



October 28, 2022

Miriam Vogel, Chair (vogemh@hotmail.com)  
James Manyika, Vice Chair (james.manyika@mckinsey.com)  
National AI Advisory Committee

Dear Ms. Vogel, Mr. Manyika, and Members of the NAIAC,

On October 4, 2022, we wrote to you, the Members of the National Artificial Intelligence Advisory Committee (NAIAC), to express support for your work, to recommend specific actions that you should take consistent with your mandate, and to make several recommendations to promote public participation in the work of NAIAC.<sup>1</sup>

We then followed closely the second meeting of the NAIAC and were surprised that there was no opportunity for public comment and no discussion of the public comments that may have been received. We reviewed your website today, and there was no indication that any comments you received were made available to the public, nor were any of the meeting records prepared for the Advisory Committee members made available to the public.<sup>2</sup>

We write to you now to raise specific concerns about the NAIAC's failure to comply with the Federal Advisory Committee Act. We have posted a web page in which we have detailed the concerns outlined in this letter.<sup>3</sup> Our webpage is one of the top search results for a search on "National AI Advisory Committee" and for "NAIAC." We intend to monitor this situation closely.

We remain in support of the mission of the NAIAC, but we are now deeply concerned about the operation of the Advisory Committee. *We urge you to take the actions detailed below to provide the necessary transparency, accountability, and public participation that the development of a report for the President on AI policy requires.*

***We request a formal response to this letter by Friday, November 11, 2022***

### **The Federal Advisory Committee Act**

The Federal Advisory Committee Act (FACA) governs the operation of federal

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<sup>1</sup> CAIDP Letter to National AI Advisory Committee (Oct. 4, 2022), <https://www.caidp.org/app/download/8416257463/CAIDP-NAIAC-10042022.pdf>

<sup>2</sup> *National AI Advisory Committee*, <https://www.ai.gov/naiac/>

<sup>3</sup> CAIDP, *National AI Advisory Committee*, <https://www.caidp.org/resources/naiac/>

Advisory Committees and emphasizes public involvement through open meetings and reporting. Meetings must be announced in the Federal Register.<sup>4</sup> “Reports, transcripts, working papers, and other materials made available to or prepared for or by the committees” must be made available to the public. The FACA expressly states that “Congress and the public should be kept informed with respect to the number, purpose, membership, activities, and cost of advisory committees.”<sup>5</sup> Additionally, interested persons “shall be permitted to attend, appear before, or file statements with any advisory committee, subject to such reasonable rules or regulations as the Administrator may prescribe.”<sup>6</sup>

*Therefore, you should take the following steps as soon as practicable.*

### **1. Post All of the Documents made Available or Prepared for Advisory Committee Members**

The FACA States that “the Congress and the public should be kept informed with respect to the number, purpose, membership, activities, and cost of advisory committees.”<sup>7</sup> Section 10(b) and (c) state specifically:

The records, reports, transcripts, minutes, appendixes, working papers, drafts, studies, agenda, or other documents which were made available to or prepared for or by each advisory committee shall be available for public inspection and copying at a single location in the offices of the advisory committee or the agency to which the advisory committee reports until the advisory committee ceases to exist.<sup>8</sup>

Detailed minutes of each meeting of each advisory committee shall be kept and shall contain a record of the persons present, a complete and accurate description of matters discussed and conclusions reached, and copies of all reports received, issued, or approved by the advisory committee. The accuracy of all minutes shall be certified to by the chairman of the advisory committee.<sup>9</sup>

As of October 28, 2022, it does not appear that the NAIAC has posted the Public Comments received, nor has it posted Meeting Records as required by the Federal Advisory

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<sup>4</sup> U.S. General Services Administration, *The Federal Advisory Committee Act with Amendments and Annotations*, 5 USC Appendix - Federal Advisory Committee Act Sec. 10, <https://www.gsa.gov/policy-regulations/policy/federal-advisory-committee-management/legislation-and-regulations/the-federal-advisory-committee-act>.

<sup>5</sup> Id. at Sec. 2(b)(5)

<sup>6</sup> Id. at Sec. 10(a)(3).

<sup>7</sup> Sec. 2(b)(5).

<sup>8</sup> Id. at Sec. (10)(b).

<sup>9</sup> Id. at Sec. 10(c).

Committee Act.

*The Advisory Committee should make immediately available all of the records it is required to disclose to the public under the FACA.*

## **2. Provide a Meaningful Opportunity for Public Participation in the Work of the Advisory Committee**

The FACA states that "Interested persons shall be permitted to attend, appear before, or file statements with any advisory committee, subject to such reasonable rules or regulations as the Administrator may prescribe." Sec. 10(a)(3). The NAIAC has held two public meetings, yet it has provided no meaningful opportunity for public participation. It is also notable that the meetings were hosted on YouTube with chat turned off. There are many services for online conferences that enable moderated participation by attendees. With these services, comments are routinely provided to panel participants by both by text and audio.

