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Exhibit A

February 7, 2019

Dear Chairman Schmidt, Vice Chairman Work, and members of the National Security Commission on Artificial Intelligence:

We are writing to you regarding the development of US national policy concerning artificial intelligence. The Electronic Privacy Information Center (EPIC) is a public interest research center established in 1994 to focus public attention on emerging privacy and civil liberties issues.¹ EPIC is one of the leading privacy organizations in the world, now focused on the challenges of algorithmic decision-making.² We have litigated several open government cases concerning AI,³ provided advice to Congressional committees,⁴ and led an international campaign for “algorithmic transparency.”

As we explained to the White House Office of Science and Technology Policy last year, in a petition joined by more than 100 leading experts, it is vital to “encourage meaningful public participation in the development of the nation’s policy for Artificial Intelligence.”⁵ We urge the Commission to provide opportunities for public input, including public hearings, similar to the process used by the Commission on Evidence-based Policymaking.⁶ We specifically ask that you issue no reports until there has been a meaningful opportunity for public participation. We note 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.

EPIC has made an open and inclusive process for US policy on AI a priority. Earlier this year, EPIC, joined by many of the nation’s leading scientific and computing societies, including the AAAS, the ACM, the FAS, and the IEEE, petitioned the White House to ensure a public and transparent process for the development of national AI policy.⁷ This Commission must also ensure a public and transparent process for AI policy.

¹ EPIC, *About EPIC*, <https://epic.org/epic/about.html>.

² EPIC, *Algorithmic Transparency*, <https://epic.org/algorithmic-transparency/>.

³ *EPIC v. CBP (Analytical Framework for Intelligence)*, <https://epic.org/foia/dhs/cbp/afi/>; *EPIC v. DHS-FAST Program*, <https://epic.org/foia/dhs/fast/>; *EPIC v. DOJ (Criminal Justice Algorithms)*, <https://epic.org/foia/doj/criminal-justice-algorithms/>.

⁴ See, e.g., Statement of EPIC, *Filtering Practices of Social Media Platforms*, 115th Cong. (2018), H. Comm. on the Judiciary (Apr. 25, 2018), <https://epic.org/testimony/congress/EPIC-HJC-SocialMediaFiltering-Apr2018.pdf>; Statement of EPIC, *Game Changers: Game Changers: Artificial Intelligence Part III, Artificial Intelligence and Public Policy*, 115th Cong. (2018), H. Comm. on Oversight & Gov. Reform, Subcomm. on Information Technology (April 19, 2018), <https://epic.org/testimony/congress/EPIC-HOGR-AI-Feb2018.pdf>.

⁵ Petition to OSTP for Request for Information on Artificial Intelligence Policy (July 4, 2018), <https://epic.org/privacy/ai/OSTP-AI-Petition.pdf>; see also *EPIC, Scientific Societies Call for Public Input on U.S. Artificial Intelligence Policy* (July 3, 2018), <https://epic.org/2018/07/epic-scientific-societies-call.html>

⁶ Comm’n on Evidence-based Policymaking, *Hearings*, <https://www.cep.gov/hearings.html>.

⁷ Petition to OSTP *supra*.

We also wish to call your attention to the Universal Guidelines for Artificial Intelligence (UGAI).⁸ The Universal Guidelines “are intended to maximize the benefits of AI, minimize the risk, and ensure the protection of human rights.”⁹ The Universal Guidelines set forth principles to guide the design, development, and deployment of AI. The Universal Guidelines also reflect the insights of many experts in the AI field.

More than 250 experts and 60 NGOs (including the American Association for the Advancement of Science, the world’s leading scientific association) have endorsed the UGAI.¹⁰ The framework is particularly well suited to legislative implementation. And EPIC is working now with many governments to implement national policies based on the UGAI.

Our second request is that you recommend adoption of the Universal Guidelines for AI across the US federal government.

We look forward to working with your Commission on these vital issues.

Sincerely,

/s/ Marc Rotenberg

Marc Rotenberg
EPIC President

/s/ Caitriona Fitzgerald

Caitriona Fitzgerald
EPIC Policy Director

Enclosure:

Universal Guidelines for Artificial Intelligence
Universal Guidelines for Artificial Intelligence – Background memo
Universal Guidelines for Artificial Intelligence – Endorsements (as of Feb. 1, 2019)
Petition to OSTP for Request for Information on Artificial Intelligence Policy (July 4, 2018)

Cc:

The Honorable James Inhofe, Chairman, Senate Committee on Armed Services
The Honorable Jack Reed, Ranking Member, Senate Committee on Armed Services
The Honorable Richard Shelby, Chairman, Senate Committee on Appropriations, Subcommittee on Defense
The Honorable Richard Durbin, Ranking Member, Senate Committee on Appropriations, Subcommittee on Defense
The Honorable Ron Johnson, Chairman, Senate Committee on Homeland Security & Governmental Affairs
The Honorable Gary Peters, Ranking Member, Senate Committee on Homeland Security & Governmental Affairs
The Honorable Adam Smith, Chairman, House Committee on Armed Services
The Honorable Mac Thornberry, Ranking Member, House Committee on Armed Services

⁸ The Public Voice, *Universal Guidelines for Artificial Intelligence*, <https://thepublicvoice.org/AI-universal-guidelines>.

⁹ The Public Voice, *Universal Guidelines for Artificial Intelligence*, <https://thepublicvoice.org/AI-universal-guidelines>.

¹⁰ A full list of endorsers is available at The Public Voice, *Universal Guidelines for Artificial Intelligence: Endorsement*, <https://thepublicvoice.org/AI-universal-guidelines/endorsement>.

The Honorable Pete Visclosky, Chairman, House Committee on Appropriations, Subcommittee on Defense

The Honorable Ken Calvert, Ranking Member, House Committee on Appropriations, Subcommittee on Defense

The Honorable Elijah Cummings, Chairman, House Committee on Oversight and Reform

The Honorable Jim Jordan, Ranking Member, House Committee on Oversight and Reform

The Honorable Patrick Shanahan, Acting Secretary of Defense

James Freeman, Advisory Committee Management Officer, Dept. of Defense



Exhibit B

VIA E-MAIL

February 22, 2019

Stephanie Carr, Chief
OSD/JS FOIA Requester Service Center
Office of Freedom of Information
1155 Defense Pentagon
Washington, DC 20301-1155
571-372-0500 (fax)
Whs.mc-alex.esd.mbx.osd-js-foia-requester-service-center@mail.mil

Dear Ms. Carr:

This letter constitutes a request under 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 Department of Defense (“DOD”).

EPIC seeks records arising from and related to the National Security Commission on Artificial Intelligence (“AI Commission”).¹

FOIA Request

Documents Requested

- (1) All records concerning the creation of the National Security Commission on Artificial Intelligence;
- (2) All records—including but not limited to reports, agendas, meeting minutes, transcripts, working papers, drafts, studies, and notices of proposed meetings scheduled to be published in the Federal Register—arising from or related to the National Security Commission on Artificial Intelligence; and
- (3) The “initial report on the findings and . . . recommendations” of the National Security Commission on Artificial Intelligence, required by section 1051(c)(1) of the National Defense Authorization Act for FY 2019, due on February 9, 2019.

