



April 6, 2020

Roger Andoh, Freedom of Information Officer
Centers for Disease Control and Prevention
1600 Clifton Road, N.E., Building 57, Room MS D-54
Atlanta, Georgia 30333
Email: FOIARequests@cdc.gov

Re: Public Records Request

Dear Mr. Andoh,

This letter constitutes a request pursuant to the Freedom of Information Act, 5 U.S.C. § 552, submitted by the Lawyers' Committee for Civil Rights Under Law ("Lawyers' Committee").

The Lawyers' Committee is a non-profit, non-partisan organization formed in 1963 at the request of President John F. Kennedy to enlist the private bar's resources in combatting racial discrimination and the resulting inequality of opportunity. The principal mission of the Lawyers' Committee is to secure equal justice for all through the rule of law, targeting in particular the inequities confronting African Americans and other racial and ethnic minorities.

I. Background

As the COVID-19 pandemic continues to spread throughout the United States, the Centers for Disease Control and Prevention (CDC) has played an important role in relaying information about the virus to the public. Since January 18, 2020, the CDC has published daily updates on the number of COVID-19 tests conducted at both CDC labs and US public labs.¹ These numbers only account for the total number of tests conducted throughout the entire country without any state specific data. Additionally, the CDC has collected data on confirmed and presumptive positive cases of the COVID-19 virus in the United States since January 21, 2020.² To date, the

¹ *Testing in the U.S.*, CTR. FOR DISEASE CONTROL AND PREVENTION, <https://www.cdc.gov/coronavirus/2019-ncov/cases-updates/testing-in-us.html> (last visited Apr. 3, 2020). The reporting public health labs include "49 state public health labs (AK, AL, AR, AZ, CA, CO, CT, DE, FL, GA, HI, IA, ID, IL, IN, KS, KY, LA, MA, MD, ME, MI, MN, MO, MS, MT, NC, ND, NE, NH, NJ, NM, NV, NY, OH, OK, OR, PA, RI, SC, SD, TN, TX, VA, VT, WA, WI, WV and WY), the District of Columbia, New York City, Puerto Rico, USAF, and 15 California Counties."

² *Cases in U.S.*, CTR. FOR DISEASE CONTROL AND PREVENTION, <https://www.cdc.gov/coronavirus/2019-ncov/cases-updates/cases-in-us.html> (last visited Apr. 2, 2020). The number of cases collected since January 21, 2020 excludes the testing results for persons repatriated from Wuhan, China and Japan.



CDC provides publicly available data on the number of COVID-19 cases in each state and the total number of cases in the country.³ These numbers are updated daily.⁴ Notably, the CDC does not currently publish any demographical information, such as race or ethnicity about COVID-19 testing recipients or patients that test positive in each state.

We are gravely concerned about the lack of publicly available racial or ethnic demographic data because of longstanding significant health disparities that affect Black communities and other communities of color. For example, systemic racism and bias in the healthcare system has resulted in chronically poor health outcomes for Black Americans, including higher rates of asthma, [high blood pressure](#), heart disease, and [diabetes](#). These health disparities make African Americans [more susceptible](#) to severe respiratory complications and death from COVID-19.

Indeed, there are recent reports indicating that African Americans are facing similar health disparities and barriers related to testing and treatment for COVID-19. One analysis suggests that African Americans are less likely to be obtain a referral for COVID-19 testing even when they have symptoms of the virus.⁵ In the greater-Memphis, Tennessee area, most screening occurs in predominantly white, affluent suburbs instead of Black, lower-income neighborhoods.⁶ Recently analyzed health data indicates that African Americans in some cities and counties are being infected and dying from COVID-19 at higher rates than their white counterparts. On April 1, the [Atlantic](#) reported that in Illinois, African Americans make up [14.6%](#) of the population, but [28%](#) of confirmed cases. On April 3rd, [Pro Publica](#) reported that in Milwaukee County, where the population is 26% Black, African Americans currently comprise “almost half of [the] County’s 941 cases and 81% of its 27 deaths.” In [Michigan](#), the state’s population is 14% Black, but African Americans currently make up 34% of the cases and 40% of deaths. And in [North Carolina](#), the state’s population is [22%](#) Black, but African Americans currently make up 36% of the cases and 25% of deaths from COVID-19.

Accurate reporting of race and ethnic demographic data will help public health officials assess whether communities of color are facing unnecessary barriers in accessing COVID-19 testing, and whether they face higher rates of infection and fatalities from the virus. The absence of this critical data will severely hamper the ability to develop robust public health interventions responsive to the needs of communities of color.

³ *Id.*

⁴ *See Id.*

⁵ Blake Farmer, *The Coronavirus Doesn't Discriminate, But U.S. Health Care Showing Familiar Biases*, NPR (Apr. 2, 2020, 12:37 PM), <https://www.npr.org/sections/health-shots/2020/04/02/825730141/the-coronavirus-doesnt-discriminate-but-u-s-health-care-showing-familiar-biases>.

