

CONSTITUTIONAL
Q&A

THE RUTHERFORD INSTITUTE

AMERICAN
COMMUNITY
SURVEY

AMERICAN COMMUNITY SURVEY

THE RUTHERFORD INSTITUTE, a national nonprofit civil liberties organization, is deeply committed to protecting the constitutional freedoms of every American and the integral human rights of all people through its extensive legal and educational programs. The Institute provides its legal services at no charge to those whose constitutional and human rights have been threatened or violated. The Institute's mission is twofold: to provide legal services in the defense of civil liberties and to educate the public on important issues affecting their constitutional freedoms.

In an age when the government has significant technological resources at its disposal to not only carry out warrantless surveillance on American citizens but also to harvest and mine that data for its own dubious purposes, whether it be crime-mapping or profiling based on race or religion, the potential for abuse is grave. As such, any attempt by the government to encroach upon the citizenry's privacy rights or establish a system by which the populace can be targeted, tracked and singled out must be met with extreme caution.

The American Community Survey (ACS) qualifies as a government program whose purpose, while seemingly benign, raises significant constitutional concerns.

Empowered by Congress with greater powers to amass information about citizens, the Census Bureau introduced the ACS in 2005. Unlike the traditional census, which is limited to a simple head count every ten years for the purpose of establishing representation in Congress, the ACS is sent on an ongoing basis to about 3 million homes every year at a reported cost of hundreds of millions of taxpayer dollars.¹

Individuals who receive the ACS must complete it or be subject to monetary penalties. Although no reports of surface of individuals actually being penalized for refusing to answer the survey, the potential fines that can be levied for refusing to participate in the ACS are staggering. For every question not answered, there is a \$100 fine. And for every intentionally false response to a question, the fine is \$500. Therefore, if a person representing a two-person household refused to fill out any questions or simply answered nonsensically, the total fines could range from upwards of \$10,000 and \$50,000 for noncompliance.

At 24 pages (with an additional 16-page instruction packet), the ACS contains some of the most detailed and intrusive questions ever put forth in a census questionnaire. These concern matters that the government simply has no business knowing, including questions relating to respondents' bathing habits, home utility costs, fertility, marital history, work commute, mortgage, and health insurance, among others. For instance, the ACS

