

**Controversy over providing special census tabulations to government security agencies in the United States: the case of Arab-Americans\***

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## **Abstract**

In the summer of 2004, it was revealed that the US Census Bureau had provided tabulations in 2002 and 2003 on Arab-Americans to the Department of Homeland Security that included detailed information on the number of people of Arab backgrounds living in selected ZIP codes. Although not a violation of law, the Census Bureau realized that this perceived breach of confidentiality would have a negative impact on public trust and within a few months following the news of the Arab-American tabulations, it announced that it would no longer assist law enforcement and intelligence agencies with tabulations on ethnic groups and other sensitive populations. In spite of this damage control, we believe that the Bureau's tabulation of Arab-Americans provides momentum to a process that adversely affects data quality by increasing both non-response and the cost of obtaining survey and census data. We argue that there are no "methodological fixes" that can repair the damage, and, further, that public relations campaigns and internal administrative changes are not optimal solutions because of the governing structure within which the Bureau currently operates. Ultimately, the best way to limit the damage already done is to effect a political solution. Toward this end we describe short and long-term actions. In the long run, we recommend removing the Census Bureau from the Executive branch of government and re-structuring it under a permanent and non-political oversight panel similar to either the Federal Reserve Board or the Congressional Budget Office. Such a move would make a strong statement that the Bureau is non-partisan federal statistical agency.

Key words: Arab-American, Confidentiality, Non-response, Public Trust

## **Introduction**

It is well documented that the US decennial census has become the center of conflicts, much of which has been in the form of contentious litigation and negative media reports [1, 2, 3, 4, 5, 6, 7]. Swanson and Walashek [8] argue that this is largely due to the fact that the census has become a “commons” of private benefits and public costs, where interest/stakeholder groups attempt to increase their share of the population to gain individual benefits at the expense of the common census. From the standpoint of the “Census Commons,” there are two primary sources of conflict: (1) federal programs that distribute benefits using decennial census data [2, 3, 6, 7, 9, 10]; and (2) the political jockeying inherent in reapportionment and re-districting [1, 4, 6, 7].

Swanson and Walashek [8] also argue that as conflicts intensify, controversy increases, and public confidence in the Census erodes; with the erosion of public confidence comes higher levels of non-response, which increases the need for the wider use of existing statistical procedures and other adjustments to compensate for those not responding [11,12,13,14]. This requires additional funding, forcing the Census Bureau to make choices about methods that cannot provide optimal results for all populations. This leads to more litigation and other forms of conflict as special interest groups struggle to get their “populations” counted and a positive feedback cycle ensues (See Figure 1). From the perspective of census data users who desire accurate (and timely) data, the “Census Controversy Feedback Cycle” illustrated in Figure 1 is disheartening because it generates higher and higher levels of non-response, one of the fundamental sources of error that adversely affects the quality of census and survey data [15].

(FIGURE 1 ABOUT HERE)

The controversy stemming from the “Census Commons” perspective has to do with who is counted. Unfortunately, the conflict over who is counted is not the only entry point into the Census Controversy Feedback Cycle. Another major source of controversy is the public’s perception of the *use* of census data. This can be traced to concerns over privacy and confidentiality [16, 17]. Of course, people’s perceptions are shaped by what they hear about the uses and misuses of data not just by what they actually know.

Privacy is the idea that it is the right of an individual to decide whether and to what extent he or she will divulge thoughts, opinions, feeling, and facts to the government [16]; confidentiality is the idea that there should be restrictions on how information is collected and used and that no data should be disclosed about a respondent that would allow him or her to be either identified or harmed [16].

Although the concepts of privacy and confidentiality are linked, in this paper we focus on the confidentiality issue. Specifically, we argue that the cycle of non-response and litigation portrayed in Figure 1 also can stem from public distrust over uses of census data that violate confidentiality, whether in reality or in perception. As a recent case in point, we examine the transmission of tabulations of Arab-Americans from the Census Bureau to the Department of Homeland Security [18]. We point out that this action represents a breach of trust that has added momentum to the type of cycle portrayed in Figure 1. It is, for example, not a far stretch that many Americans are asking themselves the question posed by Seifert and Reylea [19]: “Do you know where your information is in the homeland security era?”

