KNIGHT
FIRST AMENDMENT
INSTITUTE at
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December 10, 2020

Via ECF

The Honorable Analisa Torres
United States District Court for the
Southern District of New York
500 Pearl St.
New York, NY 10007

Re: ***Knight First Amendment Inst. at Columbia Univ. v. Centers for Disease Control & Prevention*, Case No. 1:20-cv-02761-AT**

Dear Judge Torres,

Plaintiff the Knight First Amendment Institute at Columbia University writes respectfully in response to the government's December 10, 2020 letter concerning its re-release of three contested records. *See* ECF No. 47. While the letter states that on December 4, Defendants "voluntarily released" the three records to Plaintiff, *id.*, the Knight Institute notes that two of those records, Documents 33 and 34, are identical to the versions the Knight Institute attached to the Supplemental Pinsof Declaration on October 16, which had been released by Defendant Department of Health and Human Services to another FOIA requester months ago. *See* Suppl. Pinsof Decl. Exs. 2, 3, ECF Nos. 45-2 & 45-3; *see also* Pl.'s Reply 19–20, ECF No. 44. The third record is a lesser-redacted version of Document 35, an April 30 internal CDC communications email (attached to this letter as Exhibit 1).

While the Knight Institute agrees that these three records are no longer at issue in this case, it writes to address briefly the effect of the disclosure of Document 35 on the remaining withholdings. In initially defending the redaction of Document 35, the government stated that

the record "contains a direct reference to the subjects discussed in Mr. Mulvaney's two emails," Documents 9 and 10. Gov't Reply 12, ECF No. 41. The agency withheld Documents 9 and 10 in full under the presidential communications privilege, and previously withheld information within Document 35 under the privilege because it "memorializ[es] or reflect[s]" the former two records. *Id.*

In its briefs, the Knight Institute explained that the agency could not withhold Documents 9 and 10 under the privilege because the government had broadly disseminated the emails and information therein for non-advisory purposes, including through Document 35, which was sent to CDC communications officials. *See* Pl.'s Br. 6–9, ECF No. 39; Pl.'s Reply 1–8. The agency's recent disclosure of Document 35 to the public—including the "direct reference" to the content of Documents 9 and 10—further underscores that the information contained within Documents 9 and 10 has not been treated as confidential in the manner required by the presidential communications privilege, precluding the agency from relying on the privilege to withhold those records.

Respectfully,

/s/ *Anna Diakun*

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Exhibit 1

From: Rich, Michawn (CDC/OD)
Sent: 30 Apr 2020 18:09:12 +0000
To: Oury, Rachael;Bonds, Michelle E. (CDC/OD/OADC);Galatas, Kate (CDC/OD/OADC);Lepore, Loretta (CDC/OD/OCS)
Subject: Rundown

DELIBERATIVE/PREDECISIONAL

All – below is a rundown of sorts that I put together for Rachael that may help her navigate the new role. We can discuss on the call today.

CDC Process

Internal media inquiries and discussion:

- Send the press inquiries to:
  - CDC IMS JIC (Joint Information Center) Media -2 eocjicmedia2@cdc.gov
  - Ben Haynes fxq2@cdc.gov
  - Kristen Nordlund hok4@cdc.gov
  - Tom Skinner tws3@cdc.gov
  - Cc: Loretta Lepore phf7@cdc.gov
  - Cc: Michelle Bonds meb0@cdc.gov
  - Cc: Kate Galatas kkg2@cdc.gov
- Every interview **MUST** be audio recorded.
- You need to approve all interview requests (print, tv, radio, podcast, etc) **BEFORE** they go to HHS or OVP for approval.
  - Just because there are outstanding requests or folks keep getting asked to do a particular interview does not mean it has to be fulfilled – you were hired because you have a good sense on what the folks in the White House want so use your judgement on what you send up for approval.
  - **NOTE**: as a rule, do not send up requests that ask to do profile pieces – these are not allowed at the moment.
  - **NOTE**: as a rule, do not send up requests for Greta Van Sustern or anyone affiliated with Voice of America because of this: https://www.whitehouse.gov/articles/amid-a-pandemic-voice-of-america-spends-your-money-to-promote-foreign-propaganda/

For Dr. Redfield media

- Loretta Lepore oversees all of his media and Tom helps her.
- Paul Fulton kwf8@cdc.gov is in charge of booking most of his interviews.
- These are the outstanding interview requests that we have for Dr. Redfield and that have been approved by OVP
  - Larry O'Connor's Los Angeles Radio Show
  - AARP online interview
  - Current TV News
  - Magic 106.7 FM Radio in Boston, Mass
  - PBS Frontline in late May (this is a documentary piece and must be recorded closer to the air date).
- Working with the White House and OVP, you are in charge of booking the big national tv hits for Dr. Redfield.

