

December 12, 2017 request to the Census Bureau to add a Citizenship question to the 2020 Census Questionnaire.” As part of this request, Plaintiff asked the Civil Rights Division to search for all documents to, from, or mentioning Dr. Ron Jarmin or Dr. Enrique Lamas; and all documents containing the following phrases: “2020 Census,” “long form,” “citizenship question,” “question regarding citizenship,” “ACS,” “American Community Survey,” or “CVAP.” A copy of the FOI/PA request is attached as exhibit A.

3. By letter dated February 9, 2018, the Civil Rights Division acknowledged receipt of the FOI/PA request, assigned it FOI/PA No. 18-00145-F, and granted Plaintiff’s request for expedited treatment. A copy of this letter is attached as exhibit B.

4. On February 5, 2018, the Civil Rights Division began a search within the Division to locate any documents that would be responsive to Plaintiff’s request. The Civil Rights Division’s search was directed to the two offices likely to encompass all materials regarding Arthur Gary’s December 12, 2017 letter to the Census Bureau.

5. In accordance with the Civil Rights Division’s routine procedure, when the Division receives a request seeking access to specific documents, the Division will contact the Section that specializes in the enforcement of the particular Civil Rights Division statute or issues referenced in the request, or that otherwise is likely to have information relevant to the subject matter of the request. The Division forwards a memorandum which notifies the Section of the receipt of the request and provides a copy of the request letter. Each Civil Rights Division Section has a Deputy Chief who serves as a contact point regarding issues related to public disclosures such as under the Freedom of Information Act. The Deputy Chief of the particular Section then ascertains all individual attorneys or personnel that may have been involved in developing the records related to

a specific enforcement action and supervises a search designed to locate all responsive records. The Section staff searches both paper and electronic records as necessary to locate any existing records that might be responsive to the request. A search of an individual's computer files customarily includes a search of the email systems.

6. Here, on February 5, 2018, the Civil Rights Division referred a copy of Plaintiff's FOIA request to the Division's Voting Section. In response to the referral to the Voting Section, the FOI/PA Branch was advised that the Section did not have any responsive records and recommended that the FOI/PA Branch contact the OAAG.

7. In accordance with the Civil Rights Division's routine procedure, when the Division receives a request seeking access to specific documents, the Division will contact the Office of the Assistant Attorney General's Office (OAAG), or respective Deputy Assistant Attorney General, with supervisory responsibility over the Section that specializes in the enforcement of the particular Civil Rights Division statute or issues referenced in the request, or that otherwise is likely to have information relevant to the subject matter of the request. The OAAG has senior management authority over the Civil Rights Division's twelve sections. As senior management within the Division, the OAAG staff is the informational source that can best identify the program areas of the Division which would be likely to possess responsive records and has the capacity to identify any additional areas to be searched for responsive records, if any. The FOI/PA Branch forwards a memorandum which notifies the OAAG of the receipt of the request and provides a copy of the request letter. The Director of Operational Management serves as a contact point in the AAG office regarding issues related to public disclosures such as under the Freedom of Information Act. The Director of Operational Management then ascertains all individual attorneys or personnel that

may have been involved in developing the records related to a subject matter, or is otherwise likely to have information relevant to the subject matter, and supervises a search designed to locate all responsive records. The staff searches both paper and electronic records as necessary to locate any existing records that might be responsive to the request. A search of an individual's computer files customarily includes a search of the email systems.

8. Pursuant to these procedures, the Civil Rights Division referred a copy of Plaintiff's request to the OAAG of the Civil Rights Division. In response to the referral to the OAAG, the FOI/PA Branch was advised that the OOAG had responsive records and that two members of the OAAG's office had information relevant to the subject matter of this request. The OAAG indicated that its responsive documents included internal email communications with attachments of draft documents circulated within the Departments' components and with other federal agencies which were all internal, deliberative communications. Further, these communications discussed draft documents and forwarded intra-agency and inter-agency comments and internal draft documents for review, edits, revisions, further edits, and comments.

9. On February 28, 2018, the Civil Rights Division issued a final response to the FOI/PA request and denied access to the documents in full. A copy of the FOI/PA response is attached as exhibit C. The response letter explained that the Civil Rights Division had applied FOIA Exemption 5 to withhold the responsive materials under the deliberative process privilege.