The Bureau itself recognized that this action represented a breach of trust. Only a few months after the news was broken about the release of the Arab-American tabulation

to the Department of Homeland Security, the Bureau announced that it would no longer assist law enforcement or intelligence agencies with tabulations on ethnic groups and other “sensitive” populations [20]. This announcement, coming as it did only after the news of the transmission of the Arab-American tabulation was made public by the Electronic Privacy Information Center (EPIC), a privacy watchdog, probably did little to bolster public trust. In this regard, it is important to point out that the Bureau’s move to the “rolling census” concept for the collection of “census long form data” in the form of the American Community Survey (ACS) may bear the immediate brunt of corroded public trust in the form of higher non-response rates. We believe that this may be the case for three reasons. First, even though the Census Bureau has done a great deal of work on demonstrating its commitment to confidentiality, many people simply do not believe that the information it collects will really be kept confidential [16]; second, unlike the 2010 Census, the ACS data collection is occurring now; and third, because the ACS does not have the same level of public recognition as the decennial census it is more likely to be initially ignored, even though federal law requires one to respond, as is the case with the census. Note that in regard to the third reason, the final response rate for the 2000 census was only 67 percent [21] and evidence from studies done before the news broke on the Arab-American tabulations already suggested that the 2000 census outperformed the ACS in terms of the self-response rate [22]. This is an important point in that costs are an important issue for the ACS and high self-response rates keep costs down because they reduce costly follow-up telephone contacts and the even more costly direct interviewer contacts.

## **The Arab-American Tabulations**

Statistical tabulations of Arab-Americans were provided by the Census Bureau to The Department of Homeland Security after September 11<sup>th</sup>, 2001 [18]. The first of the tabulations was provided in August 2002. It listed all cities in which more than 1,000 Arab-Americans resided. The second set, provided in December 2003, included detailed ZIP-code level tabulations of Arab-Americans, classified by country of origin and two ancestry categories, “Arab-Arabic” (An aggregate category of all countries that speak the Arabic language), and “Other Arab” [18]. As alluded to earlier, the Census Bureau did not publicly acknowledge these actions until late in July of 2004, and then only after its actions were discovered and publicized by the Electronic Privacy Information Center through a Freedom of Information Act request and reported in the New York Times [18].

The Census Bureau Director, Louis Kincannon, has described the process that led to the transmission of the tabulations to the Department of Homeland Security as follows.<sup>1</sup> The precipitating step in this process was the inability of a low-level Homeland Security employee to obtain the desired tabulations directly from the Census Bureau’s online data tabulation system, “The American Factfinder.” In fact, Director Kincannon has rightly observed that the tabulations could have been made by the Homeland Security employee had he or she been sufficiently versed in the use of the American Factfinder system. In the second step, the frustrated Homeland Security employee contacted a low level Census Bureau employee for assistance. The third step was when the Census Bureau employee tabulated the requested data and the fourth, when the data were transmitted to the Homeland Security employee.

It is worthwhile to note here that Homeland Security has stated that it wanted the Arab-American tabulations so that signs in Arabic could be posted in and around American airports to show the amount of money that could be legally taken out of the county. This leads to the following two questions: (1) “Why would Homeland Security be interested both in the number of Arab-Americans by zip code and in cities lacking airports when its stated purpose was to display these signs at airports?” and (2) “Why would it need these signs in Arabic when, according to the 2000 census, 98 percent of Arab-Americans speak English fluently?” If these indeed are the reasons for the requested tabulations, one might be moved to observe that the inability to acquire data available on-line to the public is not the only challenge that the Department of Homeland Security must overcome in terms of the data it seeks.

Whatever the details of the transmission of the Arab-American tabulations and the reasons given by Homeland Security for the use of the tabulations, the public revelation and subsequent acknowledgement of its occurrence evoked complaints to the Director of the Census Bureau. These complaints came not only from groups concerned with privacy, civil rights, and civil liberties, but from advocacy groups based on ancestry, ethnicity, and race [20]. As one can surmise from the types of organizations that registered complaints, the primary concerns were with privacy, confidentiality, and both civil rights and civil liberties (See Appendix 1 for a list of the organizations). However, as can be seen in the two sample letters shown as Appendix 2, many of these same organizations expressed the concern that the Bureau’s action would serve to decrease public participation in the decennial census and related data collection activities.<sup>2</sup>

The types of organizations expressing concern about the impact of the Arab-American tabulations on public participation should not come as a surprise. Many of them are advocacy groups that have a genuine interest and stake in a successful census. These organizations were also aware of the acknowledgement made in 2000 by then-Director, Ken Prewitt that the Census Bureau provided information about ethnic Japanese in World War II that was used in rounding them up for internment [23]. Having said that, we are also aware that the Bureau has not done anything illegal, BUT, as can be seen from the expressions of concern, it is clear that the public perception of trust in the principle of confidentiality was breached.

