

EXHIBIT A



November 22, 2017

Dionne Hardy, FOIA Officer
Office of Management and Budget
1800 G Street NW, Room 9026
Washington, DC 20503
Fax: (202) 395-3504

Via Email

Re: Freedom of Information Act Request (Expedited Processing Requested)

To Whom It May Concern:

Pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, the Protect Democracy Project hereby requests that your office produce within 20 business days the following records:

- 1) All records, including but not limited to emails, notes, and memoranda, reflecting, discussing, or otherwise relating to the possible appointment of Thomas Brunell as deputy director of the Census Bureau, including but not limited to:
 - a. Communications between the Office of Management and Budget and the Executive Office of the President,
 - b. Communications between the Office of Management and Budget and the Office of the Secretary of Commerce,
 - c. Communications between the Office of Management and Budget and the Census Bureau, and
 - d. Communications between the Office of Management and Budget and members of Congress or their staffs.

The timeframe for this item is January 20, 2017 through the date that searches are conducted for records responsive to this FOIA request.

- 2) All records, including but not limited to emails, notes, and memoranda, reflecting, discussing, or otherwise relating to communications between the Office of Management and Budget and
 - a. The Executive Office of the President,
 - b. The Office of the Secretary of Commerce,
 - c. The Census Bureau, and/or
 - d. Members of Congress or their staffs

regarding the 2020 census. The timeframe for this item is May 23, 2017 through the date that searches are conducted for records responsive to this FOIA request.

- 3) In addition to the records requested above, we also request records describing the processing of this request, including records sufficient to identify search terms used and locations and custodians searched, and any tracking sheets used to track the processing of this request. If your agency uses FOIA questionnaires or certifications completed by individual custodians or components to determine whether they possess responsive materials or to describe how they conducted searches, we also request any such records prepared in connection with the processing of this request.

EXPEDITED PROCESSING REQUEST

We request that you expedite the processing of this request pursuant to 5 U.S.C. § 552(a)(6)(E) and 28 C.F.R. § 16.5(e)(1)(ii), (iv). This request meets the criteria for expedited processing because there is “[a]n urgency to inform the public about an actual or alleged Federal Government activity, if made by a person who is primarily engaged in disseminating information;” and this request concerns “[a] matter of widespread and exceptional media interest in which there exist possible questions about the government’s integrity that could affect public confidence.” 28 C.F.R. § 16.5(e)(1)(ii), (iv).

The Protect Democracy Project intends to disseminate the information obtained in response to this request. As the District Court for the District of Columbia “easily” determined in recent litigation in a separate FOIA request, “Protect Democracy satisfied these standards” of being “primarily engaged in disseminating information.” *Protect Democracy Project, Inc. v. U.S. Dep’t of Def.*, No. 17-CV-00842 (CRC), 2017 WL 2992076, at *5 (D.D.C. July 13, 2017). The Protect Democracy Project operates in the tradition of 501(c)(3) good government organizations that qualify under FOIA as “news media organizations.” Like those organizations, the purpose of The Protect Democracy Project is to “gather information of potential interest to a segment of the public, use its editorial skills to turn the raw materials into distinct work, and distribute that work to an audience.” *Nat’s Sec. Archive v. Dep’t of Defense*, 880 F.2d 1381, 1387 (D.C. Cir. 1989). Indeed, The Protect Democracy Project has routinely demonstrated the ability to disseminate

information about its FOIA requests to a wide audience.¹ The Protect Democracy Project will disseminate information and analysis about this request—and any information obtained in response—through its website (protectdemocracy.org); its Twitter feed (<https://twitter.com/protctdemocracy>), which has more than 10,000 followers; its email list of approximately 20,000 people; and sharing information with other members of the press.

Moreover, the integrity of the 2020 Census, and its leadership, is unquestionably a matter of widespread media interest that goes directly to the heart of public confidence in our government.² The decennial census determines how to apportion the House of Representatives among the states. As the drafters of the Constitution knew, a representative government must know who it is representing. Similarly, the American public must have confidence that their representation in Congress is based on a fair and accurate census. Thomas Brunell, President Trump’s reported pick for deputy director of Census Bureau, has testified in support of Republican redistricting efforts, and has published a book entitled, “Redistricting and Representation: Why Competitive Elections are Bad for America.”³ There is therefore an urgent need for public awareness of any improper machinations regarding Mr. Brunell’s appointment, and of any attempt to politicize the 2020 Census.

