

February 27, 2020

By Facsimile: 404-235-1852

Centers for Disease Control and Prevention
CDC/ATSDR
Attn: FOIA Office, MS-D54
1600 Clifton Road, N.E.
Atlanta, GA 30333

Re: Expedited Freedom of Information Act Request

Dear FOIA Officer:

Citizens for Responsibility and Ethics in Washington (“CREW”) makes this request for records pursuant to the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, and U.S. Department of Justice Health and Human Services (“HHS”) regulations.

Specifically, CREW requests:

(1) All records of communications from January 1, 2020 to the present concerning or suggesting that the CDC downplay the threat posed by the coronavirus (COVID-19) in the United States between any of the following individuals and anyone in the White House, including anyone with an eop.gov domain name: (a) CDC Director Robert R. Redfield, M.D.; (b) CDC Principal Deputy Director Anne Schuchat, M.D.; (c) CDC Acting Associate Director for Communications Michelle E. Banks; and/or (d) CDC Chief of Staff Kyle McGowan;

(2) All records of communications between any of the above-listed CDC officials and HHS White House Liaison Trent Morse from January 1, 2020 to the present concerning or suggesting that the CDC downplay the threat posed by the coronavirus (COVID-19) in the United States;

(3) All records of communications between any of the above-listed CDC officials and White House Chief of Staff Mick Mulvaney from January 1, 2020 to the present concerning the coronavirus (COVID-19);

(4) All records of communications between any of the above-listed CDC officials from January 1, 2020 to the present concerning Larry Kudlow’s public statements regarding the coronavirus (COVID-19); and

(5) All records of communications between any of the above-listed CDC officials from January 1, 2020 to the present concerning the appointment of a coronavirus czar.

Please search for responsive records regardless of format, medium, or physical characteristics. We seek records of any kind, including paper records, electronic records, audiotapes, videotapes, photographs, data, and graphical material. Our request includes without

limitation all correspondence, letters, emails, text messages, facsimiles, telephone messages, voice mail messages, and transcripts, notes, or minutes of any meetings, telephone conversations, or discussions. Our request also includes any attachments to emails and other records.

If it is your position any portion of the requested records is exempt from disclosure, CREW requests that you provide it with an index of those documents as required under *Vaughn v. Rosen*, 484 F.2d 820 (D.C. Cir. 1973). If some portions of the requested records are properly exempt from disclosure, please disclose any reasonably segregable non-exempt portions of the requested records. *See* 5 U.S.C. § 552(b). If it is your position that a document contains non-exempt segments, but that those non-exempt segments are so dispersed throughout the document as to make segregation impossible, please state what portion of the document is non-exempt, and how the material is dispersed throughout the document. *See Mead Data Central v. U.S. Dep't of the Air Force*, 566 F.2d 242, 261 (D.C. Cir. 1977).

Please be advised that CREW intends to pursue all legal remedies to enforce its right under the FOIA to access the requested documents. Accordingly, because litigation reasonably is foreseeable, the CDC should institute an agency-wide preservation hold on documents potentially responsive to this request.

Fee Waiver Request

In accordance with 5 U.S.C. § 552(a)(4)(A) and HHS regulations, CREW requests a waiver of fees associated with processing this request for records. The subject of this request concerns the operations of the federal government, and the disclosures likely will contribute to a better understanding of relevant government procedures by CREW and the general public in a significant way. *See* 5 U.S.C. § 552(a)(4)(A)(iii). Moreover, the request primarily and fundamentally is for non-commercial purposes. *See, e.g., McClellan Ecological v. Carlucci*, 835 F.2d 1282, 1285 (9th Cir. 1987).

On January 31, 2020, HHS Secretary Alex M. Azar declared the coronavirus outbreak a public health emergency. Since that time, the number of coronavirus cases has risen dramatically, and by February 25, 2020, the CDC was warning that the virus's spread to the United States was inevitable.¹ The stock market reacted with a more than three percent drop, prompting White House economic adviser Larry Kudlow to claim that the coronavirus "is very tightly contained in the U.S. I think this thing will run its course and the US is in excellent shape."² President Trump for his part also claimed "[t]he Coronavirus is very much under control in the USA." *Id.* Further, despite the steep drop in the market, the president tweeted, "Stock Market starting to look very good to me!" *Id.* Reportedly, the president is furious with the stock market slide, blaming in part the warnings from the CDC and the media, and has sought to tamp down CDC predictions despite warnings from federal officials about the "more severe

¹ *See, e.g.,* Pam Belluck & Noah Weiland, C.D.C. Officials Warn of Coronavirus Outbreaks in the U.S., *New York Times*, Feb. 25, 2020, <https://www.nytimes.com/2020/02/25/health/coronavirus-us.html>.