We characterize the Census Bureau's initial response to the expressions of concern primarily as legalistic. For example, Deputy Director Herman Habermann stated that the tabulations and their transmission represented standard practice in regard to inter-agency cooperation and continued, "We are required to provide information to other federal agencies. This is not a cabal calculating secret tabulations"[18]. Whether legal or not, the groups (many of them members of a committee that reports directly to the Commerce Secretary, known as The Commerce Secretary's Decennial Census Advisory Committee (DCAC)) registering complaints were not satisfied with the Bureau's initial response. Members wanted to put procedures in place that would do more to safeguard data and inhibit such tabulations in the future. The Bureau then responded with a few proposed changes [24]. However, once again, this second response not deemed sufficient by all of the organizations registering complaints, and so a resolution (Appendix 3) was adopted by the DCAC to the effect that the Bureau do more in terms of confidentiality safeguards [25]. The resolution included the recommendation that the Bureau create the

post of “Privacy Officer.” The Bureau followed this recommendation and announced on March 6<sup>th</sup> 2005 that it had appointed Gerald Gates to the position of Privacy Officer (See Appendix 4). The question remains, however, is the response by the Bureau sufficient to allay concerns about breaches of confidentiality, both real and perceived? We believe it is not the ultimate solution because part of the reason that public trust has been lost is due to the Bureau’s real and perceived vulnerability to both the direct political pressure common to any executive branch agency and their standard bureaucratic form of operations [7]. Before we turn to our suggested course of action for dealing with this problem, however, it is useful to consider the consequences of breaching public trust in the confidentiality of census and related data.

### **The Consequences of Breaching Public Trust**

As we noted earlier (and as illustrated in Figure 1), when controversies intensify, public distrust in the census increases, and with that increased distrust comes higher levels of non-response. With increased undercounts, the need increases for sampling and other adjustments, including imputation, to compensate for those not responding [11, 12, 13, 14].<sup>3</sup> This, in turn, leads to more litigation and other forms of conflict. As conflict again intensifies, public distrust concerning the census will again increase, resulting in even higher levels of non-response.

As an example of what may be the most extreme of the possible adverse outcomes, consider the case of the Netherlands, where public distrust has been deemed to be so high that a legally mandated census scheduled to have taken place in 1981 was indefinitely postponed. With the last conventional census having been taken in 1971, the Dutch government and other users of census data (e.g., planners, market researchers,

bureaucrats, and academics) were desperate for current data. So, as a substitute, the Dutch government authorized Statistics Netherlands to use a combination of survey results and administrative data to come up with a “census” for 2001 [26]. While better than data from 1971, the Dutch “census of 2001” has its limitations [26]. However, even this limited form of data collection would be difficult, if not impossible, to achieve in the United States, where administrative records are, by law, custom, and usage, not as comprehensive as those in the Netherlands. The United States does not have a continuous population register, for example [27]. Add to this the likely litigation and methodological disagreements before, during, and after such a process, and it becomes clear that the Dutch approach is not likely to provide a solution for the United States.

Democratic societies like the United States are predicated on the use of numbers with valid social content and the deterioration of the decennial census and related collections efforts such as the ACS subverts one of the fundamental, constitutional elements of this validity. In the long run, democratic societies, for better or worse, are characterized by numbers that have instantly recognizable social content. As Patricia Cline Cohen [28] points out, numbers compel, and for all of their problems (with validity, reliability and accuracy), they still suggest objectivity and rationality, which in a numerically-oriented society are norms at least as important as individual liberty. In an elegantly simple example of this social content, former US Census Bureau Director Kenneth Prewitt himself [29] observed that voters give more weight to trends in national economic conditions than to changes in their own economic circumstances. He also observed that governmental statistical programs like the census are placed in jeopardy

when decisions about what and how to count become increasingly oriented to the demands of political, social, and economic interest groups [29].

While not trivial in any society, the loss of a census is even more of a tragedy in a democratic society, which is based on the rule of law and supported by governmental statistical programs serving a similar purpose. Why? Because it threatens not only individual liberty, but also the social validity of numbers, upon which the important norms of objectivity and rationality are predicated [30]. Clearly, it is not just the American public with a stake in the preservation of a national information resource like its census. Hopefully, it becomes widely recognized that a necessary condition in the preservation of such a resource in other democratic societies is the restoration of public trust in the census and other data collection efforts.

