

August 30, 2005

Dorothy Lee, Legal Technician
Office of Justice Programs
Department of Justice
Attn: FOIA Staff
810 7th Street, NW
Room 5400
Washington, DC 20531

Melanie Ann Purstay, Deputy Director
Office of Information and Privacy
Department of Justice
Attn: FOIA Staff
Suite 750 Flag Building
Washington, DC 20530

Re: Freedom of Information
Act Request

Attention:

This is a request pursuant to the Freedom of Information Act, 5 U.S.C. § 552 (“FOIA”), for all agency records¹ held by the Department of Justice regarding the Department’s decision about what information to include or omit regarding pregnancy prevention in the National Protocol for Sexual Assault Medical Forensic Examinations (“Protocol”).²

Although the 130-page Protocol provides step-by-step medical treatment guidelines for sexual assault victims, it glaringly omits any mention of emergency contraception, a safe and reliable method to prevent pregnancy. The Protocol neither explains what emergency contraception is nor recommends that sexual assault victims be offered this basic health care. However, recent published news reports make clear that information about emergency contraception was included in earlier versions of the Protocol and

¹ Records include, but are not limited to, letters, correspondence, tape recordings, notes, CD-roms, disks, notes, data, memoranda, reports, e-mail, or any other materials.

² The Protocol was released in September 2004, and is available on the Office on Violence Against Women’s website at <http://www.ojp.usdoj.gov/vawo>.

was subsequently eliminated.³ In addition, a prior version of the Protocol that was released to certain parties for comment included the recommendation that treatment providers “discuss treatment options with patients *and provide them with immediate access to a full range of reproductive healthcare services.*” See Excerpt from July 2003 Protocol draft (emphasis added), attached as Appendix A. Our broad coalition of sexual assault groups, medical professionals, religious leaders, and advocates for women’s health has urged the Department of Justice to modify the Protocol to include information about emergency contraception and pregnancy prevention in the Protocol.⁴ To date, we have received no response.

Thus, in order to have a meaningful impact on the Department’s decisions regarding the inclusion of emergency contraception in subsequent editions of the Protocol and in the implementation trainings that are currently being scheduled, we need to understand the reasons for failing to include this vital health care information.

Consequently, on behalf of the undersigned organizations, we now request through the Freedom of Information Act, any and all records related to the discussion of emergency contraception and pregnancy prevention for sexual assault victims in the Protocol, including whether or not to address the topic in the Protocol.

Request for Expedited Review

Please grant expedited review of this FOIA request. This request satisfies the “compelling need” standard required for expedition under FOIA. 5 U.S.C. § 552(a)(6)(E)(i). In particular, the requesters are “primarily engaged in disseminating information” and there is an “urgency to inform the public of an actual or alleged Federal Government activity.” 5 U.S.C. § 552(a)(6)(E)(v)(II). We also make this request under the Department of Justice regulation providing for expedited review in situations concerning “[a] matter of widespread and exceptional media interest in which there exist possible questions about the government’s integrity which affect public confidence.” Id. at (d)(1)(iv).

The ACLU is requesting this information on behalf of a group of non-profit organizations,⁵ all of whom will be engaged in a coordinated public

³ See Marie McCullough, *Guidelines for Treating Rape Victims Omit Emergency Contraception*, Phila. Inq., Dec. 31, 2004, at A01; *CBS Evening News: Politics of Rape and Contraception* (CBS television broadcast, June 9, 2005).

⁴ See Letter to Jana White of Jan. 6, 2005, resent with additional signatures on Feb. 2, 2005, available at

<http://www.aclu.org/ReproductiveRights/ReproductiveRights.cfm?ID=17275&c=30>.

⁵ ACLU Foundation; Christians for Justice Action (United Church of Christ); Clara Bell Duvall Reproductive Freedom Project of the ACLU of Pennsylvania; Concerned Clergy for

information campaign to disseminate and distribute the results of this FOIA request. Indeed, many of the requesting organizations are primarily engaged in disseminating information.

For example, the American Civil Liberties Union Foundation (ACLU Foundation) is a requestor primarily engaged in disseminating information. The ACLU Foundation meets the criteria for expedition laid out in *National Security Archive v. Department of Defense*, 880 F.2d 1381, 1387 (D.C. Cir. 1989), where a representative of the news media is defined as an entity that “gathers information of potential interest to a segment of the public” and “uses its editorial skills to turn raw materials into a distinct work, and distributes that work to an audience.” The ACLU Foundation publishes newsletters, press releases, fact sheets, handbooks, and other materials that are disseminated to the public. Its material is widely available to everyone, including tax-exempt organizations, not-for-profit groups, law students, and faculty, not to mention our more than 400,000 members. The ACLU Foundation also disseminates information through publications available online at <http://www.aclu.org>. The ACLU website specifically includes information about the Protocol and would feature any information obtained through this FOIA request. See <http://www.aclu.org/reproductiverights>.

The ACLU is not unique in this respect. Planned Parenthood Federation of America and NARAL Pro-Choice America, as well as other organizations identified below, also publish newsletters, press releases, fact sheets, news briefings, and other materials that are disseminated to the public. Some of these groups have memberships in the hundreds of thousands, and most, if not all, also make information available online.