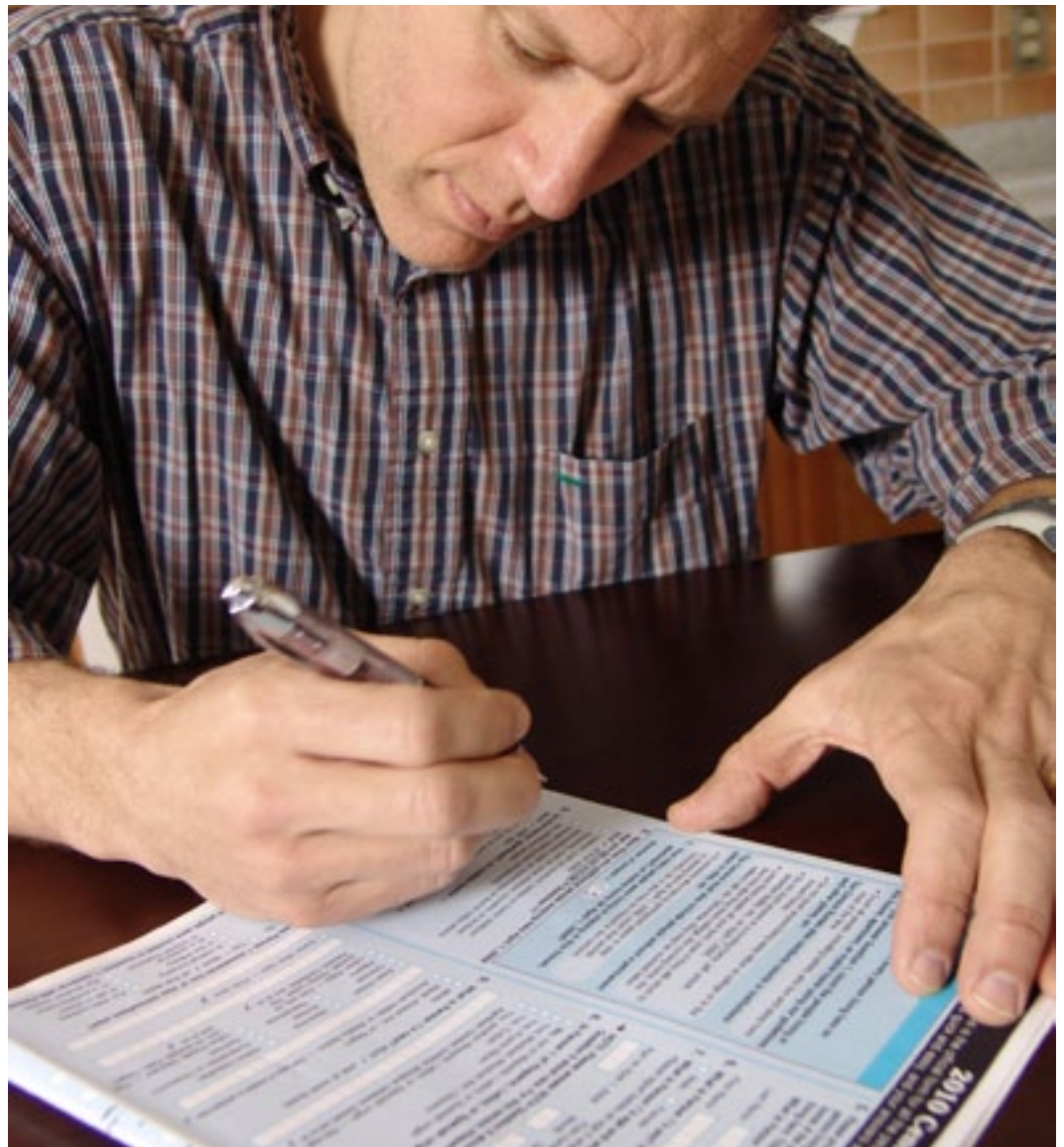
asks how many persons live in your home, along with their names and detailed information about them such as their relationship to you, marital status, race and their physical, mental and emotional problems, etc. The survey also asks how many bedrooms and bathrooms you have in your house, along with the fuel used to heat your home, the cost of electricity, what type of mortgage you have and monthly mortgage payments, property taxes and so on.

However, that's not all. The survey also demands to know how many days you were sick last year, how many automobiles you own and the number of miles driven, whether you have trouble getting up the stairs, and what time you leave for work every morning, along with highly detailed inquiries about your financial affairs. And the survey demands that you violate the privacy of others by supplying the names and addresses of your friends, relatives and employer. The questionnaire also demands that you give other information on the people in your home, such as their educational levels, how many years of school were completed, what languages they speak and when they last worked at a job, among other things.

While some of the ACS' questions may seem fairly routine, the real danger is in not knowing why the information is needed, how it will be used by the government or with whom it will be shared.

The Rutherford Institute has received hundreds of inquiries from individuals who have received the ACS and are not comfortable sharing such private, intimate details with the government or are unsettled by the aggressive tactics utilized by Census Bureau agents seeking to compel responses to ACS questions.

The following Q&A is provided as a resource to those who want to better understand their rights in respect to the ACS.



WHAT IS THE DECENNIAL CENSUS?

The U.S. Constitution requires that a decennial census be conducted every ten years for the purpose of making an “actual enumeration” of the persons within each state.² The purpose of the decennial census is to apportion the 435 members in the U.S. House of Representatives among the several states.³ After a decennial census is conducted, states which have increases in population may gain additional seats in the House of Representatives at the expense of other states. For example, in 2013 after the 2010 census, Florida gained two seats in the House, while New York lost two.

