

Congress of the United States
House of Representatives

COMMITTEE ON OVERSIGHT AND REFORM

2157 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515-6143

MAJORITY (202) 225-5051

MINORITY (202) 225-5074

<http://oversight.house.gov>

October 5, 2020

Dr. Robert R. Redfield
Director
Centers for Disease Control and Prevention
395 E Street, S.W., Suite 9100
Washington, D.C. 20201

Dear Director Redfield:

The Subcommittee on Economic and Consumer Policy seeks documents and information about the control exercised by non-experts in the White House over public health messaging from the Centers for Disease Control and Prevention (CDC). We are particularly concerned that a little-known office within the White House—the Office of Information and Regulatory Affairs (OIRA), part of the Office of Management and Budget (OMB)—is exerting influence over what is supposed to be non-partisan, scientific messaging.

The Trump White House’s Censorship of CDC Guidance

In May, experts at CDC spent weeks crafting detailed guidance for the country to deal safely with the coronavirus epidemic. These guidance documents included flow charts with decision trees on how schools, faith institutions, and businesses could reopen safely in a document titled, “Guidance for Implementing the Opening Up America Again Framework.” The document, which CDC was reportedly ready to release, was then ping-ponged around to different political appointees in the White House before eventually being suppressed.¹

During the suppression of this guidance, OIRA and OMB took express direction from White House political appointees. Thirteen days after initially sending the Guidance to OMB, CDC Chief of Staff Robert McGowan wrote to OMB that, “We need [the Guidance documents] as soon as possible so that we can get them posted.” McGowan received responses from two OMB staffers that the documents first needed to be approved by the White House Principals Committee.² That committee includes the Secretary of State, the Secretary of the Treasury, the Attorney General, the Secretary of Homeland Security, and other top-level cabinet positions

¹ *AP Exclusive: Docs Show Top WH Officials Buried CDC Report*, Associated Press (May 8, 2020) (online at <https://apnews.com/9c4d5284ba4769d3b98aa05232201f88>).

² *Id.*

unrelated to public health and science.³ Ultimately, on April 30, 2020, a staffer at OIRA notified the Department of Health and Human Services (HHS) that the White House Coronavirus Task Force did not clear the Guidance for release.⁴

Ultimately, non-partisan, scientific, coherent guidance from CDC on how to resume operations safely—which CDC was ready to release—was censored by political appointees.

Michael Caputo Tightened White House Control Over CDC Messaging

On April 15, 2020, Michael Caputo was named Assistant Secretary for Public Affairs for HHS. His appointment raised red flags because Caputo lacked any high level public health experience and because he was a campaign operative for President Trump, counted as his close friends convicted felon and Trump allies Roger Stone and Paul Manafort, and had previously worked for former Russian President Boris Yeltsin and a subsidiary to Gazprom, a Russian state-owned energy conglomerate.⁵

Together with now-former senior advisor Paul Alexander, Mr. Caputo blocked publication of scientifically accurate CDC messaging and reports. For example, Dr. Alexander and Mr. Caputo suppressed CDC reports that discussed the risks of COVID-19 to children because they were concerned that publishing the report could impact efforts to reopen schools. Dr. Alexander eventually sent a letter in red font calling for CDC to “pull it down and stop all reports immediately,” accusing CDC of undermining the President.⁶

The Subcommittee has expressed concern that Administration officials, beyond altering, restricting, or completely censoring CDC guidance, are using \$250 million in funding for communications to outsource CDC’s public health messaging function “to fund what appears to be a political propaganda campaign just two months before a presidential election.”⁷ Mr. Caputo was set to oversee this contract, prior to taking a medical leave from HHS.⁸

³ The White House, *National Security Presidential Memorandum* (online at www.whitehouse.gov/presidential-actions/national-security-presidential-memorandum-4/) (accessed Sept. 25, 2020).

⁴ *AP Exclusive: Docs Show Top WH Officials Buried CDC Report*, Associated Press (May 8, 2020) (online at <https://apnews.com/9c4d5284ba4769d3b98aa05232201f88>).

⁵ *White House Snubs Azar, Installs Trump Loyalist Michael Caputo as HHS Spokesperson*, Politico (April 15, 2020) (online at www.politico.com/news/2020/04/15/michael-caputo-azar-hhs-189046).

