



November 18, 2020

By FOIAonline Submission

Vernon E. Curry, PMP, CIPP/G FOIA Officer
U.S. Census Bureau, Room 3J235 4600 Silver Hill Road
Suitland, MD 20746

RE: Freedom of Information Act Request

Dear Mr. Curry:

Campaign Legal Center ("CLC") submits this request to the Bureau of the Census ("Census Bureau" or "Bureau") pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552 et seq.

I. Requested Records

CLC requests the following records:

1. All written communications sent or received since August 26, 2019, between any employee, staff, or person working on behalf of the Census Bureau—including the Director of the Census Bureau—and any employee, staff, or person working on behalf of (a) IHS Markit, (b) Experian, or (c) Verisk Analytics, including any subsidiaries of (a), (b), or (c).
2. All written communications sent or received by any employee, staff, or person working on behalf of the Census Bureau since August 26, 2019, containing any of the following terms: "RL Polk," "IHS Markit," "Experian," "iiX," or "Verisk."
3. All memoranda, guidance, instructions to staff, or similar documents created or relied upon by the Census Bureau since August 26, 2019, containing any of the following terms: "RL Polk," "IHS Markit," "Experian," "iiX," or "Verisk."
4. All written communications sent or received by Census Bureau employees from October 21, 2019, to the present, containing both (a) one of the following terms "citizenship," "citizen," "CVAP," "driver," "license," "motor vehicle," "DMV," "DL," "Driver License Administrative Data," "Identification Card," or "Identification Cards"; and (b) one of the following terms: "third-party," "third party," or "provider."
5. All memoranda, guidance, instructions to staff, or similar documents created or relied upon by the Census Bureau since October 21, 2019, containing both (a) one of the following terms "citizenship," "citizen," "CVAP," "driver," "license," "motor vehicle," "DMV," "DL," "Driver License Administrative Data," "Identification Card," or "Identification Cards"; and (b) one of the following terms: "third-party," "third party," or "provider."

Please note that the term "written communication" includes, but is not limited to, text messages, instant messages, and email messages—including all attachments to email messages. This request encompasses both digital and physical records.

If it is the agency's position that responsive records exist but that those records (or portions

of those records) are exempt from disclosure, please identify the records that are being withheld and state the basis for each record being withheld. In addition, please provide the non-exempt portions of the records. CLC seeks each document containing responsive records *in its entirety*. Accordingly, please do not redact portions of any document as “non-responsive,” “out of scope,” or the like.

CLC expressly excludes from this request all personally identifiable administrative records or data acquired by the Census Bureau. Those records are strictly confidential under federal law and must not be made available to anyone except the Bureau and its sworn agents.¹

CLC requests that any records produced in response to this request be provided in electronic form wherever possible.

II. Custodians To Be Searched

Please search all custodians who are likely to possess documents relating to acquisition of administrative records by the Census Bureau. CLC understands that the custodians likely to possess these documents include Steven Dillingham, Ron Jarmin, Enrique Lamas, Albert E. Fontenot Jr., John Abowd, Victoria Velkoff, John Eltinge, Michael Berning, Karen Johns, Epa Uwimana, James Whitehorne, and Kevin Deardorff, as well as other custodians whose names CLC does not know.

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.

III. Background

In March 2018, Secretary of Commerce Wilbur Ross decided to add a question on citizenship status to the 2020 Census questionnaire. Secretary Ross stated that the purpose of collecting citizenship information through the decennial census was to improve enforcement of the Voting Rights Act. However, that rationale was “contrived,” as the U.S. Supreme Court later recognized.² The Court therefore ruled that the decision to ask a citizenship question violated the Administrative Procedure Act.³

Following the Court’s decision, the Department of Commerce abandoned its attempt to ask the citizenship question in the 2020 Census. However, on July 11, 2019, President Donald Trump issued an executive order, EO 13880, to enable the Commerce Department to collect citizenship data through alternative means. EO 13880 directs other federal agencies to provide the Commerce Department with administrative records on individuals’ citizenship status; orders Secretary Ross to create an inter-agency working group on collecting citizenship data; and orders the Commerce Department to “strengthen its efforts, consistent with law, to obtain State administrative records concerning citizenship.”⁴ Around the same time as the President’s executive order, Secretary Ross ordered the Census Bureau to “produce Citizen Voting Age Population (CVAP) information prior to April 1, 2021 that states may use in redistricting.”⁵

After receiving these orders, the Census Bureau expanded its existing request for states to provide the Bureau with administrative records. Under the expanded request, the Bureau is seeking administrative records connected to state driver licenses. The Bureau has acknowledged that the purpose of seeking driver-license records is to help carry out President Trump’s order.⁶

¹ 13 U.S.C. §9(a).

² Dep’t of Commerce v. New York, 139 S. Ct. 2551, 2575 (2019).

³ *Id.* at 2576.

⁴ Exec. Order No. 13880, Collecting Information About Citizenship Status in Connection With the Decennial Census, 84 Fed. Reg. 33821, 33824-25 (July 11, 2019).

