

VIA FACSIMILE

June 25, 2018

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Dear Mr. Stafford:

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 General Service Administration (“GSA”).

EPIC seeks records related to the GSA’s advice, assistance, and guidance to the Select Committee on Artificial Intelligence¹ (“Committee”) regarding compliance with and obligations under the Federal Advisory Committee Act (“FACA”), 5 U.S.C. App. 2 §§ 1–16.

Documents Requested

- (1) All communications between the GSA and the Office of Science and Technology Policy, the National Science Foundation, the Defense Advanced Research Projects Agency, and/or any other third-party concerning the Select Committee on Artificial Intelligence;
- (2) All records including but not limited to memoranda, internal communications, and reports used by the GSA to determine the Committee’s FACA obligations.

Background

On May 9, 2018, the National Science and Technology Council established the Select Committee on Artificial Intelligence.² The White House publicly announced the Committee at its

¹ *White House Hosts Summit on Artificial Intelligence for American Industry*, White House (May 10, 2018), <https://www.whitehouse.gov/articles/white-house-hosts-summit-artificial-intelligence-american-industry/>.

² Office of Sci. and Tech. Policy, Exec. Office of the President, Summary of the 2018 White House Summit on Artificial Intelligence for American Industry, 13–15 (2018), <https://www.whitehouse.gov/wp-content/uploads/2018/05/Summary-Report-of-White-House-AI-Summit.pdf> [hereinafter Summit Summary Report].

May 10, 2018 “Summit on Artificial Intelligence for American Industry” — an event attended by government officials, business leaders, and academics.³

The Committee was formed to coordinate artificial intelligence (“AI”) policy and research across different federal agencies and advise the White House on AI. According to the Committee’s charter, the committee is tasked with:

[A]dvising the Executive Office of the President on interagency AI R&D priorities; creating balanced and comprehensive AI R&D programs, including consideration of agency partnerships with academia and industry; establishing structures to improve the way the Federal government plans and coordinates AI R&D; leveraging Federal data and computational resources across department and agency missions; and supporting a technical, national AI workforce.⁴

The Committee is chaired by the Office of Science and Technology Policy, the National Science Foundation, and the Defense Advanced Research Project Agency.⁵ The Committee is made up of at least ten members from different parts of the executive branch of the government, including the Department of Commerce, the Department of Defense, the Department of Energy, the National Science Foundation, the Office of the Director of National intelligence, the National Security Council, the Office of Management and Budget, and the Office of Science and Technology Policy.⁶

As one of its principal functions, the Committee is tasked with encouraging “partnerships with academia and industry.”⁷ The Committee may “interact with and receive *ad hoc* advice from various private sector groups consistent with the Federal Advisory Committee Act.”⁸

The FACA was created to help cut down on advisory committee waste and to prevent capture by special interests.⁹ If a group meets the statutory definition of an “advisory committee,” the law triggers certain transparency and membership requirements. 5 U.S.C. App. 2 §§ 1–16. For example, the FACA requires open meetings, detailed minutes of meetings, and committee membership that includes different points of view. §§ 5, 10. Under the FACA, the GSA is responsible for managing advisory committees and must conduct annual reviews to determine whether any should be terminated. § 7. Under the law, the GSA shall also provide “advice, assistance, and guidance” to advisory committees. § 7. The oversight and guidance responsibility of the GSA produces records subject to the FOIA.

Democratic governance is built on principles of procedural fairness and transparency. The use of AI by the federal government must be open, provable, and accountable because

³ *Id.*

⁴ *Id.* at 13.

⁵ *Id.* at 14.

