



September 19, 2019

VIA ELECTRONIC MAIL

Michael Marquis
Freedom of Information Officer
U.S. Department of Health and Human Services
Hubert H. Humphrey Building, Room 729H
200 Independence Avenue SW
Washington, DC 20201
FOIARequest@hhs.gov

Celeste Smith
Freedom of Information Officer
Administration for Children and Families
Mary E. Switzer Building
330 C Street SW, Suite 4004
Washington, DC 20201
FOIA@acf.hhs.gov

Re: Freedom of Information Act Request

Dear Mr. Marquis and Ms. Smith:

Pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552, and the implementing regulations of your agency, American Oversight makes the following request for records.

The Department of Health and Human Services (HHS) has made significant alterations to the rules that govern the Title X program. Under these newly implemented regulations, the agency will not appropriate federal funds to any clinics that provide or promote abortion services.¹ In response to these changes, numerous organizations, most prominently Planned Parenthood, have withdrawn from the Title X program.²

¹ Susannah Luthi, *Title X Family Planning Clinics Must Show They're Not Giving Abortion Referrals*, MODERN HEALTHCARE, Aug. 9, 2019, <https://www.modernhealthcare.com/payment/title-x-family-planning-clinics-must-show-theyre-not-giving-abortion-referrals>.

² Alice Miranda Ollstein, *Planned Parenthood Pulls Out of Family Planning Program over Trump Abortion Rule*, POLITICO (Aug. 19, 2019, 2:24 PM), <https://www.politico.com/story/2019/08/19/planned-parenthood-trump-administration-1468561>.



American Oversight seeks records with the potential to shed light on the interactions of other outside groups with HHS regarding this policy change.

Requested Records

American Oversight requests that HHS and the Administration for Children and Families (ACF) produce the following records within twenty business days:

All email communications (including email messages, email attachments, calendar invitations, and calendar invitation attachments) sent by any of the specified HHS or ACF officials to any of the specified external entities regarding changes to regulations implementing the Title X program.

HHS and ACF Officials

1. Alex Azar, Secretary of Health and Human Services
2. Eric Hargan, Deputy Secretary of Health and Human Services
3. Brian Harrison, Chief of Staff
4. Peter Urbanowicz, Former Chief of Staff
5. Jennifer Moughalian, Assistant Secretary for Financial Resources
6. Brenda Destro, Deputy Assistant Secretary for Planning and Evaluation
7. Mia Heck, Director of External Affairs
8. Roger Severino, Director, Office of Civil Rights
9. March Bell, Chief of Staff, Office of Civil Rights
10. Robert Charrow, General Counsel
11. Shannon Royce, Director, Center for Faith and Opportunity Initiatives
12. Scott Lloyd, Former Senior Advisor, Center for Faith and Opportunity Initiatives
13. Brett Giroir, Assistant Secretary for Health
14. Steven Valentine, Chief of Staff, Office of the Assistant Secretary of Health
15. Valerie Huber, Senior Policy Advisor, Office of the Assistant Secretary of Health
16. Marie Meszaros, Senior Policy Advisor, Office of Health Reform
17. Diane Foley, Director, Office of Population Affairs
18. David Johnson, Operations and Management Officer, Office of Population Affairs
19. Lynn Johnson, Assistant Secretary, Administration for Children and Families
20. Heidi Stirrup, Deputy Assistant Secretary of Policy, Administration for Children and Families
21. Anna Pilato, Deputy Assistant Secretary for External Affairs, Administration for Children and Families
22. Cathy Deeds, Senior Program Analyst, Administration for Children and Families
23. Mary Powers, Policy Advisor, Administration for Children and Families

