

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

| | | |
|-----------------------------|---|----------------------|
| HERITAGE FOUNDATION |) | |
| 214 Massachusetts Ave. N.E. |) | |
| Washington, D.C. 20002 |) | |
| MIKE HOWELL |) | |
| 214 Massachusetts Ave. N.E. |) | |
| Washington, D.C. 20002 |) | |
| <i>Plaintiffs,</i> |) | |
| v. |) | Case No.: 23-cv-1817 |
| U.S. DEPARTMENT OF DEFENSE |) | |
| 1000 Defense Pentagon |) | |
| Washington, D.C. 20301 |) | |
| <i>Defendant.</i> |) | |

COMPLAINT AND PRAYER FOR DECLARATORY AND INJUNCTIVE RELIEF

Plaintiffs THE HERITAGE FOUNDATION and MIKE HOWELL (collectively “Plaintiffs”) for their complaint against Defendant DEPARTMENT OF DEFENSE (“DoD” or “Department”) allege on knowledge as to Plaintiffs, and on information and belief as to all other matters, as follows:

INTRODUCTION AND SUMMARY

1. This is an action under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, to compel the production of information from DoD components concerning the number of abortions DoD provides and the circumstances surrounding DoD provided abortions.

2. After the Supreme Court’s decision in *Dobbs v. Whole Women’s Health*, DoD’s role in providing abortion to both Service Members and their dependents has been a matter of

great legal and political controversy and debate. *See, e.g., Authority of the Department of Defense to Use Appropriations for Travel by Service Members and Dependents to Obtain Abortions*, 46 Op. O.L.C. ___, Slip Op. (Oct. 3, 2022); Brad Dress, *White House blasts Tuberville's Hold on Military Nomination*, The Hill (June 15, 2023), found at <https://thehill.com/policy/defense/4051341-white-house-blasts-tubervilles-hold-military-nominations/>. That data sought by Plaintiffs' FOIA Requests go directly to this debate.

PARTIES

3. Plaintiff The Heritage Foundation is a Washington, D.C.-based nonpartisan public policy organization with a national and international reputation whose mission is to “formulate and promote public policies based on the principles of free enterprise, limited government, individual freedom, traditional American values, and a strong national defense.” Heritage Foundation, *About Heritage*, found at <https://www.heritage.org/about-heritage/mission> (last visited June 22, 2023). Heritage is a not-for-profit section 501(c)(3) organization which engages in substantial dissemination of information to the public. Heritage operates a national news outlet, *The Daily Signal*.

4. Plaintiff Mike Howell leads The Heritage Foundation's Oversight Project and is an author for *The Daily Signal*. The Oversight Project is an initiative aimed at obtaining information via Freedom of Information Act requests and other means in order to best inform the public and Congress for the purpose of Congressional oversight. The requests and analysis of information is informed by Heritage's deep policy expertise. By function, the Oversight Project primarily engages in disseminating information to the public. Oversight Project, found at <https://www.heritage.org/oversight> (last visited June 22, 2023); Twitter, found at [@OversightPR](https://twitter.com/OversightPR), <https://twitter.com/OversightPR> (last visited June 22, 2023).

5. Defendant DoD is a federal agency of the United States within the meaning of 5 U.S.C. § 552(f)(1) whose mission is to “provide the military forces needed to deter war and ensure our nation's security.” About DoD; Our Mission, *found at* <https://www.defense.gov/about/> (last visited June 22, 2023).

6. The Defense Health Agency (“DHA”) is a component of DoD whose mission is to “support[] our Nation by improving health and building readiness—making extraordinary experiences ordinary and exceptional outcomes routine.” Defense Health Agency; Our Mission, *found at* <https://health.mil/About-MHS/OASDHA/Defense-Health-Agency> (last visited June 22, 2023).

JURISDICTION AND VENUE

7. This Court has jurisdiction pursuant to 5 U.S.C. § 552(a)(4)(B) because this action is brought in the District of Columbia and 28 U.S.C. § 1331 because the resolution of disputes under FOIA presents a federal question.

8. Venue is proper in this Court under 28 U.S.C. § 1391(b) because Defendant DoD’s principal place of business is in the District of Columbia.

PLAINTIFFS’ FOIA REQUESTS

9. Plaintiffs submitted two FOIA Requests on July 6, 2022 (“Requests”). The First Request was submitted via the OSD/JS Public Access Link (PAL) system and requested records held by individuals within the Assistant Secretary of Defense for Health Affairs, Office of Health Resources Management & Policy, Office of Health Readiness Policy & Oversight, and Office of

Health Services Policy & Oversight. OSD FOIA Request (Jul. 6, 2022) (“OSD Request” or “Plaintiffs’ OSD FOIA Request”) (Ex. 1). It was assigned reference number 22-F-1104.

10. The Second Request was submitted to the Defense Health Agency’s FOIA email address and requested records held by individuals within the Office of the Director and Office of General Counsel, Office of the Chief Counsel, Force Health Protection and Readiness Programs, and the Health Care Administration. FOIA Request 22-F-1104 (Jul. 6, 2022) (“DHA Request” or “Plaintiffs’ DHA FOIA Request”) (Ex. 2).

11. The Requests set forth six succinct, identical, sub-requests for records. OSD Request at 1; DHA Request at 1.

12. The first sub-request seeks communications from January 20, 2021, to July 5, 2022, regarding “covered abortions”. OSD Request at 1; DHA Request at 1.

13. “Covered abortions” include those cases where the life of the mother would be endangered should the fetus be carried to term, and those where the pregnancy is the result of an act of rape or incest (described within DoD as “covered abortions”). Federal law prohibits the DoD from performing, or paying for the performance of, abortions for any other reason.

Reproductive Health: Covered Abortions, *found at* <https://www.health.mil/Reference-Center/Frequently-Asked-Questions/Reproductive-Health-QA-Covered-Abortions> (last visited June 21, 2023).

14. Sub-requests two through four seek documents showing numbers of covered abortions, broken up into total abortions, abortions due to rape, and abortions due to incest. OSD Request at 1; DHA Request at 1.

15. Sub-requests five and six seek documents showing the number of prosecutions stemming from cases of rapes and incest which resulted in a covered abortion. OSD Request at 1; DHA Request at 1.

