



May 22, 2020

Chief, Freedom of Information/Privacy Acts Office
U.S. Small Business Administration
409 Third St. SW, eighth floor
Washington, DC 204169
FOIA@sba.gov

RE: FOIA Request for Records of Planned Parenthood Affiliates Obtaining Cares Act Paycheck Protection Program Funds From the SBA

To Who it May Concern:

This letter is a request (“Request”) in accordance with the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, and the corresponding department/agency implementing regulations.

The Request is made by the American Center for Law and Justice (“ACLJ”)¹ on behalf of its members. The ACLJ respectfully seeks expedited processing and a waiver of fees related to this Request as set forth in an accompanying memorandum.

To summarize, this Request seeks records pertaining to the Small Business Administration (SBA) issuing Paycheck Protection Program funds to as many as 37 affiliates of Planned Parenthood, totaling as much as approximately \$80 million, and specifically, any records of Planned Parenthood affiliates’ representations made to the SBA in order to secure the funds.

Background

Pursuant to SBA FOIA regulation 13 C.F.R. §102.3(b), this Background “describe[s] the records sought in sufficient detail to enable agency personnel to locate them with a reasonable amount of effort,” and provides “specific information that may help the component in identifying the requested records, such as the date, title or name, author, recipient, subject matter of the record, case number, file designation, reference number, the timeframe for which the records are sought,

¹The 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 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.



the office that created the records, or any other information that will assist the component in locating documents responsive to the request.”

The Coronavirus Aid, Relief, and Economic Security (CARES) Act was signed in to law on March 27, 2020. As described by the U.S. Department of the Treasury:

The Paycheck Protection Program established by the CARES Act, is implemented by the Small Business Administration with support from the Department of the Treasury. This program provides small businesses with funds to pay up to 8 weeks of payroll costs including benefits. Funds can also be used to pay interest on mortgages, rent, and utilities.

The Paycheck Protection Program [PPP] prioritizes millions of Americans employed by small businesses by authorizing up to \$349 billion toward job retention and certain other expenses.

Small businesses and eligible nonprofit organizations, Veterans organizations, and Tribal businesses described in the Small Business Act, as well as individuals who are self-employed or are independent contractors, are eligible if they also meet program size standards.²

According to a breaking news report by *FoxNews.com*, “Thirty-seven Planned Parenthood affiliates applied for and received a total of \$80 million in loans from the Paycheck Protection Program (PPP).”³ Planned Parenthood’s website identifies a total of 49 affiliates.⁴ That means approximately 75% of Planned Parenthood’s affiliates received the PPP funds and that each affiliate that applied received an average of over \$2 million. According to the report:

The Small Business Administration (SBA) is reaching out to each involved Planned Parenthood affiliate explaining that affiliates of larger organizations with more than 500 employees aren't eligible for PPP distributions, Fox News is told. The Planned Parenthood Federation of America (PPFA) alone has had more than 600 employees. A Planned Parenthood affiliate in Metropolitan Washington (PPMW), for example, will receive a letter stating that although self-certified that it was eligible for a \$1,328,000 PPP loan in accordance with the SBA's affiliation rules, it will need to return the money.⁵

Planned Parenthood affiliates received massive payments. For example, “[t]he Planned Parenthood of Orange and San Bernardino Counties received a \$7.5 million loan – the largest granted to the organization’s affiliates.”⁶

² The CARES Act Provides Assistance to Small Businesses, U.S. Dept. of the Treasury, <https://home.treasury.gov/policy-issues/cares/assistance-for-small-businesses>.

³ Gregg Re & Alex Pfeiffer, *Planned Parenthood affiliates improperly applied for and received \$80 million in coronavirus stimulus funds, feds say*, FOXNEWS.COM (May 19, 2020), <https://www.foxnews.com/politics/planned-parenthood-coronavirus-stimulus-money-ppp-return>.

⁴ Planned Parenthood, About Us, <https://www.plannedparenthood.org/about-us/contact-us>.

⁵ Gregg Re & Alex Pfeiffer, *Planned Parenthood affiliates improperly applied for and received \$80 million in coronavirus stimulus funds, feds say*, FOXNEWS.COM (May 19, 2020), <https://www.foxnews.com/politics/planned-parenthood-coronavirus-stimulus-money-ppp-return>.