WHAT IS THE AMERICAN COMMUNITY SURVEY (ACS)?

The American Community Survey, a questionnaire produced by the Census Bureau, not only asks about the number of persons in a household but also asks a broad range of questions about the activities of the people living in the household. The survey is 28 pages long and requires answers to between 95 and 263 questions depending on the number of persons living in the residence. There also is a 16-page guide that contains instructions on answering the questions.⁴ Unlike the decennial census which is sent out every 10 years, the ACS is an “ongoing survey” that is sent out on a continuous basis by the Census Bureau.⁵

WHAT KIND OF QUESTIONS ARE CONTAINED IN THE ACS?

The ACS contains questions go far beyond typical census questions about the number of individuals within the household and their age, race, and sex. For instance, the ACS asks about the acreage of your property and any agricultural sales from the property,⁶ your ancestry,⁷ your citizenship status,⁸ your daily commute (including when you leave home and how long it takes to get to work),⁹ the computing devices you own,¹⁰ the fertility of women in the household,¹¹ the fuel used to heat your house,¹² the number of rooms in your house,¹³ and the year in which your house was built.¹⁴ The ACS questionnaire also demands that persons divulge how many automobiles they own¹⁵ and whether you have trouble getting up the stairs.¹⁶

The survey combines these intrusive questions with highly detailed inquiries about your financial affairs.¹⁷ Furthermore, the questionnaire also demands that recipients provide information about their family and other people in their home, such as their educational levels, how many years of school were completed,¹⁸ what languages they speak¹⁹ and when they last worked at a job.²⁰

With the power of government agents under the USA Patriot Act to secretly enter your home while you are not present and rifle through your personal belongings without a search warrant, it is not only concerning but dangerous to let the government know when you will not be at home.

HOW WILL THIS INFORMATION BE USED?

The Census Bureau states that information from this survey is used to assist a wide variety of entities, from federal, state, and local governments to private corporations, nonprofit organizations, researchers, and public advocacy groups. The Bureau lists 35 different categories of questions on its website and offers an explanation on how the information is to be used.²¹ For 12 of those categories, the information is used to assist private corporations. For another 22, the information is used to aid advocacy groups, and in nine of those cases, the Census Bureau states that the responses will be used by advocacy groups to “advocate for policies that benefit their groups,” including advocacy based on age,²² race,²³ sex,²⁴ and marital status.²⁵

Thus, information obtained through the ACS is not simply used to inform government policy in a neutral manner, but is also being provided to private actors for the purpose of promoting corporate and/or political agendas.

One concern with the collection of such private information, especially financial information, is that ACS information could be compared to information provided to the Internal Revenue Service on tax returns. Any discrepancies, intentional or not, could result in an IRS audit of your returns.

Another concern raised by the Brookings Institute is the use of ACS information by law enforcement for “crime mapping,” a surveillance tool used to predict crime and preemptively target certain neighborhoods for policing. It is “most effective” when “analysts can see the relationship between various types of criminal incidents (e.g., homicides, drug dealing) and neighborhood characteristics (risk factors such as poverty, population density, and vacant housing), pinpoint where crimes are most likely to oc-