⁶ *Political Appointees Meddled in C.D.C.’s ‘Holiest of the Holy’ Health Reports*, New York Times (Sept. 12, 2020) (online at www.nytimes.com/2020/09/12/us/politics/trump-coronavirus-politics-cdc.html).

⁷ Letter from Chairwoman Carolyn B. Maloney, Committee on Oversight and Reform, Chairman James E. Clyburn, Select Subcommittee on the Coronavirus Crisis, and Chairman Raja Krishnamoorthi, Subcommittee on Economic and Consumer Policy to Secretary Alex M. Azar II, Department of Health and Human Services (Sept. 10, 2020) (online at <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/2020-09-10.CBM%20JEC%20RK%20to%20Azar-HHS%20re%20Defeat%20Despair%20Contract.pdf>).

⁸ *Top HHS Spokesperson Caputo to Take Medical Leave*, Politico (Sept. 16, 2020) (online at www.politico.com/news/2020/09/16/top-hhs-spokesperson-caputo-to-take-medical-leave-416126).

White House Censorship of CDC Continues, Though Caputo Has Gone

Though Mr. Caputo and Dr. Alexander are no longer directing messaging, the process by which OIRA, OMB and other political appointees review and censor CDC public health messaging remains. Reports indicate that political appointees are now weighing in on almost every document related to COVID-19 advice that the agency has published.⁹

The extent of the White House's review of CDC guidance is unclear. Early in the pandemic, CDC reportedly only had to clear guidance with its parent department, HHS. At some point in the spring, it cleared its guidance with the White House Coronavirus Task Force. By the summer, OIRA was also reviewing CDC guidance, as well as sending it to other officials for comment. Many of the reviewers lack public health or scientific experience. By available accounts, CDC guidance must pass through a phalanx of political appointees at HHS, the White House Coronavirus Task Force, OMB and OIRA, the Department of Homeland Security, the Labor Department, the State Department, and the Department of Education.¹⁰

The Administration's claims that requiring guidance to be "fully reviewed, studied, and vetted by Administration officials" results in "a process the White House stands by that saved lives."¹¹ The Subcommittee disagrees. We have two primary concerns with the current review process.

First, we are concerned the process lacks clear structure, gives undue weight to the opinions of non-expert political appointees, weakens CDC guidance and delays its publication. For example, nursing homes were hit hard by the COVID-19 pandemic. Yet, CDC's final guidance for nursing homes reportedly went through ten rounds of review, culminating in weeks of delay that cost lives.¹²

Second, we are concerned that the White House is altering and censoring CDC reports and guidance so that they do not provide support for questioning the Administration's pandemic response or harming President Trump's reelection prospects. For example, hours after you told the U.S. Senate that a vaccine will not be fully available to the American public until the "late second quarter, third quarter 2021," President Trump claimed you "made a mistake" and that "we are ready at a much faster level than he said."¹³ President Trump did this because your factual statements contradicted his preferred unsubstantiated narrative.

⁹ *CDC's Messages to Public Were Slowed by Extensive Reviews*, Bloomberg (Sept. 18, 2020) (online at www.bloomberg.com/news/articles/2020-09-18/cdc-s-messages-to-public-were-slowed-by-extensive-reviews).

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ *CDC Director Says Coronavirus Vaccines Won't Be Widely Available Till the Middle of Next Year*, Washington Post (Sept. 16, 2020) (online at www.washingtonpost.com/health/cdc-director-says-coronavirus-vaccines-wont-be-widely-available-till-the-middle-of-next-year/2020/09/16/209fecf6-f827-11ea-be57-d00bb9bc632d_story.html).