² Brendan Cole, Donald Trump is Furious About Coronavirus-Related Stock Market Drops, Blames CDC For Spooking Investors, *Newsweek*, Feb. 26, 2020, <https://www.newsweek.com/donald-trump-cdc-stock-markets-coronavirus-1489123>.

consequences for inaction.”³ President Trump’s claim to have the coronavirus under control in the U.S. is at odds with reports about the growing number of new cases here and throughout the world. In an apparent effort to also assuage public concerns, Secretary Azar pushed back on public reports that the president planned to appoint a “coronavirus czar,” claiming “[t]his has been the smoothest inter-agency process I have seen in dealing with public health emergencies.”⁴

The requested records are likely to contribute to greater public understanding of the extent to which the president and his staff have attempted to exert pressure on HHS and the CDC to downplay the risks to the American public from the coronavirus in an effort to influence the stock market to which the president has often tied his political success. Any effort to deceive the public about the true risks the coronavirus presents, especially at-risk groups like the elderly and immuno-compromised, presents a grave public health risk that is completely at odds with the responsibility the president and HHS bear to protect the safety and health of the American public.

CREW is a non-profit corporation, organized under section 501(c)(3) of the Internal Revenue Code. CREW is committed to protecting the public’s right to be aware of the activities of government officials, to ensuring the integrity of those officials, and to highlighting and working to reduce the influence of money on politics. CREW uses a combination of research, litigation, and advocacy to advance its mission. CREW intends to analyze the information responsive to this request and to share its analysis with the public through reports, press releases, or other means. In addition, CREW will disseminate any documents it acquires from this request to the public through its website, www.citizensforethics.org. The release of information obtained through this request is not in CREW’s financial interest.

CREW further requests that it not be charged search or review fees for this request pursuant to 5 U.S.C. § 552(a)(4)(A)(ii)(II) because CREW qualifies as a member of the news media. See *Nat’l Sec. Archive v. U.S. Dep’t of Defense*, 880 F.2d 1381, 1386 (D.C. Cir. 1989) (holding non-profit a “representative of the news media” and broadly interpreting the term to include “any person or organization which regularly publishes or disseminates information to the public”).

CREW routinely and systematically disseminates information to the public in several ways. CREW’s website receives tens of thousands of page views every month. The website includes blogposts that report on and analyze newsworthy developments regarding government ethics, corruption, and money in politics, as well as numerous reports CREW has published to educate the public about these issues. In addition, CREW posts the documents it receives under the FOIA on its website.

Under these circumstances, CREW satisfies fully the criteria for a fee waiver.

³ Jeff Stein & Josh Dawsey, *White House struggles to contain public alarm over coronavirus*, *Washington Post*, Feb. 26, 2020, <https://www.washingtonpost.com/business/2020/02/25/white-house-struggles-contain-public-alarm-over-coronavirus-despite-panic/>.

⁴ Kimberly Leonard, *Alex Azar bats down reports that Trump will appoint a ‘coronavirus czar’ to replace him*, *Washington Examiner*, Feb. 26, 2020, <https://www.washingtonexaminer.com/policy/healthcare/alex-azar-bats-down-reports-that-trump-will-appoint-a-coronavirus-czar-to-replace-him>.

Request for Expedition

Finally, CREW requests that the CDC expedite its processing of this request because of the urgent need to inform the public about the extent to which the CDC and the HHS have downplayed the true risks that the coronavirus poses to the American public. As explained above CREW is primarily engaged in disseminating information to the public and seeks the documents requested here for public dissemination. Further, CREW requests expedition because a failure to obtain the requested records on an expedited basis reasonably could be expected to pose an imminent threat to the life or physical safety of the public at large including most specifically those at greater risk of suffering severe consequences should they contract the coronavirus. The public needs to know the true level of risk the virus poses to take all necessary precautions.

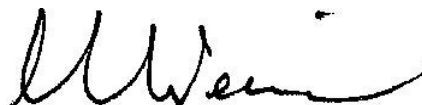
I certify that this statement is true and correct.

Conclusion

If you have any questions about this request or foresee any problems in fully releasing the requested records on an expedited basis, please contact me at (202) 408-5565 or aweismann@citizensforethics.org. Also, if CREW's request for a fee waiver is not granted in full, please contact our office immediately upon making such a determination.

Where possible, please produce records in electronic format. Please send the requested records to either the email listed above or Anne L. Weismann, Citizens for Responsibility and Ethics in Washington, 1101 K Street, N.W., Suite 201 Washington, D.C. 20005. Thank you for your assistance in this matter.

Sincerely,



Anne L. Weismann
Chief FOIA Counsel