The 2020 Census has already been labeled a “high risk program” by the U.S. Government Accountability Office due to rising costs and increased fraud and cyber-security risks.⁴ In addition, the accuracy of the census is threatened by significantly inadequate funding, resulting in cancelled testing and fears that hard-to-count populations will be undercounted.⁵ The political appointment of a partisan deputy director, rather than a non-partisan statistical expert, to lead the most important and complex data collection performed by the federal government represents a

¹ See, e.g., Lisa Rein, *Watchdog group, citing “integrity of civil service,” sues Trump to find out if feds are being bullied*, Wash. Post, Apr. 27, 2017, https://www.washingtonpost.com/news/powerpost/wp/2017/04/27/watchdog-group-citing-integrity-of-civil-service-sues-trump-to-find-out-if-feds-are-being-bullied/?utm_term=.8647ab128f3e; Ben Berwick, *Going to Court for Civil Servants*, Take Care, April 28, 2017, <https://takecareblog.com/blog/going-to-court-for-civil-servants>; Charlie Savage, *Watchdog Group Sues Trump Administration, Seeking Legal Rationale Behind Syria Strike*, N.Y. Times, May 8, 2017, <https://nyti.ms/2pX82OV>; Justin Florence, *What’s the Legal Basis for the Syria Strikes? The Administration Must Acknowledge Limits on its Power to Start a War*, Lawfare, May 8, 2017, <https://www.lawfareblog.com/whats-legal-basis-syria-strikes-administration-must-acknowledge-limits-its-power-start-war>.

² See, e.g., The Editorial Board, *Save the Census*, N.Y. Times (July 17, 2017), available at <https://www.nytimes.com/2017/07/17/opinion/census-trump-budget-cuts.html>; Charlie May, *Trump’s pick for Census position wrote a book saying “competitive elections are bad for America”*, Salon (Nov. 21, 2017), available at <https://www.salon.com/2017/11/21/trumps-pick-for-census-position-wrote-a-book-saying-competitive-elections-are-bad-for-america/>; Danny Vinik, *Is the Census Heading for a Crisis?*, Politico (May 13, 2017), available at <https://www.politico.com/agenda/story/2017/05/13/head-of-census-bureau-resigns-2020-problems-000441>.

³ Rebecca Shabad, *Report: Trump Considering Political Pick for Key Spot at Census Bureau*, CBS News (Nov. 22, 2017), available at <https://www.cbsnews.com/news/report-trump-considering-political-pick-for-key-spot-at-census-bureau/>.

⁴ U.S. Government Accountability Office, *2020 Decennial Census*, available at http://www.gao.gov/highrisk/2020_decennial_census/why_did_study.

⁵ Ryan McCrimmon, *Congressional Funding an Issue for 2020 Census*, Roll Call (Sept. 8, 2017), available at <https://www.rollcall.com/news/policy/2020-census-congress-funding>.

significant threat to the accuracy of the 2020 Census⁶—and a major step toward politicizing an agency that must, for the sake of our democracy, remain nonpartisan.⁷

The integrity of the decennial census, and the imminent appointment of Mr. Brunell, is a matter of widespread and exceptional media interest. And the public’s confidence in a core tenant of our democracy—that the United States is a government for, by, and of the people—will be greatly affected by whether the administration is attempting to politicize the census. The administration is reportedly planning on naming Mr. Brunell as early as this week.⁸ This is an urgent matter that qualifies for expedited processing under 5 U.S.C. § 552(a)(6)(E) and 28 C.F.R. § 16.5(e)(1)(ii), (iv).

FEE WAIVER

FOIA provides that any fees associated with a request are waived 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). The core mission of The Protect Democracy Project, a 501(c)(3) organization, is to inform public understanding on operations and activities of the government. This request is submitted in consort with the organization’s mission to gather and disseminate information that is likely to contribute significantly to the public understanding of executive branch operations and activities. The Protect Democracy Project has no commercial interests.

In addition to satisfying the requirements for a waiver of fees associated with the search and processing of records, The Protect Democracy Project is entitled to a waiver of all fees except “reasonable standard charges for document duplication.” 5 U.S.C. § 552(a)(4)(A)(ii)(II). Federal law mandates that fees be limited to document duplication costs for any requester that qualifies as a representative of the news media. *Id.* The Protect Democracy Project operates in the tradition of 501(c)(3) good government organizations that qualify under FOIA as “news media organizations.” Like those organizations, the purpose of The Protect Democracy Project is to “gather information of potential interest to a segment of the public, use its editorial skills to turn the raw materials into distinct work, and distribute that work to an audience.” *Nat’s Sec. Archive v. Dep’t of Defense*, 880 F.2d 1381, 1387 (D.C. Cir. 1989). As the District Court for the District of Columbia “easily” determined in recent litigation in a separate FOIA request, The Protect Democracy Project is “primarily engaged in disseminating information.” *Protect Democracy Project, Inc. v. U.S. Dep’t of Def.*, No. 17-CV-00842 (CRC), 2017 WL 2992076, at *5 (D.D.C. July 13, 2017). Indeed, The Protect Democracy Project has routinely demonstrated

⁶ Tim Fernholz, *The U.S. is On the Verge of Abandoning a Key Global Advantage: Accurate Data About Itself*, Quartz (Nov. 22, 2017), available at <https://qz.com/1136006/us-census-the-us-may-abandon-a-key-global-advantage-honest-data-about-itself/>.