### **Restoring Trust**

Given the importance of an undertaking like the decennial census to a democratic society, what can be done to insure its accuracy and credibility if neither methodological fixes nor advertising campaigns offer a long-term solution? A possible path to restoring public trust was suggested in 1998. Teitelbaum and Winter proposed that a permanent and non-political oversight panel similar in structure and function to either the Federal Reserve Board or the Congressional Budget Office be established [31]. Would such an approach be sufficient? It certainly has worked in terms of these two agencies, both of which appear to carry out their missions in an effective and de-politicized manner. As was the case for both the Federal Reserve system and the Congressional Budget Office, such a move for the Census Bureau explicitly acknowledges that its constitutionally mandated activity, the decennial census, represents

a political process that in spite of all of its flaws, serves important data needs, and that, as such, should be buffered from the excesses of political and bureaucratic demands. And, as has been demonstrated by the example of the Nixon White House forcing the addition of a last minute census question on Hispanic ethnicity on to the 1970 census, “politics” is not illegal or nefarious - it is simply politics [7]. As such, it is not difficult to picture a member of the executive branch of government bowing to political pressure that does not constitute an illegal request. Neither is it difficult to envision a low level employee in the Census Bureau assisting a low level employee in another agency with a data request in such an environment - it is simply helping another federal colleague. The initial response by the Census Bureau to the news of the Arab-American tabulations can be taken as an illustration of these points: As noted earlier, Deputy Director Habermann has explicitly stated that such “cooperation” among executive agencies was not only legal, but common practice. In the context of this statement, it is worthwhile to recall Mayer’s finding [16] that many people did not believe that the information collected by the Census Bureau is not kept confidential, a finding that was documented well before the revelation of the Arab-American tabulations. We believe that taken altogether, these conditions do much to work against even the most well-funded and sophisticated public relations campaigns aimed at restoring public trust.

Teitelbaum’s and Winter’s solution is not likely to be something that would occur quickly. As it should be, there would be much debate and in-depth consideration by many parties over a course of years before such an action would be taken. We believe that this represents a feasible course of action, but it is something that will only occur over a long period of time. In the meantime, what short-term actions could be taken by the Bureau to

increase public trust? This is critical because of the upcoming 2010 decennial census and the fact that important federal surveys such as the ACS are already in the field. In providing an answer to this question, we will not dwell on the actions that the Bureau has itself taken regarding the preservation of privacy and confidentiality [16, 24, 25, Appendix 3, Appendix 4]. Instead, we offer four suggestions.

First, we believe that the Census Bureau should provide very clear and uncomplicated messages that it is strongly committed not only to adhering to the legal requirements of privacy and confidentiality but also to deeper principles consistent with a democratic society. This will show that the Bureau is concerned with public trust and that as such, understands this goes beyond the laws and regulations governing confidentiality and privacy. The Census Bureau cannot be held responsible for how its information is used, but at the same time, it should not be an active party to applications that breach public trust and it should make its commitment to this principle unequivocally clear.

Second, we propose that the Census Bureau add external oversight to its privacy and confidentiality program in the form of one or two people not from the Federal government. This same recommendation has been made by both the Census Bureau Advisory Committee of Professional Associations (coming from representatives of the Population Association of America) and members of the Commerce Secretary's Decennial Census Advisory Committee [32]. We believe that this type of oversight would complement the actions of the Chief Privacy Officer, for which we do not yet have a job description beyond "... (the Officer) will work to establish standards and procedures for collection, publication and sharing of data that both meet legal requirements and strengthen public perception about confidentiality" [37]. It is our

opinion that this position is mainly of importance to the data user community [37, 38] and as such, more is needed in regard to the broader public. Thus, the addition one or two external members to the Bureau's Data Stewardship Executive Policy Committee [32] will be of value, and, importantly it will give "cover" to the Bureau [37, 38]. Saying this, we acknowledge that there are legal issues that need to be worked out should this recommendation be followed. For example, what is the role of a non-federal employee in carrying out the affairs of a federal agency, and how can "ordinary citizens" be charged with making such decisions? However, we believe that overcoming such obstacles in order to follow this recommendation would prove to be very beneficial to the Census Bureau. It would enhance the public perception of trust in the Bureau's actions to maintain privacy and the confidentiality of its data, while not overburdening it with micro-management.

Third, we suggest that the National Academy of Sciences' Committee on National Statistics conduct research on the effect of the recent revelations of the Japanese American and Arab-American tabulations on public trust and data quality. The Committee on National Statistics has demonstrated a strong commitment to the quality, privacy and confidentiality of data [13, 33, 34] and it would have a level of public credibility that an executive branch agency would find much more difficult to obtain. As such, research by the Committee on National Statistics could provide valuable guidance to the Census Bureau and its stakeholders on these issues. The Committee could even examine the proposal to move the Census Bureau under a permanent and non-political oversight structure.

