

VIA E-MAIL

June 8, 2018

Erin Dawson, Chief FOIA Officer  
National Science Foundation  
Attn: FOIA Officer  
2415 Eisenhower Avenue  
Alexandria, Virginia 22314

Dear Ms. Dawson:

This letter constitutes a request under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, and is submitted on behalf of the Electronic Privacy Information Center (“EPIC”) to the National Science Foundation (“NSF”).

EPIC seeks records related to the creation of the Select Committee on Artificial Intelligence, announced during the White House’s May 10, 2018 Summit on Artificial Intelligence for American Industry.<sup>1</sup>

### Documents Requested

All communications and other records about the creation of the Select Committee on Artificial Intelligence.

### Background

On May 10, 2018, the White House convened over 100 business leaders, government officials, and academics for an artificial intelligence (“AI”) summit titled “Artificial Intelligence for American Industry.”<sup>2</sup> According to the White House, the industries represented at the summit included energy and manufacturing, financial services, healthcare, food and agriculture, and transportation and logistics.<sup>3</sup> Technology giants such as Amazon, Facebook, Microsoft, and Google were among the private sector attendees.<sup>4</sup> Representatives from the federal government included officials from the National Science Foundation (“NSF”), the Office of the Director of National Intelligence, Department of Agriculture, Department of Commerce, Department of Defense, Department of Energy, Department of Health and Human Services, Department of

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<sup>1</sup> *White House Hosts Summit on Artificial Intelligence for American Industry*, White House (May 10, 2018), <https://www.whitehouse.gov/articles/white-house-hosts-summit-artificial-intelligence-american-industry/>.

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

<sup>4</sup> *The Latest: White House Launches New AI Effort*, Associated Press (May 10, 2018), <https://apnews.com/eee2501197354050aba527d5a310ed10>.

Labor, Department of Transportation, and Department of the Treasury.<sup>5</sup> The White House has not identified any summit attendees from privacy or other public interest groups.

The summit had two breakout sessions that “focused on cross cutting issues such as AI research & development . . . workforce development, regulatory barriers to AI innovation, and sector specific applications of AI.”<sup>6</sup> These discussions included ways to create “public-private partnerships to accelerate [AI research],” preparing the American workforce for AI related jobs, “removing barriers to AI innovation in the [U.S.]” by promoting AI research and development among “America’s allies,” and sharing the “novel ways industry leaders are using AI technologies” in their sectors.<sup>7</sup>

At the summit, Michael Kratsios, Deputy Assistant to the President for Technology Policy, announced a new “Select Committee on Artificial Intelligence” that will:

[A]dvise The White House on interagency AI R&D priorities; consider the creation of Federal partnerships with industry and academia; establish structures to improve government planning and coordination of AI R&D; and identify opportunities to leverage Federal data and computational resources to support our national AI R&D ecosystem.<sup>8</sup>

Led by the OSTP, NSF, and Defense Advanced Research Projects Agency, the Select Committee will also coordinate efforts across federal agencies to research and adopt technologies such as autonomous systems, biometric identification, computerized image and video analysis, machine learning, and robotics.<sup>9</sup> The Select Committee “may also interact and receive *ad hoc* advice from various private-sector groups.”<sup>10</sup> The Select Committee members include representatives from the Department of Commerce, Department of Defense, Department of Energy, Office of the Director of National Intelligence, National Security Council, and Office of Management and Budget.<sup>11</sup> It is unclear whether the Select Committee will include public perspectives in its work.

Democratic governance is built on principles of procedural fairness and transparency. The use of AI by the federal government must be open, provable, and accountable because accountability is the key to decision making. The controversial use of AI, particularly for government systems that involve the processing of personal data, may fall outside the reach of the Privacy Act of 1974 if proper oversight is not exercised. The Privacy Act of 1974 ensures fairness and accountability in the government’s use of personal data.<sup>12</sup> Algorithms deny people

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<sup>5</sup> *White House Hosts Summit on Artificial Intelligence for American Industry*, *supra* note 1.

