

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

ELECTRONIC PRIVACY INFORMATION
CENTER,

Plaintiff,

v.

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

Defendants.

Civil Action No. 1:18-cv-02711 (DLF)

DECLARATION OF ROBIN J. BACHMAN

I, Robin J. Bachman, make the following Declaration pursuant to 28 U.S.C. § 1746, and state that under penalty of perjury the following is true and correct to the best of my knowledge and belief:

1. I am the Chief of the Policy Coordination Office (PCO) and the Chief Privacy Officer with the U.S. Census Bureau and have served in this capacity since May 19, 2014. I previously served at the Census Bureau as Chief of Congressional Affairs from 1999 to 2001. As the Chief Privacy Officer, I am responsible for providing guidance to the Census Bureau programs on matters concerning confidentiality, data stewardship and safeguards, privacy and privacy compliance, including compliance with Title 13, policy development, open government and the Paperwork Reduction Act (44 U.S.C. § 3501, *et seq.*) (PRA). I supervise the work of the Privacy Compliance Branch which is responsible for promoting the agency's privacy principles across the enterprise, adherence to the requirements of the Privacy Act (5 U.S.C. § 552a *et seq.*) and the E-Government Act of 2002 (Public Law 107-347), as well as other federal statutes and the privacy policies of the Department of Commerce and the Office of Management of Budget.
2. In connection with my job responsibilities, I am familiar with the case *EPIC v. Department of Commerce*, No. 18-2711 (D.D.C. filed Nov. 20, 2018).

3. The purpose of this declaration is to explain the Census Bureau's process for completing Privacy Impact Assessments (PIAs), and specifically the PIA for CEN08 systems – a primary system used to administer the decennial census. CEN08 is owned by the Decennial Information Technology Division (DITD); the system is used to manage the development and implementation of a number of major decennial census applications utilized by the Decennial Census Program, including the Census Schedule A Human Resources Recruiting and Payroll Systems (C-SHaRPS), the Control and Response Data System (CaRDS), and the Third-Party Fingerprinting System. The systems covered by the CEN08 PIA contain several categories of information, including data collected from decennial census respondents, such as name, address, and date of birth, citizenship, etc. The system also includes decennial census personnel data, such as fingerprints collected for background checks of individuals applying to be enumerators for the 2020 Decennial Census.
4. Section 208 of the E-Government Act requires federal agencies to conduct PIAs for information technology (IT) systems operated by or on behalf of the U.S. government that are collecting, maintaining, or disseminating personally identifiable information (PII). A PIA is an analysis of how information in identifiable form is collected, maintained, stored, and disseminated, in addition to examining and evaluating the privacy risks associated with these tasks and the protections and processes for handling information to mitigate those privacy risks. A PIA includes both the ongoing analysis of how personally identifying information (PII) is handled as well as a formal document detailing the process and the outcome of that process. *See* Office of Management and Budget, Circular No. A-130, Appendix II-10.
5. Section 208 of the Act requires the PIA to be conducted prior to:
 - a. the development or procurement of information technology that collects, maintains, or disseminates information that is in an identifiable form, or,
 - b. initiating, consistent with the Paperwork Reduction Act, a new electronic collection of information in identifiable form for 10 or more persons (excluding agencies, instrumentalities or employees of the federal government).
6. Since the PIA process is initiated prior to the development and procurement of IT systems or the collection of new (i.e. not previously collected) information using existing IT systems, the Census Bureau completes and, where practicable, publishes PIAs, including the CEN08 PIA, with the understanding that the PIAs are subject to change as program operations become more refined.
7. All Census Bureau PIAs are reviewed for possible updates no fewer than once a year. The Census Bureau updates PIAs to reflect changed information collection authorities, business processes, or other factors affecting the collection and handling of information

in identifiable form, in addition to where a system change creates new privacy risks¹, such as:

