

July 1, 2020

The Honorable Alex Azar
Secretary
U.S. Department of Health and Human Services
200 Independence Avenue S.W.
Washington, DC 20201

Dear Secretary Azar:

We write to inquire about efforts and projects undertaken by the U.S. Department of Health and Human Services (HHS) to aggregate data related to the coronavirus disease 2019 (COVID-19) pandemic, and to ensure that HHS follows specific privacy principles related to Americans' personal health information (PHI) and other sensitive data.

COVID-19 testing and public health surveillance generate highly revealing data. Under the *Coronavirus Aid, Relief, and Economic Security Act* (CARES Act) and subsequent HHS guidance, clinics testing for COVID-19 are required to collect and report to the Centers for Disease Control and Prevention (CDC) a patient's age, race, ethnicity, sex, zip code, county, and test results.¹ Additionally, HHS encourages the collection of information about past health conditions, employment, and pregnancy status.² HHS also says that personal identifying information, including name, address, and date of birth, should be collected and reported to state and local health authorities, depending on the relevant state and local privacy standards.³

Because of the sensitivity of this information, Americans should have a full understanding of the degree to which the federal government is collecting and using PHI. It is also crucial that HHS identify what measures are in place to protect the privacy and security of sensitive data.

In April, HHS awarded two contracts, worth a total of nearly \$25 million, to Palantir Technologies, Inc., (Palantir) for a massive COVID-19 data platform.⁴ The platform, called HHS Protect, "pulls data from across the federal government, state and local governments, healthcare

¹ U.S. Department of Health and Human Services, "COVID-19 Pandemic Response, Laboratory Data Reporting: CARES Act Section 18115," June 4, 2020, <https://www.hhs.gov/sites/default/files/covid-19-laboratory-data-reporting-guidance.pdf>.

² *Id.*

³ *Id.*

⁴ USASpending.gov, "Contract Summary: Department of Health and Human Services to Palantir Technologies, Inc.," accessed June 9, 2020, https://www.usaspending.gov/#/award/CONT_AWD_75P00120F80084_7570_GS35F0086U_4730; USASpending.gov, "Contract Summary: Department of Health and Human Services to Palantir Technologies, Inc.," accessed June 9, 2020, https://www.usaspending.gov/#/award/CONT_AWD_75P00120F80091_7570_GS35F0086U_4730; FedScoop, "HHS cites coronavirus 'urgency' in speedy Palantir contract awards," Dave Nyczepir, May 8, 2020, <https://www.fedscoop.com/hha-covid-funds-palantir/>.

facilities, and colleges, to help administration officials determine how to ‘mitigate and prevent spread’ of the coronavirus.”⁵ HHS Protect reportedly houses 187 different datasets, including COVID-19 case counts, hospital capacity, supply chain data, census statistics, testing data, and emergency department data.⁶ It is authorized to operate at the *Federal Information Security Management Act* “moderate” level, which indicates that “the loss of confidentiality, integrity, or availability could be expected to have a serious adverse effect on organizational operations, organizational assets, or individuals.”⁷

HHS reportedly plans to gather the public’s sensitive health information as part of HHS Protect:

The federal government isn’t collecting personal information via HHS Protect, but it plans to. The Centers for Disease Control and Prevention will share patient data with the HHS platform, and efforts are underway to collect it from private companies as well, a spokesperson told Business Insider. HHS said it was working on more than 15 data-use agreements with private firms that could cover a variety of issues, including patient information and security protocols, allowing officials to collect more data.⁸

The inclusion of PHI in this database raises serious privacy concerns.⁹ Neither HHS nor Palantir has publicly detailed what it plans to do with this PHI, or what privacy safeguards have been put in place, if any.¹⁰ We are concerned that, without any safeguards, data in HHS Protect could be used by other federal agencies in unexpected, unregulated, and potentially harmful ways, such as in the law and immigration enforcement context.

