

VIA E-MAIL

September 11, 2019

National Security Commission on Artificial Intelligence
Washington, D.C.
inquiry@nscai.gov

Dear FOIA Officer/Designated Federal Officer:

This letter constitutes a request under both the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552(a)(3), and the Federal Advisory Committee Act (“FACA”), 5 U.S.C. app. 2, and is submitted on behalf of the Electronic Privacy Information Center (“EPIC”) to the National Security Commission on Artificial Intelligence (“AI Commission”).

EPIC seeks (1) records arising from and related to the AI Commission, and (2) advance notice of, and access to, all future meetings of the AI Commission.

FOIA Request

Documents Requested

All records, reports, transcripts, minutes, appendixes, working papers, drafts, studies, agenda, or other documents which were made available to or prepared for or by the National Security Commission on Artificial Intelligence or any subcomponent thereof.

Background

The Formation and Structure of the AI Commission

The National Security Commission on Artificial Intelligence was created by Congress through the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (“NDAA”), signed into law on August 13, 2018.¹ Section 1051 of the NDAA establishes the AI Commission “to review advances in artificial intelligence, related machine learning developments, and associated technologies.”²

Congress created the AI Commission as “an independent establishment of the Federal Government” that is “in the executive branch.”³ Because the AI Commission constitutes an “establishment in the executive branch of the Government,” it is an agency within the meaning

¹ Pub. L. No. 115-232, § 1051, 132 Stat. 1636 (2018) [hereinafter NDAA].

² NDAA § 1051(a)(1).

³ NDAA § 1051(a).

of the FOIA.⁴ Accordingly, the AI Commission is fully subject to the FOIA and must “make . . . records promptly available to any person” upon request.⁵

The AI Commission is to be funded by “not more than \$10,000,000” taken from “the amounts authorized to be appropriated by [the NDAA] . . . for the Department of Defense[.]”⁶ In December 2018, the Department of Defense made the required transfer of appropriations to fund the AI Commission.⁷

The AI Commission “shall be composed of 15 members” appointed “for the life of the Commission” by the Secretary of Defense, the Secretary of Commerce, and the chairs and ranking members of seven relevant congressional committees.⁸ The “members of the Commission shall be deemed to be Federal employees,”⁹ but “[t]he Commission shall terminate on October 1, 2020.”¹⁰

On December 19, 2018, EPIC sent a statement to the Congressional committee chairs responsible for naming members of the AI Commission.¹¹ EPIC urged the chairs “to nominate to the Commission computer scientists and public interest representatives who have endorsed the Universal Guidelines for Artificial Intelligence,”¹² which are a set of principles “intended to maximize the benefits of AI, minimize the risk, and ensure the protection of human rights.”¹³

⁴ 5 U.S.C. § 552(f)(1) (defining the “agenc[ies]” subject to the FOIA to include any “establishment in the executive branch of the Government”); *see also Energy Research Found. v. Def. Nuclear Facilities Safety Bd.*, 917 F.2d 581, 583 (D.C. Cir. 1990) (holding that the Defense Nuclear Facilities Safety Board is an agency subject to the FOIA because “[i]t would be a tall piece of statutory construction for a court to say that an ‘establishment in the executive branch’ as used in [the Board’s organic statute] is not an ‘establishment in the executive branch’ within the meaning of § 552(f)”).

⁵ 5 U.S.C. § 552(a)(3)(A).

⁶ NDAA § 1051(d).

⁷ Memorandum from Michele Bail, Dir., Program & Fin. Control, Dep’t of Def., to Asst. Sec. of the Army, Fin. Mgmt. & Comptroller, et al. (Dec. 26, 2018), https://comptroller.defense.gov/Portals/45/Documents/execution/reprogramming/fy2019/letter/19-05_LTR_DoD_Directed_Transfer_Commission_Artificial_Intelligence.pdf.

⁸ The relevant congressional committees are the Senate Committee on Commerce, Science, and Transportation; the House Committee on Energy and Commerce; the Senate Committee on Armed Services; the House Committee on Armed Services; the Senate Select Committee on Intelligence; and the House Permanent Select Committee on Intelligence. NDAA § 1051(a)(4).

⁹ NDAA § 1051(a)(7).

¹⁰ NDAA § 1051(e).

¹¹ *E.g.*, Statement from EPIC to Richard Burr, Chairman, Senate Select Comm. on Intelligence (Dec. 19, 2018), <https://epic.org/privacy/ai/EPIC-AICommittee-Dec2018.pdf>.

