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To:

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Re: Use of differential privacy for correctional group quarters populations

Prison Policy Initiative and Common Cause are writing to share examples illustrating how the Bureau's implementation of differential privacy may have exceeded confidentiality requirements, leading to unnecessary inaccuracies in the PL 94-171 redistricting data file.

We sincerely appreciate the Census Bureau's work to thoughtfully produce solutions to the growing electronic age and third-party data sets. We also appreciate the Census Bureau's commitment to ensuring the privacy of all residents within the United States by enacting privacy methods that keeps the data of all residents safe and attempts to align with the requirements of Title 13.

However, this past redistricting cycle demonstrated that differential privacy had an adverse impact on the accuracy of group quarters data, especially for correctional populations.

Title 13 requires the Census Bureau to keep personal data confidential, requiring that no individual may be identified in the data that the Bureau publishes.¹ The Bureau has historically used several methods to achieve that goal, but changed its approach leading into the 2020 Census in response to perceived theoretical reidentification possibilities.

¹ 13 U.S. Code § 9 ("Neither the Secretary, nor any other officer or employee of the Department of Commerce or bureau or agency thereof, or local government census liaison, may ... make any publication whereby the data furnished by any particular establishment or individual under this title can be identified...").

The Census Bureau implemented privacy protection for the 2020 Census by using differential privacy, which injected "noise" into the data it published for the 2020 count. This, as phrased by the California State Legislature, "has resulted in a greater weight being given to disclosure avoidance than to accuracy."²

The data is made noisier – further from reality – as the levels of geography get smaller. As a result, redistricting is the most impacted data use because redistricting relies on blocks – the smallest level of geography published by the Bureau. Granted, where blocks are grouped to draw districts, some of that inaccuracy is diminished, but there are some use cases where individual block populations matter on their own.

At the same time, the Census Bureau continues to interpret its residence rule to count incarcerated people as residents of their prison cells rather than their home communities. As a result, when states use census data to draw new state or local districts, they inadvertently give residents of districts with prisons greater political clout than all other state residents. And after the 2020 Census, a record number of states were adjusting their redistricting populations to avoid prison gerrymandering.

The Bureau injected noise into publicly-available population data: creating consequential inaccuracies while failing to advance a confidentiality objective.

The outcomes of this approach become particularly harmful when examining states' efforts to address prison gerrymandering. There are 19 states that have formally addressed prison gerrymandering, these states account for nearly half (49.6) of the US population.

Although the approaches to population adjustments differ among the 19 states³, they all rely on accurate counts of correctional facility populations to adjust redistricting data to avoid or limit prison gerrymandering.

In each case, the Bureau's application of privacy protections added an unnecessary impediment to their data adjustment efforts. Facility populations are public. In most states, they are published – along with other demographic statistics – on state websites.⁴

² Available at <https://www.regulations.gov/comment/USBC-2022-0004-1248>

³ Fourteen states have passed laws to adjust their redistricting data to count incarcerated people at home: California, Connecticut, Colorado, Delaware, Illinois, Maine, Maryland, Minnesota, Montana, Nevada, New Jersey, New York, Virginia, and Washington State. An additional three states take steps to ameliorate the impact of prison gerrymandering through their redistricting commissions without explicit legislative requirements: Massachusetts, Rhode Island, Pennsylvania. And two states affirmatively address deviating from Census population to avoid prison gerrymandering when drawing local government districts: Michigan and Tennessee.

⁴ Examples:

California, weekly reports: <https://www.cdcr.ca.gov/research/population-reports-2/>

Kansas, daily reports: <https://www.doc.ks.gov/publications/population-report>

New York, annual reports: ex. <https://doocs.ny.gov/system/files/documents/2022/04/under-custody-report-for-2020.pdf>

In some states the data is not available directly on the website but can easily be requested from the department's data office.

For example, in Rhode Island, the facility roster for April 1, 2020 showed 905 people incarcerated at the facility but the Bureau reported 922 people for that block.⁵ It's easy to see the Bureau's misreporting of populations in Rhode Island because the state has worked with the Bureau to ensure that block boundaries match facility boundaries.

Across the country, California also allows for direct comparisons. The state had the data that the California Department of Corrections and Rehabilitation (CDCR) reported to the Bureau to compare with what the Bureau reported back out after differential privacy was applied. The CDCR reported the population for California State Prison - Solano as 4,179, but the Bureau took 18 people out of the total and reported only 4,161.

Where did the Bureau count those 18 people? Some possibly ended up in a median strip in the middle of E 14th St., in San Leandro. The Bureau used the unpopulated median strip to report a population of 28 incarcerated people. This phantom population exemplifies how applying differential privacy to data that reflect incarcerated people as residents of correctional creates additional burdens on states working to avoid prison gerrymandering. On its face, there is no way for a state to tell whether the population the Census Bureau assigned to the median strip was a result of differential privacy or an error, or possibly both. This makes it harder for states to match correctional populations reported by the Census Bureau to those reported by the correctional facilities themselves.

The Census Bureau's policies mean that states like Rhode Island, California, and over a dozen others send their correctional population data to the Bureau, which then makes the data inaccurate and sends it back to the states, which then have to correct the data before it is usable for redistricting purposes. This process is the height of inefficiency.

Suggestions for 2030

When interpreting the privacy protections required by Title 13, the Bureau should avoid a one-size-fits-all approach and avoid applying privacy protections to publicly available data.

The Bureau should update its residence criteria to count incarcerated people at home. But if the Bureau continues to count all incarcerated people as if they were residents of the correctional facility they happen to be held at on census day then the correctional facility populations should be held invariant (or kept unchanged) to decrease the burden on the states that are correcting their redistricting data to count incarcerated people at home or last known address.

⁵ For a block-by-block list of Census populations deviating from the rostered populations see powerpoint presentation by Kim Brace at the Special Meeting Regarding Prisoner Allocation before the Rhode Island Redistricting Commission, Nov 15 2022, available at <https://www.riredistricting.org/meetings/special-meeting-regarding-prisoner-allocation/> (slides 11-12).

Sincerely,



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Prison Policy Initiative

The non-profit, non-partisan Prison Policy Initiative produces cutting edge research to expose the broader harm of mass criminalization, and then sparks advocacy campaigns to create a more just society. Prison Policy Initiative has been at the forefront of the national movement against prison gerrymandering since 2001 when the founders of the Prison Policy Initiative discovered that the sheer size of the prison population combined with outdated Census Bureau rules distorted how political decisions are made in this country.

Common Cause

Common Cause is a nonpartisan, grassroots organization dedicated to upholding the core values of American democracy. We work to create open, honest, and accountable government that serves the public interest; promote equal rights, opportunity, and representation for all. Common Cause works to serve its 1.5 million members to ensure that every voice counts, and that our government is of, by, and for the people.