July 22, 2025

Ms. Arianne Perkins
Freedom of Information Act Officer
U.S. Department of Health and Human Services
Hubert H. Humphrey Building, Room 729H
200 Independence Avenue, SW
Washington, D.C. 20201

Re: Request under the Freedom of Information Act

Dear Ms. Perkins:

This letter constitutes a request made pursuant to the Freedom of Information Act, 5 U.S.C. §552, and implementing regulations of the U.S. Department of Health and Human Services (HHS), 45 C.F.R. Part 5.

In April, HHS froze "tens of millions of dollars in federal family-planning grants to certain organizations while it investigate[d] whether the money was used for diversity efforts."[1] Sixteen organizations received letters from HHS informing them that their funding was withheld and that HHS would be assessing compliance with grant terms, federal civil rights laws, and executive orders issued by President Donald Trump.[2] At the same time, HHS awarded the Oklahoma State Department of Health (OK) and the Tennessee Department of Health (TN) at least $5 million in Title X funds.[3]

In 2023, HHS excluded TN and OK from the Title X program for the states' refusal to provide comprehensive pregnancy options counseling and abortion referrals to patients seeking that information, which was and continues to be required by law. Following their exclusion from the Title X program, OK and TN sued the Biden Administration in an attempt to reinstate their funding. In notices issued by HHS following the decision to grant Title X funds to OK and TN, HHS officials stated that funds were sent "pursuant to a settlement agreement with the recipient."[4] However, per court filings, neither OK nor TN agreed to a settlement agreement with the federal government.[5]

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[1] Lauro Kusisto and Liz Essley Whyte, *Trump Administration Plans To Freeze Family-Planning Grants*, THE WALL STREET JOURNAL (Mar. 25, 2025, 4:51 PM), https://www.wsj.com/politics/policy/trump-administration-plans-to-freeze-family-planning-grants-541441be?st=6cxzib. *See also* Rachana Pradhan, Trump Restores Title X Funding For Two Anti-Abortion States—While Wiping It Out Elsewhere, KFF HEALTH NEWS (Apr. 30, 2025), https://kffhealthnews.org/news/article/title-x-funding-restored-anti-abortion-states-trump/.

[2] Daniel Trotta, *Trump Administration To Freeze Family-Planning Funds For Planned Parenthood*, REUTERS (Apr. 1, 2025, 1:06 PM), https://www.reuters.com/business/healthcare-pharmaceuticals/trump-administration-freeze-family-planning-funds-planned-parenthood-2025-04-01/.

[3] Kusisto, *supra* note 1.

[4] Pradhan, *supra* note 1.

[5] Response to Tennessee's Supp. Mem. at 3 n.1, *State of Tennessee v. Robert F. Kennedy, Jr. et al.*, No. 24-5220 (6th Cir., Apr. 23, 2025)("Although the notice states that the award is being restored 'pursuant to a settlement agreement with the recipient,' Notice 3, that statement is incorrect. There has been no agreement with Tennessee to settle this litigation.").

The Center for Reproductive Rights ("Center") seeks to better understand the decision to grant TN and OK Title X funding, whether the award was granted to both states without applications from either state, and, if awarded without applications, how HHS came to the decision to award Title X funds to TN and OK. The Center also seeks information regarding HHS's process for awarding Title X funds, including whether and to what extent the settlement of pending litigation against an agency is considered as part of the process. Releasing this information is vital to the public interest, as the distribution and/or denial of these funds affects thousands of patients' access to their trusted health care providers.

Records Requested

Please provide all responsive records from January 20, 2025, through the date this search is conducted (unless otherwise specified). As used herein, "records" means all records as defined in 22 C.F.R. §171.1(b). Additionally, as used herein, any reference to HHS encompasses all regional offices (both current and past) as well as the central offices located in Washington, D.C. For ease of search, we have included e-mail addresses for individuals whose e-mail addresses are publicly available—lack of e-mail address availability should not hinder the agency's ability to conduct searches based on individual names or keywords.