⁶ *Id.*



II. Requested Records

Accordingly, the Lawyers' Committee requests that the CDC produce, within 20 business days, the following records:

All electronic records (see definition below):

- a) Dated from January 21, 2020 to the present;
- b) That identifies racial and/or ethnic demographic data for;
- c) each test, positive diagnosis, negative diagnosis, and patient outcome of the COVID-19 virus;
- d) for every state in the United States.

To narrow and speed this search, the records requested may be limited to: any electronic correspondence, such as emails, and any digitized memoranda, notes, and written communication, and other documentation reasonably categorized as such and subject to a speedier electronic search.

The Lawyers' Committee will not resell, trade, or use any disclosed records for commercial purposes.

Federal law strongly favors disclosure of these records. Indeed, 5 U.S.C. § 552(a)(3)(A) of the Freedom of Information Act states that "each agency, upon any request for records which (i) reasonably describes such records and (ii) is made in accordance with published rules stating the time, place, fees (if any), and procedures to be followed, shall make the records promptly available to any person." Record is defined as "any information that would be an agency record subject to the requirements of this section when maintained by an agency in any format, including an electronic format." 5 U.S.C. § 552(f)(2)(A).

Please provide the responsive materials in an electronic format by email to dsponce@lawyerscommittee.org. We request prompt processing pursuant to 5 U.S.C. § 552(a)(6)(A)(i). If you expect a significant delay in responding to and fulfilling this request, please contact the Lawyers' Committee with information about when the requested records may be expected.

Should this request be denied, please cite each specific exemption justifying the refusal to release the requested records and notify the Lawyers' Committee of the appeal procedures available under federal law.

III. Fee Waiver Request



The Lawyers' Committee requests a waiver for any applicable costs incurred in connection to disclosing the requested records. The Freedom of Information Act specifically states that “[d]ocuments shall be furnished without any charge or at a charge reduced below the fees established under clause (ii) if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.” 5 U.S.C. § 552(a)(4)(A)(iii). Clause (ii) states that “fees shall be limited to standard charges for document search and duplication.” 5 U.S.C. § 552(a)(4)(A)(ii)(III).

Disclosure of the requested information is “in the public interest because it is likely to contribute significantly to public understanding” of government operations and activities. 28 C.F.R. § 16.10(k)(1), (2)(i)-(ii). Without the requested information, it is impossible to determine whether COVID-19 tests and related treatment are being administered equitably across racial lines. However, the CDC is charged with ensuring that racial disparities do not persist in the administration of healthcare services, even in a pandemic. Furthermore, accurate and transparent reporting of race and ethnic demographic data will help public health officials and advocates determine whether marginalized communities of color are experiencing higher barriers in accessing testing, and higher rates of infection and mortality.

The Lawyers' Committee is a 501(c)(3) nonprofit organization and does not have a commercial purpose, and the release of the information requested is not in the Lawyers' Committee's financial interest. The Lawyers' Committee was founded in 1963 and is committed to full and fair enforcement of federal civil rights laws and ensuring equal justice under law for all. The Lawyers' Committee has a strong interest in eliminating systemic and structural barriers to healthcare coverage experienced by communities of color.

The Lawyers' Committee will use the information gathered, and its analysis of it, to educate the public through reports, press releases, or other media. The Lawyers' Committee will also make materials it gathers available on its public website and promote their availability on social media platforms, such as Facebook and Twitter.

Accordingly, the Lawyers' Committee qualifies for a fee waiver. If a waiver is not granted, then please advise us of the amount of any proposed search and reproduction charges before those activities are carried out. We reserve the right to appeal a decision to withhold any information or to deny a waiver of fees.

IV. Application for Expedited Records

We request expedited processing pursuant to 5 U.S.C. § 552(a)(6)(E) and 5 C.F.R. § 1303.10(d)(1)(iv). We certify to be true and correct to the best of our knowledge and belief that expedited processing is warranted because there is a compelling need to inform the public about,



and there are questions regarding, the accessibility of COVID-19 to African Americans and the patient outcomes of African Americans who test positive for the virus. There is strong reason to believe that health disparities will continue to disproportionately affect communities of color during the COVID-19 pandemic. Whether the CDC is undertaking efforts to track racial and ethnic demographics related to the pandemic and prevent health disparities are matters “of widespread and exceptional media interest in which there exist possible questions about the government’s integrity that affect public confidence.” 5 C.F.R. 1303.10(d)(1)(iv). Accordingly, the Lawyers’ Committee qualifies for expedited processing under the statute.

V. Conclusion

We share a common mission to promote transparency in government. We look forward to working with you on this request. If you do not understand any part of this request, have any questions, or foresee any problems in fully complying with this request, please contact Dorian Spence at dspence@lawyerscommittee.org.

Sincerely,

Dorian Spence
Director, Special Litigation and Advocacy Project
Lawyers’ Committee for Civil Rights Under Law