

EXHIBIT 1



November 2, 2018

VIA ELECTRONIC DELIVERY

Department of Health and Human Services
Attn: Michael Marquis, Freedom of Information Officer
Hubert H. Humphrey Building, Room 729H
200 Independence Avenue, S.W.
Washington, D.C. 20201
FOIARequest@hhs.gov

Administration for Children and Families (ACF)
Attn: Kimberly Epstein, Acting Freedom of Information Officer
Mary E. Switzer Building, Suite 4004
330 C ST, S.W
Washington, D.C. 20201
FOIA@acf.hhs.gov

RE: Freedom of Information Act Records Request

Dear FOIA Officer:

Pursuant to the Freedom of Information Act (the "FOIA"), 5 U.S.C. §§ 552 *et seq.*, and the Department of Health and Human Services' ("HHS" or "agency") FOIA regulations at 45 C.F.R. pt. 5, Democracy Forward Foundation submits this request.

I. Background

On September 26, 2018, the Office of Adolescent Health within HHS issued a press release (Exhibit A) listing 41 "intended" Tier 1 grantees under the Congressionally authorized Teen Pregnancy Prevention Program ("TPP Program") that "would have" received "\$19.4 million in grants"¹ from HHS but for court orders enjoining the agency from making the awards. The \$19.4 million in funding was from an appropriation for competitive Tier 1 grants for replicating effective teen pregnancy prevention programs that expired on September 30, 2018.² Two days

¹ Press Release, HHS, HHS Announces Programs that Would Have, but Cannot, Receive \$19.4 Million in Grants for Tier 1 of the Teen Pregnancy Prevention Program (Sept. 26, 2018), <https://www.hhs.gov/ash/about-ash/news/2018/hhs-awards-tier-2-tpp-program.html>.

² Consolidated Appropriations Act, Pub. L. No. 115-141, 132 Stat. 348 (2018).

prior to that expiration, on the last business day of the fiscal year, HHS obligated \$21,056,054 to a “supplemental agreement for work within scope” with the MITRE Corporation for work pertaining to the TPP Program (Exhibit B).

HHS’s use of TPP Program funds for means other than Congress intended has generated intense scrutiny from the media and Congress itself³ and has been the subject of multiple legal challenges, in which courts have repeatedly enjoined the agency from unlawfully terminating TPP Program grants and redirecting TPP Program funds.⁴ As with other actions involving TPP Program funds, HHS has not been transparent with the public regarding either how the agency is using the \$19.4 million referenced in the September 26, 2018 press release or about the source of funding for the MITRE contract.

II. Records Requested

In an effort to understand, and explain to the public, HHS’s use of TPP Program funds appropriated by Congress, Democracy Forward requests that HHS produce the following records on an expedited basis within ten (10) business days:

1. A copy of the “supplemental agreement for work within scope” referenced in Exhibit B as well as any contract proposals, solicitations, orders for supplies and services, or subawards associated with this agreement.
2. A copy of Contract No. HHSP233201700025U referenced in Exhibit B.
3. Any and all communications between any official, employee or contractor within HHS and anyone associated with the MITRE Corporation pertaining to the “supplemental agreement for work within scope,” including any contract proposals, solicitations, orders for supplies and services, or subawards associated with this agreement.

For this request, please search records from the following HHS offices: Office of the Secretary, Office of the Assistant Secretary for Health, Office of Adolescent Health, Administration of Children and Families, Office of the Assistant Secretary for Planning and Evaluation, Office of Population Affairs, and Office of Grants and Acquisition Policy and Accountability.

³ See, e.g., Letter from 27 U.S. Senators to Acting HHS Secretary Eric D. Hargan at 2 (Nov. 29, 2017) (questioning source of funding for MITRE contract), *available at* https://www.help.senate.gov/imo/media/doc/20171129_TPPP%20letter.pdf.

