

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

ELECTRONIC PRIVACY INFORMATION  
CENTER,

*Plaintiff,*

v.

FEDERAL AVIATION ADMINISTRATION,  
et al.,

*Defendants.*

Civil Action No. 18-833 (RC)

**PLAINTIFF'S CONSENT MOTION TO ENTER FINAL JUDGMENT  
AS TO ALL CLAIMS**

Plaintiff Electronic Privacy Information Center ("EPIC") hereby respectfully moves the Court to enter final judgment as to all remaining claims in this matter. In support, EPIC states as follows:

1. On April 11, 2018, EPIC filed a Complaint against Defendants Drone Advisory Committee ("DAC"); Federal Aviation Administration ("FAA"); Daniel K. Elwell, in his official capacity as Acting Administrator of the FAA and Designated Federal Officer of the DAC; RTCA Advisory Committee; United States Department of Transportation ("DOT"); and David W. Freeman, in his official capacity as Committee Management Officer of the DOT. ECF No 1.
2. EPIC set out seven claims in the Complaint: (1) that Defendants violated the Federal Advisory Committee Act ("FACA") by failing to open the meetings of the DAC's subgroups to the public (Count I), Compl. ¶¶102–06; (2) that Defendants unlawfully withheld agency action under the Administrative Procedure Act ("APA") by failing to open the meetings of the DAC's subgroups to the public (Count II), Compl. ¶¶107–11; (3) that Defendants violated the APA by unlawfully holding nonpublic meetings of the DAC's subgroups (Count III), Compl. ¶¶112–17;

(4) that Defendants violated the FACA by failing to publish records of the DAC, including but not limiting to the records of the DAC's subgroups (Count IV), Compl. ¶¶118–23; (5) that Defendants unlawfully withheld agency action under the APA by failing to publish records of the DAC, including but not limiting to the records of the DAC's subgroups (Count V), Compl. ¶¶124–29; (6) that Defendants violated the APA by unlawfully conducting DAC business without publishing the records of the DAC, including but not limiting to the records of the DAC's subgroups (Count VI), Compl. ¶¶130–37; and that EPIC is entitled under 28 U.S.C. § 2201(a) to a declaration of the rights and other legal relations of the parties with respect to the claims set forth in Counts I–VI of the Complaint (Count VII), Compl. ¶¶138–29.

3. On June 25, 2018, EPIC stipulated to the dismissal of all claims against RTCA Advisory Committee. ECF No. 13.

4. On July 3, 2018, Defendants moved to dismiss EPIC's Complaint under Fed. R. Civ. P. 12(b)(1) and 12(b)(6). Mot. Dismiss, ECF No. 16. On July 17, 2018, EPIC filed an Opposition to Defendants' Motion to Dismiss. Mem. in Opp'n, ECF No. 18.

5. On February 25, 2019, the Court granted in part and denied in part Defendants' Motion to Dismiss. Order, ECF No. 24. The Court dismissed Counts I, II, III, IV, and VII of EPIC's Complaint for lack of subject matter jurisdiction. *Id.* The Court also dismissed all claims against the DAC for lack of subject matter jurisdiction. *Id.*

6. At the same time, EPIC prevailed on Counts V and VI of the Complaint against the non-DAC Defendants. The Court denied Defendants' Motion with respect to Counts V and VI, holding that EPIC had "sufficiently pled its APA claims relating to Defendants' failure to release DAC records" in violation of FACA § 10(b). Mem. Op. 34, ECF No. 25.

7. The Court further held that records arising from the DAC Subcommittee and DAC task groups were not subject to disclosure under FACA § 10(b) because (1) the records of the DAC Subcommittee and DAC task groups did not qualify as records of the parent Drone Advisory Committee; and (2) the DAC Subcommittee and DAC task groups did not themselves constitute advisory committees subject to FACA § 10(b). Mem. Op. 22–31.

8. On March 13, 2019, the Court ordered Defendants to “complete a reasonable search for any responsive DAC records that have not already been disclosed, and produce to Plaintiff any non-exempt portions of such records that do not need to be referred to third-parties pursuant to the FAA's submitter review process, on or before April 25, 2019.” Minute Order (Mar. 13, 2019).

9. On April 25, 2019, Defendants produced to EPIC 652 pages of DAC documents that had not previously been disclosed to the public. On May 30, 2019, Defendants made a supplemental production to EPIC of two recordings of Drone Advisory Committee webinars that had not previously been disclosed to the public. EPIC has since completed its review of the documents and recordings produced by Defendants.

10. Having now obtained the Court-ordered release of undisclosed DAC records, EPIC believes that there is no substantive dispute remaining between the parties concerning the records of the DAC parent committee.

11. However, EPIC respectfully disagrees with this Court’s conclusion that the records of the DAC Subcommittee and DAC task groups are beyond the scope of the disclosure requirement of FACA § 10(b). Mem. Op. 22–31. Because the Court’s prior adjudication of this issue constitutes “law-of-the-case,” *Duberry v. District of Columbia*, 316 F. Supp. 3d 43, 51 (D.D.C. 2018), *aff’d*,

924 F.3d 570 (D.C. Cir. 2019), EPIC intends to seek review of the Court’s ruling by filing an appeal to the U.S. Court of Appeals for the D.C. Circuit.

12. Accordingly, EPIC respectfully moves the Court to enter judgment as to all remaining claims in this case—Counts V and VI—in the form of a final, appealable order. EPIC also requests that the Court incorporate by reference the February 25, 2019 Memorandum Opinion, so as to permit review of the Court’s legal conclusions concerning the applicability of FACA § 10(b) to the records of the DAC Subcommittee and DAC task groups.

13. EPIC reserves the right to move the Court for an award of attorney’s fees and costs incurred in this matter under the Equal Access to Justice Act, 28 U.S.C. § 2412.

14. Defendants state their position as follows: Defendants do not oppose the relief requested by Plaintiff’s motion; Defendants reserve the right to make all arguments in subsequent proceedings in this case, including on appeal and/or in connection with any future motion for attorney’s fees and costs; and Defendants reserve the right to seek costs as appropriate.

July 26, 2019

Respectfully submitted,

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