



State of California
Office of the Attorney General

XAVIER BECERRA
ATTORNEY GENERAL

February 21, 2020

VIA ELECTRONIC DELIVERY AND CERTIFIED U.S. MAIL

Secretary Alex M. Azar II
U.S. Department of Health and Human Services
Hubert H. Humphrey Building, Room 716G
200 Independence Avenue SW
Washington, DC 20201
Email: FOIARequest@HHS.gov

RE: Freedom of Information Act Request

Dear Secretary Azar:

I write to request documents pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552, related to the U.S. Department of Health and Human Services (HHS) Office for Civil Rights' Notice of Violation (hereinafter "the Notice"), issued on January 24, 2020. With any HHS decision, but particularly one of this magnitude, there must be transparency so that affected parties can understand and assess the potential consequences. I write today seeking such transparency.

As the Attorney General of California, I have a constitutional duty to protect over 39 million Californians, including over 20 million women, by safeguarding their health and safety, and defending the State's laws. Cal. Const., art. V, § 13. I have profound concerns about any efforts to restrict or burden California residents' rights to access all healthcare services. If, as threatened, HHS claws back its federal funding, there will be significant negative impacts on our residents, including women, LGBTQ people; and on numerous entities that receive federal funding to provide important benefits and services for California's residents.

Pursuant to FOIA, I hereby request disclosure of certain records regarding the Notice. This letter describes: (1) the records requested and (2) our request for a fee waiver for production of these records.



Request for Records

This request seeks all records, as described below, as that term has been defined by FOIA and interpreted by the courts (e.g., 5 U.S.C. § 552(f)(2)).

1. All records relied upon for issuance of the Notice;
2. All records referenced in the Notice;
3. All records related to the “complaints” that “prompted” the Notice (Notice at 4);
4. All records related to OCR’s investigation of these “complaints,” including but not limited to all “interview notes,” and “pleadings, motions, briefs, discovery, deposition transcripts, declarations, affidavits, hearing transcripts and videos, and court decisions” as referenced in the Notice (Notice at 4, 7);
5. All records related to any “coordination” with the relevant “HHS funding component” concerning the Notice (Notice at 4, n.20);
6. All records related to communications between OCR and the “appropriate HHS funding component” referenced in the Notice (Notice at 14);
7. All records related to the “certain HHS funds” as referenced in the Notice;
8. All records concerning internal HHS meetings related to the Notice which were held with HHS employees only;
 - a. Request 8 includes but is not limited to any communications, including emails, phone logs, text messages, calendar entries, meeting requests or invitations to persons or groups as well as meeting notes, recordings of any kind, or lists of those attending meetings or calls;
 - b. Request 8 includes but is not limited to records involving:
 - i. HHS Secretary Alex M. Azar, former HHS Secretary Thomas Price, Valerie Huber, and Assistant Secretary ADM Brett P. Giroir, M.D.;
 - ii. Office for Civil Rights employees, including but not limited to Director Roger Severino;
 - iii. Assistant Secretary of Health and Human Services for Planning and Evaluation employees; and,
 - iv. Office of Minority Health employees;
9. All records, from January 20, 2017 to the present, concerning HHS meetings or calls related to the Notice which were held with HHS employees and individuals outside HHS, including any third parties;

- a. Request 9 includes but is not limited to records involving any communications, including emails, phone logs, text messages, calendar entries, meeting requests or invitations to persons or groups as well as meeting notes, recordings of any kind, or lists of those attending meetings or calls;
 - b. Request 9 includes but is not limited to:
 - i. any group or organization, including outside entities and other governmental agencies;
 - ii. any member of Congress or representative of a member of Congress;
 - iii. any employee of the White House, including but not limited to Katy Talento;
 - iv. Any employee, member, or other representative of a not-for-profit entity, advocacy group, including any legal advocacy group, or member thereof;
10. All records, from January 20, 2017 to the present, including but not limited to, memorandum(s), including, but not limited to a final decision memorandum presented to the Secretary, emails, meeting notices, summaries, or notes of any meeting or call, related to internal communications between HHS employees, including but not limited to former Secretary Thomas Price, Secretary Alex M. Azar and Assistant Secretary ADM Brett P. Giroir, M.D., Deputy Assistant Secretary Diane Foley, M.D., FAAP, Valerie Huber, related to the Notice; and,
11. All records related to communications between employees of HHS with any other person or group not already identified in this request from January 20, 2017 to the date of the response to this request, relating to the Notice.

