



February 27, 2023

VIA HHS Online FOIA Public Access Link

HHS FOIA/PA Public Liaison
FOI/Privacy Acts Division
Assistant Secretary for Public Affairs (ASPA)
Office of the Secretary (OS)
U.S. Department of Health and Human Services (HHS)

Freedom of Information Act Request: Federal Health Grants and Contracts for Outsourcing Unlawful Censorship

Dear FOIA Officer:

America First Legal Foundation is a national, nonprofit organization working to promote the rule of law in the United States, prevent executive overreach, and ensure due process and equal protection for all Americans, all to promote public knowledge and understanding of the law and individual rights guaranteed under the Constitution and laws of the United States. To that end, we file Freedom of Information Act (FOIA) requests on issues of pressing public concern, then disseminate the information we obtain, making documents broadly available to the public, scholars, and the media. Using our editorial skills to turn raw materials into distinct work, we distribute that work to a national audience through traditional and social media platforms. AFL's email list contains over 49,000 unique addresses, our Twitter page has over 56,000 followers, the Twitter page of our Founder and President has over 410,000 followers, our Facebook page has 109,000 followers, and we have another approximately 31,700 followers on GETTR.

I. Background

Evidence suggests that the Department of Health and Human Services (HHS) plans to intensify its efforts to unlawfully censor Americans for criticizing the Biden Administration's COVID-19 pandemic propaganda and response.

To be clear, HHS does not have clear statutory authorization to regulate "misinformation," whether about vaccines or anything else. In fact, the very term "misinformation" lacks any fixed or clearly discernable legal meaning, except as a proxy for First Amendment speech of which HHS disapproves. It is therefore a matter

of grave concern that last month, the Centers for Disease Control and Prevention (CDC) posted a grant opportunity for “Developing a Public Health Tool to Predict the Virality of Vaccine Misinformation Narratives” that it intends to use to “predict misinformation trends.”¹ This tool appears to be designed to enhance and support illegal censorship, as HHS has done in the past.²

Over the past three years, HHS has awarded multiple federal grants to organizations and groups promising to join them, as one \$111,455 grant awardee put it, in “a partnership to clear the air of misinformation.”³ On August 31, 2022, HHS awarded a separate \$3.3 million grant for “brief digital intervention to increase COVID-19 vaccination among individuals with anxiety or depression.”⁴ On August 5, 2022, HHS also awarded a \$300,000 contract to a California-based artificial intelligence firm for “capturing medical misinformation in social media for targeted interdiction.”⁵ On October 31, 2022, it awarded the University of Texas \$1.1 million to “better understand patterns of misinformation in social media” and conduct a study with “an emphasis on combating misinformation” about COVID-19 testing and vaccines.⁶

Contrary to the First Amendment, long-standing principles of open scientific inquiry, and the Congressional prohibition on domestic propaganda by Executive Branch agencies, HHS has taken robust efforts to quash political opinions and scientific evidence contradicting this administration’s policies on social media platforms. For example, CDC documents previously obtained by AFL revealed that the agency regularly worked with Twitter, Google, and Facebook to identify and suppress information about COVID-19 vaccines and the administration’s pandemic response.⁷

The evidence shows that CDC was “inviting all tech platforms” to “COVID misinformation” meetings⁸ and working with Facebook to set up a special COVID-19 misinformation reporting channel.⁹ For its part, Twitter offered a CDC employee a “special, expedited reporting flow” via their “Partner Support Portal.”¹⁰ Mirroring

¹ View Grant Opportunity FRA-IP-23-006, GRANTS.GOV (Oct. 20, 2022), <https://tinyurl.com/3u8uehyj>.

² Joseph Simonson, *How the CDC Coordinated With Big Tech To Censor Americans*, WASH. FREE BEACON (July 27, 2022), <https://tinyurl.com/yc4usfwx>.

³ Grant to Kern County Hospital Authority, USASPENDING.GOV, <https://tinyurl.com/cwk5fwf4> (last visited Feb. 24, 2023).