The DOD has an obligation under its FOIA regulations to reroute “misdirected” FOIA requests to the appropriate agency sub-component.² If “responsibility for the requested records rests with

¹ See John S. McCain National Defense Authorization Act for Fiscal Year 2019, Pub. L. No. 115-232, § 1051, 132 Stat. 1636 (2018) [hereinafter NDAA].

² 32 C.F.R. § 286.7(c).

a non-DoD Federal agency,” the DOD has an obligation to advise EPIC of the proper agency to resubmit the request to.³

Background

The National Security Commission on Artificial Intelligence was created by Congress through the National Defense Authorization Act for Fiscal Year 2019 (“NDAA”).⁴ Section 1051 of the NDAA establishes the AI Commission “to review advances in artificial intelligence, related machine learning developments, and associated technologies.”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 On December 26, 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

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.”¹¹ Specifically, the Commission must review:

- (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.

³ *Id.*

⁴ *Id.*

⁵ NDAA § 1051(a)(1).

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: Senate Committee on Commerce, Science, and Transportation; House Committee on Energy and Commerce; Senate Committee on Armed Services; House Committee on Armed Services; Senate Select Committee on Intelligence; House Permanent Select Committee on Intelligence. NDAA § 1051(a)(4), (6).

⁹ NDAA § 1051(a)(7).

¹⁰ NDAA § 1051(e).

¹¹ NDAA § 1051(b)(1).

- (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.¹²

Within 180 days of the passage of the NDAA—*i.e.*, by February 9, 2019—the AI Commission “shall submit to the President and Congress an initial report on the findings of the Commission and such recommendations that the Commission may have for action by the executive branch and Congress[.]”¹³ The Commission is then required to submit annual “comprehensive report[s] on the [Commission’s] review” by August 13, 2019 and August 13, 2020.¹⁴ Notably, reports submitted by the AI Commission “shall be made public[ly] available, but may include a classified annex.”¹⁵

On January 22, 2019, it was reported that federal officials had finalized the roster of the AI Commission.¹⁶ The Commission will be chaired by Eric Schmidt, former CEO of Google and

¹² NDAA § 1051(b)(2).

¹³ NDAA § 1051(c)(1).

¹⁴ NDAA § 1051(c)(2).

¹⁵ NDAA § 1051(c)(3).

¹⁶ Jack Corrigan, *Former Google Chief to Chair Government Artificial Intelligence Advisory Group*, Nextgov (Jan. 22, 2019), <https://www.nextgov.com/emerging-tech/2019/01/former-google-chief-chair-government-artificial-intelligence-advisory-group/154333/>.

Alphabet, and vice chaired by Robert Work, former Deputy Secretary of Defense.¹⁷ The Commission will also include:

- Andy Jassy, CEO of Amazon Web Services
- Safra Catz, CEO of Oracle
- Chris Darby, CEO of In-Q-Tel
- Jason Matheny, former IARPA director
- Eric Horvitz, director of Microsoft Research Labs
- Mignon Clyburn, Open Society Foundation fellow and former FCC commissioner
- Andrew Moore, head of Google Cloud AI
- Steve Chien, supervisor of the AI Group at Caltech's Jet Propulsion Lab
- Ken Ford, CEO of the Florida Institute for Human and Machine Cognition
- Jose-Marie Griffiths, president of Dakota State University
- Gilman Louie, partner at Alsop Louie Partners
- William Mark, director of SRI's Information and Computing Sciences Division
- Katharina McFarland, consultant at Cypress International¹⁸

Request for Expedition

This request warrants expedited processing under the FOIA because there is a “compelling need” for disclosure of the requested records.¹⁹ 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.”²⁰

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 Commission because the AI Commission’s initial report on its findings and recommendations was due on February 9, 2019. The report must be made publicly available,²¹ yet there is no indication that the report has been published or even submitted to the President and the Congress. Moreover, the AI Commission is led by technologists, executives of major technology firms, and former federal officials, and the Commission is operating at a time when the White House has launched the “American AI Initiative.”²² The AI Commission’s findings, recommendations, and proceedings will therefore have significant influence on AI policymaking by both Congress and the executive branch. The public urgently needs to be informed of the activities of the AI Commission.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ 5 U.S.C § 552(a)(6)(E)(v)(II).

²⁰ *Id.*

²¹ NDAA § 1051(c)(3).

²² Exec. Order No. 13,859, 84 Fed. Reg. 3,967 (2019).

Second, EPIC is an organization “primarily engaged in disseminating information.”²³ 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.²⁴ EPIC’s work is also consistently featured in widely circulated news publications such as Politico, Law 360, Washington Post, New York Times, NPR, Wall Street Journal, The Hill, CBS, and USA Today.²⁵

In submitting this request for expedited processing, we certify this explanation is true and correct to the best of our knowledge and belief.²⁶

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.²⁷

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.²⁸

(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.” 5 U.S.C. § 552(a)(4)(A)(iii). First, the subject of the request concerns “operations or activities of the federal government.” The AI Commission was established by statute, is funded through DOD 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 would be “meaningfully informative” because the documents will contribute to an increased understanding of government operations and activities. Specifically, disclosure will educate the public about the activities of the AI Commission and the report that the Commission was required to submit to the President and

²³ 5 U.S.C. § 552(a)(6)(E)(v)(II).

²⁴ See EPIC, *EPIC Alert*, <https://www.epic.org/alert/>.

²⁵ See EPIC, *EPIC in the News*, https://epic.org/news/epic_in_news.php/.

²⁶ 5 U.S.C. § 552(a)(6)(E)(vi).

²⁷ 5 U.S.C. § 552(a)(4)(A)(ii)(II).

²⁸ 5 U.S.C. § 552(a)(4)(A)(iii).

Congress. The AI Commission has not yet announced that it will allow public participation in its meetings, nor has it solicited public comment concerning any proposed actions or reports. To date, no information has been released about when the AI Commission will convene, what topics it will discuss (or has already discussed), or whether the required February 9, 2019 report was completed and submitted.

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 and therefore satisfies this condition. EPIC largely disseminates its work 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.²⁹ EPIC is a registered non-profit organization committed to privacy, open government, and civil liberties.³⁰ 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 identified 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.

FACA Request

Documents and Access Requested

EPIC also seeks access to the records, minutes, and meetings of the National Security Commission on Artificial Intelligence pursuant to section 10 of the Federal Advisory Committee Act. 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 or any subcomponent thereof;
- (2) A copy of the “initial report on the findings and . . . recommendations” of the National Security Commission on Artificial Intelligence required by section 1051(c)(1) of the National Defense Authorization Act for FY 2019; and
- (3) Access to, and advance Federal Register notice of, all meetings of the National Security Commission on Artificial Intelligence and any subcomponent thereof.

²⁹ 5 U.S.C. § 552(a)(4)(A)(iii).

³⁰ *About EPIC*, EPIC.org, <http://epic.org/epic/about.html>.

The AI Commission is subject to the FACA because it is an advisory committee established by statute.³¹ 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[.]”³² 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.³³ 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.”³⁴

Conclusion

Thank you for your consideration of this request. We anticipate your determination on our request within ten calendar days.³⁵ 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

³¹ Pub. L. No. 92-463, 86 Stat. 770 (1972) (codified as amended at 5 U.S.C. app. 2) [hereinafter FACA].

³² FACA § 3.

³³ FACA § 10(a)–(c).

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

³⁵ 5 U.S.C. § 552(a)(6)(E)(ii)(I).