⁵ *Paperwork Reduction Act Program, Information Collection Request 2020 Census - Enumeration Operations* at 18, OMB Control Number 0607-1006, Department of Commerce & U.S. Census Bureau (July 3, 2019), available at <https://www.documentcloud.org/documents/6192581-2020-Census-Supporting-Statement-ARevised-July.html#document/p18/a512146>.

⁶ See *Determination of the 2020 U.S. Citizen Voting Age Population (CVAP) Using*

Additionally, on July 21, 2020, President Trump issued a Memorandum declaring that “[f]or the purpose of the reapportionment of Representatives following the 2020 census it is the policy of the United States to exclude from the apportionment base aliens who are not in a lawful immigration status.”⁷ To implement this policy, the President ordered the Secretary of Commerce to provide him with the total population as determined in the 2020 Census minus the number of “aliens who are not in a lawful immigration status.”⁸ The Memorandum granted the Secretary of Commerce discretion to determine how to calculate the number of “aliens who are not in a lawful immigration status” in each state.⁹ Given the Bureau’s existing efforts to use driver-license data to determine CVAP pursuant to EO 13880, it may well intend to use that data to implement the July 21, 2020, Presidential Memorandum as well.

To the extent the Bureau plans to rely on state driver-license records to determine individuals’ citizenship for purposes of compiling block-level CVAP data and for the purposes of reapportioning of the House of Representatives per the July 21 Presidential Memorandum, that plan is cause for concern. State driver-license agencies are an unreliable source for block-level citizenship data because their records of non-U.S. citizen status are necessarily stale. Typically, driver-license records reflect a person’s citizenship status only as of the date the person applied for a license and was asked to provide proof of either U.S. citizenship or legal presence in the United States. If a non-U.S. citizen obtains a driver license and later naturalizes, the agency record of that person’s citizenship status is rendered obsolete. But the record will not be updated until the person has reason to interact with the agency again—for example, when the license expires years later. As such, these records are substantially likely to misidentify newly naturalized U.S. citizens as non-U.S. citizens.

CLC identified this precise problem in Texas last year, when the state attempted to use stale driver license data to remove registered voters from its voter registration rolls on the basis that they were ineligible non-U.S. citizens. After Texas publicly announced that it had found nearly 100,000 non-U.S. citizens on its voter registration rolls, it quickly became clear that the vast majority of people Texas had identified were newly naturalized U.S. citizens who had obtained a driver license, later naturalized, and only then registered and voted. Because these individuals had not had any reason to interact with the Texas driver-license agency since becoming citizens, their driver-license records still indicated they were non-U.S. citizens. CLC sued and obtained a preliminary injunction halting the voter purge on the basis that it discriminated against newly naturalized U.S. citizens.¹⁰ In the wake of the injunction, Texas agreed to settle the case, together with two separate lawsuits brought by the ACLU of Texas and the Texas Civil Rights Project, and by the Mexican American Legal Defense and Education Fund.¹¹

As this example shows, driver-license data, on its own, does not provide reliable information as to current citizenship status, especially for newly naturalized U.S. citizens. Given this concern, there is an important public interest in understanding how the Census Bureau intends to collect and use driver-license records for the purposes of carrying out E.O. 13880 and the July 21 Presidential Memorandum.

Administrative Records and Statistical Methodology, U.S. CENSUS BUREAU 20 (Oct. 30, 2020), <https://www2.census.gov/ces/wp/2020/CES-WP-20-33.pdf>; Mike Schneider, *Census confirms drivers’ records request tied to citizenship*, ASSOCIATED PRESS (Oct. 16, 2019), <https://apnews.com/584d26aa91fc4004ad147d0a3ba2231e>; Hansi Lo Wang, *Four States Are Sharing Driver’s License Info To Help Find Out Who’s A Citizen*, NPR (July 14, 2020), <https://www.npr.org/2020/07/14/890798378/south-dakota-is-sharing-drivers-license-info-to-help-find-out-who-s-a-citizen>.

⁷ The Memorandum was published in the Federal Register two days later. Excluding Illegal Aliens from the Apportionment Base Following the 2020 Census, 85 Fed. Reg. 44,679, 44,680 (July 23, 2020).

⁸ *Id.*

⁹ *Id.*

¹⁰ *Victory! Court Saves Texas Voters from Purge*, CAMPAIGN LEGAL CTR. (Feb. 27, 2019), <https://campaignlegal.org/press-releases/victory-court-saves-texas-voters-purge>.

¹¹ *CLC and Partners Settle with Texas to End Targeting of Naturalized Citizen Voters*, CAMPAIGN LEGAL CTR. (April 26, 2019), <https://campaignlegal.org/press-releases/clc-and-partners-settle-texas-end-targeting-naturalized-citizen-voters>.