⁴ See, e.g., Ericka Cruz Guevarra, *Judge Rules Against Trump Administration In Multnomah County Lawsuit*, *The Oregonian* (Aug. 31, 2018), <https://www.opb.org/news/article/judge-rules-against-trump-administration-in-teen-pregnancy-suit/>; Jessie Hellman, *Third Judge Rules Against Trump Admin on Cuts to Teen Pregnancy Prevention Program*, *The Hill* (Apr. 26, 2018), <https://thehill.com/policy/healthcare/384991-third-federal-judge-rules-against-trump-admin-over-cuts-to-federal-teen>.

4. Any and all communications within HHS regarding Exhibit A, including pertaining to the disposition of the \$19.4 million in Tier 1 funding referenced in Exhibit A.

For this request, please search records from the following HHS offices: Office of the Assistant Secretary for Health, Office of Adolescent Health, Office of the General Counsel, and Office of Public Affairs. In addition, please search the emails of anyone employed in these offices from April 1, 2018 to the present in a communications capacity, even if they have since moved elsewhere within HHS.

5. Any and all communications between any official, employee or contractor within HHS and any of the 41 “intended” grantees listed in the first table of Exhibit A regarding the subject of either Exhibit A or Exhibit B.

For this request, please search records from the Office of the Secretary, Office of the Assistant Secretary for Health, the Office of Adolescent Health, and the Office of Grants and Acquisition Policy and Accountability.

For all of the above requests, please search for records created between April 1, 2018 and the present.

Please search for records regardless of format, including paper records, electronic records, audiotapes, videotapes, photographs, data, and graphical materials. This request includes, without limitation, all correspondence, letters, emails, text messages, calendar entries, facsimiles, telephone messages, voice mail messages, and transcripts, notes, minutes, or audio or video recordings of any meetings, telephone conversations, or discussions. In searching for responsive records, however, please exclude publicly available materials such as news clips that mention otherwise responsive search terms.

FOIA requires agencies to disclose information, with only limited exceptions for information that would harm an interest protected by a specific exemption or where disclosure is prohibited by law. 5 U.S.C. § 552(a)(8)(A). In the event that any of the requested documents cannot be disclosed in their entirety, we request that you release any material that can be reasonably segregated. See 5 U.S.C. § 552(b). Should any documents or portions of documents be withheld, we further request that you state with specificity the description of the document to be withheld and the legal and factual grounds for withholding any documents or portions thereof in an index, as required by *Vaughn v. Rosen*, 484 F.2d 820 (D.C. Cir. 1973). Should any document include both disclosable and non-disclosable material that cannot reasonably be segregated, we request that you describe what proportion of the information in a document is non-disclosable and how that information is dispersed throughout the document. *Mead Data Cent., Inc. v. U.S. Dep’t of Air Force*, 566 F.2d 242, 261 (D.C. Cir. 1977).

If requested records are located in, or originated in, another agency, department, office, installation or bureau, please refer this request or any relevant portion of this request to the appropriate entity.

To the extent that the records are readily reproducible in an electronic format, we would prefer to receive the records in that format. However, if certain records are not available in that format, we are willing to accept the best available copy of each such record.

In the event expedited processing is not granted, please respond to this request in writing within 20 working days as required under 5 U.S.C. § 552(a)(6)(A)(i). If all of the requested documents are not available within that time period, we request that you provide us with all requested documents or portions of documents that are available within that time period. If all relevant records are not produced within that time period, we are entitled to a waiver of fees for searching and duplicating records under 5 U.S.C. § 552(a)(4)(A)(viii)(I).

III. Request for Fee Waiver

Democracy Forward requests a waiver of document search, review, and duplication fees because the disclosure of the requested records is in the public interest and because disclosure 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.” 5 U.S.C. § 552(a)(4)(A)(iii). Democracy Forward also requests a waiver of search fees on the ground that it qualifies as a “representative of the news media” and the records are not sought for commercial use. 5 U.S.C. § 552(a)(4)(A)(ii)(II).