16. Sub-requests seeking records of abortion and prosecution numbers—sub-requests two through six—limit the timeframe to January 1, 2010, through the day before the Requests, July 5, 2022. OSD Request at 1; DHA Request at 1.

17. The Requests also sought a fee waiver because, as a 501(c)(3) nonprofit, Heritage Foundation does not have a commercial purpose for the information requested; instead, it analyzes the information requested in order to educate the public through social media, broadcast media, (traditional and nontraditional) and press releases. The requested information is in the public interest because multiple news agencies have been and continue to cover DoD's provision of abortions. OSD Request at 3; DHA Request at 3.

DOD CONSTRUCTIVELY DENIED THE OSD REQUEST

18. DoD's FOIA system assigned the OSD Request reference number 22-F-1104.

19. The PAL website indicates the OSD Request is still in progress with an estimated delivery date of November 24, 2022. PAL Request Landing Page (last visited June 21, 2023) (Ex. 3).

20. Under FOIA, DoD has twenty (20) business days to produce responsive documents or issue a determination communicating the scope of the documents it intends to produce and/or withhold, the reasons for any withholding, and notifying the requester that it may appeal any adverse determinations. Twenty business days from July 6, 2022 is August 3, 2022. As of June 22, 2023, it has been three hundred and fifty-one (351) calendar days since the Request was filed.

21. As of the date of this Complaint, DoD has failed to: (i) produce the requested records or demonstrate that the records are lawfully exempt from disclosure; (ii) notify Plaintiffs of the scope of any responsive records it intends to produce or withhold and the reasons for any withholdings; or (iii) inform Plaintiffs that they may appeal any adequately specific, adverse determination.

DOD FAILED TO RESPOND TO THE DHA REQUEST

22. Plaintiffs have received no communication or acknowledgment from DHA since filing the FOIA Request.

23. On March 31, 2023, counsel for Plaintiffs emailed DHA requesting follow up information regarding their FOIA Request. Email from Heritage to DHA (Mar. 31, 2023) (Ex. 4).

24. DHA did not respond.

25. Under FOIA, DHA has twenty (20) business days to produce responsive documents or issue a determination communicating the scope of the documents it intends to produce and/or withhold, the reasons for any withholding, and notifying the requester that it may appeal any adverse determinations. Twenty business days from July 6, 2022 is August 3, 2022. As of June 21, 2023, it has been three hundred and fifty-one (351) calendar days since the Request was filed.

26. As of the date of this Complaint, DHA has failed to: (i) produce the requested records or demonstrate that the records are lawfully exempt from disclosure; (ii) notify Plaintiffs of the scope of any responsive records it intends to produce or withhold and the reasons for any withholdings; or (iii) inform Plaintiffs that they may appeal any adequately specific, adverse determination.

FIRST CLAIM FOR RELIEF
(OSD Request)

Violation FOIA, 5 U.S.C. § 552

Failure to Conduct Adequate Searches for Responsive Records.

27. Plaintiffs re-allege the foregoing paragraphs as if fully set out herein.
28. FOIA requires all doubts to be resolved in favor of disclosure. “Transparency in government operations is a priority of th[e Biden] . . . Administration.” Attorney General, *Memorandum for Heads of Executive Departments and Agencies: Freedom of Information Act Guidelines*, at 4 (Mar. 15, 2022).
29. Plaintiffs properly requested records within the possession, custody, and control of Defendant.
30. Defendant is subject to FOIA and therefore must make reasonable efforts to search for requested records.
31. Defendant has failed to promptly review agency records for the purpose of locating and collecting those records that are responsive to Plaintiffs’ OSD FOIA Request.
32. Defendant’s failure to conduct searches for responsive records violates FOIA and DoD regulations.
33. Plaintiffs have a statutory right to the information they seek.
34. Defendant is violation of FOIA.
35. Plaintiffs are being irreparably harmed by reason of Defendant’s violation of FOIA. Plaintiffs are being denied information to which they are statutorily entitled and that is important to carrying out Plaintiffs’ functions as a non-partisan research and educational institution and publisher of news. Plaintiffs will continue to be irreparably harmed unless Defendant is compelled to comply with the law.
36. Plaintiffs have no adequate remedy at law.

37. Plaintiffs have constructively exhausted their administrative remedies.

SECOND CLAIM FOR RELIEF

(OSD Request)

Violation of FOIA, 5 U.S.C. § 552

Wrongful Withholding of Non-Exempt Responsive Records

38. Plaintiffs re-allege the foregoing paragraphs as if fully set out herein.

39. FOIA requires all doubts to be resolved in favor of disclosure. “Transparency in government operations is a priority of th[e Biden] . . . Administration.” Attorney General, *Memorandum for Heads of Executive Departments and Agencies: Freedom of Information Act Guidelines*, at 4 (Mar. 15, 2022).

40. Plaintiffs properly requested records within the possession, custody, or control of Defendant.

41. Defendant is subject to FOIA, and therefore must release to a FOIA requester any non-exempt records and provide a lawful reason for withholding any records.

42. Defendant is wrongfully withholding non-exempt records requested by Heritage by failing to produce any records responsive to Plaintiffs’ OSD FOIA Request.

43. Defendant is wrongfully withholding non-exempt-agency records requested by Plaintiffs by failing to segregate exempt information in otherwise non-exempt records responsive to Plaintiffs’ OSD FOIA Request.

44. Defendant’s failure to provide all non-exempt responsive records violates FOIA and DoD regulations.

45. Plaintiffs have a statutory right to the information they seek.

46. Defendant is in violation of FOIA.

47. Plaintiffs are being irreparably harmed by reason of Defendant’s violation of FOIA. Plaintiffs are being denied information to which they are statutorily entitled and that is

important to carrying out Plaintiffs' functions as a non-partisan research and educational institution and publisher of news. Plaintiffs will continue to be irreparably harmed unless Defendant is compelled to comply with the law.

48. Plaintiffs have no adequate remedy at law.

49. Plaintiffs have constructively exhausted their administrative remedies.

THIRD CLAIM FOR RELIEF
(OSD Request)
Violation of FOIA, 5 U.S.C. § 552
Wrongful Denial of Fee Waiver

50. Plaintiffs re-allege the foregoing paragraphs as if fully set out herein.

51. FOIA requires all doubts to be resolved in favor of disclosure. "Transparency in government operations is a priority of th[e Biden] . . . Administration." *Attorney General, Memorandum for Heads of Executive Departments and Agencies: Freedom of Information Act Guidelines*, at 4 (Mar. 15, 2022).

