



April 22, 2020

Via USPS and Email

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RE: FOIA Request for: Records Regarding Communications Concerning the inclusion of “reproductive health care providers” in Executive Order 2020-10 (also referred to as: EXECUTIVE ORDER IN RESPONSE TO COVID-19 (COVID-19 EXECUTIVE ORDER NO. 8)) Between the Governor and/or Other Executive Chamber Employees, the Lieutenant Governor, the Illinois Department of Public Health, the Illinois Attorney General, Illinois NARAL, Personal PAC, and Planned Parenthood Illinois Action.

Dear FOIA Officers:

This letter is a request (“Request”) in accordance with the Illinois Freedom of Information Act (“FOIA”), 5 Ill. Comp. Stat. Ann. 140/1, *et seq.*

The Request is made by the American Center for Law and Justice (ACLJ)¹ on behalf of itself and more than 137,000 of its members (nearly 4,000 of whom reside in Illinois) who have signed a petition to ban elective abortions during the pandemic² and who object to, and demand

¹ 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.

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



accountability for, the inclusion of reproductive healthcare providers in Executive Order 2020-10, which will allow abortion during a pandemic, while all other elective procedures are halted.

To summarize, this Request seeks records regarding communications concerning Executive Order 2020-10 between Governor JB Pritzker and/or Lt. Governor Juliana Stratton (or their staff), and the Illinois state legislature, the Illinois Department of Public Health, the Illinois Attorney General, Illinois NARAL, Personal PAC, and Planned Parenthood Illinois Action. This Request also seeks any other records of which the Executive Offices or the Department of Public Health are custodians which concern the inclusion of reproductive healthcare providers in Executive Order 2020-10.

Background

On March 20, 2020, Governor Pritzker issued Executive Order 2020-10 (Covid-19 Executive Order No. 8) closing all non-essential businesses in the State of Illinois until April 30, 2020. The Executive Order specifically permits “reproductive health care providers” to remain in operation.³

It does not stop all elective surgeries but the Illinois Department of Public Health has recommended canceling all elective surgeries in order to “immediately decompress the healthcare system during the COVID-19 response ‘Elective’ is defined as those procedures that are pre-planned by both the patient and the physician that are advantageous to the patient but are NOT urgent or emergent.”⁴

The reproductive healthcare providers are referring potential COVID-19 patients to other healthcare providers. For example, the website of Planned Parenthood of Illinois says:

We will continue to follow the most current safety guidelines issued by the U.S. Centers for Disease Control and Prevention and the Illinois Department of Public Health. We encourage everyone to observe proper precautions to protect against COVID-19.

As always, consult your health care provider if you have flu-like symptoms and are very sick or believe you may be at risk for serious complications from an underlying condition.⁵

As a further example, the website of Family Planning Associates states:

Call us at 312-707-8988, if you have a fever of 100.0 or more, a cough, difficulty breathing, muscle pains throughout your body, and/or diarrhea or if you have been

³ Exec. Order 2020-10, ¶ 7, 44 Ill. Reg. 5857 (Mar. 20, 2020).

⁴ ILL. DEP’T OF PUB. HEALTH, COVID-19 – ELECTIVE SURGICAL PROCEDURE GUIDANCE (2020), www.dph.illinois.gov/topics-services/diseases-and-conditions/diseases-a-z-list/coronavirus/health-care-providers/elective-procedures-guidance.

⁵ *Stay Smart. Stay Healthy*, PLANNED PARENTHOOD OF ILL., <https://www.plannedparenthood.org/planned-parenthood-illinois/stay-smart-stay-healthy> (last visited Apr. 21, 2020).

exposed to the coronavirus (COVID-19) as we will not be able to see you as a patient at this time.⁶

How the elective services and surgeries provided by those referenced above and other reproductive healthcare providers came to be given a special status under the Executive Order during this pandemic – while they are apparently not providing COVID-19-related healthcare – is a question of public concern and the rationale of these Illinois FOIA requests.

REQUESTS

For purposes of this Request, all terms used herein have the meaning given pursuant to 5 Ill. Comp. Stat. Ann. 140/1, *et seq.* Specifically:

- The term “Public body” means all legislative, executive, administrative, or advisory bodies of the State, state universities and colleges, counties, townships, cities, villages, incorporated towns, school districts and all other municipal corporations, boards, bureaus, committees, or commissions of this State, any subsidiary bodies of any of the foregoing including but not limited to committees and subcommittees.⁷
- The term, “Public records” means all records, reports, forms, writings, letters, memoranda, books, papers, maps, photographs, microfilms, cards, tapes, recordings, electronic data processing records, electronic communications, recorded information and all other documentary materials pertaining to the transaction of public business, regardless of physical form or characteristics, having been prepared by or for, or having been or being used by, received by, in the possession of, or under the control of any public body.⁸

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 Illinois Freedom of Information Act, 5 Ill. Comp. Stat. Ann. 140/1, *et seq.*, the ACLJ requests an opportunity to inspect or obtain copies of the following records:

⁶ *The Coronavirus COVID-19 Outbreak*, FAMILY PLANNING ASSOCS., <https://www.fpachicago.com/covid-19/> (last visited Apr. 21, 2020).