We request the following to be produced within twenty business days:

1. All communications, meeting notices, meeting agendas, informational materials, draft legislation, draft rules, talking points, reports, disclosures, or other documents sent to, received by, or exchanged between any HHS employee (temporary or permanent), and any official, appointee, contractor, or grantee from Oklahoma regarding family planning funding or Title X grants.

2. All communications, meeting notices, meeting agendas, informational materials, draft legislation, draft rules, talking points, reports, disclosures, or other documents sent to, received by, or exchanged between any HHS employee (temporary or permanent), and any official, appointee, contractor, or grantee from Tennessee regarding family planning funding or Title X grants.

3. All communications, meeting notices, meeting agendas, informational materials, draft legislation, draft rules, talking points, reports, disclosures, or other documents sent to, received by, or exchanged between any HHS employee (temporary or permanent), official, appointee, contractor, or grantee regarding the awarding of Title X funds to Tennessee and Oklahoma and the plan for the states to implement abortion counseling long-term.

4. All communications, meeting notices, meeting agendas, informational materials, draft legislation, talking points, reports, disclosures, or other documents sent to, received by, or exchanged between any HHS employee (temporary or permanent), official, appointee, contractor, or grantee regarding Title X grantees who provide abortion care outside of the Title X program, or the decision to withhold distribution of Title X grant funds from the same.

5. All records, documents, memoranda, and communications related to the criteria used by HHS to determine whether to restore funding to current and former Title X recipients.

6. All electronic communications (including emails, email attachments, complete email chains, calendar invitations, and calendar invitation attachment), or messages on messaging platforms (including but not limited to Microsoft Teams, Signal, Slack, GChat or Google Hangouts, Lync, Skype, X (formerly Twitter) direct messages, Facebook messages, Truth Social messages, WhatsApp, Telegram or Parler) regarding the potential withholding or awarding of funding from/to any Title X recipient, sent or received by any HHS officials, including but not limited to:

    a. Hannah Anderson, Deputy Chief of Staff, Policy

    b. Anthony Archeval, Acting Director for Office for Civil Rights

    c. Stephanie (Steph) Carlton, Acting Administrator for the Centers for Medicare and Medicaid Services (stephanie.carlton@cms.hhs.gov)

    d. Dorothy Fink, Acting Assistant Secretary for Health

    e. John W. Gilford, Region 4 Regional Health Administrator (TN) (john.gilford@hhs.gov)

    f. Andrew Gradison, Acting Assistant Secretary at the Administration for Children and Families

    g. Robert F. Kennedy, Jr., HHS Secretary

    h. Sean R. Keveney, HHS, Acting General Counsel (sean.keveney@hhs.gov)

    i. Capt. (Ret.) Mehran S. Massoudi, Region 6 Regional Health Administrator (OK) (Mehran.massoudi@hhs.gov)

    j. Cortney McCormick, Executive Secretary to HHS

    k. Heather Flick Melanson, Chief of Staff (heather.melanson@hhs.gov)

    l. Jonathan Osborne, Acting Assistant Secretary for Legislation (Jonathan.Osborne@hhs.govJonathan.Osborne@hhs.gov)

    m. Stefanie Spear, Principal Deputy Chief of Staff/Senior Counselor to the Secretary (stefanie.spear@hhs.govstefanie.spear@hhs.gov)

7. All records, documents, memoranda, and communications related to the review process for Title X funding applications, including, but not limited to, application announcements and descriptions, review matrices, and any criteria used to evaluate whether Title X

grantees are in compliance with Title VI, Title VII, and/or other federal antidiscrimination laws.

8. All records, documents, memoranda, and communications related to the March 31, 2025, letters sent to 16 Title X grantees regarding the temporary withholding of funding, including communications with grantees regarding compliance with any federal civil rights laws or executive orders mentioned in the original letter.