External Entities

1. Alliance Defending Freedom (adfflegal.org)
2. Alliance for Life (allianceforlifeint.org)
3. American Association of Pro-Life Obstetricians and Gynecologists (aaplog.org)
4. American Center for Law and Justice (aclj.org)
5. American Life League (all.org)
6. Americans United for Life (aul.org)
7. American Values (ouramericanvalues.org)
8. Care Net (care-net.org)
9. Catholic Medical Association (cathmed.org)
10. Catholic Vote (catholicvote.org)
11. Charlotte Lozier Institute (lozierinstitute.org)
12. Concerned Women for America (concernedwomen.org)
13. Conference of Catholic Bishops (usccb.org)
14. Faith and Freedom Coalition (ffcoalition.com)
15. Family Policy Alliance (familypolicyalliance.com)
16. Family Research Council (frc.org)
17. First Liberty Institute (firstliberty.org)
18. Heartbeat International (heartbeatinternational.org)
19. Heritage Foundation (heritage.org)
20. Human Coalition (humancoalition.org)
21. Human Defense Initiative (humandefense.com)
22. Knights of Columbus (kofc.org)
23. Life Legal Defense Foundation (lifelegaldefensefoundation.org)
24. Live Action (liveaction.org)
25. March for Life (marchforlife.org)
26. National Association of Catholic Nurses
27. National Catholic Bioethics Center
28. National Institute of Family and Life Advocates (nifla.org)
29. National Right to Life (nrlc.org)
30. Obria Group (obria.org)
31. Operation Rescue (operationrescue.org)
32. Population Research Institute (pop.org)
33. Priests for Life (priestsforlife.org)
34. Pro-Life Action League (prolifeaction.org)
35. Radiance Foundation (theradiancefoundation.org)
36. Students for Life (studentsforlife.org)
37. Susan B. Anthony List (sba-list.org)

American Oversight believes that records containing the terms below are likely to be responsive records, and American Oversight requests that HHS and ACF employ, at a minimum, these search terms to identify responsive records:

1. "Family planning"

2. Contracepti*
3. "birth control"
4. "Population control"
5. Abort*
6. Abstinence
7. NFP
8. "Planned Parenthood"
9. PP
10. PPFA
11. "Title X"
12. "Protect Life Rule"
13. "Gag rule"

Please note that American Oversight is using the asterisk (*) to designate the standard use of "wildcards" in the search for responsive records. For example, a search for "contracepti*" would return all of the following: contraceptive, contraceptives, contraception, etc. If your agency is unable to search for wildcards, please advise so that we may specifically include the variations that we would like searched.

In an effort to accommodate HHS and ACF and reduce the number of responsive records to be processed and produced, American Oversight has limited its request to emails sent by the specified HHS or ACF custodians. To be clear, however, American Oversight still requests that complete email chains be produced, displaying both the sent messages and the prior received messages in each email chain. This means, for example, that both an HHS or ACF official's response to an email from one of the external entities and the initial received message are responsive to this request and should be produced.

Please provide all responsive records from February 15, 2019, until September 15, 2019.

Fee Waiver Request

In accordance with 5 U.S.C. § 552(a)(4)(A)(iii) and your agency's regulations, American Oversight requests a waiver of fees associated with processing this request for records. The subject of this request concerns the operations of the federal government, and the disclosures will likely contribute to a better understanding of relevant government procedures by the general public in a significant way. Moreover, the request is primarily and fundamentally for non-commercial purposes.

American Oversight requests a waiver of fees because disclosure of the requested information is "in the public interest because it is likely to contribute significantly to

public understanding of operations or activities of the government.”³ The public has a significant interest in the allocation of federal funding to family planning providers. Records with the potential to shed light on this matter would contribute significantly to public understanding of operations of the federal government, including changes to regulations implementing the Title X program. American Oversight is committed to transparency and makes the responses agencies provide to FOIA requests publicly available, and the public’s understanding of the government’s activities would be enhanced through American Oversight’s analysis and publication of these records.