Exhibit C



**DEPARTMENT OF DEFENSE
FREEDOM OF INFORMATION DIVISION
1155 DEFENSE PENTAGON
WASHINGTON, DC 20301-1155**

FEB 28 2019

Re: 19-F-0810

Enid Zhou
EPIC Open Government Fellow
1718 Connecticut Avenue, NW
Suite 200
Washington, DC 20009

Dear Ms. Zhou:

This is an interim response to your February 22, 2019, Freedom of Information Act (FOIA) request, a copy of which is enclosed for your convenience. We received your request on the same day it was submitted and assigned it case number 19-F-0810. We ask that you use this number when referring to your request.

Although we have already begun processing your request, we will not be able to respond within the FOIA's 20-day statutory time period as there are unusual circumstances which impact our ability to quickly process your request. The FOIA defines unusual circumstances as (a) the need to search for and collect records from a facility geographically separated from this office; (b) the potential volume of records responsive to your request; and (c) the need for consultation with one or more other agencies or DoD components having a substantial interest in either the determination or the subject matter of the records. At least one, if not more of these scenarios applies or would likely apply to your request. While this office handles FOIA requests for the Office of the Secretary of Defense (OSD), the Joint Staff (JS) and other component offices, we do not actually hold their records and our office is not geographically located with these organizations. As we do not hold the records, until the required records searches are complete, we are unable to estimate the potential volume of records or the number of consultations that will be required to make a release determination.

Your request has been placed in our complex processing queue and is being worked based on the order in which the request was received. Our current administrative workload is approximately 2,940 open requests.

Expedited processing may be granted when the requester demonstrates a compelling need for the information and shows that the information has a particular value that would be lost if not processed on an expedited basis. A key word here is "demonstrates." It is, therefore, incumbent upon you to demonstrate that the requested records will serve an urgency purpose, and that they also will be meaningful in the sense that they will provide for a greater understanding of actual or alleged federal government activity on the part of the public-at-large than that which existed before such information was disseminated. Consequently, it must be clearly demonstrated that such information has a particular value that will be lost if not disseminated quickly. After careful consideration of your request, this office finds that you have not clearly demonstrated how the information will lose its value if not processed on an expedited basis. For these reasons, your request for expedited processing is denied.

In some instances, we have found that requesters who narrow the scope of their requests experience a reduction in the time needed to process their requests. If you have any questions or wish to discuss the reformulation of your request or an alternative time frame for the processing of your request, you may contact Ms. Namioka Mead, the Action Officer assigned to your request, at namioka.l.mead2.civ@mail.mil or (571) 372-0437.

The OSD/JS FOIA Public Liaison, Jim Hogan, is available at (571) 372-0462 or by e-mail at OSD.FOIALiaison@mail.mil to answer any concerns about the foregoing.

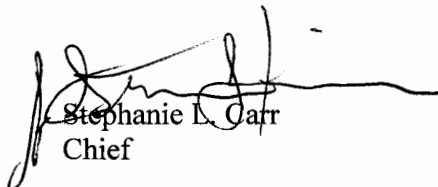
Additionally, you may contact the Office of Government Information Services (OGIS) at the National Archives and Records Administration to inquire about the FOIA mediation services they offer. The contact information for OGIS is as follows:

Office of Government Information Services
National Archives and Records Administration
8601 Adelphi Road-OGIS
College Park, MD 20740
E-mail: ogis@nara.gov
Telephone: 202-741-5770
Fax: 202-741-5769
Toll-free: 1-877-684-6448

You have the right to appeal to the appellate authority, Ms. Joo Chung, Director of Oversight and Compliance, Office of the Secretary of Defense, by writing directly to OCMO Office of the Chief Management Officer, 4800 Mark Center Drive, ATTN: DPCLTD, FOIA Appeals, Mailbox# 24, Alexandria, VA 22350-1700. Your appeal must be postmarked within 90 calendar days of the date of this response. Alternatively, you may email your appeal to osd.foia-appeal@mail.mil. If you use email, please include the words "FOIA Appeal" in the subject of the email. Please also reference case number 18-F-0810 in any appeal correspondence.

We regret the delay in responding to your request and appreciate your patience.

Sincerely,


Stephanie L. Carr
Chief

Enclosure:
As stated

Exhibit D



Press Release

National Security Commission on Artificial Intelligence Holds Inaugural Meeting

Press Release | March 12, 2019

WASHINGTON, DC - The National Security Commission on Artificial Intelligence, a federally appointed Commission tasked with advising the federal government on artificial intelligence, held its inaugural meeting on March 11 in Washington, DC. The bipartisan Commission was established by the National Defense Authorization Act for Fiscal Year 2019 and is comprised of 15 Commissioners including a Chairman and Vice Chairman.

The Commission will review and advise on 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.

"I'm honored to lead this talented group of Commissioners as we take on this important effort," said Eric Schmidt, Chairman of the Commission. "I want to thank the Senate and House Armed Services Committees and Senate and House AI Caucuses for their support and look forward to presenting our findings in the future, and particularly Senator Martin Heinrich and Representatives Elise Stefanik and Jerry McNerney, who joined us to discuss Congressional intent and expectations. We have a tremendous opportunity to help our government understand the state of artificial intelligence and offer ideas on how to harness this transformative technology to benefit both our economic and national security interests."

At yesterday's AI Orientation Seminar, the Commissioners received briefs from the Defense and Commerce departments, the intelligence community, and Members of Congress.

In close collaboration with the White House, Interagency, and Congress the Commission intends to conduct plenary sessions with the Commissioners throughout the year with subordinate working groups meeting more often

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About the National Security Commission on Artificial Intelligence:

H.R. 5515, the National Defense Authorization Act for Fiscal Year 2019, section 1051, establishes the National Security Commission on Artificial Intelligence (the Commission) to review advances in artificial intelligence, related machine learning developments, and associated technologies including recommendations to more effectively organize the Federal Government.

The Commissioners:

Commissioners were appointed by the secretaries of Defense and Commerce, as well as the top Republicans and Democrats on congressional armed services, commerce and intelligence committees.

Chairman

- Dr. Eric Schmidt, Technical Advisor to Alphabet

Vice Chairman

- Hon. Robert Work, Senior Counselor for Defense at Center for a New American Security

Other Commissioners:

- Ms. Safra Catz, CEO of Oracle
- Dr. Steve Chien, Technical Group Supervisor of AI Group and Senior Research Scientist at California Institute of Technology's Jet Propulsion Lab
- Ms. Mignon Clyburn, Open Society Foundation Fellow and former FCC Commissioner
- Chris Darby, CEO of In-Q-Tel
- Dr. Kenneth Ford, CEO of the Florida Institute for Human and Machine Cognition
- Dr. Jose-Marie Griffiths, president of Dakota State University
- Dr. Eric Horvitz, director of Microsoft Research Labs
- Mr. Andy Jassy, CEO of Amazon Web Services
- Mr. Gilman Louie, partner at Alsop Louie Partners
- Dr. William Mark, director of SRI's Information and Computing Sciences Division
- Dr. Jason Matheny, founding director of the Center on Security and Emerging Technology
- Hon. Katharina McFarland, consultant at Cypress International and former Assistant Secretary of the Army (Acquisition, Logistics & Technology)
-  : Andrew Moore, VP of Engineering and head of Google Cloud AI



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Senators Martin Heinrich (D-NM) and Rob Portman (R-OH)

House Artificial Intelligence Caucus Co-Chairs:

Representatives Jerry McNerney (D-California) and Pete Olson (R-Texas)

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The National Security Commission on Artificial Intelligence | The United States of America



Exhibit E

VIA E-MAIL

April 30, 2019

Ms. Joo Chung
Director of Oversight and Compliance
Office of the Secretary of Defense
Office of the Chief Management Officer (OCMO)
4800 Mark Center Drive
ATTN: DPCLTC, FOIA Appeals, Mailbox #24
Alexandria, VA 22350-1700
E-mail: osd.foia-appeal@mail.mil

Freedom of Information Act Appeal, Case No. 19-F-0810

Dear Ms. Chung:

This letter constitutes an appeal of the U.S. Department of Defense's ("DOD") denial of expedited processing under the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552(a)(6)(E)(i). The FOIA request was submitted on behalf of the Electronic Privacy Information Center ("EPIC") to the DOD on February 22, 2019 ("EPIC's FOIA Request").

