

Exhibit A

VIA ONLINE PORTAL

February 19, 2021

ATTN: FOIA Office
Vernon E. Curry, PMP, CIPP/G
U.S. Census Bureau, Room 3J235
4600 Silver Hill Road
Washington, DC 20233-3700
Census.efoia@census.gov

Re: Freedom of Information Act (FOIA) Request

Dear FOIA Officer:

Fair Lines America Foundation, Inc. (“Fair Lines”) makes the following noncommercial request for records pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552, 15 C.F.R. § 4.1 *et seq.*, and any other implementing regulations of your agency.

Please note that this request should be treated as separate from Fair Lines’ February 18, 2021 request to the Census Bureau, which has been assigned reference number DOC-CEN-2021-000970. Furthermore, this new request should not be construed in any way that would result in waiving, tolling, or resetting the FOIA statutory twenty-day (or thirty-day under “unusual circumstances”) requirement under 5 U.S.C. §§ 552(a)(6)(A) and (a)(6)(B) for a determination in response to that previous request.

Fair Lines requests that a copy of the records detailed below be provided to it, and does not wish to inspect the records first. Fair Lines will then make public information about issues of public importance surrounding the United States Census Bureau’s public announcements that it has experienced difficulties and had various issues regarding the gathering and counting of group quarters data for the 2020 Census.¹ Complications with the 2020 Census generally have already caused significant hurdles for many looking forward to elections scheduled in 2021 and 2022. Disclosure of the requested information here will also contribute significantly to the public’s understanding of recent complications with the 2020 Census in light of the COVID-19 pandemic, as well as the impact of group residential facilities generally on the overall populations of various localities and states. Accordingly, it is imperative that the public have access to records casting light in any way on the 2020 Group Quarters Enumeration with its significant implications for our nation’s redistricting and electoral process.

¹ See, e.g., Release Number CB20-RTQ.06, *Census Bureau Statement on Modifying 2020 Census Operations to Make Sure College Students are Counted*, U.S. Census Bureau (Mar. 15, 2020), <https://www.census.gov/newsroom/press-releases/2020/modifying-2020-operations-for-counting-college-students.html>; Press Release, *2020 Census Operational Adjustments Due to COVID-19*, U.S. Census Bureau News, <https://2020census.gov/en/news-events/operational-adjustments-covid-19.html> (accessed on February 19, 2021).

I. Requested Records

Fair Lines requests the following records² in the possession of the U.S. Census Bureau:

1. Records demonstrating or reflecting—for each institutional living facility or housing facility from which a completed 2020 Group Quarters Enumeration questionnaire was received (or any other method of group quarters reporting received such as Drop-Off, Pick Up, Pick Up Paper Response Data File, or Self-Enumeration)—the number of residents reported by each living or housing facility nationwide in response to the Census Bureau’s request for group quarters population data, for each resident living or sleeping at such facility on Census Day, April 1, 2020, and the dates on which such response(s) were received.

Please note that this request encompasses both digital and physical records. “Record” should be understood as that term is defined under FOIA (5 U.S.C. § 552(f)(2)), and applicable case law (*see, e.g., Forsham v. Harris*, 455 U.S. 169, 193 (1980)), existing in any format whatsoever. Please understand “Census Bureau” to include any employees working for the Bureau.

If any portion of the requested records is exempt from disclosure, please state specifically why it is not reasonable to segregate portions of the record for release, and provide an index of the withheld materials as required under *Vaughn v. Rosen*, 484 F.2d 820, 827-28 (D.C. Cir. 1973), cert. denied, 415 U.S. 977 (1974).³

In the event that some portions of the requested records are properly exempt from disclosure, please disclose any “reasonably segregable” non-exempt portions of the requested records as required by FOIA. 5 U.S.C. § 552(b). Pursuant to regulation, please clearly delineate any and all redactions in such a manner so that the justification for each redaction is apparent. *See* 15 C.F.R. § 4.7(c)(1)(iii). If it is your position that a document contains non-exempt segments and that those non-exempt segments are so dispersed throughout the documents as to make segregation impossible, please state what portion of the document is non-exempt, and how the material is dispersed through the document. *Mead Data Cent. v. U.S. Dep’t of the Air Force*, 455 F.2d 242, 261 (D.C. Cir. 1977). Claims of non-segregability must be made with the same detail as required for claims of exemptions in a *Vaughn* index. If a request is denied in whole, please state specifically that it is not reasonable to segregate portions of the record for release.

