



July 28, 2021

VIA ELECTRONIC MAIL

LaShonda Schofield
CDC/ATSDR FOIA Office
Office of the Chief Operating Officer
1600 Clifton Road, N.E.
Atlanta, GA 30333

CDC Freedom of Information Act Response

Dear Ms. Schofield:

This letter responds to your email and letter correspondence of July 22, 2021, related to America First Legal Foundation's ("AFL") Freedom of Information Act request, FOIA control number #21-01575-FOIA.

On July 16, 2021, America First Legal Foundation requested documents from the Centers for Disease Control and Prevention (CDC) under the Freedom of Information Act, requesting expedited processing and a fee waiver. CDC assigned the request identification number #21-01575-FOIA ("Request"). On July 22, 2021, at 9:44 AM we received an acknowledgement letter that, among other things, classified the request as complex, granted the expedited processing request, and partially granted the fee waiver request ("Acknowledgement Letter"). At 10:11 AM, we then received a letter stating that CDC was "unable to process your request as it is currently stated" because it was "unduly burdensome" (Response 1).

At 10:39 AM, we responded to this letter via email objecting to the categorical denial to perform any searches stating, "CDC has not even attempted to specify which aspects of this request it considers to be overbroad" and that, "[o]ur request was specific and almost entirely easily obtainable with simple electronic records searches" ("AFL Reply). Finally, at 1:05 PM CDC responded with a second letter, nearly identical to the first, but with an additional paragraph that stated, in part, "[p]lease provide some specificity such as the names of three to four specific CDC...employees that may have been the direct custodian of the records you are seeking, as well as the context of the records you seek." (Response 2). The letter went on to say, "[p]lease

note that terms such as COVID-19 are ubiquitous given the enormous amount of records since the inception of COVID-19. You will need to confine the scope of your request to a very small and specific scope of records to reduce the burden to the agency.” *Id.*

This letter serves as our response to the CDC’s claims that the Request was overbroad or would place an undue burden on the agency and its request that AFL further narrow the scope.

First, AFL reiterates that nearly all of the information specified in the Request is easily obtainable via simple electronic records searches. Specifically, requests 7 through 10 ask for communications with external email domains for about six-month time period (note also that the longer the CDC waits to process this request, the more records there are likely to be). Regardless of the volume that exists here, this poses a very small burden to the agency since there are no legitimate redactions that could be applied to, or privileges that could be claimed over, the content of those records.

Additionally, requests 5, 6, 11, and 12, all deal with records sufficient to identify employees who are engaging in content moderation and viewpoint discrimination of online, social media posts. Leaving aside the irony that the Centers for *Disease Control and Prevention* now apparently has the time to moderate content on the Internet while simultaneously claiming that processing records is unduly burdensome, this is a specific, narrowly tailored request for documents. AFL cannot provide custodians because it is requesting records on who those custodians would be, and which employees are in charge of such activities.

Already, 8 of the 12 requests are sufficiently narrow and specific as drafted. CDC’s main concern, however, seems to be with requests 1, 2, and 3, as you ask for specific custodians and object to “COVID-19” as a search term. But this is not what AFL has asked for. Our request clearly states that we seek records relating to efforts to flag “misinformation” or “disinformation” to social media companies. The first request is admittedly the broadest, and AFL is open to engaging in good faith discussions with CDC regarding the best way to receive the information we seek. We routinely work with other government agencies to do this, but in those instances, the agencies identify relevant custodians and propose parameters and explain why such an approach is likely to yield the most relevant data without being unduly burdensome. CDC has not done that here.

With respect to the second and third requests, AFL is not in a position to know the relevant custodians. Nor will we limit these requests to “three or four” custodians. The requests are designed to shed light on who, and how many employees are in regular contact with social media companies related to online content, and who, and how many are relaying this back to the Executive Office of the President.

Finally, we address the CDC's assertion that AFL needs to "confine the scope of your request to a very small and specific scope of records to reduce the burden to the agency." *See* Response 2. There is no basis in law for this statement. Although CDC references case law that say that the government need not be reduced to full-time investigators on behalf of requestors, that has no relevance here.

If the CDC is going to turn into an Internet content moderator for the political leadership at the White House, then it owes the American people transparency into how it is doing so. Nowhere in the CDC's mission or authorizing authorities is any charge to engage in 'flagging' what someone deems to be "misinformation" or "disinformation," and if the agency is going to take it upon itself to do this, it is not unduly burdensome for it to produce those records. Moreover, it is a slap in the face to the American people to say that you have the bandwidth and the resources to monitor their speech online in violation of the First Amendment, but not enough to fulfill your statutory duty of making records public. If you can do the heavy lifting of monitoring social media for specific content, you can easily make those records available to the public.

Because AFL's request as drafted is narrowly tailored to seek responsive documents that CDC must statutorily produce, and because CDC failed to identify a legitimate reason that prevents it from performing the searches for the majority of AFL's requests, we again ask that CDC process its request as written and submitted on July 16, 2021. To the extent that there are one or two requests that CDC legitimately believes need to be scoped, AFL is open to engaging in conversations on that issue, however such conversations should not impede the search for—or production of—documents responsive to AFL's other requests.

Thank you,

/s/ Gene P. Hamilton

Gene P. Hamilton

America First Legal Foundation