The disclosure of requested records is “likely to contribute significantly to public understanding of the operations or activities of the government” because, as discussed above, news accounts underscore the substantial public interest in the records sought through this request. 5 U.S.C. § 552(a)(4)(A)(iii). Given the ongoing media attention and other scrutiny concerning HHS’s use of TPP Program funds appropriated by Congress, the records sought will contribute significantly to public understanding of an issue of profound public importance. Moreover, Democracy Forward is a nonprofit organization organized under Internal Revenue Code § 501(c)(3) and is dedicated to promoting policy engagement and civic education. As a nonprofit organization, it does not have a commercial interest in the records. The records obtained from this request will be made available to the public at no cost.

Democracy Forward also requests a waiver of search fees because it is a “representative of the news media” and the records are not sought for commercial use. 5 U.S.C. § 552(a)(4)(A)(ii)(II). Democracy Forward meets the definition of “representative[s] of the news media” because it gathers information, exercises editorial discretion in selecting and organizing documents, and “distributes the resulting work to the public.” *Nat’l Sec. Archive v. U.S. Dep’t of Def.*, 880 F.2d 1381, 1387 (D.C. Cir. 1989). It is therefore a “representative of the news media” for the same reasons it is “primarily engaged in disseminating information.” 5 U.S.C. §§ 552(a)(4)(A)(ii)(II), 552(a)(6)(E)(v)(II).

If the request for a waiver is denied, we are willing to pay all reasonable fees incurred for searching and duplicating records in responding to this request, up to \$100. If the costs of responding to this request should exceed that amount, please contact us before incurring costs exceeding that amount.

IV. Expedited Processing

Democracy Forward is entitled to expedited processing of this request because there is a “compelling need” for the information. 5 U.S.C. § 552(a)(6)(E)(i)(I). A “compelling need” is established when there exists an “urgency to inform the public about an actual or alleged Federal Government activity,” when the requester is a “person primarily engaged in disseminating information.” 5 U.S.C. § 552(a)(6)(E)(v)(II); *see also* 45 C.F.R. § 5.27(b)(2) (HHS will process records on an “expedited basis” when “[t]here is an urgent need to inform the public about an actual or alleged Federal Government activity (this criterion applies only to those requests made by a person primarily engaged in disseminating information to the public)”).

Expedited processing is required in this instance. There is no question that this request concerns federal government activity—here, HHS’s disposition of roughly \$20 million in Congressionally appropriated funds. There is also an urgent need to inform the public about this issue: HHS’s persistent lack of transparency about its actions concerning TPP Program funding raises questions concerning the agency’s lawful use of appropriated funds. In addition to raising questions about the government’s integrity, HHS’s disposition of TPP Program funds has already been the subject of significant media interest as outlined above.⁵ Further, Democracy Forward is primarily engaged in disseminating information, as set forth above. The urgency to inform the public regarding the subject matter of this request therefore justifies expedited processing.

V. Conclusion

If you need clarification as to the scope of the request, have any questions, or foresee any obstacles to releasing fully the requested records within the ten (10) day expedited period, please contact Josephine Morse as soon as possible at foia@democracyforward.org or 202-448-9090.

We appreciate your assistance and look forward to your prompt response.

Sincerely,

/s/ Josephine Morse
Josephine Morse
Senior Counsel, Democracy Forward
Foundation

*Counsel for Democracy Forward
Foundation*

I hereby certify that the information contained in Section IV, in support of our request for expedited processing is true and correct pursuant to 45 C.F.R. § 5.27(a).

/s/ Josephine Morse
Josephine Morse

⁵ *See supra* n.4.

EXHIBIT A
to FOIA Request

HHS.gov

U.S. Department of Health & Human Services

Office of the Assistant Secretary for Health

HHS Announces Programs that Would Have, but Cannot, Receive \$19.4 Million in Grants for Tier 1 of the Teen Pregnancy Prevention Program

*HHS will award \$5.2 M for Tier 2***FOR IMMEDIATE RELEASE****Wednesday, September 26, 2018****Contact: ASH Media Office****202-205-0143****ashmedia@hhs.gov**

Today, the U.S. Department of Health and Human Services, Office of Adolescent Health (OAH) announced the organizations it was prepared to issue awards to as part of the Teen Pregnancy Prevention (TPP) program, but to which HHS cannot issue those awards, because of lawsuits filed by organizations that opposed the funding opportunity announcement. The intended grantees would have received a total of \$19.4 M to fund 41 new TPP program Tier 1 grants. These grants would have implemented a wide variety of teen pregnancy prevention curricula in diverse communities, populations, and settings across 36 States, the District of Columbia and the Virgin Islands.

