

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
EASTERN DIVISION

THE STATE OF ALABAMA, *et al.*

Plaintiffs,

v.

UNITED STATES DEPARTMENT OF
COMMERCE, *et al.*,

Defendants.

No. 3:21-CV-00211- RAH-ECM-KCN

**DEFENDANTS' RESPONSES TO
PLAINTIFFS' FIRST REQUEST FOR ADMISSIONS**

Defendants United States Department of Commerce; Gina Raimondo, in her official capacity as Secretary of Commerce; United States Census Bureau; and Ron Jarmin, in his official capacity as Acting Director of the U.S. Census Bureau; collectively submit the following responses and objections to Plaintiffs' First Set of Requests for Admissions. Responses to the following Requests for Admissions are subject to the general objections set forth at the end of this document.

REQUEST FOR ADMISSION NO. 1: Admit that Differential Privacy has never been used as the disclosure avoidance method in any decennial census before the 2020 census.

ANSWER: ADMIT, although Defendants note that the Census has used differential privacy to protect confidential information in other Census programs.

REQUEST FOR ADMISSION NO. 2: Admit that the implementation of Differential Privacy has, at least in part, delayed the release of the PL 94-171 Data to Alabama.

ANSWER: DENY. Defendants specifically DENY that applying any other appropriate disclosure-avoidance methods that complied with Title XIII would allow them to release Redistricting Data any sooner than using Differential Privacy. In fact, switching to a disclosure avoidance methodology other than Differential Privacy would require new disclosure risk analysis, software development, system testing, and quality assurance steps that would result in substantial delays to the current production schedule for the Redistricting Data.

REQUEST FOR ADMISSION NO. 3: Admit that after the Census Bureau performed an internal database reconstruction and re-identification attack on the 2010 census data, John M. Abowd – the Chief Scientist and Associate Director for Research and Methodology at the U.S. Census Bureau – concluded that “the risk of re-identification” posed by such an attack “is small.”

ANSWER: Defendants object to the Request’s selective quote as lacking context and as written, potentially misleading because Dr. John M. Abowd specifically retracted this claim in February 16, 2019 in his presentation to the American Association for the Advancement of Science because subsequent research revealed that 52 million persons, at a minimum, could be correctly re-identified from the reconstructed 2010 Census micro-data.

ADMIT only to the extent that Dr. John M. Abowd, made a presentation on August 23, 2018, to the 24th ACM SIGKDD Conference on Knowledge Discovery and Data Mining, titled “The U.S. Census Bureau Adopts Differential Privacy” where he: described the Census Bureau’s internal experiments that “[c]onfirm[ed] that the confidential micro-data from the confidential hundred percent file can be reconstructed quite accurately from PL94 + balance of SF1”; stated that “[w]hile there is a vulnerability, the risk of re-identification is small”; and concluded that “reconstruction of Title 13-sensitive data is an issue,” thus providing “[s]trong motivation for the adoption of differential privacy for

the 2018 End-to-End Census Test and 2020 Census.” The context of the quote can be seen in the slide below.

Internal Experiments Using the 2010 Census

- Confirm that the confidential micro-data from the confidential hundred percent detail file can be reconstructed quite accurately from PL94 + balance of SF1
- While there is a vulnerability, the risk of re-identification is small
- Experiments are at the person level, not household
- Experiments have led to the declaration that reconstruction of Title 13-sensitive data is an issue, no longer a risk
- Strong motivation for the adoption of differential privacy for the 2018 End-to-End Census Test and 2020 Census

United States Census Bureau | U.S. Department of Commerce Economics and Statistics Administration U.S. CENSUS BUREAU census.gov

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Otherwise, DENY.

REQUEST FOR ADMISSION NO. 4: Admit that to the extent the Census Bureau’s internal database reconstruction and re-identification attack on the 2010 census data revealed some risk of reidentification, the Bureau’s application of Differential Privacy to the 2010 census data did not remove all risk of reidentification.

