

## **Factsheet on the Census, Confidentiality and Japanese American Incarceration<sup>1</sup>**

The U.S. Constitution mandates a count of all persons living in the United States every 10 years. Unfortunately, each decade, some members of the public are reluctant to participate in the census based on fear of government and potential misuse of their responses. Lack of trust in the confidentiality of census data presents a major barrier to census participation, despite the survey's mandatory nature.

This decade is no different. In fact, Commerce Secretary Wilbur Ross' recent [misguided decision to add a citizenship question to the 2020 Census](#), along with recent [media coverage of the use of census data to target Japanese Americans for incarceration during WWII](#), has heightened fear and concern in many communities about participating in the 2020 Census. Fortunately, the *current* confidentiality protections are the strongest in federal law and should give people confidence that participating in the census is safe.

### ***What legal protections exist to safeguard my privacy and the confidentiality of my responses?***

The confidentiality provision of the Census Act (also known as Title 13) – 13 U.S.C. §9 – prohibits any officer or employee of the Department of Commerce or Census Bureau,<sup>2</sup> or local government census liaison, from using information collected under the Census Act for any purpose other than producing statistical datasets. The bureau may not publish information that would identify an individual, business, or organization. Only Census Bureau employees or liaisons sworn to observe the strict confidentiality of personal data collected in censuses or surveys may examine individual reports or census/survey forms. More importantly, the bureau and its employees may not share personal census responses with *any* other government agency or official (federal, state, or local), outside entity (such as a business), or court of law for *any* reason.<sup>3</sup> Individual census forms are immune from legal process and may not be used in a judicial proceeding (except with the consent of the respondent). The oath that Census Bureau employees take not to reveal any personal information is in force for life. Violators are subject to stiff criminal sanctions, including fines up to \$250,000 and up to five years in prison (13 U.S.C. §214, as amended).

As an added layer of protection, section 8(c) of Title 13 prohibits federal, state, and local government agencies from using statistical datasets, including special tabulations, produced by the Census Bureau to the “detriment” of any individual who responded to a census or survey from which the dataset is built. In addition, personal information collected in the census cannot be disclosed or published for 72 years; that information includes names, addresses (including GPS coordinates), ethnicity, and telephone numbers.

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<sup>1</sup> Although historically referenced as “internment,” the authors of this factsheet adopt the more accurate terminology of “Japanese American Incarceration” to reference the forced removal and incarceration of over 120,000 Japanese Americans during WWII.

<sup>2</sup> The Census Bureau is an agency of the Commerce Department. All Title 13 statutory restrictions that apply to Bureau employees also apply to Commerce Department employees and officers.

<sup>3</sup> Title 13 protected data may only be used to prosecute violations of the Act itself, such as purposefully falsifying answers, although such prosecutions are almost non-existent historically.

Only Congress can change the census confidentiality protections through the legislative process, and no lawmaker has proposed weakening the strong Title 13 protections. The Title 13 confidentiality provisions have been supported by the U.S. Supreme Court (*Baldrige v. Shapiro*, 455 U.S. 345 (1982)) and two Attorney General opinions.

***Weren't census data used to incarcerate Japanese Americans during WWII? Shouldn't that concern me?***

The most notable case of disclosure of unpublished information to assist another federal agency was the provision of tabulations of Japanese Americans, by county, county subdivision, and – in some cases – by census block, to the Department of War during World War II, as well as limited sharing of personally identifiable information with a federal agency. The Census Bureau's actions did not fully come to light until the early 2000s. As deplorable as the agency's actions were, it is important to know that it was not done in violation of the law as written at the time. The Census Act authorized the Census Director to release this sort of information if he deemed it necessary, and the War Powers Act (now long expired) explicitly superseded the Title 13 confidentiality provisions. What happened during WWII that led to the incarceration of Japanese Americans was, in fact, the reason for strengthening the Census Bureau's confidentiality protections, which now prohibit any disclosure of personally identifiable information for any purpose whatsoever.

In fact, since World War II, the Census Bureau has developed a strong agency culture of protecting against the misuse of personal data. Indeed, the Census Bureau has apologized for its actions that led to Japanese American Incarceration during World War II.

The modern-day Census Bureau holds its privacy and confidentiality obligations as one of its most important missions because it recognizes that the accuracy of the census (and all of its surveys) is dependent on people's trust in the security of their data. No law currently on the books, or any agency or government official, can override the Census Act confidentiality protections – not the Patriot Act, the IRS, Homeland Security, ICE, or even the president. Furthermore, no private company, landlord, or employer can get any household's census information, even with a court order.

***Has the Census Bureau improperly shared data with other federal agencies?***

No. The Census Bureau is authorized to make special statistical compilations and conduct surveys for other federal agencies. In 2002 and 2003, the Census Bureau produced special tabulations by ZIP code of major Arab-American population concentrations in U.S. cities at the request of the Bureau of Customs and Border Protection, Department of Homeland Security. (The datasets were not confidential, personal data, but were not yet available on the Census Bureau's website.) In response to concerns about confidentiality and privacy protections arising from these special tabulations, the Census Bureau implemented additional procedures that require prior approval by the appropriate Associate Director for special tabulations where a request is made by a federal, state, or local law enforcement or intelligence agency and/or involves a "sensitive population." It also established the new position of Chief Privacy Officer. And, as stated earlier, 13 U.S.C. §8(c) prohibits any government agency from using datasets provided by the Census Bureau, including special tabulations, to harm any individual or household.

Nevertheless, we understand why people might be fearful that their census responses could fall into the wrong government agency hands and be used to harm them or their families and friends, despite the strong statutory protections. That's why civil rights advocates will organize teams of experienced lawyers who will be prepared to respond quickly and over the long term to any unauthorized access to and misuse of census data by government agencies and officials.

***Why should I risk participating in the census? Isn't it better just to sit this one out, regardless of what legal protections exist?***

Sitting out the census hurts your family, your neighborhood, and your community for years to come. A fair and accurate census is among the most significant civil rights issues facing the country today and is the foundation of our country's democratic future. In addition to ensuring fair political representation, enforcing civil rights laws, and effective policy planning, census data are used to distribute federal, state, and local resources equitably and prudently. In fact, federal agencies use census data to allocate more than \$800 billion each year for vital community services such as hospitals, job training centers, schools, senior centers, bridges, tunnels and other public works projects, and emergency response. Communities of color, urban and rural low-income households, immigrants, and young children are all at risk of being missed by the census at disproportionately high rates. Being undercounted deprives already vulnerable communities of fair representation and vital community resources. If millions of people aren't counted in the census, policymakers and private sector decision-makers will have a flawed blueprint when deciding how and where to invest limited resources that lift up the well-being of communities and families. If we sit this census out, our families and communities pay the price over the next decade. There's no need to fear the census. Individual responses are secure, and your privacy is strongly protected.

*Your participation in the decennial census is also required by law.* There are penalties for not answering census questions (\$100 fine) and for providing false responses (\$500 fine). The Census Bureau is a statistical agency and does not enforce the law; that responsibility falls to the Department of Justice. As a practical matter, the Census Bureau uses the "carrot approach" to encourage full participation in the census and does not refer cases of nonresponse to DOJ for prosecution. Nevertheless, the Census Act also prohibits any action that is intended to cause an inaccurate enumeration (\$1,000 fine and/or up to one-year imprisonment).

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