



April 11, 2018

Via Regular Mail and Online Form

Catrina Purvis, CISSP, Esq.
Chief Freedom of Information Act Officer
Office of Privacy and Open Government
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Dear Dr. Purvis:

The NAACP Legal Defense & Educational Fund, Inc. (“LDF”) is the nation’s oldest civil and human rights law organization. LDF was founded in 1940 by Thurgood Marshall, who later became the first Black Supreme Court Justice, and, since its inception has worked to defend and advance the voting rights of Black Americans and protect the integrity of our nation’s democracy. On behalf of LDF, and in response to the March 26, 2018 decision issued by U.S. Department of Commerce (the “Department”) Secretary Wilbur Ross to reinstate a citizenship question on the 2020 decennial U.S. Census at the request of the U.S. Department of Justice, I hereby request copies of the following documents pursuant to the Freedom of Information Act, 5 U.S.C. § 552:

- (1) All documents,¹ including but not limited to draft and final memoranda, opinions, analyses, or correspondence, relating to the Department’s review of whether a citizenship status question on the 2020 decennial U.S. Census is necessary to enforce Section 2 of the Voting Rights Act and/or how adding a citizenship question will improve protections for minority voting rights.
- (2) All documents, including but not limited to draft and final memoranda, opinions, analyses, or correspondence, relating to the U.S. Department of Justice’s request for a citizenship status question on the 2020 decennial U.S. Census as necessary to enforce Section 2 of the Voting Rights Act.

¹ The term “document” is to be interpreted in the broadest possible sense within the meaning of the Freedom of Information Act and shall include, without limitation, any written, printed, typed, spoken, computerized, or other graphic, phonic, or recorded matter of any kind or nature, however produced or reproduced, whether sent or received or neither, including drafts and copies bearing notations or marks not found on the original.



- (3) All documents, including but not limited to draft and final memoranda, opinions, analyses, or correspondence, relating to the Department’s review of whether a citizenship status question on the American Community Survey (ACS) is “insufficient in scope, detail, and certainty” to enforce Section 2 of the Voting Rights Act.²
- (4) All 50-plus letters reviewed by the Department sent by “stakeholders, interest groups, Members of Congress, and state and local officials” as part of the Department’s decision-making process in deciding to reinstate the citizenship question on the 2020 decennial Census; all documents relating to “specific conversations” that Secretary Ross had “on the citizenship question with over 24 diverse, well informed and interested parties representing a broad range of views”;³ and all documents relating to the above-mentioned correspondence.
- (5) All documents, including but not limited to draft and final memoranda, opinions, analyses, or correspondence, relating to the Department’s review of whether a citizenship status question on the 2020 decennial U.S. Census will have an impact on the response rate of Black or African American people on the 2020 decennial U.S. Census count.
- (6) All documents, including but not limited to draft and final memoranda, opinions, analyses, or correspondence, relating to the Department’s review of whether a citizenship status question on the 2020 decennial U.S. Census will have an impact on the response rate of non-Black or non-African American racial or ethnic groups on the 2020 decennial U.S. Census count.
- (7) All documents, including but not limited to draft and final memoranda, opinions, analyses, or correspondence, relating to the Department’s review of whether a citizenship status question on the 2020 decennial U.S. Census will impact how federal funding is allocated to the states or to different federal programs.
- (8) All documents, including but not limited to draft and final memoranda, opinions, analyses, or correspondence, relating to the Department’s review of whether a citizenship status question on the 2020 decennial U.S. Census will have an impact on apportionment of Congressional seats among states.

² Memorandum from Wilbur Ross, Secretary, U.S. Dep’t of Commerce, to Karen Dunn Kelley, Under Secretary for Economic Affairs, U.S. Dep’t of Commerce at 2 (Mar. 26, 2018), https://www.commerce.gov/sites/commerce.gov/files/2018-03-26_2.pdf (directing the Census Bureau to reinstate a question on citizenship to the 2020 decennial census).

³ *Id.* at 1-2.