⁷ Abigail Tracy, *How Trump’s New Census Nominee Could Rig Future Elections*, Vanity Fair (Nov. 21, 2017), available at <https://www.vanityfair.com/news/2017/11/donald-trump-thomas-brunell-census-bureau>.

⁸ Danny Vinick and Andrew Restuccia, *Leading Trump Census Pick Causes Alarm*, Politico (Nov. 21, 2017), available at <https://www.politico.com/story/2017/11/21/trump-census-pick-causes-alarm-252571>.

the ability to disseminate information about its FOIA requests to a wide audience.⁹ The Protect Democracy Project will disseminate information and analysis about this request—and any information obtained in response—through its website (protectdemocracy.org); its Twitter feed (<https://twitter.com/protctdemocracy>), which has more than 10,000 followers; its email list of approximately 20,000 people; and by sharing information with other members of the press.

RESPONSIVE RECORDS

We ask that all types of records and all record systems be searched to discover records responsive to our request. We seek records in all media and formats. This includes, but is not limited to: agendas, manifests, calendars, schedules, notes, and any prepared documentation for meetings, calls, teleconferences, or other discussions responsive to our request; voicemails; e-mails; e-mail attachments; talking points; faxes; training documents and guides; tables of contents and contents of binders; documents pertaining to instruction and coordination of couriers; and any other materials. However, you need not produce press clippings and news articles that are unaccompanied by any commentary (*e.g.*, an email forwarding a news article with no additional commentary in the email thread).

We ask that you search for records from all components of the Office of Management and Budget that may be reasonably likely to produce responsive results. We also ask that you search all systems of record, including electronic and paper, in use at your agency, as well as files or emails in the personal custody of your employees, such as personal email accounts, as required by FOIA and to the extent that they are reasonably likely to contain responsive records. The Protect Democracy Project would prefer records in electronic format, saved as PDF documents, and transmitted via email or CD-ROM.

If you make a determination that any responsive record, or any segment within a record, is exempt from disclosure, we ask that you provide an index of those records at the time you transmit all other responsive records. In the index, please include a description of the record and the reason for exclusion with respect to each individual exempt record or exempt portion of a record, as provided by *Vaughn v. Rosen*, 484 F.2d 820 (D.C. Cir. 1973), *cert. denied*, 415 U.S. 977 (1974). When you deem a portion of a record exempt, we ask that the remainder of the record to be provided, as required by 5 U.S.C. § 552(b).

⁹ See, *e.g.*, Lisa Rein, *Watchdog group, citing “integrity of civil service,” sues Trump to find out if feds are being bullied*, Wash. Post (Apr. 27, 2017), <https://www.washingtonpost.com/news/powerpost/wp/2017/04/27/watchdog-group-citing-integrity-of-civil-service-sues-trump-to-find-out-if-feds-are-being-bullied/>; Ben Berwick, *Going to Court for Civil Servants*, Take Care (April 28, 2017), <https://takecareblog.com/blog/going-to-court-for-civil-servants>; Charlie Savage, *Watchdog Group Sues Trump Administration, Seeking Legal Rationale Behind Syria Strike*, N.Y. Times (May 8, 2017), <https://nyti.ms/2pX82OV>; Justin Florence, *What’s the Legal Basis for the Syria Strikes? The Administration Must Acknowledge Limits on its Power to Start a War*, Lawfare (May 8, 2017), <https://www.lawfareblog.com/whats-legal-basis-syria-strikes-administration-must-acknowledge-limits-its-power-start-war>; Allison Murphy, *Ten Questions for a New FBI Director*, Take Care (June 6, 2017), <https://takecareblog.com/blog/ten-questions-for-a-new-fbi-director>.

Given the 20-day statutory deadline, we hope to be as helpful as possible in clarifying or answering questions about our request. Please contact me at FOIA@protectdemocracy.org or (202) 751-4058 if you require any additional information. We appreciate your cooperation, and look forward to hearing from you very soon.

Sincerely,

A handwritten signature in black ink, appearing to read "Jamila Benkato". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Jamila Benkato
Counsel
Protect Democracy