9. All records, documents, memoranda, and communications related to the March 31, 2025, letters sent to 16 Title X grantees regarding any finding or determination that any of the 16 grantees is violating or has ever violated any federal civil rights laws or executive orders mentioned in the original letter.

10. All records, documents, memoranda, and communications related to the March 31, 2025, letters sent to 16 Title X grantees regarding a timeline for evaluation of compliance with the letter's requirements.

11. From April 1, 2022, to present, all records, documents, memoranda, and communications related to the review process for Title X funding applications, including, but not limited to, application announcements and descriptions, review matrices, and any criteria used to determine Title X funding eligibility.

12. All records, documents, memoranda, and communications describing the review and assessment process for all new Title X grant applicants.

13. From April 1, 2022, to present, all records, documents, memoranda, and communications sufficient to identify new Title X grant recipients.

14. Records sufficient to identify all persons, whether or not employed directly by HHS, tasked with conducting reviews of Title X funding eligibility, including, but not limited to, records to show the title and classification for each individual.

15. Any records, documents, memoranda, and communications related to the consideration of diversity, equity, and inclusion programming and/or the application of federal civil rights laws as part of the assessment process to determine whether to withhold funds from existing Title X grantees.

The Center seeks all 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. We seek records of any kind, including electronic records, audiotapes, videotapes, and photographs, as well as letters, emails, facsimiles, telephone messages, voice mail messages and transcripts, notes, or minutes of any meetings, telephone conversations or discussions. Our request includes any attachments to these records. No category of material should be omitted from search, collection, and production.

In addition to the records requested above, the Center also requests records describing the processing of this request, including records sufficient to identify search terms used, locations and custodians searched, and any tracking sheets used to track the processing of this request. If your agency uses FOIA questionnaires or certifications completed by individual custodians or components to determine whether they possess responsive materials or to describe how they conducted searches, we also request any such records prepared in connection with the processing of this request.

Please search all records regarding agency business. You may not exclude searches of files or emails 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 such information to official systems within a certain period of time; the Center has a right to records contained in those files even if material has not yet been moved to official systems or if officials have, through negligence or willfulness, failed to meet their obligations.

Please note that in conducting a "reasonable search" as required by law, you must employ the most up-to-date technologies and tools available, in addition to searches by individual custodians likely to have responsive information. Recent technology may have rendered your agency's prior FOIA practices unreasonable. In light of the government-wide requirements to manage information electronically by the end of 2016, it is no longer reasonable to rely exclusively on custodian-driven searches. Furthermore, agencies, including the HHS Office of the Assistant Secretary for Health, that have adopted the National Archives and Records Agency (NARA) Capstone program, or similar policies, now maintain emails in a form that is reasonably likely to be more complete than individual custodians' files. For example, a custodian may have deleted a responsive email from his or her email program, but your agency's archiving tools would capture that email under Capstone.

Accordingly, the Center requests that HHS use the most up-to-date technologies to search for responsive information and take steps to ensure that the most complete repositories of information are searched. The Center is available to work with you to craft appropriate search terms. However, custodian searches are still required; agencies may not have direct access to files stored in .PST files, outside of network drives, in paper format, or in personal email accounts.

We request that you produce all responsive materials in their entirety; however, should you determine the materials contain information which falls within the statutory exemptions provided in 5 U.S.C. §552 or 22 C.F.R. §171.11, we request the information be reviewed for possible discretionary disclosure. We furthermore request that all reasonably segregable portions of the exempt material be provided. We request that any deleted material be described in detail, and that you specify the statutory basis for the denial as well as your reasons for believing that the alleged statutory justification applies in this instance. Please separately state your reasons for not invoking your discretionary powers to release the requested documents in the public interest. Such statements will be helpful in deciding whether to appeal an adverse determination.

