

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

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|--|---|--------------------------|
| 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> |) | |

**DEFENDANTS’ RESPONSE TO PLAINTIFF’S STATEMENT OF MATERIAL FACTS
AS TO WHICH THERE IS NO GENUINE ISSUE**

Pursuant to Local Rule 7(h)(1) and section 14(B) of the Standing Order for Cases Before Judge Trevor N. McFadden, ECF No. 6, Defendants National Security Commission on Artificial Intelligence (“AI Commission” or “Commission”), Defendants hereby submit this response to Plaintiff’s Statement of Material Facts as to Which There is No Genuine Issue (“SMF”), ECF No. 31-2, filed by Plaintiff Electronic Privacy Information Center (“Plaintiff”).

1. Admitted.
2. Admitted.
3. Denied. Plaintiff provides no independent evidentiary support for this purported fact. Rather, Plaintiff relies solely on Defendants’ supposed admission that, as alleged in paragraph 43 of Plaintiff’s Complaint for Injunctive, Mandamus, and Declaratory Relief (“Complaint”), ECF No. 1, “the members of the AI Commission are employed on an ‘intermittent’ basis in ‘excepted service’ positions.” In fact, Defendants noted this allegation was a legal characterization of the effect of the John S. McCain National Defense Authorization Act for Fiscal year 2019, to which no response was

required. Answer, ECF No. 29, ¶¶ 40-43. Even if this answer were insufficient to respond to Plaintiff's allegation, Defendants specifically stated in the Answer that "[a]ny allegation [in the Complaint] not expressly admitted [was t]hereby denied." *Id.* at 13. Defendants thus have not conceded Plaintiff's legal characterization of the employment status of the Commission's members. Absent independent evidence on this point, Plaintiff cannot meet its burden for summary judgment.

4. Admitted. This fact, however, is not material because no claim or defense turns on the date of the AI Commission's first plenary meeting or the fact that the meeting has occurred.
5. Admitted. This fact, however, is not material because the AI Commission is not obligated to publish notice of its meetings in the Federal Register.
6. Admitted. This fact, however, is not material because the AI Commission is not obligated to allow public participation in its meetings.
7. Admitted. This fact, however, is not material because no claim or defense turns on the date of the AI Commission's second plenary meeting or the fact that the meeting has occurred.
8. Admitted. This fact, however, is not material because the AI Commission is not obligated to publish notice of its meetings in the Federal Register.
9. Admitted. This fact, however, is not material because the AI Commission is not obligated to publicly announce its meetings in advance.

10. Admitted. This fact, however, is not material because no claim or defense turns on the date of the AI Commission's third plenary meeting or the fact that the meeting has occurred.
11. Admitted. This fact, however, is not material because the AI Commission is not obligated to publish notice of its meetings in the Federal Register.
12. Admitted. This fact, however, is not material because the AI Commission is not obligated to publicly announce its meetings in advance.
13. Admitted. This fact, however, is not material because no claim or defense turns on the date of the AI Commission's submission of its initial report to Congress or the fact that the submission occurred.
14. Admitted.
15. Admitted.
16. Admitted.
17. Admitted. This fact, however, is not material because no claim or defense turns on the date on which the AI Commission acknowledged receipt of Plaintiff's request or on the fact that the acknowledgement occurred.
18. Admitted. This fact, however, is not material because no claim or defense turns on the date of the AI Commission's fourth plenary meeting or the fact that the meeting has occurred.

19. Admitted. This fact, however, is not material because the AI Commission is not obligated to publish notice of its meetings in the Federal Register.
20. Admitted. This fact, however, is not material because the AI Commission is not obligated to publish a meeting agenda or minutes.
21. Admitted. This fact, however, is not material because no claim or defense turns on the date of the AI Commission's Interim Report or the fact that the report was issued.
22. Admitted. This fact, however, is not material because no claim or defense turns on the date of the AI Commission's meeting on January 16, 2020, or the fact that the meeting has occurred.
23. Admitted. This fact, however, is not material because the AI Commission is not obligated to publish notice of its meetings in the Federal Register.
24. Admitted. This fact, however, is not material because the AI Commission is not obligated to publish a meeting agenda or minutes.

Dated: February 28, 2020

Respectfully submitted,

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