Through a previous Freedom of Information Act request,¹² CLC also acquired documents that indicate the Census Bureau is planning to contact third-party data providers in its efforts to implement E.O. 13880 and the July 21 Presidential Memorandum.¹³ In email correspondence with the President and CEO of the American Association of Motor Vehicle Administrators (“AAMVA”), the Census Bureau’s Assistant Division Chief for Data Acquisition and Curation requested information regarding third-party providers who might be able to assist with the Bureau’s “search for national driver’s license data.”¹⁴ The AAMVA CEO identified three possible third-party providers: RL Polk (a subsidiary of IHS Markit), Experian, and iix (a subsidiary of Verisk Analytics).¹⁵ If the Bureau has decided to use driver-license data from private companies to carry out EO 13880 and the July 21 Presidential Memorandum, that decision would raise significant questions about the reliability of the Bureau’s citizenship data—and by extension the reliability of the data that will be used for state redistricting and reapportionment of the House of Representatives. There is an important public interest in knowing whether the Bureau is in fact relying on private companies to collect this data, and, if so, how they plan to use it. The public also has an interest in understanding how these third-party providers obtained any driver-license data requested by the Bureau, as well as the scope and accuracy of that data.

IV. Application for Fee Waiver or Limitation of Fees

CLC requests that all fees for this request be waived because disclosure of the requested records would serve the public interest by contributing significantly to public understanding of the operations and activities of the Census Bureau, and CLC does not have a commercial interest in the records. 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, 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.

Under FOIA, an agency must grant a fee waiver 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.”¹⁶ The Bureau considers six factors in evaluating a fee-waiver application:

- (1) “whether the subject of the requested records concerns the operations or activities of the Government”;
- (2) “whether the disclosure is ‘likely to contribute’ to an understanding of Government operations or activities” by providing “meaningfully informative” information not already public;
- (3) “[w]hether disclosure of the requested information will contribute to the understanding of a reasonably broad audience of persons interested in the subject”;
- (4) “whether the disclosure is likely to contribute ‘significantly’ to public understanding of Government operations or activities”— i.e., whether the public’s understanding will “be significantly enhanced by the disclosure”;
- (5) “whether the requester has a commercial interest that would be furthered by the requested disclosure”; and
- (6) “[w]hether any identified commercial interest of the requester is sufficiently

¹² See DOC-CEN-2020-000115.

¹³ See Ex. A at 11.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ 5 U.S.C. § 552(a)(4)(A)(iii).

great, in comparison with the public interest in disclosure, that disclosure is ‘primarily in the commercial interest of the requester.’”¹⁷

Here, all six factors weigh in favor of waiving fees for this request.

First, this request unquestionably “concerns the operations or activities of the Government”—specifically, the Census Bureau’s acquisition of state administrative records and its use of those records to compile CVAP data.

Second, the request will contribute to public understanding because responsive records will likely disclose “meaningfully informative” information that is not currently in the public domain.

The Census Bureau’s attempts to collect driver-license data from states is a matter of great public concern and has already generated significant media coverage.¹⁸ The requested records would, if published, meaningfully improve public understanding of this issue, particularly with respect to the Bureau’s work with non-governmental third-party providers. Although a previous FOIA request revealed that the Bureau sought to work with these third-party providers to obtain driver-license data, very little is known publicly about the scope or extent of any data provided by those third-party providers. Thus, for example, communications between Bureau officials to employees at third-party providers would likely shed light on the scope of the Bureau’s request for driver-license records and the nature of the data available—and potentially provided—to the Bureau. Similarly, any documents formalizing a relationship between the Bureau and a third-party provider, such as a record-sharing agreement, or internal memoranda or guidance documents discussing such agreements would further illuminate the decision to request driver-license data from third-party providers.

All of these records would contribute meaningfully to the public understanding of the Bureau’s request for driver-license data from third-party providers, but none of them are currently in the public domain. CLC’s request is designed to change that.

Third, disclosure of the requested records will contribute to the understanding of at least a reasonably broad audience of persons, not merely CLC’s own understanding.

In assessing whether this factor is satisfied, the agency considers the “requester’s expertise in the subject area and ability and intention to effectively convey information to the public.”¹⁹ A requester that qualifies as “a representative of the news media” is presumed to satisfy this factor.²⁰

As discussed below, CLC qualifies as a representative of the news media. CLC is therefore entitled to a presumption that its request will contribute to the understanding of at least a reasonably broad audience. However, regardless of whether the Bureau classifies CLC as a news media requester, CLC satisfies this factor test by virtue of its expertise and its ability and intention to disseminate information from the requested records.

CLC has well-established expertise in the relevant subject area to help educate a reasonably broad audience of persons interested in the subject. Founded in 2002, CLC is a nationally respected source of nonpartisan expert analysis and legal advice on all aspects of the

¹⁷ 15 C.F.R. § 4.11(l).

¹⁸ See, e.g., Mike Schneider, *Census confirms drivers’ records request tied to citizenship*, ASSOCIATED PRESS (Oct. 16, 2019), <https://apnews.com/584d26aa91fc4004ad147d0a3ba2231e>; Hansi Lo Wang, *Census Bureau Asks States For Driver’s License Records To Produce Citizenship Data*, NPR (Oct. 16, 2019), <https://www.npr.org/2019/10/16/770648941/census-bureau-asks-states-for-drivers-license-records-to-produce-citizenship-dat>; Hansi Lo Wang, *Four States Are Sharing Driver’s License Info To Help Find Out Who’s A Citizen*, NPR (July 14, 2020), <https://www.npr.org/2020/07/14/890798378/south-dakota-is-sharing-drivers-license-info-to-help-find-out-who-s-a-citizen>; Nicole Narea, *Trump is still trying to collect citizenship data for redistricting*, VOX (Oct. 17, 2019), <https://www.vox.com/policy-and-politics/2019/10/17/20918989/trump-2020-census-citizenship-data-redistricting-drivers-license>.

