



## Factsheet on the Census and Confidentiality

The U.S. Constitution mandates a count of all persons living in the United States every 10 years. A complete count is necessary to accurately apportion representation in the House of Representatives and the Electoral College, and to effectively distribute hundreds of billions of dollars of federal, state and local funding.

There are indications that some may be reluctant to participate in the census due to fear of the government and concern that their information could be used to harm them or their families.

This factsheet provides background on the existing law regarding disclosure of census data by the Census Bureau. It is intended to help community leaders and respondents better understand the benefits and risks to individual respondents participating in the 2020 Census. Key points are:

- **Federal law establishes confidentiality protections applicable to individual census responses. Protections include:**
  - Prohibiting the Census Bureau from using census information to the detriment of a respondent or for any purpose other than producing statistical datasets; and
  - Making it a felony for census workers or other Census Bureau employees to publish or distribute individual responses or other information that would identify an individual, business, or organization.
- **The Census Bureau can share compiled census data, including statistical and demographic data at the community or neighborhood level.**
- **Federal law requires a truthful, complete response to the census; failure to do so can result in a fine, although they have rarely been levied.**

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### Legal Protections to Safeguard the Confidentiality of Individual Census Responses

The Census Act prohibits any officer or employee of the Department of Commerce or Census Bureau, or local government census liaison, from using information collected under the Census Act for any purpose other than producing statistical datasets.<sup>1</sup> Anyone coming into contact with the data swears an oath to observe the strict confidentiality of personal data contained in census forms.

The Census Bureau or local government census liaison may not publish or distribute information that would identify an individual.<sup>2</sup> Personal information collected (including names, addresses with or without GPS coordinates, ethnicity, and telephone numbers) cannot be disclosed or published for 72 years. Employees who violate the law are subject to criminal sanctions, including adjusted fines up to \$250,000 and up to five years in prison.<sup>3</sup>

The Census Act prohibits the use of compiled or individual census data “to the detriment of any respondent or other person to whom such information relates.”<sup>4</sup> Importantly, the Census Bureau may not share personal census responses with *any* other government agency or official (federal, state, or local), outside entity (such as a business, landlord, or employer), or court of law for *any* reason.<sup>5</sup> Individual census forms may not be used in a judicial proceeding (except with the consent of the respondent).<sup>6</sup>

Although the Census Bureau is forbidden from sharing *individual census responses* with other government agencies, federal law provides that the Bureau “may make special statistical compilations and surveys, for departments, agencies, and establishments of the Federal Government, the government of the District of Columbia, the government of any [U.S. territory], State or local agencies, or other public and private persons and agencies.”<sup>7</sup> In other words, as long as they do not reveal any individual responses, the Census Bureau can share statistical data—including demographic data—with anyone who requests it.

The confidentiality protections currently in the Census Act were adopted in response to the disclosure of unpublished information to assist the Department of War in incarcerating Japanese-Americans during World War II. The confidentiality provisions have been broadly construed to protect the confidentiality of census data. For example, in a 1982 ruling, the U.S. Supreme Court held that the Freedom of Information Act does not

permit local governments to obtain address lists relied on by the Census Bureau to contest the accuracy of the census count. As the Court explained, Sections 8 and 9 “of the Census Act embody explicit congressional intent to preclude *all* disclosure of raw census data reported by or on behalf of individuals.”<sup>8</sup> This principle has been reflected in interpretations made by the U.S. Department of Justice.<sup>9</sup>

Following the Commerce Secretary’s request to add a citizenship question to the 2020 Census, Acting Director Jarmin the following statement: “I know that one important concern is how the census data will be used and there is often a question of whether the Census Bureau shares information with law enforcement agencies like the FBI, ICE or even the local police. I assure you that this does not happen and it is prohibited by Title 13. Title 13 makes it very clear that the data we collect can only be used for statistical purposes and cannot be shared for nonstatistical purposes — including law enforcement. The Census Bureau is proud of this law and we are committed to ensuring that the data we collect are always protected. We do not share confidential micro data (i.e., data at the individual, household or business level) with any party for nonstatistical purposes.”<sup>10</sup>

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## Responding to the Census is Required by Law