One court dismissed a challenge to HHS's funding announcements, which would have cleared the way for HHS to issue these grants. But two other courts issued orders at the end of August prohibiting HHS from issuing these grants under the funding opportunity announcement. Those suits were brought by Planned Parenthood of New York City and Multnomah County in Oregon. None of those plaintiffs will receive funds under the FY 2018 Tier 1 Funding Opportunity Announcement because the court orders prohibit it.

Tier 1 projects are ready to replicate one of two effective adolescent programs that include the protective factors shown to be effective in preventing teen pregnancy and/or sexual risk behaviors with the result of improving healthy youth decision-making and enhancing protective factors. Approved applicants chose curricula that replicated one of two evidence-based programs: the [Tool to Assess the Characteristics of Effective Sex and STD/HIV Education Programs](#) or the [Systematic Method for Assessing Risk-avoidance Tool \(SMARTool\) - PDF](#).

In a separate part of the TPP program not covered by those court orders, OAH is announcing \$5.2 million for Tier 2 cooperative agreements to develop and test new and innovative strategies to prevent teen pregnancy, improve adolescent health and address youth sexual risk holistically by focusing on protective factors. Fourteen awards are being made to a broad range of organizations (universities, school districts, State health departments, and non-profit organizations), to implement both sexual risk reduction and sexual risk avoidance approaches, and interventions using a variety of implementation strategies and curricula.

The overall goal of the TPP program is to give youth the information and skills that will enable them to prevent pregnancy and related risks, in order to successfully navigate from adolescence into adulthood. Tier 1 and Tier 2 are designed to serve teens most vulnerable to teen pregnancy, STDs, multiple partners, and other risks associated with sexual activity.

Tier 1 approved, but unfunded awards:

Organization	City	State	Recommended Funding Amount
Ambassadors for Christ Youth Ministries Inc.	Pine Bluff	AR	\$500,000
The East Los Angeles Community Union	Los Angeles	CA	\$500,000
County of Sacramento	Sacramento	CA	\$500,000
The Center for Relationship Education	Denver	CO	\$499,485
State of Connecticut Department of Public Health	Hartford	CT	\$500,000
Assoc. of Maternal & Child Hlth Program	Washington	DC	\$498,499
OIC of Broward County Inc.	Fort Lauderdale	FL	\$500,000
Be Strong International Inc.	Palmetto Bay	FL	\$500,000
Bethany Christian Services of Georgia	Atlanta	GA	\$500,000
Gibson Community Hospital	Gibson City	IL	\$349,936
Health Care Education and Training Inc.	Indianapolis	IN	\$500,000
Social Innovation Laboratory	Emporia	KS	\$372,194
Lake Cumberland District Health Department	Somerset	KY	\$499,007

Southwest Louisiana Area Health Education Center	Lafayette	LA	\$500,000
Family Services of the Merrimack Valley	Lawrence	MA	\$399,826
Child Trends Inc	Bethesda	MD	\$500,000
AFC Scholarship Foundation Inc.	Waldorf	MD	\$500,000
Bethany Christian Services of Michigan	Grand Rapids	MI	\$500,000
Asian Media Access Incorporated	Minneapolis	MN	\$500,000
Better Family Life Inc.	St. Louis	MO	\$500,000
SR1	Ridgeland	MS	\$298,000
Montana Department of Public Health and Human Services	Helena	MT	\$500,000
Duke University	Durham	NC	\$500,000
New Jersey Physicians Advisory Group Inc.	Fanwood	NJ	\$500,000
Capacity Builders Inc.	Farmington	NM	\$434,009
Southern Nevada Health District	Las Vegas	NV	\$500,000
Sunset Park Health Council Inc.	Brooklyn	NY	\$500,000
Gay Men's Health Crisis Inc.	New York	NY	\$500,000
City of Columbus	Columbus	OH	\$500,000
Northwest Family Services	Portland	OR	\$500,000
Delta Community Supports Inc.	Blue Bell	PA	\$305,489
Health Rhode Island Department of	Providence	RI	\$500,000