⁷ 5 ILL. COMP. STAT. ANN. 140/2(a) (LexisNexis, Lexis Advance through P.A. 101-629 of the 2019 Regular Session of the 101st General Assembly).

⁸ *Id.* § 140/2(c) (Lexis Advance).

1. All records prepared, generated, forwarded, transmitted, sent, shared, saved, received, or reviewed by Governor JB Pritzker or his staff, Lt. Governor Juliana Stratton or her staff, or any other Executive Chamber appointee, staff, employee or agent, that are or concern in any way communications with any person or organization advocating for the inclusion of reproductive healthcare providers in Executive Order 2020-10.
2. All records prepared, generated, forwarded, transmitted, sent, shared, saved, received, or reviewed by any Department of Public Health appointee, staff, employee or agent, that are or concern in any way communications with any person or organization advocating for inclusion of reproductive healthcare providers in Executive Order 2020-10, its implementation, or the language of any provision contained in the Order at any stage of its development in the Executive Chamber.
3. All records prepared, generated, forwarded, transmitted, sent, shared, saved, received, or reviewed by Governor JB Pritzker or his staff, Lt. Governor Juliana Stratton or her staff, or any other Executive appointee, staff, employee or agent, that are from or regard any person at or on behalf of any Planned Parenthood entity; the Illinois NARAL, Personal PAC, and Planned Parenthood Illinois Action – and which relate to Executive Order 2020-10 or its decree in any way.
4. All records prepared, generated, forwarded, transmitted, sent, shared, saved, received, or reviewed by Governor JB Pritzker or his staff, Lt. Governor Juliana Stratton or her staff, or any other Executive appointee, staff, employee or agent, that concern or regard in any way the impact that the inclusion of “reproductive health services” in Executive Order 2020-10 could, would, or should have on the health, safety or wellbeing of any woman.
5. All records prepared, generated, forwarded, transmitted, sent, shared, saved, received, or reviewed by any Department of Public Health appointee, staff, employee or agent, that concern or regard in any way the impact that Executive appointee, staff, employee or agent, that concern or regard in any way the impact that the inclusion of “reproductive health services” in Executive Order 2020-10 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 Illinois public body or agency that concern or in any way discuss the Executive appointee, staff, employee or agent, that concern or regard in any way the impact that the inclusion of “reproductive health services” in Executive Order 2020-10 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 General Assembly has recognized:

Pursuant to the fundamental philosophy of the American constitutional form of government, it is declared to be the public policy of the State of Illinois that all persons are entitled to full and complete information regarding the affairs of government and the official acts and policies of those who represent them as public officials and public employees consistent with the terms of this Act. Such access is

necessary to enable the people to fulfill their duties of discussing public issues fully and freely, making informed political judgments and monitoring government to ensure that it is being conducted in the public interest.

The General Assembly hereby declares that it is the public policy of the State of Illinois that access by all persons to public records promotes the transparency and accountability of public bodies at all levels of government. It is a fundamental obligation of government to operate openly and provide public records as expediently and efficiently as possible in compliance with this Act.⁹

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.

If there are any fees for searching or copying these records, please inform the ACLJ if the cost will exceed \$500. However, the ACLJ respectfully requests a waiver of all fees because the disclosure of the requested information is in the public interest and will contribute significantly to the public's understanding of the process leading to the inclusion of "reproductive health services" in Executive Order 2020-10, as well as the organizations influencing its language and decree. The decree Executive Order 2020-10 is unquestionably the subject of significant media reporting nationwide. The ACLJ will disseminate the records requested to the public via multiple media platforms and, as such, the records are requested for news gathering purposes. This information is not being sought for commercial purposes.

As you know, the Illinois Freedom of Information Act requires a response time of five (5) business days, as set forth in § 140(3)(d). If access to the records requested herein by the ACLJ will take longer than the five (5) business days, pursuant to § 140(3) (f), 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
American Center for Law and Justice

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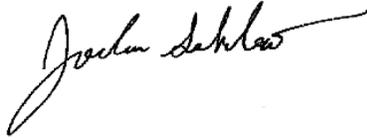
⁹ *Id.* § 140/1 (Lexis Advance).

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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
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Benjamin P. Sisney
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John A. Monaghan
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