



September 11, 2019

*By FOIAonline Submissions to Department of Commerce and Census Bureau*

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U.S. Census Bureau, Room 3J235  
4600 Silver Hill Road  
Suitland, MD 20746

***RE: Freedom of Information Act Request***

Dear FOIA Officers:

Campaign Legal Center (“CLC”) submits this request to the Department of Commerce (“Department”) and the Bureau of the Census (“Census Bureau” or “Bureau”) (together, the “Agencies”) pursuant to the Freedom of Information Act, 5 U.S.C. § 552 *et seq.* Please note that CLC is concurrently submitting separate copies of this request to the Department and the Bureau.

**I. Requested Records**

CLC requests every written communication—including but not limited to email messages, text messages, and office memoranda—that (1) contains at least one of the following search terms: “Council on American-Islamic Relations,” “Council on American Islamic Relations,” “CAIR,” “Tucker,” “Carlson,” “FOX”; *and* (2) was sent or received between August 1, 2018 and September 10, 2019.

**II. Custodians To Be Searched**

To expedite processing of this request, CLC agrees that the Agencies need not search the devices and accounts of every Department and Bureau employee. However, this request requires the Agencies to search (1) all custodians listed below, and (2) any and all custodians not listed below who are likely to possess responsive records:

*Department of Commerce custodians*

- Wilbur L. Ross
- Karen Dunn Kelley
- Brian Moyer

*Census Bureau custodians*

- Steven Dillingham
- Ron Jarmin
- Albert E. Fontenot Jr.
- James B. Treat
- Burton Reist
- Kathleen Styles
- Erika Becker-Medina
- Ali Ahmad
- Timothy Olson
- Dale Kelly

For each custodian searched, please search all devices and accounts that the custodian uses to conduct government business, regardless of whether those devices and accounts are government-issued.

Please note that this request encompasses both digital and physical records.

If some portions of the requested records are exempt from disclosure, please disclose any reasonably segregable non-exempt portions of the requested records. 5 U.S.C. § 552(b). If any portion of the requested records is exempt from disclosure, please provide an index of the withheld materials as required under *Vaughn v. Rosen*, 484 F.2d 820 (D.C. Cir. 1973), cert. denied, 415 U.S. 977 (1973).

### **III. Background**

The Census Bureau will attempt to enumerate the United States population in 2020. By the Bureau's own description, the task of encouraging households to respond to the 2020 Census is an "enormous, increasingly complex, and unparalleled challenge."<sup>1</sup> To help confront this challenge, the Bureau has said that it will partner with community-

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<sup>1</sup> *2020 Census Operational Plan v4.0* at 100, U.S. CENSUS BUREAU (December 2018), available at <https://www2.census.gov/programs-surveys/decennial/2020/program-management/planning-docs/2020-oper-plan4.pdf>.

based and faith-based organizations; state, local, and tribal governments; and other entities outside the federal government.<sup>2</sup>

On August 28, 2019, the Council on American-Islamic Relations (“CAIR”) announced a formal partnership with the Census Bureau “to promote American Muslim participation in the 2020 Census and to better represent the most *diverse Muslim* population in the world.”<sup>3</sup> The next day, FOX News host Tucker Carlson reported on the partnership and quoted a Department spokesperson as saying that, “based on further review,” the Bureau would no longer partner with CAIR.<sup>4</sup>

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

CLC requests that all fees for this request be waived or, in the alternative, limited. This request qualifies for a fee waiver or reduction because it is non-commercial in nature and would serve the public interest by contributing significantly to public understanding of the operations or activities of the Department and the Census Bureau. CLC is also entitled to an exemption from search and review costs because CLC qualifies as a representative of the news media.

In the event that CLC’s application for a complete fee waiver is denied and you estimate that more than \$100 in fees will be charged, please contact me before proceeding with any search, review, or duplication.