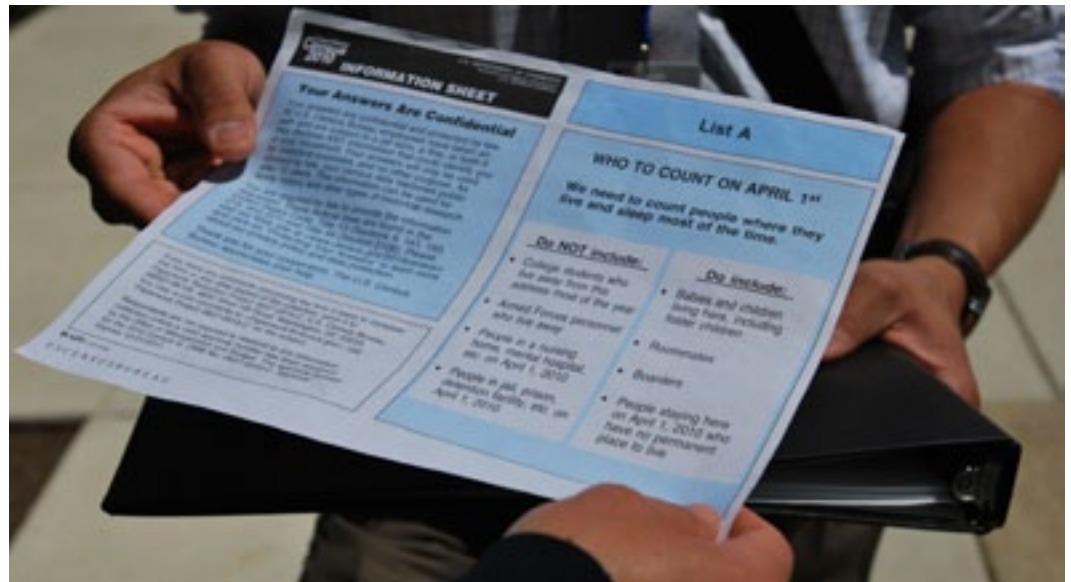
cur (hot spots), and focus police resources accordingly.”²⁶ The Brookings Institute notes that because the ACS provides data every year, rather than every ten years, crime mapping is more effective and cheaper.

ARE MY RESPONSES KEPT CONFIDENTIAL?

While the Census Bureau claims that an individual’s information will be kept strictly confidential,²⁷ it does require a recipient to put their name on the survey, ostensibly for the purpose of asking follow-up questions in the event of missing or incomplete answers.²⁸

This means your answers can and most likely will be linked to you even if it is forbidden by law to share your individual responses.

CONSTITUTIONAL Q&A



ARE YOU REQUIRED BY LAW TO FULLY COMPLETE THE AMERICAN COMMUNITY SURVEY?

Federal law makes it mandatory to answer all questions on the ACS. A refusal to answer any question on the ACS or giving an intentionally false answer is a federal offense.²⁹ The Census Bureau also maintains that responding to the ACS is mandatory and that recipients are legally obligated to answer all questions.³⁰

IS THERE A PENALTY FOR REFUSING TO ANSWER AMERICAN COMMUNITY SURVEY QUESTIONS?

The law requiring answers to the ACS also provides that a person who fails to answer “shall be fined not more than \$100.”³¹ The actual fine for a refusal to complete the ACS could be much greater because a failure to respond to certain ACS questions could be considered a separate offense subject to the \$100 fine. However, while The Rutherford Institute has been made aware of Census Bureau agents engaging in harassing tactics and threatening behavior, to date, we are unaware of the Census Bureau having levied any financial penalties for non-compliance with the ACS.

HAS THE GOVERNMENT PROSECUTED PERSONS FOR REFUSING TO ANSWER THE AMERICAN COMMUNITY SURVEY?

According to one report published in early 2014, the government has not prosecuted anyone for refusing to respond to the ACS. A Census Bureau representative is quoted in this report as saying that the Bureau is “really not in the business of prosecuting people who don’t comply.”³² However, a refusal to answer the survey violates the letter of the law and a prosecution might be brought if the government decides to adopt a policy to do so.

HOW DOES THE CENSUS BUREAU TYPICALLY ENSURE THAT PEOPLE COMPLETE THE SURVEY?

Those who do not answer the ACS risk repeated overtures—by mail, by phone and in person—from Census Bureau employees seeking to compel a response. Typically, the Census Bureau will telephone those who do not respond to the survey and may visit their homes to coerce the targets to respond.

