

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

Elec. Privacy Info. Ctr. v. Drone Advisory Comm.

Elec. Privacy Info. Ctr. v. Drone Advisory Comm., 369 F. Supp. 3d 27 (D.D.C. 2019) · Decided February 25, 2019

SUMMARY

The district court held that the Federal Advisory Committee Act (FACA) does not provide a private right of action, dismissing direct FACA claims for lack of subject matter jurisdiction. The court also dismissed APA open-meeting claims for lack of standing because the plaintiff did not allege it sought to attend the unannounced subcommittee meetings, and dismissed all claims against the Drone Advisory Committee itself as it is not an "agency" under the APA. However, the court allowed APA public-records claims against the FAA to proceed regarding records of the parent DAC, finding that subcommittees and task groups that report to a parent advisory committee and do not provide direct advice to the agency are not themselves "advisory committees" subject to FACA's disclosure requirements. Key topics include FACA's scope, subcommittee transparency obligations, informational standing, and the absence of an implied private right of action under FACA.

CASE DETAILS

COURT	United States District Court for the District of Columbia
WRITING FOR THE COURT	Rudolph Contreras
JURISDICTION	Federal
DECIDED	February 25, 2019
DISPOSITION	other
PROCEDURAL POSTURE	Motion to dismiss for lack of subject matter jurisdiction and failure to state a claim
STANDARD OF REVIEW	For subject matter jurisdiction, plaintiff bears burden; for failure to state a claim, plausible claim standard under Iqbal and Twombly.
PRECEDENTIAL VALUE	Published

TOPICS

civil procedure

subject matter jurisdiction

standing

motions to dismiss

administrative law

statutory interpretation

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether FACA provides a private right of action
2. Whether the Declaratory Judgment Act provides an independent cause of action
3. Whether EPIC has standing to bring APA open meeting claims
4. Whether the DAC is an agency subject to APA review
5. Whether the DACSC and DAC task groups are advisory committees under FACA
6. Whether EPIC stated a claim for APA claims regarding DAC records

HOLDINGS

1. FACA does not provide a private right of action.
2. The DJA does not provide an independent source of federal jurisdiction or a private right of action.
3. EPIC lacks standing because it did not allege that it sought to attend the closed meetings.
4. The DAC is not an agency because an entity cannot be both an advisory committee and an agency.
5. The DACSC and DAC task groups are not advisory committees because they report to the DAC and do not directly advise the FAA.
6. EPIC sufficiently pled its APA claims for failure to release DAC records.

KEY QUOTATIONS

“The Court concurs with the reasoning of others in this circuit that ‘FACA does not provide a cause of action, given that none is apparent from the statutory text.’” (at 38)

“Absent from the complaint are allegations of particularized harm to EPIC, which at a bare minimum would require EPIC to indicate that it had an interest in attending the DACSC and task group meetings before they took place but was unable to attend because of a lack of information available on when such meetings were to take place.” (at 40)

“The Court accordingly finds that the Complaint fails to allege facts that plausibly support the claim that the DAC task groups are advisory committees under FACA.” (at 46-47)

FACTUAL BACKGROUND

The Federal Aviation Administration created the Drone Advisory Committee (DAC) to address drone integration issues. The DAC operated with a subcommittee (DACSC) and three task groups between 2016 and 2018. The DAC held public meetings, but the DACSC and task groups held unannounced, closed meetings. EPIC requested records and filed suit under FACA and the APA.

PROCEDURAL HISTORY

EPIC filed suit alleging FACA violations by the DAC, its subcommittee, and task groups. Defendants moved to dismiss for lack of subject matter jurisdiction and failure to state a claim.

DISPOSITION

other

CASES CITED

- Alexander v. Sandoval, 532 U.S. 275 (2001)
- Int'l Union, Security, Police & Fire Professionals of Am. v. Faye, 828 F.3d 969 (D.C. Cir. 2016)
- Ctr. for Biological Diversity v. Tidwell, 239 F. Supp. 3d 213 (D.D.C. 2017)
- Dunlap v. Presidential Advisory Comm'n on Election Integrity, 286 F. Supp. 3d 96 (D.D.C. 2017)
- Lawyers' Comm. for Civil Rights Under Law v. Presidential Advisory Comm'n on Election Integrity, 265 F. Supp. 3d 54 (D.D.C. 2017)
- Public Citizen v. U.S. Dep't of Justice, 491 U.S. 440 (1989)
- FEC v. Akins, 524 U.S. 11 (1998)
- Byrd v. EPA, 174 F.3d 239 (D.C. Cir. 1999)
- Cummock v. Gore, 180 F.3d 282 (D.C. Cir. 1999)
- Friends of Animals v. Jewell, 828 F.3d 989 (D.C. Cir. 2016)
- Nat'l Anti-Hunger Coalition v. Exec. Comm., 557 F. Supp. 524 (D.D.C. 1983)
- Ass'n of Am. Physicians & Surgeons v. Clinton, 997 F.2d 898 (D.C. Cir. 1993)
- Freedom Watch, Inc. v. Obama, 807 F. Supp. 2d 28 (D.D.C. 2011)
- Ali v. Rumsfeld, 649 F.3d 762 (D.C. Cir. 2011)
- Kokkonen v. Guardian Life Ins. Co. of Am., 511 U.S. 375 (1994)
- Lujan v. Defs. of Wildlife, 504 U.S. 555 (1992)
- Bell Atl. Corp. v. Twombly, 550 U.S. 544 (2007)
- Ashcroft v. Iqbal, 556 U.S. 662 (2009)

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