52. Plaintiffs properly requested records within the possession, custody, or control of Defendant.

53. Defendant has constructively denied Plaintiffs' application for a fee waiver pursuant to 5 U.S.C. § 552(a)(4)(A)(ii) & (iii) and 28 C.F.R. §16.10(k).

54. The OSD Request does not have a commercial purpose because Heritage is a 501(c)(3) nonprofit, Howell acts in his capacity as a Heritage employee, and release of the information sought does not further Plaintiffs' commercial interest.

55. Plaintiffs are members of the news media as they "gather[] information of potential interest to a segment of the public, use[] . . . [their] editorial skills to turn the raw materials into a distinct work, and distribute[] that work to an audience" via Heritage's major news outlet, *The Daily Signal*. 5 U.S.C. § 552(a)(4)(a)(ii).

56. Disclosure of the information sought by the OSD Request also “is in the public interest because it 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).

57. Defendant has “failed to comply with a[]time limit under paragraph (6)” as to the OSD Request. 5 U.S.C. § 552(a)(4)(A)(viii)(I).

58. Plaintiffs have a statutory right to a fee waiver.

59. Defendant is in violation of FOIA by denying a fee waiver.

60. Plaintiffs are being irreparably harmed by reason of Defendant’s violation of FOIA. Plaintiffs are being denied a fee waiver to which they are statutorily entitled and that is important to carrying out Plaintiffs’ functions as a non-partisan research and educational institution and publisher of news. Plaintiffs will continue to be irreparably harmed unless Defendant is compelled to comply with the law.

61. Plaintiffs have no adequate remedy at law.

62. Plaintiffs have constructively exhausted their administrative remedies.

FOURTH CLAIM FOR RELIEF
(OSD Request)
Violation of FOIA, 5 U.S.C. § 552
Statutory Bar Against Charging Fees

63. Plaintiffs re-allege the foregoing paragraphs as if fully set out herein.

64. FOIA requires all doubts to be resolved in favor of disclosure. “Transparency in government operations is a priority of th[e Biden] . . . Administration.” Attorney General, *Memorandum for Heads of Executive Departments and Agencies: Freedom of Information Act Guidelines*, at 4 (Mar. 15, 2022).

65. Plaintiffs properly requested records within the possession, custody, or control of Defendant.

66. The OSD Request does not have a commercial purpose because Heritage is a 501(c)(3) nonprofit, Howell acts in his capacity as a Heritage employee, and release of the information sought does not further Plaintiffs' commercial interest.

67. Plaintiffs are members of the news media as they "gather[] information of potential interest to a segment of the public, use[] . . . [their] editorial skills to turn the raw materials into a distinct work, and distribute[] that work to an audience" via Heritage's major news outlet, *The Daily Signal*. 5 U.S.C. § 552(a)(4)(a)(ii).

68. Disclosure of the information sought by the OSD Request also "is in the public interest because it 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).

69. Defendant has "failed to comply with a[]time limit under paragraph (6)" as to the OSD Request. 5 U.S.C. § 552(a)(4)(A)(viii)(I).

70. Defendant has not determined "more than 5,000 pages are necessary to respond to this request," or discussed with Plaintiffs how Plaintiffs "could effectively limit the scope of the request." 5 U.S.C. § 552(a)(4)(A)(viii)(II)(cc).

71. Defendant is currently statutorily barred from charging fees related to Plaintiffs' OSD FOIA Request. Therefore, Plaintiffs have a statutory right to have the OSD Request processed without being charged any fees.

72. Plaintiffs are being irreparably harmed by reason of Defendant's violation of FOIA. Plaintiffs will continue to be irreparably harmed unless Defendant is compelled to comply with the law.

73. Plaintiffs have no adequate remedy at law.

74. Plaintiffs have constructively exhausted their administrative remedies.

FIFTH CLAIM FOR RELIEF

(DHA Request)

Violation FOIA, 5 U.S.C. § 552

Failure to Conduct Adequate Searches for Responsive Records.

75. Plaintiffs re-allege the foregoing paragraphs as if fully set out herein.
76. FOIA requires all doubts to be resolved in favor of disclosure. “Transparency in government operations is a priority of th[e Biden] . . . Administration.” Attorney General, *Memorandum for Heads of Executive Departments and Agencies: Freedom of Information Act Guidelines*, at 4 (Mar. 15, 2022).
77. Plaintiffs properly requested records within the possession, custody, and control of Defendant.
78. Defendant is subject to FOIA and therefore must make reasonable efforts to search for requested records.
79. Defendant has failed to promptly review agency records for the purpose of locating and collecting those records that are responsive to Plaintiffs’ DHA FOIA Request.
80. Defendant’s failure to conduct searches for responsive records violates FOIA and DoD regulations.
81. Plaintiffs have a statutory right to the information they seek.
82. Defendant is violation of FOIA.
83. Plaintiffs are being irreparably harmed by reason of Defendant’s violation of FOIA. Plaintiffs are being denied information to which they are statutorily entitled and that is important to carrying out Plaintiffs’ functions as a non-partisan research and educational institution and publisher of news. Plaintiffs will continue to be irreparably harmed unless Defendant is compelled to comply with the law.
84. Plaintiffs have no adequate remedy at law.

85. Plaintiffs have constructively exhausted their administrative remedies.

SIXTH CLAIM FOR RELIEF

(DHA Request)

Violation of FOIA, 5 U.S.C. § 552

Wrongful Withholding of Non-Exempt Responsive Records

86. Plaintiffs re-allege the foregoing paragraphs as if fully set out herein.

87. FOIA requires all doubts to be resolved in favor of disclosure. “Transparency in government operations is a priority of th[e Biden] . . . Administration.” Attorney General, *Memorandum for Heads of Executive Departments and Agencies: Freedom of Information Act Guidelines*, at 4 (Mar. 15, 2022).

88. Plaintiffs properly requested records within the possession, custody, or control of Defendant.

89. Defendant is subject to FOIA, and therefore must release to a FOIA requester any non-exempt records and provide a lawful reason for withholding any records.

