



April 14, 2020

VIA EMAIL: FOIARequests@cdc.gov

CDC/ATSDR
Attn: FOIA Office, MS-D54
1600 Clifton Road, N.E.
Atlanta, GA 30333

Re: 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 Centers for Disease Control and Prevention (“CDC”) regulations.

First, CREW seeks all communications from January 29, 2020 to the present between the CDC and the following individuals referencing or involving the collection, tracking, reporting, or release of 2019 Novel Coronavirus (“novel coronavirus”) information pertaining to race, ethnicity, primary language, gender, disability status or socioeconomic status:

- (1) President Trump;
- (2) White House employees, including anyone with an “*.eop.gov” email domain;
- (3) attorneys or representatives acting on behalf of President Trump; and/or
- (4) members of the White House Coronavirus Task Force, specifically:

Mike Pence, Vice President of the United States;
Dr. Deborah Birx, United States Global AIDS Coordinator;
Vice Admiral Jerome Adams, U.S. Surgeon General;
Alex Azar, U.S. Secretary of Health and Human Services;
Stephen Biegun, U.S. Deputy Secretary of State;
Robert Blair, Assistant to the President and Senior Advisor to the Chief of Staff;
Dr. Ben Carson, U.S. Secretary of Housing and Urban Development;
Ken Cuccinelli, Acting U.S. Deputy Secretary of Homeland Security;
Dr. Kelvin Droegemeier, Director of the U.S. Office of Science and Technology;
Dr. Anthony Fauci, Director of the National Institute of Allergy and Infectious Diseases;
Joe Grogan, Assistant to the President and Director of the Domestic Policy Council;
Stephen Hahn, U.S. Commissioner of Food and Drugs;
Derek Kan, Executive Associate Director of the Office of Management and Budget;
Larry Kudlow, Director of the National Economic Council;

Chris Liddell, Assistant to the President and White House Deputy Chief of Staff for Policy Coordination;
Steven Mnuchin, U.S. Secretary of the Treasury;
Robert O'Brien, Assistant to the President for National Security Affairs;
Matthew Pottinger, Assistant to the President and Deputy National Security Advisor;
Dr. Robert R. Redfield, Director for the Centers for Disease Control and Prevention;
Joel Szabat, Assistant to the President and Deputy National Security Advisor;
Seema Verma, Administrator of the Centers for Medicare and Medicaid Services;
Col. Robert Wilkie, U.S. Secretary of Veterans Affairs,
(hereinafter collectively "Members of the White House Coronavirus Task Force")

Second, CREW seeks all internal CDC communications from January 29, 2020 to the present regarding any directives, instructions, requests, or inquiries that reference or involve the collection, tracking, reporting, or release of novel coronavirus information pertaining to race, ethnicity, primary language, gender, disability status or socioeconomic status from: (1) President Trump; (2) White House employees, including anyone with an "*.eop.gov" email domain; (3) attorneys or representatives acting on behalf of President Trump; (4) Members of the White House Coronavirus Task Force; and/or (5) employees of the National Institute of Health ("NIH"), including employees of the National Institute of Allergy and Infectious Diseases ("NIAID").

Third, CREW seeks all documents containing raw data or analysis pertaining to race or ethnicity of persons identified as confirmed cases of novel coronavirus, regardless of the infected person's current status.

The foregoing requests include but are not limited to data, analyses and communications related to CDC's "Human Infection with 2019 Novel Coronavirus Person Under Investigation PUI and Case Report Form."¹

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, as well as those who were cc'ed or bcc'ed on any emails.

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). In the event 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

¹ Human Infection with 2019 Novel Coronavirus Person Under Investigation (PUI) and Case Report Form, March 21, 2020, available at <https://www.cdc.gov/coronavirus/2019-ncov/php/reporting-pui.html>.

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-*/U.S. Dep't of the Air Force*, 566 F.2d 242, 261 (D.C. Cir. 1977).

Fee Waiver Request

In accordance with 5 U.S.C. § 552(a)(4)(A) and CDC 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 29, 2020, President Donald J. Trump announced the formation of The President's Coronavirus Task Force ("Task Force"), which was charged with leading the government's response to the novel coronavirus and keeping the president apprised of developments.² The public was promised that this Task Force would "lead the Administration's efforts to monitor, contain, and mitigate the spread of the virus, while *ensuring that the American people have the most accurate and up-to-date health and travel information.*"³

Despite the guidance of our nation's foremost experts on infectious diseases and responsive leadership from state and local authorities nationwide, on or about March 26, 2020, the United States surpassed Italy and China to become the country with the most novel coronavirus cases in the world.⁴ Approximately one week later, on April 3, 2020, the nonprofit news organization *ProPublica* revealed early data showing significantly higher rates of novel coronavirus deaths among black Americans.⁵ A groundswell of public outcry began to build as additional news outlets reported alarming disproportionalities in novel coronavirus's impact in communities of color -- particularly in black communities.⁶ In an analysis of data collected from

² Statement from the Press Secretary Regarding the President's Coronavirus Task Force, January 29, 2020, available at <https://www.whitehouse.gov/briefings-statements/statement-press-secretary-regarding-presidents-coronavirus-task-force/>.

³ *Id.* (Emphasis added)

⁴ Ansari, Calfas and Han Wong, *U.S. Coronavirus Cases Surpass Those of China, Italy*, March 27, 2020, available at <https://www.wsj.com/articles/governments-clamp-down-as-coronavirus-infections-surge-11585218656>; Mairead Mcardle, *U.S. Surpasses China, Italy in Total Coronavirus Cases*, March 27, 2020, available at <https://www.nationalreview.com/news/u-s-surpasses-china-italy-in-total-coronavirus-cases/>; Donald G. McNeil Jr., *The U.S. Now Leads the World in Confirmed Coronavirus Cases*, March 26, 2020, available at <https://www.nytimes.com/2020/03/26/health/usa-coronavirus-cases.html>; Feuer, Higgins-Dunn and Lovelace, *US now has more coronavirus cases than either China or Italy*, March 26, 2020, available at <https://www.cnn.com/2020/03/26/usa-now-has-more-coronavirus-cases-than-either-china-or-italy.html>.