Under the FOIA Improvement Act of 2016, agencies must adopt a presumption of disclosure, withholding information "only if . . . disclosure would harm an interest protected by an exemption" or "disclosure is prohibited by law." If it is your position that any portion of the requested records is exempt from disclosure, the Center requests that you provide an index of those documents as required under *Vaughn v. Rosen*, 484 F.2d 820 (D.C. Cir. 1973), *cert. denied*, 415 U.S. 977 (1974). As you are aware, a *Vaughn* index must describe each document claimed as exempt with sufficient specificity "to permit a reasoned judgment as to whether the material is actually exempt under FOIA."[6] Moreover, the *Vaughn* index "must describe each document or portion thereof withheld, and for each withholding it must discuss the consequences of disclosing the sought-after information." Further, "the withholding agency must supply 'a relatively detailed justification, specifically identifying the reasons why a particular exemption is relevant and correlating those claims with the particular part of a withheld document to which they apply.'"

You should institute a preservation hold on information responsive to this request. The Center intends to pursue all legal avenues to enforce its right of access under FOIA, including litigation if necessary. Accordingly, your agency is on notice that litigation is reasonably foreseeable.

To ensure that this request is properly construed, that searches are conducted in an adequate but efficient manner, and that extraneous costs are not incurred, the Center welcomes an opportunity to discuss their request with you before you undertake your search or incur search or duplication costs. By working together at the outset, the Center and your agency can decrease the likelihood of costly and time-consuming litigation in the future.

Waiver or Limitation of Fees

Pursuant to 5 U.S.C. § 552(a)(4)(A)(iii), documents are required to be provided to requesters without any charge or at reduced fees "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." We request a waiver (or, in the alternative, a reduction) of all fees because disclosure of the information would be in the public interest by contributing significantly to the public understanding of the decisions to grant Title X funds to states barred from the program for not following the law.

Founded in 1992, the Center is the only global legal advocacy organization dedicated to reproductive rights, and its litigation and advocacy has played a key role in expanding access to reproductive health care around the world. The Center uses information gathered, and its analysis of information gathered, to educate the public through reports, briefing papers, fact sheets, periodicals, articles, blog posts, and other educational materials. Likewise, the Center also makes the materials gathered available on its public website and promotes their availability on social media platforms, such as Facebook, X (formerly known as Twitter), and Instagram. The Center receives hundreds of thousands of website page views, monthly, and publishes newsletters for public dissemination. Thus, the Center has demonstrated commitment to the public disclosure of documents and creation of editorial content.

[6] *Founding Church of Scientology of Washington, D.C. v. Bell*, 603 F. 2d 945, 949 (D.C. Cir. 1979).

The Center does not make this request for commercial use. 45 C.F.R. § 5.54(b)(3). As a 501(c)(3) nonprofit organization, the Center does not have a commercial purpose and the release of the information requested is not in the organization's financial interest. Accordingly, the Center qualifies for a fee waiver.

In the event that you determine you are unable to waive the fees, please provide us with prior notice if the total fees authorized will exceed $200 so that we can discuss arrangements.

Conclusion

The Center looks forward to working with your agency on this request. Thank you for your prompt attention to this matter.

With respect to the form of production, *see* 5 U.S.C. § 552(a)(3)(B), the Center requests that responsive materials be provided electronically by email or in PDF or TIF format on a USB drive. Please send any responsive material being provided and acknowledgement of receipt of this request to:

Vidhi Bamzai
c/o Julia Long
Center for Reproductive Rights
1634 Eye Street, NW
Washington, DC 20006
Phone: (202) 524-5534
Email: vbamzai@reprorights.org

If it will accelerate release of responsive records, please also provide responsive material on a rolling basis.

If you do not understand any part of this request, have any questions, or foresee any problems in fully releasing the requested records, please contact Vidhi Bamzai at (202) 524-5534 if you have any questions. Thank you for your assistance.

Sincerely,

Vidhi Bamzai