- After you confirm an interview send a document to Loretta and Paul with this information:
  - Time of interview
  - Outlet
  - Whether it is live or taped
  - How long the interview will be
  - Reporter conducting the interview
  - Booker contact
  - Producer contact (if you have it)
  - On site contact
  - Topics
  - Location of interview
  - Parking directions if necessary
  - Biography of reporter conducting interview
- **NOTE**: Dr. Redfield can do FOX News, FOX Business, NBC, or CNBC interviews from the Hall of States Satellite Studio in D.C.
- **NOTE**: Dr. Redfield can do other interviews from the HHS studio in D.C. if it is available – sometimes he can bump someone if he is higher up on the leadership board.
  - Email Michael Wilker Michael.Wilker@hhs.gov, Steven Hamberg shamberg@hhs.tv, Karen Foster kfoster@hhs.tv, Morgan Courbois mcourbois@hhs.tv, and Samuel Nix Samuel.Nix@hhs.gov to see if the studio is available.

For Dr. Schuchat and Dr. Butler media

- Ana Toro pvq1@cdc.gov is in charge of booking most of their interviews.
  - This is the only outstanding request we haven't booked for Dr. Butler but that was approved by OVP: FOX 5 Good Day New York

HHS Process

- **NOTE**: The new HHS comms leadership wants to focus on local media.
  - Send any good local media stories to Brad Traverse Brad.Traverse@hhs.gov
- All press materials (releases, statements, etc.) need to be submitted to releases@hhs.gov for clearance
- All media inquiries (requests for interviews, written responses to reporter questions, etc.) need to be submitted to interviews@hhs.gov. These include any incoming that may come through FEMA to the HHS team embedded there.
- HHS will triage the submissions to determine which ones require OVP/WH visibility/approval. Certainly, if you have a recommendation on that when you submit, please share that as well. Likewise, if you are contacted directly by OVP/WH with a request for a media inquiry, create or approve a press material, etc., please be sure to loop in HHS, so they can maintain situational awareness.
- Cc: Ben, Michelle, Kate, Kristen, Loretta, and Tom on emails to HHS that seek approval on interviews, releases, op-eds, etc.

OVP Process

- Once a press release, statement, etc. is approved by CDC and HHS send it to Devin O'Malley for final approval (b)(6)

- Like Kelly Love, Ninio is going back to his former job on Monday.

- Send all national tv interview requests or pitches you want to do to Devin O'Malley, Alexa Henning (b)(6) and Roma Davari (b)(6)
  - Additionally, you can ask them for national tv interview ideas.
- Send all local tv interview requests or pitches you want to do Devin O'Malley, John Horstman (b)(6) and Meghan Burris (b)(6)
  - Additionally, you can ask them for local tv interview ideas.
- Send all radio or podcast interview requests or pitches you want to do to Devin O'Malley, Lauren Bowman (b)(6) and MacAulay Porter (b)(6)
  - Additionally, you can ask them for radio or podcast interview ideas.
- If it is a digital item, send it to Hannah MacInnis (b)(6)

Daily FEMA Calls

- You will receive a daily email from someone in the JIC at CDC (eocevent202@cdc.gov) with a rundown of press and events for the day around 9:30am. You can pull from that to report out on the daily 10:15am FEMA calls.
- You can also ask Loretta for Dr. Redfield's schedule to see if you can pull anything from that to report out on the FEMA call.
- Following each call, send your readout to Ben Haynes and Carrie Harmon qbj2@cdc.gov. They send it to HHS at the end of the day up to HHS with other CDC items.

Op-ed Process

- Follow the CDC and HHS approval process above.
- Once approved by CDC and HHS, send it to the White House for approval – they have a process by which it goes all the way up to the Chief of Staff.
  - Send it to Meghan Burris and Brittany Yanick (b)(6)
  - Cc: Tori Syrek (b)(6) and Claire Nance (b)(6)
  - Attach the op-ed and provide this information in your email:
    - Topic:
    - Byline:
    - Target Audience:
    - Target Outlet:
    - Driver:
    - Three Key Messages:

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