⁵ Akila Johnson and Talia Buford, *Early Data Shows African Americans Have Contracted and Died of Coronavirus at an Alarming Rate*, April 3, 2020, available at <https://www.propublica.org/cdn.ampproject.org/c/www.propublica.org/article/early-data-shows-african-americans-have-contracted-and-died-of-coronavirus-at-an-alarming-rate/amp>.

⁶ Thebault, Ba Tran and Williams, *The coronavirus is infecting and killing black Americans at an alarmingly high rate*, April 7, 2020, available at <https://www.washingtonpost.com/nation/2020/04/07/coronavirus-is-infecting-killing-black-americans-an-alarmingly-high-rate-post-analysis-shows/?arc404=true>; The Associated Press, *Outcry*

geographic areas where black Americans account for approximately 21% of the population, black Americans accounted for more than 40% of the novel coronavirus deaths.⁷ Among the most alarming numbers to date are those from Louisiana, where black Americans account for 32% of the population and 70% of the novel coronavirus deaths,⁸ and Milwaukee County, where black Americans account for 26% of the population and 81% of novel coronavirus deaths.⁹

While news outlets have reported on data obtained from state and local sources, the ability to analyze racial data for a full and accurate understanding of the national scope and contributing factors to the disparity in outcomes is hindered by a lack of nationwide data. Accordingly, public officials, health experts and policymakers have called on the CDC to track and report on novel coronavirus testing, cases, health outcomes and mortality rates using data disaggregated by race, ethnicity, primary language, genders, disability status, and socioeconomic status “to help policymakers and outside partners better understand the impacts on different segments of the population based on existing disparities and craft more calibrated responses.”¹⁰ Likewise, Members of Congress have called on the CDC “to collect and publicly report on the racial and ethnic demographic information of patients tested for and affected by COVID-19,” cautioning that “[w]ithout demographic data, policy makers and researchers will have no way to identify and address ongoing disparities and health inequities that risk accelerating the impact of the novel coronavirus and the respiratory disease it causes.”¹¹

President Trump acknowledged the racial disparities in the impact of novel coronavirus during a press briefing on April 7, 2020, stating “[w]e are doing everything in our power to address this challenge,” and adding that the Chair of the Task Force, Dr. Anthony Fauci, “is looking at it very strongly.”¹² To date, the CDC has not released to the public, in any form, racial data related to novel coronavirus. Furthermore, as fears regarding racial disparities continue to deepen, the American people remain in the dark about what, if any, plans have been put into place to begin to address this challenge. The requested records will shed light on the extent to which the administration has addressed these disparities and what, if any steps the administration has taken. The human and financial toll of this unprecedented pandemic continues to rise as Americans endure the loss of loved ones, shuttering of businesses, lay-offs, and the unrelenting

Over Racial Data Grows as Virus Slams Black Americans, April 8, 2020, *available at* <https://www.nytimes.com/aponline/2020/04/08/us/ap-us-virus-outbreak-race.html>.

⁷ Stafford, Hoyer and Morrison, *Outcry over racial data grows as virus slams black Americans*, April 9, 2020, *available at* <https://apnews.com/71d952faad4a2a5d14441534f7230c7c>.

⁸ *Id.*

⁹ Akila Johnson and Talia Buford, *Early Data Shows African Americans Have Contracted and Died of Coronavirus at an Alarming Rate*, April 3, 2020, *available at* <https://www.propublica-org.cdn.ampproject.org/c/s/www.propublica.org/article/early-data-shows-african-americans-have-contracted-and-died-of-coronavirus-at-an-alarming-rate/amp> (Percentage based on *ProPublica*’s April 3, 2020 data analysis).

¹⁰ Letter from Mayor Hardy Davis, Jr., et. al. to CDC Director Robert R. Redfield, M.D. and U.S. Surgeon General Jerome Adams, April 3, 2020, *available at* <https://www.wemustcount.org/the-letter>.

¹¹ Letter from Sen. Elizabeth Warren, Sen. Cory Booker, Sen. Kamala Harris, Rep. Robin Kelly and Rep. Ayanna Pressley to Hon. Alex Alex M. Azar, March 27, 2020, *available at* <https://www.warren.senate.gov/imo/media/doc/2020.03.27%20Letter%20to%20HHS%20re%20racial%20disparities%20in%20COVID%20response.pdf>.

¹² Thebault, Ba Tran and Williams, *The coronavirus is infecting and killing black Americans at an alarmingly high rate*, April 7, 2020, *available at* <https://www.washingtonpost.com/nation/2020/04/07/coronavirus-is-infecting-killing-black-americans-an-alarmingly-high-rate-post-analysis-shows/?arc404=true>.

anxiety associated with the uncertainty of the times. Now, more than ever, the public needs to understand what their government is doing to monitor, contain, and mitigate the spread of the virus — particularly in the hardest hit communities.

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. CREW uses a combination of research, litigation, and advocacy to advance its mission. CREW intends to share the information responsive to this request 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 documents it receives under the FOIA on its website, and those documents have been visited hundreds of thousands of times.

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

Conclusion

If you have any questions about this request or foresee any problems in fully releasing the requested records, please contact me at mwoodard@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 me either at mwoodard@citizensforethics.org or at Mia Woodard, 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,



Mia L. Woodard

Legislative Affairs and Policy Counsel