90. Defendant is wrongfully withholding non-exempt records requested by Heritage by failing to produce any records responsive to Plaintiffs’ DHA FOIA Request.

91. Defendant is wrongfully withholding non-exempt-agency records requested by Plaintiffs by failing to segregate exempt information in otherwise non-exempt records responsive to Plaintiffs’ DHA FOIA Request.

92. Defendant’s failure to provide all non-exempt responsive records violates FOIA and DoD regulations.

93. Plaintiffs have a statutory right to the information they seek.

94. Defendant is in violation of FOIA.

95. Plaintiffs are being irreparably harmed by reason of Defendant’s violation of FOIA. Plaintiffs are being denied information to which they are statutorily entitled and that is

important to carrying out Plaintiffs' functions as a non-partisan research and educational institution and publisher of news. Plaintiffs will continue to be irreparably harmed unless Defendant is compelled to comply with the law.

96. Plaintiffs have no adequate remedy at law.

97. Plaintiffs have constructively exhausted their administrative remedies.

SEVENTH CLAIM FOR RELIEF

(DHA Request)

**Violation of FOIA, 5 U.S.C. § 552
Wrongful Denial of Fee Waiver**

98. Plaintiffs re-allege the foregoing paragraphs as if fully set out herein.

99. FOIA requires all doubts to be resolved in favor of disclosure. "Transparency in government operations is a priority of th[e Biden] . . . Administration." *Attorney General, Memorandum for Heads of Executive Departments and Agencies: Freedom of Information Act Guidelines*, at 4 (Mar. 15, 2022).

100. Plaintiffs properly requested records within the possession, custody, or control of Defendant.

101. Defendant has constructively denied Plaintiffs' application for a fee waiver pursuant to 5 U.S.C. § 552(a)(4)(A)(ii) & (iii) and 28 C.F.R. §16.10(k).

102. The DHA Request does not have a commercial purpose because Heritage is a 501(c)(3) nonprofit, Howell acts in his capacity as a Heritage employee, and release of the information sought does not further Plaintiffs' commercial interest.

103. Plaintiffs are members of the news media as they "gather[] information of potential interest to a segment of the public, use[] . . . [their] editorial skills to turn the raw materials into a distinct work, and distribute[] that work to an audience" via Heritage's major news outlet, *The Daily Signal*. 5 U.S.C. § 552(a)(4)(a)(ii).

104. Disclosure of the information sought by the DHA Request also “is in the public interest because it 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).

105. Defendant has “failed to comply with a[]time limit under paragraph (6)” as to the DHA Request. 5 U.S.C. § 552(a)(4)(A)(viii)(I).

106. Plaintiffs have a statutory right to a fee waiver.

107. Defendant is in violation of FOIA by denying a fee waiver.

108. Plaintiffs are being irreparably harmed by reason of Defendant’s violation of FOIA. Plaintiffs are being denied a fee waiver to which they are statutorily entitled and that is important to carrying out Plaintiffs’ functions as a non-partisan research and educational institution and publisher of news. Plaintiffs will continue to be irreparably harmed unless Defendant is compelled to comply with the law.

109. Plaintiffs have no adequate remedy at law.

110. Plaintiffs have constructively exhausted their administrative remedies.

EIGHTH CLAIM FOR RELIEF
(DHA Request)
Violation of FOIA, 5 U.S.C. § 552
Statutory Bar Against Charging Fees

111. Plaintiffs re-allege the foregoing paragraphs as if fully set out herein.

112. FOIA requires all doubts to be resolved in favor of disclosure. “Transparency in government operations is a priority of th[e Biden] . . . Administration.” Attorney General, *Memorandum for Heads of Executive Departments and Agencies: Freedom of Information Act Guidelines*, at 4 (Mar. 15, 2022).

113. Plaintiffs properly requested records within the possession, custody, or control of Defendant.

114. The DHA Request does not have a commercial purpose because Heritage is a 501(c)(3) nonprofit, Howell acts in his capacity as a Heritage employee, and release of the information sought does not further Plaintiffs' commercial interest.

115. Plaintiffs are members of the news media as they "gather[] information of potential interest to a segment of the public, use[] . . . [their] editorial skills to turn the raw materials into a distinct work, and distribute[] that work to an audience" via Heritage's major news outlet, *The Daily Signal*. 5 U.S.C. § 552(a)(4)(a)(ii).

116. Disclosure of the information sought by the DHA Request also "is in the public interest because it 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).

117. Defendant has "failed to comply with a[]time limit under paragraph (6)" as to the DHA Request. 5 U.S.C. § 552(a)(4)(A)(viii)(I).

118. Defendant has not determined "more than 5,000 pages are necessary to respond to this request," or discussed with Plaintiffs how Plaintiffs "could effectively limit the scope of the request." 5 U.S.C. § 552(a)(4)(A)(viii)(II)(cc).

119. Defendant is currently statutorily barred from charging fees related to Plaintiffs' DHA FOIA Request. Therefore, Plaintiffs have a statutory right to have the DHA Request processed without being charged any fees.

120. Plaintiffs are being irreparably harmed by reason of Defendant's violation of FOIA. Plaintiffs will continue to be irreparably harmed unless Defendant is compelled to comply with the law.

121. Plaintiffs have no adequate remedy at law.

122. Plaintiffs have constructively exhausted their administrative remedies.

WHEREFORE as a result of the foregoing, Plaintiffs pray that this Court:

- A. Order Defendant to conduct a search or searches reasonably calculated to uncover all records responsive to Plaintiffs' FOIA Requests;
- B. Order Defendant to produce, within twenty days of the Court's order, or by such other date as the Court deems appropriate, any and all non-exempt records responsive to Plaintiffs' FOIA Requests and indexes justifying the withholding of any responsive records withheld in whole or in part under claim of exemption;
- C. Enjoin Defendant from continuing to withhold any and all non-exempt records responsive to Plaintiffs' FOIA Requests;
- D. Enjoin Defendant from assessing fees or costs for Plaintiffs' FOIA Requests;
- E. Retain jurisdiction over this matter as appropriate;
- F. Award Plaintiffs their costs and reasonable attorneys' fees in this action as provided by 5 U.S.C. § 522(a)(4)(E); and
- G. Grant such other and further relief as this Court may deem just and proper.