¹² *Id.*

¹³ *Universal Guidelines for Artificial Intelligence*, The Public Voice (Oct. 23, 2018), <https://thepublicvoice.org/AI-universalguidelines>.

The roster of AI Commission members was finalized by January 2019.¹⁴ The Commission is chaired by Eric Schmidt, former CEO of Google and Alphabet, and vice chaired by Robert O. Work, former Deputy Secretary of Defense.¹⁵ The Commission also includes:

- Safra Catz, CEO of Oracle
- Steve Chien, supervisor of the Artificial Intelligence Group at Caltech's Jet Propulsion Lab
- Mignon Clyburn, Open Society Foundation fellow and former FCC commissioner
- Chris Darby, CEO of In-Q-Tel
- Ken Ford, CEO of the Florida Institute for Human and Machine Cognition
- Jose-Marie Griffiths, president of Dakota State University
- Eric Horvitz, director of Microsoft Research Labs
- Andy Jassy, CEO of Amazon Web Services
- Gilman Louie, partner at Alsop Louie Partners
- William Mark, director of SRI International's Information and Computing Sciences Division
- Jason Matheny, director of the Center for Security and Emerging Technology and former Assistant Director of National Intelligence
- Katharina McFarland, consultant at Cypress International and former Assistant Secretary of Defense for Acquisition
- Andrew Moore, head of Google Cloud AI¹⁶

The Commission is “supported by a professional staff of about 20, including direct hires and detailees from the military services and government agencies. The staff is organized into three teams, focused on research and analysis, outreach and engagement, and operations.”¹⁷

Under the NDAA, the AI Commission is charged with “consider[ing] the methods and means necessary to advance the development of artificial intelligence, machine learning, and associated technologies by the United States to comprehensively address the national security and defense needs of the United States.”¹⁸ Specifically, the Commission must review:

¹⁴ See Tajha Chappellet-Lanier, *Alphabet, Microsoft leaders named to National Security Commission on Artificial Intelligence*, FedScoop (Nov. 14, 2018), <https://www.fedscoop.com/alphabet-microsoft-leaders-named-national-security-commission-artificial-intelligence/>; Sam Shead, *Ex-Google CEO To Lead US Government AI Advisory Group*, Forbes (Jan. 24, 2019), <https://www.forbes.com/sites/samshead/2019/01/24/ex-google-ceo-to-lead-ai-us-government-ai-advisory-group/>.

¹⁵ *Commissioners*, National Security Commission on Artificial Intelligence (2019), <https://www.nscai.gov/about/commissioners>.

¹⁶ *Id.*

¹⁷ National Security Commission on Artificial Intelligence, *Initial Report 4* (July 2018) [hereinafter *Initial Report*], available at <https://epic.org/privacy/NSCAI-initial-report-073119.pdf>.

¹⁸ NDAA § 1051(b)(1).

- (A) The competitiveness of the United States in artificial intelligence, machine learning, and other associated technologies, including matters related to national security, defense, public-private partnerships, and investments.
- (B) Means and methods for the United States to maintain a technological advantage in artificial intelligence, machine learning, and other associated technologies related to national security and defense.
- (C) Developments and trends in international cooperation and competitiveness, including foreign investments in artificial intelligence, related machine learning, and computer science fields that are materially related to national security and defense.
- (D) Means by which to foster greater emphasis and investments in basic and advanced research to stimulate private, public, academic and combined initiatives in artificial intelligence, machine learning, and other associated technologies, to the extent that such efforts have application materially related to national security and defense.
- (E) Workforce and education incentives to attract and recruit leading talent in artificial intelligence and machine learning disciplines, including science, technology, engineering, and math programs.
- (F) Risks associated with United States and foreign country advances in military employment of artificial intelligence and machine learning, including international law of armed conflict, international humanitarian law, and escalation dynamics.
- (G) Associated ethical considerations related to artificial intelligence and machine learning as it will be used for future applications related to national security and defense.
- (H) Means to establish data standards, and incentivize the sharing of open training data within related national security and defense data-driven industries.
- (I) Consideration of the evolution of artificial intelligence and appropriate mechanism for managing such technology related to national security and defense.
- (J) Any other matters the Commission deems relevant to the common defense of the Nation.¹⁹

Within 180 days of the passage of the NDAA—*i.e.*, by February 9, 2019—the AI Commission was required to “submit to the President and Congress an initial report on the findings of the Commission and such recommendations that the Commission may have for

¹⁹ NDAA § 1051(b)(2).

action by the executive branch and Congress[.]”²⁰ The Commission was also required to submit an annual “comprehensive report on the [Commission’s] review” by August 13, 2019, and the Commission’s final report is due by August 13, 2020.²¹ Notably, reports submitted by the Commission “shall be made public[ly] available, but may include a classified annex.”²²

The Activities of the AI Commission

Despite holding thirteen meetings and receiving more than 100 briefings over the past six months,²³ the AI Commission has operated almost entirely in secret. The Commission has conducted all of its proceedings behind closed doors and has failed to publish any meeting notices, agendas, minutes, or materials.