The Census Bureau boasts a 97% response rate to the survey via these methods,³³ but critics argue this constitutes harassment. One recipient who did complete the survey but whose answers were misplaced by the Census Bureau wrote about his experience. First, a Census Bureau employee left a note at his apartment asking him to contact her. When he did, the employee asked him to allow her into his home. When he refused, the employee “turned up twice unannounced at my apartment, demanding entry, and warning me of the fines I would face if I didn’t cooperate.”³⁴ Only after he filed a complaint with the Census Bureau did the agency realize he had actually completed the survey, thus ending its attempts to enter his home.

DOES EVERYONE IN THE UNITED STATES RECEIVE THE AMERICAN COMMUNITY SURVEY?

The ACS is not sent to all households. The Census Bureau uses sampling methods to select households that represent a cross-section of the population of the United States. According to the Census Bureau, it randomly selects 3.5 million households each year as targets of the ACS.



IS THIS AN UNCONSTITUTIONAL INVASION OF PRIVACY?

There are significant and legitimate questions concerning the authority of the government to require, under threat of prosecution and penalty, that persons answer questions posed by the ACS. The ACS is not part of the enumeration required by Article I of the Constitution, and that constitutional provision only applies to a census for purposes of counting the number of people in each state. As noted, the ACS seeks much more information than the number of persons in a household.

In other contexts, the U.S. Supreme Court has ruled that citizens have no obligation to answer questions posed by the government and are free to refuse to do so.³⁵ This same principle could apply to questions posed by ACS agents. However, because the government has not brought a prosecution for a refusal to respond to the ACS, the question of a person's right to refuse has not yet been decided by a court.

WHAT ARE MY OPTIONS FOR OBJECTING TO THE ACS SURVEY AS AN INTRUSION ON MY FOURTH AMENDMENT RIGHTS?

If you receive notice that you have been targeted to respond to the ACS and you desire to assert your right of privacy, you can voice those objections and your intent not to respond to the ACS by writing a letter to the Census Bureau. The Rutherford Institute has developed a form letter that you may use in standing up against the government's attempt to force you to disclose personal information ([click here to access](#)).

If you are contacted by Census Bureau employees, either by telephone or in person, demanding your response, you can assert your rights by politely, but firmly, informing the employee that you believe the ACS is an improper invasion of your privacy, that you do not intend to respond and that they should not attempt to contact you again. Be sure to document any interactions you have with Bureau representatives for your own files.

If you believe you are being unduly harassed by a Census Bureau employee, either by telephone or in person, it is in your best interests to carefully document the time, place and manner of the incidents and file a complaint with the U.S. Census Bureau.

DEFENDING YOUR RIGHTS

The Rutherford Institute stands ready to defend your rights if they are violated by the government. For over a quarter century, we have assisted, without charge, persons deprived of their liberty by government officials.

Should you have further questions or need legal assistance in exercising your constitutional rights, please contact the Legal Department at legal@rutherford.org.

