

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

JUSTIN H. PHILLIPS,

Plaintiff,

v.

UNITED STATES BUREAU OF THE CENSUS,

Defendant.

22 Civ. 9304 (JSR)

**STIPULATION AND ORDER  
OF DISMISSAL**

WHEREAS, on July 7, 2022, the Election Law Clinic at Harvard Law School submitted a FOIA request (the “FOIA Request”) to the Bureau of the Census (“Census Bureau”) on behalf of Justin H. Phillips, a Professor at Columbia University (“Plaintiff”), in furtherance of desired research regarding Census’s disclosure avoidance system. The FOIA Request, which was assigned tracking number DOC-CEN-2022-002073, sought:

All machine-readable files that describe the 2020 Census data for all fifty states after noise has been injected but before post-processing has occurred. Referred to as the “noisy” measurements stage, these may take the form of “histograms” as described in Abowd et al 2019. These file(s) are also described by Abowd as those produced by line 2 of algorithm 1 and referred to as “A,” as the “noisy answer to a query,” or as a “measurement.”

All machine-readable files that describe the 2010 Census production settings demonstration data for all fifty states after noise has been injected but before post-processing has occurred. Referred to as the “noisy” measurements stage, these may take the form of “histograms” as described in Abowd et al 2019. These file(s) are also described by Abowd as those produced by line 2 of algorithm 1 and referred to as “A,” as the “noisy answer to a query,” or as a “measurement.”

WHEREAS, on November 17, 2022, the Census Bureau sent a letter to counsel for the Plaintiff, seeking confirmation of its understanding that Professor Phillips was seeking two electronic files:

- 1) 2010 Census Production Settings Demonstration Data Product Noisy

Measurement Persons File (this file comprises the noisy measurements used to produce tables P1-P5 in the 2010 Census Production Settings Demonstration Data Product released on June 8, 2021)

2) 2020 Redistricting Data (P.L. 94-171) Summary Noisy Measurement Persons File (this file comprises noisy measurements used to produce tables P1-P5 in the official 2020 Census Redistricting [P.L. 94-171] Data Summary File released on August 12, 2021);

WHEREAS, Plaintiff responded to the request for clarification on November 18, 2022, and confirmed that Plaintiff was seeking those two electronic files: 1) the 2010 Census Production Settings Demonstration Data Product Noisy Measurement Persons File (the “2010 Demonstration NMF”); and 2) the noisy measurements associated with the 2020 Redistricting Data (P.L. 94-171) Summary File for Persons (the “2020 Redistricting NMF”);

WHEREAS, on October 31, 2022, Plaintiff filed this suit pursuant to the Freedom of Information Act, 5 U.S.C. § 552 (“FOIA”), seeking the release of the records requested in the FOIA Request;

WHEREAS, on December 1, 2022, the Census Bureau sent Plaintiff a final determination with respect to his FOIA Request, in which the Census Bureau indicated that a reasonable search had been conducted for the 2010 Demonstration NMF, but that it had been determined that the file system containing these data had been deleted prior to the submission of Plaintiff’s FOIA request; and that 2020 Redistricting NMF had been withheld under FOIA Exemption 3, as statutorily exempt from disclosure pursuant to 13 U.S.C. § 9(a)(2);

WHEREAS, the Census Bureau informed the Court and Plaintiff that, due to public demand, the Data Stewardship Executive Policy Committee (the “DSEP”), which must approve any release of data deriving from the decennial censuses after ensuring that the release comports with the legal protections required by Title 13 of the U.S. Code, was considering whether to

authorize the development and release of certain noisy measurement files in research data products related to the 2020 Census;

WHEREAS, on January 18, 2023, the DSEP approved the development and release of privacy protected microdata files and noisy measurement files, created when the 2020 Census Disclosure Avoidance System is run on the 2010 Census Edited File;

WHEREAS, on March 2, 2023, DSEP approved the development and release of privacy protected microdata files and noisy measurements files, created from the production runs of the 2020 Redistricting Data (P.L. 94-171) Summary File and the 2020 Demographic and Housing Characteristics File as research data products;