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> Office of Sci. and Tech. Policy, Exec. Office of the President, Summary of the 2018 White House Summit on Artificial Intelligence for American Industry, 7 (2018), <https://www.whitehouse.gov/wp-content/uploads/2018/05/Summary-Report-of-White-House-AI-Summit.pdf> [hereinafter Summit Summary Report].

<sup>9</sup> Charter of the National Science and Technology Council Select Committee on Artificial Intelligence, May 9, 2018, <https://epic.org/SelectCommitteeonAI.pdf> [hereinafter Select Committee Charter].

<sup>10</sup> *Id.* at 2.

<sup>11</sup> *Id.*

<sup>12</sup> 5 U.S.C. § 552a; *see also* EPIC, *The Privacy Act*, <https://epic.org/privacy/1974act/>.

educational opportunities, employment, housing, insurance, and credit.<sup>13</sup> When the government uses AI to make decisions about people, many of these decisions are opaque and leave individuals to wonder whether these decisions were accurate, fair, or even about them.

### Request for Expedition

EPIC is entitled to expedited processing of this request under the FOIA and the NSF's FOIA regulations. 5 U.S.C. § 552(a)(6)(E)(v)(II); 45 C.F.R. § 612.5(e). Specifically, this request is entitled to expedited processing because, first, there is an "urgency to inform the public about an actual or alleged Federal government activity," and second, the request is made "by a person primarily engaged in disseminating information." § 612.5(e)(2)(i)(B).

First, there is an "urgency to inform the public about an actual or alleged Federal government activity." § 612.5(e)(2)(i)(B). The "actual . . . government activity" at issue is the establishment of the Select Committee on Artificial Intelligence.<sup>14</sup> According to the Select Committee's charter, the Select Committee will be co-chaired by the NSF.<sup>15</sup>

There is an urgency to inform the public about this activity. The use of AI by both the government and the private sector raises fundamental questions about accountability, privacy, public safety, and fairness. Transparency in the AI policymaking process is therefore essential. Yet little information has been released about what prompted the formation of the Select Committee, which privacy-sector groups will interact and provide "*ad hoc* advice" to the Select Committee, and what particular issues the Select Committee will focus on. Various news outlets have reported on the announcement of the creation of the Select Committee, but few new information have been provided to the public other than what has been disclosed by the government.<sup>16</sup> There is an immediate public need to know the details of the Trump administration's AI policies and the Select Committee's role in shaping such policies. The administration has indicated that it will seek to eliminate limitations on the use of AI. For example, Mr. Kratsios stated in his opening remarks that "[i]n the private sector, [the government] will not dictate what is researched and developed."<sup>17</sup> Mr. Kratsios also stated that "We can greatly improve that research by opening access to the government's vast troves of taxpayer-funded data in ways that don't compromise privacy or security."<sup>18</sup> Removing regulatory limitations on AI and providing access to government data could raise serious privacy and

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<sup>13</sup> Danielle Keats Citron & Frank Pasquale, *The Scored Society: Due Process for Automated Predictions*, 89 Wash. L. Rev. 1 (2014).

<sup>14</sup> See *White House Hosts Summit on Artificial Intelligence for American Industry*, *supra* note 1.

<sup>15</sup> Select Committee Charter, *supra* note 9 at 2.

<sup>16</sup> See e.g., Ali Breland, *White House to Create Artificial Intelligence Committee*, The Hill (May 10, 2018), <http://thehill.com/policy/technology/387133-white-house-to-create-ai-committee>; Will Knight, *The White House Says a New AI Task Force Will Protect Workers and Keep America First*, MIT Technology Review (May 10, 2018), <https://www.technologyreview.com/s/611118/the-white-house-says-a-new-ai-taskforce-will-keep-america-first-and-protect-its-workers/>; Tajha Chappellet-Lanier, *White House Announces Creation of Select Committee on Artificial Intelligence*, FedScoop (May 10, 2018), <https://www.fedscoop.com/white-house-artificial-intelligence-committee-kratsios/>.

<sup>17</sup> Summit Summary Report, *supra* note 8 at 10.

cybersecurity risks, and it is imperative that the public knows the extent of this government activity and the role of the Select Committee to shape the administration's AI policy.

