

## Appendix: An Incident Register

### Part I: Requests from Federal Agencies and Elected Officials to Access Statistical Information Collected under a Pledge of Confidentiality

Year	Requesting Agency or Elected Official	Statistical Agency Affected	Nature of Request	Statistical Agency Response	Evaluation of Precedent Set by the Request	Additional Research Needed	Source of Information
1917-18	Justice Department and/or Selective Service (Provost Marshal General's Office)	Census Bureau	Names, addresses and ages from 1910 census records of individuals thought to be evading the draft. "...While we do not know the exact circumstances surrounding the release, we do know that personal information for several hundred young men was released to courts, draft boards, and the Justice Department."	Request granted	"The Bureau stopped such releases during the 1920's, a position which was made official in 1930 by an opinion from the Attorney General. His opinion said that even the name and address of an individual was confidential."	Impact of release on individuals affected. Impact of the incident on the Justice Department and Selective Service policies and procedures.	Barabba, 27.
1920	Justice Department on behalf of the Department of Labor	Census Bureau local enumerators, Toledo, Ohio	"Information about individuals' citizenship from the 1920 Census of Population (then underway) for use in deportation cases."	Unknown: "There is no record that the requested information was ever delivered to the Justice Department."	Commerce Dept. Solicitor opinion: "The opinion also pointed out that the 1920 census act prohibited the Director from disclosing information about private business concerns, it did not restrict his discretionary disclosure of individual information (by the Director, but <u>not</u> [emphasis in original] by any other Census Bureau employee without the Director's permission) from the population and agriculture censuses."	Impact of the request on the deportation cases	Bohme and Pemberton, 11
early 1920s	"a number of States and local institutions"	Census Bureau	Lists of illiterates from the 1920 census	Lists supplied	Confidential individual information released	Use of the data in the lists by the states and organizations and impact of the request on the persons named	Bohme and Pemberton, 11

1920s, exact date not known	Secretary of State	Census Bureau	Data about "individual farms" in Stevens County, Washington for an "international tribunal" adjudicating a dispute about sulphur dioxide pollution from a smelter in Canada	Request denied: "aggregated county data" provided "which allowed the court to award damages to the Washington farmers."	Unknown	Exact dates and circumstances of the litigation and data requested.	Barabba, 27
1930	Women's Bureau	Census Bureau	"list of names, addresses, occupations, and employment status of women living in Rochester, NY"	Request Denied	Attorney General opinion, 36 Op. Atty. Gen. 362, September 29, 1930, denied the request, and became the opinion cited in later similar requests.	Origin of the request and response of the Women's Bureau to the denial.	Bohme and Pemberton
Dec. 1939	President's instruction to permit intelligence agency access to census data: see list of legislative proposals below.	Census Bureau	"Tell Dave Niles [official in the Commerce Department] that unrestricted access to Census files should not be given to Army or Navy Intelligence or F.B.I. However, where G2 [as Army Intelligence was called], O.N.I. or F.B.I need information regarding a specific person, the information should be given to them in confidence after they have stated the reason for asking it."	Unknown whether instruction was formally conveyed to agency	Unknown	Whether instruction was formally conveyed to agency	FDR Library, President's Official File: 3b-3c, Dept of Commerce, Box 6, Folder: Commerce Department, 1939-1940, Census Bur.

Dec. 1941	Census Director, J.C. Capt	Census Bureau	Proposed a draft Executive Order to permit the release of confidential statistical data for the prosecution of the war. Capt wrote to the Commerce Secretary noting that "[T]he Bureau of the Census has no authority at the present time to permit other governmental agencies to obtain from Census records information about individuals or business establishments that may be indispensable to the defense of the nation. Authority therefore is needed for the Bureau of the Census to make available for war purposes any record of information in the possession of the Bureau of the Census when directed to do so by the Secretary of Commerce....In my judgment, it is necessary to have these powers vested in the Secretary of Commerce at once to make possible the flexible, efficient, and economical war-time operation of the Bureau of the Census in obtaining and making available statistics for planning and directing war efforts."	Supported the confidential waiver	Request denied by Attorney General. Request represented a retreat from support of confidentiality by the official leadership of the Census bureau	Whether records were released.	NARA, RG40, Genl Recds of the Dept of Commerce, Office of the General Council, General Counsel's Subject and Index File, 1903-1946, Box 152, File 5706 - 33. Memorandum from J.C. Capt to the Secy of Commerce, 12/11/41
1946	Attorney General	Census Bureau	"...information from census records about certain individuals for use by the FBI" in the context of "rising concern about possible Communist infiltration and sabotage."	Request denied	Unknown	Exact dates and circumstances of the request and data requested	Barabba, 27
1950	Secret Service	Census Bureau	"During White House renovations, the Secret Service asks the U.S. Census Bureau to provide information about the people in a neighborhood where they hope to move President Truman. Census coordinator, Ed Goldfield, denies their request."	Request denied, small area tabulations provided as an alternative	The incident is used as a prominent example of the agency's refusal to breach confidentiality.	Origin of the Secret Service request, exact date of request	CensusBureau website

1958	Federal Trade Commission	Census Bureau	The FTC asked the St. Regis Paper Company for the file copy of its 1958 Census of Manufacturers report. The company refused. The FTC litigated the refusal and won in the US Supreme Court in 1961, 368 US 208, 82 S. Ct. 289.	Request successful	Congress amended Title 13 in 1962 to extend confidentiality to file copies of census forms.	Role of the Census Bureau during the litigation and legislative change (1958-62).	Bohme and Pemberton.
1971	California Rural Legal Assistance	Census Bureau	"individual census data for jury selection"	Request denied	Unkonwn	Response of California authorities	Bohme and Pemberton, 12
1980	U.S. District Court	Census Bureau	Address registers for New York City to evaluate the accuracy of the 1980 census	Request denied; Supreme Court affirmed decision in <i>Baldrige v. Shapiro</i> , 455 US 345 (1982)	"Address lists could not be disclosed, either through civil discovery or the Freedom of Information Act."	Details of legal challenge	Bohme and Pemberton, 13
2001	Justice Department	National Center for Education Statistics	individual survey information to fight terrorism	NCES responded that law would require change	Congress passed Section 508 of Patriot Act in October 2001	Background of request	Seltzer and Anderson, "NCES and the Patriot Act."

