December 1, 2022

Ms. Theresa J. Lee
Election Law Clinic
Harvard Law School
6 Everett Street, Suite 4105
Cambridge, MA 02138
thlee@law.harvard.edu

Dear Ms. Lee:

This letter is in response to your Freedom of Information Act (FOIA), Title 5, United States Code, Section 552, request submitted July 7, 2022, to the U.S. Census Bureau's FOIA Office. We received your request in this office on July 7, 2022. We have assigned to it tracking number DOC-CEN-2023-000130 and are responding under the FOIA to your clarification dated November 18, 2022, for:

1. 2010 Census Production Settings Demonstration Data Product Noisy Measurement Persons File (this file comprises the noisy measurements used to produce tables P1-P5 in the 2010 Census Production Settings Demonstration Data Product released on June 8, 2021)

2. 2020 Redistricting Data (P.L. 94-171) Summary Noisy Measurement Persons File (this file comprises noisy measurements used to produce tables P1-P5 in the official 2020 Census Redistricting [P.L. 94-171] Redistricting Data Summary File released on August 12, 2021)

After conducting a reasonable search, we have determined that we have no records responsive to item 1 of your request. This information was destroyed on March 26, 2022, because it was not operationally efficient to maintain them. As part of the Disclosure Avoidance System development, the Census Bureau generated approximately 700 redistricting Noisy Measurement Files from the 2010 Census, each containing approximately 16.6 billion statistics and each requiring approximately 950 gigabytes of storage. As these were intermediate, experimental files, responsible fiscal management prompted their deletion. Please note that the 2010 Noisy Measurement Files are temporary records not subject to any approved record retention schedule with NARA, and these temporary files were deleted before you submitted your FOIA request.

We are withholding item 2, the 2020 Redistricting Data (P.L. 94-171) Summary Noisy Measurement Persons File, in full pursuant to FOIA Exemption 3, 5 U.S.C. § 552(b)(3), in conjunction with 13 U.S.C. § 9(a)(2). FOIA Exemption 3 exempts from disclosure records or portions of records that are made confidential by statute, and Title 13 strictly prohibits publication whereby the data furnished by any particular establishment or individual can be identified. *See Fair Lines American Foundation Inc. v. U.S. Department of Commerce and U.S. Census Bureau*, Memorandum Opinion at No. 21-cv-1361 (D.D.C. August 02, 2022) (holding that 13 U.S.C. § 9(a)(2) permits some level of attenuation in the chain of causation, and thus supports the withholding of information that could plausibly allow data furnished by a particular establishment or individual to be more easily reconstructed).

Although the data you are seeking must be withheld under FOIA, we note that we have a well-defined procedure to provide secure access to data protected under Title 13 through the Federal Statistical Research Data Centers (FSRDCs) for approved research projects. (Columbia University and Harvard University are institutional partners of the New York and Boston FSRDCs, respectively.) If Professor Phillips were to submit a qualifying project proposal through an FSRDC, upon review and acceptance of the project we would be able to approve authorized access to the confidential 2020 Redistricting Data (P.L. 94-171) Summary Noisy Measurement File for his research.

Based on the above information, this constitutes a denial of your request under FOIA. Although we are aware that this matter is already in litigation, we must inform you that you have the right to appeal this denial of the FOIA request. An appeal must be received within 90 calendar days of the date of this response letter. Any appeal should be addressed to the following office:

> Assistant General Counsel for Employment, Litigation, and Information
> Room 5896
> U.S. Department of Commerce,
> 14th and Constitution Avenue, N.W.
> Washington, D.C. 20230

An appeal may also be sent by e-mail to FOIAAppeals@doc.gov, or by FOIAonline, if you have an account in FOIAonline, at https://foiaonline.gov/foiaonline/action/public/home. The appeal should include a copy of the original request and initial denial, if any. All appeals should include a statement of the reasons why the records requested should be made available and why the adverse determination was in error. The appeal letter, the envelope and the e-mail subject line should be clearly marked "Freedom of Information Act Appeal."

The e-mail, FOIAonline, and Office are monitored only on working days during normal business hours (8:30 a.m. to 5:00 p.m., Eastern Time, Monday through Friday). FOIA appeals posted to the e-mail box, FOIAonline, or Office after normal business hours will be deemed received on the next normal business day. If the 90th calendar day for submitting an appeal falls on a Saturday, Sunday or legal public holiday, an appeal received by 5:00 p.m., Eastern Time, the next business day will be deemed timely.

In addition, you may contact the Office of Government Information Services (OGIS) at the National Archives and Records Administration to inquire about the FOIA mediation services they offer. The contact information for OGIS is as follows:

> Office of Government Information Services
> National Archives and Records Administration
> 8601 Adelphi Road-OGIS
> College Park, Maryland 20740-6001
> e-mail at ogis@nara.gov
> telephone at 202-741-5770; toll free at 1 877-684-6448
> facsimile at 202-741-5769

Because this request is in litigation as *Phillips v. Census*, No. 22-cv-9304 (S.D.N.Y.), if you have any questions concerning this letter or wish to discuss the matter please contact Jeannette Vargas, the Assistant United States Attorney representing the Census Bureau in the lawsuit, at Jeannette.Vargas@usdoj.gov or 212-637-2678.

Sincerely,

Jean M. McKenzie, Esq., CISM
Acting Freedom of Information Act/Privacy Act Officer
Acting Chief, Freedom of Information Act Office

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