This request is primarily and fundamentally for non-commercial purposes.⁴ As a 501(c)(3) nonprofit, American Oversight does not have a commercial purpose and the release of the information requested is not in American Oversight’s financial interest. American Oversight’s mission is to promote transparency in government, to educate the public about government activities, and to ensure the accountability of government officials. American Oversight uses the information gathered, and its analysis of it, to educate the public through reports, press releases, or other media. American Oversight also makes materials it gathers available on its public website and promotes their availability on social media platforms, such as Facebook and Twitter.⁵

American Oversight has also demonstrated its commitment to the public disclosure of documents and creation of editorial content through numerous substantive analyses posted to its website.⁶ Examples reflecting this commitment to the public disclosure of documents and the creation of editorial content include the posting of records related to an ethics waiver received by a senior Department of Justice attorney and an analysis of what those records demonstrated regarding the Department’s process for issuing such waivers;⁷ posting records received as part of American Oversight’s “Audit the Wall” project to gather and analyze information related to the administration’s proposed construction of a barrier along the U.S.-Mexico border, and analyses of what those records reveal;⁸ posting

³ 5 U.S.C. § 552(a)(4)(A)(iii).

⁴ See 5 U.S.C. § 552(a)(4)(A)(iii).

⁵ American Oversight currently has approximately 12,200 page likes on Facebook and 54,400 followers on Twitter. American Oversight, FACEBOOK, <https://www.facebook.com/weareoversight/> (last visited Sept. 6, 2019); American Oversight (@weareoversight), TWITTER, <https://twitter.com/weareoversight> (last visited Sept. 6, 2019).

⁶ News, AMERICAN OVERSIGHT, <https://www.americanoversight.org/blog>.

⁷ DOJ Records Relating to Solicitor General Noel Francisco’s Recusal, AMERICAN OVERSIGHT, <https://www.americanoversight.org/document/doj-civil-division-response-noel-francisco-compliance>; Francisco & the Travel Ban: What We Learned from the DOJ Documents, AMERICAN OVERSIGHT, <https://www.americanoversight.org/francisco-the-travel-ban-what-we-learned-from-the-doj-documents>.

⁸ See generally *Audit the Wall*, AMERICAN OVERSIGHT, <https://www.americanoversight.org/investigation/audit-the-wall>; see, e.g., *Border Wall Investigation Report: No Plans, No Funding, No Timeline, No Wall*, AMERICAN OVERSIGHT,

records regarding potential self-dealing at the Department of Housing & Urban Development and related analysis;⁹ posting records and analysis relating to the federal government's efforts to sell nuclear technology to Saudi Arabia;¹⁰ and posting records and analysis regarding the Department of Justice's decision in response to demands from Congress to direct a U.S. Attorney to undertake a wide-ranging review and make recommendations regarding criminal investigations relating to the President's political opponents and allegations of misconduct by the Department of Justice itself and the Federal Bureau of Investigation.¹¹

Accordingly, American Oversight qualifies for a fee waiver.

Guidance Regarding the Search & Processing of Requested Records

In connection with its request for records, American Oversight provides the following guidance regarding the scope of the records sought and the search and processing of records:

- Please search all locations and systems likely to have responsive records, regardless of format, medium, or physical characteristics. In conducting your search, please understand the terms “record,” “document,” and “information” in their broadest sense, to include any written, typed, recorded, graphic, printed, or audio material of any kind.
- Our request for records includes any attachments to those records or other materials enclosed with those records when they were previously transmitted. To the extent that an email is responsive to our request, our request includes all prior messages sent or received in that email chain, as well as any attachments to the email.
- Please search all relevant records or systems containing records regarding agency business. Do not exclude records regarding agency business contained in files, email accounts, or devices in the personal custody of your officials, such as personal email accounts or text messages. Records of official business conducted using unofficial systems or stored outside of official files are subject to the Federal

<https://www.americanoversight.org/border-wall-investigation-report-no-plans-no-funding-no-timeline-no-wall>.

⁹ *Documents Reveal Ben Carson Jr.'s Attempts to Use His Influence at HUD to Help His Business*, AMERICAN OVERSIGHT, <https://www.americanoversight.org/documents-reveal-ben-carson-jr-s-attempts-to-use-his-influence-at-hud-to-help-his-business>.

¹⁰ *Investigating the Trump Administration's Efforts to Sell Nuclear Technology to Saudi Arabia*, AMERICAN OVERSIGHT, <https://www.americanoversight.org/investigating-the-trump-administrations-efforts-to-sell-nuclear-technology-to-saudi-arabia>.