Last month, CDC posted guidance that it was not necessary to test people without symptoms of COVID-19, even if they had been exposed to the virus. Reporting later revealed that this guidance was not written by CDC scientists; it was posted over the objections of CDC scientists and circumvented CDC's strict review process. Admiral Brett Giroir, the Assistant Secretary for Health at HHS, said that over the course of a month, the original CDC guidance went through roughly twenty rounds of edits, culminating in guidance that was unrecognizable to CDC experts.¹⁴

Recently, on Friday, September 18, 2020, CDC finally confirmed that the COVID-19 pandemic is likely being transmitted via aerosols, which are microscopic particles suspended in air. In fact, according to CDC's update, aerosol transmission might be the "main way" the virus spreads.¹⁵ This change came after months of urging by CDC's researchers and scientists, who said that aerosol transmission was being ignored to the public's detriment.¹⁶ However, in a remarkable turn, the guidance that was posted on a Friday was taken off the CDC website by the next Monday, September 21. The webpage where the guidance had been posted now says that a "draft version of proposed changes to these recommendations was posted in error" and that CDC is "currently updating its recommendations."¹⁷ It strains credulity to believe that CDC, the nation's foremost authority on public health, accidentally published a definitive conclusion about the "main" method of transmission of the COVID-19 pandemic. We are concerned the much more likely alternative is that the White House and political appointees ordered CDC to take the guidance down.

The Subcommittee supports orderly and controlled review of CDC guidance by medical professionals and public health experts who are qualified to communicate the best and most scientifically sound information to the public in a way that promotes the public health. The Trump Administration appears instead to encourage endless rounds of dilatory review by non-specialist political operators.

Expanded OIRA Power, Diminished OIRA Transparency

In 2019, Executive Order 13891 vastly expanded OIRA's reach by requiring all regulations and even non-binding guidance documents to be funneled through the office.¹⁸ During the coronavirus pandemic, OIRA's review of public health guidance has reportedly expanded even more, now covering almost every document related to COVID-19.¹⁹

¹⁴ *C.D.C. Testing Guidance Was Published Against Scientists' Objections*, New York Times (Sept. 13, 2020) (online at www.nytimes.com/2020/09/17/health/coronavirus-testing-cdc.html).

¹⁵ *CDC Publishes — Then Withdraws — Guidance on Aerosol Spread of Coronavirus*, National Public Radio (Sept. 21, 2020) (online at www.npr.org/sections/coronavirus-live-updates/2020/09/21/915351325/cdc-publishes-then-withdraws-guidance-on-aerosol-spread-of-coronavirus).

¹⁶ *Scientists Say WHO Ignores the Risk that Coronavirus Floats in Air as Aerosol*, Los Angeles Times (July 4, 2020) (online at www.latimes.com/world-nation/story/2020-07-04/coronavirus-airborne-spread).

¹⁷ Centers for Disease Control and Prevention, *Coronavirus Disease: How It Spreads* (online at www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/how-covid-spreads.html) (accessed on Sept. 25, 2020).

¹⁸ Exec. Order No. 13891, 84 Fed. Reg. 55235 (Oct. 9, 2019).

¹⁹ *CDC's Messages to Public Were Slowed by Extensive Reviews*, Bloomberg (Sept. 18, 2020) (online at www.bloomberg.com/news/articles/2020-09-18/cdc-s-messages-to-public-were-slowed-by-extensive-reviews).

Until recently, OIRA operated with some modicum of transparency. It published on its website, as required by law, a “publicly available log” of all rules and guidances under review so that the public knew the issues on which it was working.²⁰ Troublingly, CDC guidance documents that have been distorted and blocked by OIRA in recent months do not appear on its website.²¹ OIRA has also stopped publishing on its website the list of closed-door meetings it takes with lobbyists on the guidances under review.

To assist the Subcommittee in its review of this matter, please provide the following information by October 19, 2020:

1. All CDC actions, including reports and guidance documents, submitted for review to the White House, or any office thereof, from March 1, 2020, to the present, and all documents and communications related thereto, including all interagency comments including from the White House;
2. All documents and communications from January 1, 2020, to present referring or relating to changes in which agency actions are to be submitted to OIRA;
3. All first drafts of CDC guidance documents sent to OIRA and any documents showing tracked changes of CDC’s original guidance documents; and
4. Any document referring or relating to OIRA’s decision to not disclose the status of CDC’s guidance documents as they underwent OIRA review.

The Committee on Oversight and Reform is the principal oversight committee of the House of Representatives and has broad authority to investigate “any matter” at “any time” under House Rule X. An attachment to this letter provides additional instructions for responding to the Committee’s request. If you have any questions regarding this request, please contact Subcommittee staff at (202) 225-5051.

