

October 18, 2022

VIA Electronic Delivery

Office of the Governor
Public Information Request
General Counsel Division
P.O. Box 12428
Austin, TX 78711
publicrecords@gov.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 midterms and the next biennial legislative session.¹ In an effort to understand and clarify the facts surrounding this delay, Democracy Forward Foundation requests the following records:

1. 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 the Office of the Governor and:
 - a. Any employee or representative of the Texas Department of State Health Services;
 - b. Any employee or representative the of Texas Health and Human Services Commission;
 - c. Any employee or representative of the Office of the Texas Lieutenant Governor;
 - d. Any employee or representative of the Office of the Texas Attorney General; or
 - e. Any member or committee of the Texas State Senate or House or Representatives
2. 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 the Office of the Governor and any employee or representative of the following:
 - a. One America News Network (or @oann.com);

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

- 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)
3. 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 the Office of the Governor and the following:
- a. Jonathan F. Mitchell (jonathan@mitchell.law)
 - b. Heather Hacker
 - c. Mark Lee Dickson (markleedickson@gmail.com)
 - d. Joe Pojman
 - e. John Seago
 - f. Operation Save America (or any representative thereof, including but not limited to Rusty Thomas) (@operationsaveamerica.org)
 - g. Right to Life of East Texas (or any representative thereof) (They only have an organization-wide email available rtletx@gmail.com)
 - h. Texas Right to Life (or any representative thereof) (@texasrighttolife.com)
 - i. Texas Public Policy Foundation (or any representative thereof) (@texaspolicy.com)
 - j. Texas Alliance for Life (or any representative thereof) (@texasallianceforlife.org)
 - k. Abolish Abortion Texas (or any representative thereof, including but not limited to Bradley Pierce) (@abolishabortiontx.com)
 - l. American Association of Pro-Life Obstetricians and Gynecologists (@aaplog.org)
 - m. Christian Medical & Dental Associations (@cmda.org)
4. 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 the Office of the Governor and any employee or representative of the Texans for Greg Abbott campaign (@GregAbbott.com).

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 Office of the Governor 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 Office of the Governor 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 Committee 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.

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
P.O. Box 34553
Washington, DC 20043