² These requested records broadly include, but are not limited to, written correspondence, email correspondence, text messages, telephone messages, voice mail messages, records of telephone correspondence, records pertaining to in-person meetings, office memoranda, videotapes, photographs, computer print-outs, calendar or scheduling entries, *etc.*

³ As you are undoubtedly aware, a *Vaughn* index must describe each document claimed as exempt with sufficient specificity “to permit a reasoned judgment as to whether the material is actually exempt under FOIA.” *Founding Church of Scientology v. Bell*, 603 F.2d 945, 959 (D.C. Cir. 1979). Moreover, the *Vaughn* index must “describe each document or portion thereof withheld, and for each withholding it must discuss the consequences of supplying the sought-after information.” *King v. U.S. Dep’t of Justice*, 830 F.2d 210, 223–24 (D.C. Cir. 1987).

II. Guidance Regarding the Search and Processing of Requested Records

In connection with this request for information and records, Fair Lines provides the following guidance regarding the search of requested records and the scope of those records:

- Please search all locations and systems likely to have responsive records, regardless of format, medium, or physical characteristics. Please search all locations likely to contain written communications, including relevant hard-copy files, correspondence files, appropriate locations on hard drives and shared drives, emails, text messages or other direct messaging systems (such as Teams, iMessage, Signal, WhatsApp, Signal, or Twitter direct messages), voicemail messages, instant messaging systems, shared messages systems, or other platforms.
- In conducting your search, please understand the terms “record,” “document,” “communication,” and “memorandum,” in their broadest sense, to include any written, typed, recorded, graphic, printed, or audio material of any kind without limitation. We seek records of any kind, including electronic records, audiotapes, videotapes, letters, emails, email addresses, facsimiles, telephone messages, voice mail messages, telephone conversations, calendar entries, scheduling entries, photographs, as well as transcripts, notes, or minutes of any meetings or discussions, and correspondence detailing meetings or discussions in any form whatsoever and without limitation.
- Our request for records includes any attachments to those records or other materials enclosed with those records when they were previously transmitted. If an email is responsive to our request, our request includes all prior messages sent or received in that email chain, as well as any attachments to the email.
- Please produce responsive records in the format most felicitous to an expedited production.
- Upon receipt of this request, please take all reasonable steps to preserve relevant public records while the request is pending.

Notice is hereby given that as a non-profit organization requesting these records, Fair Lines qualifies as an “other requester[.]” within the meaning of 5 U.S.C. § 552(a)(4)(A)(ii)(III) and 15 C.F.R. § 4.11(c)(1)(iv). Fair Lines states that it will use any records released under this FOIA request to evaluate the operations of the U.S. Census Bureau.

III. Background

An open and transparent government is essential to the functioning of America’s democracy. The American public deserves to know what is occurring in the day-to-day discussions and activities of our government, particularly with implications as significant as the Census Bureau’s recently announced postponement of the redistricting data release date.

Fair Lines is a Section 501(c)(3) non-profit organization committed to educates the public on fair

and legal redistricting through comprehensive data gathering, processing, and deployment; dissemination of relevant news and information; and strategic investments in academic research and litigation. To further this mission, it also files FOIA requests to help promote open and transparent government regarding the federal government’s decisions and actions taken regarding apportionment and redistricting.

This request will help Fair Lines monitor the activities of the Census Bureau, and to then inform the public regarding the same. Fair Lines can then develop and make public detailed information about the Bureau’s activities and communications.

IV. Application for Fee Waiver or Limitation of Fees

Fair Lines requests that all fees associated with processing this request be either waived or limited, in accordance with 5 U.S.C. § 552(a)(4)(A)(iii) and your agency’s regulations.