Fourth, somebody reading this article is probably thinking “what about the internet?” Indeed, data collected by the Census Bureau are available on the internet for compilation and quick viewing. This is an important issue because while the Bureau may make procedural changes for *releasing data*, electronic availability is a critical issue for this point in time. Reliance on Bureau personnel has lessened because one can, and does, access data from the Census Bureau’s web page (e.g., the American Factfinder) very easily. Two immediate questions we believe should be addressed are: (1) “What is the relationship between data availability and the purposes for which it is used?” and (2) “What data should be on the internet?” These are critical questions for the digital age and we are proposing that the Census Bureau do even more to address them than it has to-date. As with the case in the preceding suggestion, the Bureau could be assisted in this effort by the National Committee on Statistics.

We argue that the pursuit of short-term solutions is a worthwhile goal even as efforts are made toward our suggested long-term solution. None of the short-term solutions involves major administrative changes for the Bureau. Similarly, none of them requires major operational changes for the Census Bureau. Finally, our four suggestions require little in the way of additional funding, even if all were pursued simultaneously.

Turning back to the long-term solution, we observe in closing that Teitelbaum and Winter [31] may be more explicit than others, but they are not alone in recognizing the solution to a breach of public trust is more likely to be political than methodological in nature [9, 14, 35]. We also believe that like the methodological option, the public relations option is not really a long-term solution either. Finally, we argue that the solution is also much more likely to be political rather than “administrative” in nature

(e.g., an internal re-organization of the Census Bureau). However difficult the task, a solution is needed and the suggestion by Teitelbaum and Winter is worth pursuing, even as other, short-term actions are taken. Although not without its costs, the overriding issue is that without trust, the collection of information is made difficult to the point of impossibility in a democratic society. As Kenneth Prewitt [36] has observed, “what if you gave a census and no one came?” We suggest that people are more likely to come if the Census Bureau is better insulated from both the direct political pressures that affect executive branch agencies and the standard bureaucratic processes that characterize their interactions.

## Endnotes

1. Director Kincannon has provided this description in a number of public settings, including the opening remarks made on April 21<sup>st</sup> to the spring 2005 meeting of the Census Bureau's Advisory Committee of Professional Associations, held at the Sheraton Crystal City Hotel in Arlington, Virginia.
2. It is of interest to note here that neither the American Statistical Association nor the Population Association of America, arguably the primary professional organizations directly concerned with the quality of federal data, registered a letter of complaint with the Census Bureau over the transmission of the Arab-American tabulations to the Department of Homeland Security. However, both organizations have actively supported strong safeguards to preserve privacy and confidentiality. For example, the Population Association's Census Advisory Committee has recommended that external members be added to the Census Bureau's Data Stewardship Executive Committee [32].
3. In this context it is worthwhile to note that the Census Bureau is obligated by law to impute missing data for the decennial short form, which are used for redistricting and re-apportionment. In surveys such as the ACS (the replacement for the decennial long form), there is no such legal requirement to account for missing data, but there are extensive (and costly) procedures in place to capture as much data as possible. These include telephone follow-up to a household that has not returned a completed mail-out questionnaire and a follow-up by an interviewer to a household that has not responded to the telephone follow-up.

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**APPENDIX 1. Organizations Writing Letters of Complaint to the US Census Bureau about the Arab-American Tabulations.\***

1. Electronic Privacy Information Center (EPIC)
2. American Civil Liberties Union (ACLU)National Asian Pacific American Legal Consortium (NAPALC)
3. LaRaza Centro Legal (LRCL)
4. Asian & Pacific Islander American *Health Forum*
5. *Asian American Legal Defense and Educational Fund (AALDEF)*
6. Chinese for Affirmative Action
7. National Coalition for an Accurate Count of Asian Pacific Americans
8. National Coalition for Asian Pacific American Community Development
9. National Korean American Service & Education Consortium (NAKASEC)
10. National Association of Latino Elected and Appointed Officials (NALEO) Educational Fund
11. Puerto Rican Legal Defense and Education Fund, PRLDEF
12. Coalition De Derechos Humanos – Alianza Indigena Sin Fronteras
13. South Asian American Leaders of Tomorrow (SAALT)
14. University of California, Los Angeles Census Information Center
15. Zogby International
16. Arab-American Institute (AAI)
17. American-Arab Anti-Discrimination Committee (ADC)
18. (ACCESS)Arab-American Community Center for Economic and Social Services
19. Arab-American Community Development Corporation of Philadelphia
20. Arab-American Family Support Center
21. Arab-American Institute, Michigan
22. Arab Cultural & Community Center, San Francisco
23. Center for National Security Studies
24. Consumer Action
25. First Amendment Foundation
26. National Committee Against Repressive Legislation
27. Immigrant and Refugee Rights Project
28. Washington Lawyers' Committee for Civil Rights and Urban Affairs
29. Muslim American Republican Caucus
30. Muslim Public Affairs Council
31. Nashville Peace and Justice Center
32. New York Immigration Coalition
33. Privacy Journal
34. Privacy Times
35. Center for Constitutional Rights (CCR)
36. Congress of Arab-American Organizations-Michigan (CAAOMI)
37. Council on American Islamic Relations (CAIR)
38. Immigrant Legal Resource Center (ILRC)
39. Leadership Conference on Civil Rights (LCCR)
40. Lebanese American Heritage Club (LAHC)

