

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

JONATHAN B. FREEMAN,

Plaintiff,

v.

U.S. CENSUS BUREAU, *et al.*,

Defendants.

Civil Action No. 25-7834 (LJL)

ANSWER

Defendants the United States Census Bureau (“Census”) and the United States Department of Commerce (“Commerce”) (collectively, “Defendants”), by and through undersigned counsel, hereby respond to Plaintiff’s Complaint alleging violations of the Freedom of Information Act (“FOIA”) (ECF No. 1).

Defendants deny all allegations in the Complaint, including the relief sought, except as specifically admitted in this Answer. To the extent the Complaint refers to or quotes from external documents, statutes, or other sources, Defendants may refer to such materials for their accurate and complete contents in response; however, Defendants’ responses are not intended to be, and should not be construed to be, an admission that the cited materials are: (a) correctly cited or quoted by Plaintiff; or (b) relevant to this, or any other, action; or (c) admissible in this, or any other, action. Defendants respond to the separately numbered paragraphs and prayer for relief in the Complaint as follows:

JURISDICTION AND VENUE¹

1. This paragraph consists of Plaintiff’s conclusions of law regarding jurisdiction, to which no response is required. To the extent a response is deemed required, Defendants admit that this Court has jurisdiction over this action subject to the terms, conditions, and limitations of the FOIA.

2. This paragraph consists of Plaintiff’s conclusions of law regarding venue, to which no response is required. To the extent a response is deemed required, Defendants admit that venue may be proper in this District for a properly stated FOIA claim and lack knowledge or information sufficient to form a belief as to where Plaintiff resides or where events or omissions purportedly giving rise to Plaintiff’s claims occurred.

PARTIES

3. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegation in this paragraph.

4. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph.

5. Defendant Census admits that it is a federal agency subject to the FOIA, and that it is headquartered in Suitland, Maryland. Whether Census possesses and controls records responsive to Plaintiff’s FOIA requests at issue in this complaint is a conclusion of law to which no response is required.

¹ For ease of reference, Defendants’ Answer replicates the headings contained in the Complaint. Although Defendants believe that responses to headings in the Complaint are not required, to the extent a response is deemed required and to the extent the headings or subheadings contained in the Complaint or this Answer could be construed to contain factual allegations, any such allegations are denied.

6. Defendant Commerce admits that it is a federal agency subject to the FOIA, and that it is headquartered in Washington, D.C. Defendants admit that the U.S. Census Bureau is a component within the Department of Commerce.

FACTS

7. Defendants admit that, in 2024, Census conducted a congressionally funded survey to collect sexual orientation and gender identity information from approximately 480,000 households nationwide, that Census indicated it eventually planned to release information concerning the testing, and that such information has not been released to date. The remainder of this paragraph consists of Plaintiff's characterizations of his Complaint and FOIA requests, Defendants' responses to Plaintiff's FOIA requests, and applicable law, to which no response is required. Defendants respectfully refer the Court to those materials for a complete and accurate statement of their contents.

8. Admitted. With respect to the publication cited in footnote one to this paragraph, Defendants respectfully refer the Court to that publication for a complete and accurate statement of its contents.

9. Census admits that field testing for sexual orientation and gender identity ("SOGI") questions for the ACS began in or around August 2024 and ended in or around December 2024. Defendant Census also admits that cognitive testing for SOGI questions on the ACS occurred from in or around February 2024 to in or around September 2024.

10. This paragraph contains Plaintiff's characterizations of the public and agency demand for sexual orientation and gender identity data, which are not material to the claims in the Complaint and to which no response is required. To the extent that a response is deemed required, Defendants deny the allegations in this paragraph except to admit that in 2023, the

Census Bureau received requests from federal agencies to add content to the ACS on sexual orientation and gender identity. Defendants further admit that Congress appropriated funds for the 2024 ACS SOGI test.

11. This paragraph contains Plaintiff's characterizations of the usefulness of ACS data, which are not material to the claims in the Complaint and to which no response is required. To the extent that a response is deemed required, Defendants deny the allegations in this paragraph as argumentative, for lack of knowledge and information, and as stating a legal conclusion.

