

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

ELECTRONIC PRIVACY
INFORMATION CENTER,

Plaintiff,

v.

PRESIDENTIAL ADVISORY
COMMISSION ON ELECTION
INTEGRITY, *et al.*,

Defendants.

Civil Action No. 17-1320 (CKK)

ORDER
(July 19, 2018)

Currently pending before the Court are Defendants' fully briefed [49] Motion to Dismiss, addressing the operative Second Amended Complaint, and Plaintiff's fully briefed [54] Motion for Leave to File a Third Amended Complaint. The factual predicates for these motions have changed substantially since briefing concluded.

First, the Presidential Advisory Commission on Election Integrity ("Commission") was terminated on January 3, 2018. Notice of Executive Order, ECF No. 57. There can be no further collection of state voter data by the Commission. The Director of White House Information Technology ("WHIT") has also stated under penalty of perjury that "[t]he White House stands ready to destroy the state voter data" that was collected, pending the resolution of litigation holds in this case and related litigation concerning the Commission. 4th Decl. of Charles C. Herndon, ECF No. 61-1, ¶¶ 5, 7. Moreover, "[n]o member of the former Commission has ever been provided access to the state voter data," nor has it ever "been transferred to any entity or individual" outside of the "four members of the WHIT's staff [who] have ever had access to the data." *Id.* ¶ 2. "These staff members are not authorized to transfer or utilize this data." *Id.*

Second, on June 20, 2018, Defendants sent a letter to plaintiffs in six cases against the Commission requesting plaintiffs' consent to destruction of the state voter data. Defendants attributed the continued retention of the data to litigation holds, "as [these records] may be relevant to claims brought in [the six] cases." Defs.' Letter, Disposal of State Voter Data Obtained by the Former Presidential Advisory Commission on Election Integrity, ECF No. 61-2, at 2. A notice that Plaintiff in this case submitted to the Court today contains a response letter to the Government, dated July 19, 2018, from the plaintiffs in all six cases. Notice, ECF No. 62. All of the plaintiffs make clear that they "do not oppose the deletion of data from state voter rolls that was provided to the Commission in response to Mr. Kobach's request" and "do not assert

any litigation hold over the data.” Pl.’s Letter, Disposal of State Voter Data Obtained by the Former Presidential Advisory Commission on Election Integrity, ECF No. 62-1.

Because the pending motions do not reflect these material factual developments, the Court shall **DENY WITHOUT PREJUDICE** Defendants’ [49] Motion to Dismiss and **DENY WITHOUT PREJUDICE** Plaintiff’s [54] Motion for Leave to File a Third Amended Complaint.

The Court is of the view that no further adjudication in this matter is necessary. Plaintiff itself acknowledges that “the Defendants will have unilaterally provided all substantive relief that [Plaintiff] sought in its Complaint” once Defendants complete “the deletion of all state voter data collected by the [now-defunct] Commission.” Notice, ECF No. 62, at 2.

Defendants shall file a Notice by **AUGUST 20, 2018**, confirming whether all state voter data collected by the Commission has been deleted, and if not, identifying when Defendants expect to complete that process. Upon Defendants’ confirmation of deletion, the Court expects that this case can be dismissed.

SO ORDERED.

Dated: July 19, 2018

/s/
COLLEEN KOLLAR-KOTELLY
United States District Judge