On February 7, 2019—a month before the Commission’s work began “in earnest”²⁴—EPIC sent a letter to members of the AI Commission urging the Commission “to provide opportunities for public input, including public hearings” and to “issue no reports until there has been a meaningful opportunity for public participation.”²⁵ EPIC noted “that many governments, including Japan, Canada, Germany, and the European Commission, have hosted important public events to solicit public opinion to ensure a national policy on AI that reflects the public interest.”²⁶ EPIC received no substantive response from the AI Commission.

Two weeks later, on February 22, 2019, EPIC sent a FOIA and FACA request to the Department of Defense seeking “records arising from and related to the National Security Commission on Artificial Intelligence” and “[a]ccess to, and advance Federal Register notice of, all meetings of the [Commission] and any subcomponent thereof.”²⁷ The Department of Defense has yet to provide a substantive response to EPIC’s request.

On March 11, 2019, the AI Commission held its first plenary meeting in Arlington, VA.²⁸ The Commission did not publish a notice in the Federal Register or otherwise provide the public with an opportunity to participate in the meeting. Only after the fact—in a March 12, 2019 press release—did the Commission even acknowledge that the meeting had occurred.²⁹

Little is publicly known about the substance of the AI Commission’s March 11 meeting. The Commission has reported that it “received briefs from the Defense and Commerce

²⁰ NDAA § 1051(c)(1).

²¹ NDAA § 1051(c)(2).

²² NDAA § 1051(c)(3).

²³ *Initial Report*, *supra* note 17, at 1–2.

²⁴ *Id.* at 1.

²⁵ Letter from EPIC to Eric Schmidt, Chairman, Nat’l Sec. Comm’n on Artificial Intelligence, et al. at 1 (Feb. 7, 2019),

²⁶ *Id.*

²⁷ FOIA Request from EPIC to Dep’t of Defense at 1, 6 (Feb. 22, 2019), <https://epic.org/foia/dod/EPIC-19-02-22-DOD-FOIA-20190222-Request.pdf>.

²⁸ *Initial Report*, *supra* note 17, at 1.

²⁹ Press Release, Nat’l Sec. Comm’n on Artificial Intelligence, National Security Commission on Artificial Intelligence Holds Inaugural Meeting (Mar. 12, 2019), <https://www.nsc.gov/press/press-releases/press-release-20190312>.

departments, the intelligence community, and Members of Congress,”³⁰ including Sen. Martin Heinrich, Rep. Elise Stefanik, and Rep. Jerry McNerney.³¹ Commissioners also “organize[d] themselves into four working groups focused on key areas to examine in detail”:

- Working Group #1, which “is focused on how the U.S. Government, through policy reforms, incentives, or appropriations, can help accelerate academic research and commercial innovation in AI”;
- Working Group #2, which “is focused on how the U.S. Government can adopt AI applications at speed and scale to protect U.S. national security, including through policy, process, governance, and organizational reforms”;
- Working Group #3, which “is focused on how to overcome challenges and develop incentives to build a world-class, AI-ready national security workforce”; and
- Working Group #4, which “is considering ways to enhance U.S. global competitiveness, leverage our alliances, and establish norms that advance U.S. values and interests.”³²

According to the AI Commission, these working groups “meet[] monthly, and will enumerate objectives, assess current challenges, and develop recommendations for consideration by the entire Commission.”³³ Although the working groups have held at least nine meetings to date,³⁴ the Commission has failed to disclose any information about the membership of the groups, the dates and locations of their meetings, or the content of their proceedings.

The AI Commission has also “decided to pursue Special Projects on three cross-cutting issues: 1) harnessing AI through public-private partnerships, 2) pursuing the responsible and ethical use of AI for national security, and 3) managing data to support AI applications.”³⁵ No information is publicly available about the direction or progress of these projects.