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ Steven P. Croley & William F. Funk, *The Federal Advisory Committee Act and Good Government*, 14 Yale J. on Reg. 451, 462 (1997).

accountability is the key to decision making. The controversial use of AI, particularly for government systems that involve the processing of personal data, may fall outside the reach of the Privacy Act of 1974 if proper oversight is not exercised. The Privacy Act of 1974 ensures fairness and accountability in the government's use of personal data.¹⁰ Algorithms deny people educational opportunities, employment, housing, insurance, and credit.¹¹ When the government uses AI to make decisions about people, many of these decisions are opaque and leave individuals to wonder whether these decisions were accurate, fair, or even about them. It is vital for the public to understand the makeup and operation of the committee that is helping to shape artificial intelligence policy.

Request for Expedition

EPIC is entitled to expedited processing of this request under the FOIA and the GSA FOIA regulations. 5 U.S.C. § 552(a)(6)(E)(v)(II); 41 C.F.R. § 105-60.402-2(c). Specifically, this request is entitled to expedited processing because the information sought is (1) “urgently needed,” (2) by EPIC, “an individual primarily engaged in disseminating information,” (3) “to inform the public concerning actual or alleged Federal Government activity.” 41 C.F.R. § 105-60.402-2(c)(2).

First, the information sought is “urgently needed,” meaning that the “information has a particular value that will be lost if not disseminated quickly, such as a breaking news story or general public interest.” § 105-60.402-2(c)(2). The GSA’s communications and other records pertaining to the Committee’s compliance and obligations under FACA are of general public interest. The purpose and scope Committee’s future work has been broadly described in numerous news reports over the past months, and the White House has said it intends to quickly adopt policy on the issue.¹² The formation of the Committee is one of the first public indications of the administration stance on AI research and development. This is an increasingly important and urgent issue implicating a wide range of policy areas in the United States. The government has invested significant resources in AI research and development, growing by more than 40 percent since 2015.¹³ The administration’s fiscal year 2019 budget request designated AI and autonomous and unmanned systems as administration research and development priorities.¹⁴ While the Committee Charter states that the Committee may receive “*ad hoc*” advice from private sector groups, there is no information as to which private sector groups will be engaged and whether there is public participation component throughout the Committee’s existence. It is

¹⁰ 5 U.S.C. § 552(a); *see also* EPIC, The Privacy Act, <https://epic.org/privacy/1974act/>.

¹¹ Danielle Keats Citron & Frank Pasquale, *The Scored Society: Due Process for Automated Predictions*, 89 Wash. L. Rev. 1 (2014).

¹² Will Knight, *The White House Promises to Release Government Data to Fuel the AI Boom*, MIT Tech. Rev. (June 5, 2018), <https://www.technologyreview.com/s/611331/the-white-house-promises-to-release-government-data-to-fuel-the-ai-boom/>; *see also* Ali Ireland, *White House to Create Artificial Intelligence Committee*, The Hill (May 10, 2018), <http://thehill.com/policy/technology/387133-white-house-to-create-ai-committee>; *The Latest: White House Launches New AI Effort*, Associated Press (May 10, 2018), <https://apnews.com/eee2501197354050aba527d5a310ed10>.

¹³ Statement, The White House, Artificial Intelligence for the American People (May 10, 2018), <https://www.whitehouse.gov/briefings-statements/artificial-intelligence-american-people/>.

¹⁴ *Id.*

within the public's interest to understand the Committee's stance regarding public participation and transparency.

Second, EPIC is an organization "primarily engaged in disseminating information," § 105-60.402-2(c)(2). As the Court explained in *EPIC v. Dep't of Def.*, "EPIC satisfies the definition of 'representative of the news media'" entitling it to preferred fee status under FOIA. 241 F. Supp. 2d 5, 15 (D.D.C. 2003). EPIC's primary purpose is to focus public attention on emerging privacy and civil liberties issues and it fulfills its mission by disseminating information through its website, EPIC.org.¹⁵

Third, the information sought concerns an "actual or alleged Federal Government activity." 41 C.F.R. § 105-60.402-2(c)(2). The creation of the Committee and the GSA's role under the FACA to oversee federal advisory committees is an actual Federal Government Activity.