- (9) All documents, including but not limited to draft and final memoranda, opinions, analyses, or correspondence, relating to the Department’s review of whether a citizenship status question would “lead to increased non-response follow-up costs” and/or “significant monetary costs, programmatic or otherwise.”⁴
- (10) All documents, including but not limited to draft and final memoranda, opinions, analyses, or correspondence, relating to the Department’s review of whether a citizenship status question would “depress response rate” and “lead to . . . less accurate responses.”⁵
- (11) All documents, including but not limited to draft and final memoranda, instructions, manuals, guidelines, and correspondence, relating to the Department’s standard process for adding a question to the 2020 decennial U.S. Census.
- (12) All documents, including but not limited to draft and final memoranda, instructions, manuals, guidelines, and correspondence, relating to the Department’s process for researching, studying, and testing of a citizenship status question in contemplation of adding it to the 2020 decennial U.S. Census.
- (13) All documents, including but not limited to draft and final memoranda, opinions, analyses, or correspondence, relating to the Department’s research, studying, and testing of changes to the decennial U.S. Census since January 1, 1990.
- (14) All documents, including but not limited to draft and final memoranda, opinions, analyses, or correspondence, relating to whether an untested citizenship status question will impact the response rate to the decennial U.S. Census.
- (15) All documents, including but not limited to draft and final memoranda, opinions, analyses, or correspondence, relating to the Department’s review of whether concerns about data confidentiality and potential misuse of data might deter 2020 decennial U.S. Census respondents from answering any Census questions.

LDF requests expedited processing under 5 U.S.C. § 552(a)(6)(E) because the requested records concern the integrity of the democratic process, the funding of public programs, and other matters that are of vital interest to the American public. The requested records, thus, involve matters “of widespread and exceptional media interest in which there exist possible

⁴ *Id.* at 5, 7.

⁵ *Id.* at 5.



questions about the government's integrity that affect public confidence." 28 C.F.R. § 16.5(e)(1).

Otherwise, please provide a response to this request no later than 20 business days after receipt of this request pursuant to 5 U.S.C. § 552 (a)(3) and (6). If photocopies are provided, then LDF respectfully requests a waiver of copying and other fees, as it is a 501(c)(3), non-profit organization seeking these documents in the public interest and because the information is likely to contribute significantly to the public's understanding of government operations or activities with respect to the 2020 decennial U.S. Census count. *Id.* § 552(a)(4)(A)(iii). The information requested will not be used for commercial purposes. If the Freedom of Information Act Office declines LDF's request for a waiver, then please provide an invoice, detailing reasonable standard charges, prior to fulfilling this request. *Id.* § 552(a)(4)(A)(ii).

If the Department determines that any of the requested documents are exempt from disclosure, please provide a *Vaughn* index describing any such document(s) or parts of document(s) withheld and the justification for withholding any document(s) or any part of any document(s), including the specific exemption claimed and the consequences of providing the withheld information. *See Vaughn v. Rosen*, 484 F.2d 820, 827 (D.C. Cir. 1973); *Mead Data Central, Inc. v. U.S. Dep't of Air Force*, 566 F.2d 242, 251 (D.C. Cir. 1977) ("we require that when an agency seeks to withhold information it must provide a relatively detailed justification, specifically identifying the reasons why a particular exemption is relevant and correlating those claims with the particular part of a withheld document to which they apply"); *King v. Dep't of Justice*, 830 F.2d 210, 223-24 (D.C. Cir. 1987) ("A withholding agency must describe each document or portion thereof withheld, and for each withholding it must discuss the consequences of disclosing the sought-after information"). For any document or record for which an exemption is claimed, please disclose any reasonably segregable non-exempt portion of the requested document or record. 5 U.S.C. § 552(b).

In the event that you have any questions concerning the type or scope of materials we have requested, please contact me by email or by telephone at (212) 965-7715.

Sincerely,

A handwritten signature in black ink, appearing to read "Sherrilyn Ifill", written in a cursive style.

Sherrilyn Ifill, President & Director Counsel
Sam Spital, Director of Litigation
Leah C. Aden, Senior Counsel

Ltr. to Dr. Purvis
Department of Commerce
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