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# United States Senate

WASHINGTON, DC 20510-3703

April 4, 2005

## COMMITTEES:

COMMITTEE ON THE BUDGET  
COMMITTEE ON ENERGY AND NATURAL RESOURCES  
SUBCOMMITTEE ON PUBLIC LANDS AND FORESTS  
SPECIAL COMMITTEE ON AGING  
SELECT COMMITTEE ON INTELLIGENCE  
COMMITTEE ON FINANCE

The Honorable Carlos M. Gutierrez, Secretary  
U.S. Department of Commerce  
Herbert Hoover Building, Room 5858  
Washington, DC 20230

Dear Secretary Gutierrez:

I am writing to request that you provide me with the names of the persons and entities responsible for exporting approximately 268 million barrels of petroleum products from the United States in 2004, according to U.S. Census Bureau data.

As a member of the Senate Energy and Natural Resources Committee, I believe this information is critical for Congress to have as it considers national energy legislation in the coming weeks. Unfortunately, Director of the Census Bureau Charles Kincannon wrote to me on March 29, 2005 to deny my request for this information. I respectfully urge you to overrule Mr. Kincannon's decision on the grounds it is not supported by statute or controlling legal precedent governing the right of members of Congress to have access to information necessary to perform their duties as legislators.

In his letter, Mr. Kincannon states that he has been advised that the information I requested cannot be released to a member of Congress acting in his or her official capacity. To determine the basis for this claim, my staff contacted the Census Bureau's Acting General Counsel Jane Dana who asserted that only committees of Congress have the authority to obtain the information I requested. Ms. Dana cited as additional authority for not complying with my request a provision of the Census Act that provides shippers export declarations are exempt from disclosure, unless the Secretary of Commerce determines that such exemption would be contrary to the national interest.

First, the Census Bureau's claim that individual members of Congress do not have the authority to seek information from Federal agencies is directly at odds with the governing law in this area. Specifically, Murphy v. Dep't of the Army, 613 F.2d 1151 (D.C. Cir. 1979), addressed the issue of individual members of Congress' right to seek information from a Federal agency. As the Murphy court pointed out,

all Members have a constitutionally recognized status entitling them to share in general congressional powers and responsibilities, many of them requiring access to executive information. . . . Each of them participates in the law-making process; each has a voice and a vote in that process; and each is entitled to request such information from the executive agencies as will enable him to carry out the responsibilities of a legislator.

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613 F.2d at 1157. In sum, Murphy stands for the proposition that any individual member of Congress acting in his/her official capacity should be entitled to the full panoply of rights of access to privileged information accorded to "Congress". The Murphy case also makes clear that there is no basis in law to deny my request for the names of petroleum exporters on the grounds the request did not come from a Congressional committee.

Second, I believe that the provision of the Census Act cited by Ms. Dana does not provide support for denying my request. The statute in question, 13 U.S.C. Section 301(g), specifically states that "Shippers' Export Declarations (or any successor document) wherever located, shall be exempt from public disclosure unless the Secretary determines that such exemption would be contrary to the national interest." I would point out that I have not requested release of Shippers' Export Declarations. Nor am I requesting any successor document that contains any specific information about shippers' exports of petroleum. I am simply requesting the names of the persons (individuals or companies) who have exported petroleum from the U.S. As this statute does not specifically exempt the names of exporters from public disclosure, I believe that it cannot be fairly read as grounds to deny my request.

However, even if it were theoretically possible to construe this section of the Census Act to withhold the names of petroleum exporters, I believe the national interest justifies you authorizing the release of the exporters' names. Energy security issues, and in particular U.S. dependence on foreign oil, will be a critical part of the Congressional debate on national energy legislation. Information about the export of gasoline, diesel and aviation fuels as well as other petroleum products out of the U.S. is directly relevant to the coming Congressional debate on how to address our nation's dependence on imports of oil and other petroleum products. For this reason, I urge that notwithstanding the Census Bureau's questionable contention that release of exporters' names could be exempt from public disclosure, you determine that such exemption would be contrary to the national interest in this case.

Because the Senate Energy and Natural Resources Committee is expected to begin its consideration of national energy legislation in the next few weeks, I am requesting you respond to my request no later than April 15. Thank you for your prompt consideration of this important energy security issue, and I look forward to your response.

Sincerely,

A handwritten signature in black ink that reads "Ron Wyden". The signature is written in a cursive, slightly slanted style.

RON WYDEN  
United States Senator

Cc: Charles Kincannon