⁴ Grant to Research Foundation of the City of New York, USASPENDING.GOV, <https://tinyurl.com/5n7vwm5x> (last visited Feb. 24, 2023).

⁵ Contract to INNOV8AI, USASPENDING.GOV, <https://tinyurl.com/yckv7y2x> (last visited Feb. 24, 2023).

⁶ Award Information: HHS TAGGS, TRACKING ACCOUNTABILITY IN GOVERNMENT GRANTS SYSTEM, <https://tinyurl.com/5n95ndwc> (last visited Feb. 24, 2023).

⁷ AFL, *AFL Lawsuit Reveals Damning CDC Documents Proving Government Collusion With Big Tech To Censor Free Speech and Promote Biden Administration Propaganda* (July 27, 2022), <https://tinyurl.com/bdd7n3dr>.

⁸ AFL, CDC Production 1 (July 27, 2022), <https://tinyurl.com/2p8xejxf>.

⁹ AFL, CDC Production 2 (Sep. 6, 2022), <https://tinyurl.com/4ycse9yj>.

¹⁰ AFL, CDC Production 4 (Dec. 6, 2022), <https://tinyurl.com/37p2zt3b>.

Fauci and Walensky's comments, a May 2021 Facebook presentation branded statements such as "vaccines are not effective to prevent the disease against which they purport to protect" or "natural immunity is safer than vaccine acquired immunity" as "widely debunked vaccine hoaxes."¹¹ Less than three months later, Walensky was forced to admit that "what [the COVID-19 vaccines] can't do anymore is prevent transmission."¹² Almost two years later, mainstream media outlets finally acknowledged that natural immunity was "at least as high, if not higher" than the immunity provided by two doses of an mRNA vaccine.¹³

Time and again, HHS officials were the ones knowingly, or with reckless disregard, trafficking in falsehoods. National Institutes of Health, National Institute of Allergy and Infectious Diseases (NIAID) Director Anthony Fauci's May 2021 claim that "when people are vaccinated, they can feel safe that they are not gonna [sic] get infected"¹⁴ and CDC Director Rochelle Walensky's assertion that "vaccinated people do not carry the virus, don't get sick"¹⁵ were clearly false. Given HHS's documented history of spreading covert propaganda¹⁶ and making scientifically baseless statements, on the one hand, and coordinated censorship of First Amendment protected speech through social media companies acting as federal government instrumentalities on the other, we are deeply concerned that these new grants and funding opportunities reflect HHS's continuing intention to censor the American people, suppress dissent, and prevent open scientific inquiry.

II. Requested Records

AFL requests the following records under the Freedom of Information Act (FOIA), 5 U.S.C. § 552(a):

1. For Funding Opportunity Number (FON) RFA-IP-23-006:
 - a. All records of the Notice of Funding Opportunity;
 - b. All records of any Notice of Award;

¹¹ *Id.*

¹² Madeline Holcombe & Christina Maxouris, *Fully Vaccinated People Who Get a COVID-19 Breakthrough Infection Can Transmit the Virus, CDC Chief Says*, CNN HEALTH (updated Aug. 6, 2021), <https://tinyurl.com/3m3ufnds>. Fauci similarly reversed his views on hotly debated topics, including the efficacy of masks; Brianna Herlihy, *Fauci Emailed Friend Saying Masks Were 'Ineffective,' Pushed for Mandates Anyway, Missouri AG Says*, FOX NEWS (Nov. 25, 2022), <https://tinyurl.com/4hk3ez5u>.

¹³ Akshay Syal, M.D., *Immunity Acquired From a COVID Infection Is as Protective as Vaccination Against Severe Illness and Death, Study Finds*, NBC HEALTH (Feb. 16, 2023), <https://tinyurl.com/26dfck8w>.

¹⁴ *Transcript: All In with Chris Hayes, 5/17/21*, MSNBC (May 17, 2021), <https://tinyurl.com/3px2uk8h>.

