



April 30, 2020

**Via Email Only**

Department of Attorney General  
Attn. FOIA Coordinator  
P.O. Box 30754  
Lansing, MI 48909  
[AG-FOIA@mi.gov](mailto:AG-FOIA@mi.gov)

**Via Email Only**

Michigan Department of Treasury  
Attn. FOIA Coordinator  
P.O. Box 30716  
Lansing, MI 48909  
[MIStateTreasurer@michigan.gov](mailto:MIStateTreasurer@michigan.gov)

**Via Website Only**

Michigan Dep't of Health and Human  
Services,  
ATTN: FOIA Coordinator,  
P.O. Box 30195,  
Lansing, Michigan, 48909

**Via Website Only**

Dep't of Licensing and Regulatory Affairs  
c/o FOIA Coordinator  
Ottawa Building, 4<sup>th</sup> Floor  
P.O. Box 30004  
Lansing, MI 48909

**RE: FOIA Request for: Records Regarding Communications Concerning Executive Order 2020-17 (COVID-19) between or among the Department of the Attorney General, the Michigan Department of Treasury, the Michigan Department of Health and Human Services and the Michigan Department of Licensing and Regulatory Affairs including but not limited to any emails ending in prochoiceamerica.org, ppmi.org, emilyslist.org, inghamcountymichiganparty.com, gretchenwhitmer.com.**

Dear FOIA Officers:

This letter is a request ("Request") in accordance with the Freedom of Information Act, MCL 15.231 *et seq.*

The Request is made by the American Center for Law and Justice (ACLJ)<sup>1</sup> on behalf of itself and more than 137,000 of its members (of whom 5,000 reside in Michigan) who have signed a petition to ban elective abortions during the pandemic<sup>2</sup> and who object to, and demand accountability for,

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<sup>1</sup> The ACLJ is a not-for-profit 501(c)(3) organization dedicated to the defense of constitutional liberties secured by law. The ACLJ regularly monitors governmental activity concerning abortion and works to inform the public of such affairs. The ACLJ and its global affiliated organizations are committed to ensuring governmental accountability and the ongoing viability of freedom and liberty in the United States and around the world.

<sup>2</sup> *Shut Down Planned Parenthood's Abortions*, ACLJ, <https://aclj.org/pro-life/shut-down-planned-parenthoods-abortion/> (last visited April 21, 2020).



the inclusion of abortion as a an essential service in Executive Order 2020-17, which will allow abortion during a pandemic, while all other elective procedures are halted.

To summarize, this request seeks records regarding Executive Order 2020-17 (COVID-19) among the Department of the Attorney General, the Michigan Department of Treasury, the Michigan Department of Health and Human Services and the Michigan Department of Licensing and Regulatory Affairs, including but not limited to any emails ending in prochoiceamerica.org, ppmi.org, emilyslist.org, inghamcountymunicipalparty.com, gretchenwhitmer.com, aol.com, yahoo.com and gmail.com.

### **Background**

On March 20, 2020, Governor Whitmer issued Executive Order 2020-17 (Covid-19) restricting all non-essential medical and dental procedures in the State of Michigan until the State of Emergency declared in Executive Order 2020-4 is no longer in effect. The Order defines a non-essential procedure as any procedure that “is not necessary to address a medical emergency or to preserve the health and safety of a patient, as determined by a licensed medical provider.” EO 2020-17, ¶1 It specifically permits “pregnancy-related visits and procedures; labor and delivery.” *Id.* at ¶2.

The Lansing State Journal reported on March 25, 2020:

“It was explicit in the order that pregnancy-related care is included,” said Lori Carpentier, Planned Parenthood of Michigan president and CEO. “You can rest assured we didn’t leave it up to our own interpretation.”<sup>3</sup>

However, Planned Parenthood of Michigan provides neither emergency medical care nor care preserving the health and safety of a patient. For example, the website of its Lansing Health Center says:

Symptoms of COVID-19 (coronavirus) include fever, cough, sore throat, and difficulty breathing. ANYONE WITH THESE SYMPTOMS WILL NOT BE ALLOWED TO ENTER THE HEALTH CENTER. . . .