On May 20, 2019, the AI Commission held its second plenary meeting in Cupertino, CA.³⁶ Again, the Commission did not publish a notice in the Federal Register or otherwise announce the meeting in advance. Only nine days after the fact—in a May 29, 2019 press release—did the Commission acknowledge that the meeting had occurred.³⁷

The details of the AI Commission’s May 20 are also unknown to the public. The Commission has stated only that it “received classified briefs on the status of the U.S.

³⁰ *Id.*

³¹ *Initial Report, supra* note 17, at 1.

³² *Id.* at 2.

³³ *Id.*

³⁴ *Id.*

³⁵ *Id.*

³⁶ *Id.* at 1–2.

³⁷ Press Release, Nat’l Sec. Comm’n on Artificial Intelligence, National Security Commission on Artificial Intelligence Holds Second Plenary Meeting (May 29, 2019), <https://www.nscai.gov/press/press-releases/press-release-20190529>.

government’s artificial intelligence strategies and examined overseas trends,”³⁸ and that it was “briefed on U.S. Government policies and perspectives, including from the White House Office of Science and Technology Policy, the National Security Council, and the Defense Department’s Office of Net Assessment.”³⁹

On July 11, 2019, the AI Commission held its third plenary meeting in Cupertino, CA.⁴⁰ Once again, the Commission did not publish a notice in the Federal Register or otherwise announce the meeting in advance. Only after the fact—in a July 12, 2019 press release—did the Commission acknowledge that the meeting had occurred.⁴¹

The AI Commission has publicly described its July 11 meeting in only the vaguest terms. The Commission said that it “examined the AI landscape” and “received classified briefings on counterintelligence threats and challenges to the United States as well as opportunities to advance U.S. leadership in artificial intelligence.”⁴² The meeting “featured briefings from the Intelligence Community, the Federal Bureau of Investigation, and the National Security Council.”⁴³

On July 15, 2019, C4ISRNET published an article calling attention to the AI Commission’s lack of transparency.⁴⁴ “Absent from the [Commission’s July 12 press] release is any information about the specifics of the reports, assessments, working group evaluations or briefings,” staff writer Kelsey D. Atherton wrote.⁴⁵ “Companies or members of the public interested in learning how the Commission is studying AI are left only with the knowledge that appointed people met to discuss these very topics, did so, and are not yet releasing any information about their recommendations.”⁴⁶

Two days later, on July 17, 2019, Eric Schmidt and Robert O. Work—chair and vice chair of the AI Commission—co-published an article about the Commission in *War on the Rocks*, a privately-run publication focused on foreign policy and national security issues.⁴⁷ The article revealed, for the first time publicly, that the Commission “includes four working groups and three special projects” and that the “[t]he three special projects address ethics, data, and

³⁸ *Id.*

³⁹ *Initial Report*, *supra* note 17, at 2.

⁴⁰ *Id.*

⁴¹ Press Release, Nat’l Sec. Comm’n on Artificial Intelligence, National Security Commission on Artificial Intelligence Holds Plenary Meeting (July 12, 2019), <https://www.nscai.gov/press/press-releases/press-release-20190712>.

⁴² *Id.*

⁴³ *Initial Report* at 2.

⁴⁴ Kelsey D. Atherton, *Why won’t the National Security Commission share its thoughts on AI?*, C4ISRNET (July 15, 2019), <https://www.c4isrnet.com/artificial-intelligence/2019/07/15/national-security-commission-on-ai-meets-again/>.

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ Robert Work & Eric Schmidt, *In Search of Ideas: The National Security Commission on Artificial Intelligence Wants You* (July 18, 2019), <https://warontherocks.com/2019/07/in-search-of-ideas-the-national-security-commission-on-artificial-intelligence-wants-you/>.

public-private partnerships.”⁴⁸ The article also called for papers in response to one of five “prompts” determined by the Commission—but only papers consistent with the lengthy submission guidelines of *War on the Rocks*.⁴⁹ The article contained no details about future meetings of the Commission and made no provision for public comments on other subjects.

On July 31, 2019, the AI Commission submitted its Initial Report to Congress (more than five months after the February 9 statutory deadline). The four-page document briefly summarized the “[i]nitial [a]ctivities” of the AI Commission; broadly described the relationship of the Commission to industry, academia, and other federal AI efforts; and included two bullet points on the Commission’s “[n]ext [s]teps.”