12. Defendants admit that the 2024 ACS SOGI Test consisted of cognitive testing and field testing, that cognitive testing involved interviews to assess how respondents interpreted questions and responded, and that field testing involved administering experimental SOGI questions to a nationally representative sample of approximately 480,000 housing units. The second sentence of this paragraph consists of Plaintiff's characterization of the usefulness of the testing, which is not material to the claims in the Complaint and to which no response is required. The last sentence of this paragraph is vague as to how it asserts the field test differs or is the same as normal ACS data collection; as such no response is required. With respect to the publication cited in footnote two to this paragraph, Defendants respectfully refer the Court to that publication for a complete and accurate statement of its contents.

13. This paragraph purports to quote from the *ACS Research and Evaluation Analysis Plan (REAP) Sexual Orientation and Gender Identity Test* (April 17, 2024), available at https://www.reginfo.gov/public/do/PRAViewIC?ref_nbr=202404-0607-003&icID=190927 (Attachment M), which speaks for itself. Defendants deny that the alleged quotation is found within the cited document. Defendants respectfully refer the Court to the document for a

complete and accurate statement of its contents and deny any allegations inconsistent therewith. Defendants admit that results of the test survey have not been released.

14. Defendants admit that RTI International, a Census Bureau contractor, worked on a draft report on ACS SOGI cognitive testing but deny that RTI International ever completed a final report. Defendants admit that field testing was completed and aver that no report concerning the findings has been finalized. The remainder of this paragraph consists of Plaintiff's assertion that Census's plans are unclear to him, to which no response is required.

15. This paragraph cites to the *ACS Research and Evaluation Analysis Plan (REAP) Sexual Orientation and Gender Identity Test* (April 17, 2024), available at https://www.reginfo.gov/public/do/PRAViewIC?ref_nbr=202404-0607-003&icID=190927 (Attachment M), which speaks for itself. Defendants respectfully refer the Court to this document for a complete and accurate statement of its contents and deny any allegations inconsistent therewith.

16. Defendants admit that between 2021 and 2023 Census conducted field testing and analyses of self-response data and paradata for SOGI questions in the National Survey of College Graduates, which is a national survey Census administers in partnership with the National Center for Science and Engineering Statistics. Defendants further admit that Plaintiff requested materials relating to that survey under FOIA, and that Census responded to that request. To the extent this paragraph contains Plaintiff's characterizations of previous data and reports that the Census Bureau has released, those characterizations are not material to the claims in the Complaint. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph regarding Plaintiff's and others' research and publications and the importance of analyses of SOGI datasets.

17. This paragraph contains conclusions of law, to which no response is required, and Plaintiff's characterizations of the contents of 13 U.S.C. §§ 8 and 9, which speak for themselves. Defendants respectfully refer the Court to Title 13 for a complete and accurate statement of its contents. Defendants admit that Census implements data protection measures through the Disclosure Review Board prior to public release of data, tabulations, or research outputs.

18. This paragraph contains characterizations of Plaintiff's prior FOIA requests which are not material to the claims in the Complaint and speak for themselves, and to which no response is required. Defendants respectfully refer the Court to those requests and Census's responses for a complete and accurate statement of their contents. Defendants deny that Census subjected data to DRB review solely for purposes of responding to Plaintiff's prior FOIA requests. Defendants also deny that, in response to Plaintiff's prior FOIA requests, Census released uncompleted draft reports like those Plaintiff has requested here. Defendants admit that Census did not withhold the reports and data Plaintiff previously requested in their entirety.

19. Defendants admit that, on or about May 30, 2025, Defendants received a FOIA request from Plaintiff. Defendants respectfully refer the Court to Plaintiff's FOIA request for a complete and accurate statement of its contents and deny any allegations inconsistent therewith.

20. This paragraph contains Plaintiff's characterizations of his FOIA request, to which no response is required. Defendants respectfully refer the Court to Plaintiff's FOIA request for a complete and accurate statement of its contents and deny any allegations inconsistent therewith.

21. Defendants admit that, on or about June 18, 2025, Census responded to Plaintiff's FOIA request DOC-CEN-2025-000402. Defendants respectfully refer the Court to its response to

the FOIA request for a complete and accurate statement of its contents and deny any allegations inconsistent therewith.

22. Defendants admit that they received Plaintiff's appeal of Census's response by letter dated on or about June 19, 2025. Defendants respectfully refer the Court to Plaintiff's letter for a complete and accurate statement of its contents and deny any allegations inconsistent herewith.

23. Defendants admit that, as of the date of the filing of the Complaint, Commerce had not issued a final response to Plaintiff's appeal of FOIA request DOC-CEN-2025-000402.