41. Lutheran Immigration and Refugee Services (LIRS)
42. Migration Policy and Resource Center – Urban and Environmental Policy Institute (Occidental College)
43. National Immigration Forum
44. National Immigration Project of the National Lawyers Guild
45. National Network of Immigrant and Refugee Rights (NNIRR).
46. United American Lebanese Federation (UALF)

\* Absent from the list are the organizations that typically represent the data user community (e.g., the American Economic Association, American Statistical Association, the American Marketing Association, the Association of Public Data users, and the Population Association of America). See also endnote # 2.

## APPENDIX 2. Sample Letters of Complaint

### A. Letter from NAPALC)

September 10, 2004  
The Honorable Louis Kincannon  
Director  
United States Bureau of the Census  
4700 Silver Hill Road  
Washington, D.C. 20233-0001

Dear Dr. Kincannon:

On behalf of the National Asian Pacific American Legal Consortium (NAPALC), I am writing to express my deep concern about the Census Bureau's decision to provide data tabulations on persons of Arab ancestry to the Department of Homeland Security (DHS), the Bureau's subsequent interim policy to deal with data tabulation requests, and the Bureau's attempt to change the dates of the Decennial Census Advisory Committee (DCAC) meeting in order to supposedly accommodate discussions about the provision of data tabulations.

Since NAPALC's inception, census work has been one of our top priorities. During Census 2000, NAPALC helped lead education and outreach efforts in the Asian American community. NAPALC's *Census 2000 Community Education Project* was the largest national community education initiative focused on the Asian American community. As a part of our education and outreach efforts, we have taken great pains to assure Asian Americans that their responses to the Bureau would remain strictly confidential and would not be used for immigration enforcement or other such purposes. Our work and collaboration with the Bureau has proved to be a significant success, with more Asian Americans counted than ever before.

We are especially concerned about the Bureau's decision to provide data on Arab Americans to DHS in light of our nation's history around the internment camps during World War II and the sharing of data on Japanese Americans, like my parents and their families, at that time. We find it very troubling that only a few years after the Bureau issued a formal apology for its participation in the baseless internment of Japanese Americans during World War II, it is once again caught up in sharing data on a "sensitive" population. We believe you share our belief that the Bureau has a responsibility to ensure public trust in their work and cannot skirt that responsibility under the technicalities of law.

NAPALC is dedicated to an accurate and fair census count, especially of Asian Americans. Unfortunately, the current actions by the Bureau are being perceived by the community as an abuse of its trust in the Bureau and serves to confirm its

suspicious that they are being watched, catalogued and tracked for improper purposes. When the Bureau's actions during World War II became public in April 2000, it undermined our efforts to encourage Asian Americans to trust the Bureau and return the census forms. We fear that the community is now less inclined to respond and return their census forms due to the Bureau's current data sharing activities, which hinders the purpose of both our organizations.

It is good to see that the Census Bureau acknowledges that public perception is important to their directive and that this latest incident has harmed the public trust in the Bureau. We are heartened to see the Bureau has taken steps to address the issues, but feel much more needs to be done.

The Bureau, with the help of interested stakeholders, needs to strengthen its interim policy by working with community stakeholders in developing the criteria used by the Associate Director in determining whether to provide data to law enforcement or intelligence agencies. It is not enough to raise the level of review if there are not strong guidelines with a presumption against such sharing without meeting strict criteria.

We were hopeful that this would be discussed and resolved at the October DCAC meeting. We are very troubled by the fact that despite being told by several key stakeholders that the new November date presented conflicts, the Bureau is still going forward with the date change. This sends a message that we assume the Bureau does not intend to send to its long time partners and stakeholders. Any good that would come from having a joint meeting with REAC members is undermined by the lack of participation by DCAC members whose constituencies are most affected by the problem.