The Initial Report was published contemporaneously with the launch of the Commission’s website, which consists almost exclusively of Commission member biographies, post-hoc press releases about Commission meetings, and a copy of the Initial Report.⁵⁰ The website contains no meeting notices, agendas, minutes, or materials.

On August 13, 2019, the statutory deadline for the AI Commission’s first “comprehensive report” came and passed.⁵¹ The Commission has yet to issue that report. The AI Commission has also not disclosed the dates, locations, or subject matter of its future plenary sessions. However, if the Commission continues to “meet in plenary every other month,” meetings will be held in September 2019 and November 2019—the same month that the Commission has promised to issue its first comprehensive report.⁵²

Request for Expedition

This request warrants expedited processing under the FOIA because there is a “compelling need” for disclosure of the requested records.⁵³ Specifically, this request is entitled to expedited processing because there is an “urgency to inform the public about an actual or alleged Federal Government activity,” and because the request is “made by a person who is primarily engaged in disseminating information.”⁵⁴

First, the activities of AI Commission are an “actual . . . Federal Government activity” because the AI Commission is established by statute and is funded through DOD appropriations. The AI Commission is also part of the executive branch, and members of the Commission are deemed federal employees.

It is “urgen[t] to inform the public” about the activities of the AI Commission⁵⁵ because the Commission has disclosed extremely scant information about its proceedings—even as the

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ *National Security Commission on Artificial Intelligence* (2019), <https://www.nsc.ai.gov/>.

⁵¹ NDAA § 1051(c)(2).

⁵² *Initial Report*, *supra* note 17, at 1, 4.

⁵³ 5 U.S.C § 552(a)(6)(E)(v)(II).

⁵⁴ *Id.*

⁵⁵ *Id.*

Commission continues to issue reports, formulate recommendations, hold meetings, and receive briefings. Indeed, although the Commission claims that it will issue its first comprehensive report in just over two months, it has failed to release a single page of meeting minutes, agendas, or materials to date. It is urgent that the requested information be released to the public before the Commission’s next scheduled meeting and the issuance of its first comprehensive report.

Moreover, the AI Commission—comprised of prominent technologists, executives of major technology firms, and former federal officials—is operating during the “American AI Initiative,” the White House’s artificial intelligence policy project.⁵⁶ The Commission’s findings and recommendations, which must by law be delivered to the President and Congress, will have significant influence on the White House’s initiative and on AI policy generally. Thus, the public urgently needs to be informed of the activities of the AI Commission.

Second, EPIC is an organization “primarily engaged in disseminating information.”⁵⁷ As the Court explained in *EPIC v. DOD*, “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 certifies that it is currently engaging in the same activities the District Court found sufficient for news media fee status in 2003. EPIC conducts research on emerging privacy and civil liberties issues, analyzes and turns this raw material into a distinct work, and distributes that work to a wide audience through EPIC’s website and publications. Every two weeks for the past 25 years, EPIC has published and disseminated its newsletter, the *EPIC Alert*, to the public.⁵⁸ EPIC’s work is also consistently featured in publications such as *Politico*, *Law 360*, the *Washington Post*, the *New York Times*, *NPR*, the *Wall Street Journal*, *The Hill*, *CBS*, and *USA Today*.⁵⁹

In submitting this request for expedited processing, EPIC certifies this explanation is true and correct to the best of its knowledge and belief.⁶⁰

Request for “News Media” Fee Status and Fee Waiver

EPIC is a “representative of the news media” for fee classification purposes. *EPIC v. DOD*, 241 F. Supp. 2d 5, 15 (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.⁶¹

Further, any duplication fees should also be waived because (i) “disclosure of the requested information is in the public interest because it is likely to contribute to the public understanding of the operations or activities of the government” and (ii) “disclosure of the information is not primarily in the commercial interest” of EPIC, the requester.⁶²

⁵⁶ Exec. Order No. 13,859, 84 Fed. Reg. 3,967 (2019).

⁵⁷ 5 U.S.C. § 552(a)(6)(E)(v)(II).

⁵⁸ See EPIC, *EPIC Alert*, <https://www.epic.org/alert/>.

⁵⁹ See EPIC, *EPIC in the News*, https://epic.org/news/epic_in_news.php/.

⁶⁰ 5 U.S.C. § 552(a)(6)(E)(vi).

⁶¹ 5 U.S.C. § 552(a)(4)(A)(ii)(II).

⁶² 5 U.S.C. § 552(a)(4)(A)(iii).

(1) Disclosure of the requested information is likely to contribute to the public understanding of the operations or activities of the government.