EPIC's FOIA Request sought records in possession of the DOD concerning the National Security Commission on Artificial Intelligence ("AI Commission"). EPIC's FOIA Request established that there is an "urgency to inform the public" about a matter "concerning actual or alleged Federal government activity" and that EPIC is "primarily engaged in disseminating information." *See* Appendix A.

The DOD contends there is no need to grant expedited processing of EPIC's FOIA Request. In an acknowledgement letter from the DOD dated February 28, 2019, the DOD denied EPIC's request for expedited processing under the compelling need standard, which EPIC satisfied with specific facts. The DOD concluded that, "this office finds that [EPIC has] not clearly demonstrated how the information will lose its value if not processed on an expedited basis." *See* Appendix B.

The DOD's determination should be reversed. According to the FOIA, a request will be processed on an expedited basis whenever the request involves (1) an "urgency to inform the public concerning [an] actual or alleged Federal government activity" (2) if "made by a person primarily engaged in disseminating information" 5 U.S.C. § 552(a)(6)(E)(v)(II).

EPIC's FOIA Request made clear that EPIC is "primarily engaged in disseminating information" and that there is an "urgency to inform the public" about a government activity. EPIC's FOIA Request presented specific facts demonstrating that the AI Commission's initial

report on its findings and recommendations was never made public and that there was no indication the required report was transmitted to the President or Congress.

EPIC hereby appeals the DOD's denial of expediting processing of EPIC's FOIA Request. EPIC should be granted expedited processing.

Procedural Background

On February 22, 2019, EPIC submitted EPIC's FOIA Request to the DOD via e-mail. EPIC specifically requested:

- (1) All records concerning the creation of the National Security Commission on Artificial Intelligence;
- (2) All records—including but not limited to reports, agendas, meeting minutes, transcripts, working papers, drafts, studies, and notices of proposed meetings scheduled to be published in the Federal Register—arising from or related to the National Security Commission on Artificial Intelligence; and
- (3) The “initial report on the findings and . . . recommendations” of the National Security Commission on Artificial Intelligence, required by section 1051(c)(1) of the National Defense Authorization Act for FY 2019, due on February 9, 2019.

EPIC also requested expedited processing and a fee waiver. *See* Appendix A.

On February 28, 2019, the DOD sent an acknowledgement letter denying EPIC's request for expedited processing because EPIC allegedly did not demonstrate an urgency to obtain the records and that the records will “provide for a greater understanding of actual or alleged federal government activity on the part of the public-at-large than that which existed before such information was disseminated.” The letter stated that EPIC's FOIA Request has been assigned to the complex track because “there are unusual circumstances which impact [the DOD's] ability to process” the request. The DOD stated that “[a]t least one, if not more” of the three scenarios that defines unusual circumstances under the FOIA apply to the EPIC's request. EPIC's request was assigned reference number 19-F-0810. *See* Appendix B.

EPIC's FOIA Request Satisfies The “Compelling Need” Test For Expedited Processing Because It Involves An Urgency To Inform The Public About A Government Activity And Is Made By A Person Primarily Engaged In Disseminating Information

EPIC is entitled to expedited processing of this request because this request involves a “compelling need.” 5 U.S.C. § 552(a)(6)(E)(v)(II). EPIC established that its FOIA Request (1) involves “an urgency to inform the public concerning actual or alleged federal government activity” and (2) is made by “a person primarily engaged in disseminating information.” *Id.* EPIC presented specific facts to demonstrate a “compelling need.” EPIC explained that it is urgent to inform the public about the activities of the AI Commission because its initial report on its findings and recommendations was due on February 9, 2019—but there is no indication that the

report was submitted to the President or to Congress. EPIC described how the activities of the AI Commission have significant influence on AI policymaking by both the Congress and the executive branch. The agency's determination is incorrect.

(I) There is a Clear "Urgency to Inform the Public" About an Actual Government Activity

First, this request self-evidently "concern[s] actual or alleged Federal government activity." 5 U.S.C. § 552(a)(6)(E)(v)(II). The "actual or alleged Federal government activit[ies]" are the activities of the AI Commission, which was established by statute and is funded through DOD appropriations. As EPIC stated in its FOIA request, the AI Commission is also a part of the executive branch, and members of the Commission are deemed federal employees.

There is also a clear "urgency to inform the public" about the activities of the AI Commission because the AI Commission's initial report on its findings and recommendations was due to the President and Congress on February 9, 2019—yet there is no indication that the report has been completed or submitted. Courts evaluate three factors when determining whether the requester demonstrates an "urgency to inform" sufficient to constitute a "compelling need": "(1) whether the request concerns a matter of current exigency to the American public; (2) whether the consequences of delaying a response would compromise a significant recognized interest; and (3) whether the request concerns federal government activity." *Protect Democracy Project, Inc. v. DOD*, 263 F. Supp. 3d 293, 298–99 (D.D.C. 2017) (quoting *Al-Fayed v. C.I.A.*, 254 F.3d 300, 310 (D.C. Cir. 2001)).

(1) EPIC's FOIA Request concerns a matter of current exigency to the American public

For matters of current exigency, district courts require there be a "'substantial interest' in the 'particular aspect' of [the] FOIA request." *EPIC v. DOD*, 355 F. Supp. 2d 98, 102 (D.D.C. 2004). When determining whether an interest is substantial, courts will consider the number of publications, the variety of sources, and the content of the articles present in the request. *See Amer. Civil Liberties Union v. DOJ*, 321 F. Supp. 2d 24, 31–32 (D.D.C. 2004). "[C]ase law makes it clear that only public interest in the specific subject of a FOIA request is sufficient to weigh in favor of expedited treatment." *EPIC v. DOD*, 355 F. Supp. 2d at 102.

The subject of EPIC's FOIA Request—the activities of the AI Commission—is clearly of "substantial interest" to the public because the AI Commission is charged with providing the President and Congress recommendations on the development and implementation of artificial intelligence for national security and defense in the United States. EPIC's FOIA Request explained that the AI Commission is led by technologists and executives of major technology firms and that the Commission is operating at a time when the White House has launched its "American AI Initiative." *See* Appendix A. This initiative directs federal resources and funding toward AI research and the development of ethical standards.¹ One of the initiative's aims is to "identify opportunities to increase access and use [of Federal data] by the greater non-Federal AI

¹ Exec. Order No. 13,859, 84 Fed. Reg. 3,967 (2019).

research community.” *Id.* The recommendations of the AI Commission will greatly affect the American public, yet the activities of the Commission remain a secret.