10. On or about July 3, 2018, the Civil Rights Division conducted a further electronic search using the term "census." The search was conducted for the emails of certain personnel within the OAAG from January 23, 2017 through July 3, 2018. The search query was sent for

those personnel who were likely to have responsive documents. Nearly all of the documents located through this electronic search were duplicative of the results of the initial search.

11. On September 26, 2018, the Civil Rights Division provided a supplemental response letter to Plaintiff and released 59 pages of responsive documents in full or in part. A copy of that response letter is attached hereto as exhibit D and the released records are attached as exhibit E. The letter also explained that the Civil Rights Division was withholding 43 pages of documents in full. Division staff carefully reviewed the records in an effort to find documents or portions of documents that might be disclosed. As a result of the detailed review, the Civil Rights Division released all reasonably segregable portions of the responsive documents and determined that the withheld information is clearly exempt from access after conducting this line-by-line review. The Division applied Exemption 5 to the materials here protected by the deliberative process privilege and withheld those documents in full or in part. The Division also applied Exemption 6 for those materials the disclosure of which could reasonably be expected to constitute a clearly unwarranted invasion of personal privacy.

12. Exemption 5 exempts from mandatory release “inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency.” In the supplemental release of 59 pages, the Civil Rights Division withheld portions of the records under Exemption 5. Those records consist of email exchanges between Arthur E. Gary, General Counsel for the Justice Management Division, U.S. Department of Justice, and John Gore, Acting Assistant Attorney General, Civil Rights Division, U.S. Department of Justice. Exemption 5 has been applied here to materials protected by the deliberative process privilege. Certain of the emails forward a draft letter regarding the 2020

Census and the citizenship question and request review and advice from the OAAG. The draft letter is circulated within the Department for additional review and input, and they contain questions to elicit relevant information, comment bubbles, and edits. Multiple versions of the draft letters are forwarded between Arthur Gary and John Gore for further review, comments, and questions. These emails discuss the draft response, include comments and additional edits, exchange further revisions of the draft letter, questions for clarification, and formulation of additional questions to elicit relevant information. The emails are predecisional because they were drafted before determining the final contents of the letter. Further, other internal Departmental communications and positions are summarized in some of these email exchanges between Arthur Gary and John Gore, including communications and positions relating to the addition of a citizenship question to the 2020 census. These emails are predecisional because they were drafted before a final decision had been made concerning the addition of a citizenship question to the 2020 census. The documents contain candid, frank discussion of vital enforcement interests, that, if released, would harm the Division's capacity to conduct future exchanges without chilling the staff's exchange and presentation of views.

13. The Civil Rights Division is also withholding 43 pages in full under Exemption 5 pursuant to the deliberative process privilege. Specifically, the Civil Rights Division withheld 11 drafts of a letter from Arthur Gary to Dr. Ron Jarmin, Acting Director of the U.S. Census Bureau regarding the 2020 census and the citizenship question. The drafts were attached to the emails described above, which the Civil Rights Division partially released. The drafts were circulated within the Department for additional review and input, and they are deliberative because they contain questions to elicit relevant information, comment bubbles, and edits. The documents are

predecisional because they were drafted before determining the final contents of the letter. The documents contain candid, frank discussion of vital enforcement interests, that, if released, would harm the Division's capacity to conduct future exchanges without chilling the staff's exchange and presentation of views.

14. Exemption 6 exempts from mandatory release information which, if released, could reasonably be expected to constitute a clearly unwarranted invasion of personal privacy. In the supplemental release of 59 pages in part, portions of the documents were redacted pursuant to Exemption 6. In this case, the personal, direct telephone, cell numbers, and email addresses of Department of Justice personnel have been redacted for privacy reasons. The personnel to whom the information pertains have a privacy interest in avoiding the disclosure of this information, as it could invite unwarranted intrusions. The Civil Rights Division determined that there was no public interest in the disclosure of this information, such that release of the information would constitute a clearly unwarranted invasion of personal privacy.

I declare under penalty of perjury that the foregoing is true and correct.



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