

December 2, 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 (2022), Democracy Forward Foundation (DFF or Democracy Forward), submits this request for records.

***Background***

At the September 18, 2020, Maternal Mortality and Morbidity Review Committee (MMMRC) meeting, a Department of Health and Human Services (DSHS) official stated that the MMMRC Legislative Biennial Report (Report) had been delayed due to COVID-19. The meeting minutes state that DSHS “asked for an extension”<sup>1</sup> and that the “extension to delay the submission of the report until December was granted.”<sup>2</sup>

***Records Requested***

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 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 (and their staffs) related to the date

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<sup>1</sup> *Texas Maternal Mortality and Morbidity Review Committee Meeting Minutes 2*, Tex. Dep't of State Health Servs. (Dec. 11, 2020), available at [https://www.dshs.texas.gov/uploadedFiles/Content/Family\\_and\\_Community\\_Health/mch/pdf/MMRC\\_APPROVED\\_2020-12-11\\_Minutes.pdf](https://www.dshs.texas.gov/uploadedFiles/Content/Family_and_Community_Health/mch/pdf/MMRC_APPROVED_2020-12-11_Minutes.pdf).

<sup>2</sup> *Texas Maternal Mortality and Morbidity Review Committee Meeting Minutes 4*, Tex. Dep't of State Health Servs. (Sept. 18, 2020), available at [https://www.dshs.texas.gov/uploadedFiles/Content/Family\\_and\\_Community\\_Health/mch/pdf/MMRC\\_APPROVED\\_2020-9-18\\_Minutes.pdf](https://www.dshs.texas.gov/uploadedFiles/Content/Family_and_Community_Health/mch/pdf/MMRC_APPROVED_2020-9-18_Minutes.pdf).

of publication of the 2020 MMMRC Report or any extension of the submission date of the 2020 Texas Maternal Mortality and Morbidity Review Committee and Department of State Health Services Joint Biennial Report.

2. Any reports, letters, notes, meeting meetings, or other documents related to the date of publication of the 2020 MMMRC Report or any extension of the submission date of the 2020 Texas Maternal Mortality and Morbidity Review Committee and Department of State Health Services Joint Biennial Report.
3. Any record of a communication to or from any employee or representative of DSHS and any employee or representative of the Centers for Disease Control related to the date of publication of the 2020 MMMRC Report or any extension of the submission date of the 2020 Texas Maternal Mortality and Morbidity Review Committee and Department of State Health Services Joint Biennial Report.
4. Any record of communications related to the timing of the release of the 2020 Texas Maternal Mortality and Morbidity Review Committee and Department of State Health Services Joint Biennial Report between or among any employee or representative of DSHS and/or 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 (@acog.org);
  - b. Texas Association of Obstetricians and Gynecologists;
  - c. Texas Nurses Association (@texasnurses.org);
  - d. Texas Section of the Association of Women's Health, Obstetric and Neonatal Nurses;
  - e. Texas Academy of Family Physicians (@tafp.org);
  - f. Texas Pediatric Society (@txpeds.org);
  - g. Consortium of Texas Certified Nurse-Midwives (@midwivesoftexas.org);
  - h. Association of Texas Midwives (@texasmidwives.org);
  - i. Texas Hospital Association (@tha.org);
  - j. Texas Medical Association (@texmed.org); and
  - k. Texas Public Health Association.

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

Unless otherwise specified, this request seeks records dated between January 1, 2020 and December 31, 2020.

In searching for responsive records, 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. However, please exclude publicly available materials such as news clips that mention otherwise responsive search terms, unless the records contain additional discussion or commentary from State employees or contacts at the organizations listed above.

The Public Information Act 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. Tex. Gov't Code § 552.022. In the event that the DSHS wishes to withhold any documents or portions of documents, it must ask for a decision from the Attorney General about whether that information is within the exception. Tex. Gov't Code § 552.301(a), *Thomas v. Cornyn*, 71 S.W.3d 473, 480 (Tex. App. – Austin 2002, no pet.). Should the Attorney General find that the documents ought to be withheld, we further request a written statement from the DSHS 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 10 business days as required under Texas Government Code section 552.221(c). If all 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 sections 552.301(d)–(e-1) is not provided to us within 10 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***

Democracy Forward requests a waiver of document search, review, and duplication fees associated with processing records for this request, in accordance with Texas Government Code 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