⁶ Mark Moore, *SBA Tells Planned Parenthood to Return \$80M in Stimulus Funds*, NYPost.com (May 20, 2020), <https://nypost.com/2020/05/20/sba-tells-planned-parenthood-to-return-80m-from-stimulus/>.

Multiple United States Senators have spoken out and demanded an investigation and that the money be returned. According to a press release statement by Senator Marco Rubio, Chairman of the Senate Committee on Small Business and Entrepreneurship:

“There is no ambiguity in the legislation that passed or public record around its passage that organizations such as Planned Parenthood, whose parent organization has close to half a billion dollars in assets, is not eligible for the Paycheck Protection Program,” Chairman Rubio said. “Those funds must be returned immediately. Furthermore, the SBA should open an investigation into how these loans were made in clear violation of the applicable affiliation rules and if Planned Parenthood, the banks, or staff at the SBA knowingly violated the law all appropriate legal options should be pursued.”⁷

According to Senator James Lankford, “every dollar Planned Parenthood took from PPP was a dollar that did not get to legitimate small businesses.”⁸ FoxNews.com quoted Senator Lankford as follows:

“With an annual budget of over one billion dollars and the explicit Small Business Administration affiliation rules made it clear that Planned Parenthood was not and is not eligible for the Paycheck Protection Program,” Lankford wrote. “Like other large organizations that returned monies they were not eligible for, Planned Parenthood should immediately repay the American people the money they took from deserving small businesses and non-profits.”⁹

According to Senator Josh Hawley, “The money needs to be recovered and if anybody knowingly falsified applications, they need to be prosecuted.”¹⁰ Senator Hawley went further in a letter to the SBA:

“Planned Parenthood is not a small business. It is a multi-billion-dollar company. In the fiscal year ending last June, Planned Parenthood had \$2.3 billion in assets and nearly \$2 billion in revenue. The year before, Planned Parenthood paid its CEO more than \$1 million. And now, Planned Parenthood has diverted \$80 million from actual small businesses during a global pandemic even though Planned Parenthood knew it was ineligible for this program,” said Senator Hawley. “The ease with which Planned Parenthood was able to unlawfully divert \$80 million should concern everyone.”¹¹

⁷ Rubio Statement on Planned Parenthood Improperly Receiving PPP Loans (May 19, 2020), <https://www.rubio.senate.gov/public/index.cfm?p=Press-Releases&id=0E282CEC-0AD2-446F-BD50-4518B31686D5>.

⁸ Gregg Re & Alex Pfeiffer, *Planned Parenthood affiliates improperly applied for and received \$80 million in coronavirus stimulus funds, feds say*, FOXNEWS.COM (May 19, 2020), <https://www.foxnews.com/politics/planned-parenthood-coronavirus-stimulus-money-ppp-return>.

⁹ *Id.*

¹⁰ *Id.*

¹¹ Senator Hawley Asks SBA to Explain Planned Parenthood Loans Scandal (May 20, 2020), <https://www.hawley.senate.gov/senator-hawley-asks-sba-explain-planned-parenthood-loans-scandal>.

Further:

The Coronavirus Aid, Relief, and Economic Security (CARES) Act prohibits Planned Parenthood from receiving PPP funds as Planned Parenthood's own documents state that each organization is a "Planned Parenthood Affiliate." Planned Parenthood therefore has about 16,000 employees in total, more than 30 times higher than the limit for the Paycheck Protection Program.¹²

Senator Rick Scott weighed in as well: "Yet another example of the #PPP program being misused. Florida's taxpayers should not be footing to bail out a huge organization like Planned Parenthood. This money should be returned immediately."¹³

On Wednesday, May 20, 2020, Senate Majority Leader Mitch McConnell made his position clear: "Disrespecting human life is their central mission. . . . It goes without saying: The money must be sent back immediately. Right now."¹⁴