The Census Act makes it illegal to refuse or willfully neglect to answer any of the census questions.<sup>11</sup> The penalty for not answering census questions is a \$5,000 fine for each question refused. Providing a false response can also result in a \$5,000 fine.<sup>12</sup> A \$5,000 fine can also be imposed on landlords or property managers who refuse to provide the names of their tenants or permit census workers to enter their properties.<sup>13</sup> Additionally, any action intended to cause an inaccurate enumeration, can result in a fine of not more than \$100,000 or one year of imprisonment, or both for noncompliance.<sup>14</sup>

In 1960 and again in 1970, prosecution was brought against individuals for not answering all of the questions on the census form. The 1970 case was dismissed by the trial court.<sup>15</sup> Since then, Washington state is not aware of any situation where the Census Bureau has referred a case to the Justice Department for prosecution.

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<sup>1</sup> 13 U.S.C. § 214.

<sup>2</sup> 13 U.S.C. §§ 8 and 9.

<sup>3</sup> 13 U.S.C. § 214, as amended. Note that the fines and penalties described in this Fact Sheet have been adjusted to comply with federal sentencing laws and policies.

<sup>4</sup> 13 U.S.C. § 8(c).

<sup>5</sup> 13 U.S.C. § 9(2) prohibits the Census Bureau from “mak[ing] **any** publication whereby the data furnished by any particular establishment or individual under this title can be identified. Section 9(3) Permit[ing] **anyone other than the sworn officers and employees of the Department or bureau or agency thereof** to examine the individual reports.” (emphasis added)

<sup>6</sup> 13 U.S.C. § 8(a). Section 8(c) does allow census information to be used “in the prosecution of alleged violations of this title.” In other words, if someone were criminally prosecuted for refusing to answer census questions, or willfully giving false answers on a census form, their census form could be used to prove those violations. See 13 U.S.C. § 221.

<sup>7</sup> 13 U.S.C. § 8(b)

<sup>8</sup> *Baldrige v. Shapiro*, 455 U.S. 345, 361 (1982) (emphasis added). Following *Baldrige*, Congress amended the Census Act to provide that local governments’ census liaisons could obtain “access to census address information for the purpose of verifying the accuracy of the address information of the Bureau for census and survey purposes,” but only “information concerning addresses within the local unit of general purpose government represented by the census liaison or an adjacent local unit of general purpose government.” Pub. L. 103–430, § 2(a), Oct. 31, 1994, 108 Stat. 4393, codified at 13 U.S.C. § 16.

<sup>9</sup> See, e.g., *Census Confidentiality and the PATRIOT Act* (Jan. 4, 2010), available at <https://www.justice.gov/sites/default/files/olc/opinions/attachments/2016/03/18/2010-01-04-census-confidentiality.pdf>

(concluding that the broad information-sharing provisions of the PATRIOT Act do not undermine the confidentiality provisions of the Census Act because Section 9(a) prohibits disclosure of census information *except* where Congress *explicitly* provides for its disclosure); *Relationship Between Illegal Immigration Reform and Immigrant Responsibility Act of 1996 and Statutory Requirement for Confidentiality of Census Information* (May 18, 1999) (“IIRIRA Opinion”), available at <https://www.justice.gov/sites/default/files/olc/opinions/attachments/2016/03/18/2010-01-04-census-confidentiality.pdf> (concluding that a statute prohibiting government officials from prohibiting or restricting the sharing of individuals’ citizenship and immigration status with INS did not affect the confidentiality provisions of the Census Act in part “because it has long been assumed that, if Congress were to cut back on the confidentiality provision set forth in 13 U.S.C. § 9(a), it would do so clearly”).

<sup>10</sup> [https://www.census.gov/newsroom/blogs/director/2018/05/the\\_u\\_s\\_census\\_bure.html](https://www.census.gov/newsroom/blogs/director/2018/05/the_u_s_census_bure.html)

<sup>11</sup> 13 U.S.C. § 221.

<sup>12</sup> 13 U.S.C. § 222.

<sup>13</sup> 13 U.S.C. § 223.

<sup>14</sup> 13 U.S.C. § 222.

<sup>15</sup> *U.S. v. Little*, 317 F. Supp. 1308 (1970).