Dated: June 22, 2023

Respectfully submitted,

/s/ Samuel Everett Dewey
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Counsel for Plaintiffs

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| <input type="radio"/> G. Habeas Corpus/ 2255 <input type="checkbox"/> 530 Habeas Corpus – General <input type="checkbox"/> 510 Motion/Vacate Sentence <input type="checkbox"/> 463 Habeas Corpus – Alien Detainee | <input type="radio"/> H. Employment Discrimination <input type="checkbox"/> 442 Civil Rights – Employment (criteria: race, gender/sex, national origin, discrimination, disability, age, religion, retaliation) *(If pro se, select this deck)* | <input checked="" type="radio"/> I. FOIA/Privacy Act <input checked="" type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 890 Other Statutory Actions (if Privacy Act) *(If pro se, select this deck)* | <input type="radio"/> J. Student Loan <input type="checkbox"/> 152 Recovery of Defaulted Student Loan (excluding veterans) |
| <input type="radio"/> K. Labor/ERISA (non-employment) <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 740 Labor Railway Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act | <input type="radio"/> L. Other Civil Rights (non-employment) <input type="checkbox"/> 441 Voting (if not Voting Rights Act) <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 445 Americans w/Disabilities – Employment <input type="checkbox"/> 446 Americans w/Disabilities – Other <input type="checkbox"/> 448 Education | <input type="radio"/> M. Contract <input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 153 Recovery of Overpayment of Veteran’s Benefits <input type="checkbox"/> 160 Stockholder’s Suits <input type="checkbox"/> 190 Other Contracts <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise | <input type="radio"/> N. Three-Judge Court <input type="checkbox"/> 441 Civil Rights – Voting (if Voting Rights Act) |

V. ORIGIN
 1 Original Proceeding
 2 Removed from State Court
 3 Remanded from Appellate Court
 4 Reinstated or Reopened
 5 Transferred from another district (specify)
 6 Multi-district Litigation
 7 Appeal to District Judge from Mag. Judge
 8 Multi-district Litigation – Direct File

VI. CAUSE OF ACTION (CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE.)
 5 U.S.C. § 552 - Failure to make a determination; failure to produce records

| | | | |
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| VII. REQUESTED IN COMPLAINT | <input type="checkbox"/> CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 | DEMAND \$ JURY DEMAND: | Check YES only if demanded in complaint YES <input type="checkbox"/> NO <input type="checkbox"/> |
|------------------------------------|--|---|---|

| | | | | |
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| VIII. RELATED CASE(S) IF ANY | (See instruction) | YES <input type="checkbox"/> | NO <input checked="" type="checkbox"/> | If yes, please complete related case form |
|-------------------------------------|-------------------|------------------------------|--|---|

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| DATE: <u>06/22/2023</u> | SIGNATURE OF ATTORNEY OF RECORD <u>/s/ Samuel Everett Dewey</u> |
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INSTRUCTIONS FOR COMPLETING CIVIL COVER SHEET JS-44
 Authority for Civil Cover Sheet

The JS-44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and services of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. Listed below are tips for completing the civil coversheet. These tips coincide with the Roman Numerals on the cover sheet.

- I. COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF/DEFENDANT (b) County of residence: Use 11001 to indicate plaintiff if resident of Washington, DC, 88888 if plaintiff is resident of United States but not Washington, DC, and 99999 if plaintiff is outside the United States.
- III. CITIZENSHIP OF PRINCIPAL PARTIES: This section is completed only if diversity of citizenship was selected as the Basis of Jurisdiction under Section II.
- IV. CASE ASSIGNMENT AND NATURE OF SUIT: The assignment of a judge to your case will depend on the category you select that best represents the primary cause of action found in your complaint. You may select only one category. You must also select one corresponding nature of suit found under the category of the case.
- VI. CAUSE OF ACTION: Cite the U.S. Civil Statute under which you are filing and write a brief statement of the primary cause.
- VIII. RELATED CASE(S), IF ANY: If you indicated that there is a related case, you must complete a related case form, which may be obtained from the Clerk’s Office.

Because of the need for accurate and complete information, you should ensure the accuracy of the information provided prior to signing the form.

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

_____)
 Plaintiff)
)
 v.) Civil Action No.
)
_____)
 Defendant)

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)*

A lawsuit has been filed against you.

Within 30 days after service of this summons on you (not counting the day you received it) you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

If you fail to respond, judgment by default may be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

ANGELA D. CAESAR, CLERK OF COURT

Date: _____

Signature of Clerk or Deputy Clerk

Civil Action No. _____

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____.

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____ ; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____, and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____, who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____ ; or

I returned the summons unexecuted because _____ ; or

Other *(specify):* _____

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

_____)
 Plaintiff)
)
 v.) Civil Action No.
)
_____)
 Defendant)

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)*

A lawsuit has been filed against you.

Within 30 days after service of this summons on you (not counting the day you received it) you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

If you fail to respond, judgment by default may be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

ANGELA D. CAESAR, CLERK OF COURT

Date: _____

Signature of Clerk or Deputy Clerk

Civil Action No. _____

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____.

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____, and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____, who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____; or

I returned the summons unexecuted because _____; or

Other *(specify):* _____

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

_____))
 Plaintiff))
))
 v.)) Civil Action No.
))
_____))
 Defendant))

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)*

A lawsuit has been filed against you.

Within 30 days after service of this summons on you (not counting the day you received it) you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

If you fail to respond, judgment by default may be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

ANGELA D. CAESAR, CLERK OF COURT

Date: _____

Signature of Clerk or Deputy Clerk

Civil Action No. _____

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____.