In submitting this request for expedited processing, I certify that this explanation is true and correct to the best of my knowledge and belief. 41 C.F.R. § 105-60.402-2(c); 5 U.S.C. § 552(a)(6)(E)(vi).

Request for "News Media" Fee Status and Fee Waiver

EPIC is a "representative of the news media" for fee classification purposes. *EPIC v. Dep't of Def.*, 241 F. Supp. 2d 5 (D.D.C. 2003). Based on EPIC's status as a "news media" requester, EPIC is entitled to receive the requested record with only duplication fees assessed. 5 U.S.C. § 552(a)(4)(A)(ii)(II); 41 C.F.R. § 105-60.305-10(d)(2).

Further, any duplication fees should also be waived because disclosure of the requested information "would contribute significantly to public's understanding of the operations or activities of the Government and would not be primarily in the commercial interest" of EPIC. 41 C.F.R. § 105-60.305-13; 5 U.S.C. § 552(a)(4)(A)(iii). The GSA evaluates four factors to determine whether this standard is met: (1) the "the subject of the requested records concerns 'the operations or activities of the Government'"; (2) disclosure "is 'likely to contribute' to an understanding of Government operations or activities"; (3) disclosure "of the requested information will contribute to [the] 'public's understanding'"; and (4) whether "the requester has a commercial interest that would be furthered by the requested disclosure; and if so: whether the magnitude of the identified commercial interest of the requester is sufficiently large, in comparison with the public's interest in disclosure, that disclosure is 'primarily in the commercial interest of the requester.'" § 105-60.305-13(a)(1-4). EPIC's request satisfies these four GSA factors for granting a fee waiver. § 105-60.305-13(a)(1-4).

First, the information sought concerns "the operations or activities of the Government." § 105-60.305-13(a)(1). The creation of the Committee and the GSA's oversight and guidance obligations under the FACA undoubtedly concerns the operations or activities of the government.

¹⁵ See *About EPIC*, EPIC.org, <http://epic.org/epic/about.html>.

Second, the disclosure is “likely to contribute” the public’s understanding. § 105-60.305-13(a)(2). The records sought include information about the operations of the GSA in carrying out its statutory obligations of oversight and guidance of advisory committees under FACA. The records sought are not yet in the public domain. Even though multiple news outlets have reported on the creation of the Committee, the details of its obligations under FACA are unknown. The release of the requested information will allow the public to better understand the Committee’s position on transparency and to enable public participation in Committee activities under the FACA.

Third, the disclosure will contribute to the “public’s understanding.” § 105-60.305-13(a)(3). As stated previously, there is little new information other than what has been released by the White House and the release of this information will contribute to the public’s understanding of this new Committee. Moreover, “the identity and qualifications of the requester should be considered to determine whether the requester is in a position to contribute to public’s understanding through the requested disclosure.” *Id.* EPIC is in a position to contribute to the public’s understanding because EPIC qualifies as a media requester. EPIC regularly disseminates information obtained through the FOIA as a part of its public interest mission through the website EPIC.org, a bi-weekly newsletter titled “EPIC Alert,” and other publications.¹⁶

Fourth, EPIC has no “commercial interest that would be furthered by the requested disclosure.” § 105-60.305-13(a)(4). EPIC is a registered non-profit organization committed to privacy, open government, and civil liberties.¹⁷

For these reasons, a full fee waiver should be granted for EPIC’s request.

Conclusion

Thank you for your consideration of this request. I anticipate your decision concerning EPIC’s request for expedited processing within five working days. 41 C.F.R. § 105-60.402-2(d). For questions regarding this request I can be contacted at 202-483-1140 x104 or FOIA@epic.org.

Respectfully submitted,

/s/ Mario Trujillo
Mario Trujillo
EPIC Clerk

/s/ Enid Zhou
Enid Zhou
EPIC Open Government Fellow

¹⁶ *About EPIC*, EPIC.org, <http://epic.org/epic/about.html>.

¹⁷ *Id.*