

Exhibit EE

Office of Legal Counsel

Department of Justice

Letter 1



U.S. Department of Justice

Office of Legal Counsel

Washington, D.C. 20530

July 10, 2020

Jared V. Grubow
 Wilmer Cutler Pickering Hale and Dorr LLP
 O.B.O. The Brennan Center for Justice
 jared.grubow@wilmerhale.com

Re: FOIA Tracking No. FY20-113

Dear Mr. Grubow:

This letter acknowledges receipt of your July 1, 2020 Freedom of Information Act ("FOIA") request to the Office of Legal Counsel ("OLC") on behalf of the Brennan Center for Justice at NYU School of Law ("Brennan Center"), in which you sought four categories of "records created on or after June 27, 2019," "concerning the 2020 Census." Your request has been assigned tracking number **FY20-113**. Based on our preliminary review of your request, and pursuant to 28 C.F.R. § 16.5(b), your request has been tentatively assigned to the "complex" processing track. If you would like to narrow your request so that it can be transferred to the "simple" track and processed more quickly, please contact Melissa Golden at the address and phone number provided below. We have not yet made a decision on your request for a fee waiver. We will do so after we determine whether fees will be assessed for this request. We note that in the event your fee waiver is denied, you have agreed to pay fees up to \$500.

You requested expedited treatment of your request on the ground that the documents sought are "urgently needed to inform the public about actual or alleged government activity." See 5 U.S.C. § 552(a)(6)(E); 28 C.F.R. § 16.5(e)(1)(ii). Department of Justice regulations set forth the basis for expedited processing, providing for expedited treatment when a request involves "[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." 28 C.F.R. § 16.5(e)(1)(ii).

I have determined that your request for expedited processing under 28 C.F.R. § 16.5(e)(1)(ii) should be denied. While you state that "[t]he Brennan Center is a think tank and public interest law center that regularly writes and publishes reports and articles and makes appearances in various media outlets regarding census-related subjects," you have not established that the Brennan Center is "primarily engaged in disseminating information." Courts have held that to qualify under this standard, an organization must be "primarily, and not just incidentally, engaged in information dissemination." *Landmark Legal Found. v. EPA*, 910 F. Supp. 2d 270, 276 (D.D.C. 2012). Put another way, information dissemination must be "the main activity" of the requestor, and not merely "a main activity." *ACLU of N. Cal. v. DOJ*, No. 04-4447, 2005 WL 588354, at *14 (N.D. Cal. Mar. 11, 2005). Accordingly, courts have upheld the denial of requests for expedited processing from such legal policy advocacy organizations as the American Civil Liberties Union of Northern California and the Landmark Legal Foundation. See *Landmark Legal Found.*, 910 F. Supp. 2d at 275-76; *ACLU of N. Cal.*, 2005 WL 588354, at *14. A review of the Brennan Center's public statements about its mission and work indicates that, like these organizations, its primary activity is

legal policy advocacy and not information dissemination. *See, e.g., Brennan Center for Justice, About Us*, <https://www.brennancenter.org/about> (last visited July 7, 2020) (describing the Brennan Center as “a nonpartisan law and policy institute”). Therefore, because information dissemination is not the Brennan Center’s main activity, you have not satisfied this standard.


You also requested expedited treatment of your request under 28 C.F.R § 16.5(e)(1)(iv). On July 2, 2020, we referred your request to the Director of the Office of Public Affairs (“OPA”), who determines whether a request pertains to “[a] matter of widespread and exceptional media interest in which there exist possible questions about the government’s integrity that affect public confidence.” 28 C.F.R § 16.5(e)(1)(iv); *see id.* § 16.5(e)(2). On July 7, 2020, we were informed that OPA has denied your request for expedited processing under standard (iv) because, in the judgment of the Director of OPA, the topic of your request is neither a “matter of widespread and exceptional media interest,” nor “[a] matter . . . in which there exist possible questions about the government’s integrity that affect public confidence.” *Id.* § 16.5(e)(1)(iv). Accordingly, your request for expedited processing was denied.

Because of the considerable number of FOIA requests received by OLC prior to your request, we likely will be unable to comply with the twenty-day statutory deadline for responding to your request. Please also be advised that due to necessary operational changes as a result of the national emergency concerning the novel coronavirus disease (COVID-19) outbreak, there may be some additional delay in the processing of your request. I regret the necessity of this delay, but I assure you that your request will be processed as soon as practicable. In the meantime, if you have any questions or wish to discuss your request, you may contact Melissa Golden, OLC’s FOIA Public Liaison, at usdoj-officeoflegalcounsel@usdoj.gov, (202) 514-2053, or at Office of Legal Counsel, United States Department of Justice, 950 Pennsylvania Ave., N.W., Room 5511, Washington, DC 20530.

Additionally, 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, Room 2510, 8601 Adelphi Road, College Park, Maryland 20740-6001, e-mail at ogis@nara.gov; telephone at 202-741-5770; toll free at 1-877-684-6448; or facsimile at 202-741-5769.

You have the right to an administrative appeal. You may administratively appeal by writing to the Director, Office of Information Policy (“OIP”), United States Department of Justice, 441 G Street, NW, 6th Floor, Washington, D.C. 20530, or you may submit an appeal through OIP’s FOIA STAR portal by creating an account following the instructions on OIP’s website: <https://www.justice.gov/oip/submit-and-track-request-or-appeal>. Your appeal must be postmarked or electronically transmitted within 90 days of the date of my response to your request. If you submit your appeal by mail, both the letter and the envelope should be clearly marked “Freedom of Information Act Appeal.”

Sincerely,


for Paul P. Colborn
Special Counsel