24. Defendants admit that, on or about July 21, 2025, Defendants received a FOIA request from Plaintiff. Defendants respectfully refer the Court to Plaintiff's FOIA request for a complete and accurate statement of its contents and deny any allegations inconsistent therewith.

25. Defendants admit that, on or about August 1, 2025, Census responded to Plaintiff's FOIA request DOC-CEN-2025-000470. Defendants respectfully refer the Court to its response to the FOIA request for a complete and accurate statement of its contents and deny any allegations inconsistent therewith.

26. Defendants admit that they received Plaintiff's appeal of Census's response by letter dated on or about August 4, 2025. Defendants respectfully refer the Court to Plaintiff's letter for a complete and accurate statement of its contents and deny any allegations inconsistent herewith.

27. Defendants deny that Census routinely creates Public Use Microdata Sample ("PUMS") files for content tests or that the annual ACS PUMS files include content test data. Defendants deny the allegations in the second and third sentences of this paragraph. The remainder of this paragraph consists of Plaintiff's characterization of the materials cited in

footnotes 6, 7, and 8. Defendants respectfully refer the Court to those materials for a complete and accurate statement of their contents.

28. This paragraph contains Plaintiff's characterizations of his FOIA request, which speaks for itself. Defendants respectfully refer the Court to Plaintiff's FOIA request DOC-CEN-2025-000470 for a complete and accurate statement of its contents and deny any allegations inconsistent therewith. The second through fourth sentences of this paragraph consist of Plaintiff's characterization of the materials cited in footnotes 10 and 11. Defendants respectfully refer the Court to those materials for a complete and accurate statement of their contents. Defendants deny the allegations in the last two sentences of this paragraph.

29. Defendants admit that as of the date of the filing of the Complaint, Commerce had not issued a final response to Plaintiff's appeal of FOIA request DOC-CEN-2025-000470.

30. Defendants admit that, as of the date of the filing of the Complaint, a final determination had not yet been made on Plaintiff's appeals. The remainder of this paragraph consists of Plaintiff's legal conclusions, to which no response is required.

CLAIM FOR RELIEF

Count 1 (Violation of FOIA, 5 U.S.C. § 552)

31. Defendants incorporate by reference their responses to Paragraphs 1 through 30 as if fully restated herein.

32. Paragraph 32 consists of Plaintiff's conclusions of law, to which no response is required. To the extent a response is deemed required, Defendants deny the allegations in this paragraph.

REQUEST FOR RELIEF

The remainder of the Complaint consists of Plaintiff's request for relief, to which no response is required. To the extent a response is deemed required, Defendants deny that Plaintiff is entitled to the relief requested in these paragraphs, elsewhere in the Complaint, or to any relief whatsoever.

DEFENSES

Any allegations not specifically admitted, denied, or otherwise answered are hereby denied. Without waiving, limiting, modifying, or amending the foregoing, Defendants aver the following additional and affirmative defenses, in the alternative where appropriate, and to the extent discovery and the evidence so indicate:

First Defense

The Court lacks subject matter jurisdiction over any of Plaintiff's requests for relief that exceed the relief authorized by the FOIA. 5 U.S.C. § 552.

Second Defense

Plaintiff is not entitled to injunctive or declaratory relief. 5 U.S.C. § 552(a)(4)(B).

Third Defense

Plaintiff is not entitled to production of records protected from disclosure by one or more applicable FOIA exemptions, the release of which foreseeably would harm an interest that the exemption protects, or which are protected from disclosure by one or more applicable FOIA exclusions. 5 U.S.C. § 552(b).

Fourth Defense

Plaintiff is not entitled to production of non-exempt portions of records that are not reasonably segregable from exempt portions of records.

Fifth Defense

Plaintiff is not entitled to production of records protected from disclosure by 13 U.S.C. §§ 8 and 9.

Sixth Defense

At all times alleged in the Complaint, Defendants acted in good faith, with justification, and pursuant to authority.

Seventh Defense

Plaintiff is neither eligible for nor entitled to an award of attorneys' fees or costs in this action.

In asserting these defenses, Defendants do not assume the burden to establish any fact or proposition where that burden is properly imposed upon Plaintiff. Defendants may have additional defenses which are not currently known but may become known at a later time. Accordingly, Defendants reserve the right to assert each and every affirmative or other defense that may be available, including any defenses available pursuant to Rules 8 and 12 of the Federal Rules of Civil Procedure.

Dated: January 12, 2026
New York, New York

Respectfully submitted,

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Southern District of New York

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