¹⁹ 15 C.F.R. § 4.11(l)(2)(iii).

²⁰ *Id.*

democratic process, including the census and the use of census data for redistricting.²¹ CLC has significant experience in litigation directly involving the census.²²

CLC also has the ability and intention to convey information from the requested records to the public. CLC plans to publish responsive records and write analyses of those records for public consumption, which will be shared on CLC's website and social media accounts. CLC's large online presence²³ will enable these materials to reach at least a "reasonably broad audience." In the past, CLC has disseminated information broadly through reports, blogs, op-eds, and videos,²⁴ among other media. CLC also shares information and analysis with traditional news organizations, which regularly cite and rely upon CLC's work.²⁵

Fourth, the contribution that CLC's request will make to public understanding will be significant.

As explained above, the public has almost no information about the Bureau's request for driver-license records from third-party providers. The public does not fully understand the scope of the Bureau's request, because the Bureau has not released copies of its communications with private providers. Similarly, the public is mostly in the dark about which private providers have agreed to share driver-license data, which ones have refused, and which ones (if any) have written to the Census Bureau with comments on the accuracy of driver-license records.

Moreover, the Bureau has not explained its reasons for seeking access to driver-license records from private providers as a source of citizenship data. It is not clear who made this decision, nor is it clear whether the choice to seek driver-license data was part of a broader decision to request a range of administrative records. The public also does not know what decisions the Bureau has made regarding the role that driver-license data will play in determining citizenship for CVAP purposes or for the purposes of the reapportionment of the House of Representatives.

²¹ See *Impact*, CAMPAIGN LEGAL CENTER, <https://campaignlegal.org/impact> (last visited Nov. 2, 2020).

²² See *CLC Sues DOJ Over Unlawful Silence in Decision-Making Process Over Census Citizenship Question*, CAMPAIGN LEGAL CENTER (May 23, 2018), <https://campaignlegal.org/update/clc-sues-doj-over-unlawful-silence-decision-making-process-over-census-citizenship-question>; Brief of Former Directors of the Census Bureau as *Amici Curiae* in Support of Appellees, *Evenwel v. Abbott*, 136 S. Ct. 1120 (2016) (No. 14-940) (amicus brief on which CLC served as co-counsel).

²³ CLC has approximately 30,000 followers on Twitter and more than 11,500 followers on Facebook. Campaign Legal Center (@CampaignLegal), TWITTER, <https://twitter.com/CampaignLegal> (last visited Nov. 2, 2020); Campaign Legal Center (@CampaignLegalCenter), FACEBOOK, https://www.facebook.com/CampaignLegalCenter/?ref=br_rs (last visited Nov. 2, 2020). CLC also publishes updates by email to its many supporters.

²⁴ See, e.g., Maggie Christ, *Constitutional Challenges Facing Our Democracy*, Campaign Legal Center blog (Sept. 18, 2019), <https://campaignlegal.org/update/constitutional-challenges-facing-our-democracy>; Paul Smith, *Census paves moment of truth for the Supreme Court and rule of law*, The Hill (July 9, 2019), <https://thehill.com/opinion/judiciary/452224-census-paves-moment-of-truth-for-the-supreme-court-and-rule-of-law>; Molly Danahy, *The U.S. Supreme Court Should Stop Census Citizenship Question*, Campaign Legal Center blog (April 3, 2019), <https://campaignlegal.org/update/us-supreme-court-should-stop-census-citizenship-question>; Campaign Legal Center, *Distorted Democracy: The Fight Against Gerrymandering*, YOUTUBE (March 7, 2019), https://www.youtube.com/watch?v=HgAVos_tK8E; Danielle Lang & Thea Sebastian, *Too Poor to Vote*, N.Y. TIMES (Nov. 1, 2018), <https://www.nytimes.com/2018/11/01/opinion/election-voting-rights-poverty.html>; Daniel Hessel, *Litigating Partisan Gerrymandering Claims Under State Constitutions*, CAMPAIGN LEGAL CTR. (July 17, 2018), https://campaignlegal.org/sites/default/files/2018-07/CLC%20Issue%20Brief%20Litigating%20Partisan%20Gerrymandering%20under%20State%20Constitutions_0.pdf; 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>.

²⁵ See, e.g., Bart Jansen, Kevin Johnson & Kevin McCoy, *Two Giuliani associates involved in Trump-Ukraine controversy arrested on campaign finance charges*, USA TODAY (Oct. 10, 2019), <https://www.usatoday.com/story/news/politics/2019/10/10/impeachment-inquiry-lev-parnas-igor-fruman-witness-list/3866159002>; 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>.

