

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

ELECTRONIC PRIVACY INFORMATION CENTER)	
)	
<i>Plaintiff,</i>)	Case No. 19-cv-02906-TNM
)	
v.)	Judge Trevor N. McFadden
)	
NATIONAL SECURITY COMMISSION ON ARTIFICIAL INTELLIGENCE, <i>et al.</i>)	
)	
<i>Defendants.</i>)	

ANSWER

Defendants National Security Commission on Artificial Intelligence (“Commission”), Eric Schmidt, in his official capacity as Chairman of the Commission, Ylli Bajraktari, in his official capacity as Executive Director of the Commission, and the United States Department of Defense (“DOD”) (collectively, “Defendants”), through their undersigned counsel, answer Plaintiff Electronic Privacy Information Center’s Complaint for Injunctive, Mandamus, and Declaratory Relief (“Complaint”) and set forth their affirmative defenses and as follows:

- 1-3. These paragraphs consist of Plaintiff’s characterization of this lawsuit and conclusions of law, to which no response is required.
4. This paragraph consists of Plaintiff’s characterization of the John S. McCain National Defense Authorization Act for Fiscal Year 2019, Pub. L. No. 115-232, § 1051, 132 Stat. 1636, 1962-65 (2018), to which no response is required. The Court is respectfully referred to that statute for a full and accurate statement of its contents.
5. Defendants lack information or knowledge sufficient to form a belief as to the possible implications of the Commission’s recommendations.

6. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegation in this paragraph.
7. This paragraph consists of legal conclusions regarding jurisdiction, to which no response is required.
8. This paragraph consists of a legal conclusion regarding venue, to which no response is required.
- 9-17. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in these paragraphs.
18. This paragraph consists of legal conclusions, to which no response is required.
19. Admit the first and second sentences. The third sentence consists of characterizations of media statements to which no response is required. The Court is respectfully referred to the cited media stories for a full and accurate statement of their contents.
20. Admitted.
21. Admitted.
22. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegation in this paragraph.
23. The second sentence of this paragraph consists of a legal conclusion, to which no response is required. Defendants lack knowledge or information sufficient to form a belief as to the truth of the remaining allegations in this paragraph.
- 24-31. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in these paragraphs.

32. This paragraph consists of a characterization of statements by Plaintiff about the National Science Foundation, to which no response is required. The Court is respectfully referred to the cited statements for a full and accurate statement of their contents.
33. This paragraph consists of a characterization of statements by the National Institute of Standards and Technology, to which no response is required. The Court is respectfully referred to the cited statements for a full and accurate statement of their contents.
34. This paragraph consists of a characterization of a Federal Register notice, to which no response is required. The Court is respectfully referred to the cited notice for a full and accurate statement of its contents.
35. This paragraph consists of a characterization of Executive Order No. 13,859, to which no response is required. The Court is respectfully referred to the cited Executive Order for a full and accurate statement of its contents.
36. Admitted.
37. Defendants admit that the word “privacy” appears 63 times in the supplement to the President’s fiscal year 2020 budget, including the table of contents and the use of the term in citations to other documents.
38. Denied.
39. This paragraph consists of a characterization of Congress’s passage of the John S. McCain National Defense Authorization Act for Fiscal Year 2019, Pub. L. No. 115-232, § 1051, 132 Stat. 1636, 1962-65 (2018), to which no response is

required. The Court is respectfully referred to the statute for a full and accurate statement of its contents.

40-43. These paragraphs consist of characterizations of the John S. McCain National Defense Authorization Act for Fiscal Year 2019, to which no response is required. The Court is respectfully referred to the statute for a full and accurate statement of its contents.

44. Admitted.

45. This paragraph consists of characterizations of the John S. McCain National Defense Authorization Act for Fiscal Year 2019, to which no response is required. The Court is respectfully referred to the statute for a full and accurate statement of its contents.

46. Admitted.

47. Admitted.

48. Admitted.

49. Admitted.

50. This paragraph consists of legal conclusions, to which no response is required.

51-53. These paragraphs consists of characterizations of the John S. McCain National Defense Authorization Act for Fiscal Year 2019, to which no response is required. The Court is respectfully referred to the statute for a full and accurate statement of its contents.

54-58. These paragraphs consist of legal conclusions, to which no response is required.