## Part II: Proposals from Federal Agencies and Elected Officials to Amend the Protections of Statistical Confidentiality in Law

Year	Requesting Agency or Elected Official	Statistical Agency Affected	Nature of Request	Statistical Agency Response	Evaluation of Precedent Set by the Request	Additional Research Needed	Source of Information
Nov. 1939	Bureau of the Budget on behalf of Justice Department	Census Bureau	Draft legislation amending Section 11 of the Census Act to permit the military intelligence agencies and the FBI access to individual level census forms "in connection with violations of the laws against espionage and other matters relating to the national defense."	Strenuous opposition to the draft legislation	Legislation withdrawn by the White House in March 1940. Prompted a major attack on the 1940 Census questions by Sen. Charles Tobey (Repub-VT).	Background of request	FDR Library, President's Offl File: 3b-3c, Dept of Comm, Box 6, Folder: Commerce Dept, 1939-1940, Census Bureau]

June 1941	Census Bureau Director J.C. Capt	Census Bureau	Proposed language which becomes S1627, 77 <sup>th</sup> Congress, 1 <sup>st</sup> Session, passed the Senate on August 11, 1941. Bill amended the Census Act to permit the use of "any individual census report...in connection with the national defense program:"	Supported the bill	Represented a retreat from the support of confidentiality by the official leadership of the Census Bureau. House Census Committee failed to act on the bill. Chair of the House Census Committee, Guy Moser (Dem- PA) opposed the bill.	Evaluation of the bill in the Senate Commerce Committee	Congressional Record (77 <sup>th</sup> Cong., 1 <sup>st</sup> Sess) volume 87, pt. 6, p. 6969, August 11, 1941
June 24, 1942	Rep. Guy Moser, Chair, House Census Committee	Census Bureau	Introduced HR 5139, to permit individual census reports to be used in connection with national defense. Bill also permitted access to individual census reports to members of Congress.	Opposed the bill	Unknown	Reason for the introduction of the bill	RG233, NARA, Records of the US House of Rep., 77 <sup>th</sup> Congress.
July 3, 1941	Rep. John Rankin (Dem-MS), member, House Census Committee	Census Bureau	Introduced HR 5232 to allow individual "census reports" to be used in connection with national defense.	Opposed the bill	Unknown	Reason for the introduction of the bill	RG233, NARA, Records of the US House of Rep., 77 <sup>th</sup> Congress
July 16, 1941	Rep. Guy Moser, Chair, House Census Committee	Census Bureau	Introduced H. Jt Resolution 213, to permit individual census reports to be used in connection with national defense by the Office of Production Management. Also permitted access to individual census reports to members of Congress	Opposed the bill	Unknown	Reason for the introduction of the resolution	RG233, NARA, Records of the US House of Rep., 77 <sup>th</sup> Congress
Feb 4, 1942	Census Director J.C. Capt	Census Bureau	Proposed amendment to S2208 (Second War Powers Act), 77 <sup>th</sup> Congress, 2 <sup>nd</sup> Session, on the "utilization of vital war information" to permit the use of "any record, schedule, report or return ... in the possession of the Department of Commerce, or any bureau or division thereof ...in connection with the conduct of the war."	Supported the bill	Second War Powers Act enacted into law, 3/27/42. Repealed the confidentiality of individual census forms for "war purposes." Provision ended with the First Decontrol Act of 1947 (S931), Chapter 29, Public Law 29, passed March 31, 1947, (50 U.S.C.A. Appendix, Section 644a).	Extent of release of individual information and impact of release, if any.	RG233, NARA, Records of the US House of Rep., 77 <sup>th</sup> Congress
1942	Bureau of the Budget	All Agencies	Federal Reports Act of 1942	Supported the bill	Defined a uniform set of standards for sharing confidential data among federal agencies	Implementation of the law	Rice, 1954

2001	Justice Department	NCES	Proposed Section 508 of USA Patriot Act	Unknown	Repealed under certain circumstances, the confidentiality protections of data collected by NCES	Implementation of the law	Seltzer and Anderson, "NCES and the Patriot Act"
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Seltzer, William and Margo Anderson, "NCES and the Patriot Act: An Early Appraisal of Facts and Issues." Paper prepared for presentation at the annual Joint Statistical Meetings, New York, August 10-15, 2002.

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Franklin Delano Roosevelt Library, President's Official File: 3b-3c, Department of Commerce, Box 6, Folder: Commerce Department, 1939-1940, Census Bureau.

Records of the U.S. House of Representatives, RG233, National Archives and Records Administration (NARA), 77<sup>th</sup> Congress, Papers accompanying specific bills and resolutions, HR 77A-D20, S2208-S2395, Box 159, Letterbooks of the House Census