The near-complete absence of information despite the clear public interest in this issue makes clear that the requested records have immense “informative value” and that disclosure will significantly increase the “degree” of public understanding of Census Bureau operations.²⁶ Moreover, the value of the requested records does not depend on whether they reveal government malfeasance as the public has “as much interest in knowing that key [Census Bureau] decisions are free from the taint of [impropriety] as they have in discovering that they are not.”²⁷

Fifth, CLC has no commercial interest in its FOIA request. CLC is a non-profit public-interest organization organized under Section 501(c)(3) of the Internal Revenue Code. CLC is filing this FOIA request for the sole purpose of furthering its public-interest mission.

Sixth, because CLC has no commercial interest at all in the request, it necessarily follows that the request cannot be “primarily in the commercial interest of the requester.”

For these reasons, CLC is entitled to a full fee waiver under 5 U.S.C. § 552(a)(4)(A)(iii), and CLC is precisely the type of requester that Congress intended to benefit from the fee-waiver provision.²⁸

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

In addition to its entitlement to a public-interest fee waiver, CLC should be categorized as a “representative of the news media” under FOIA and, thus, cannot be charged search or review fees.²⁹ In fact, the Bureau recently recognized CLC’s news-media status in processing a separate FOIA request,³⁰ and that determination was correct.

“[T]he term ‘a representative of the news media’ means any person or entity that 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.”³¹ This statutory term must “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.’”³²

In applying the “representative of the news media” test, courts focus on the requester rather than the specific FOIA request.³³ News-media status extends not only to traditional news organizations, but also to entities that disseminate information “by issuing press releases to media outlets in order to reach the public indirectly.”³⁴

CLC qualifies as a representative of the news media because it applies expertise and editorial skills to turn raw materials into reports, articles, and op-eds that are widely disseminated on its blog,³⁵ through its own website,³⁶ through social media platforms and regular emails to its supporters, and through other outlets. CLC additionally applies editorial skill to analyze and disseminate materials to other news media outlets.

Courts have found that other organizations with functionally similar missions and engaged

²⁶ Cause of Action v. FTC, 799 F.3d 1108, 1116 & n.5 (D.C. Cir. 2015).

²⁷ Judicial Watch, Inc. v. Rossotti, 326 F.3d 1309, 1314 (D.C. Cir. 2003).

²⁸ See Judicial Watch, 326 F.3d at 1312 (“Congress amended FOIA to ensure that it be liberally construed in favor of waivers for noncommercial requesters.”) (quotation marks omitted).

²⁹ See 5 U.S.C. § 552(a)(4)(A)(ii)(II)-(III); 15 C.F.R. § 4.11(c)(1) (providing that representatives of the news media cannot be charged FOIA fees except for duplication beyond the first 100 pages).

³⁰ The Bureau classified CLC as a representative of the news media for purposes of the FOIA request assigned tracking number DOC-CEN-2019-002192, which CLC filed in September 2019.

³¹ 5 U.S.C. § 552(a)(4)(A)(ii)(III).

³² 132 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).

³³ Cause of Action v. FTC, 799 F.3d 1108, 1121 (D.C. Cir. 2015).

³⁴ *Id.* at 1125-26.

³⁵ See Campaign Legal Center blog at <http://www.campaignlegalcenter.org/news/262>.

³⁶ See Campaign Legal Center “Reference Materials” library, <http://www.campaignlegalcenter.org/research/reference-materials>.

in similar public- education activities qualify as representatives of the news media, even if engaged in litigation or other advocacy beyond educating the public. For example, in *Cause of Action*, the D.C. Circuit granted news-media status to a public-interest advocacy organization that commented to other media outlets about documents it obtained under FOIA.³⁷

For these reasons, if the Bureau does not grant CLC 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.

V. Application for Expedited Processing

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,”³⁸ and for good reason: the census is required by the U.S. Constitution,³⁹ and the results will be used to reapportion Congress, redraw voting districts, and distribute hundreds of billions of federal dollars.⁴⁰

The Bureau’s plan to collect citizenship data through driver-license records is a matter of particularly intense media interest. As explained previously, the Bureau’s request for these records from states has already received substantial media attention.⁴¹ More broadly, the Bureau’s efforts to obtain citizenship information in connection with the 2020 Census and reapportionment of the House of Representatives have received immense media coverage. Much of that coverage has focused on the issue of whether the government is engaged in a scheme to reduce political representation and funding for minority communities—a quintessential “question[] about the Government’s integrity which affect[s] public confidence.”⁴²

The need to inform the public about this matter is urgent. Members of the public deserve an opportunity to form educated opinions about the wisdom of the Bureau’s efforts to seek driver-license data from private companies to compile CVAP data, while there is still time to contact their federal representatives and express their views. Moreover, with reapportionment of the House of Representatives and state redistricting based on the 2020 Census just months away, now is the time to inform the public about the reliability of the data on which these changes will be based.

³⁷ 799 F.3d at 1121-25.

³⁸ 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.”).

³⁹ U.S. Const. art. I § 2 cl. 3.

⁴⁰ 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>.

⁴¹ See *supra* n.19.