¹⁵ *Transcript: The Rachel Maddow Show, 3/29/21*, MSNBC (Mar. 29, 2021), <https://tinyurl.com/2bp73xju>.

¹⁶ AFL, *AFL Requests Inspector General Investigation Into CDC Collusion With Big Tech To Push Covert COVID-19 Propaganda* (Aug. 3, 2022), <https://tinyurl.com/yckv66ar>.

- c. All records of grants agreements, cooperative agreements, and other agreements for assistance covered in § 200.40 Federal financial assistance of the OMB Uniform Grant Guidance.
- d. All records of Reporting received from Recipients during the post award phase, including closeout.
- e. All records of Audits conducted during the post award phase.
- 2. For Federal Award Identification Numbers (FAIN) NU50CK000573, RF1MH132360, and U01TR004355:
 - a. All records of the Notice of Funding Opportunity;
 - b. All records of the Notice of Award;
 - c. All records of the Application submitted for which funding was awarded;
 - d. All records of grant agreements, cooperative agreements, other agreements for assistance covered in § 200.40 Federal financial assistance of the OMB Uniform Grant Guidance.
 - e. All records of Reporting received from the Recipient during the post award phase, including closeout.
 - f. All records of Audits conducted during the post award phase.
- 3. For Procurement Instrument Identifier Number (PIID) 75N93022C00050:
 - a. All records of the Acquisition Package;
 - b. All records of the Solicitation;
 - c. All records of the Proposals submitted;
 - d. All records of the Program Office’s evaluation of the Proposals;
 - e. All records of the Final Award Determination;
 - f. All records of the Statement of Work
 - g. All other records maintained in the contract file, including records relating to the monitoring of work for technical compliance, changes approved by the contracting officer, and other correspondence or actions relating to the contract.
- 4. All records providing the statutory authority on which HHS relies to address “misinformation.”
- 5. All records providing HHS’s regulatory definition of “misinformation.”

III. Processing

Processing should occur in strict compliance with the processing guidance in the Attorney General’s Memorandum on Freedom of Information Act Guidelines.¹⁷ If you have any questions or believe further discussions regarding search and processing will facilitate a more efficient production of records of interest to AFL, please do not hesitate to contact me at FOIA@aflegal.org.

¹⁷ U.S. DEP’T JUST. (Mar. 15, 2022), <https://bit.ly/3zvpxb6>.

IV. Fee Waiver Request

Per 5 U.S.C. § 552(a)(4)(A)(iii), 5 C.F.R. § 5.54, AFL requests a waiver of all search and duplication fees associated with this request. The requested information specifically concerns identifiable operations and activities of the Federal Government, including how HHS and its operating divisions are soliciting and awarding federal funds through grants and contracts to combat alleged misinformation. Because it has not been made public how HHS has decided how these funds should be obligated, and why certain awardees were selected, disclosure of the requested information would contribute significantly to public understanding. Furthermore, AFL has a demonstrated ability and intention to effectively convey the information broadly to the public; AFL's status as representative of the news media has been recognized by other agencies for granting fee waivers by the Departments of Defense, Education, Energy, Health and Human Services, Justice, Interior, and Homeland Security. Finally, as a non-profit organization, AFL has no identifiable commercial interest, and the request is made entirely to serve the public interest. We are, of course, available to provide additional information in writing or offline in support of this request. If AFL's request for a fee waiver is not granted in full, please contact us immediately upon making that determination.

VI. Production

To accelerate the release of responsive records, AFL welcomes production on an agreed rolling basis. If possible, please provide responsive records in an electronic format by email. Alternatively, please provide responsive records in native format or in PDF format on a USB drive to America First Legal Foundation, 611 Pennsylvania Ave SE #231, Washington, DC 20003.

Thank you in advance for your cooperation.

Sincerely,
/s/ Michael Ding
Michael Ding
America First Legal Foundation