Disclosure of the requested documents is “in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government.”⁶³ First, the subject of the request concerns “operations or activities of the federal government.” The AI Commission was established by statute; is funded through Department of Defense appropriations; is required to submit reports and recommendations to guide the federal government in AI policymaking; and is composed of members who are deemed federal government employees.

Second, disclosure of the requested documents will contribute significantly to an increased understanding of government operations and activities. Specifically, disclosure will educate the public about the activities of the AI Commission and the reports that the Commission is required to submit to the President and Congress. Although the Commission has been active for six months, little is known about the Commission’s past and future meetings, and no agendas, minutes, or meeting materials have been released.

Third, disclosure will contribute to the understanding of a reasonably broad audience of persons interested in the subject because EPIC is a representative of the news media. EPIC disseminates its work widely through its online publications and through traditional news media channels.

(2) Disclosure of the information is not primarily in the commercial interest of the requester

The “[d]isclosure of the information is not primarily in the commercial interest” of EPIC, the requester.⁶⁴ EPIC is a registered non-profit organization committed to privacy, open government, and civil liberties.⁶⁵ EPIC has no commercial interest in the requested records and does not use the information obtained through FOIA for commercial purposes.

The public interest is also greater than any commercial interest in disclosure. Again, EPIC is a non-profit organization with no commercial interest in the requested records and has established that there is significant public interest in the records. As a news media requester, EPIC satisfies the public interest standard and is entitled to a full fee waiver.

⁶³ 5 U.S.C. § 552(a)(4)(A)(iii).

⁶⁴ 5 U.S.C. § 552(a)(4)(A)(iii).

⁶⁵ EPIC, *About EPIC*, <http://epic.org/epic/about.html>.

FACA Request

Documents and Access Requested

Pursuant to section 10 of the Federal Advisory Committee Act,⁶⁶ EPIC also seeks access to the records, minutes, and meetings of the National Security Commission on Artificial Intelligence. Specifically, EPIC seeks:

- (1) Copies of all “records, reports, transcripts, minutes, appendixes, working papers, drafts, studies, agenda, or other documents which were made available to or prepared for or by” the National Security Commission on Artificial Intelligence and/or any subcomponent thereof;⁶⁷
- (2) Contemporaneous access to,⁶⁸ and advance Federal Register notice of,⁶⁹ all meetings of the National Security Commission on Artificial Intelligence and any subcomponent thereof, including but not limited to the Commission’s September 2019 and November 2019 plenary meetings.

The AI Commission is subject to the FACA because it is an advisory committee established by statute.⁷⁰ The FACA applies to “any committee, board, commission, council, conference, panel, task force, or other similar group, or any subcommittee or other subgroup thereof” that is “established by statute . . . in the interest of obtaining advice or recommendations for the President or one or more agencies or officers of the Federal Government[.]”⁷¹ The AI Commission is a committee established by Congress through the NDAA, and it is required to provide advice to both the President and Congress.

The FACA requires advisory committees to (1) publish their records in a central location; (2) hold their meetings in public; and (3) keep and publish detailed meeting minutes.⁷² This means that the Commission’s work must be conducted in the open, and records related to its meetings and proceedings must be proactively disclosed to the public. A committee or agency “may not require members of the public or other interested parties to file requests for non-exempt advisory committee records under the request and review process established by section 552(a) of FOIA.”⁷³

⁶⁶ Pub. L. No. 92-463, 86 Stat. 770 (1972) (codified as amended at 5 U.S.C. app. 2) [hereinafter FACA].

⁶⁷ FACA § 10(b); *see also* FACA § 10(c).

⁶⁸ FACA §§ 10(a)(1), (3).

⁶⁹ FACA § 10(a)(2).

⁷⁰ FACA § 3(2).

⁷¹ *Id.*

⁷² FACA § 10(a)–(c).

⁷³ 41 C.F.R. § 102-3.170; *see also Food Chem. News v. HHS*, 980 F.2d 1468, 1469 (D.C. Cir. 1992).

Conclusion

Thank you for your consideration of this request. EPIC anticipates your determination on its request within ten calendar days.⁷⁴ For questions regarding this request, please contact John Davisson at 202-483-1140 x120 or FOIA@epic.org.

Respectfully submitted,

/s John Davisson
John Davisson
EPIC Counsel

/s Enid Zhou
Enid Zhou
EPIC Open Government Counsel

⁷⁴ 5 U.S.C. § 552(a)(6)(E)(ii)(I).