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_____ on *(date)* _____; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____, and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____, who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____; or

I returned the summons unexecuted because _____; or

Other *(specify)*: _____

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

EXHIBIT 1



214 Massachusetts Avenue, NE
Washington, DC 20002
(202) 546-4400
heritage.org

SENT VIA: OSD/JS Public Access Link (PAL) system

July 6, 2022

OSD/JS FOIA Requester Service Center
Freedom of Information Division
1155 Defense Pentagon
Washington, DC 20301-1155
Fax (571) 372-0500

Dear FOIA Officer,

Pursuant to the Freedom of Information Act, 5 U.S.C. § 552, and the implementing FOIA regulations of the Department of Defense, 32 CFR 286, I respectfully request the following records from any individuals within the Assistant Secretary of Defense for Health Affairs, Office of Health Resources Management & Policy, Office of Health Readiness Policy & Oversight, and Office of Health Services Policy & Oversight:

- 1) All correspondence regarding covered abortions, as defined under Title 10, Section 1093 of the United States Code, from January 20, 2021, to July 5, 2022.
- 2) All records regarding the number of covered abortions from January 1, 2010, through July 5, 2022.
- 3) All records regarding the number of covered abortions that are the result of an act of rape from January 1, 2010, through July 5, 2022.
- 4) All records regarding the number of covered abortions that are the result of an act of incest from January 1, 2010, through July 5, 2022.
- 5) All records regarding the number of covered abortions that are the result of an act of rape and resulted in some type of prosecution under the Uniform Code of Military Justice from January 1, 2010, through July 5, 2022.
- 6) All records regarding the number of covered abortions that are the result of an act of incest and resulted in some type of prosecution under the Uniform Code of Military Justice from January 1, 2010, through July 5, 2022.

The term "record" means any written, recorded, or graphic matter of any nature whatsoever, regardless of how recorded, and whether original or copy, including, but not limited to, the



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following: memoranda, reports, expense reports, books, manuals, instructions, financial reports, working papers, records, notes, letters, notices, confirmations, telegrams, receipts, appraisals, pamphlets, magazines, newspapers, prospectuses, inter-office and intra-office communications, electronic mail (emails), MMS or SMS text messages, instant messages, messaging systems (such as iMessage, Microsoft Teams, WhatsApp, Telegram, Signal, Google Chat, Twitter direct messages, Lync, Slack, and Facebook Messenger), contracts, cables, telexes, notations of any type of conversation, telephone call, voicemail, meeting or other communication, bulletins, printed matter, computer printouts, teletypes, invoices, transcripts, diaries, analyses, returns, summaries, minutes, bills, accounts, estimates, projections, comparisons, messages, correspondence, press releases, circulars, financial statements, reviews, opinions, offers, studies and investigations, questionnaires and surveys, and work sheets (and all drafts, preliminary versions, alterations, modifications, revisions, changes, and amendments of any of the foregoing, as well as any attachments or appendices thereto), and graphic or oral records or representations of any kind (including without limitation, photographs, charts, graphs, microfiche, microfilm, videotape, recordings and motion pictures), and electronic, mechanical, and electronic records or representations of any kind (including, without limitation, tapes, cassettes, disks, and recordings) and other written, printed, typed, or other graphic or recorded matter of any kind or nature, however produced or reproduced, and whether preserved in writing, film, tape, disk, videotape or otherwise. A record bearing any notation not a part of the original text is to be considered a separate record. A draft or non-identical copy is a separate record within the meaning of this term.

The term “communication” means each manner or means of disclosure or exchange of information (in the form of facts, ideas, inquiries, or otherwise), regardless of means utilized, whether oral, electronic, by document or otherwise, and whether in an in-person meeting, by telephone, facsimile, e-mail (desktop or mobile device), MMS or SMS text message, instant messages, messaging systems (such as iMessage, Microsoft Teams, WhatsApp, Telegram, Signal, Google Chat, Twitter direct messages, Lync, Slack, and Facebook Messenger), regular mail, telexes, releases, or otherwise.

In the interest of expediency and to minimize the research and/or duplication burden on your staff, please send records electronically if possible. If this is not possible, please notify me before sending to the mailing address listed below. If access to this request will take longer than seven (20) business days, please let me know when I might receive records or be able to inspect the requested records. Please produce responsive documents as soon as they become available. In all cases, please communicate with me at the below email address.

Please comply fully with 5 U.S.C. § 552 (b). Accordingly, without limitation to the foregoing, if any portion of this request is denied for any reason, please provide written notice of the records or portions of records that are being withheld and cite each specific exemption of the Freedom of Information Act on which the agency relies. Moreover, to the extent the agency believes that responsive records may be withheld in part produce all reasonably segregable portions of those



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records.

Additionally, please provide all responsive documents even if they are redacted in full.

Fee Waiver Request

This request is primarily and fundamentally for non-commercial purposes. As a 501(c)(3) nonprofit, Heritage Foundation does not have a commercial purpose and the release of the information requested is not in Heritage Foundation's commercial interest. Heritage Foundation's mission is to formulate and promote public policies based on the principles of free enterprise, limited government, individual freedom, traditional American values, and a strong national defense. Heritage Foundation uses the information requested and analyzes it in order to educate the public through social media,¹ broadcast media² (traditional and nontraditional) and press releases.³ The requested information is in the public interest because multiple news agencies⁴ have been covering DoD's ability to provide covered abortions.

Because this is a request by a member of the news media for information of public interest, made in my capacity as an author for the *Daily Signal*⁵ (a major news outlet⁶), I request that you waive all applicable fees associated with this request. As an author for the *Daily Signal*, I intend to use this FOIA request and other investigatory means to gather information of potential public interest regarding the records requested and use my editorial skills to turn the raw materials into a distinct work and distributes that work to my *Daily Signal* audience.

If you deny this request for a fee waiver, please advise me in advance of the estimated charges if they are to exceed \$50. Please send me a detailed and itemized explanation of those charges.

¹ Heritage Foundation. [@ Heritage] (Accessed: 2022, February 18). 626.8K Followers Twitter.

