

# EXHIBIT 1

**VIA ELECTRONIC MAIL**

June 3, 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](mailto:Census.efoia@census.gov)

Re: Freedom of Information Act (FOIA) Request

Dear FOIA Officer:

Legacy Foundation Action Fund, Inc. (“Legacy Foundation”) 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.

Legacy Foundation requests that a copy of the records detailed below be provided to it, and does not wish to inspect the records first. Legacy Foundation will then make public information of public importance surrounding the United States Census Bureau’s public and conflicting announcements that the Bureau intends to use synthetic data for the release of the American Community Survey (“ACS”) data.<sup>1</sup>

**I. Requested Records**

Legacy Foundation requests records<sup>2</sup> referencing or containing the term(s) “synthetic”, “ACS data users conference”, “American Community Survey data users conference”, “ACS privacy”, “American Community Survey privacy”, “formal privacy”, and/or “Ruggles” in the possession of the following U.S. Census Bureau employees and/or agents for the period of January 1, 2021, through May 31, 2021:<sup>3</sup>

- Dr. Ron S. Jarmin – Acting Director;
- Donna M. Daily – American Community Survey Office Chief;
- Tommy Wright – Chief of the Center for Statistical Research and Methodology;
- Victoria Velkoff – Associate Director for Demographic Programs;

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<sup>1</sup> Compare Mike Scheider, *Census Bureau’s use of ‘synthetic data’ worries researchers*, Associated Press, May 27, 2021, <https://apnews.com/article/census-2020-technology-data-privacy-business-be938fa5db887a0ae6858dff0be217ef> with Ron Jarmin (@jarmin\_ron), Twitter (May 28, 2021, 9:17am), [https://twitter.com/jarmin\\_ron/status/1398267258946850823](https://twitter.com/jarmin_ron/status/1398267258946850823).

<sup>2</sup> These requested records broadly include, but are not limited to, email correspondence, text messages, personal/private messages or instant messages (such as those found on Twitter, Facebook, and other social media), written correspondence, records pertaining to in-person meetings, office memoranda, *etc.*

<sup>3</sup> The list of terms should be read disjunctively such that the appearance of any single quoted term or phrase is responsive to this request.

- John M. Abowd – Associate Director for Research and Methodology and Chief Scientist;
- Rolando A. Rodriguez – Statistician;
- Michael Hawes – Senior Advisor for Data Access and Privacy.

Please note that as Dr. Jarmin used his personal Twitter account to conduct agency business, *see* fn. 1, a reasonable expectation exists that he, as well as those within his charge, have been using their personal accounts to conduct agency business. Therefore, Legacy Foundation’s request should be read to include a search of the listed individuals personal accounts in addition to their governmental accounts. *See Competitive Enter. Inst. v. Office of Sci. & Tech. Policy*, 827 F.3d 145, 149 (D.C. Cir. 2016) (“If the agency head controls what would otherwise be an agency record, then it is still an agency record and still must be searched or produced.”).

Please also 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).<sup>4</sup>

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 record 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.

## **II. Guidance Regarding the Search and Processing of Requested Records**

In connection with this request for information and records, Legacy Foundation 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

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<sup>4</sup> 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).

format, medium, or physical characteristics. Please search all locations likely to contain written communications regarding the same, 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,” “summary,” “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, spreadsheets, statistical tabulations, 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, Legacy Foundation 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). Legacy Foundation 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 activities of our government, particularly with implications as significant as the Census Bureau’s recently announced use, or possible use, of synthetic data in the ACS.

Legacy Foundation is a Section 501(c)(4) non-profit organization committed to, among other things, educating the public on government transparency issues.

This request will help Legacy foundation monitor the activities of the Census Bureau, and to then inform the public regarding the same. Legacy Foundation can then develop and make public

detailed information about the Bureau's activities.

#### **IV. Application for Fee Waiver or Limitation of Fees**

Legacy Foundation 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 changes to how the data is used or processed for the ACS.<sup>5</sup> 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 ACS data. Any improprieties, irregularities, or inadequacy in quality checks of the data threaten to undermine public trust in the Census Bureau and our democracy. Accordingly, records casting light on this should be made available for immediate public 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 the Census Bureau during this critical time. As publication of these records would benefit the public's understanding of the Bureau's actions regarding the dissemination of ACS data, Legacy Foundation 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)(4) nonprofit, Legacy Foundation 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)). Legacy Foundation is committed to providing education in the fields of citizenship, civil rights, and government transparency. Legacy Foundation will use information gathered, and its analysis of it, to educate the public through reports, press releases, or other media. Legacy Foundation also makes materials it gathers

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<sup>5</sup> *See*, fn. 1.

available on its public website and promotes their availability on social media platforms.

Accordingly, Legacy Foundation qualifies for a waiver of fees under FOIA. However, if Legacy Foundation's application for a complete fee waiver is denied, Legacy Foundation hereby requests that the Census Bureau notify Legacy Foundation 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**

Legacy Foundation requests that the processing of this request be expedited pursuant to 15 C.F.R. § 4.6(f). This request qualifies for expedited processing 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 the data released by the Census Bureau.

Additionally, there is an "urgency to inform the public about an actual or alleged Federal Government activity," and Legacy Foundation 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. 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 data disseminated by the Census Bureau.

And as described above, Legacy Foundation uses the information it gathers and analyzes to educate the public generally through reports, press releases, or other media. Legacy Foundation 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 Legacy Foundation, please contact Jason Torchinsky by phone at (540) 341-8808 or by email at [jtorchinsky@holtzmanvogel.com](mailto:jtorchinsky@holtzmanvogel.com) to discuss this request. Legacy Foundation 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, Legacy Foundation 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@holtzmanvogel.com](mailto:jtorchinsky@holtzmanvogel.com). If not, please send responsive material in native format or in PDF format on a USB drive by mail to:

Jason Torchinsky  
Holtzman Vogel Baran Torchinsky & Josefiak PLLC  
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 Legacy Foundation 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,

/s/ Christopher Rants

Christopher Rants  
President  
Legacy Foundation Action Fund  
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Suite 360  
Sioux City, IA 51101