- a. Conversions - when converting paper-based records to electronic systems;
 - b. Anonymous to Non-Anonymous - when functions applied to an existing information collection change anonymous information into information in identifiable form;
 - a. Significant System Management Changes - when new uses of an existing IT system, including application of new technologies, significantly change how information in identifiable form is managed in the system;
 - b. Significant Merging - when agencies adopt or alter business processes so that government databases holding information in identifiable form are merged, centralized, matched with other databases or otherwise significantly manipulated;
 - c. New Public Access - when user-authenticating technology (e.g., password, digital certificate, biometric) is newly applied to an electronic information system accessed by members of the public;
 - d. Commercial Sources - when agencies systematically incorporate into existing information systems databases of information in identifiable form purchased or obtained from commercial or public sources. (Merely querying such a source on an ad hoc basis using existing technology does not trigger the PIA requirement);
 - e. New Interagency Uses - when agencies work together on shared functions involving significant new uses or exchanges of information in identifiable form, such as the cross-cutting E-Government initiatives; in such cases, the lead agency should prepare the PIA;
 - f. Internal Flow or Collection - when alteration of a business process results in significant new uses or disclosures of information or incorporation into the system of additional items of information in identifiable form; or
 - g. Alteration in Character of Data - when new information in identifiable form added to a collection raises the risks to personal privacy.
8. Upon completion or update of a PIA, the Census Bureau is required to submit the PIA to the Department of Commerce's Office of Privacy and Open Government for final review by the Department's PIA Compliance Review Board (CRB). Upon receiving concurrence from the Department's CRB, the PIA is submitted to the Department of Commerce's Senior Agency Official for Privacy (SAOP) for final approval.
 9. The Census Bureau's CEN08 PIA was updated twice in 2018, and subsequently published on the Commerce Department and Census Bureau's websites: once in early 2018 as part of the annual review process (attachment A PIA published June 26, 2018) and again during late summer (attachment B PIA published September 27, 2018).

¹ Office of Management and Budget (OMB) Memorandum M-03-22.

Another update to the CEN08 PIA is currently underway and is scheduled to be released in late February or early March of 2019.

10. On March 26, 2018, Commerce Secretary Wilbur Ross announced his decision to include a citizenship question on the 2020 Decennial Census questionnaire. On March 29, 2018, the Census Bureau delivered its planned questions for the 2020 Decennial Census to Congress, which included a citizenship question. The CEN08 PIA was updated and published in June 2018 to reflect the intent to add citizenship status to the personally identifying information (PII) data to be collected during the 2020 Decennial Census and to assess the PII confidentiality risk level of collecting the planned PII data. The confidentiality risk level was already rated as moderate based on National Institute of Standards and Technology (NIST) Special Publication 800-122 standards, prior to the addition of the citizenship question, and that rating did not change with the addition of the citizenship question.²
11. Census Bureau information technology systems employ a multitude of layered security controls to protect PII at rest, during processing, as well as in transit. These NIST Special Publication 800-53 controls, at a minimum, are deployed and managed at the enterprise level including, but not limited to the following:
 - Intrusion Detection | Prevention Systems (IDS | IPS)
 - Firewalls
 - Mandatory use of HTTP(S) for Census public facing websites
 - Use of trusted internet connection (TIC)
 - Anti-Virus software to protect host/end user systems
 - Encryption of databases (data at rest)
 - HSPD-12 Compliant PIV cards
 - Access controls
12. Census Bureau information technology systems also follow other NIST standards including special publications 800-63, 800-37 etc. Any system within the Census Bureau that contains, transmits, or processes PII has a current authority to operate (ATO) and goes through continuous monitoring on a yearly basis to ensure controls are implemented

² The potential impact is **MODERATE** if the loss of confidentiality, integrity, or availability could be expected to have a **serious adverse effect** on organizational operations, organizational assets, or individuals. A serious adverse effect means that, for example, the loss of confidentiality, integrity, or availability might (i) cause a significant degradation in mission capability to an extent and duration that the organization is able to perform its primary functions, but the effectiveness of the functions is significantly reduced; (ii) result in significant damage to organizational assets; (iii) result in significant financial loss; or (iv) result in significant harm to individuals that does not involve loss of life or serious life threatening injuries. Source: NIST Special Publication 800-122, Section 3.1. Impact Level Definitions.

and operating as intended. The Census Bureau also deploys a Data Loss Prevention (DLP) solution as well.

