



March 23, 2022

U. S. Department of Health and Human Services
Freedom of Information Officer
200 Independence Avenue, SW
Washington, D.C. 20201

Re: Freedom of Information Act Request for Records Regarding the Department of Health and Human Services Task Force on Reproductive Healthcare Access.

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 25,000 unique addresses, our Twitter page has nearly 10,000 followers, the Twitter page of our Founder and President has over 83,800 followers, and we have another 18,000 followers on GETTR.

I. Background

The Biden Administration has repeatedly promoted abortion by funding abortion clinics,¹ overturning the Mexico City policy preventing taxpayer funds from being used for abortions overseas,² and most recently by constituting a pro-abortion task

¹ Sandhya Raman, *HHS Moves to Reinstate Aid to Family Planning Clinics that Perform Abortions*, ROLL CALL, (Apr. 14, 2021), <https://rollcall.com/2021/04/14/hhs-moves-to-reinstate-aid-to-family-planning-clinics-that-perform-abortions/>.

² Kaiser Family Foundation, *The Mexico City Policy: An Explainer*, (Jan. 28, 2021) <https://www.kff.org/global-health-policy/fact-sheet/mexico-city-policy-explainer/>.

force at the Department of Health and Human Services called the “HHS Reproductive Healthcare Access Task Force.”³

Contrary to law, the task force has been operating in the dark, without public access to its deliberations. There is no public list of its members, other than a statement that they include “senior-level HHS officials who have been designated by their respective agencies.”⁴ HHS has put nothing in the Federal Register about it, and it is not even listed on the HHS task force webpage.⁵

AFL is particularly concerned by HHS’s cynical decision to coat its radical pro-abortion policies with a “racial justice” veneer.⁶ The majority of abortions conducted in this country are performed on non-white women and their babies.⁷ The data suggest that abortion has reduced the African American population alone by thirty-six percent.⁸ To frame such a policy as “racial justice” is farcical.⁹

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

³ HHS, *FACT SHEET: HHS Reproductive Healthcare Access Task Force*, (Jan. 21, 2022) <https://www.hhs.gov/about/news/2022/01/21/fact-sheet-hhs-reproductive-healthcare-access-task-force.html>.

⁴ *Id.*

⁵ HHS, *HHS Advisory Committees, Task Forces, & Initiatives*, (Dec. 8, 2021), <https://www.hhs.gov/about/agencies/advisory-committees/index.html>.

⁶ *Supra* note 3.

⁷ Mullins, *Abortion Demographics - Who Has an Abortion?*, CONCERNED WOMEN FOR AMERICA, (Oct. 25, 2016), <https://concernedwomen.org/2016/10/25/abortion-demographics-who-has-an-abortion/> (showing that black and Hispanic women account for 55.4% of the abortions for which race is reported).

⁸ Parker & Dannenfelser, *The Impact of Abortion on the Black Community*, CURE, (Jan. 19, 2022) <https://curepolicy.org/report/the-impact-of-abortion-on-the-black-community/> (“[W]ithout abortion, America’s black community would now number 52 million persons. It would be 36 percent larger than it is. Abortion has swept through the black community like a scythe, cutting down every fourth member.”).

⁹ According to a former Democrat presidential candidate, the Rev. Jesse Jackson:

Another area that concerns me greatly, namely because I know how it has been used with regard to race, is the psycholinguistics involved in this whole issue of abortion. If something can be dehumanized through the rhetoric used to describe it, then the major battle has been won That is why the Constitution called us three-fifths human and then whites further dehumanized us....The first step was to distort the image of us as human beings in order to justify that which they wanted to do and not even feel like they had done anything wrong. Those advocates of taking life prior to birth do not call it killing or murder; they call it abortion. They further never talk about aborting a baby because that would imply something human. Rather they talk about aborting the fetus. Fetus sounds less than human and therefore can be justified.

Jesse Jackson, *How we respect life is the over-riding moral issue*, RIGHT TO LIFE NEWS, (Jan. 1977), <https://groups.csail.mit.edu/mac/users/rauch/nvp/consistent/jackson.html>.

II. Custodians

1. Secretary Xavier Becerra
2. Sean McCluskie, Chief of Staff
3. Anne Reid, Deputy Chief of Staff
4. Kristin Avery, White House Liaison
5. Shannon Myricks, Deputy White House Liaison
6. Steven Lopez, Counselor to the Secretary
7. Admiral Rachel L. Levine, MD, Assistant Secretary for Health
8. Elisabeth Handley, Principal Deputy Assistant Secretary for Health
9. Jessica Swafford Marcella, Deputy Assistant Secretary for Population Affairs
10. Vivek H. Murthy, MD, Surgeon General
11. Max Lesko, Chief of Staff for the Surgeon General
12. Sarah Boateng, Chief of Staff, Office of the Assistant Secretary for Health
13. Maura Calsyn, Deputy Assistant Secretary for Health Policy, Office of the Assistant Secretary for Health
14. Loyce Pace, Assistant Secretary for Global Affairs
15. Colin McIff, Deputy Director, Office of Global Affairs
16. Karoun Tcholakian, Special Assistant to the Director
17. Susan Kim, Office of Global Affairs, Chief of Staff
18. Stephanie Psaki, Senior Advisor on Human Rights and Gender Equity, Office of Global Affairs

III. Requested Records

- A. Records sufficient to identify all persons who are members of the “Task Force on Reproductive Healthcare Access” that is referenced at <https://www.hhs.gov/about/news/2022/01/21/fact-sheet-hhs-reproductive-healthcare-access-task-force.html>.
- B. All communications whether electronic mail, text message, phone message, phone records, or otherwise, containing the term “Task Force on Reproductive Healthcare Access.” The time frame for this request is September 1, 2021, to the date this request is processed.
- C. All communications whether electronic mail, text message, phone message, phone records, or otherwise, containing the terms “Roe” or “Roe v. Wade.” The time frame for this request is September 1, 2021, to the date this request is processed.

