

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

DEMOCRACY FORWARD FOUNDATION,  
P.O. Box 34553  
Washington, D.C. 20043,

*Plaintiff,*

vs.

UNITED STATES  
DEPARTMENT OF COMMERCE,  
1401 Constitution Ave., N.W.,  
Washington, D.C. 20230,

*Defendant.*

Case No.

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**COMPLAINT FOR INJUNCTIVE RELIEF**

Plaintiff Democracy Forward Foundation brings this action against Defendant U.S. Department of Commerce (“Commerce”) to compel compliance with the Freedom of Information Act, 5 U.S.C. § 552 (“FOIA”). Plaintiff alleges as follows.

**Jurisdiction and Venue**

1. This Court has jurisdiction over this action pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1331.
2. Venue is proper under 28 U.S.C. § 1391(e), as Commerce’s headquarters are located in Washington, D.C. and a substantial part of the events or omissions giving rise to plaintiff’s claims occurred here.

### **Parties**

3. Plaintiff Democracy Forward Foundation is a not-for-profit media organization incorporated under the laws of the District of Columbia, and based in Washington, D.C. Plaintiff works to promote transparency and accountability in government, in part, by educating the public on government actions and policies.

4. Defendant Commerce is a federal agency within the meaning of FOIA, 5 U.S.C. § 552(f)(1), and is headquartered in Washington, D.C. Commerce has possession, custody, and control of records to which Plaintiff seeks access.

### **Facts**

#### **The Trump Administration's Attempts to Impede the Census Bureau's Work**

5. On May 9, 2017, John H. Thompson abruptly announced his intent to resign as Director of the U.S. Census Bureau. Jonah Engel Bromwich, *Census Director to Resign Amid Worries Over 2020 Head Count*, N.Y. Times (May 10, 2017), <https://goo.gl/a7eJLB>.

6. Thompson's resignation follows recent reports detailing efforts by the Trump Administration to significantly scale back resources the Census Bureau has said it needs to conduct the 2020 decennial count. *See, e.g.*, Tara Bahrapour, *U.S. Census Director Resigns Amid Turmoil Over Funding of 2020 Count*, Washington Post (May 9, 2017),

<https://goo.gl/WJjdCb>;

Clare Foran, *Why Did The U.S. Census Director Resign?*, The Atlantic (May 10, 2017),

<https://goo.gl/zSzUvs>.

7. In addition to withholding adequate funding, reports have highlighted other actions that the Trump Administration has taken that could impede or undermine the Census Bureau's work.

For example, the Trump Administration removed sexual orientation questions from a list of planned topics for the 2020 census, notwithstanding that federal agencies responsible for enforcing laws that protect LGBT individuals from discrimination had requested the inclusion of such question in support of their law enforcement mission. Hansi Lo Wang, *Collecting LGBT Census Data Is 'Essential' to Federal Agency, Document Shows*, National Public Radio (June 20, 2017), <https://goo.gl/SRZniU>. Groups that advocate for the rights of the LGBTQ community were “outraged” by the Administration’s decision to strike these questions. Mary Emily O’Hara, *LGBTQ Americans Won’t Be Counted in 2020 U.S. Census After All*, NBC News (Mar. 29, 2017), <https://goo.gl/3vS1ui>. The decision also directly conflicts with a 2016 request made by members of Congress that the Census Bureau collect such data in order to “address the unique needs of this vulnerable population.” Jose R. Gonzalez, *Lawmakers Seek 'Expanded Data Collection' on LGBTs by Census Bureau*, CBSNews.com (May 6, 2016), <https://goo.gl/aHSeyF>.

8. The Trump Administration also proposed directing the Census Bureau to include a question on immigration status in the census, which could, according to experts, discourage immigrants from participating in the census, thereby resulting in “poorer quality data compared to what we currently have through the census.” Tina Vasquez, *Trump Administration May Undermine the 'Sanctity of the Census'*, Rewire (Apr. 24, 2017), <https://goo.gl/iWU34r>.

9. Additionally, the Trump Administration’s hiring freeze, which lasted until April 21, 2017, prohibited the Census Bureau from filling more than 150 open positions to meet its staffing needs. Matt Novak, *Here Are the Jobs the Census Bureau Can’t Fill Because of Trump’s Stupid Hiring Freeze*, Gizmodo (Apr. 10, 2017), <https://goo.gl/Fo5j29>.

**Plaintiff's FOIA Request**

10. To understand and explain to the public the extent to which these, and other issues, may have contributed to the resignation of former Census Bureau Director Thompson, Plaintiff submitted a FOIA request to Defendant.

11. Plaintiff's FOIA request was submitted to Commerce via electronic mail on May 19, 2017, requesting the following:

(1) All records that refer or relate to: The resignation of Census Bureau Director John H. Thompson.

12. Plaintiff sought a waiver of search and duplicating fees under 5 U.S.C. § 552(a)(4)(A)(iii), which requires waiver of fees if the disclosure is "in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester."

13. Pursuant to 5 U.S.C. § 552(a)(6)(A)(i), Commerce was required to determine whether to comply with the FOIA request within twenty (20) working days of receipt of the request and to notify plaintiff immediately of its determination, the reasons therefor, and the right to appeal any adverse determination.

14. Commerce's determination regarding plaintiff's FOIA request was due, at the latest, by June 19, 2017.

15. As of the date of this complaint, Commerce has failed to: (1) determine whether to comply with the FOIA request, (2) notify plaintiff of any such determination of the reasons therefor, (3) advise plaintiff of the right to appeal any adverse determination, or (4) produce the requested records or otherwise demonstrate that the requested records are exempt from production.

16. Because Commerce has failed to comply with the time limit set forth in 5 U.S.C. § 552(a)(6)(A), plaintiff is deemed to have exhausted any and all administrative remedies pursuant to 5 U.S.C. § 552(a)(6)(C).

**Claim for Relief**

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

17. Plaintiff incorporates by reference the foregoing paragraphs as though fully set forth herein.

18. By failing to respond to plaintiff's request within the statutorily mandated twenty (20) days, Commerce has violated its duties under 5 U.S.C. § 552, including but not limited the duties to conduct a reasonable search for responsive records, to take reasonable steps to release all nonexempt information, and to not withhold responsive records.

WHEREFORE, plaintiff prays that this Court:

1. order defendant to conduct a search for any and all responsive records to plaintiff's FOIA request using search methods reasonably likely to lead to discovery of all responsive records;
2. order defendant to produce, by a date certain, any and all non-exempt responsive records and a *Vaughn* index of any responsive records withheld under a claim of exemption;
3. enjoin defendant from continuing to withhold any and all non-exempt responsive records;
4. order defendant to grant plaintiff's request for a fee waiver;
5. award plaintiff its costs, attorneys' fees, and other disbursements for this action; and
6. grant any other relief this Court deems appropriate.

Dated: June 30, 2017

Respectfully submitted,

/s/ Javier M. Guzman

Javier M. Guzman  
(D.C. Bar No. 462679)  
Karianne M. Jones (*pro hac vice motion to  
be filed*)

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