



June 15, 2016

Commissioner John Hellerstedt
Texas Department of State Health Services
Brown-Heatly Building
4900 North Lamar Blvd.
Austin, TX 78751-2316
Via Email: John.Hellerstedt@dshs.state.tx.us

Dear Commissioner Hellerstedt:

The Texas Department of State Health Services appears to be concealing abortion statistics that should be released to the public. Specifically, it seems that DSHS is concealing statistical tables for 2014, the first full year that Texas implemented portions of its controversial abortion regulations known as H.B. 2. Concealing the existence of these statistics is a direct violation of the Texas Public Information Act, Texas's law protecting democratic control of government information.

It has come to our attention that your agency completed the relevant statistical tables in March 2016. Since that time, upper-level supervisors within DSHS have instructed employees to mislead the public about whether these statistical tables are complete, and to refrain from sending email about the statistics in order to avoid creating a paper trail.

DSHS has refused to fulfill dozens of Public Information Act requests for these statistics, including requests from journalists, academics, and research institutions. Instead, under instructions from the Chief Operating Officer's General Counsel, DSHS has falsely reported that the statistics are still being processed and are not ready for release.

We write to demand that you either release the 2014 statistical tables or publicly state the legal basis you claim for withholding them.

2014 Abortion Statistics Are Crucial Public Information

The Texas Public Information Act is a critical tool for government transparency and accountability. As the Act itself specifies, Texans "do not give their public servants the right to decide what is good for the people to know and what is not good for them to know."¹ The people of Texas "insist on remaining informed so that they may retain control over the instruments they have created."² The Public Information Act is the primary way for Texans to demand disclosure of government information.

¹ Tex. Gov't Code § 552.001.

² *Id.*

When a government institution disregards the Public Information Act, it not only erodes public trust in government, it also robs the people of their ability to hold the government accountable to its mission. The mission of the Department of State Health Services is to improve health and well being in Texas. To further this mission, DSHS has committed to being “**the source** for timely, accurate, and useful health information in Texas.”³ For more than twenty years, DSHS and its predecessor agency have created and published statistical tables on abortion. These tables help the public to track the way that Texas law impacts the provision of abortion care. Doctors, public health professionals, state lawmakers, and advocates have relied on these statistical tables in litigation before the United States Supreme Court.⁴ To our knowledge, this is the first time DSHS has attempted to hide these statistical tables from the public.

Statistics for the year 2014 are particularly important. 2014 was the first full year after Texas enacted targeted restrictions on abortion providers in the law known as H.B. 2. Most abortion providers were subject to the law’s admitting privileges requirement for the duration of 2014, and all providers were subject to the ambulatory surgical center requirement for nearly two weeks of 2014. It is therefore especially troubling that DSHS would attempt to conceal 2014’s public health statistics.

There is an ongoing, vigorous debate in the public sphere, in state legislatures, and in our nation’s highest court about the public health impact of targeted restrictions on abortion providers like those enacted in H.B. 2. DSHS should carry out its mission of improving Texans’ health by releasing 2014 abortion statistics and making this debate better informed.

While we are not sure what the 2014 statistics will show about implementation of H.B. 2, that analysis should take place in the sunshine. No matter what the 2014 statistical tables say, Texans are entitled to know.

DSHS Supervisors Cannot Instruct Employees to Lie to the Public

Regardless of the Department’s mission and the public debate, DSHS has a basic legal duty to respond truthfully to requests for public information. To the extent that DSHS has concealed the creation of statistical tables, DSHS has breached that duty.

Shortly after your agency created the 2014 statistical tables, it is our understanding that supervisors took affirmative steps to conceal the statistics from the public. Specifically, DSHS supervisors gave employees detailed instructions about whether and how employees could discuss and share the statistics. These instructions were given in person to avoid creating a paper trail. DSHS supervisors instructed employees to refrain from sending emails about the statistics, to refrain from responding to any Public Information Act request that sought abortion statistics, and to print such requests for physical delivery to the Office of

³ *About the Center for Health Statistics*, TEX. DEP’T FOR STATE HEALTH SERVS., <https://dshs.texas.gov/chs/CHS-Organization.shtm> (last updated Feb. 23, 2016) (emphasis in original).

⁴ *E.g.*, Brief for 3,348 Women Injured by Abortion, *et al.* as Amici Curiae Supporting Respondents, 26–27, *Whole Woman’s Health v. Hellerstedt*, No. 15-274 (Feb. 2, 2016); Brief for Wendy Davis, *et al.* as Amici Curiae Supporting Petitioners at 7, 8, *Whole Woman’s Health v. Hellerstedt*, No. 15-274 (Jan. 4, 2016); Brief for Am. Coll. of Obstetricians & Gynecologists, *et al.* as Amici Curiae Supporting Petitioners at 7, 8, 13, *Whole Woman’s Health v. Hellerstedt*, No. 15-274 (Oct. 5, 2015); Brief for Am. Pub. Health Ass’n as Amicus Curiae Supporting Petitioners at 11, *Whole Woman’s Health v. Hellerstedt*, No. 15-274 (Oct. 5, 2015).

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General Counsel. Weeks later, employees were instructed to respond to Public Information Act requests by stating that the 2014 abortion statistics were still being processed.

These instructions came from supervisors as senior as General Counsel for the Chief Operating Officer, who reports directly to you.

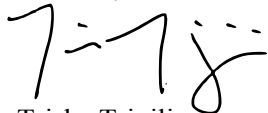
Following these instructions, DSHS employees have refused to fulfill dozens of requests for the 2014 statistical tables. As recently as yesterday, DSHS claimed that the 2014 statistics were still being processed and not ready for release. Rather than responding honestly and claiming a legal basis for withholding the 2014 statistical tables, it appears that your agency has chosen to hide the truth.

Lying in response to Public Information Act requests would subvert the purpose of the Act, whether or not there is an arguable legal basis for withholding information. The Act is designed to put decisions about government information in the hands of a neutral arbiter—the attorney general, or, if necessary, a judge. In Texas, government agencies are not entitled to make unilateral decisions about whether information is subject to public disclosure. If DSHS wants to hide public health statistics, DSHS must make a legal argument in a public forum, not behind closed doors.

We demand that you either immediately release the complete, unredacted, and unaltered 2014 Annual Statistical Tables on Abortion, Tables 33–38, or publicly state the legal basis you claim for withholding the tables or any information they contain. Moreover, you should consider this letter to be an independent request by the ACLU of Texas for 2014 Annual Statistical Tables on Abortion, Tables 33–38, under the Texas Public Information Act.

Should you fail to comply with this request within a reasonable time, we will explore all available legal options to vindicate the rights and principles protected by the Texas Public Information Act.

Sincerely,

A handwritten signature in black ink, appearing to read "Trisha Trigilio". The signature is stylized with a large initial "T" and a long, sweeping underline.

Trisha Trigilio
Staff Attorney
ACLU of Texas