WHEREAS, on January 20, 2023, after receiving authorization from the DSEP, the Census Bureau announced that it would be creating and releasing to the public the “2010 Demonstration Data Products Suite – Redistricting and DHC,” which would include a new 2010 Demonstration Privacy-Protected Microdata File (PPMF) combining the differentially private protected tables from the 2010 Redistricting Data (Public Law 94-171) Summary File and 2010 Demographic and Housing Characteristics File; detailed Summary Metrics for the new PPMF; separate noisy measurement files for the two sets of data products in the combined PPMF; and supporting technical documentation and materials;

WHEREAS, the 2010 Demonstration Data Products Suite was released to the public on April 3, 2023;

WHEREAS, on March 27, 2023, after receiving authorization from the DSEP, the Census Bureau announced that it would be creating and releasing to the public additional research data products related to the 2020 Census, including noisy measurement files for the 2020 Census supporting both the Redistricting Data (P.L. 94-171) Summary File (the “2020 Redistricting

NMF Research Data Product”) and the Demographic and Housing Characteristics File (collectively, the “2020 NMFs Research Data Product”);

WHEREAS, the 2020 NMFs Research Data Product is still under development and the Census Bureau has not announced a release date for the 2020 NMFs Research Data Product;

WHEREAS, Plaintiff agrees that the public release of the 2010 Demonstration Data Suite and the 2020 NMFs Research Data Product would obviate their need for the records requested in the FOIA Request; and

WHEREAS, the parties seek to resolve this matter consensually without the need for motion practice or additional proceedings;

IT IS HEREBY STIPULATED, AGREED, and ORDERED as follows:

1. If the Census Bureau does not publicly release the 2020 Redistricting NMF Research Data Product by August 23, then on that date the Census Bureau will produce to the Plaintiff an unsupported file containing the noisy measurements for the 2020 Census Redistricting Data (P.L. 94-171) Summary File (the “Unsupported 2020 Redistricting NMF”).

2. Pursuant to Rule 41(a)(2) of the Federal Rules of Civil Procedure, this action is hereby dismissed with prejudice; provided, however, that the dismissal is without prejudice to Plaintiff’s right to enforce the terms of this stipulation, including the terms of paragraph 1, and the Court shall retain jurisdiction to enforce the terms of this stipulation, including the terms of paragraph 1, and to adjudicate a request by Plaintiff for attorneys’ fees and costs under 5 U.S.C. § 552(a)(4)(E).

3. Plaintiff reserves the right to file a claim for fees and costs pursuant to 5 U.S.C. § 552(a)(4)(E), and Defendant reserves its right to oppose any such application. Any such application for fees and costs must be filed no later than 60 days following the

Census Bureau's production of either the 2020 Redistricting NMF Research Data Product or the Unsupported 2020 Redistricting NMF.

Dated: New York, NY  
April 10, 2023

DAMIAN WILLIAMS  
United States Attorney for the Southern  
District of New York

/s/ Jeanette A. Vargas  
By: JEANNETTE A. VARGAS  
Assistant United States Attorney  
86 Chambers Street, 3rd Floor  
New York, New York 10007  
Tel.: (212) 637-2678  
Email: jeannette.vargas@usdoj.gov

*Counsel for Defendant*

/s/ Theresa J. Lee  
Theresa J. Lee  
Ruth Greenwood\*  
Delaney I. Herndon†  
ELECTION LAW CLINIC  
HARVARD LAW SCHOOL  
6 Everett Street, Ste. 4105  
Cambridge, MA 02138  
(617) 496-0370  
thlee@law.harvard.edu  
rgreenwood@law.harvard.edu

\*Admitted *pro hac vice*

†Law student admission pending

Jordan A. Goldstein  
Jeffrey Zalesin  
SELENDY GAY ELSBERG PLLC  
1290 Avenue of the Americas  
New York, NY 10104  
(212) 390-9000  
jgoldstein@selendygay.com  
jzalesin@selendygay.com

*Counsel for Plaintiff*

SO ORDERED:

HONORABLE JED S. RAKOFF  
UNITED STATES DISTRICT JUDGE