##### **A. The request is made for non-commercial purposes and will contribute significantly to public understanding of the operations or activities of the government.**

FOIA directs agencies to furnish 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).

Records likely to be disclosed in response to this request will contribute significantly to the public’s understanding of an important governmental activity—namely, the formation and termination of partnerships in connection with the 2020 Census. Currently, there is virtually no information in the public record about how the Census Bureau entered a partnership with CAIR, why this partnership was terminated, and whether the Bureau’s dealings with CAIR adhered to the policies and practices that generally govern the Bureau’s partnership program. Without more information,

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<sup>2</sup> See generally *2020 Census Partnership Plan*, U.S. CENSUS BUREAU (March 2019), available at <https://www2.census.gov/programs-surveys/decennial/2020/partners/2020-partnership-plan.pdf>.

<sup>3</sup> Ayan Ajeen, *CAIR Announces Formal Partnership with Census Bureau to Promote U.S. 2020 Census*, COUNCIL ON AMERICAN-ISLAMIC RELATIONS (Aug. 28, 2019), <https://www.cair.com/cair-announces-formal-partnership-with-census-bureau-to-promote-u-s-2020-census>.

<sup>4</sup> See Gregg Re, *Census Bureau abruptly ends just-announced partnership with Muslim advocacy group CAIR*, FOX NEWS (Aug. 29, 2019), <https://www.foxnews.com/politics/census-bureau-abruptly-ends-just-announced-partnership-with-muslim-advocacy-group-cair>.

members of the public may reasonably wonder whether the government chooses its 2020 Census partners based on their ability to increase census participation in hard-to-count communities, or based on their perceived popularity with specific political constituencies and media commentators. The requested records are likely to improve the public's understanding of the partnership program and how it serves—or falls short of serving—the Bureau's constitutional mandate to enumerate the population.

CLC will use records responsive to this request in the creation of widely disseminated materials and analysis that will educate the public about these matters and the operations of the government. CLC anticipates analyzing the materials gathered through this FOIA request to develop reports,<sup>5</sup> write blogs,<sup>6</sup> and/or author op-eds.<sup>7</sup> CLC's research and reports are widely disseminated on its blog,<sup>8</sup> through its own website,<sup>9</sup> through social media platforms like Facebook<sup>10</sup> and Twitter,<sup>11</sup> and through regular emails to its supporters, among other communications outlets. In addition to its own blogs and reports, CLC anticipates analyzing the requested records and disseminating the materials among traditional news outlets.

CLC is a non-profit public interest organization organized under Section 501(c)(3) of the Internal Revenue Code and this request is made for non-commercial purposes.

As such, CLC requests that any applicable fees associated with this request be waived pursuant to 5 U.S.C. § 552(a)(4)(A)(iii). A fee waiver in this instance would fulfill Congress's intent in amending FOIA. *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.”) (quotation marks omitted).

### **B. CLC is exempt from search and review fees as a “representative of the news media.”**

In the event that a complete fee waiver is not granted, CLC requests that it not be charged search or review fees for this request because the organization meets the definition of a “representative of the news media” for purposes of FOIA. CLC qualifies

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<sup>5</sup> See, e.g., Lawrence M. Noble & Brendan M. Fischer, *Funding the Presidential Nominating Conventions: How a Trickle of Money Turned Into a Flood*, CAMPAIGN LEGAL CENTER (July 26, 2016), <http://www.campaignlegalcenter.org/sites/default/files/Funding%20the%20Presidential%20Nominating%20Conventions%20Report.pdf>.