59. Denied.

60. Admitted.

61. Defendants admit that, on February 22, 2019, EPIC sent Exhibit B to the Complaint to DOD. The remainder of the allegations in this paragraph are characterizations of the contents of that exhibit, to which no response is required.
62. Defendants admit the first sentence of this paragraph. The second sentence of this paragraph is a characterization of DOD's February 28, 2019 letter to Plaintiff, to which no response is required.
63. Defendants admit the first and second sentences of this paragraph. Defendants further admit that the Commission issued a press release on March 12, 2019, regarding its first plenary meeting. Defendants deny that the Commission did not "acknowledge" the meeting to anyone before it occurred.
64. Defendants lack knowledge or information sufficient to form a belief as to the truth of the first sentence of this paragraph. Defendants admit the second sentence of this paragraph.
65. Admitted.
66. Admitted.
67. Defendants admit the first and second sentences of this paragraph. Defendants further admit that the Commission issued a press release on May 29, 2019, regarding its first plenary meeting. Defendants deny that the Commission did not "acknowledge" the meeting to anyone before it occurred.
68. Defendants deny the first sentence of this paragraph. The Commission website includes an agenda and summary of the May 20, 2019 meeting. Defendants admit that the Commission issued the statements quoted in the second sentence of this paragraph.

69. Defendants admit the first and second sentences of this paragraph. Defendants further admit that the Commission issued a press release on July 12, 2019, regarding its first plenary meeting. Defendants deny that the Commission did not “acknowledge” the meeting to anyone before it occurred.
70. Admitted.
71. Admitted.
72. Admitted.
73. Defendants admit that no request similar to the one published in *War on the Rocks* was published on the Commission website or in the Federal Register. Defendants lack sufficient knowledge or information to form a belief as to whether the request was republished or recounted elsewhere.
74. Defendants admit that the language quoted in this paragraph appeared for the first time on behalf of the Commission in the *War on the Rocks* article published July 17, 2019.
75. Defendants admit that the Commission submitted its Initial Report to Congress and the President, as well as making it publicly available on the Commission website, on July 31, 2019. The remainder of this paragraph consists of characterizations of the Initial Report and legal conclusions, to which no responses are required.
76. Admitted.
77. Admitted.
78. Defendants admit that the Commission’s Initial Report was published contemporaneously with the launch of the Commission website. The remainder

of the first sentence of this paragraph consists of characterizations of the website, to which no response is required. The Court is respectfully referred to that website for a full and accurate statement of its contents. Defendants deny the third sentence of this paragraph.

79. Defendants admit that the Commission had not issued its first comprehensive report by August 13, 2019, which was the deadline set by statute at the time. Congress changed the deadline to December 1, 2019, in the National Defense Authorization Act for Fiscal Year 2020, Pub. L. 116-92, § 1735 (2019). The Commission issued its interim report on November 4, 2019, before the revised deadline. The remainder of this paragraph consists of legal conclusions, to which no responses is required.
80. Defendants admit that EPIC sent Exhibit I to the Complaint to the Commission by email. The remainder of this paragraph consists of characterizations of the Commission's proceedings and characterizations of Plaintiff's email, to which no responses are required. The Court is respectfully referred to Exhibit I for a full and accurate statement of its contents.
81. Admitted.
82. Defendants admit that Under Secretary of State Andrea Thompson spoke with Commission staff on September 19, 2019, but deny that this was a Commission meeting. Defendants further admit that the Commission did not publish a notice in the Federal Register concerning Under Secretary Thompson's visit with Commission staff in advance. Defendants deny that the Commission did not "announce" Under Secretary Thompson's visit in advance.

83. Defendants deny that Under Secretary Thompson's visit with Commission staff constituted a Commission meeting. Defendants admit that the Commission has made no public statements concerning that visit.
84. Defendants deny that, to date, the Commission has not released any of the documents Plaintiff has sought under the Federal Advisory Committee Act ("FACA"). Defendants admit that, to date, the Commission has not released all of the documents Plaintiff has sought under FACA. Defendants deny that Plaintiff is entitled to any documents under FACA.
85. Admitted.
86. Denied.
87. Denied.
- 88-93. Defendants admit that Plaintiff sent an email to the Commission on September 11, 2019, requesting documents under FOIA. The remainder of the allegations in these paragraphs are characterizations of the contents of that email, to which no response is required. The Court is respectfully referred to Plaintiff's FOIA request for a full and accurate statement of its contents.
94. Admitted.
95. Admitted.
96. Admitted.
97. Defendants deny that the Commission has not made a determination on Plaintiff's request for expedited processing of its FOIA request to the Commission. The Commission approved that request on January 27, 2020. The remainder of this paragraph consists of a legal conclusion, to which no response is required.

