



ADVANCING AMERICAN FREEDOM

VIA E-MAIL AND U.S. MAIL

April 27, 2023

Robert M. Califf, M.D.
Commissioner
U.S. Food & Drug Administration
10903 New Hampshire Ave
Silver Spring, MD 20993-0002

Ms. Sarah Kotler
Director, Division of Freedom of Information, OES
U.S. Food & Drug Administration
5630 Fishers Lane
Room-1035
Rockville, Maryland 20857

Re: Freedom of Information Act Request: mifepristone

Dear Dr. Califf and Ms. Kotler:

Advancing American Freedom (AAF)¹ on behalf of itself and requesters Able Americans, American Cornerstone Institute, American Principles Project, Americans United for Life, Anglicans for Life, Care Net, CatholicVote, Center for Medical Progress, Center for Political Renewal, Center for Urban Renewal and Education (CURE), Concerned Women for America, Delegate Elias Coop-Gonzalez (WV-67th), Democrats for Life, Eagle Forum, Ethics and Public Policy Center, Family Research Council, Frederick Douglass Foundation, Global Liberty Alliance, Good Counsel, Inc., Heartbeat International, International Conference of Evangelical Chaplain Endorsers, Lifeline Children's Services, Men for Life, My Faith Votes, National Center for Public Policy Research, New Jersey Family Policy Center, Phyllis Schlafly's Eagles, Students for Life of America, Susan B. Anthony Pro-Life America, and Young America's Foundation ("Joint Requesters") submit this joint Freedom of Information Act ("FOIA") request (the "Request"),

¹ Advancing American Freedom, Inc. is a 501(c)(4) non-profit organization. AAF advocates for conservative values and policy solutions by developing innovative policy solutions, strategies, coalitions, and messaging that builds upon the accomplishments of the last administration and expands freedom for all Americans. Special thanks to Hannah Levintova, author of "The Abortion Pill's Secret Money Men: The untold story of the private equity investors behind Mifeprex—and their escalating legal battle to cash in post-Dobbs," *Mother Jones*, (March/April 2023), available at <https://www.motherjones.com/politics/2023/01/abortion-pill-mifepristone-mifeprex-roe-dobbs-private-equity/>

pursuant to 5 U.S.C. § 552(a), for records pertaining to the Food and Drug Administration (“FDA”)’s communications with non-FDA personnel about mifepristone.

Given the large number of requesters for these records who represent well over a million Americans, we ask for written acknowledgement from the FDA that this joint request be considered under the "frequently requested record" provision of the FOIA, 5 U.S.C. § 552(a)(2)(D) (2000). The FOIA's "frequently requested record" provision, which was enacted as part of the Electronic Freedom of Information Act Amendments of 1996 (E-FOIA), created an additional category of reading room records by requiring all federal agencies to give "reading room" treatment to certain records after they are processed for, and released to, a FOIA requester. See FOIA Update, Vol. XVII, No. 4, at 1. It provides that such treatment must be given to any FOIA-processed records that, "because of the nature of their subject matter, the agency determines have become or are likely to become the subject of subsequent requests for substantially the same records." 5 U.S.C. § 552(a)(2)(D). Because the language of this statutory provision is phrased in the plural (i.e., with explicit reference to "subsequent requests"), it necessarily is triggered by multiple FOIA requests beyond the initial one for which records are processed in the first place. See FOIA Update, Vol. XVIII, No. 1, at 4. It would be a prudent use of FDA resources to acknowledge this combined request as meeting the provisions of 5 U.S.C. § 552(a)(2)(D) for frequently requested records to avoid a broader grassroots appeal to Joint Requesters’ individual members and supporters to file their own FOIA request for the same records.

Requested Records

Pursuant to 5 U.S.C. § 552, Joint Requesters seek the release of the following records with the timeframe for the Request from 1993-2005, and 2015 to present:

1. Any and all records of communications
 - a. Between any FDA personnel and any person or entity (including but not limited to any organization, association, corporation, Federal employees, and or non-Federal employees) mentioning “mifepristone” (which includes, but is not limited to, such terms as Mifeprex, Mifegyne, Korlym, abortion pill, RU-486, RU-38486, ZK-98296, and/or the mifepristone chemical description of “11β-(4-(dimethylamino)phenyl)-17α-(1-propynyl)estra-4,9-dien-17β-ol-3-one” or other names used by the same compound in its generic form) for use as an abortifacient,
 - b. The context of these communications should include but not limited to communications relating to litigation, advocacy, outreach, public education, listening session, grant applications, or calendar invitations or acceptances. These communications should also include, where applicable, drafts of communications, as well as those in which the FDA is copied or blind-copied.
 - c. The communications should include but not limited to, communications with or mentioning the Population Council (“PC”), Danco (including and derivations of the names of Joseph Pike, Roy Karnovsky, Abby or Abigail Long, Lawrence Lader, George Soros, Greg Hawkins, Sharon Hawkins, Brad Daniel, Susan Allen, Sandra Arnold, Beverly Winikoff, Susan Buffett, Gloria Vanderbilt, Bob Shapiro), Atmospheric Radiation Measurement (“ARM”) Research Council,

