



October 17, 2018

Sent via mail and email

U.S. Department of State
Office of Information Programs and Services
A/GIS/IPS/RL
SA-2, Suite 8100
Washington, D. C. 20522-0208

Re: Request under the Freedom of Information Act

To Whom It May Concern,

This letter constitutes a request made pursuant to the Freedom of Information Act, 5 U.S.C. §552, and implementing regulations of the United States Department of State, 22 C.F.R. §171.1 *et seq.*

Records Requested

On April 20, 2018, the U.S. Department of State released the 2017 *Country Reports on Human Rights Practices*, which documents the status of human rights in nearly 200 countries and territories. The annual *Country Reports on Human Rights Practices* (“Human Rights Reports”) are required by Sections 116(d) and 502B(b) of the Foreign Assistance Act of 1961. 19 U.S.C. § 2464, 2467 also require that U.S. foreign and trade policy take into account countries’ human rights performance and that country reports be submitted to the Congress on an annual basis.

In previous years, including every year from 2012 to 2017 (encompassing the 2011 to 2016 Human Rights Reports), the Human Rights Reports included a subsection titled “Reproductive Rights” under Section 6 (“Discrimination, Societal Abuses, and Trafficking in Persons”). The Reproductive Rights subsection often included research on the impact of laws restricting access to reproductive health care around the world, including reporting on whether individuals “have the right to decide the number, spacing, and timing of their children; manage their reproductive health and have access to the information and means to do so.” Past Human Rights Reports have also contained, within the Reproductive Rights subsection, information about the availability of contraception, rates of maternal mortality, and civil society concerns about total abortion bans.

The 2017 Human Rights Reports removed the subsection titled “Reproductive Rights.” Instead, the 2017 Human Rights Reports contained a subsection titled “Coercion in Population

Control,” which focused solely on whether there were “reports of coerced abortion, involuntary sterilization, or other coercive population control methods.”

Despite widespread objections to the removal of the “Reproductive Rights” subsection from the 2017 Human Rights Reports, the Department is currently preparing the 2018 Human Rights Reports and continuing the policy of removing the subsection titled “Reproductive Rights.”

We request the following records within twenty business days:

1. All versions, drafts, copies, or modifications of the U.S. Department of State’s instructions for preparation of the 2018 *Country Reports on Human Rights Practices* in whole or in part, in existence and in the possession of any U.S. Department of State employee, agent or contractor between April 20, 2018 and October 16, 2018.
2. All communications, and/or any attachments to communications, that refer or pertain to the changes made to Section 6 (“Discrimination, Societal Abuses, and Trafficking in Persons”), including the removal of the “Reproductive Rights” subsection, of the 2017 *Country Reports on Human Rights Practices* and/or the 2018 *Country Reports on Human Rights Practices* sent or received between January 1, 2018 and October 16, 2018 by the following offices or overseas Missions:
 - a. the Department’s Office of the Secretary, including any individual employees, agents or contractors acting on behalf of the Office of the Secretary;
 - b. the Bureau of Democracy, Human Rights, and Labor, including any individual employees, agents or contractors acting on behalf of the Bureau of Democracy, Human Rights, and Labor.
 - c. U.S. Embassy Manila, including any individual employees, agents or contractors acting on behalf of Embassy Manila in the Philippines.
 - d. U.S. Mission India, including U.S. Embassy New Dehli, U.S. Consulate General Hyderabad, U.S. Consulate General Chennai, U.S. Consulate General Kolkata, U.S. Consulate General Mumbai, and/or U.S. Virtual Consulate Bengaluru, and any individual employees, agents or contractors acting on behalf of Mission India.
 - e. U.S. Embassy Port-au-Prince, including any individual employees, agents or contractors acting on behalf of Embassy Port-au-Prince in Haiti.
 - f. U.S. Embassy Buenos Aires, including any individual employees, agents or contractors acting on behalf of Embassy Buenos Aires in Argentina.
 - g. U.S. Embassy Dhaka, including any individual employees, agents or contractors acting on behalf of Dhaka in Bangladesh.
 - h. U.S. Embassy Ouagadougou, including any individual employees, agents or contractors acting on behalf of Embassy Ouagadougou in Burkina Faso.
 - i. U.S. Embassy Yaounde, including any individual employees, agents or contractors acting on behalf of Embassy Yaounde in Cameroon.
 - j. U.S. Embassy San Salvador, including any individual employees, agents or contractors acting on behalf of Embassy San Salvador in El Salvador.
 - k. U.S. Embassy Addis Ababa, including any individual employees, agents or contractors acting on behalf of Embassy Addis Ababa in Ethiopia.