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ENDNOTES

1. Jill Wilson, "R.I.P., Census Long Form," *New Republic*, May 12, 2010. <https://newrepublic.com/article/74934/rip-census-long-form>.
2. U.S. Constitution, Article 1, Section 2, Clause 3.
3. The number of seats in the House of Representatives was established by Congress at 435 in 1911 and capped at that amount by Congress in 1929, although the number was temporarily increased to 437 in 1959 when Alaska and Hawaii were admitted to the Union. See *Clemons v. U.S. Dep't of Commerce*, 710 F. Supp. 2d 570, 572 (N.D. Miss.), *vacated sub nom. Clemons v. Dep't of Commerce*, 562 U.S. 1105 (2010).
4. <http://www.census.gov/programs-surveys/acs/about/forms-and-instructions/2016-form.html>.
5. <https://www.census.gov/programs-surveys/acs/about.html>.
6. https://www2.census.gov/programs-surveys/acs/about/qbyq-fact/2016/Acreage_AgSales.pdf.
7. <https://www2.census.gov/programs-surveys/acs/about/qbyq-fact/2016/Ancestry.pdf>.
8. <https://www2.census.gov/programs-surveys/acs/about/qbyq-fact/2016/Citizenship.pdf>.
9. <https://www2.census.gov/programs-surveys/acs/about/qbyq-fact/2016/JourneytoWork.pdf>.
10. <https://www2.census.gov/programs-surveys/acs/about/qbyq-fact/2016/Computer.pdf>.
11. <https://www2.census.gov/programs-surveys/acs/about/qbyq-fact/2016/Fertility.pdf>.
12. <https://www2.census.gov/programs-surveys/acs/about/qbyq-fact/2016/HomeHeatingFuel.pdf>.
13. <https://www2.census.gov/programs-surveys/acs/about/qbyq-fact/2016/StructureRooms.pdf>.
14. <https://www2.census.gov/programs-surveys/acs/about/qbyq-fact/2016/YearBuilt.pdf>.
15. <https://www2.census.gov/programs-surveys/acs/about/qbyq-fact/2016/Vehicles.pdf>.
16. <https://www2.census.gov/programs-surveys/acs/about/qbyq-fact/2016/Disability.pdf>.
17. <https://www2.census.gov/programs-surveys/acs/about/qbyq-fact/2016/MortgageSMOC.pdf>.

18. <https://www2.census.gov/programs-surveys/acs/about/qbyqfact/2016/EducationalAttainment.pdf>.
19. <https://www2.census.gov/programs-surveys/acs/about/qbyqfact/2016/Language.pdf>.
20. <https://www2.census.gov/programs-surveys/acs/about/qbyqfact/2016/WorkStatus.pdf>.
21. <http://www.census.gov/acs/www/about/why-we-ask-each-question/>.
22. <https://www2.census.gov/programs-surveys/acs/about/qbyqfact/2016/Age.pdf>.
23. <https://www2.census.gov/programs-surveys/acs/about/qbyqfact/2016/Race.pdf>.
24. <https://www2.census.gov/programs-surveys/acs/about/qbyqfact/2016/Sex.pdf>.
25. <https://www2.census.gov/programs-surveys/acs/about/qbyqfact/2016/MaritalStatusHistory.pdf>.
26. Andrew Reamer, "To Take a Bite Out of Crime: Safeguard the Census," <https://www.brookings.edu/opinions/to-take-a-bite-out-of-crime-safeguard-the-census/>.
27. <http://www.census.gov/programs-surveys/acs/about/is-my-privacy-protected.html>.
28. <https://www2.census.gov/programs-surveys/acs/about/qbyqfact/2016/Name.pdf>.
29. 13 U.S.C. § 221.
30. <https://www.census.gov/programs-surveys/acs/about/survey-is-mandatory.html>.
31. 13 U.S.C.A. § 221(a).
32. Gardner Selby, "Americans Must Answer U.S. Census Bureau Survey by Law, Though Agency Hasn't Prosecuted since 1970," *Politifact*, <http://www.politifact.com/texas/statements/2014/jan/09/us-census-bureau/americans-must-answer-us-census-bureau-survey-law-/>.
33. <http://www.sciencemag.org/news/2015/04/will-kinder-gentler-census-survey-placate-congressional-foes>
34. Daniel Freedman, "The Orwellian American Community Survey," *The Weekly Standard*, <http://www.weeklystandard.com/article/431469>.
35. *Florida v. Royer*, 460 U.S. 491, 498 (1983).

THE RUTHERFORD INSTITUTE stands ready to defend your rights if they are violated by police. For over a quarter century, we have assisted, without charge, persons deprived of their liberty by government officials. If you believe your rights described above were violated and want to seek justice, contact us and we will listen and provide you with the guidance and help that you need.

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