ANSWER: ADMIT only to the extent that the Census Bureau’s internal database reconstruction and re-identification attack on the 2010 census data revealed that a hypothetical attacker could correctly identify at least 52 million Americans and potentially up to 179 million. And ADMIT only to the extent that releasing any data, regardless of the disclosure avoidance method employed, involves some risk of reidentification. The Census conducted an empirical analysis that showed differential privacy offered the most

efficient trade-off between privacy and accuracy and its calculations showed that the efficiency of differential privacy dominated traditional methods. In other words, regardless of the level of desired confidentiality, differential privacy will always produce more accurate data than the alternative traditional methods considered by the Bureau, including suppression and data swapping. The Census Bureau has assessed various options for mitigating the risk of reidentification in Redistricting Data and concluded that Differential Privacy strikes the most appropriate balance between privacy, end-user needs, and accuracy. Otherwise, DENY.

REQUEST FOR ADMISSION NO. 5: Admit that with Differential Privacy applied, the data at the census block level will be less reflective of both the number of persons and the demographic characteristics of persons in that census block than without Differential Privacy applied.

ANSWER: Defendants object to this Request as vague and ambiguous. The phrase “less reflective” is vague and imprecise, particularly when coupled with the compound phrase “both the number of persons and demographic characteristics.” Defendants object to this Request’s phrase “without Differential Privacy applied” as vague and ambiguous because it is unclear whether the phrase refers to collected and imputed demographic data without any disclosure avoidance applied, or collected and imputed demographic data with some other disclosure avoidance applied, or the actual population count and demographics that existed on Census Day.

LACK OF INFORMATION. Defendants can neither admit nor deny this Request because the Census has not finalized the specific algorithm parameters and other critical details about how it will apply Differential Privacy to the Redistricting Data. Further, the enumerated population count and collected demographic characteristics for any given census block are imperfect representations of the actual population count and demographic characteristics of that census block that existed on Census Day. So for certain

census blocks, application of Differential Privacy may result in a population count and demographic characteristics that are just as reflective – or in some cases even more reflective – “of both the number of persons and the demographic characteristics of persons in that census block” as the confidential census data themselves.

REQUEST FOR ADMISSION NO. 6: Admit that there is not a single documented case of anyone outside the Census Bureau obtaining the responses of a particular identified person in the public use decennial census or American Community Survey data.

ANSWER: DENY. See the documented cases in McKenna (2019) [Research and Methodology Directorate \(census.gov\)](#).

REQUEST FOR ADMISSION NO. 7: Admit that if 13 U.S.C. § 9 requires the Bureau to protect only respondents’ identities, and not also their characteristics, then Differential Privacy would not be required to satisfy 13 U.S.C. § 9’s confidentiality requirement.

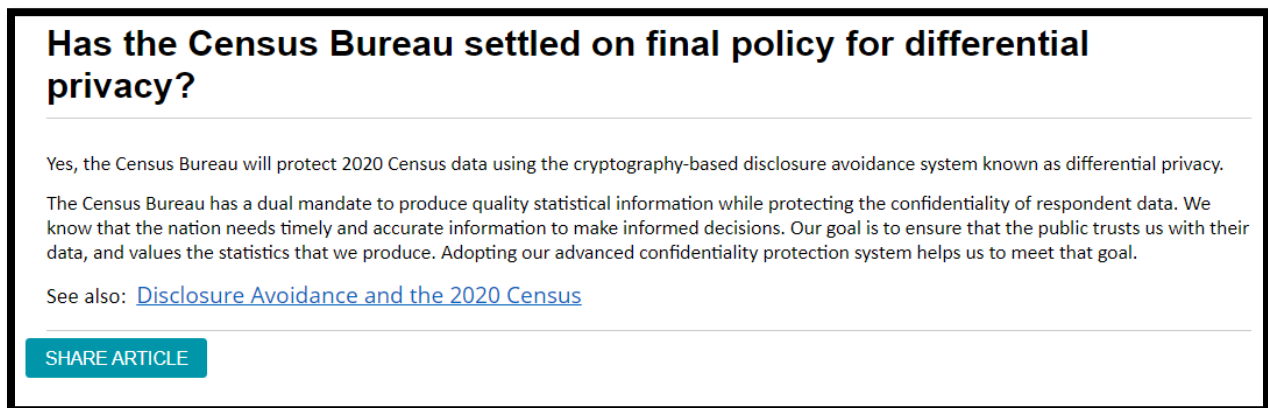
ANSWER: Defendants object to this Request as an improper hypothetical request for admission. *See, e.g., Atlanta Channel, Inc. v. Solomon, Civil Action, No. 15-1823 (RC), 2020 U.S. Dist. LEXIS 216969, at *18 (D.D.C. Nov. 18, 2020); Storck USA, L.P. v. Farley Candy Co., No. 92 C 552, 1995 U.S. Dist. LEXIS 4433, at *9 (N.D. Ill. Apr. 5, 1995); Morley v. Square, Inc., No. 4:14cv172, 2016 U.S. Dist. LEXIS 318, at *11 (E.D. Mo. Jan. 4, 2016); Buchanan v. Chi. Transit Auth., No. 16-cv-4577, 2016 U.S. Dist. LEXIS 168983, at *15 (N.D. Ill. Dec. 7, 2016).*