(2) The consequences of delaying a response would compromise a significant recognized interest

Delaying a response to EPIC’s FOIA Request would compromise a significant recognized interest in understanding the activities of the AI Commission: specifically, the Commission’s initial comprehensive review and recommendations to the executive branch and Congress concerning the federal government’s use and implementation of AI. This prong of the test is satisfied when the requested information is “vital to [a] current and ongoing debate.” *Sai v. Transportation Sec. Admin.*, 54 F. Supp. 3d 5, 11 (D.D.C. 2014). The D.C. Circuit has acknowledged that “stale information is of little value . . .” *Payne Enterprises, Inc. v. United States*, 837 F.2d 486, 494 (D.C. Cir. 1988). For instance, in *EPIC v. DOJ*, the court found that EPIC had demonstrated a risk of irreparable injury when seeking expedited processing for information vital to an ongoing debate surrounding the legality of the government’s warrantless surveillance program. 416 F. Supp. 2d 30, 41 (D.D.C. 2006).

The release of the requested information is vital to an ongoing debate surrounding the federal government’s implementation of AI in areas related to national security and defense. In *Protect Democracy Project v. DOD*, the requesters sought information related to the President’s legal authority to launch missile strikes against a Syrian-government airbase the day after the strikes were conducted. The district court stated, “[b]eing closed off from such a debate is itself a harm in an open democracy” if there is an undue delay in processing. *Protect Democracy*, 263 F. Supp. 3d at 300.

Like the public debates surrounding the legality of military strikes against the Syrian government, there is great public debate surrounding the government’s implementation of AI technologies in national security and defense. Delay will cause cognizable harm because the public cannot participate in meaningful public debate about the AI Commission’s findings and recommendations.

(3) The request concerns a federal government activity

As previously stated, the actual government activities at issue in EPIC’s FOIA Request are the activities of the AI Commission, which include transmitting a required initial report on the findings of the Commission to the President and Congress. EPIC’s FOIA Request included facts—supported by both a federal statute and a government document—that the AI Commission is engaged in federal government activities.

(II) EPIC is an Organization “Primarily Engaged in Disseminating Information”

EPIC is an organization “primarily engaged in disseminating information” under 28 C.F.R. § 16.5(e)(1)(ii) because, as the court explained in *EPIC v. DOD*, “EPIC satisfies the definition of ‘representative of the news media.’” 241 F. Supp. 2d 5, 15 (D.D.C. 2003). EPIC actively gathers information that is of interest to a segment of the public, turns the raw materials

into distinct work, and publishes that work to the public through its website, bi-weekly newsletter, and various news outlets.

In EPIC's FOIA Request, EPIC stated that it is a registered non-profit organization committed to open government, privacy, and civil liberties. EPIC's request emphasized that the requested information would reach a large audience because EPIC routinely publishes information obtained through the FOIA on its widely read website, <https://epic.org>.

I certify that this explanation is true and correct to the best of my knowledge and belief. 5 U.S.C. § 552(a)(6)(E)(vi). For the foregoing reasons, EPIC is entitled to expedited processing of EPIC's FOIA Request. § 552(a)(6)(E)(iii).

Conclusion

Thank you for your consideration of this appeal. EPIC anticipates your determination on its appeal within twenty working days. 5 U.S.C. § 552(a)(6)(A)(ii). For question regarding this appeal, please contact John Davisson at 202-483-1140 x120 or davisson@epic.org, cc: FOIA@epic.org.

Respectfully submitted,

/s John Davisson

John Davisson
EPIC Counsel

/s Enid Zhou

Enid Zhou
EPIC Open Government Counsel

APPENDIX A

VIA E-MAIL

February 22, 2019

Stephanie Carr, Chief
OSD/JS FOIA Requester Service Center
Office of Freedom of Information
1155 Defense Pentagon
Washington, DC 20301-1155
571-372-0500 (fax)
Whs.mc-alex.esd.mbx.osd-js-foia-requester-service-center@mail.mil

Dear Ms. Carr:

This letter constitutes a request under 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 Department of Defense (“DOD”).

EPIC seeks records arising from and related to the National Security Commission on Artificial Intelligence (“AI Commission”).¹

FOIA Request

Documents Requested

- (1) All records concerning the creation of the National Security Commission on Artificial Intelligence;
- (2) All records—including but not limited to reports, agendas, meeting minutes, transcripts, working papers, drafts, studies, and notices of proposed meetings scheduled to be published in the Federal Register—arising from or related to the National Security Commission on Artificial Intelligence; and
- (3) The “initial report on the findings and . . . recommendations” of the National Security Commission on Artificial Intelligence, required by section 1051(c)(1) of the National Defense Authorization Act for FY 2019, due on February 9, 2019.

The DOD has an obligation under its FOIA regulations to reroute “misdirected” FOIA requests to the appropriate agency sub-component.² If “responsibility for the requested records rests with

¹ See John S. McCain National Defense Authorization Act for Fiscal Year 2019, Pub. L. No. 115-232, § 1051, 132 Stat. 1636 (2018) [hereinafter NDAA].

² 32 C.F.R. § 286.7(c).

a non-DoD Federal agency,” the DOD has an obligation to advise EPIC of the proper agency to resubmit the request to.³

Background

The National Security Commission on Artificial Intelligence was created by Congress through the National Defense Authorization Act for Fiscal Year 2019 (“NDAA”).⁴ Section 1051 of the NDAA establishes the AI Commission “to review advances in artificial intelligence, related machine learning developments, and associated technologies.”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 On December 26, 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

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.”¹¹ Specifically, the Commission must review:

- (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.

³ *Id.*

⁴ *Id.*

⁵ NDAA § 1051(a)(1).

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: Senate Committee on Commerce, Science, and Transportation; House Committee on Energy and Commerce; Senate Committee on Armed Services; House Committee on Armed Services; Senate Select Committee on Intelligence; House Permanent Select Committee on Intelligence. NDAA § 1051(a)(4), (6).

⁹ NDAA § 1051(a)(7).

¹⁰ NDAA § 1051(e).

¹¹ NDAA § 1051(b)(1).

- (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.¹²

Within 180 days of the passage of the NDAA—*i.e.*, by February 9, 2019—the AI Commission “shall submit to the President and Congress an initial report on the findings of the Commission and such recommendations that the Commission may have for action by the executive branch and Congress[.]”¹³ The Commission is then required to submit annual “comprehensive report[s] on the [Commission’s] review” by August 13, 2019 and August 13, 2020.¹⁴ Notably, reports submitted by the AI Commission “shall be made public[ly] available, but may include a classified annex.”¹⁵

On January 22, 2019, it was reported that federal officials had finalized the roster of the AI Commission.¹⁶ The Commission will be chaired by Eric Schmidt, former CEO of Google and

¹² NDAA § 1051(b)(2).

¹³ NDAA § 1051(c)(1).

¹⁴ NDAA § 1051(c)(2).

¹⁵ NDAA § 1051(c)(3).

¹⁶ Jack Corrigan, *Former Google Chief to Chair Government Artificial Intelligence Advisory Group*, Nextgov (Jan. 22, 2019), <https://www.nextgov.com/emerging-tech/2019/01/former-google-chief-chair-government-artificial-intelligence-advisory-group/154333/>.

