

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

NAACP, *et al.*

Plaintiffs,

v.

U.S. DEPARTMENT OF COMMERCE,

Defendant.

Civil Action No. 3:17-cv-01682-WWE

February 4, 2019

STIPULATION AND ORDER OF SETTLEMENT

Plaintiffs the National Association for the Advancement of Colored People (“NAACP”), the NAACP Connecticut State Conference, and the NAACP Boston Branch (together, “Plaintiffs”) and Defendant U.S. Department of Commerce (“Defendant”) hereby stipulate and agree to the following stipulation and settlement regarding the above-captioned case.

WHEREAS, on June 29, 2017, Plaintiffs submitted to Defendant the Freedom of Information Act (“FOIA”) request that is the subject of the above-captioned case (the “First Request”);

WHEREAS, on October 5, 2017, Plaintiffs filed the complaint in the above-captioned case, ECF 1 (the “Complaint”), alleging that Defendant failed to provide an adequate and timely response to the First Request as required by FOIA;

WHEREAS, on March 7, 2018, Plaintiffs submitted to Defendant a second FOIA request, DOC-CEN-2018-000911, not at issue in the above-captioned case (the “Second Request”);

WHEREAS, Plaintiffs and Defendant have engaged in arms-length negotiations to resolve all outstanding disputes between Plaintiffs and Defendant regarding the reasonableness of Defendant's searches pursuant to both the First Request and the Second Request;

NOW THEREFORE, IT IS HEREBY AGREED AMONGST THE PARTIES AS FOLLOWS:

1. No later than the dates indicated below, Defendant shall conduct a reasonable search for the following categories of records and shall produce all responsive records in these categories to Plaintiffs, except that Defendant may withhold any information that properly falls within an exemption to FOIA. Defendant shall provide any responsive, non-exempt records that exist in electronic form in an electronic searchable format on a compact disc, digital video disk, digital file transfer, or equivalent electronic medium. Emails with accompanying attachments shall be provided together, preserving any parent-child relationship of documents should they exist.

No later than February 14, 2019:

- a. From January 1, 2017 through January 31, 2019, meeting materials for the 2020 Census Executive Steering Committee, as well as meeting materials from the Operating Committee, where discussion of the 2020 Census is identified on the agenda;
- b. Meeting materials for the 2020 Census Portfolio Management Governing Board, from January 1, 2017 through January 31, 2019;
- c. From January 1, 2017 through January 31, 2019, presentation materials for briefings provided to the Department of Commerce in the Census Bureau's "Weekly Updates";

- d. From January 1, 2017 through January 31, 2019, presentation materials for briefings provided to Under Secretary of Economic Affairs Karen Dunn Kelley, the Deputy Secretary of Commerce, and the Secretary of Commerce, to the extent that these briefings have taken place outside the “Weekly Updates”;
- e. Budget, finance and funding estimation documents, specifically:
 - i. The full basis of estimation for Version 1 (2017) of the 2020 Decennial Census Lifecycle Cost Estimate;
 - ii. The Census Bureau’s budget variance reports and monthly spend plans for Fiscal Years 2018 and 2019; and
 - iii. Budget impact statements related to the cancellation and modification of 2017 and 2018 field tests;
- f. Partnership plans, specifically:
 - i. Records documenting the Census Bureau’s identification of certain “keystone partners” for the 2020 Census National Partnership Program;
 - ii. Spreadsheet of partners gathered by the Census Bureau since 2010; and
 - iii. Hiring snapshots and the total amount of money spent on the 2020 Decennial Census Integrated Partnership and Communications Program as of December 2018;
- g. Data sufficient to show:
 - i. The number of partnership specialists hired by the Census Bureau through December 31, 2018; and
 - ii. the numbers of individuals working as contractors for the Census Bureau as of December 31, 2018

- A. as technical integrators; and
- B. on the Integrated Partnership and Communications program;
- h. Documents or data sufficient to show what portion of the communications budget for the 2010 Census Integrated Partnership and Communications program was spent on advertising per target audience, specifically to include each racial or ethnic group classified as a hard-to-count population;
- i. To the extent not already produced to Plaintiffs, documents Defendant agreed to search for and produce pursuant to the Joint Stipulation of November 2, 2018 (ECF 33), to wit:
 - i. Agreements in force between the Census Bureau and State agencies governing the Census Bureau's use of administrative data as of the date of this stipulation of settlement;
 - ii. From January 1, 2017 to the date of this stipulation of settlement, the Census Bureau's "Should Have Started / Should Have Finished Reports";
 - iii. From January 1, 2017 to the date of this stipulation of settlement, the Census Bureau's "30, 60, and 90 Day Look Ahead Reports";
 - iv. From January 1, 2017 to the date of this stipulation of settlement, the Census Bureau's Executive Alert Reports;
 - v. The Census Bureau's Draft HR Bulletin for the hiring freeze; hiring freeze exception memoranda; hiring freeze exemption approvals; and the document titled "updated CORI hiring freeze user guidance MZL";
 - vi. Internal Census Bureau planning memoranda relating to opening regional census centers in January 2017, beginning address canvassing field staff

recruitment in March 2017, and opening area census offices from April 1, 2017 to July 31, 2017; and

- vii. Internal Census Bureau memoranda or documents on reaching hard-to-count populations, specifically with regards to the role of technology.