If you have any of these symptoms, have traveled to an affected area, or have been exposed to a person with a confirmed case, please do not come in to the health center. Call 800-230-7526 to reschedule your appointment. Contact your primary care provider for further assistance.<sup>4</sup>

How “pregnancy-related care” came to include abortion and how that was not left to “interpretation” under EO 2020-17 during this pandemic – when the clinics are apparently not providing COVID-19-related healthcare – is a question of public concern and the rationale of these Michigan FOIA requests.

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<sup>3</sup>Thompson, *Michigan clinics still providing abortion services during coronavirus crisis*, Lansing State Journal (March 25, 2020) available at <<https://www.lansingstatejournal.com/story/news/2020/03/25/michigan-clinics-still-providing-abortion-services-coronavirus/5080860002/>> (accessed April 27, 2020).

<sup>4</sup>Planned Parenthood, *Lansing Health Center of Lansing, Michigan*, <https://www.plannedparenthood.org/health-center/michigan/lansing/48912/lansing-health-center-2785-90630> (accessed April 27, 2020).

## REQUESTS

For purposes of this Request, all terms used herein have the meaning given pursuant to MCL 15.231, *et seq.* Specifically:

- The term “Public body” means all a state officer, employee, agency, department, division, bureau, board, commission, council, authority, or other body in the executive branch of the state government, an agency, board, commission, or council in the legislative branch of the state government., a county, city, township, village, intercounty, intercity, or regional governing body, council, school district, special district, or municipal corporation, or a board, department, commission, council, or agency thereof, any other body that is created by state or local authority or is primarily funded by or through state or local authority, except that the judiciary, including the office of the county clerk and its employees when acting in the capacity of clerk to the circuit court, is not included in the definition of public body.<sup>5</sup>
- The term, “Public record” means a writing prepared, owned, used, in the possession of, or retained by a public body in the performance of an official function, from the time it is created.<sup>6</sup>

For purposes of each request described herein, the record requested includes, but is not limited to, any text messages, any record located on backup tapes, archives, any other recovery, backup, storage or retrieval system, state-operated electronic mail or message accounts, non-state-operated electronic mail or message accounts, personal electronic mail or message accounts, agency servers, or non-agency servers, and personal servers, as well as any electronic mail or message carbon copied to agency account recipients, any electronic mail or message carbon copied to non-agency account recipients, any electronic mail or message forwarded to agency account recipients, any electronic mail or message forwarded to non-agency account recipients, and attachments to any electronic mail or message

**For purposes of this Request, and unless otherwise indicated, the timeframe of records requested herein is December 1, 2019, through the date of receipt of this Request.**

Pursuant to the Michigan Freedom of Information Act, Freedom of Information Act, MCL 15.231 *et seq.*, the ACLJ requests an opportunity to inspect or obtain copies of the following records:

1. All records prepared, generated, forwarded, transmitted, sent, shared, saved, received, or reviewed by any appointee, staff, employee or agent of the Department of the Attorney General, the Michigan Department of Treasury, the Michigan Department of Health and Human Services and the Michigan Department of Licensing and Regulatory Affairs that are or concern in any way communications with any person or organization advocating for the inclusion of abortion or “pregnancy related visits and procedures” under Executive Order 2020-17.
2. All records prepared, generated, forwarded, transmitted, sent, shared, saved, received, or reviewed by any appointee, staff, employee or agent of the Department of the Attorney General, the Michigan Department of Treasury, the Michigan Department of Health and Human Services and the Michigan Department of Licensing and Regulatory Affairs that are or concern in any way

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<sup>5</sup> MCL 15.232(h)

<sup>6</sup> MCL 15.232(i)

communications with any person or organization advocating for the inclusion of abortion or “pregnancy related visits and procedures” under Executive Order 2020-17, its implementation, or the language of any provision contained in the Order at any stage of its development.