⁴² See, e.g., Michael Wines, *Two Huge Questions Loom as 2020 Census Winds Down*, N.Y. TIMES (Oct. 16, 2020), <https://www.nytimes.com/2020/10/12/us/census-reapportionment-questions.html>; Sara Murray & Gregory Wallace, *What’s behind the citizenship question on the 2020 census*, CNN (June 24, 2019), <https://www.cnn.com/2019/06/24/politics/citizenship-census-2020/index.html>; Ed Kilgore, *Trump’s New Attempt to Skew Redistricting*, NEW YORK (Aug. 20, 2019), <http://nymag.com/intelligencer/2019/08/trump-moves-ahead-on-citizenship-data-to-skew-redistricting.html>; Tierney Sneed, *Feds Producing Data For States To Do Anti- Immigrant Redistricting Overhaul*, TALKING POINTS MEMO (July 15, 2019), <https://talkingpointsmemo.com/news/citizenship-data-states-redistricting-bureau-directed-data>.

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, and in particular about the Census and related reapportionment of the House of Representatives.

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

* * *

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.

Please email copies of responsive documents to:

Mdanahy@campaignlegalcenter.org

Or, please mail copies of responsive documents to:

**Molly Danahy
Campaign Legal Center
1101 14th Street NW, Suite 400
Washington, D.C. 20005**

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

Thank you.

Sincerely,

/s/ Molly Danahy

Molly Danahy
Legal Counsel, Litigation
mdanahy@campaignlegalcenter.org

Patrick Llewellyn
Senior Legal Counsel, Campaign Finance
pllewellyn@campaignlegalcenter.org

Jade Ford
Law Clerk*
jford@campaignlegalcenter.org
*Not admitted to the practice of law

Campaign Legal Center 1101 14th St. NW Suite 400
Washington, DC 20005
(202) 736-2200

EXHIBIT A

From: [Epaphrodite Uwimana \(CENSUS/ERD FED\)](#)
To: [Michael A Berning \(CENSUS/ERD FED\)](#)
Subject: Contact for AAMVA regarding Drivers License.
Date: Tuesday, August 13, 2019 9:15:12 AM
Attachments: [DPPA Act 1994.pdf](#)

Hi Mike,

Here is the contact person (President and CEO) for the American Association of Motor Vehicle Administrators.

Karen contacted her last week.

Anne Ferro, President & CEO | American Association of Motor Vehicle Administrators

4401 Wilson Blvd., Suite 700 | Arlington, VA 22203 | 703.522.4200

D: (b)(6) | C: (b)(6) | (b)(6)

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Epa Uwimana, Branch Chief for Data Acquisitions

Economic Reimbursable Surveys Division

U.S. Census Bureau

o: 301-763-6064 | m: (b)(6)

[census.gov](#) | [@uscensusbureau](#)

From: Karen Johns (CENSUS/ERD FED) <Karen.Denise.Johns@census.gov>

Sent: Wednesday, August 7, 2019 3:03 PM

To: Epaphrodite Uwimana (CENSUS/ERD FED) <epaphrodite.uwimana@census.gov>

Subject: Fw: Your call

Karen Johns, Program Analyst

Data Acquisitions Branch, Economic Reimbursable Surveys Division (ADEP)

U.S. Census Bureau

o: 301-763-2415 |

[census.gov](#) | [@uscensusbureau](#)

From: Ferro, Anne <AFerro@aamva.org>

Sent: Wednesday, August 7, 2019 02:52 PM
To: Karen Johns (CENSUS/ERD FED) <Karen.Denise.Johns@census.gov>
Cc: Peraino, Joe <JPeraino@aamva.org>
Subject: Your call

Hi Ms. Johns,

Thank you for checking with AAMVA concerning name/address data and availability for purchase. As I mentioned, that information is not available through AAMVA but may be directly from the states or third-party record providers who may make it available under DPPA approved purposes. A copy of the DPPA is attached for reference purposes.

Sorry to have been somewhat rushed when you called – I was about to take a conference call. My contact information is below if I can answer your questions more fully; just email me a time when you'd like to talk.

Sincerely,

Anne

Anne Ferro, President & CEO | American Association of Motor Vehicle Administrators
4401 Wilson Blvd., Suite 700 | Arlington, VA 22203 | 703.522.4200
D: 703.908.5766 | C: (b)(6) | aferro@aamva.org
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To: aferro@aamva.org
Cc: [con](#)
Subject: Drivers License Data Acquisition Project
Date: Tuesday, August 13, 2019 9:26:55 AM

Good morning Ms. Ferro,

I am following up to a discussion you had with one of my staff regarding the potential for the Census Bureau to acquire Drivers License data to support our 2020 Census operations.

Mike Berning, Assistant Division Chief for Data Acquisition and Curation
Economic Reimbursable Surveys Division
U.S. Census Bureau
O: 301-763-2028 | M: (b)(6)
census.gov | @uscensusbureau

From: [Michael A Berning \(CENSUS/ERD FED\)](#)
To: [Steven K Smith \(CENSUS/DEPDIR FED\)](#)
Subject: Fw: Contact for AAMVA regarding Drivers License.
Date: Tuesday, August 13, 2019 9:41:44 AM

Well it looks like AAMVA isn't an avenue for us at this time.