Shiroyama LLC, American College of Obstetricians and Gynecologists (“ACOG”), Planned Parenthood (and “PP”), Gynuity Health Projects, EMILY’s List, Feminist Abortion Network (“FAN”), National Abortion Federation (“NAF”), National Coalition of Abortion Providers (“NCAP”), American Civil Liberties Union (“ACLU”), Center for Reproductive Rights (“CRR”), Guttmacher Institute, National Association for the Repeal of Abortion Laws (“NARAL”), Pro-Choice America, National Organization for Women (“NOW”), Long-Term Capital Management (“LTCM”), Roussel Uclaf, Bio-Pharm Investments, and/or MedApproach. The most likely custodians for responsive documents during the time frames above would be the Commissioner of the FDA, the Director of Center for Drug Evaluation and Research (CDER), and FDA Office of Women’s Health.

2. Any other records which, though not specifically requested, would have a reasonable relationship to the subject matter of this request, including any record or document.

Application for Waiver or Limitation of Fees

Joint Requesters request the waiver of any fees associated with responding to its FOIA request, pursuant to 5 U.S.C. § 552(a)(4)(A)(iii) and 22 C.F.R. § 171.16. AAF requests the waiver of document search, review, and duplication fees on the grounds that “disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.” 5 U.S.C. § 552(a)(4)(A)(iii). Additionally, each of the Joint Requesters qualifies as a “representative of the news media” and does not seek the Records for commercial use. *See* 5 U.S.C. § 552(a)(4)(A)(ii)(II).

A. Disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government.

As nonprofit organizations, Joint Requesters do not have a commercial purpose and any release of information requested is not primarily in our financial interest. One of the primary purposes of the Joint Requesters is to inform and educate the public about the activities of the federal government, and whether those activities may chill Constitutional rights to the freedom of speech, association, and to petition the government for redress. Therefore, any information disclosed to the Joint Requesters because of this Request will be made readily available to the public at no cost.

B. Each of the Joint Requesters qualifies as a “representative of the news media” which is not seeking records for commercial use.

Advancing American Freedom qualifies as a “representative of the news media” because it “gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience.” 5 U.S.C. § 552(a)(4)(A)(ii); *see Nat’l Sec. Archive v. DOD*, 880 F.2d 1381, 1387 (D.C. Cir. 1989). Each of the Joint Requesters intend to regularly collect, publish, and disseminate information it receives to the general public via its website, social media accounts, and through public appearances by its principal figures. Further, each of the Joint Requesters would exercise editorial discretion with

respect to all information that it obtains from the Request.

Each of the Joint Requesters distributes its work widely. Each organization routinely issues press releases that highlight various newsworthy events and amicus legal briefs that it files or joins; its principal figures make regular appearances in the news media and at conferences and other large events. Indeed, obtaining and distributing information about government activity is a key part of each of the Joint Requester's purpose and work.

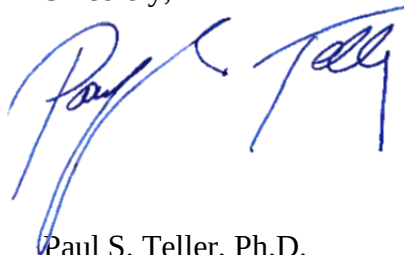
If the Request is denied in whole or in part, each of the Joint Requesters requests justifications for all deletions by reference to specific FOIA exemptions be made to AAF, which will notify each of the Joint Requesters. The Joint Requesters expect the release of all segregable portions of otherwise exempt material. Each of the Joint Requesters reserves the right to appeal a decision relating to any portion of this request.

Pursuant to 5 U.S.C. § 552(a)(7)(B)(ii), please provide an estimated completion date to this request.

Thank you for your prompt attention to this Joint Request. On behalf of the Joint Requesters, please provide the requested records to:

Paul Teller, Executive Director
Advancing American Freedom
801 Pennsylvania Avenue, N.W., Suite 930
Washington, D.C. 20004
(202)780-4848

Sincerely,

A handwritten signature in blue ink, appearing to read "Paul S. Teller", is written over a horizontal line.

Paul S. Teller, Ph.D.
Executive Director
Advancing American Freedom