3. All records prepared, generated, forwarded, transmitted, sent, shared, saved, received, or reviewed by any appointee, staff, employee or agent of the Department of the Attorney General, the Michigan Department of Treasury, the Michigan Department of Health and Human Services and the Michigan Department of Licensing and Regulatory Affairs that are or concern in any way communications with any person or organization advocating for the inclusion of abortion or “pregnancy related visits and procedures” under Executive Order 2020-17, its implementation, or the language of any provision contained in the Order at any stage of its development. Such advocacy shall include, but is not limited to, all records that contains the following: prochoiceamerica.org, ppmi.org, emilyslist.org, inghamcountymunicipalparty.com, gretchenwhitmer.com, aol.com, yahoo.com, and gmail.com.

4. All records prepared, generated, forwarded, transmitted, sent, shared, saved, received, or reviewed by any appointee, staff, employee or agent of the Department of the Attorney General, the Michigan Department of Treasury, the Michigan Department of Health and Human Services and the Michigan Department of Licensing and Regulatory Affairs that are or concern in any way communications with any person or organization, and that concern or regard the impact that inclusion of abortion or “pregnancy related visits and procedures” under Executive Order 2020-17 could, would, or should have on the health, safety or wellbeing of any woman.

6. All records prepared, generated, forwarded, transmitted, sent, shared, saved, received, or reviewed by any Michigan public body or agency that concern or in any way discuss the Executive appointee, staff, employee or agent, that and that concern or regard the impact that inclusion of abortion or “pregnancy related visits and procedures” under Executive Order 2020-17 could, would, or should have on the health, safety or wellbeing of any woman.

### **Conclusion**

If this Request is denied in whole or in part, ACLJ requests that, within the time requirements imposed by the FOIA, the custodian agency support all denials by reference to specific FOIA exemptions and provide any statutorily or judicially required explanatory information.

As the Legislature has recognized:

It is the public policy of this state that all persons, except those persons incarcerated in state or local correctional facilities, are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and public employees, consistent with this act. The people shall be informed so that they may fully participate in the democratic process.<sup>7</sup>

Accordingly, and with the legislatively pronounced spirit of the FOIA in mind, the ACLJ requests an opportunity to inspect or obtain copies of the public records described herein.

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<sup>7</sup> MCL 15.231.

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As you know, the Michigan Freedom of Information Act requires a response time of five (5) business days, as set forth in MCL 15.235(5)(2). If access to the records requested herein by the ACLJ will take longer than the five (5) business days, pursuant to MCL 15.235(5)(2)(d), please contact the undersigned to advise when copies or the opportunity to inspect will be made available.

If you deny any or all of this request, please cite each specific exemption upon which you base the refusal to release the information in whole or in part, and notify me of any specific appeal procedures available by law.

Thank you for your prompt consideration of this Request. Please furnish all applicable records and direct any responses to:

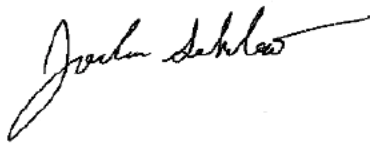
Jordan Sekulow, Executive Director  
Abigail Southerland, Senior Litigation Counsel  
Benjamin P. Sisney, Senior Litigation Counsel  
John A. Monaghan, Senior Litigation Counsel  
American Center for Law and Justice

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I affirm that the foregoing request and attached documentation are true and correct to the best of my knowledge and belief.

Respectfully submitted,



Jordan Sekulow  
Executive Director



Abigail Southerland  
Senior Litigation Counsel



Benjamin P. Sisney  
Senior Litigation Counsel



John A Monaghan  
Senior Litigation Counsel