

EXHIBIT 1



RON DESANTIS
GOVERNOR

JASON WEIDA
SECRETARY

January 30, 2023

ONLINE SUBMISSION ONLY

FOIA Officer/Director
Office of the Secretary
Freedom of Information and Privacy Acts Division
U.S. Department of Health & Human Services
Hubert H. Humphrey Bldg, Suite 729H
200 Independence Avenue, S.W.
Washington, D.C. 20201

Office for Civil Rights Headquarters
U.S. Department of Health & Human Services
200 Independence Avenue, S.W.
Washington, D.C. 20201

Barbara Stampul, Regional Manager
Office for Civil Rights
U.S. Department of Health and Human Services
Sam Nunn Atlanta Federal Center, Suite 16T70
61 Forsyth Street, S.W.
Atlanta, GA 30303-8909
Email: ocrmail@hhs.gov

Re: Freedom of Information Act (FOIA) Request

Dear Freedom of Information Officer:

This letter is submitted on behalf of the Florida Agency for Health Care Administration ("AHCA" or the "Requester"). The Requester submits this request for records pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552 and 45 C.F.R. § 5 *et seq.* We request that a copy of the records detailed below be provided to us. We do not wish to inspect the records first.

I. FOIA Request

The Requester requests records related to the U.S. Department of Health and Human Services' ("HHS") March 2, 2022 Notice and Guidance on Gender Affirming Care, Civil Rights and Patient



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Privacy (the “March 2022 HHS Guidance”)¹ and regarding the subject matter of litigation that was recently brought against AHCA, *Dekker, et al. v. Weida, et al.*, No. 4:22-cv-325-RLH (N.D. Fla.), challenging the adoption of a rule, Florida Administrative Code 59G-1.050(7), prohibiting Medicaid coverage of certain services for treating gender dysphoria.

Specifically, the Requester requests the following Records² in the possession of HHS and/or the HHS Office for Civil Rights from January 20, 2022, through the date of production of the Records:

1. Records related to the March 2022 HHS Guidance, including, but not limited to, any inter- or intra-agency communications by HHS regarding the March 2022 HHS Guidance.
2. Records related to the Florida Department of Health’s April 20, 2022 Guidance titled “Treatment of Gender Dysphoria for Children and Adolescents” (“April 2022 DOH Guidance”).³
3. Records related to AHCA’s June 2022 Generally Accepted Professional Medical Standards Determination on the Treatment of Gender Dysphoria (“June 2022 AHCA GAPMS”) report.⁴

¹ See United States Department of Health and Human Services, *Notice and Guidance on Gender Affirming Care, Civil Rights, and Patient Privacy*, Mar. 2, 2022, available at <https://www.hhs.gov/sites/default/files/hhs-ocr-notice-and-guidance-gender-affirming-care.pdf> (last visited Jan. 30, 2023).

² “Records” as that term is defined under FOIA (5 U.S.C. § 552(f)(2)), existing in any format whatsoever, including, but not limited to, written correspondence, records kept in electronic format on computers and/or electronic storage devices, email correspondence (whether through .gov email addresses or private third-party services such as Gmail), records of telephone correspondence, records pertaining to in-person meetings, calendar or scheduling entries, videotapes, photographs, computer print-outs, telephone messages, or voicemail messages.

Records sought include, but are not limited to, inter- and intra-agency records and external records and communications, briefings, reports, memoranda, legal opinions, directives, policy statements, talking points, notes, and any other materials.

³ See Florida Department of Health, *Treatment of Gender Dysphoria for Children and Adolescents*, April 20, 2022, available at <https://www.floridahealth.gov/documents/newsroom/press-releases/2022/04/20220420-gender-dysphoria-guidance.pdf> (last visited Jan. 30, 2023).

⁴ See AHCA Website, *Generally Accepted Professional Medical Standards Determination on the Treatment of Gender Dysphoria*, June 2, 2022, available at <https://ahca.myflorida.com/letkidsbekids/> (last visited Jan. 30, 2023).



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4. Records related to AHCA's adoption of Rule 59G-1.050(7) of the Florida Administrative Code, titled "Gender Dysphoria."
5. Records related to the *Dekker, et al. v. Weida, et al.*, No. 4:22-cv-325-RLH (N.D. Fla.) litigation challenging AHCA's adoption of Florida Administrative Code 59G-1.050(7).
6. Records containing communications with or about Equality Florida regarding the March 2022 HHS Guidance, the April 2022 DOH Guidance, the June 2022 AHCA GAPMS, or AHCA's adoption of Florida Administrative Code 59G-1.050(7).
7. Records containing communications with or about Florida Health Justice Project, Southern Legal Counsel, Lambda Legal, National Health Law Program, or Pillsbury Winthrop Shaw Pittman LLP regarding the March 2022 HHS Guidance, the April 2022 DOH Guidance, the June 2022 AHCA GAPMS, or AHCA's adoption of Florida Administrative Code 59G-1.050(7).
8. Records containing communications with or about the American Academy of Pediatrics, the Endocrine Society, or the World Professional Association for Transgender Health regarding the March 2022 HHS Guidance, the April 2022 DOH Guidance, the June 2022 AHCA GAPMS, or AHCA's adoption of Florida Administrative Code 59G-1.050(7).
9. Records containing communications with or about the American Academy of Pediatrics, the Endocrine Society, or the World Professional Association for Transgender Health regarding gender dysphoria.
10. Records related to pending litigation involving HHS, or its components, regarding gender dysphoria.
11. Records related to any subpoena issued or investigation commenced regarding gender dysphoria.