Concerns have already been raised that state and local law enforcement will misuse COVID-19 data shared with them, or that such data sharing will make people already distrustful of the government less likely to get tested.¹¹ HHS must do everything in its power to ensure that the public can trust that the federal government will not misuse COVID-19-related data. Unfortunately, HHS data has been misused before by federal law enforcement officials. For example, in 2018, HHS allowed Immigration and Customs Enforcement (ICE) to access data that an HHS sub-agency collected while reuniting unaccompanied migrant children with their families; for 10 months, ICE used this data to arrest over 300 immigrants who offered to sponsor

⁵ The Daily Beast, “Team Trump Turns to Peter Thiel’s Palantir to Track Virus,” Erin Banco and Spencer Ackerman, April 21, 2020, <https://www.thedailybeast.com/trump-administration-turns-to-peter-thiels-palantir-to-track-coronavirus>.

⁶ FedScoop, “Inside the HHS system informing White House coronavirus decisions,” Dave Nyczepir, April 21, 2020, <https://www.fedscoop.com/hhs-system-white-house-coronavirus-response-jose-arrieta/>.

⁷ *Id.*; U.S. Department of Commerce, “Standards for Security Categorization of Federal Information and Information Systems,” February 2004, <https://nvlpubs.nist.gov/nistpubs/FIPS/NIST.FIPS.199.pdf>.

⁸ Business Insider, “The US teamed up with Palantir on a secretive project to analyze coronavirus data. Now, they want to gather personal health information, too,” Blake Dodge, May 7, 2020, <https://www.businessinsider.com/hhs-protect-palantir-healthcare-data-coronavirus-trump-2020-5>.

⁹ The Washington Post, “Why are we trusting a company with ties to ICE and intelligence agencies to collect our health information?,” Michael Kleinman and Charanya Krishnaswami, <https://www.washingtonpost.com/opinions/2020/05/21/why-are-we-trusting-company-with-ties-ice-intelligence-agencies-collect-our-health-information/>.

¹⁰ *Id.*

¹¹ Associated Press, “COVID-19 data sharing with law enforcement sparks concern,” Kimberlee Kruesi, May 19, 2020, <https://apnews.com/ab4cbfb5575671c5630c2442bc3ca75e>.

those unaccompanied children, resulting in immigrant children being held in U.S. custody for longer periods and a chilling effect for other prospective sponsors.¹² Our concerns that HHS Protect could be misused in this way are compounded by the fact that Palantir has a history of contracting with ICE, including two active awards worth over \$38 million in total.¹³

In addition to HHS Protect, the CDC has been using location data from smartphone apps to track the movements of Americans in order to understand the spread of COVID-19.¹⁴ While this data is reportedly “stripped of identifying information like the name of a phone’s owner,”¹⁵ it is, in practice, nearly impossible to truly anonymize detailed this type of location information.¹⁶ A 2019 *New York Times* investigation revealed how easy it is to deanonymize and glean sensitive details about individual Americans from location datasets.¹⁷

We support the smart and focused use of data to mitigate the COVID-19 pandemic. We also believe that such efforts should, to the greatest extent possible, limit the use and aggregation of personal information and health data at the federal level only to those instances in which there is a legitimate public health rationale. Two recently-introduced bills, the *Coronavirus Containment Corps Act*,¹⁸ and the *Public Health Emergency Privacy Act*,¹⁹ build privacy safeguards around the use of data collected during manual and digital contact-tracing. Collectively, the provisions in these bills reflect the following principles (COVID-19 privacy principles), which apply beyond the context of contact-tracing:

- Data should be minimized, anonymized, and redacted.²⁰

¹² Vice, “ICE Has Arrested Hundreds of Prospective Sponsors for Migrant Kids,” Gaby Del Valle, July 25, 2019, https://www.vice.com/en_us/article/d3nna/ice-has-arrested-hundreds-of-prospective-sponsors-for-migrant-kids; Women’s Refugee Commission, National Immigrant Justice Center, American University Washington College of Law Clinical Program, “Children as Bait: Impacts of the ORR-DHS Information-Sharing Agreement,” March 26, 2019, <https://immigrantjustice.org/sites/default/files/content-type/research-item/documents/2019-03/Children-as-Bait.pdf>; “MEMORANDUM OF AGREEMENT AMONG THE OFFICE OF REFUGEE RESETTLEMENT OF THE U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES AND U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT AND U.S. CUSTOMS AND BORDER PROTECTION OF THE U.S. DEPARTMENT OF HOMELAND SECURITY REGARDING CONSULTATION AND INFORMATION SHARING IN UNACCOMPANIED ALIEN CHILDREN MATTERS,” effective May 13, 2018, <https://www.texasmonthly.com/wp-content/uploads/2018/06/Read-the-Memo-of-Agreement.pdf>.