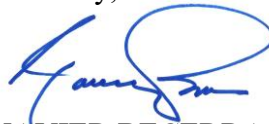
Please provide these records in a timely manner, on a rolling basis, and in a readily-accessible, electronic format, either in “.pdf,” or native form for excel spreadsheets. *See* 5 U.S.C. § 552(a)(3)(B). If HHS has destroyed or otherwise deems any requested record or portion of a record exempt from disclosure pursuant to one or more 5 U.S.C. § 552(b) exemptions, then please provide an explanation for the destruction or the basis for withholding the record or portion of a record, including (i) basic factual information about each destroyed or withheld record (author(s), recipient(s), date, length, subject matter, and location), (ii) the justification for the destruction or claimed exemption(s), and (iii) the interest protected by the exemption(s) that disclosure would harm. 5 U.S.C. § 552(a)(8)(A).

This request includes any records in the custody, control, or possession of HHS, inclusive of all sub-agencies and all respective subdivisions of each agency. Nothing in these requests should be interpreted to be seeking personally identifiable information such as names or addresses. Any record responsive to a request that contains personally identifiable information should be redacted accordingly.

I believe that the documents sought are of great public interest and not exempt from required disclosure under FOIA. Please forward this request to all HHS agencies and any other federal agencies that may be in possession of the requested documents. In addition, given that disclosure of these records would be in the public interest, even if you determine that certain of the documents sought are exempt under FOIA, I request that you disclose these documents as a matter of agency discretion.

Please send all requested materials to my attention, at the address provided above, within 20 business days as required by FOIA. Should you have any questions or concerns about this request, please contact Deputy Attorney General Karli Eisenberg at 916-210-7913 or Karli.Eisenberg@doj.ca.gov. In addition, our request for a fee waiver is available in appendix A.

Sincerely,



XAVIER BECERRA
Attorney General

Appendix A

California requests a waiver of searching and copying fees associated with these requests. Under FOIA, agencies must waive such fees where disclosure is likely to contribute significantly to public understanding of the operations and activities of the government and disclosure is not primarily in the commercial interest of the requester. 5 U.S.C. § 552(a)(4)(A)(iii). HHS has incorporated this requirement in its regulations for responding to FOIA requests. 45 C.F.R. § 5.54. Under the criteria set forth in the HHS regulations, such a waiver is appropriate here, as explained below.

“Disclosure of the requested information would shed light on the operations or activities of the government. The subject of the request must concern identifiable operations or activities of the Federal Government with a connection that is direct and clear, not remote or attenuated.” 45 C.F.R. § 5.54(b)(1).

These requests explicitly concern only the operation or activities of the federal government. Specifically, they concern the decision of HHS to include new conditions on the disbursement of federal funds. These are direct and clear actions by the federal government that have a direct impact on California and its residents.

“Disclosure of the requested information would be likely to contribute significantly to public understanding of those operations or activities.” 45 C.F.R. § 5.54(b)(2).

This disclosure would be likely to contribute significantly to the public understanding of the federal government’s decision to issue the Notice, including these new conditions on the disbursement of federal funds appropriated by Congress. Some parts of the Notice include no explanation of the new conditions and/or the reasoning behind their imposition and/or the evidence that HHS relied on in making its decision. Thus, this information is not already in the public domain. *See* 45 C.F.R. § 5.54(b)(2)(i).

Moreover, the disclosure will contribute to the understanding of a broad audience of persons interested in the subject. *See* 45 C.F.R. § 5.54(b)(2)(iii). There is no question that the distribution of federal funds itself is a matter of significant public interest, and impacts all residents of California (and the other 49 states), whose state and local entities rely on this funding. I am the chief law officer for the State of California and its more than 39 million residents, and I have a role in determining whether state and local policies are in compliance with these new substantive conditions. At a minimum, we intend to share the disclosed records with other state entities and sub-recipients, something that will be of “great benefit to the public at large.” In addition, our office engages regularly with the public and serves as a source of information to promote the public’s understanding through speaking engagements, press releases, and other social media. Those public outreach actions, coupled with our expertise in both administrative and civil justice law, make our office well suited to disseminate more broadly, which I also plan to do, any notable records disclosed as part of this request.

“The disclosure must not be primarily in the commercial interest of the requester.” 45 C.F.R. § 5.54(b)(3).

I am a public officer acting on behalf of the State and the public pursuant to the California Constitution, statutory authority, and common law. *See* Cal. Const. art. V, § 13; Cal. Gov’t Code § 12511; *D’Amico v. Board of Medical Examiners*, 11 Cal.3d 1, 14-15 (1974). The information sought in this FOIA request will assist me in representing the 39 million people of California. Disclosure of the documents sought “is likely to contribute significantly to public understanding of the operations or activities of the Government,” and the materials requested are not sought for any commercial purpose.