competing allegations about Tiversa, a data security firm that provided information to the FTC about LabMD’s security breach. Obviously, we all agree that the FTC should rely only on evidence it believes is legitimate. If allegations are ultimately verified that Tiversa provided intentionally falsified data, that data clearly should not be used in any enforcement action. But to date, we have obtained no evidence to corroborate these allegations. So they remain just that—unconfirmed allegations.

Unfortunately, on June 17, Chairman Issa sent a letter to the FTC Inspector General alleging “coordination” and “collaboration” between the FTC and Tiversa, and suggesting that “the FTC aided a company whose business practices allegedly involve disseminating false data about the nature of data security breaches.” Chairman Issa wrote that “the FTC appears to have acted on information provided by Tiversa without verifying it in any meaningful way.” He also requested that the Inspector General examine the actions of several specific FTC employees.

I do not know how the Chairman could have reached these conclusions since the Committee has not yet spoken to a single FTC employee. The Committee just requested documents from the FTC less than a week ago, and the Committee has obtained no evidence to support claims that FTC officials directed Tiversa employees to fabricate information. To the contrary, every single current and former Tiversa employee interviewed by Committee staff has uniformly denied receiving any request from FTC employees relating to fabricating information.

In response to the Chairman’s request for an investigation, the Inspector General has now informed the Committee that one of the employees named in his letter in fact was “brought in to assist with the LabMD case after Tiversa was no longer involved, and she has not been working on the case for the past year.” So it appears that some of the Chairman’s information was wrong.

I am sure we will hear a lot of allegations today from parties in this ongoing litigation. Our job is not to take sides, but rather to serve as neutral overseers and base our conclusions on facts and evidence.

The consequences of having personal information compromised can be devastating. As the new Republican Majority Leader Kevin McCarthy has said, “Nothing can turn a life upside down more quickly than identity theft.” I agree. That is why I wrote to Chairman Issa in January proposing that the Committee examine the massive data security breach at Target, which may have compromised the personal information of more than 100 million American consumers.

Instead of holding hearings like today’s, which seek to cast doubt on whether the FTC even has authority to protect American consumers, I hope the Committee will turn to constructive efforts to actually improve corporate data security standards across the board.