98. This paragraph consists of a legal conclusion to which no responses is required.
99. Admitted.
- 100-103. These paragraphs consist of characterizations of Plaintiff's February 22, 2019 FOIA request to DOD, to which no responses are required. The Court is respectfully referred to that FOIA request for a full and accurate statement of its contents.
104. Admitted.
105. This paragraph consists of a characterization of DOD's February 28, 2019 letter to Plaintiff, to which no response is required. The Court is respectfully referred to Exhibit C for a full and accurate statement of its contents.
106. Admitted.
107. Admitted.
108. Defendants admit that, on April 30, 2019, Plaintiff filed an administrative appeal of DOD's denial of expedited processing for Plaintiff's February 22, 2019 FOIA request to DOD. The remainder of the first sentence of this paragraph consists of a legal conclusion, to which no response is required. The second sentence of this paragraph consists of a characterization of Plaintiff's administrative appeal, to which no response is required.
109. Admitted.
110. This paragraph consists of a legal conclusion, to which no response is required.
111. This paragraph consists of a legal conclusion, to which no response is required.
112. Defendants incorporated by reference paragraphs 1-111.
113. This paragraph consists of a legal conclusion, to which no response is required.

114. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegation in this paragraph.
115. This paragraph consists of a legal conclusion, to which no response is required.
116. The first sentence of this paragraph consists of a legal conclusion, to which no response is required. Defendants lack sufficient information to form a belief as to the truth of the allegation in the second sentence of this paragraph.
117. This paragraph consists of a legal conclusion, to which no response is required.
118. Denied.
119. Defendants incorporate by reference paragraphs 1-111.
120. This paragraph consists of a legal conclusion, to which no response is required.
121. Defendants lack sufficient information to form a belief as to the truth of the allegation in this paragraph.
122. This paragraph consists of a legal conclusion, to which no response is required.
123. The first sentence is denied. Defendants lack sufficient information to form a belief as to the truth of the remaining allegations in this paragraph.
124. This paragraph consists of a legal conclusion, to which no response is required.
125. This paragraph consists of a legal conclusion, to which no response is required.
126. Defendants incorporate by reference paragraphs 1-111.
127. Denied.
128. Defendants lack sufficient information to form a belief as to the truth of the allegation in this paragraph.
129. Denied.
130. Denied.

131. The first sentence is denied. Defendants lack sufficient information to form a belief as to the truth of the remaining allegations in this paragraph.
132. This paragraph consists of a legal conclusion, to which no response is required.
133. Denied.
134. Defendants incorporate by reference paragraphs 1-111.
135. Defendants admit that not all documents available to, or prepared by, the Commission have been made available for public inspection and copying to date. Insofar as this paragraph's citations to the FACA statute imply legal obligations to make documents available for public inspection or copying, this paragraph consists of a legal conclusion, to which no response is required.
136. Denied.
137. The first sentence is denied. Defendants lack sufficient information to form a belief as to the truth of the remaining allegations in this paragraph.
138. This paragraph consists of a legal conclusion, to which no response is required.
139. Denied.
140. Defendants incorporate by reference paragraphs 1-111.
141. Defendants admit that not all documents available to, or prepared by, the Commission have been made available for public inspection and copying to date and deny that it is under any obligation to do so.
142. Denied.
143. The first sentence is denied. Defendants lack sufficient information to form a belief as to the truth of the remaining allegations in this paragraph.
144. This paragraph consists of a legal conclusion, to which no response is required.

145. Denied.
146. Defendants incorporate by reference paragraphs 1-111.
147. Denied.
148. Denied.
149. Defendants admit that DOD has not yet made a final determination regarding Plaintiff's February 22, 2019 FOIA request, although it did provide a preliminary response to that request on February 28, 2019. The remainder of this paragraph consists of a legal conclusion, to which no response is required.
150. Defendants deny that DOD has failed to make a determination regarding Plaintiff's April 30, 2019 FOIA appeal. DOD denied that request on May 29, 2019. The remainder of this paragraph consists of a legal conclusion, to which no response is required.
151. This paragraph consists of a legal conclusion, to which no response is required.
152. Denied.
153. Defendants incorporate by reference paragraphs 1-111.
154. Denied.
155. Denied.
156. Defendants deny that DOD has failed to make a determination regarding Plaintiff's April 30, 2019 FOIA appeal. DOD denied that request on May 29, 2019. The remainder of this paragraph consists of a legal conclusion, to which no response is required.
157. This paragraph consists of a legal conclusion, to which no response is required.
158. Denied.

159. Defendants hereby incorporate the above responses to paragraphs 1 through 111 as if fully stated herein.

160-163. Denied.

The unnumbered paragraphs following paragraph 163 consist of Plaintiff's requested relief, to which no response is required. Any allegation not expressly admitted is hereby denied.

DEFENSES

1. Plaintiff is not entitled to compel production of records exempt from disclosure by one or more FOIA exemptions.
2. Plaintiff fails to state claims as to which relief can be granted.

Dated: January 31, 2020

Respectfully submitted,

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