Alphabet, and vice chaired by Robert Work, former Deputy Secretary of Defense.¹⁷ The Commission will also include:

- Andy Jassy, CEO of Amazon Web Services
- Safra Catz, CEO of Oracle
- Chris Darby, CEO of In-Q-Tel
- Jason Matheny, former IARPA director
- Eric Horvitz, director of Microsoft Research Labs
- Mignon Clyburn, Open Society Foundation fellow and former FCC commissioner
- Andrew Moore, head of Google Cloud AI
- Steve Chien, supervisor of the AI Group at Caltech's Jet Propulsion Lab
- Ken Ford, CEO of the Florida Institute for Human and Machine Cognition
- Jose-Marie Griffiths, president of Dakota State University
- Gilman Louie, partner at Alsop Louie Partners
- William Mark, director of SRI's Information and Computing Sciences Division
- Katharina McFarland, consultant at Cypress International¹⁸

Request for Expedition

This request warrants expedited processing under the FOIA because there is a “compelling need” for disclosure of the requested records.¹⁹ 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.”²⁰

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 Commission because the AI Commission's initial report on its findings and recommendations was due on February 9, 2019. The report must be made publicly available,²¹ yet there is no indication that the report has been published or even submitted to the President and the Congress. Moreover, the AI Commission is led by technologists, executives of major technology firms, and former federal officials, and the Commission is operating at a time when the White House has launched the “American AI Initiative.”²² The AI Commission's findings, recommendations, and proceedings will therefore have significant influence on AI policymaking by both Congress and the executive branch. The public urgently needs to be informed of the activities of the AI Commission.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ 5 U.S.C § 552(a)(6)(E)(v)(II).

²⁰ *Id.*

²¹ NDAA § 1051(c)(3).

²² Exec. Order No. 13,859, 84 Fed. Reg. 3,967 (2019).

Second, EPIC is an organization “primarily engaged in disseminating information.”²³ 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.²⁴ EPIC’s work is also consistently featured in widely circulated news publications such as Politico, Law 360, Washington Post, New York Times, NPR, Wall Street Journal, The Hill, CBS, and USA Today.²⁵

In submitting this request for expedited processing, we certify this explanation is true and correct to the best of our knowledge and belief.²⁶

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.²⁷

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.²⁸

(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.” 5 U.S.C. § 552(a)(4)(A)(iii). First, the subject of the request concerns “operations or activities of the federal government.” The AI Commission was established by statute, is funded through DOD 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 would be “meaningfully informative” because the documents will contribute to an increased understanding of government operations and activities. Specifically, disclosure will educate the public about the activities of the AI Commission and the report that the Commission was required to submit to the President and

²³ 5 U.S.C. § 552(a)(6)(E)(v)(II).

²⁴ See EPIC, *EPIC Alert*, <https://www.epic.org/alert/>.

²⁵ See EPIC, *EPIC in the News*, https://epic.org/news/epic_in_news.php/.

²⁶ 5 U.S.C. § 552(a)(6)(E)(vi).

²⁷ 5 U.S.C. § 552(a)(4)(A)(ii)(II).

²⁸ 5 U.S.C. § 552(a)(4)(A)(iii).

Congress. The AI Commission has not yet announced that it will allow public participation in its meetings, nor has it solicited public comment concerning any proposed actions or reports. To date, no information has been released about when the AI Commission will convene, what topics it will discuss (or has already discussed), or whether the required February 9, 2019 report was completed and submitted.

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 and therefore satisfies this condition. EPIC largely disseminates its work 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.²⁹ EPIC is a registered non-profit organization committed to privacy, open government, and civil liberties.³⁰ 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 identified 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.

FACA Request

Documents and Access Requested

EPIC also seeks access to the records, minutes, and meetings of the National Security Commission on Artificial Intelligence pursuant to section 10 of the Federal Advisory Committee Act. 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 or any subcomponent thereof;
- (2) A copy of the “initial report on the findings and . . . recommendations” of the National Security Commission on Artificial Intelligence required by section 1051(c)(1) of the National Defense Authorization Act for FY 2019; and
- (3) Access to, and advance Federal Register notice of, all meetings of the National Security Commission on Artificial Intelligence and any subcomponent thereof.

²⁹ 5 U.S.C. § 552(a)(4)(A)(iii).

³⁰ *About EPIC*, EPIC.org, <http://epic.org/epic/about.html>.

The AI Commission is subject to the FACA because it is an advisory committee established by statute.³¹ 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[.]”³² 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.³³ 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.”³⁴

Conclusion

Thank you for your consideration of this request. We anticipate your determination on our request within ten calendar days.³⁵ 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

³¹ Pub. L. No. 92-463, 86 Stat. 770 (1972) (codified as amended at 5 U.S.C. app. 2) [hereinafter FACA].

³² FACA § 3.

³³ FACA § 10(a)–(c).

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

³⁵ 5 U.S.C. § 552(a)(6)(E)(ii)(I).

APPENDIX B



**DEPARTMENT OF DEFENSE
FREEDOM OF INFORMATION DIVISION
1155 DEFENSE PENTAGON
WASHINGTON, DC 20301-1155**

FEB 28 2019

Re: 19-F-0810

Enid Zhou
EPIC Open Government Fellow
1718 Connecticut Avenue, NW
Suite 200
Washington, DC 20009

Dear Ms. Zhou:

This is an interim response to your February 22, 2019, Freedom of Information Act (FOIA) request, a copy of which is enclosed for your convenience. We received your request on the same day it was submitted and assigned it case number 19-F-0810. We ask that you use this number when referring to your request.

Although we have already begun processing your request, we will not be able to respond within the FOIA's 20-day statutory time period as there are unusual circumstances which impact our ability to quickly process your request. The FOIA defines unusual circumstances as (a) the need to search for and collect records from a facility geographically separated from this office; (b) the potential volume of records responsive to your request; and (c) the need for consultation with one or more other agencies or DoD components having a substantial interest in either the determination or the subject matter of the records. At least one, if not more of these scenarios applies or would likely apply to your request. While this office handles FOIA requests for the Office of the Secretary of Defense (OSD), the Joint Staff (JS) and other component offices, we do not actually hold their records and our office is not geographically located with these organizations. As we do not hold the records, until the required records searches are complete, we are unable to estimate the potential volume of records or the number of consultations that will be required to make a release determination.

Your request has been placed in our complex processing queue and is being worked based on the order in which the request was received. Our current administrative workload is approximately 2,940 open requests.

Expedited processing may be granted when the requester demonstrates a compelling need for the information and shows that the information has a particular value that would be lost if not processed on an expedited basis. A key word here is "demonstrates." It is, therefore, incumbent upon you to demonstrate that the requested records will serve an urgency purpose, and that they also will be meaningful in the sense that they will provide for a greater understanding of actual or alleged federal government activity on the part of the public-at-large than that which existed before such information was disseminated. Consequently, it must be clearly demonstrated that such information has a particular value that will be lost if not disseminated quickly. After careful consideration of your request, this office finds that you have not clearly demonstrated how the information will lose its value if not processed on an expedited basis. For these reasons, your request for expedited processing is denied.