Given the meeting date change, we would like to have a meeting with you before November.

Sincerely,

Karen K. Narasaki  
President and Executive Director  
National Asian Pacific American Legal Consortium

## APPENDIX 2 (cont.)

### B. Sample Letter from Samia El-Badry

*August 1, 2002*

*Memo: to Jerry Gates and Dr. Haberban,*

*CC: Louis Kincannon*

*Dear Sirs:*

*It does not matter that Homeland security could have gotten the data on its own, it does matter that we have been telling our population groups that the Bureau will not violate its principles; it does matter that the bureau did not abide by its own guidelines of review when it comes to special tabulations for law enforcement.*

*The Bureau did not tell me or the advisory committee of the request for two years, and only told me about it the day it came out in public. Representing the Arab-American community, I have been serving on the committee for the past 8 years, both as an Arab-American and as a demographer. I trusted and supported the Bureau and really believed that the Bureau would not do anything to betray public trust.*

*Indeed the fact that they tabulated such data for Homeland security is a betrayal of public trust. Given the Bureau's history of allowing its statistical data to be used to round up Japanese Americans, and the Bureau's promise never to do that again, I find it deplorable that the Bureau was so callous in its use of cooperation between agencies. Indeed, as Ken Prewitt said, "there is an issue of principle involved as well as law, in WW2 we violated our principles even if we did not violate the law, and we assured people that we would not do that again".*

*It is appalling that who ever got the request did not "think" or consider the implications and ramifications, especially because there is no indication that the Department of Homeland Security requested similar information about any other ethnic groups. The*

*tabulations were for individuals of Arab descent whose families have lived in the US for generations.*

*Additionally, none of the **Bureau's guidelines** for preparing special tabulations for law enforcement were taken into consideration:*

- *How the data sharing will affect the Bureau's reputation*
- *whether the data deals with "sensitive populations"*
- *And whether it is being requested by law enforcement agencies.*

*The guidelines suggest that the Bureau evaluate whether the agency will use the data for statistical applications or law enforcement.*

*In this case, we are told that Homeland requested zip code level data to write signs/brochures in Arabic for customs and border protection. It appears that the Bureau failed to see the lack of a relationship between the type of data requested (zip code level) and where ports of entry are located. If that were the case, then Homeland needed data for ports of entry/exit, rather than Arabs who live in the US.*

- *One does not need zip code level data of Arab-Americans for International ports of entry/exit signage*
- *One does not need Arabic signs as most Arab-Americans speak fluent English*
- *One does not need tabulations of places with 1000+ Arab-Americans*
- *One does not need to know the person's country specific ancestry to write signs in Arabic*
- *One does not need zip code by state level data (Puerto Rico, Massachusetts, Rhode Island and New Hampshire) of Arab persons to write brochures and signs to be used at International ports of entry/exit.*

*The fact that the Bureau did not scrutinize this request is deplorable and unprofessional. The fact that the Bureau did not abide by its own guidelines of scrutiny is untrustworthy;*

*the fact that the Bureau did not scrutinize the request for its utility is blinding. The special tabulations are indeed legal; however the Bureau has had a history of being cautious about cooperation between agencies because of principle and public sensitivity of data utility. In this case, they failed on principle and failed the trust of the public.*

*Sincerely,*

*Samia El-Badry, Ph.D*

*Advisory Board Member, representing the Arab-American Community*

*American Arab Anti Discrimination Committee and*

*The Arab-American Institute Foundation  
Washington, DC 20006*

### **APPENDIX 3.**

#### **Final Resolution, by Secretary of Commerce's Advisory Committee on the Decennial Census, November 10, 2004**

##### **Resolution by the Secretary of Commerce's Advisory Committee on the Decennial Census on extracts and special tabulations by the U.S. Census Bureau on racial and ethnic groups for other federal agencies**

Whereas the U.S. Census Bureau must maintain the highest level of trust with all stakeholder groups and individuals to ensure maximum voluntary public participation in the decennial census and other surveys;

Whereas the Bureau's partnerships with national and local groups, throughout the decade and particularly in the years leading up to the decennial census, are very important to build and maintain such trust;

Whereas the Bureau's national and local partnerships helped significantly to reduce the differential undercount in Census 2000, compared to previous decennial censuses, and to generate unprecedented community participation in key aspects of Census 2000;

Whereas the various Census advisory committees, including the Secretary of Commerce's Advisory Committee on the Decennial Census, are an important component to the Bureau's partnership efforts and have proven to be effective vehicles to address issues of stakeholder concerns to the Bureau;