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The Requestor asks that HHS process this request consistent with the Department of Justice's policy memorandum (directed to the heads of executive departments and agencies) emphasizing the presumption of disclosure under FOIA, as amended by the FOIA Improvement Act of 2016.⁵

II. Application for Expedited Processing

The Requestor requests that HHS and the Office for Civil Rights provide expedited processing of this FOIA request, which qualifies for expedited treatment pursuant to 45 C.F.R. § 5.27 and 5 U.S.C. § 552(a)(6)(E). There is an "urgency to inform the public concerning actual or alleged Federal Government activity" as it relates to issues of significant interest to the public,⁶ including the issuance of the March 2022 HHS Guidance and the above-mentioned litigation that has been brought against AHCA. Furthermore, the Requester is "primarily engaged in dissemination of information." 5 U.S.C. § 552(a)(6)(E)(v)(II); *see also* 45 C.F.R. § 5.27.

Specifically, the Requestor is "primarily engaged in disseminating information to the public." 45 C.F.R. § 5.27. AHCA is a state agency with a mission of "facilitating better health care for all Floridians." As part of that mission, AHCA is "responsible for the administration of the Florida Medicaid program, licensure and regulation of Florida's health facilities, and for providing information to Floridians about the quality of care they receive."⁷ Dissemination of information about government activities, particularly with respect to healthcare, is a critical and substantial component of AHCA's mission. Because doing so is vital to its work, AHCA will disseminate any information obtained through this request to the public, contributing to the public's enhanced understanding of HHS's decision to issue the March 2022 HHS Guidance and its position and response to AHCA's adoption of Florida Administrative Code 59G-1.050(7).

⁵ *See* Dep't of Justice Office of Information Policy, *Memorandum from The Attorney General*, March 15, 2022, available at <https://www.justice.gov/ag/page/file/1483516/download> (last visited Jan. 30, 2023).

⁶ *See, e.g.*, Katie Keith, "HHS Issues Guidance to Help Protect Transgender Youth," *Health Affairs*, Mar. 7, 2022, available at <https://www.healthaffairs.org/doi/10.1377/forefront.20220307.303712/> (last visited Jan. 30, 2023); Alta Spells and Jen Christensen, "Florida Health Department Advises Against Gender-affirming Care for Youth," *CNN*, Apr. 20, 2022, available at <https://www.cnn.com/2022/04/20/health/florida-gender-affirming-care-health-department-guidance/index.html> (last visited Jan. 23, 2023); Arek Sarkissian, "Groups Sue Florida Over Medicaid Ban on Gender-affirming Care," *Politico*, Sept. 7, 2022, available at <https://www.politico.com/news/2022/09/07/coalition-sues-florida-over-medicaid-ban-00055205> (last visited Jan. 30, 2023).

⁷ *See* AHCA website, <https://ahca.myflorida.com/> (last visited Jan. 30, 2023).



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Additionally, there is an “urgent need” for the requested information to inform the public because of the pending lawsuit that has been filed against AHCA, *Dekker, et al. v. Weida, et al.*, No. 4:22-cv-325-RLH (N.D. Fla.), seeking preliminary and permanent injunctions prohibiting AHCA from enforcing Florida Administrative Code 59G-1.050(7). The requested records in HHS’s possession are likely to become relevant to the issues being litigated in this time-sensitive and important matter.

As required by federal regulation, 45 C.F.R. § 5.27(a), I hereby certify that the above information is true and correct to the best of my knowledge and belief.

III. Request for a Public Interest Fee Waiver

The Requester requests a waiver of search, review, and duplication fees because disclosure of the requested records (1) “is likely to contribute significantly to public understanding of the operations or activities of the Government,” 5 U.S.C. § 552(a)(4)(A)(iii), and (2) “is not primarily in the commercial interest of the requester.” 5 U.S.C. § 552(a)(4)(A)(iii).

Specifically, the Requester is entitled to a waiver of fees because it satisfies the three factors outlined in HHS regulations. 45 C.F.R. § 5.54.

First, disclosure of the requested information here “would shed light on the operations or activities of the government,” *id.* § 5.54(b)(1), in connection with HHS’s issuance of the March 2022 HHS Guidance, as well as HHS’s position and actions taken regarding Florida and AHCA’s exclusion of Medicaid coverage of certain services for treating gender dysphoria and the resultant litigation currently pending against AHCA.