Records Requested

For purposes of this Request, the term "record" is any information that qualifies under 5 U.S.C. § 552(f), and includes, but is not limited to, the original or any full, complete and unedited copy of any log, chart, list, memorandum, note, correspondence, writing of any kind, policy, procedure, guideline, agenda, handout, report, transcript, set of minutes or notes, video, photo, audio recordings, or other material. The term "record" also includes, but is not limited to, all relevant information created, stored, received or delivered in any electronic or digital format, e.g., electronic mail, instant messaging or Facebook Messenger, iMessage, text messages or any other means of communication, and any information generated, sent, received, reviewed, stored or located on a government *or private* account or server, consistent with the holdings of *Competitive Enterprise Institute v. Office of Science and Technology Policy*, No. 15-5128 (D.C. Cir. July 5, 2016) (rejecting agency argument that emails on private email account were not under agency control, and holding, "If a department head can deprive the citizens of their right to know what his department is up to by the simple expedient of maintaining his departmental emails on an account in another domain, that purpose is hardly served.").

For purposes of this Request, the term "briefing" includes, but is not limited to, any meeting, teleconference, electronic communication, or other means of gathering or communicating by which information was conveyed to one or more person(s). For purposes of this Request, all sources, documents, letters, reports, briefings, articles and press releases cited in this Request are incorporated by reference as if fully set forth herein.

For purposes of this Request, and unless otherwise indicated, the timeframe of records requested herein is March 1, 2020, through the date this FOIA request is processed.

¹² *Id.*

¹³ Gregg Re & Alex Pfeiffer, *Planned Parenthood affiliates improperly applied for and received \$80 million in coronavirus stimulus funds, feds say*, FOXNEWS.COM (May 19, 2020), <https://www.foxnews.com/politics/planned-parenthood-coronavirus-stimulus-money-ppp-return>.

¹⁴ <https://twitter.com/SBAList/status/1263112193098289152>.

Pursuant to FOIA, 5 U.S.C. § 552, ACLJ hereby requests that the SBA respond to the following numbered requests and produce all responsive records:

1. All records concerning or relating in any manner to any Planned Parenthood affiliate's application for Paycheck Protection Program funds, including but not limited to any application, information or material provided to the SBA by any Planned Parenthood affiliate, and any communication from or with any representative of any Planned Parenthood organization (e.g., Planned Parenthood Federation of America, Planned Parenthood Action Fund, etc.).
2. All records concerning or relating in any manner to any Planned Parenthood affiliate's application for Economic Injury Disaster Loans, including but not limited to any application, information or material provided to the SBA by any Planned Parenthood affiliate, and any communication from or with any representative of any Planned Parenthood organization (e.g., Planned Parenthood Federation of America, Planned Parenthood Action Fund, etc.).
3. All records concerning or relating in any manner to any organization providing abortion services which applied for Paycheck Protection Program funds, including but not limited to any application, information or material provided to the SBA by any such organization, and any communication from or with any representative of any Planned Parenthood organization (e.g., Planned Parenthood Federation of America, Planned Parenthood Action Fund, etc.).
4. All records concerning or relating in any manner to any organization providing abortion services which applied for Economic Injury Disaster Loans, including but not limited to any application, information or material provided to the SBA by any such organization.
5. To the extent construed as not concerning or relating to any application for Paycheck Protection Funds or Economic Injury Disaster Loans actually made by a Planned Parenthood affiliate, all records of any communication from or with (a) any Planned Parenthood affiliate or representative of any Planned Parenthood organization (e.g., Planned Parenthood Federation of America, Planned Parenthood Action Fund, etc.), or (b) any other for profit or not for profit organization that provides abortion.

CONCLUSION

If this Request is denied in whole or in part, ACLJ requests that, within the time requirements imposed by FOIA, you support all denials by reference to specific FOIA exemptions and provide any judicially required explanatory information, including but not limited to, a *Vaughn* Index.

Moreover, as explained in an accompanying memorandum, the ACLJ is entitled to expedited processing of this Request as well as a waiver of all fees associated with it. The ACLJ reserves the right to appeal a decision to withhold any information sought by this request and/or to deny the separate application for expedited processing and waiver of fees.

May 22, 2020

Page 6 of 6

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
American Center for Law and Justice



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

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Jordan Sekulow".

Jordan Sekulow
Executive Director

A handwritten signature in cursive script, appearing to read "Abigail L. Southerland".

Abigail Southerland
Senior Litigation Counsel

A handwritten signature in cursive script, appearing to read "Benjamin P. Sisney".

Benjamin P. Sisney
Senior Litigation Counsel