<https://twitter.com/Heritage>

² Fox News. (Accessed: 2022, February 18). Heritage Foundation launches Conservative Oversight Project aimed at 'exposing' Biden admin, leftist policies. <https://www.foxnews.com/politics/heritage-conservative-oversight-project-biden-admin-leftist-policies>

³ Heritage Foundation. (Accessed: 2022, February 18). Press. <https://www.heritage.org/press>

⁴ The Military Times. (Accessed, 2022, July 5, 2022). DoD looks to protect troops, civilian employees from prosecution over new abortion laws. <https://www.militarytimes.com/news/pentagon-congress/2022/06/28/dod-looks-to-protect-troops-civilian-employees-from-prosecution-over-new-abortion-laws/>; The Wall Street Journal. (Accessed: 2022, July 5). Pentagon Grapples With Policy for Women Serving in Antiabortion States. <https://www.wsj.com/livecoverage/supreme-court-decision-roe-v-wade-6-24-2022/card/pentagon-grapples-with-policy-for-women-serving-in-antiabortion-states-Aerwgrk3JddgIzGWZM3o>

⁵ Daily Signal. (Accessed: 2022, February 18). Mike Howell. <https://www.dailysignal.com/author/mike-howell/>

⁶ Daily Signal. [@DailySignal] (Accessed: 2022, February 18). 73.7K Followers Twitter. <https://twitter.com/DailySignal>



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Washington, DC 20002

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Thank you in advance for considering my request. If you have any questions, or feel you need clarification of this request please contact me at oversightproject@heritage.org.

Sincerely,

Mike Howell
Senior Advisor and Author at The Daily Signal
The Heritage Foundation
214 Massachusetts Ave, NE
Washington, D.C. 20002

Submit New Request

July 6th, 2022

Requester Details

To modify request details please update your requester profile or contact the our office for assistance.

Mike Howell

The Heritage Foundation
214 Massachusetts Ave NE
Washington, 20002
oversightproject@heritage.org

Requester Default Category: News Media

Custom Fields

Requester Control # :
Previous Address 2 :

General Information

Request Type FOIA
Requester Category News Media

Shipping Address

Street1 214 Massachusetts Ave NE
Street2
City Washington
State
State (Other)
Country United States
Zip Code 20002

Request Information

Description

I respectfully request the following records from any individuals within the Assistant Secretary of Defense for Health Affairs, Office of Health Resources Management & Policy, Office of Health Readiness Policy & Oversight, and Office of Health Services Policy & Oversight:

- 1) All correspondence regarding covered abortions, as defined under Title 10, Section 1093 of the United States Code, from January 20, 2021, to July 5, 2022.
- 2) All records regarding the number of covered abortions from January 1, 2010, through July 5, 2022.
- 3) All records regarding the number of covered abortions that are the result of an act of rape from January 1, 2010, through July 5, 2022.
- 4) All records regarding the number of covered abortions that are the result of an act of incest from January 1, 2010, through July 5, 2022.
- 5) All records regarding the number of covered abortions that are the result of an act of rape and resulted in some type of prosecution under the Uniform Code of Military Justice from January 1, 2010, through July 5, 2022.
- 6) All records regarding the number of covered abortions that are the result of an act of incest and resulted in some type of prosecution under the Uniform Code of Military Justice from January 1, 2010, through July 5, 2022.

Date Range for Record Search:From 01/20/2021
Date Range for Record Search:To 07/06/2022
Description Document DOD covered abortion FOIA 7-6.pdf

Fee Information

| | |
|---------------------------|--|
| Willing Amount | \$25 |
| Fee Waiver Requested | Yes ,DOD covered abortion FOIA 7-6.pdf |
| Fee Waiver Request Reason | please see attached |

Billing Address

State (Other)

Other Information

State (Other)

Custom Fields

Requester #

Expedite Information

| | |
|--------------------|----|
| Expedite Requested | No |
| Expedite Reason | |

EXHIBIT 2



214 Massachusetts Avenue, NE
Washington, DC 20002
(202) 546-4400
heritage.org

SENT VIA: Email: DHA.FOIA@mail.mil

July 6, 2022

ATTN: DHA FOIA Public Liaison
Defense Health Agency
7700 Arlington Boulevard, Suite 5101
Falls Church, VA 22042-5101
Phone: 1-703-275-6017

Dear FOIA Officer,

Pursuant to the Freedom of Information Act, 5 U.S.C. § 552, and the implementing FOIA regulations of the Department of Defense, 32 CFR 286, I respectfully request the following records from any individuals within Office of the Director and Office of General Counsel, Office of the Chief Counsel, Force Health Protection and Readiness Programs, and the Health Care Administration:

- 1) All correspondence regarding covered abortions, as defined under Title 10, Section 1093 of the United States Code, from January 20, 2021, to July 5, 2022.
- 2) All records regarding the number of covered abortions from January 1, 2010, through July 5, 2022.
- 3) All records regarding the number of covered abortions that are the result of an act of rape from January 1, 2010, through July 5, 2022.
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following: memoranda, reports, expense reports, books, manuals, instructions, financial reports, working papers, records, notes, letters, notices, confirmations, telegrams, receipts, appraisals, pamphlets, magazines, newspapers, prospectuses, inter-office and intra-office communications, electronic mail (emails), MMS or SMS text messages, instant messages, messaging systems (such as iMessage, Microsoft Teams, WhatsApp, Telegram, Signal, Google Chat, Twitter direct messages, Lync, Slack, and Facebook Messenger), contracts, cables, telexes, notations of any type of conversation, telephone call, voicemail, meeting or other communication, bulletins, printed matter, computer printouts, teletypes, invoices, transcripts, diaries, analyses, returns, summaries, minutes, bills, accounts, estimates, projections, comparisons, messages, correspondence, press releases, circulars, financial statements, reviews, opinions, offers, studies and investigations, questionnaires and surveys, and work sheets (and all drafts, preliminary versions, alterations, modifications, revisions, changes, and amendments of any of the foregoing, as well as any attachments or appendices thereto), and graphic or oral records or representations of any kind (including without limitation, photographs, charts, graphs, microfiche, microfilm, videotape, recordings and motion pictures), and electronic, mechanical, and electronic records or representations of any kind (including, without limitation, tapes, cassettes, disks, and recordings) and other written, printed, typed, or other graphic or recorded matter of any kind or nature, however produced or reproduced, and whether preserved in writing, film, tape, disk, videotape or otherwise. A record bearing any notation not a part of the original text is to be considered a separate record. A draft or non-identical copy is a separate record within the meaning of this term.

The term “communication” means each manner or means of disclosure or exchange of information (in the form of facts, ideas, inquiries, or otherwise), regardless of means utilized, whether oral, electronic, by document or otherwise, and whether in an in-person meeting, by telephone, facsimile, e-mail (desktop or mobile device), MMS or SMS text message, instant messages, messaging systems (such as iMessage, Microsoft Teams, WhatsApp, Telegram, Signal, Google Chat, Twitter direct messages, Lync, Slack, and Facebook Messenger), regular mail, telexes, releases, or otherwise.