Mike Berning, Assistant Division Chief for Data Acquisition and Curation
Economic Reimbursable Surveys Division
U.S. Census Bureau
O: 301-763-2028 | M: (b)(6)
census.gov | @uscensusbureau

From: Michael A Berning (CENSUS/ERD FED)
Sent: Tuesday, August 13, 2019 9:40 AM
To: aferro@aamva.org <aferro@aamva.org>
Subject: Fw: Contact for AAMVA regarding Drivers License.

Good morning Ms. Ferro,

Thank you for following up with Karen and letting us know that the person-level drivers license data is not available to us through AAMVA. I do have a follow-up question if you wouldn't mind. Are you aware of any third party record providers who might have compiled drivers licenses from all 50 states?

As Karen probably mentioned, we believe these data could enhance operations during the 2020 Census for statistical purposes so we are very interested in tracking down any opportunity where we might be able to make a national-level acquisition.

Thank you.

Mike Berning, Assistant Division Chief for Data Acquisition and Curation
Economic Reimbursable Surveys Division
U.S. Census Bureau
O: 301-763-2028 | M: (b)(6)
census.gov | @uscensusbureau

From: Ferro, Anne <AFerro@aamva.org>
Sent: Wednesday, August 7, 2019 02:52 PM
To: Karen Johns (CENSUS/ERD FED) <Karen.Denise.Johns@census.gov>

Cc: Peraino, Joe <JPeraino@aamva.org>

Subject: Your call

Hi Ms. Johns,

Thank you for checking with AAMVA concerning name/address data and availability for purchase. As I mentioned, that information is not available through AAMVA but may be directly from the states or third-party record providers who may make it available under DPPA approved purposes. A copy of the DPPA is attached for reference purposes.

Sorry to have been somewhat rushed when you called – I was about to take a conference call. My contact information is below if I can answer your questions more fully; just email me a time when you'd like to talk.

Sincerely,

Anne

Anne Ferro, President & CEO | American Association of Motor Vehicle Administrators
4401 Wilson Blvd., Suite 700 | Arlington, VA 22203 | 703.522.4200

D: 703.908.5766 | C: (b)(6) | aferro@aamva.org

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From: [J David Brown \(CENSUS/CES FED\)](#)
To: [Michael A Berning \(CENSUS/ERD FED\)](#); [Epaphrodite Uwimana \(CENSUS/ERD FED\)](#); [Misty L Heggeness \(CENSUS/CES FED\)](#)
Subject: notes from USCIS meeting
Date: Tuesday, August 20, 2019 5:04:54 PM
Attachments: (b) (5)

Hi Mike, Epa, and Misty,

I have attached notes from an impromptu meeting this morning with some USCIS people after I gave a seminar on the citizenship paper. Mike, you might want to look at this before your meeting at USCIS tomorrow.

David

J. David Brown, PhD, Principal Economist
Center for Economic Studies
U.S. Census Bureau
o: 301-763-8769 | m: (b)(6)
[census.gov](https://www.census.gov) | [@uscensusbureau](https://twitter.com/uscensusbureau)

(b) (5) [Redacted]

(b) (5) [Redacted]

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(b) (5) [Redacted]

[Redacted]

(b) (5)

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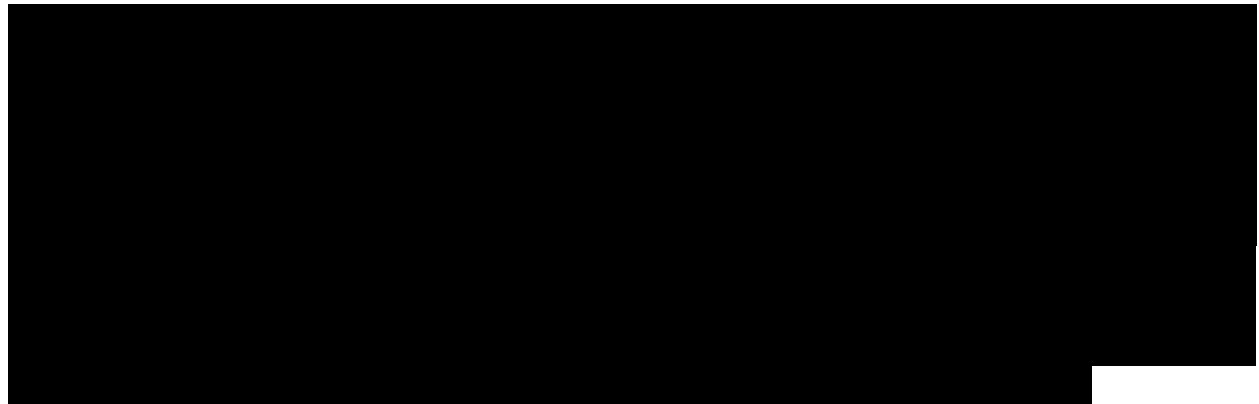
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(b) (5)

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(b) (5)

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From: [Ferro, Anne](#)
To: [Michael A Berning \(CENSUS/ERD FED\)](#)
Subject: RE: Contact for AAMVA regarding Drivers License.
Date: Monday, August 26, 2019 1:16:17 PM

Hi Mike,

I am writing to follow up on your request for 3rd party providers who might be able to assist you in your search for national driver's license data. I spoke with several such providers during AAMVA's recent international conference and am sharing them in this message to you. I hope this is helpful.