No later than fourteen calendar days after Version 2 of the 2020 Decennial Census Lifecycle Cost Estimate is finalized:

- j. The basis of estimation for Version 2 (forthcoming, February 2019) of the 2020 Decennial Census Lifecycle Cost Estimate.

No later than fourteen calendar days after the 2020 Decennial Census media plan is finalized:

- k. Documents or data sufficient to show what portion of the communications budget for the 2020 Census Integrated Partnership and Communications program the Census Bureau expects to spend on advertising buys per target audience, specifically including each racial or ethnic group classified as a hard-to-count population; and
- l. Documents or data sufficient to show what portion of the communications budget for the 2020 Census Integrated Partnership and Communications program, if any, the Census Bureau has instructed or expects Young & Rubicam to allocate to advertising developed by Carol H. Williams Advertising;

No later than February 28, 2019:

- m. Emails sent to or from the email account of Census Bureau Director John Thompson in October 2016 (whether Mr. Thompson was a primary addressee, copied on a message, “bcc”-d, forwarded the message, or otherwise received a message) addressing the partial cancellation of 2017 field testing operations;

2. Defendant shall produce to Plaintiffs, no later than February 28, 2019, a *Vaughn* index describing each document withheld for the categories in paragraph 1 above and the basis for each withholding.
3. In exchange for Defendant's performance of paragraphs 1 and 2 herein, Plaintiffs hereby stipulate and agree that Defendant has conducted a reasonable search for records responsive to the First Request and Second Request.
4. Defendant hereby withdraws its Motion for Summary Judgment, ECF 20.
5. Plaintiffs reserve the right to enforce the terms of this agreement. The parties request, and expressly consent to the Court making "the parties' obligation to comply with the terms of the Settlement Agreement ... part of the [Court's] order," pursuant to *Kokkonen v. Guardian Life Ins. Co.*, 511 U.S. 375, 381 (1994). The parties agree that, after the Court issues such an order, it shall retain jurisdiction to adjudicate any dispute arising from the performance of this stipulation. The parties agree to make reasonable efforts to resolve any disputes informally before making an application to the Court.
6. By March 14, 2019, Plaintiffs shall review the *Vaughn* index and advise Defendant which withholdings, if any, they contest. Plaintiffs and Defendant shall confer regarding any contested withholdings until March 28, 2019. If any disputes remain, Defendant shall move for summary judgment as to the propriety of its withholdings by May 2, 2019; Plaintiffs' response in opposition, together with any cross-motion, shall be due May 30, 2019; Defendant's reply in support of its motion for summary judgment, together with its opposition to any cross-motion, shall be due June 13, 2019; and Plaintiffs' reply in support of any cross-motion shall be due June 27, 2019.

7. This stipulation shall not be used as evidence or otherwise in any pending or future civil or administrative action against or involving Defendant, its agents, servants, or employees, or any agency or instrumentality of the United States, except as may be necessary to establish or clarify the parties' respective rights and obligations under this stipulation.
8. This stipulation shall be binding upon and inure to the benefit of the parties hereto and their respective predecessors, successors, agents, and assigns.
9. The parties hereby declare that they have voluntarily entered into this stipulation in good faith, have read and fully understand the entire stipulation, and consider it to be a fair and reasonable agreement. The parties hereby declare further that the undersigned counsel are fully authorized to enter into this stipulation on behalf of their respective clients.
10. The parties may execute this stipulation in counterparts, each of which constitutes an original and all of which constitute one and the same stipulation. Facsimiles and pdf versions of signatures shall constitute acceptable, binding signatures for purposes of this stipulation.

Dated: February 4, 2019

Respectfully submitted,

John H. Durham
United States Attorney

/s/ Brenda M. Green
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Counsel for all Plaintiffs

SO ORDERED.

Dated:

WARREN W. EGINTON
Senior United States District Judge

CERTIFICATE OF SERVICE

I hereby certify that on February 4, 2019, a copy of the foregoing Stipulation and Order of Settlement was filed electronically and served by mail on anyone unable to accept electronic filing. Notice of this filing will be sent by e-mail to all parties by operation of the Court's electronic filing system or by mail to anyone unable to accept electronic filing as indicated on the Notice of Electronic Filing. Parties may access this filing through the Court's CM/ECF System.

Respectfully submitted,

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