Under FOIA, an agency must provide requested records without charge or at a reduced charge if disclosure of the information is in the public interest because it is “likely to contribute significantly to public understanding of the operations or activities of the Government” and is “not primarily in the commercial interest of the requester.” 5 U.S.C. § 552(a)(4)(A)(iii). These factors weigh in favor of a fee waiver or reduction for this request because the subject of this request clearly concerns identifiable operations and activities of the Federal Government. 15 C.F.R. § 4.11(l)(ii)(2)(i). The disclosures of key information not already “in the public domain” (as sought in this request), *see* 15 C.F.R. § 4.11(l)(ii)(2)(ii), will serve the public interest by significantly contributing to a better public understanding of the Census Bureau’s public statements regarding difficulties and issues that have arisen while gathering and counting group quarters data for the 2020 Census.⁴ Disclosure of this requested information is also in the public interest because it will contribute significantly to the public’s understanding of the impact of residential facilities on the overall populations of various localities and states. Accordingly, given the public significance of the information and records sought in this request, it is also likely to appeal to a “reasonably broad audience of persons interested in the subject.” 15 C.F.R. § 4.11(l)(ii)(2)(iii).

Specifically, the public has a significant interest in understanding the actions of the Census Bureau regarding the release of population data for purposes of apportionment and redistricting. Any improprieties, irregularities, or inadequacy in quality checks of the data threaten to undermine public trust in the fairness of the redistricting process and our democracy. Accordingly, records casting light on this should be made available for immediate public

⁴ *See, e.g.*, Release Number CB20-RTQ.06, *Census Bureau Statement on Modifying 2020 Census Operations to Make Sure College Students are Counted*, U.S. Census Bureau (Mar. 15, 2020), <https://www.census.gov/newsroom/press-releases/2020/modifying-2020-operations-for-counting-college-students.html>; Press Release, *2020 Census Operational Adjustments Due to COVID-19*, U.S. Census Bureau News, <https://2020census.gov/en/news-events/operational-adjustments-covid-19.html> (last visited February 19, 2021); *see also* Jennifer D. Williams, *2020 Census Fieldwork Delayed by COVID-19*, Congressional Research Service (updated Dec. 22, 2020), <https://crsreports.congress.gov/product/pdf/IF/IF11486>.

dissemination for purposes of accountability to the people.

Records with the potential to shed light on these matters would contribute “significantly” to public understanding of operations of the federal government, 15 C.F.R. § 4.11(l)(ii)(2)(iv), including by giving the public a historical record of the actions of Census Bureau officials during this critical time at the Bureau. As publication of these records would benefit the public’s understanding of the Bureau’s actions regarding collection of group quarters data, Fair Lines will make the Bureau’s responses publicly available with accompanying analysis.

Finally, this request is primarily and fundamentally for non-commercial purposes. 15 C.F.R. § 4.11(l)(ii)(3). As a 501(c)(3) nonprofit, Fair Lines does not have a commercial purpose in the disclosure and the release of the information requested is not in its financial interest. *See Judicial Watch, Inc. v. Rossotti*, 326 F.3d 1309, 1312 (D.C. Cir. 2003) (“Congress amended FOIA to ensure that it be liberally construed in favor of waivers for noncommercial requesters.” (internal quotation marks omitted)). Fair Lines is committed to providing education in the fields of demography, political science, geographic information systems, and legal studies. Fair Lines supports fair and legal redistricting through comprehensive data gathering, processing, and deployment; dissemination of relevant news and information; and strategic investments in academic research and litigation., all while promoting open and transparent government and public accountability by monitoring the activities of policymakers and officials through FOIA requests. Fair Lines will use information gathered, and its analysis of it, to educate the public through reports, press releases, or other media. Fair Lines also makes materials it gathers available on its public website and promotes their availability on social media platforms.