Whereas census data collection is not possible without the full participation and cooperation of the public, especially hard-to-enumerate population groups, and better data collection produces a more accurate portrait of the nature and diversity of this country;

Whereas public participation and cooperation in the decennial census and other surveys depend on the highest level of public trust that the census is confidential, that participation in the census will not bring harm - real or perceived - to respondents and their families, and that the Census Bureau will not share confidential census data with other governmental agencies;

Whereas race, ethnic, and ancestry data collected through the decennial census, American Community Survey, and other surveys are required to carry out federal laws or judicial decisions;

Whereas in March 2000, Census Director Kenneth Prewitt appropriately issued a statement of apology to the public for the provision of data on Americans of Japanese descent provided to other governmental agencies during World War II;

Whereas the Census Bureau, without violating confidentiality statutes, provided extracts of data on Americans of Arab descent to the U.S. Department of Homeland Security in 2002 and 2003;

Whereas such extracts of data on Americans of Arab descent by the Census Bureau have caused deep concern in stakeholder communities and have the potential to undermine severely the public's trust that the conduct and tabulation of census data are confidential and safe and will not be used adversely by law enforcement or national security agencies:

Now therefore be it resolved that the Secretary of Commerce's Advisory Committee on the Decennial Census calls on the Secretary of Commerce and his staff to work with the Census Bureau and the advisory committees to institute policies and procedures to ensure the Bureau does not engage in the preparation or release of extracts or special tabulations of racial and ethnic groups that could harm or be perceived as diminishing public confidence in any decennial census activities or the confidentiality of census data; and

Be it further resolved that the Advisory Committee recommends that the Census Bureau consider the establishment of a Chief Privacy Officer.

#### **APPENDIX 4. Notice of Privacy Officer installed at the US Census Bureau.**

FOR IMMEDIATE RELEASE  
TUESDAY, MARCH 1, 2005

Shelly Lowe  
Public Information Office  
(301) 763-3691/457-3620 (fax)  
(301) 457-1037 (TDD)  
e-mail: pio@census.gov

CB05-CN.01  
Data Stewardship Web Page

Census Bureau Names Gerald W. Gates as  
First Chief Privacy Officer  
Agency Also Launches New Web Page Devoted to Data Stewardship

As part of its commitment to honor privacy and protect the confidentiality of data it collects about the nation's population and economy, the U.S. Census Bureau has named Gerald W. Gates as its first-ever chief privacy officer.

Gates has played a major role in establishing the Census Bureau's data stewardship program, which ensures that executive decisions reflect a thoughtful analysis of mission objectives in light of legal and ethical privacy obligations.

Gates is an expert on privacy and confidentiality issues. His new role will complement the data stewardship program and communicate the program's vision, principles and policies, thereby ensuring the continued protection of information provided by every person that participates in a census or survey.

"The public places their trust in us to safeguard their information, and we take that responsibility seriously," said Census Bureau Director Louis Kincannon. "Our ability to meet the nation's data needs depends on it. Jerry's pioneering work in data stewardship makes him uniquely qualified to serve as the agency's first chief privacy officer."

As chief privacy officer, Gates will work with privacy groups, professional associations, data user groups, congressional staffs, advisory committees and other interested parties to clarify and highlight privacy issues and concerns.

"Privacy, confidentiality and the security of the information we collect from households and businesses across the nation are top priorities at the Census Bureau," said Gates. "It is clear that privacy concerns will play an

increasing role in the Census Bureau's future, and I will do all in my power to further strengthen protections, educate our employees and assure the public that their information is confidential and used solely to produce high-quality statistics."

Gates has served at the Census Bureau for more than 33 years. He received a bachelor's degree in business and statistics from the University of Colorado in 1970, and is the author of numerous papers on privacy research, perceptions of confidentiality and alternatives for providing access to statistical data. He has chaired an interagency team that proposed privacy principles and recommended governmental strategies for protecting privacy for the National Information Infrastructure. Gates also served for four years as the U.S. representative to the Council of Europe Working Party, which developed Recommendations on the Protection of Personal Data Statistics.

The Census Bureau also launched today new content on its Web site about the agency's data stewardship program. The site emphasizes privacy and confidentiality protections in place at the Census Bureau. It also covers such topics as how to verify that a survey is legitimate. To access the new content, visit <<http://www.census.gov>> and click on the "data protection and privacy policy" link at the bottom of the page.

**Figure 1. The Census Controversy Feedback Cycle**