In the interest of expediency and to minimize the research and/or duplication burden on your staff, please send records electronically if possible. If this is not possible, please notify me before sending to the mailing address listed below. If access to this request will take longer than seven (20) business days, please let me know when I might receive records or be able to inspect the requested records. Please produce responsive documents as soon as they become available. In all cases, please communicate with me at the below email address.

Please comply fully with 5 U.S.C. § 552 (b). Accordingly, without limitation to the foregoing, if any portion of this request is denied for any reason, please provide written notice of the records or portions of records that are being withheld and cite each specific exemption of the Freedom of Information Act on which the agency relies. Moreover, to the extent the agency believes that responsive records may be withheld in part produce all reasonably segregable portions of those



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records.

Additionally, please provide all responsive documents even if they are redacted in full.

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This request is primarily and fundamentally for non-commercial purposes. As a 501(c)(3) nonprofit, Heritage Foundation does not have a commercial purpose and the release of the information requested is not in Heritage Foundation's commercial interest. Heritage Foundation's mission is to formulate and promote public policies based on the principles of free enterprise, limited government, individual freedom, traditional American values, and a strong national defense. Heritage Foundation uses the information requested and analyzes it in order to educate the public through social media,¹ broadcast media² (traditional and nontraditional) and press releases.³ The requested information is in the public interest because multiple news agencies⁴ have been covering DoD's ability to provide covered abortions.

Because this is a request by a member of the news media for information of public interest, made in my capacity as an author for the *Daily Signal*⁵ (a major news outlet⁶), I request that you waive all applicable fees associated with this request. As an author for the *Daily Signal*, I intend to use this FOIA request and other investigatory means to gather information of potential public interest regarding the records requested and use my editorial skills to turn the raw materials into a distinct work and distributes that work to my *Daily Signal* audience.

If you deny this request for a fee waiver, please advise me in advance of the estimated charges if they are to exceed \$50. Please send me a detailed and itemized explanation of those charges.

¹ Heritage Foundation. [@ Heritage] (Accessed: 2022, February 18). 626.8K Followers Twitter. <https://twitter.com/Heritage>

² Fox News. (Accessed: 2022, February 18). Heritage Foundation launches Conservative Oversight Project aimed at 'exposing' Biden admin, leftist policies. <https://www.foxnews.com/politics/heritage-conservative-oversight-project-biden-admin-leftist-policies>

³ Heritage Foundation. (Accessed: 2022, February 18). Press. <https://www.heritage.org/press>

⁴ The Military Times. (Accessed, 2022, July 5, 2022). DoD looks to protect troops, civilian employees from prosecution over new abortion laws. <https://www.militarytimes.com/news/pentagon-congress/2022/06/28/dod-looks-to-protect-troops-civilian-employees-from-prosecution-over-new-abortion-laws/>; The Wall Street Journal. (Accessed: 2022, July 5). Pentagon Grapples With Policy for Women Serving in Antiabortion States. <https://www.wsj.com/livecoverage/supreme-court-decision-roe-v-wade-6-24-2022/card/pentagon-grapples-with-policy-for-women-serving-in-antiabortion-states-Aerwgrk3JddgIzGWZM3o>

⁵ Daily Signal. (Accessed: 2022, February 18). Mike Howell. <https://www.dailysignal.com/author/mike-howell/>

⁶ Daily Signal. [@DailySignal] (Accessed: 2022, February 18). 73.7K Followers Twitter. <https://twitter.com/DailySignal>



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Thank you in advance for considering my request. If you have any questions, or feel you need clarification of this request please contact me at oversightproject@heritage.org.

Sincerely,

Mike Howell
Senior Advisor and Author at The Daily Signal
The Heritage Foundation
214 Massachusetts Ave, NE
Washington, D.C. 20002

EXHIBIT 3

Requester Details

To modify request details please update your requester profile or contact the our office for assistance.

Mike Howell

The Heritage Foundation
214 Massachusetts Ave NE
Washington, 20002
Phone 202-546-4400
oversightproject@heritage.org

Requester Default Category: News Media

Custom Fields

Requester Control #:
Previous Address 2:

Request Details

Date Requested: 07/06/2022
Received Date: 07/06/2022
Estimate Delivery Date: 11/24/2022
Status: In Process

General Information

Request Type: FOIA
Requester Category: News Media

Shipping Address

Street1: 214 Massachusetts Ave NE
City: Washington
State: Select
Country: United States
Zip Code: 20002

Request Information

Description: I respectfully request the following records from any individuals within the Assistant Secretary of Defense for Health Affairs, Office of Health Resources Management & Policy, Office of Health Readiness Policy & Oversight, and
Date Range for Record Search: 01/20/2021 To 07/06/2022
Description Document: Add Attachment -DOD covered abortion FOIA 7-6.pdf

Fee Information

Willing Amount (\$): 50.00
Fee Waiver Requested: Add Attachment -DOD covered abortion FOIA 7-6.pdf
Fee Waiver Request Reason: Please see attached.

Billing Address

State (Other)

Other Information

State (Other)

Custom Fields

Requester #

Only Click "Submit" Once

Expedite Information

Expedite Requested

Add Attachment

Case 1:23-cv-01817 Document 1-7 Filed 06/22/23 Page 3 of 3

Expedite Reason

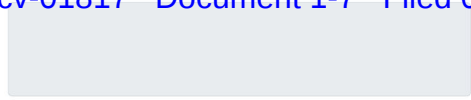


EXHIBIT 4

Heritage Foundation FOIA

From philumina@proton.me <Philumina@proton.me>
To DHA.FOIA@mail.mil
Date Friday, March 31st, 2023 at 12:32 PM

Dear FOIA Officer,

Mike Howell and The Heritage Foundation filed a FOIA request with the Defense Health Agency on July 6, 2022 (attached). Would you please forward to me any responses sent following that filing? If you have any other information on this, I'd appreciate seeing it.

Thank you,

Philumina Johanni

Counsel to The Oversight Project at The Heritage Foundation

philumina@proton.me

(239)301-9060

176.26 KB 1 file attached

DHA covered abortion FOIA 7-6-22.pdf 176.26 KB