Accordingly, Fair Lines qualifies for a waiver of fees under FOIA. However, if Fair Lines’ application for a complete fee waiver is denied, Fair Lines hereby requests that the Census Bureau notify Fair Lines of the actual or estimated amount of the fees to be incurred and assessed for the “document search and duplication” of the agency records responsive to this request. 5 U.S.C. § 552(a)(4)(A)(ii)(III); *see also* 15 C.F.R. § 4.11(c)(1)(iv).

V. Application for Expedited Processing

Fair Lines requests that the processing of this request be expedited pursuant to 15 C.F.R. § 4.6(f). This request qualifies for expedited processing both because it involves “[a] matter of widespread and exceptional media interest involving questions about the Government’s integrity which affect public confidence.” 15 C.F.R. § 4.6(f)(iii). Indeed, there are few matters of more widespread interest than the integrity of our election system and democracy; issues regarding the accuracy and collection of group quarters data and its potentially significant impact on the redistricting process are integrally connected to these critical matters.

Additionally, there is an “urgency to inform the public about an actual or alleged Federal Government activity,” and Fair Lines is “primarily engaged in disseminating information.” 15 C.F.R. § 4.6(f)(iv). The information sought here is urgently needed for public dissemination because the public has a pressing interest in learning of any improprieties, irregularities, or inadequacy in quality checks of Census Bureau data, including group quarters data where the

Bureau has already acknowledged numerous difficulties and issues that have arisen while gathering and counting it for the 2020 Census. Members of the public also deserve a voice in shaping the trajectory of the Census Bureau in a positive future direction, strengthening our democracy, and securing public trust in the fairness of the redistricting process. Finally, given the time-sensitive nature of the release of redistricting data in light of upcoming elections, as well as the decennial nature of the Census Bureau's data collection, the public deserves to know how this process is being conducted, as well as to have a voice in shaping these activities.

And as described above, Fair Lines uses the information it gathers and analyzes to educate the public generally through reports, press releases, or other media. Fair Lines also makes materials it gathers publicly available on its website. As such, it frequently engages in publication and dissemination of important information to the broader public regarding various aspects of our government. Accordingly, expedited processing is warranted here.

I certify that my statements concerning the need for expedited processing are true and correct to the best of my knowledge and belief. 15 C.F.R. § 4.6(f)(3).

VI. Conclusion

If you have any questions about this request (including if you do not understand any part of this request), or believe that further discussions regarding search and processing would facilitate a more efficient production of records of interest to Fair Lines, please contact Jason Torchinsky by phone at (540) 341-8808 or by email at jtorchinsky@hvjt.law to discuss this request. Fair Lines welcomes an opportunity to discuss its request with you before you undertake your search or incur search or duplication costs. By working together at the outset, Fair Lines and your agency can decrease the likelihood of costly and time-consuming litigation in the future.

If records are available in electronic format, please email the responsive documents to jtorchinsky@hvjt.law. If not, please send responsive material in native format or in PDF format on a USB drive by mail to:

Jason Torchinsky
Holtzman Vogel Josefiak Torchinsky
15405 John Marshall Hwy
Haymarket, VA 20169

Because of the time-sensitive nature of this request, I ask that you strictly comply with the 20-day time limit established by FOIA and applicable regulations. *See* 5 U.S.C. § 552(a)(6)(A); 15 C.F.R. § 4.6(b). Please be advised that once this 20-day period has expired, you are deemed to have constructively denied this request, and Fair Lines will consider the internal administrative appeals process to be constructively exhausted. *See, e.g., Citizens for Ethics and Responsibility in Gov't v. Fed. Election Comm'n*, 711 F.3d 180 (D.C. Cir. 2013). I also respectfully request that documents be made available as soon as they are located and reviewed via a rolling production.

Please confirm receipt of this request and provide me with an estimate of processing time. I look

forward to receiving your response.

Sincerely,

A handwritten signature in black ink, appearing to read "Adam Kincaid". The signature is fluid and cursive, with a long horizontal stroke at the end.

/s/ Adam Kincaid

Adam Kincaid
Executive Director
Fair Lines America Foundation, Inc.
2308 Mount Vernon Ave. Ste. 716
Alexandria VA 22301-1328