Second, as discussed above, because AHCA will disseminate any information obtained through this request to the public, disclosure of the requested information will likely “contribute significantly to public understanding” of HHS’s operations and approaches to States’ actions regarding Medicaid funding of certain services for treating gender dysphoria. *Id.* § 5.54(b)(2). Disclosure of this information will be “meaningfully informative about [HHS’s] operations or activities” because it is not already in the public domain, because, to date, HHS has not released the information sought in this FOIA request. It also pertains to HHS’s recent policies and activities that have recently come under heightened public scrutiny, making them of great significance to



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the public understanding of the agency's operations and positions on those important issues. *Id.* § 5.54(b)(2)(i).

Furthermore, because the request pertains to prominent issues of great public interest, concern, and debate, including the litigation recently filed against AHCA, disclosure of these records will necessarily "contribute to the understanding of a reasonably broad audience of persons interested in the subject," *id.* § 5.54(b)(2)(ii). AHCA's "expertise in the subject area" and its substantial "ability and intention to effectively convey information to the public" demonstrates that disclosure here will contribute to the understanding of a broad audience of persons. As described above, AHCA is a state agency "responsible for the administration of the Florida Medicaid program, licensure and regulation of Florida's health facilities, and for providing information to Floridians about the quality of care they receive."⁸ By definition, AHCA has the knowledge and expertise to understand the information sought and to facilitate its public dissemination quickly and effectively. And, as described, AHCA will disseminate this information to the public.

Third, this request is not "in the commercial interest of the requester." *Id.* § 5.54(b)(3). AHCA does not have any commercial interest in the disclosure of the requested records. AHCA does not seek to commercially benefit from this information. Nor could it possibly do so. Rather, the dissemination of information to the public will be at no cost and for the purpose of educating the public and promoting AHCA's mission.

IV. Search and Processing of Requested Records

Upon receipt of this request, please take all reasonable steps to preserve relevant public records while the request is pending.

Please search for responsive records regardless of format, medium, or physical characteristics. The Requester asks that responsive electronic records be produced in electronically in their native file format, if possible, or the format most conducive to an expedited production. Alternatively, the Requester requests that the Records be provided electronically in text-searchable PDF, in the best image quality in HHS's possession, and in separate, Bates-stamped files.

⁸ See AHCA Website, <https://ahca.myflorida.com> (last visited Jan. 30, 2023).



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The Requester further requests that you provide an estimated date on which you will finish processing this request.

If this FOIA request is denied in whole or in part, please provide the reasons for the denial, pursuant to 5 U.S.C. § 552(a)(6)(A)(i).

If it is your position that any portion of the requested records is exempt from disclosure, we request that you provide a *Vaughn* index of those documents. *See Vaughn v. Rosen*, 484 F.2d 820 (D.C. Cir. 1973). As you are aware, a *Vaughn* index must describe each document claimed as exempt with sufficient specificity “to permit a reasoned judgment as to whether the material is actually exempt under FOIA.” *Founding Church of Scientology v. Bell*, 603 F.2d 945, 959 (D.C. Cir. 1979). Moreover, the *Vaughn* index must “describe each document or portion thereof withheld, and for each withholding it must discuss the consequences of supplying the sought-after information.” *King v. U.S. Dep’t of Justice*, 830 F.2d 210, 223–24 (D.C. Cir. 1987).

In the event that some portions of the requested records are properly exempt from disclosure, please disclose any reasonably segregable, non-exempt portions of the requested records. *See* 5 U.S.C. § 552(b). Pursuant to regulation, please clearly delineate any and all redactions in such a manner so that the justification for each redaction is apparent. If it is your position that a document contains non-exempt segments and that those non-exempt segments are so dispersed throughout the documents as to make segregation impossible, please state what portion of the document is non-exempt, and how the material is dispersed through the document. *Mead Data Cent. v. U.S. Dep’t of the Air Force*, 455 F.2d 242, 261 (D.C. Cir. 1977). Claims of non-segregability must be made with the same detail as required for claims of exemptions in a *Vaughn* index. If a request is denied in whole, please state specifically that it is not reasonable to segregate portions of the record for release.

For records available in electronic format, please email the documents to Andrew.Sheeran@ahca.myflorida.com. Please send all other requested documents to the attention of:

Andrew T. Sheeran, General Counsel
2727 Mahan Drive
Mail Stop # 3
Tallahassee, FL 32308

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Phone: (850) 412-3630

Email: Andrew.Sheeran@ahca.myflorida.com

Because of the time-sensitive nature of this request, the Requester asks that you strictly comply with the 20-day time limit established by FOIA. *See* 5 U.S.C. § 552(a)(6)(A). Please be advised that once this 20-day period has expired, you are deemed to have constructively denied this request, and we will consider the internal appeals process to be constructively exhausted. *See, e.g., Citizens for Ethics and Responsibility in Government v. Fed. Election Comm'n*, 711 F.3d 180 (D.C. Cir. 2013).

The Requester also respectfully requests that documents be made available as soon as they are located and reviewed via a rolling production. The Requester will undertake to pay reasonable increased costs incurred as part of a rolling production.

If you have any questions about this request, please do not hesitate to contact either me, or General Counsel Andrew T. Sheeran.

Sincerely,

Jason Weida
Secretary

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