- D. All communications whether electronic mail, text message, phone message, phone records, or otherwise, containing the terms “Dobbs v. Jackson Women’s Health Organization,” “Dobbs,” or “Mississippi abortion ban.” The time frame for this request is September 1, 2021, to the date this request is processed.
- E. All communications whether electronic mail, text message, phone message, phone records, or otherwise, containing the term “White House National Strategy on Gender Equity and Equality.” The time frame for this request is September 1, 2021, to the date this request is processed.
- F. Records sufficient to identify the person(s) responsible for implementation of each of the specific activities “identified in the White House National Strategy on Gender Equity and Equality - PDF” and referenced in <https://www.hhs.gov/about/news/2022/01/21/fact-sheet-hhs-reproductive-healthcare-access-task-force.html>.
- G. Records sufficient to identify all members of the “working group” referenced at <https://www.hhs.gov/about/news/2022/01/21/fact-sheet-hhs-reproductive-healthcare-access-task-force.html>.
- H. All communications whether electronic mail, text message, phone message, phone records, or otherwise, containing the terms “abortion,” “essential service,” or “conscientious objection.” The time frame for this request is September 1, 2021, to the date this request is processed.
- I. All communications whether electronic mail, text message, phone message, phone records, or otherwise, containing the terms “Texas Heartbeat Act,” “Texas Heartbeat Law,” “Senate Bill 8,” “SB 8,” “House Bill 1515,” or “HB 1515.” The time frame for this request is September 1, 2021, to the date this request is processed.
- J. All communications whether electronic mail, text message, phone message, phone records, or otherwise, between the above referenced custodians and any person affiliated with Planned Parenthood Federation of America, Inc. Please include all communications sent to and from any email address ending in “@ppfa.org.” The time frame for this request is September 1, 2021, to the date this request is processed.
- K. Records sufficient to identify all person(s) referred to as “bilateral and multi-lateral partners to support evidence-based guidance and policy that bolster access to sexual and reproductive healthcare globally” referenced at <https://www.hhs.gov/about/news/2022/01/21/fact-sheet-hhs-reproductive-healthcare-access-task-force.html>.

IV. Processing

The FOIA requires the Department of Health and Human Services to disclose records freely and promptly. It must liberally construe AFL's requests and make a good faith effort to search for requested records using methods "which can be reasonably expected to produce the information requested." At all times, FOIA must be construed to carry out Congress's open government mandate according to the ordinary public meaning of its terms at the time of its enactment. As a general matter:

- Redactions are disfavored as the FOIA's exemptions are exclusive and must be narrowly construed. If a record contains information responsive to a FOIA request, then the Department must disclose the entire record, as a single record cannot be split into responsive and non-responsive bits. Our request includes any attachments to those records or other materials enclosed with a record when transmitted. If an email is responsive to our request, then our request includes all prior messages sent or received in that email chain, as well as any attachments.
- Please search all locations and systems likely to have responsive records, regardless of format, medium, or physical characteristics. In conducting your search, please give full effect to all applicable authorities and broadly construe our Item and your obligations to provide responsive records.
- 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 Records Act and FOIA. It is not adequate to rely on policies and procedures that require officials to move records to official systems within a certain time. AFL has a right to records 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.
- Please use all available tools to conduct a complete and efficient search for potentially responsive records. Many agencies have adopted the National Archives and Records Administration ("NARA") Capstone program or similar policies. These provide options for searching emails and other electronic records in a manner 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; you may not have direct access to files stored in .PST files, outside of network drives, in paper format, or in personal email accounts.

- If some portions of the requested records are properly exempt from disclosure, then 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 before our Items are processed. If potentially responsive records are subject to potential deletion, including on a scheduled basis, please prevent deletion by instituting a litigation hold or other appropriate measures.

IV. Fee Waiver

Per 5 U.S.C. § 552(a)(4)(A)(iii) and 22 C.F.R. § 171.17, AFL requests a waiver of all search and duplication fees. These authorities provide for fee waivers when, as here, “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.” AFL’s request concerns identifiable operations or activities of the government, and the information requested is likely to contribute significantly to the public understanding of the Biden Administration’s abortion policies and compliance with federal transparency and accountability laws.

Also, AFL is a qualified non-commercial public education and news media requester. AFL is a new organization, but it has already demonstrated its commitment to the public disclosure of documents and creation of editorial content. We distribute our work widely, posting government records for the benefit of the public, Congress, policymakers, and scholars, and creating and disseminating distinct work on media outlets of all sorts through the exercise of our editorial skills.

As a nonprofit organization primarily engaged in the dissemination of information to educate the public, AFL does not have a commercial purpose and the release of the information requested is not primarily in AFL’s financial interest. Our status as a qualified non-commercial public education and news media requester has been recognized by the Departments of Defense, Education, Energy, Interior, Health and Human Services, Homeland Security, State, and the Office of the Director of National Intelligence.

V. Production

To accelerate 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. Please send any responsive records being transmitted by mail to America First Legal Foundation, 611 Pennsylvania Ave SE #231, Washington, DC 20003.

VI. Conclusion

If you have any questions about this request or believe further discussions regarding search and processing will speed the efficient production of records of interest to AFL, then please contact me at FOIA@aflegal.org. Finally, please contact us immediately if AFL's request for a fee waiver is not granted in full. Thank you in advance for your cooperation.

Sincerely yours,

/s/ Reed D. Rubinstein

Reed D. Rubinstein

America First Legal Foundation