<sup>6</sup> See, e.g., Brendan M. Fischer, *How Trump's Plan to Repeal the Johnson Amendment Could Unleash 'Super Dark Money' Into Our Elections*, Campaign Legal Center blog (Feb. 3, 2017), <http://www.campaignlegalcenter.org/news/blog/how-trump-s-plan-repeal-johnson-amendment-could-unleash-super-dark-money-our-elections>; *Filling the Swamp: Inauguration and Transition Funding*, Campaign Legal Center blog (Jan. 19, 2017), <http://www.campaignlegalcenter.org/news/blog/filling-swamp-inauguration-and-transition-funding>;

<sup>7</sup> See, e.g., Trevor Potter, *Donald Trump Hasn't Solved Any of His Conflicts of Interest*, WASH. POST (Jan. 11, 2017), [https://www.washingtonpost.com/posteverything/wp/2017/01/11/donald-trump-hasnt-solved-any-of-his-conflicts-of-interest/?utm\\_term=.0e80b538fb8f](https://www.washingtonpost.com/posteverything/wp/2017/01/11/donald-trump-hasnt-solved-any-of-his-conflicts-of-interest/?utm_term=.0e80b538fb8f).

<sup>8</sup> See Campaign Legal Center blog at <http://www.campaignlegalcenter.org/news/262>.

<sup>9</sup> See Campaign Legal Center “Reference Materials” library, <http://www.campaignlegalcenter.org/research/reference-materials>.

<sup>10</sup> <https://www.facebook.com/CampaignLegalCenter/>

<sup>11</sup> <https://twitter.com/CampaignLegal>

for “news media” status because it “gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience.” 5 U.S.C. § 552(a)(4)(A)(ii)(II)-(III).

The “representative of the news media” test is focused on the requester rather than the specific FOIA request. *Cause of Action v. FTC*, 799 F.3d 1108, 1121 (D.C. Cir. 2015). CLC satisfies this test because (as noted in Part IV(A)) CLC applies its expertise and editorial skills to turn raw materials into reports, articles, and op-eds that are widely disseminated on its blog,<sup>12</sup> through its own website,<sup>13</sup> through social media platforms and regular emails to its supporters, and through other communications outlets. CLC additionally applies editorial skill to analyze and disseminate materials to other news media outlets, which regularly cite and rely upon CLC’s work.<sup>14</sup> The D.C. Circuit has explained that a requester may qualify as a news media entity if it “‘distribute[s] [its] work’ by issuing press releases to media outlets in order to reach the public indirectly.” *Cause of Action*, 799 F.3d. at 1125-26.

Courts have found that other organizations with functionally similar missions and engaged in similar public education activities qualify as representatives of the news media, even if engaged in litigation or other advocacy beyond educating the public about the operations of government. *See, e.g., Cause of Action.*, 799 F.3d at 1121-25 (finding a public interest advocacy organization that comments to other media outlets about documents it obtains under FOIA a news media requester); *Judicial Watch, Inc. v. DOJ*, 133 F. Supp. 2d 52, 53-54 (D.D.C. 2000) (finding “public interest law firm” Judicial Watch a news media requester); *Elec. Privacy Info. Ctr. v. DOD*, 241 F. Supp. 2d 5, 10-15 (D.D.C. 2003) (finding nonprofit public interest group that published a biweekly email newsletter a news media requester).

“It is critical that the phrase ‘representative of the news media’ be interpreted broadly if [FOIA] is to work as expected, . . . In fact, *any person or organization which regularly publishes or disseminates information to the public . . . should qualify for waivers as a ‘representative of the news media.’*” 132 Cong. Rec. S14298 (daily ed. Sept. 30, 1986), cited in *Nat’l Sec. Archive v. DOD*, 880 F.2d 1381, 1386 (D.C. Cir. 1989).

For these reasons, if CLC is denied a complete public-interest waiver of all fees for this request, CLC should nevertheless be exempted from any fees for search, review, and the first 100 pages of duplication. *See* 15 C.F.R. § 4.11(c)(1) (providing that representatives of the news media cannot be charged fees except for duplication beyond the first 100 pages).

## V. Application for Expedited Processing

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<sup>12</sup> See Campaign Legal Center blog at <http://www.campaignlegalcenter.org/news/262>.

<sup>13</sup> See Campaign Legal Center “Reference Materials” library, <http://www.campaignlegalcenter.org/research/reference-materials>.