¹¹ *Sessions' Letter Shows DOJ Acted on Trump's Authoritarian Demand to Investigate Clinton*, AMERICAN OVERSIGHT, <https://www.americanoversight.org/sessions-letter>.

Records Act and FOIA.¹² It is not adequate to rely on policies and procedures that require officials to move such information to official systems within a certain period of time; American Oversight has a right to records contained in those files even if material has not yet been moved to official systems or if officials have, by intent or through negligence, failed to meet their obligations.¹³

- Please use all tools available to your agency to conduct a complete and efficient search for potentially responsive records. Agencies are subject to government-wide requirements to manage agency information electronically,¹⁴ and many agencies have adopted the National Archives and Records Administration (NARA) Capstone program, or similar policies. These systems provide options for searching emails and other electronic records in a manner that is reasonably likely to be more complete than just searching individual custodian files. For example, a custodian may have deleted a responsive email from his or her email program, but your agency’s archiving tools may capture that email under Capstone. At the same time, custodian searches are still necessary; agencies may not have direct access to files stored in .PST files, outside of network drives, in paper format, or in personal email accounts.
- In the event some portions of the requested records are properly exempt from disclosure, please disclose any reasonably segregable non-exempt portions of the requested records. If a request is denied in whole, please state specifically why it is not reasonable to segregate portions of the record for release.
- Please take appropriate steps to ensure that records responsive to this request are not deleted by the agency before the completion of processing for this request. If records potentially responsive to this request are likely to be located on systems where they are subject to potential deletion, including on a scheduled basis, please take steps to prevent that deletion, including, as appropriate, by instituting a litigation hold on those records.

¹² See *Competitive Enter. Inst. v. Office of Sci. & Tech. Policy*, 827 F.3d 145, 149–50 (D.C. Cir. 2016); cf. *Judicial Watch, Inc. v. Kerry*, 844 F.3d 952, 955–56 (D.C. Cir. 2016).

¹³ See *Competitive Enter. Inst. v. Office of Sci. & Tech. Policy*, No. 14-cv-765, slip op. at 8 (D.D.C. Dec. 12, 2016).

¹⁴ Presidential Memorandum—Managing Government Records, 76 Fed. Reg. 75,423 (Nov. 28, 2011), <https://obamawhitehouse.archives.gov/the-press-office/2011/11/28/presidential-memorandum-managing-government-records>; Office of Mgmt. & Budget, Exec. Office of the President, Memorandum for the Heads of Executive Departments & Independent Agencies, “Managing Government Records Directive,” M-12-18 (Aug. 24, 2012), <https://www.archives.gov/files/records-mgmt/m-12-18.pdf>.

Conclusion

If you have any questions regarding how to construe this request for records or believe that further discussions regarding search and processing would facilitate a more efficient production of records of interest to American Oversight, please do not hesitate to contact American Oversight to discuss this request. American Oversight welcomes an opportunity to discuss its request with you before you undertake your search or incur search or duplication costs. By working together at the outset, American Oversight and your agency can decrease the likelihood of costly and time-consuming litigation in the future.

Where possible, please provide responsive material in an electronic format by email. Alternatively, please provide responsive material in native format or in PDF format on a USB drive. Please send any responsive material being sent by mail to American Oversight, 1030 15th Street NW, Suite B255, Washington, DC 20005. If it will accelerate release of responsive records to American Oversight, please also provide responsive material on a rolling basis.

We share a common mission to promote transparency in government. American Oversight looks forward to working with your agency on this request. If you do not understand any part of this request, please contact Sara Creighton at foia@americanoversight.org or 202-869-5246. Also, if American Oversight's request for a fee waiver is not granted in full, please contact us immediately upon making such a determination.

Sincerely,

A handwritten signature in blue ink that reads "Austin R. Evers". The signature is fluid and cursive, with a long horizontal line extending to the left.

Austin R. Evers
Executive Director
American Oversight