- l. U.S. Embassy Guatemala City, including any individual employees, agents or contractors acting on behalf of Embassy Guatemala City in Guatemala.
 - m. U.S. Embassy Kathmandu, including any individual employees, agents or contractors acting on behalf of Embassy Kathmandu in Nepal.
 - n. U.S. Mission Pakistan, including U.S. Embassy Islamabad, U.S. Consulate General Karachi, U.S. Consulate General Lahore and/or U.S. Consulate General Peshawar, and any individual employees, agents or contractors acting on behalf of Mission Pakistan.
 - o. U.S. Embassy Kampala, including any individual employees, agents or contractors acting on behalf of Embassy Kampala in Uganda.
 - p. U.S. Embassy Lusaka, including any individual employees, agents or contractors acting on behalf of Embassy Lusaka in Zambia.
3. All communications, and/or any attachments to communications, that contain the terms “abortion,” “contraception,” “reproductive,” or “repro,” sent or received between June 21, 2018 and October 16, 2018 by the following offices:
 - a. the Department’s Office of the Secretary, including any individual employees, agents or contractors acting on behalf of the Office of the Secretary;
 - b. the Bureau of Democracy, Human Rights, and Labor, including any individual employees, agents or contractors acting on behalf of the Bureau of Democracy, Human Rights, and Labor.
 4. All calendar entries and invitations, all attachments to any calendar entries and invitations, and all meeting records, including but not limited to meeting notes and agendas, that refer or pertain to the 2017 *Country Reports on Human Rights Practices* and/or the 2018 *Country Reports on Human Rights Practices*, between June 21, 2018 and October 16, 2018.

As used herein, the word “records” means all records as defined in 22 C.F.R. §171.1(b)(1). Additionally, as used herein, the word “Department” means the United States Department of State, including its field offices and Foreign Service posts abroad. 22 C.F.R. §171.1(b)(2).

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.

In addition to the records requested above, the Center for Reproductive Rights also requests records describing the processing of this request, including records sufficient to identify search terms used and 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.

The Center for Reproductive Rights 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.

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. Records of official business conducted using unofficial systems or stored outside of official files is 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 for Reproductive Rights 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.

In addition, 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 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 for Reproductive Rights requests that your agency 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 for Reproductive Rights 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.

You should institute a preservation hold on information responsive to this request. The Center for Reproductive Rights 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 for Reproductive Rights 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 for Reproductive Rights and your agency can decrease the likelihood of costly and time-consuming litigation in the future.

Waiver or Limitation of Fees

We request a waiver (or, in the alternative, a reduction) of all fees under 5 U.S.C. § 552(a)(4)(A)(iii) because disclosure of the information would be in the public interest by contributing significantly to the public understanding of the 2017 Human Rights Reports. In addition, the requested records will promote public understanding of the State Department's operations and assist non-governmental organizations and other actors who may be affected by the removal of the reproductive rights subsection. The Center for Reproductive Rights does not make this request for commercial use.

Further, the Center for Reproductive Rights will disseminate the information to “a reasonably broad audience of persons” through our social media accounts and our websites. If a waiver or reductions in fees is not granted on the basis of the disclosure being in the public interest, we request a waiver (or, in the alternative, a reduction) of all fees under the “representative of the news media” exception in 5 U.S.C. § 552(a)(4)(A)(ii)(II). The term, “representative of the news media,” as used in the Freedom of Information Act, is defined as any person or entity “that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience.” 5 U.S.C. § 552(a)(4)(A)(ii).

The Center for Reproductive Rights publishes a regular newsletter that currently has over 215,000 subscribers. Additionally, the Center for Reproductive Rights routinely gathers information from government and other sources and use that information to publish reports, briefing papers, fact sheets, periodicals, articles, blog posts, and other educational materials, which are readily available to the public through the Center for Reproductive Rights' website (www.reproductiverights.org) and social media accounts (for example, on the Center's Twitter stream @reprights). During a representative month in 2018, the Center for Reproductive Rights has had over 60,000 visits leading to over 110,000 page views – of which nearly 40,000 were unique visitors. Additionally, the Center has well over 95,000 followers on Twitter.

Accordingly, the Center for Reproductive Rights requests that we be accorded “representative of news media” status and that any fees accrued for this request be waived, or alternatively, reduced. This request is primarily and fundamentally for non-commercial purposes. As a 501(c)(3) nonprofit organization, the Center for Reproductive Rights does not have a commercial purpose and the release of the information requested is not in the organization's financial interest.

Founded in 1992, the Center for Reproductive Rights 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 for Reproductive Rights uses information gathered, and its analysis of information gathered, to educate the public through reports, press releases, or other media, as discussed above. Likewise, the Center for Reproductive Rights also makes the materials gathered available on its public website and promote their availability on social media platforms, such as Facebook and Twitter. The Center for Reproductive Rights has demonstrated commitment to the public disclosure of documents and creation of editorial content.

Accordingly, the Center for Reproductive Rights 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.

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Conclusion

The Center for Reproductive Rights 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 for Reproductive Rights 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 sent by mail to:

Stephanie L. Schmid
Center for Reproductive Rights,
1634 Eye Street NW, Suite 600
Washington, D.C. 20006
Email: sschmid@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 us at (202) 628-0286 if you have any questions. Thank you for your assistance.

Sincerely,

Stephanie L. Schmid

Stephanie L. Schmid
U.S. Foreign Policy Counsel
Center for Reproductive Rights