

LabMD next argues that there is a “reasonable suspicion” that I have prejudged this matter because the FTC withheld certain documents on the basis of the deliberative process privilege in responding to a Freedom of Information Act request about the Oversight Committee’s requests for information. This ~~also~~ is equally unfounded. Recusal is required only where “a disinterested observer may conclude that [the decisionmaker] has in some measure adjudged the facts as well as the law in a particular case in advance of hearing it.”³ A party seeking disqualification must show that the official has “demonstrably made up [her] mind about important and specific factual questions and [is] impervious to contrary evidence.”⁴ LabMD’s claim of prejudgment falls far short of this standard. The deliberative process privilege applies to many types of agency determinations reached by officials at various levels within the agency, including recommendations responding to Congressional inquiries.⁵ Accordingly, the FTC’s invocation of that privilege provides no basis whatsoever for any claim of prejudgment.

The facts indicate nothing more