In some instances, we have found that requesters who narrow the scope of their requests experience a reduction in the time needed to process their requests. If you have any questions or wish to discuss the reformulation of your request or an alternative time frame for the processing of your request, you may contact Ms. Namioka Mead, the Action Officer assigned to your request, at namioka.l.mead2.civ@mail.mil or (571) 372-0437.

The OSD/JS FOIA Public Liaison, Jim Hogan, is available at (571) 372-0462 or by e-mail at OSD.FOIALiaison@mail.mil to answer any concerns about the foregoing.

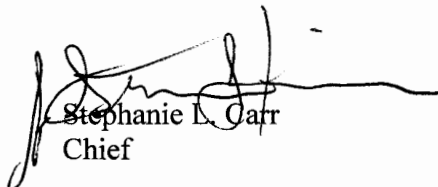
Additionally, you may contact the Office of Government Information Services (OGIS) at the National Archives and Records Administration to inquire about the FOIA mediation services they offer. The contact information for OGIS is as follows:

Office of Government Information Services
National Archives and Records Administration
8601 Adelphi Road-OGIS
College Park, MD 20740
E-mail: ogis@nara.gov
Telephone: 202-741-5770
Fax: 202-741-5769
Toll-free: 1-877-684-6448

You have the right to appeal to the appellate authority, Ms. Joo Chung, Director of Oversight and Compliance, Office of the Secretary of Defense, by writing directly to OCMO Office of the Chief Management Officer, 4800 Mark Center Drive, ATTN: DPCLTD, FOIA Appeals, Mailbox# 24, Alexandria, VA 22350-1700. Your appeal must be postmarked within 90 calendar days of the date of this response. Alternatively, you may email your appeal to osd.foia-appeal@mail.mil. If you use email, please include the words "FOIA Appeal" in the subject of the email. Please also reference case number 18-F-0810 in any appeal correspondence.

We regret the delay in responding to your request and appreciate your patience.

Sincerely,



Stephanie L. Carr
Chief

Enclosure:
As stated

Exhibit F



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Press Release





Second Plenary Meeting

Press Release | May 29, 2019

WASHINGTON, DC - The National Security Commission on Artificial Intelligence (NSCAI) met for the second time on May 20 in Cupertino, California.

The bipartisan commission received classified briefs on the status of the U.S. government's artificial intelligence strategies and examined overseas trends. Commissioner Safra Catz, CEO of Oracle, said the Commission's work was urgent, "There is a race on, someone is running it, and we are still stretching. We must get serious about artificial intelligence as a national security priority."

The NSCAI was created by the 2019 National Defense Authorization Act to examine 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 country's national security and defense needs. Within its broad mandate, the Commission is focusing its efforts on how the United States can maintain global leadership in research and development, adopt AI applications for national security, prepare American citizens for an AI future, and ensure the United States continues to compete and cooperate to shape AI ethics, standards, and norms in the international arena.

To date, the Commission has received more than 50 classified and unclassified briefings in the working groups since it began its work over two months ago. The Commission's Vice Chair and former Deputy Secretary of Defense Robert Work explained that the Commission is working closely with Congress and with the Department of Defense's ongoing AI efforts, "In an era of great power competition, the Pentagon and others in the national security community must take on the AI challenge with a sense of purpose and clear objectives."

The Commission is an independent federal entity, but Mr. Work affirmed the Commissioners want their work to complement and strengthen ongoing work in the executive branch and Congress, while also making additional recommendations to integrate artificial intelligence into national security programs.

###

The National Security Commission on Artificial Intelligence | The United States of America



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Press Release



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Plenary Meeting

Press Release | July 12, 2019

WASHINGTON, DC - The National Security Commission on Artificial Intelligence (NSCAI) held its third plenary session yesterday in Cupertino, California.

The Commission examined the AI landscape, and focused on advancing its legislative mandate to "consider the methods and means necessary to advance the development of artificial intelligence, machine learning and associated technologies to comprehensively address the national security and defense needs of the United States." Commissioners received classified briefings on counterintelligence threats and challenges to the United States as well as opportunities to advance U.S. leadership in artificial intelligence. Commissioner Andy Jassy, CEO of Amazon Web Services, said "the session advanced the Commission's understanding of the nature and challenges facing the United States."

The Commission also received an update from each of the working groups established to examine how the United States can maintain global leadership in artificial intelligence research and national security applications, how to prepare American citizens for an AI future, and how the United States can maintain its competitive advantage in artificial intelligence. Gilman Louie, Partner at Alsop Louie Partners, said "as we discuss how we are going to protect U.S. national security, we are also continuing discussions with our global partners on how to cooperate in artificial intelligence."

The Commission has received more than 100 classified and unclassified briefings in the working groups and the in the three plenary sessions since it began its work in March. The commission is an independent federal entity, and its goal is to complement and strengthen ongoing efforts in the executive branch and Congress, while also making additional recommendations to integrate artificial intelligence into national security programs.

###

The National Security Commission on Artificial Intelligence | The United States of America



Exhibit H



National Security Commission on Artificial Intelligence

Initial Report

July 2019



July 31, 2019

The Honorable Nancy Pelosi
United States House of Representatives
H-204, United States Capitol Building
Washington, DC 20515

The Honorable Kevin McCarthy
United States House of Representatives
H-329, United States Capitol Building
Washington, DC 20515

The Honorable Chuck Schumer
United States Senate
322 Hart Senate Office Building
Washington, DC 20510

The Honorable Mitch McConnell
United States Senate
317 Russell Senate Office Building
Washington, DC 20510

Dear Speaker Pelosi, Majority Leader McConnell, Minority Leader McCarthy, and Minority Leader Schumer:

In accordance with the Fiscal Year 2019 John S. McCain National Defense Authorization Act (P.L. 115-232), we hereby submit the initial report of the National Security Commission on Artificial Intelligence.

The mandate given to this independent federal commission presents a significant opportunity “to consider 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.”

This initial report, delivered in response to the request in P.L. 115-232, Sec. 1051(c)(1), provides a summary of the Commission’s activities to date and a plan for the next phases of our work. Our interim report this fall will offer early substantive assessments, and our final report will lay out the Commission’s full findings and recommendations.

We thank you for the honor and opportunity to serve our country on an issue of utmost importance to the future of U.S. national security and defense.

Respectfully submitted,

Eric Schmidt
Chairman

Robert O. Work
Vice Chairman



NSCAI Update to Congress — July 2019

The National Security Commission on Artificial Intelligence (NSCAI) was established by the *John S. McCain National Defense Authorization Act for Fiscal Year 2019*. In that legislation, Congress requested an initial report from the Commission within 180 days of the NDAA's enactment.¹ The following update responds to that request.

Background

The NSCAI is comprised of fifteen Commissioners, led by Chairman Eric Schmidt and Vice Chairman Robert Work.² Commissioners were appointed by Members of Congress and by the Secretaries of Defense and Commerce. The Commission is bipartisan and Commissioners are drawn from across the country. They bring broad and deep expertise in the private sector, academia, and government. The NSCAI mandate is to “consider 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.”³ All Commissioners and Commission staff are committed to collaborating with, and providing timely recommendations to, Congress and the executive branch.

