

December 21, 2017

The Honorable Henry Kerner
Special Counsel
Office of Special Counsel
1730 M St NW
Washington, DC 20036

Dear Special Counsel Kerner:

The Make It Safe Coalition, a coalition of organizations concerned with government accountability, transparency, and whistleblower protection, request you conduct a *sua sponte* investigation into the Center for Disease Control's apparent violations of the "anti-gag" provisions in the Whistleblower Protection Enhancement Act (WPEA) and the FY 2017 Consolidated Appropriations Act (CAA). Together our organizations helped draft, implement, and execute these statutes. We are alarmed at the CDC's pattern of actions that violate both the spirit and letter of these laws.

Last week, the [Washington Post](#) revealed¹ that high-level CDC officials allegedly banned policy analysts from using certain terms, including "vulnerable," "entitlement," "diversity," "transgender," "fetus," "evidence-based" and "science-based," in budget documents given to the CDC's partner organizations and to Congress. The article, citing multiple employee sources present when the directive was issued at the CDC's Atlanta office, revealed a policy decision which would constitute an unacceptable infringement on CDC analysts' free speech rights and threaten the CDC's mission.

The CDC Director, Brenda Fitzgerald, claimed "there are no banned words at the CDC." The Office of Special Counsel should investigate to determine the truth about the CDC's nondisclosure policies. This is the third allegation of gag orders publicly reported at the CDC this year. On January 25, the [Huffington Post](#) reported² the Department of Health and Human Services and its sub-agencies, including the CDC, had "been told not to send 'any correspondence to public officials' according to a memo shared with HuffPost." After that, the CDC barred staff from speaking to reporters entirely. An August 31 email by CDC public affairs officer Jeffrey Lancashire, obtained by [Axios](#),³ instructed, "Effective immediately and until further notice, any and all correspondence with any member of the news media, regardless of the nature of the inquiry, must be cleared through CDC's Atlanta Communications Office." The email continued, "This correspondence includes everything from formal interview requests to the most basic of data requests." Now there is an alleged word ban.

As the OSC instructed earlier this year, agencies cannot gag federal employees from speaking without "including required language that informs employees that their statutory right to blow the whistle supersedes the terms and conditions of the nondisclosure agreement or policy. (5 U.S.C.

¹ https://www.washingtonpost.com/national/health-science/cdc-gets-list-of-forbidden-words-fetus-transgender-diversity/2017/12/15/f503837a-e1cf-11e7-89e8-edec16379010_story.html

² https://www.huffingtonpost.com/entry/trump-communication-freeze_us_58878b3ae4b0441a8f7114e2

³ https://www.axios.com/vitals-2484160722.html?rebellitem=4&utm_medium=linkshare&utm_campaign=organic#rebellitem4

§2302(b)(13)).”⁴ Both the WPEA and CAA contain language prohibiting Congress from funding agencies that “implement or enforce” any “non-disclosure policy, form, or agreement if such policy, form, or agreement does not contain” provisions reaffirming that employee whistleblower rights are controlling, despite any nondisclosure restrictions.⁵

If even one of the reports, emails, or memoranda are accurate, we fear the CDC implemented a non-disclosure policy gagging their analysts without recognizing their whistleblower protection rights. Turning to the statute, your agency reads “non-disclosure policy, form, or agreement” to include management communications broadly.⁶ According to the *Washington Post*, the CDC implemented their new policy through a top-down meeting with policy analysts without asserting the analysts’ whistleblower protections. According to *Axios*, a management email explicitly gagged media correspondence with no exception for whistleblower activity. According to the *Huffington Post*, a management memorandum explicitly gagged public official correspondence with no exception for whistleblower activity. Neither the agency nor any public reports have referenced the statutorily-required addendum preserving whistleblower rights.

If correct, these three incidents reveal an alarming pattern: the CDC is blatantly violating the law. When an agency unlawfully gags its employees, it threatens Congress’s ability to engage in oversight, hampers citizens’ right to know about threats to public health, safety and the environment, and undermines policy-making that depends on science and evidence-based data. These efforts also would create a chilling effect on the many federal employees committed to exercising scientific and professional integrity in fulfilling their agencies’ mandates. The Whistleblower Protection Act and the WPEA recognize the essential role whistleblowers play in promoting accountability and transparency in government. Silencing CDC employees undermines the intent and letter of these laws, all passed with unanimous, bipartisan support.

As the agency charged with enforcing 5 USC §2302(b)(13) we request you investigate these claims to answer the following questions:

- 1) Most recently, did CDC officials direct their policy analysts to avoid specific words and phrases in any communications, and if so did they include the statutorily required anti-gag addendum?
- 2) In August, did a CDC official issue management correspondence barring communication with public officials? If so, did the CDC enforce the gag order through any policy or memorandum? In any communication implementing the policy, did the CDC managers include the language mandated by the WPEA and CAA?
- 3) In January, did a CDC official issue management correspondence barring communication with the media? If so, did the CDC enforce the gag order through any policy or memorandum? In any communication implementing the policy, did the CDC managers include the language mandated by the WPEA and CAA?

⁴ January 25, 2017, “OSC’s Enforcement of the Anti-Gag Order Provision in Whistleblower Law,” <https://osc.gov/News/pr17-03.pdf>

⁵ 5 USC §2302(b)(13); §§713 and 744, Consolidated Appropriations Act, 2016; Division E, Financial Services and General Government Appropriations Act, 2016; Title VII, General Provisions, Government-Wide.

⁶ <https://osc.gov/News/pr17-03.pdf>

In order for the federal government to protect public health and safety, it invests in scientific research. But hampering the ability to fully communicate about scientific findings with Congress and the public undermines not only scientific integrity but the ability of the government's science agencies to succeed in their missions.

Our coalition has always supported science, scientific integrity, and science whistleblowers, recognizing the importance of employees' free speech rights to expose violations of laws, rules, and regulations, gross mismanagement, gross waste of funds, abuse of authority, substantial and specific threats to public health and safety, and scientific censorship. Whistleblowers often are the only pathway to promote regulatory compliance, protect the public interest, and maintain public trust in government. If science employees at the CDC, charged with protecting public health, are chilled from exercising their speech rights, it could also mean the difference between life and death.

The CDC's alleged policy threatens scientific integrity and the whistleblowers yet to come. If any communications exist enforcing or implementing the policy without including statutorily mandated whistleblower protection language, we cannot trust the integrity of CDC-produced reports.

Sincerely,

Tom Devine
Government Accountability Project

Michael Ostrolenk
Liberty Coalition

Pete Sepp
National Taxpayers Union

Elizabeth Hempowicz
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Susan Harley
Public Citizen

David Williams
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cc: Daniel Levinson, Inspector General, Health and Human Services