Sincerely,



Raja Krishnamoorthi

Chairman

Subcommittee on Economic and Consumer Policy

Enclosure

cc: The Honorable Michael Cloud, Ranking Member

²⁰ Exec. Order No. 13891, 84 Fed. Reg. 55235 (Oct. 9, 2019).

²¹ Office of Information and Regulatory Affairs, Regulatory Actions Currently Under Review By Agency (online at www.reginfo.gov/public/jsp/EO/eoDashboard.myjsp) (accessed Sept. 25, 2020).

Responding to Oversight Committee Document Requests

1. In complying with this request, produce all responsive documents that are in your possession, custody, or control, whether held by you or your past or present agents, employees, and representatives acting on your behalf. Produce all documents that you have a legal right to obtain, that you have a right to copy, or to which you have access, as well as documents that you have placed in the temporary possession, custody, or control of any third party.
2. Requested documents, and all documents reasonably related to the requested documents, should not be destroyed, altered, removed, transferred, or otherwise made inaccessible to the Committee.
3. In the event that any entity, organization, or individual denoted in this request is or has been known by any name other than that herein denoted, the request shall be read also to include that alternative identification.
4. The Committee's preference is to receive documents in electronic form (i.e., CD, memory stick, thumb drive, or secure file transfer) in lieu of paper productions.
5. Documents produced in electronic format should be organized, identified, and indexed electronically.
6. Electronic document productions should be prepared according to the following standards:
 - a. The production should consist of single page Tagged Image File ("TIF"), files accompanied by a Concordance-format load file, an Opticon reference file, and a file defining the fields and character lengths of the load file.
 - b. Document numbers in the load file should match document Bates numbers and TIF file names.
 - c. If the production is completed through a series of multiple partial productions, field names and file order in all load files should match.
 - d. All electronic documents produced to the Committee should include the following fields of metadata specific to each document, and no modifications should be made to the original metadata:

BEGDOC, ENDDOC, TEXT, BEGATTACH, ENDATTACH, PAGECOUNT, CUSTODIAN, RECORDTYPE, DATE, TIME, SENTDATE, SENTTIME, BEGINDATE, BEGINTIME, ENDDATE, ENDTIME, AUTHOR, FROM, CC, TO, BCC, SUBJECT, TITLE, FILENAME, FILEEXT, FILESIZE, DATECREATED, TIMECREATED, DATELASTMOD, TIMELASTMOD,

INTMSGID, INTMSGHEADER, NATIVELINK, INTFILPATH, EXCEPTION,
BEGATTACH.

7. Documents produced to the Committee should include an index describing the contents of the production. To the extent more than one CD, hard drive, memory stick, thumb drive, zip file, box, or folder is produced, each should contain an index describing its contents.
8. Documents produced in response to this request shall be produced together with copies of file labels, dividers, or identifying markers with which they were associated when the request was served.
9. When you produce documents, you should identify the paragraph(s) or request(s) in the Committee's letter to which the documents respond.
10. The fact that any other person or entity also possesses non-identical or identical copies of the same documents shall not be a basis to withhold any information.
11. The pendency of or potential for litigation shall not be a basis to withhold any information.
12. In accordance with 5 U.S.C. § 552(d), the Freedom of Information Act (FOIA) and any statutory exemptions to FOIA shall not be a basis for withholding any information.
13. Pursuant to 5 U.S.C. § 552a(b)(9), the Privacy Act shall not be a basis for withholding information.
14. If compliance with the request cannot be made in full by the specified return date, compliance shall be made to the extent possible by that date. An explanation of why full compliance is not possible shall be provided along with any partial production.
15. In the event that a document is withheld on the basis of privilege, provide a privilege log containing the following information concerning any such document: (a) every privilege asserted; (b) the type of document; (c) the general subject matter; (d) the date, author, addressee, and any other recipient(s); (e) the relationship of the author and addressee to each other; and (f) the basis for the privilege(s) asserted.
16. If any document responsive to this request was, but no longer is, in your possession, custody, or control, identify the document (by date, author, subject, and recipients), and explain the circumstances under which the document ceased to be in your possession, custody, or control.
17. If a date or other descriptive detail set forth in this request referring to a document is inaccurate, but the actual date or other descriptive detail is known to you or is otherwise apparent from the context of the request, produce all documents that would be responsive as if the date or other descriptive detail were correct.