- [RL Polk](#)
Kirk Hanna
Director, Government Relations | Automotive
(b) (6)
(b) (6)
- [Experian](#)
Heidi Holst
(b) (6)
(b) (6)
- [Iix/Verisk Analytics](#)
Katie James
iiX Government Relations Director
(b) (6)
(b) (6)

All the best,

Anne

Anne Ferro | AAMVA | D: 703.908.5766 | C: (b) (6) | aferro@aamva.org
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From: Michael A Berning (CENSUS/ERD FED) [mailto:Michael.A.Berning@census.gov]
Sent: Tuesday, August 13, 2019 9:41 AM
To: Ferro, Anne <AFerro@aamva.org>
Subject: Fw: Contact for AAMVA regarding Drivers License.

[External email]

Good morning Ms. Ferro,

Thank you for following up with Karen and letting us know that the person-level drivers license data is not available to us through AAMVA. I do have a follow-up question if you wouldn't mind. Are you aware of any third party record providers who might have compiled drivers licenses from all 50 states?

As Karen probably mentioned, we believe these data could enhance operations during the 2020 Census for statistical purposes so we are very interested in tracking down any opportunity where we might be able to make a national-level acquisition.

Thank you.

Mike Berning, Assistant Division Chief for Data Acquisition and Curation
Economic Reimbursable Surveys Division
U.S. Census Bureau
O: 301-763-2028 | M: 202-407-1602
census.gov | @uscensusbureau

From: Ferro, Anne <AFerro@aamva.org>
Sent: Wednesday, August 7, 2019 02:52 PM
To: Karen Johns (CENSUS/ERD FED) <Karen.Denise.Johns@census.gov>
Cc: Peraino, Joe <JPeraino@aamva.org>
Subject: Your call

Hi Ms. Johns,

Thank you for checking with AAMVA concerning name/address data and availability for purchase. As I mentioned, that information is not available through AAMVA but may be directly from the states or third-party record providers who may make it available under DPPA approved purposes. A copy of the DPPA is attached for reference purposes.

Sorry to have been somewhat rushed when you called – I was about to take a conference call. My contact information is below if I can answer your questions more fully; just email me a time when you'd like to talk.

Sincerely,

Anne

Anne Ferro, President & CEO | American Association of Motor Vehicle Administrators
4401 Wilson Blvd., Suite 700 | Arlington, VA 22203 | 703.522.4200
D: 703.908.5766 | C: (b)(6) | aferro@aamva.org
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From: [Michael A Berning \(CENSUS/ERD FED\)](#)
To: [Epaphrodite Uwimana \(CENSUS/ERD FED\)](#); [Karen Johns \(CENSUS/ERD FED\)](#)
Subject: Re: Your call -- regarding Drivers license information
Date: Thursday, August 08, 2019 7:11:49 AM

Thank you both for this follow-up

Mike Berning, Assistant Division Chief for Data Acquisition and Curation
Economic Reimbursable Surveys Division
U.S. Census Bureau
O: 301-763-2028 | M: (b)(6)
census.gov | @uscensusbureau

From: Epaphrodite Uwimana (CENSUS/ERD FED) <epaphrodite.uwimana@census.gov>
Sent: Thursday, August 8, 2019 6:54 AM
To: Michael A Berning (CENSUS/ERD FED) <Michael.A.Berning@census.gov>
Subject: Fw: Your call -- regarding Drivers license information

FYI

Epa Uwimana, Branch Chief for Data Acquisitions
Economic Reimbursable Surveys Division
U.S. Census Bureau
o: 301-763-6064 | m: (b)(6)
[census.gov](#) | [@uscensusbureau](#)

From: Karen Johns (CENSUS/ERD FED) <Karen.Denise.Johns@census.gov>
Sent: Wednesday, August 7, 2019 3:30 PM
To: Ferro, Anne <AFerro@aamva.org>
Cc: Peraino, Joe <JPeraino@aamva.org>
Subject: Re: Your call

Good afternoon Ms. Ferro,

Thank you for taking time out of your busy schedule to speak with me regarding the purchase of Personally Identifiable Information (PII) from the American Association of Motor Vehicle Administrators (AAMVA).

Per our telephone conversation and your email below, I understand that this information is not

available from AAMVA and we may need to reach out to the states.

I appreciate you answering my questions and providing me with a copy of the Driver's Privacy Protection Act (DPPA) for reference purposes.

Karen Johns, Program Analyst

Data Acquisitions Branch, Economic Reimbursable Surveys Division (ADEP)

U.S. Census Bureau

o: 301-763-2415 |

[census.gov](https://www.census.gov) | [@uscensusbureau](https://twitter.com/uscensusbureau)

From: Ferro, Anne <AFerro@aamva.org>

Sent: Wednesday, August 7, 2019 02:52 PM

To: Karen Johns (CENSUS/ERD FED) <Karen.Denise.Johns@census.gov>

Cc: Peraino, Joe <JPeraino@aamva.org>

Subject: Your call

Hi Ms. Johns,

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Sincerely,

Anne

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4401 Wilson Blvd., Suite 700 | Arlington, VA 22203 | 703.522.4200

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