The “exceptional need [and] urgency” to inform the public about the DOJ’s withholding of key information for rape victims justifies “putting [this request] ahead of all other requests received by the same agency prior thereto.” *Open America v. Watergate Special Prosecution Force*, 547 F.2d 605, 615 (1976). The Department of Justice is currently scheduling and conducting trainings that implement the Protocol,⁶ and it is critical that emergency contraception be included in these. Experts estimate that 22,000 of the 25,000 pregnancies resulting from sexual assault each year could be

Choice; Family Planning Advocates of New York State; General Board of Church and Society, United Methodist Church; Jane Doe Inc., Massachusetts Coalition Against Sexual Assault and Domestic Violence; MergerWatch; Montana Coalition Against Domestic Violence and Sexual Assault; NARAL Pro-Choice America; National Council of Jewish Women; New Jersey Coalition Against Sexual Assault; Planned Parenthood Federation of America; Religious Coalition For Reproductive Choice; Union for Reform Judaism; Unitarian Universalist Association of Congregations; United Church of Christ-Justice and Witness Ministries; Women's Division of United Methodist Church.

⁶ See Office for Victims of Crime Training and Technical Assistance Center, *OVC TTAC Calendar of Events*, available at <http://www.ovcttac.org/calendar/events.cfm>.

prevented with emergency contraception.⁷ Yet an overview of hospital emergency rooms shows that in many states, fewer than 40 percent of emergency care facilities dispense emergency contraception on-site to sexual assault patients.⁸ The Protocol is, thus, an important opportunity to ensure that these victims get appropriate care, including pregnancy prevention medication.

This request also warrants expedition because the failure to include information regarding emergency contraception and pregnancy prophylaxis in the Protocol is of pressing public interest and has generated considerable controversy. More than 25 press outlets have commented on the Department of Justice's omission of accurate medical information, including features on CBS News and National Public Radio, as well as articles in *The New York Times*, *The Washington Post*, and *The Philadelphia Inquirer*. See Press List, attached as Appendix B. Moreover, political leaders around the country have urged the Department of Justice to amend the Protocol to include the routine offering of pregnancy prophylaxis. A bipartisan congressional group recently introduced the Best Help for Rape Victims Act, H.R. 1214, 109th Cong. (1st Sess. 2005), to remedy the Department of Justice's omission. A bipartisan coalition of congressmen and senators, as well as several state attorneys general, has also spoken out against the Protocol's failure to include emergency contraception.⁹

Request for a fee waiver

Finally, we request a fee waiver pursuant to 5 U.S.C. § 552(a)(4)(A)(iii) because, as discussed above, the subject matter of the requested records concerns the operations and activities of the federal government, the disclosure is likely to contribute to an understanding of federal government operations or activities, disclosure of the requested information is in the public interest, the contribution to public understanding of federal government operations or activities will be significant, and, as non-profit 501(c)(3) organizations, the requestors do not have a commercial interest that would be furthered by the disclosure of the requested information.

We certify that the above basis for expedition is true and correct to the best of our knowledge and belief. Accordingly, we look forward to your reply

⁷ Felicia H. Stewart and James Trussell, *Prevention of Pregnancy Resulting from Rape: A Neglected Preventive Health Measure*, 19 Am. J. Preventive Med. 228, 229 (2000).

⁸ ACLU Reproductive Freedom Project Briefing Paper, *Preventing Pregnancy after Rape: Emergency Care Facilities Put Women at Risk* (2004), available at <http://www.aclu.org/ReproductiveRights/ReproductiveRights.cfm?ID=17212&c=30>

⁹ See Letter from U.S. Representatives to Department of Justice of Jan. 13, 2005, attached as Appendix C; Letter from U.S. Senate to Department of Justice of Jan. 18, 2005, attached as Appendix D; Letter from State Attorneys General to Department of Justice of Feb. 2, 2005, attached as Appendix E.

within ten working days, as required under 5 U.S.C. § 552(6)(E)(ii)(I) and 28 C.F.R. § 16.5(d)(4).

Please address all responses to Jennifer Nevins, on behalf of the undersigned group at the address listed below.

Sincerely,

Jennifer Nevins
American Civil Liberties Union, Reproductive Freedom Project
125 Broad St., 18th Floor
New York, New York 10004

Requesting Organizations:

ACLU Foundation

Christians for Justice Action (United Church of Christ)

Clara Bell Duvall Reproductive Freedom Project of the ACLU of Pennsylvania

Concerned Clergy for Choice

Family Planning Advocates of New York State

General Board of Church and Society, United Methodist Church

Jane Doe Inc., Massachusetts Coalition Against Sexual Assault and Domestic Violence

MergerWatch

Montana Coalition Against Domestic Violence and Sexual Assault

NARAL Pro-Choice America

National Council of Jewish Women

New Jersey Coalition Against Sexual Assault

Planned Parenthood Federation of America

Religious Coalition For Reproductive Choice

Union for Reform Judaism

Unitarian Universalist Association of Congregations

United Church of Christ-Justice and Witness Ministries

Women's Division of United Methodist Church