



September 16, 2022

**VIA Electronic Delivery**

Open Records Request  
Texas Department of State Health Services  
P.O. Box 149347 MC 1876  
Austin, TX 78714-9347  
openrecords@dshs.texas.gov

**Re: Request Pursuant to Texas Public Information Act**

Dear Public Information Officer,

Pursuant to the Texas Public Information Act, Tex. Gov't Code §§ 552.001-552.376, Democracy Forward Foundation, submits this request for records.

***Records Requested***

On September 13, 2022, the *Houston Chronicle* published a report that the September 1, 2022 release of maternal mortality data would be delayed until summer of 2023, after the 2022 election and the next biennial legislative session.<sup>1</sup> In an effort to understand and clarify the facts surrounding this delay, Democracy Forward Foundation requests the following records:

1. Any record of a communication, memos, talking points, minutes, notes, agendas, or other documents related to remarks made by DSHS Commissioner John Hellerstadt at the September 2, 2022 meeting of the Texas Maternal Mortality and Morbidity Review Committee.
2. Any reports, assessments, or evaluations conducted by or in the possession of DSHS related to statements made at the September 2, 2022, meeting of the Texas Maternal Mortality and Morbidity Review Committee that the publication of data 2022 Joint Biennial Report may be confusing to the public or not comparable to data from other states.
3. Any record of a communication to or from any employee or representative of DSHS and any employee or representative of the Office for the Texas Governor, Office of the Texas Lieutenant Governor, Office of the Texas Attorney General, or any member or committee of the Texas State Senate or House or Representatives related to the content or timing of the

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<sup>1</sup> Julian Gill & Jeremy Blackman, *Texas Delays Publication of Maternal Death Data Until After Midterms, Legislative Session*, *Houston Chronicle* (Sept. 14, 2022, 9:52 AM), available at <https://www.houstonchronicle.com/politics/texas/article/Texas-delays-publication-of-maternal-death-data-17439477.php>.

2022 Texas Maternal Mortality and Morbidity Review Committee and Department of State Health Services Joint Biennial Report.

4. Any record of communications related to the content or timing of the 2022 Texas Maternal Mortality and Morbidity Review Committee and Department of State Health Services Joint Biennial Report between any employee or representative of DSHS and any employee, member, or representative of the following groups, to whom DSHS is obligated to distribute the report pursuant to Texas Health and Safety Code section 34.015:
  - a. District XI of the American Congress of Obstetricians and Gynecologists;
  - b. Texas Association of Obstetricians and Gynecologists;
  - c. Texas Nurses Association;
  - d. Texas Section of the Association of Women's Health, Obstetric and Neonatal Nurses;
  - e. Texas Academy of Family Physicians;
  - f. Texas Pediatric Society;
  - g. Consortium of Texas Certified Nurse-Midwives;
  - h. Association of Texas Midwives;
  - i. Texas Hospital Association;
  - j. Texas Medical Association; and
  - k. Texas Public Health Association
  
5. Any record of a communication related to the content or timing of the 2022 Texas Maternal Mortality and Morbidity Review Committee and Department of State Health Services Joint Biennial Report between any employee or representative of DSHS and any employee or representative of the following:
  - a. One America News Network (or @oann.com);
  - b. Fox News (or @foxnews.com or @foxbusiness.com);
  - c. Breitbart News Network (or @breitbart.com);
  - d. Blaze Media (or @blazemedia.com);
  - e. CRTV.com (or @crtv.com);
  - f. The Blaze (or @theblaze.com);
  - g. NewsMax (or @newsmax.com);
  - h. Daily Caller (or @dailycaller.com or @dailycallernewsfoundation.org);
  - i. Daily Wire (or @dailywire.com); or
  - j. Sinclair Broadcast Group (or @sbgi.net)
  
6. Any record of a communication related to the content or timing 2022 Texas Maternal Mortality and Morbidity Review Committee and Department of State Health Services Joint Biennial Report between any employee or representative of DSHS and the following:
  - a. Jonathan F. Mitchell
  - b. Heather Hacker