*The Advisory Committee should convene another hearing with a meaningful opportunity for public participation. The Advisory Committee should also make available the public comments it has received.*

## **3. Establish the AI and Law Enforcement Subcommittee**

In addition to your ongoing obligations under the FACA, Congress made clear that one of the key responsibilities of the NAIAC would be to study and assess the use of AI in the law enforcement section. Pursuant to Section 5104(e) of the FACA, the NAIAC Chairperson was to "establish a subcommittee that shall provide advice to the President, through the Committee, on matters relating to the development of artificial intelligence relating to law enforcement, including advice on the following":

- a. Bias, including whether the use of facial recognition by government authorities, including law enforcement agencies, is taking into account ethical considerations and addressing whether such use should be subject to additional oversight, controls, and limitations.
- b. Security of data, including law enforcement's access to data and the security parameters for that data.
- c. Adoptability, including methods to allow the United States Government and industry to take advantage of artificial intelligence systems for security or law enforcement purposes while at the same time ensuring the potential abuse of such technologies is sufficiently mitigated.
- d. Legal standards, including those designed to ensure the use of artificial intelligence systems are consistent with the privacy rights, civil rights and civil

liberties, and disability rights issues raised by the use of these technologies.<sup>10</sup>

As of October 28, 2022, it does not appear that you have established the Subcommittee on AI and Law Enforcement as the statute requires.

*Pursuant to the authorizing legislation for the Advisory, you should establish the AI and Law Enforcement Subcommittee as soon as practicable and provide opportunities for public participation in the work of the Subcommittee.*

#### **4. Provide a Justification for Hiring a Private Contractor to Write the NAIAC Report or Simply have Advisory Committee Members to Write their Report**

On July 21, 2022, the National Institute of Standards and Technology announced that it would provide a contract to the Institute for Defense Analyses, Inc (IDA) for "synthesizing meetings; conducting research; collaborating with NAIAC staff and collaborators on research; and producing technical analysis of the committee's findings, and recommendations."<sup>11</sup> The contract outlined several tasks to be completed by the NAIAC.

As of October 28, 2022, the NAIAC has provided no justification for the decision to hire a private contractor to write the Advisory Committee report.

*Preferable, of course, would be for the Advisory Committee to write the report as Congress intended.*

#### **Notification of Designated Federal Officer**

By way of copy below, we have notified the Designated Federal Officer (DFO) and the Chief of Staff for the Information Technology Laboratory, regarding our concern regarding compliance with the Federal Advisory Committee Act.<sup>12</sup>

#### **Conclusion**

As we wrote in our letter of October 4, 2022, we are in strong support of the mission of the National AI Advisory Committee. The United States needs a strong AI policy that builds

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<sup>10</sup>National AI Advisory Committee (US), Oct. 2022, <https://www.caidp.org/resources/naiac/>.

<sup>11</sup> Id.

<sup>12</sup> See NIST, *Call for Nominations To Serve on the National Artificial Intelligence Advisory Committee and Call for Nominations To Serve on the Subcommittee on Artificial Intelligence and Law Enforcement* (Sept. 8, 2021),

<https://www.federalregister.gov/documents/2021/09/08/2021-19287/call-for-nominations-to-serve-on-the-national-artificial-intelligence-advisory-committee-and-call>



upon the OECD AI Principles, the Blueprint for an AI Bill of Rights, and the White House Executive Orders on AI and Big Data. The NAIAC has a unique opportunity to carry forward this work on behalf of the American public.

It is for these reasons, as well as the general obligation of all federal Advisory Committees, that the NAIAC must fully comply with the Federal Advisory Committee Act. As stated above, we intend to monitor this situation closely.

We expect a formal written response to the points we have raised by November 11, 2022.

Thank you for your prompt attention to this matter.

Sincerely yours,

Handwritten signature of Marc Rotenberg in blue ink.

Marc Rotenberg  
CAIDP President

Handwritten signature of Merve Hickok in blue ink.

Merve Hickok  
CAIDP Chair

Handwritten signature of Karine Caunes in blue ink.

Karine Caunes  
CAIDP Director

Handwritten signature of Maison Bergeron in blue ink.

Maison Bergeron  
CAIDP Researcher

Cc: Designated Federal Officer, Melissa Banner ([melissa.banner@nist.gov](mailto:melissa.banner@nist.gov))  
Elham Tabassi, Chief of Staff, Information Technology Laboratory, National Institute of Standards and Technology ([elham.tabassi@nist.gov](mailto:elham.tabassi@nist.gov))