Initial Activities

The Commissioners met and began to work in earnest in March 2019. Most of the Commission staff was appointed by late April. During these early months, the Commissioners and staff have focused on surveying the AI landscape, and have held three plenary meetings:

- Plenary #1: The Commission's first meeting was held on March 11 in Arlington, VA. Senator Martin Heinrich and Representatives Elise Stefanik and Jerry McNerney participated. They laid out their expectations and recommendations for the Commission, and expressed strong support for our mandate. Commissioners received briefings from the Defense and Commerce Departments and from the Intelligence Community.
- Plenary #2: The Commission convened on May 20 in Cupertino, CA. Commissioners were briefed on U.S. Government policies and perspectives, including from the White

¹ P.L. 115-232, Sec. 1051(c)(1).

² Other commissioners include Safra Catz, Steve Chien, Mignon Clyburn, Chris Darby, Ken Ford, José-Marie Griffiths, Eric Horvitz, Andy Jassy, Gilman Louie, William Mark, Jason Matheny, Katharina McFarland, and Andrew Moore.

³ P.L. 115-232, Sec. 1051(b)(1).

House Office of Science and Technology Policy, the National Security Council, and the Defense Department's Office of Net Assessment.

- Plenary #3: The third meeting on July 11, also held in Cupertino, CA, featured briefings from the Intelligence Community, the Federal Bureau of Investigation, and the National Security Council.

At the first meeting, Commissioners decided to meet in plenary every other month, and organize themselves into four working groups focused on key areas to examine in detail. Each working group meets monthly, and will enumerate objectives, assess current challenges, and develop recommendations for consideration by the entire Commission. The preliminary results of the working group assessments will form the basis of the Commission's Interim Report to Congress in fall 2019.

- Working Group #1 Maintaining U.S. Global Leadership in AI Research. The first group 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 Maintaining Global Leadership in AI National Security Applications. The second group 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 Preparing Our Citizens for an AI Future. The third group is focused on how to overcome challenges and develop incentives to build a world-class, AI-ready national security workforce.
- Working Group #4 International Competitiveness and Cooperation in AI. The fourth group is considering ways to enhance U.S. global competitiveness, leverage our alliances, and establish norms that advance U.S. values and interests.

Commissioners have 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.

As of July 11, 2019, the Commission has held nine working group meetings. From March to July, the Commissioners and staff have received over 100 briefings, both unclassified and classified, on a wide range of government, academic, and commercial topics related to AI.

Relationship to Ongoing USG Efforts

The Commission's Chair and Vice Chair held informative initial engagements with House and Senate staff members on June 28, and will seek further opportunities to consult with Congress throughout the course of the Commission's work.

The Commission is also working in close collaboration with the White House, the National Security Council, the Office of Science and Technology Policy, and executive departments and agencies, to ensure that the many ongoing U.S. Government efforts in AI are complementary and reinforcing. Ultimately, these efforts should produce a comprehensive and enduring national approach to maintaining America's AI advantages in the realm of national security. The Commission has enjoyed exceptional cooperation from other U.S. Government offices working on issues relevant to the Commission's work.

Other major U.S. Government efforts include: the February 2019 Executive Order on Maintaining American Leadership in Artificial Intelligence;⁴ the National Security Presidential Memorandum on Protecting the United States Advantage in Artificial Intelligence and Related Critical Technologies; the National Science and Technology Council's National Artificial Intelligence Research and Development Strategic Plan 2019 Update;⁵ the Department of Defense's 2018 AI Strategy;⁶ the Office of the Director of National Intelligence's AIM Initiative;⁷ and the Department of Energy's AI initiatives.

Relationship with Industry and Academia

The Commission is committed to understanding a range of perspectives from outside of government. Given the central role of universities, research centers, and private enterprises in AI innovation, the NSCAI will ensure that expertise and insights from these arenas are integrated into the Commission's work. Toward that end, the Commission has held engagements with a wide range of academic and private sector groups, and we have enlisted leading figures in the AI field to serve as advisors or to offer their perspectives to the Commission.

Ethics and Responsible Use

The Commission is firmly committed to integrating ethical considerations into all components of its analysis and research. The Special Project on AI ethics will convene experts across the range

⁴ E.O. 13859, available at <https://www.govinfo.gov/content/pkg/FR-2019-02-14/pdf/2019-02544.pdf>.

⁵ <https://www.nitrd.gov/pubs/National-AI-RD-Strategy-2019.pdf>.

⁶ <https://media.defense.gov/2019/feb/12/2002088963/-1/-1/1/summary-of-DoD-AI-Strategy.pdf>.

⁷ <https://www.dni.gov/files/ODNI/documents/AIM-Strategy.pdf>.

of ethicists in the private sector, academia, and within government, and is working closely with the Defense Innovation Board's AI Principles Project.

Commission Staff

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. The staff frames questions, convenes experts, manages day-to-day relations with counterparts in and out of government, and prepares the commissioners for their regular meetings as the NSCAI moves toward its Final Report.

Next Steps

- The Commission will continue to carry out the assessment phase of its work, which should be complete by November 2019. At that time, the Commission will submit an Interim Report to Congress on its initial findings and judgments.
- The delivery of the Interim Report will mark the shift to the Commission's analysis phase, which will take up much of 2020. The analysis phase will be followed by a final phase of work focused on consolidating the Commission's findings and refining its final recommendations.



NATIONAL
SECURITY
COMMISSION
ON ARTIFICIAL
INTELLIGENCE

Exhibit I

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.nscai.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).

Exhibit J

From: inquiry@nscai.gov
Subject: Re: FOIA/FACA Request Submission: 19-09-11-NSCAI (National Security Commission on AI)
Date: September 12, 2019 at 11:18 AM
To: Enid Zhou zhou@epic.org
Cc: foia@epic.org



Hello Enid,

Thank you for your inquiry. We have forwarded your request for review. Additionally, we would like to host you for a meeting to discuss our work at the time that is convenient for you. Please let us know some dates and times.

Best Regards.

On Wed, Sep 11, 2019 at 6:14 PM Enid Zhou <zhou@epic.org> wrote:

Dear FOIA Officer/Designated Federal Officer:

Attached is a Freedom of Information Act and Federal Advisory Committee Act request to the National Security Commission on Artificial Intelligence seeking records arising from and related to the AI Commission.

Please contact me if there is an issue opening the pdf. Thank you.

Best,

Enid Zhou
EPIC Open Government Counsel
1718 Connecticut Ave, N.W.
Suite 200
Washington, DC 20009 | (202) 483-1140 x104
zhou@epic.org, FOIA@epic.org

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Exhibit K



**Strength Through Innovation: The Future of A.I. and U.S. National Security
Hosted by the National Security Commission on A.I.**

About this Event

National Security Commission on Artificial Intelligence (NSCAI) Chair Eric Schmidt and Vice Chair Bob Work cordially invite you to attend the NSCAI's event, "Strength Through Innovation: The Future of A.I. and U.S. National Security." The November 5 event, held in conjunction with the submission of NSCAI's interim report to Congress, will bring together members of Congress and leaders from industry, academia and government to discuss the Commission's initial assessments on the state of A.I. and U.S. national security outlined in the report and develop concepts for the way ahead.

"Strength Through Innovation: The Future of A.I. and U.S. National Security," will be an all-day event at the Liaison Hotel on Capitol Hill comprised of four panel discussions, a fireside chat over lunch, and opening/closing speakers. Please visit our website at www.nsc.ai.gov for the latest information on panelists, speakers and additional information about the National Security Commission on Artificial Intelligence and its Commissioners. You can also submit your questions prior to the conference during registration.