

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

**ELECTRONIC PRIVACY INFORMATION CENTER** )  
1718 Connecticut Ave. NW )  
Suite 200 )  
Washington, DC 20009, )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
**DEPARTMENT OF COMMERCE** )  
1401 Constitution Ave. NW )  
Washington, DC 20230, )  
 )  
and )  
 )  
**DEPARTMENT OF HOMELAND SECURITY** )  
Washington, DC 20528, )  
 )  
Defendants. )  
\_\_\_\_\_ )

Civil Action No.

**COMPLAINT FOR INJUNCTIVE RELIEF**

1. This is an action under the Freedom of Information Act, 5 U.S.C. § 552, for injunctive and other appropriate relief for the disclosure and release of agency records improperly withheld from plaintiff by the United States Census Bureau and United States Customs and Border Protection.

**JURISDICTION AND VENUE**

2. This court has both subject matter jurisdiction over this action and personal jurisdiction over the parties pursuant to 5 U.S.C. § 552(a)(4)(B). This court also has jurisdiction over this action pursuant to 28 U.S.C. § 1331. Venue lies in this district under 5 U.S.C. § 552(a)(4)(B).

## **THE PARTIES**

3. Plaintiff Electronic Privacy Information Center (“EPIC”) is a non-profit organization incorporated in Washington, DC. EPIC is a research center established in 1994 to focus public attention on emerging civil liberties issues and to protect privacy, the First Amendment, and other constitutional values. EPIC’s activities include the review of federal data collection and data sharing policies to determine their possible impacts on civil liberties and privacy interests. Among its other activities, EPIC publishes books, reports and a bi-weekly electronic newsletter. EPIC also maintains a heavily visited site on the World Wide Web ([www.epic.org](http://www.epic.org)) containing extensive information on privacy issues, including information EPIC has obtained from federal agencies under the FOIA.

4. Defendant Department of Commerce (“Commerce”) is a Department of the Executive Branch of the United States government. Commerce is an “agency” within the meaning of 5 U.S.C. § 552(f), comprised of component agencies, including the United States Census Bureau.

5. The United States Census Bureau (“Census”) is a component agency of defendant Commerce. Census is an “agency” within the meaning of 5 U.S.C. § 552(f).

6. Defendant Department of Homeland Security (“DHS”) is a department of the Executive Branch of the United States government. DHS an “agency” within the meaning of 5 U.S.C. § 552(f), comprised of component agencies, including United States Customs and Border Protection.

7. United States Customs and Border Protection (“Customs”) is a component agency of defendant DHS. Customs is an “agency” within the meaning of 5 U.S.C. §552(f).

**Plaintiff’s FOIA Request and Census’ Response**

8. By letter to Census dated May 14, 2004, plaintiff requested, *inter alia*, copies of “correspondence or communications between the Census Bureau and law enforcement or intelligence agencies concerning access to completed census questionnaires or census data.”

9. By letter to plaintiff on July 23, 2004, Census provided, *inter alia*, copies of five electronic communications between Census and Customs between December 22, 2003, and April 23, 2004, concerning statistical demographic data Census prepared for Customs about people who identified themselves on the 2000 census as being of Arab ancestry. In its response letter to plaintiff, Census stated that Customs “has asked that we withhold certain parts of their parts of these documents pursuant to FOIA exemptions (b)(2), (b)(6), and (b)(5).” Four of the five communications between Customs and Census were heavily redacted. Census provided no indication of whether additional documents responsive to plaintiff’s request had been located and withheld. Census advised plaintiff of its right to appeal this determination to the FOIA Appeals Officer of Customs.

10. By letters to defendant Commerce and Customs, both dated July 30, 2004, plaintiff appealed the agencies’ determination to withhold material responsive to plaintiff’s FOIA request.

**Defendant Commerce's Failure to Timely Respond to Plaintiff's Appeal**

11. By letter dated August 19, 2004, defendant Commerce acknowledged receipt of plaintiff's FOIA appeal.

12. To date, defendant Commerce has not issued a determination on plaintiff's appeal, despite the requirement under both FOIA and 15 C.F.R. § 4.6(b) that it do so within twenty (20) working days.

13. Plaintiff has exhausted the applicable administrative remedies with respect to its FOIA appeal to defendant Commerce.

**Customs' Failure to Timely Respond to Plaintiff's Appeal**

14. By letter dated August 9, 2004, Customs acknowledged receipt of plaintiff's FOIA appeal, stating that "[t]he Freedom of Information Act, as amended, requires that we respond to an appeal within 20 working days after its receipt by this office. We are currently unable to process appeals on a timely basis because of resource constraints."

15. To date, Customs has not issued a determination on plaintiff's appeal, despite the requirement under FOIA that it do so within twenty (20) working days.

16. Plaintiff has exhausted the applicable administrative remedies with respect to its FOIA appeal to Customs.

**CAUSE OF ACTION**

**Violation of the Freedom of Information Act for  
Wrongful Withholding of Agency Records**

17. Plaintiff repeats and realleges paragraphs 1-16.

18. Defendants have wrongfully withheld agency records requested by plaintiff.

19. Plaintiff has exhausted the applicable administrative remedies with respect to defendants' wrongful withholding of the requested records.

20. Plaintiff is entitled to injunctive relief with respect to the release and disclosure of the requested documents.

**Requested Relief**

WHEREFORE, plaintiff prays that this Court:

- A. order defendants to disclose the requested records in their entireties and make copies available to plaintiff;
- B. provide for expeditious proceedings in this action;
- C. award plaintiff its costs and reasonable attorneys fees incurred in this action;
- and
- D. grant such other relief as the Court may deem just and proper.

Respectfully submitted,

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