- c. Mark Lee Dickson
  - d. Joe Pojman
  - e. John Seago
  - f. Operation Save America (or any representative thereof, including but not limited to Rusty Thomas)
  - g. Right to Life of East Texas (or any representative thereof)
  - h. Texas Right to Life (or any representative thereof)
  - i. Texas Public Policy Foundation (or any representative thereof)
  - j. Texas Alliance for Life (or any representative thereof)
  - k. Abolish Abortion Texas (or any representative thereof, including but not limited to Bradley Pierce)
7. All records related to grants submitted by DSHS to the Centers for Disease Control's (CDC) Enhancing Reviews and Surveillance to Eliminate Maternal Mortality (ERASE MM) Program, including but not limited to grant applications, award letters, status reports, final reports, and evaluations.
8. Any record of a communication between DSHS and CDC related to any grants or funding provided by CDC to the State of Texas under the CDC's ERASE MM program, including but not limited to data or findings entered by DSHS into the CDC's Maternal Mortality and Information Application (MMRIA) data portal since September 2020.

### ***Scope of Search***

Unless otherwise specified, this request seeks records dated October 1, 2020 to and including the date of the final response to this request. Please note that, under Texas Government Code section 441.187, "[a] state record may not be destroyed if any . . . open records request . . . or other action involving the record is initiated before the expiration of a retention period . . . until the completion of the action and the resolution of all issues that arise from the action, or until the expiration of the retention period, whichever is later." We therefore ask that you take steps to ensure that no responsive records are destroyed immediately following receipt of this request.

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.

The Public Information Act requires agencies to disclose information, with limited exceptions for information that would harm an interest protected by a specific exemption or where disclosure is prohibited by law. Tex. Gov't Code § 552.022. In the event that the DSHS wishes to withhold any

documents or portions of documents, it must, within ten business days, ask for a decision from the Attorney General about whether that information is within the exception. Tex. Gov't Code § 552.301(a), (b), *Thomas v. Cornyn*, 71 S.W.3d 473, 480 (Tex. App. 2002).

However, we agree to the redaction of information that is subject to mandatory or discretionary exceptions, provided such redactions are clearly labeled on the information we receive, and provided that doing so will not prejudice our ability to request the redacted information in a subsequent request and/or to challenge the appropriateness of the redactions. If the DSHS wishes to withhold any documents in full, it must nonetheless request a decision from the Attorney General; should the Attorney General find that the documents ought to be withheld, we further request a written statement from the Department asserting its wishes to withhold the requested information and a copy of the written communication to the Attorney General asking for a decision on the issue. Tex. Gov't Code § 552.301(d). 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 a searchable, 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 ten business days as required under the Public Information Act. *Id.* § 552.221(d). 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 no decision from the Attorney General is requested and the information required by section 552.301(d), (e-1) is not provided to us within fifteen business days, the information we requested is presumed to be subject to public disclosure and must be released. Tex. Gov't Code § 552.302.

### ***Request for Fee Waiver***

We request a waiver of document search, review, and duplication fees associated with processing records for this request, in accordance with section 552.267.

The requested waiver is in the public interest because providing the copy of the information sought primarily benefits the general public. Records received in response to this request will contribute to the public's understanding of this issue. The disclosure of the records sought here will contribute significantly to understanding of an issue of profound public importance. Democracy Forward also has a demonstrated ability to disseminate information of public interest requested through freedom of information statutes.

Democracy Forward is not filing this request to further any commercial interest. Any information obtained by Democracy Forward as a result of this request will be disclosed at no cost.

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.

If you deny any or all of this request, please cite each specific exemption you feel justifies the refusal to release the information and notify us of the appeal procedures available to us under the law. We reserve the right to initiate legal proceedings for injunctive or declaratory relief or file suit for a writ of mandamus if denied the opportunity to inspect the public records requested. Tex. Gov't Code §§ 552.321, 552.3215

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-day period, please contact me at [jgaeta@democracyforward.org](mailto:jgaeta@democracyforward.org).

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

Sincerely,

*/s/ Joe Gaeta*

Joe Gaeta  
Director of Oversight and Engagement  
Democracy Forward Foundation  
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Washington, DC 20043