Defendants CANNOT ADMIT OR DENY this Request because it is premised on a mischaracterization of the law. In *Baldrige v. Shapiro*, 455 U.S. 345 (1982), the Supreme Court expressly rejected the argument that the Census Act’s “confidentiality provisions protect raw data only if the individual respondent can be identified.” *Id.* at 355. Rather, “Congress plainly contemplated that raw data reported by or on behalf of individuals

was to be held confidential and not available for disclosure.” *Id*; see also *id.* at 361 (“§ 8(b) and § 9(a) of the Census Act embody explicit congressional intent to preclude *all* disclosure of raw census data reported by or on behalf of individuals”) (emphasis in original).

AMENDED REQUEST FOR ADMISSION NO. 8: Admit that the statements made at the following governmental web address are authentic and accurately reflect the Bureau’s position as to the implementation of Differential Privacy with respect to the Census: https://ask.census.gov/prweb/PRServletCustom/app/ECOR-RAsk/YACFBFye-rFlz_FoGtyvDRUGg1Uzu5Mn*/!STANDARD?pzuiactionzzz=CXtpbn0rTEpMcGRYOG1vS0tqTFAwaENUZWpvM1NNWEMzZ3p5aFpnWUxzVmw0TjJp-TUZqanNtWnVVTitZWnhVVldtN1dI* .

ANSWER: ADMIT, presuming that the Request refers to text in the following image.



REQUEST FOR ADMISSION NO. 9: Admit that with Differential Privacy applied, areas with comparatively smaller populations—such as rural areas—will see a greater variance in population figures from the raw data than will areas with comparatively larger populations—such as urban areas.

ANSWER: LACK OF INFORMATION. Defendants can neither admit nor deny

this Request because the Census has not finalized the specific algorithm parameters and other critical details about how it will apply Differential Privacy to the Redistricting Data.

REQUEST FOR ADMISSION NO. 10: Admit that with Differential Privacy applied, smaller subpopulations, such as specific racial groups, will see a greater variance from the raw data than more numerous racial or ethnic groups.

ANSWER: LACK OF INFORMATION. Defendants can neither admit nor deny this Request because the Census has not finalized the specific algorithm parameters and other critical details about how it will apply Differential Privacy to the Redistricting Data.

REQUEST FOR ADMISSION NO. 11: Admit that Differential Privacy adds intentional error to the PL 94-171 Data.

ANSWER: ADMIT that most disclosure avoidance methods, including the swapping methodology used for the 2000 and 2010 Censuses and differential privacy, add intentional error to the PL 94-171 data.

REQUEST FOR ADMISSION NO. 12: Admit that demographic information (such as age, race, ethnicity, etc.) will not be held invariant at any level of geography under Differential Privacy for the 2020 Census.

ANSWER: LACK OF INFORMATION. Defendants can neither admit nor deny this Request because the Census has not finalized the specific algorithm and other critical details about how it will apply Differential Privacy to the Redistricting Data. While the Census Bureau's Data Stewardship Executive Policy (DSEP) Committee announced a final list of data elements that will be held invariant for the 2020 Census in November 2020, those invariants are always subject to change up to the point when the Secretary of Commerce releases the Redistricting Data.

REQUEST FOR ADMISSION NO. 13: Admit that with Differential Privacy applied, the PL 94-171 data will not reflect the actual population counts for sub-statewide geographies.