18. This request is continuing in nature and applies to any newly-discovered information. Any record, document, compilation of data, or information not produced because it has not been located or discovered by the return date shall be produced immediately upon subsequent location or discovery.
19. All documents shall be Bates-stamped sequentially and produced sequentially.
20. Two sets of each production shall be delivered, one set to the Majority Staff and one set to the Minority Staff. When documents are produced to the Committee, production sets shall be delivered to the Majority Staff in Room 2157 of the Rayburn House Office Building and the Minority Staff in Room 2105 of the Rayburn House Office Building.
21. Upon completion of the production, submit a written certification, signed by you or your counsel, stating that: (1) a diligent search has been completed of all documents in your possession, custody, or control that reasonably could contain responsive documents; and (2) all documents located during the search that are responsive have been produced to the Committee.

Definitions

1. The term “document” means any written, recorded, or graphic matter of any nature whatsoever, regardless of how recorded, and whether original or copy, including, but not limited to, the following: memoranda, reports, expense reports, books, manuals, instructions, financial reports, data, working papers, records, notes, letters, notices, confirmations, telegrams, receipts, appraisals, pamphlets, magazines, newspapers, prospectuses, communications, electronic mail (email), contracts, cables, notations of any type of conversation, telephone call, meeting or other inter-office or intra-office communication, bulletins, printed matter, computer printouts, teletypes, invoices, transcripts, diaries, analyses, returns, summaries, minutes, bills, accounts, estimates, projections, comparisons, messages, correspondence, press releases, circulars, financial statements, reviews, opinions, offers, studies and investigations, questionnaires and surveys, and work sheets (and all drafts, preliminary versions, alterations, modifications, revisions, changes, and amendments of any of the foregoing, as well as any attachments or appendices thereto), and graphic or oral records or representations of any kind (including without limitation, photographs, charts, graphs, microfiche, microfilm, videotape, recordings and motion pictures), and electronic, mechanical, and electric records or representations of any kind (including, without limitation, tapes, cassettes, disks, and recordings) and other written, printed, typed, or other graphic or recorded matter of any kind or nature, however produced or reproduced, and whether preserved in writing, film, tape, disk, videotape, or otherwise. A document bearing any notation not a part of the original text is to be considered a separate document. A draft or non-identical copy is a separate document within the meaning of this term.
2. The term “communication” means each manner or means of disclosure or exchange of information, regardless of means utilized, whether oral, electronic, by document or otherwise, and whether in a meeting, by telephone, facsimile, mail, releases, electronic

message including email (desktop or mobile device), text message, instant message, MMS or SMS message, message application, or otherwise.

3. The terms “and” and “or” shall be construed broadly and either conjunctively or disjunctively to bring within the scope of this request any information that might otherwise be construed to be outside its scope. The singular includes plural number, and vice versa. The masculine includes the feminine and neutral genders.
4. The term “including” shall be construed broadly to mean “including, but not limited to.”
5. The term “Company” means the named legal entity as well as any units, firms, partnerships, associations, corporations, limited liability companies, trusts, subsidiaries, affiliates, divisions, departments, branches, joint ventures, proprietorships, syndicates, or other legal, business or government entities over which the named legal entity exercises control or in which the named entity has any ownership whatsoever.
6. The term “identify,” when used in a question about individuals, means to provide the following information: (a) the individual’s complete name and title; (b) the individual’s business or personal address and phone number; and (c) any and all known aliases.
7. The term “related to” or “referring or relating to,” with respect to any given subject, means anything that constitutes, contains, embodies, reflects, identifies, states, refers to, deals with, or is pertinent to that subject in any manner whatsoever.
8. The term “employee” means any past or present agent, borrowed employee, casual employee, consultant, contractor, de facto employee, detailee, fellow, independent contractor, intern, joint adventurer, loaned employee, officer, part-time employee, permanent employee, provisional employee, special government employee, subcontractor, or any other type of service provider.
9. The term “individual” means all natural persons and all persons or entities acting on their behalf.