<sup>14</sup> *See, e.g.,* Alayna Treene, Jonathan Swan & Harry Stevens, *Scoop: Inside a top Trump adviser’s fundraising mirage*, AXIOS (May 5, 2019), <https://www.axios.com/david-bossie-fundraising-presidential-coalition-3bf22829-8a89-4a10-84b7-7310e02c2ef2.html>.

CLC requests that the processing of this request be expedited pursuant to 15 C.F.R. § 4.6(f)(1). 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)(1)(iii), and because it involves “[a]n urgency to inform the public about an actual or alleged Federal Government activity” and a requester “primarily engaged in disseminating information,” 15 C.F.R. § 4.6(f)(1)(iv).

The 2020 Census has attracted “widespread and exceptional media interest,”<sup>15</sup> and for good reason: the census is required by the U.S. Constitution,<sup>16</sup> and the results will be used to reapportion Congress, redraw voting districts, and distribute hundreds of billions of federal dollars.<sup>17</sup> Since the CAIR partnership was announced and terminated, some journalists have questioned the Bureau’s integrity based on its willingness to work with CAIR in the first place,<sup>18</sup> while another journalist has quoted a CAIR official raising the possibility that “Islamophobic smears” played a role in ending the partnership.<sup>19</sup> In other words, this mysterious episode has raised “questions about the Government’s integrity which affect public confidence” across the political spectrum.

Moreover, there is great urgency to clear up public confusion about the CAIR partnership and the 2020 Census partnership program. Census Day is less than seven months away, and organizations across the country need information to inform their decisions on whether and how to collaborate with the Bureau.

As described above, CLC qualifies as a representative of the news media; as such, we are regularly engaged in disseminating information about various aspects of our government.

I certify that my statements concerning the need for expedited processing are true and correct to the best of my knowledge and belief.

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In order to expedite delivery of these requested documents and in order to reduce possible fees incurred, I am requesting that these documents be delivered to me either digitally via email (in PDF format), or on a data disk via the U.S. Postal Service.

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<sup>15</sup> See *2020 Census Operational Plan v4.0*, *supra* note 1, at 103 (“There is a lot of press coverage surrounding the 2020 Census questionnaire.”); *Covering the 2020 Census*, POYNTER, <https://www.poynter.org/covering-the-2020-census-poynter/#1549662376277-7e2acdf9-0a29> (“Covering the census is the epitome of public service and accountability journalism, and the 2020 Census presents more opportunities than ever before for newsrooms.”).

<sup>16</sup> U.S. Const. art. I § 2 cl. 3.

<sup>17</sup> Hansi Lo Wang, *What You Need To Know About The 2020 Census*, NPR (March 31, 2019), <https://www.npr.org/2019/03/31/707899218/what-you-need-to-know-about-the-2020-census>.

<sup>18</sup> See Mike Schneider, *Short-lived partnership between Census and Muslim group over, ASSOCIATED PRESS* (Sept. 3, 2019), <https://www.washingtontimes.com/news/2019/sep/3/short-lived-partnership-between-census-and-muslim/> (describing “backlash from conservative media”).

<sup>19</sup> Hansi Lo Wang (@hansilowang), TWITTER (Sept. 3, 2019, 6:05 PM), <https://twitter.com/hansilowang/status/1169008604453715969>.

**Please email copies of responsive documents to:**

[Dlang@campaignlegalcenter.org](mailto:Dlang@campaignlegalcenter.org)

**Or, please mail copies of responsive documents to:**

**Danielle Lang  
Campaign Legal Center  
1101 14<sup>th</sup> Street NW, Suite 400  
Washington, D.C. 20005**

Should you elect, for any reason, to withhold, redact, or deny the release of any record responsive to this request, I request that you provide me with an explanation for each withholding/redaction, along with pertinent legal citations.

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

Thank you.

Sincerely,

/s/ Danielle Lang

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