ANSWER: Defendants object to this Request as vague and ambiguous because “actual population counts” could refer to the actual population that existed on Census Day, or different types of collected information, including self-response, persons enumerated in non-response follow-up, proxy responses, group quarters response, or imputed population counts, or some subset of those categories.

LACK OF INFORMATION. Defendants can neither admit nor deny this Request because the Census has not finalized the specific algorithm parameters and other critical details about how it will apply Differential Privacy to the Redistricting Data.

REQUEST FOR ADMISSION NO. 14: Admit that if the Census Bureau did not apply Differential Privacy, the Bureau could shorten the timeline for the release of redistricting data.

ANSWER: DENY.

REQUEST FOR ADMISSION NO. 15: Admit that if the Census Bureau did not apply Differential Privacy, the Bureau could release the PL 94-171 data to states on a state-by-state rolling basis, rather than in a single national release.

ANSWER: Defendants object to this Request as an improper hypothetical request for admission. *See, e.g., Atlanta Channel, Inc. v. Solomon, Civil Action, No. 15-1823 (RC), 2020 U.S. Dist. LEXIS 216969, at *18 (D.D.C. Nov. 18, 2020); Storck USA, L.P. v. Farley Candy Co., No. 92 C 552, 1995 U.S. Dist. LEXIS 4433, at *9 (N.D. Ill. Apr. 5, 1995); Morley v. Square, Inc., No. 4:14cv172, 2016 U.S. Dist. LEXIS 318, at *11 (E.D. Mo. Jan. 4, 2016); Buchanan v. Chi. Transit Auth., No. 16-cv-4577, 2016 U.S. Dist. LEXIS 168983, at *15 (N.D. Ill. Dec. 7, 2016).*

To the extent that the Request asks Defendants to admit that applying Differential Privacy prevents the Bureau from releasing PL 94-171 data on a rolling basis, Defendants DENY. The Census Bureau can release data on either on a state-by-state rolling basis or a single, national release regardless of what disclosure avoidance method it employs. Census Bureau could release PL 94-171 data to states on a state-by-state rolling basis after applying Differential Privacy rather than a single national release, but as explained in the February 12 Press Release, a single national release of final redistricting “enables the Census Bureau to deliver complete and accurate redistricting data in a more timely fashion overall for the states.” *See* Pls. Mot. for P.I., Ex. 7. To the extent the Census Bureau does not apply Differential Privacy, it would need to apply an alternate form of disclosure avoidance that complies with Title XIII. But whatever hypothetical Title XIII-compliant disclosure-avoidance mechanism the Census Bureau uses, the form of disclosure avoidance mechanism would most likely not impact whether data can be released on a rolling basis or on a single national release.

REQUEST FOR ADMISSION NO. 16: Admit that Differential Privacy has never before, to the Census Bureau’s knowledge, been applied to a dataset as large and complex as the Census.

ANSWER: DENY. Differential Privacy is used by companies that manage extremely large data-sets, including Google, Apple, and Facebook. Because those private data-sets collect more information than the Census, they are likely larger and more complex than the redistricting data set collected by the Census.

GENERAL OBJECTIONS

1. Defendants object to the definition of “you” and “your,” and Instruction No. 5, to the extent they include persons and entities that are not parties to this lawsuit.

Defendants construe “you” and “your” to refer to the persons and entities named as defendants in this case.

2. Defendants object to the Definitions and Instructions to the extent they purport to impose obligations on Defendants that go beyond the obligations imposed by those the Federal Rules of Civil Procedure. Pursuant to Fed. R. Civ. P. 36(a)(3) and 29, the parties have agreed that Defendants will provide responses to these Requests for Admission by April 13, 2021.

3. Defendants object to Instruction No. 2 to the extent it purports to impose obligations on Defendants that go beyond the obligations those in Fed. R. Civ. P. 26(e). Defendants will timely supplement their responses as necessary and consistent with their obligations under Fed. R. Civ. P. 26(e).

DATED: April 13, 2021

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CERTIFICATE OF SERVICE

I hereby certify that on April 13, 2021, I served Defendants' Responses to Plaintiffs' First Request for Admissions to counsel of record for the Plaintiffs via e-mail per agreement.

DATED: April 13, 2021

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