



December 20, 2018

VIA EMAIL

FOIA Officer / Director, Freedom of Information and Privacy Acts Division
Department of Health and Human Services
Hubert H. Humphrey Building, Suite 729H
200 Independence Avenue, SW
Washington, DC 20201
foiarequest@psc.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") FOIA regulations at 45 C.F.R. pt. 5, Democracy Forward Foundation makes the following request for records:

Records Requested and Scope of Search

In an effort to better understand, and explain to the public, HHS's rulemaking concerning *Protecting Statutory Conscience Rights in Health Care; Delegations of Authority*, 83 Fed. Reg. 3,880 (Jan. 26, 2018) (Notice of Proposed Rulemaking), Democracy Forward Foundation requests that HHS produce the following within twenty (20) business days:

1. All documentation substantiating HHS's statement that "Since the designation of OCR as the agency with authority to enforce Federal health care conscience laws in 2008, [HHS's Office for Civil Rights ('OCR')] has received a total of forty-four complaints, the large majority of which (thirty-four) were filed since the November 2016 election." 83 Fed. Reg. at 3,886.
2. Any correspondence or communications between HHS OCR and any of the complainants who filed the "thirty-four" complaints "since the November 2016 election," *id.*, that predated the complainants' filing of the respective complaints.
3. All records reviewed or considered by HHS in drafting *Protecting Statutory Conscience Rights in Health Care; Delegations of Authority*, 83 Fed. Reg. 3,880 (Jan. 26, 2018) (Notice of Proposed Rulemaking).

The date range for this search is from January 20, 2017 to the date the search is conducted.

Please limit the search to the following HHS offices: OCR, Office of the General Counsel, Office of the Secretary.

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, attachments text messages, instant messages, slack 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.

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 id.* § 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.

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).

Fee Waiver Request

Pursuant to 5 U.S.C. § 552(a)(4)(A)(iii) and 45 C.F.R. § 5.54, Democracy Forward Foundation requests a waiver of all fees associated with processing records for this request. The subject of this request concerns the operations of the federal government, and the disclosures will likely contribute to a better understanding of these operations by the public in a significant way. Moreover, the request is for noncommercial purposes.

Pursuant to 45 C.F.R. § 5.54(b)(1), disclosure of the requested records will shed light on the operations and activities of the government, in that they will reveal the rationale behind, and data relevant to, HHS's decisions concerning its rulemaking on *Protecting Statutory Conscience Rights in Health Care*. Disclosure of the requested records will also contribute significantly to public understanding of HHS's decisionmaking because the requested records are not already in the public domain, *see id.* § 5.54(b)(2)(i); because of the significant public interest in the rulemaking (as demonstrated by, for example, the number of comments submitted to HHS in response to the proposed rule), *see id.* § 5.54(b)(2)(ii); and because of Democracy Forward Foundation's proven success at disseminating information to a broad audience, *see id.*, and intent to use the materials gathered to educate the public through its website, press releases, and social media outlets.¹ Finally, the request bears no relationship to any commercial interest of Democracy Forward Foundation. *See id.* § 5.54(b)(3). Democracy Forward Foundation is a nonprofit organization organized under Internal Revenue Code § 501(c)(3). A core mission of Democracy Forward Foundation is to educate the public about government activity.

Accordingly, Democracy Forward Foundation qualifies for a fee waiver.

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 20 day period, please contact Adam Grogg 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/ Adam Grogg
Adam Grogg
Senior Counsel, Democracy Forward Foundation

¹ *See* Democracy Forward Twitter, @DemocracyFWD;
<https://democracyforward.org/work/democracy-forward-foundation-doc/>.