Second, EPIC is an organization "primarily engaged in disseminating information." § 612.5(e)(2)(i)(B). 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 the FOIA. 241 F. Supp. 2d 5, 15 (D.D.C. 2003).

In submitting this request for expedited processing, 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).

#### 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 (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.; 5 U.S.C. § 552(a)(4)(A)(ii)(II).

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 significantly to public understanding of the operations or activities of the government," and (ii) disclosure "is not primarily in the commercial interest" of EPIC, the requester. 45 C.F.R. § 612.10(k)(1); 5 U.S.C. § 552(a)(4)(A)(iii). EPIC's request satisfies this standard based on the NSF's considerations for granting a fee waiver. 45 C.F.R. §§ 612.10(k)(2)(i)–(iv).

*(1) Disclosure of the information is in the public interest because it is likely to contribute significantly to the public understanding of the operations or activities of the government.*

First, "disclosure of the requested documents is in the public interest because it is likely to contribute significantly to the public understanding of the operations or activities of the government." 45 C.F.R. § 612.10(k)(1). The official announcement of the creation of the Select Committee and the NSF's role as a co-chair of the Select Committee indisputably involves "operations or activities of the government." § 612.10(k)(2)(i). Disclosure of the requested information is "meaningfully informative" about the government's operations and activities because little is known about the creation and operation of the Select Committee other than the announcement made by Mr. Kratsios and the publication of the Select Committee's charter. § 612.10(k)(2)(ii).

Since EPIC is a representative of the news media, the EPIC "will normally be presumed to satisfy" the consideration that "disclosure of the requested information will contribute to 'public understanding.'" § 612.10(k)(2)(iii). Additionally, disclosure is within the public's interest and is significant because prior to the White House summit, the administration has been quiet on its AI position. § 612.10(k)(2)(iv). The convening of the summit and formation of the Select Committee is one of the first public indicators of the administration stance on AI research and development. The federal government's investments for unclassified AI research and

development has grown by over 40% since 2015.<sup>19</sup> The administration's fiscal year 2019 budget request designated AI and autonomous and unmanned systems as administration research and development priorities.<sup>20</sup> The release of the requested information will allow the public to better understand the government's priorities and concerns around AI and what role the Select Committee will play in shaping AI policy.

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

Second, disclosure of the information "is not primarily in the commercial interest" of EPIC. 45 C.F.R. § 612.10(k)(1). EPIC is a registered non-profit organization committed to privacy, open government, and civil liberties.<sup>21</sup> EPIC intends to disseminate the requested information to a broad spectrum of the public. EPIC consistently publishes critical documents obtained through the FOIA and through litigation on its robust website.<sup>22</sup> EPIC publishes an award-winning email and online newsletter that always highlights the critical documents obtained through the FOIA.<sup>23</sup> Thus, EPIC has no commercial interest in the requested records and has established there is significant public interest in the requested records.

For these reasons, a full fee waiver should be granted for EPIC's request.

### Conclusion

Thank you for your consideration of this request. I anticipate your determination on our request within ten calendar days. 5 U.S.C. § 552(a)(6)(E)(ii)(I); 45 C.F.R. § 612.5(e)(3). For questions regarding this request I can be contacted at 202-483-1140 x104 or Zhou@epic.org, cc: FOIA@epic.org.

Respectfully submitted,

*/s Enid Zhou*

Enid Zhou

EPIC Open Government Fellow

*/s John Davisson*

John Davisson

EPIC Counsel

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<sup>19</sup> Statement, The White House, Artificial Intelligence for the American People (May 10, 2018), <https://www.whitehouse.gov/briefings-statements/artificial-intelligence-american-people/>.

<sup>20</sup> *Id.*

<sup>21</sup> *About EPIC*, EPIC.org, <http://epic.org/epic/about.html>.

<sup>22</sup> EPIC.org, <https://www.epic.org/>.

<sup>23</sup> *EPIC Alert*, EPIC.org, <https://www.epic.org/alert/>.