¹³ USASpending.gov, “Spending by Prime Award,” accessed June 9, 2020, <https://www.usaspending.gov/#/search/ee3d493ccd7fb6b4bbdecf4fd159fe34>.

¹⁴ Wall Street Journal, “Government Tracking How People Move Around in Coronavirus Pandemic,” Byron Tau, May 28, 2020, <https://www.wsj.com/articles/government-tracking-how-people-move-around-in-coronavirus-pandemic-11585393202>.

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ New York Times, “Twelve Million Phones, One Dataset, Zero Privacy,” Stuart A. Thompson and Charlie Warzel, December 19, 2019, <https://www.nytimes.com/interactive/2019/12/19/opinion/location-tracking-cell-phone.html>.

¹⁸ Senator Elizabeth Warren, “Warren, Levin, Merkley, Smith Introduce Legislation for a National Contact Tracing Program,” press release, May 14, 2020, <https://www.warren.senate.gov/newsroom/press-releases/warren-levin-merkley-smith-introduce-legislation-for-a-national-contact-tracing-program>.

¹⁹ Senator Richard Blumenthal, “Protecting Civil Liberties During COVID-19: Blumenthal, Warner, Eshoo, Schakowsky & DelBene Introduce the Public Health Privacy Act,” press release, May 14, 2020, <https://www.blumenthal.senate.gov/newsroom/press/release/protecting-civil-liberties-during-covid-19-blumenthal-warner-eshoo-schakowsky-and-delbene-introduce-public-health-privacy-act>.

²⁰ *Coronavirus Containment Corps Act*, S. 3848, 116th Congress, § 2(c)(a)(9).

- Data should only be collected, used, or disclosed to the extent that it serves a public health purpose.²¹
- Data should not be shared within the federal government except for certain public health agencies.²²
- Agencies should adopt safeguards to prevent unlawful discrimination on the basis of collected data.²³
- Agencies should implement policies, practices, and procedures to protect the security and confidentiality of collected data.²⁴
- Any public reports of data should protect the privacy of individuals.²⁵
- Data should be deleted after the conclusion of the COVID-19 public health emergency.²⁶
- Tribal data sovereignty must be respected.²⁷

We hope that all HHS efforts to collect and use individuals' data, including but not limited to PHI, include safeguards that guarantee these COVID-19 privacy principles. To ensure that is the case, we request that you provide answers to the following questions by July 15, 2020:

1. Please describe all COVID-19-related initiatives within HHS that involve the collection, use, or disclosure of individual health data, as defined in the *Public Health Emergency Privacy Act*.²⁸
 - a. For each initiative, please describe the extent to which it comports with each of the above listed COVID-19 privacy principles.
 - b. For each of HHS's COVID-19 initiative that is inconsistent with one of these privacy principles, please describe why the initiative is necessary, why it has not been implemented to be consistent with said principles, and detail any plans to address the inconsistency.
2. Please provide details on, including the full text of, information-sharing agreements by which HHS may share data collected in COVID-19 response efforts with any federal, state, or local government entities, including those engaged in law enforcement.
3. Please share the text of all active contracts between HHS and Palantir, including those related to HHS Protect.
4. Reportedly, 187 datasets are included in HHS Protect.²⁹

²¹ *Public Health Emergency Privacy Act*, S. 3749/H.R. 6866, 116th Congress, § 3(a)(1).

²² *Coronavirus Containment Corps Act*, S. 3848, 116th Congress, § 2(c)(a)(7)(B); *Public Health Emergency Privacy Act*, S. 3749, 116th Congress, § 3(a)(4)(A).