United States Parents Involved in Education	Lugoff	SC	\$500,000
Rural America Initiatives	Rapid City	SD	\$499,995
Boys & Girls Clubs in Tennessee	Knoxville	TN	\$281,851
University of Texas Southwestern Medical Center at Dallas	Dallas	TX	\$487,561
University of Texas Hlth Sci Ctr San Antonio	San Antonio	TX	\$500,000
Virginia Commonwealth University	Richmond	VA	\$481,484
Unique Xpression Ministries Inc	St. Thomas	VI	\$488,409
Boys & Girls Club of Greater Milwaukee	Milwaukee	WI	\$500,000
Mission West Virginia Inc.	Hurricane	WV	\$500,000

Tier 2:

Organization	City	State	Funded Amount
Teen Outreach Pregnancy Services	Tucson	AZ	\$375,000
Morehouse School of Medicine	Atlanta	GA	\$374,773
Sexual Health Education Inc.	Cedar Rapids	IA	\$375,000
Kent Intermediate School District	Grand Rapids	MI	\$375,000
Delta Health Alliance Inc.	Stoneville	MS	\$374,943
Public Health And Human Services Montana Department Of	Helena	MT	\$375,000
National Indian Youth Leadership Development Project Inc.	Albuquerque	NM	\$375,000

Healthy Visions	Montgomery	OH	\$375,000
Thrive Inc.	Oklahoma	OK	\$375,000
Northwest Family Services	Portland	OR	\$374,463
Public Health Management Corporation	Philadelphia	PA	\$375,000
University of Texas Health Science Center of San Antonio	San Antonio	TX	\$373,492
Urban Strategies LLC	Arlington	VA	\$370,270
Washington State Department of Health	Tumwater	WA	\$375,000
TOTAL:			\$5,242,941

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Content created by Assistant Secretary for Health (ASH)

Content last reviewed on September 26, 2018

EXHIBIT B
to FOIA Request



Award ID: HHSP233201700025U
Parent Award ID: HHSM5002012000081

Contract Summary

Awarding Agency ▾

Department of Health and Human Services

Sub-Agency
Office of the Assistant Secretary for Administration
Office
PROGRAM SUPPORT CENTER ACQ MGMT SVC

Recipient

THE MITRE CORPORATION

Address
7515 COLSHIRE DR
MC LEAN, VA 22102
Congressional District: VA-08
DUNS
040540304
Parent DUNS
007872690
Business Types
Corporate Entity tax Exempt
Nonprofit Organization

Award Amounts

This contract was awarded to **The Mitre Corporation** with a potential award amount of **\$29,551,986**. Of this amount, **100% (\$29,551,986)** has been obligated.



Contract Details

Description	IGF::OT::IGF TEEN PREGNANCY PREVENTION STUDY
Period of Performance	09/29/2017 - 09/29/2020 (3 years)
Primary Place of Performance	MC LEAN, VA 22102 Congressional District: VA-08
Contract Award Type	DELIVERY ORDER
Contract Pricing Type	COST PLUS FIXED FEE

[See Additional Details](#)

Transaction History ▾

Modification Number	Action Date	Amount	Reason for Modification	Description
3	09/28/2018	\$21,056,054	B: SUPPLEMENTAL AGREEMENT FOR WORK WITHIN SCOPE	IGF::OT::IGF TEEN PREGNANCY PREVENTION STUDY
2	09/27/2018	\$456,054	C: FUNDING ONLY ACTION	IGF::OT::IGF TEEN PREGNANCY PREVENTION STUDY
1	05/10/2018	\$0	D: CHANGE ORDER	IGF::OT::IGF TEEN PREGNANCY PREVENTION STUDY
0	09/27/2017	\$8,039,878	--	IGF::OT::IGF TEEN PREGNANCY PREVENTION STUDY

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