13. In July 2018, the CEN08 PIA was once again updated to reflect employment recruiting and hiring activities for the 2020 Decennial Census. The updated PIA was published on September 27, 2018. The collections of fingerprints and other personal information from potential Census employees were added to the PIA. The updated PIA noted in Section 4: Purpose of the System, that this information would be shared with other federal agencies for criminal background investigations. Background investigations are required for all 2020 Decennial Census hires. The collected information, including fingerprints, is shared with other federal agencies solely for conducting the background investigations of potential news hires and is not linked to 2020 Decennial Census questionnaire responses. The updated PIA also noted in Section 4 that collected information would be shared with other federal agencies for the purpose of administering human resources programs (i.e., personnel and payroll processing). These recruiting and hiring updates included additional sensitive PII which, in consideration of the overall system, changed the PII confidentiality risk level from moderate to high.³
14. Census Bureau IT systems share information with other Census Bureau IT systems for administrative and statistical purposes. As relevant here, CEN08 shares administrative information with other administrative IT systems such as CEN21 (Human Resources Application) for the purpose of processing employment applications, background investigations, payroll, and other personnel activities. The administrative information CEN08 shares with CEN21 and other IT systems is protected from unauthorized disclosure under the Privacy Act of 1974. The Decennial Census response data collected by CEN08 is also shared with several other internal Census IT systems, including CEN05 (Field Systems Major Application System), CEN11 (Demographic Census, Surveys, and Special Processing), and CEN13 (Center for Economic Studies) in support for producing household, demographic and economic aggregate statistical information. This information is protected from unauthorized disclosure under Title 13 United States Code. The information collected cannot be used to affect the rights, benefits, or privileges of the

³ The potential impact is **HIGH** if the loss of confidentiality, integrity, or availability could be expected to have a **severe or catastrophic adverse effect** on organizational operations, organizational assets, or individuals. A severe or catastrophic adverse effect means that, for example, the loss of confidentiality, integrity, or availability might (i) cause a severe degradation in or loss of mission capability to an extent and duration that the organization is not able to perform one or more of its primary functions; (ii) result in major damage to organizational assets; (iii) result in major financial loss; or (iv) result in severe or catastrophic harm to individuals involving loss of life or serious life threatening injuries. Source: NIST Special Publication 800-122, Section 3.1. Impact Level Definitions.

individual respondent. CEN18 (Enterprise Applications) is a conduit for passing information from CEN08 to these other Census IT systems.

15. The CEN21 PIA was last updated on June 29, 2018, the CEN05 PIA was last updated on June 22, 2018, the CEN11 PIA was last updated on June 22, 2018, the CEN13 PIA was last updated on June 26, 2018, and the CEN18 PIA was last updated on June 26, 2018. Each of these PIAs will be reviewed within the next two months as part of our annual PIA review processes and updated, as appropriate.
16. The CEN08 PIA cites the Census Bureau's programmatic authority, which is Title 13 of the U.S. Code. Similarly, other PIAs for Census Bureau data collections and processing also cite this authority. Title 13 provides authority to conduct our work in addition to providing robust confidentiality protections. Section 9 of Title 13 not only requires that the Census Bureau maintain the confidentiality of the information it collects, but also mandates that the Census Bureau may only use the information it collects for statistical purposes, and the information cannot be used to a respondent's detriment. The Census Bureau cannot publish data that identifies a particular individual or establishment because of Title 13. Only "sworn individuals" are permitted to access confidential information, and the Census Bureau administers an "oath of nondisclosure" with all of its employees, as well as contractors. This oath of nondisclosure is a lifetime commitment to protect the confidentiality of the information collected, and an acknowledgement that violations of this law are a federal crime with serious penalties that could include a prison sentence up to five years, a fine of up to \$250,000, or both.
17. The Census Bureau leverages its own Title 13 authority and obligations in coordination with other federal statutes and mandates for privacy, data security, transparency, and accountability, including the Privacy Act, the E-Government Act of 2002 (which directs PIAs), the Federal Information Security Modernization Act or FISMA, and the Paperwork Reduction Act as well as federal standards and guidance promulgated by the Office of Management and Budget (OMB) and the National Institute of Standards and Technology.
18. Although the legal requirement as found in Section 208(a) of the E-Government Act requires the PIA to be conducted for citizen-centered electronic government, the Department of Commerce has extended the privacy provisions of the E-Government Act to include personally identifiable information (PII) from Census employees, contractors, or potential employees (administrative data) that is collected, maintained, or disseminated on a IT system operated by or on behalf of the U.S. government.

19. In summary, this declaration details how the U.S. Census Bureau has complied with and intends to continue to comply with the requirements of the E-Government Act.

 Jan. 30, 2019
Robin J. Bachman
Chief, Policy Coordination Office and
Chief Privacy Officer
Bureau of the Census

Attachments (2)