²³ *Public Health Emergency Privacy Act*, S. 3749/H.R. 6866, 116th Congress, § 3(a)(3).

²⁴ *Public Health Emergency Privacy Act*, S. 3749/H.R. 6866, 116th Congress, § 3(b).

²⁵ *Coronavirus Containment Corps Act*, S. 3848, 116th Congress, § 2(c)(a)(8)(A).

²⁶ *Coronavirus Containment Corps Act*, S. 3848, 116th Congress, § 2(c)(a)(7)(A); *Public Health Emergency Privacy Act*, S. 3749, 116th Congress, § 3(g).

²⁷ *Coronavirus Containment Corps Act*, S. 3848, 116th Congress, § 2(c)(8)(B); *see also, Equitable Data Collection and Disclosure on COVID-19 Act*, S. 3850, 116th Congress, § 5(d)(3).

²⁸ *Public Health Emergency Privacy Act*, S. 3749/H.R. 6866, 116th Congress, § 2(8).

²⁹ FedScoop, "Inside the HHS system informing White House coronavirus decisions," Dave Nyczepir, April 21, 2020, <https://www.fedscoop.com/hhs-system-white-house-coronavirus-response-jose-arrieta/>.

- a. Please provide a list of all datasets included in HHS Protect. For each dataset, please specify the source of the dataset, categories of personal data included, and provide any associated contracts.
5. Please provide a timeline for the process by which the HHS Protect contract was awarded to Palantir, including any requests for proposals, proposals, and bids.
 6. Please provide a list of private sector entities that have access to the data in HHS Protect, including the text of any relevant contracts. Please also detail any plans that may result in the provision of access to other private sector entities in the future.
 7. Reports indicate that “the federal government isn’t collecting personal information via HHS Protect, but it plans to.”³⁰
 - a. Please describe the state of this plan, including the rationale and any progress made to begin the collection of personal information.
 - b. Please describe plans to ensure that the collection and use of personal information is consistent with the above COVID-19 privacy principles.
 - c. Has or will HHS allow for public comment on this plan? If so, when?
 - d. Will the data generated by public health surveillance monitoring required under the CARES Act be included in this database?
 8. Reports from April indicated that White House Coronavirus Response Coordinator Dr. Deborah Birx received “nightly briefings based off data compiled and analyzed on” HHS Protect.³¹ Because these briefings may shed additional light on the project, please provide all such briefings.³²

Sincerely,

Elizabeth Warren
United States Senator

Richard Blumenthal
United States Senator

³⁰ Business Insider, “The US teamed up with Palantir on a secretive project to analyze coronavirus data. Now, they want to gather personal health information, too,” Blake Dodge, May 7, 2020, <https://www.businessinsider.com/hhs-protect-palantir-healthcare-data-coronavirus-trump-2020-5>.

³¹ The Daily Beast, “Team Trump Turns to Peter Thiel’s Palantir to Track Virus,” Erin Banco and Spencer Ackerman, April 21, 2020, <https://www.thedailybeast.com/trump-administration-turns-to-peter-thiels-palantir-to-track-coronavirus>.

³² American Oversight, “FOIA TO HHS FOR NIGHTLY ‘HHS PROTECT NOW’ REPORTS PROVIDED TO WHITE HOUSE CORONAVIRUS RESPONSE COORDINATOR BIRX,” April 29, 2020, <https://www.americanoversight.org/document/foia-to-hhs-for-nightly-hhs-protect-now-reports-provided-to-white-house-coronavirus-response-coordinator-birx>.

Carolyn B. Maloney
Chairwoman
House Committee on Oversight and Reform

Andy Levin
Member of Congress

Anna G. Eshoo
Member of Congress

Michael F. Bennet
United States Senator

Edward J. Markey
United States Senator

Jeffrey A. Merkley
United States Senator

Tina Smith
United States Senator

Raul M. Grijalva
Member of Congress

Mark Pocan
Member of Congress

Katie Porter
Member of Congress

Jamie Raskin
Member of Congress

Suzan K. DelBene
Member of Congress

Brenda L. Lawrence
Member of Congress

Jerry McNerney
Member of Congress