

REQUEST UNDER THE VIRGINIA FREEDOM OF INFORMATION ACT

March 30, 2016

Attorney General Mark Herring
900 East Main Street
Richmond, VA 23219

BY CERTIFIED MAIL

RE: Certain records describing the Attorney General's Office's efforts relating to RICO

Dear Mr. Herring:

Pursuant to the Virginia Freedom of Information Act, Va. Code § 2.2-3700 et. seq., the undersigned groups (and individuals) request copies of any and all records as described herein. The Free Market Environmental Law Clinic (FME Law) and Energy & Environment Legal Institute (E&E Legal) are both non-profit educational foundations incorporated in Virginia with established public records transparency practices. All individual signatories are residents, domiciliaries, and citizens of the Commonwealth of Virginia. Given the non-profit transparency and journalism activities of the requesters, described below, we ask that any limited fees permitted by law be waived.

1. Please provide us **copies of all emails, including attachments, sent to or from (including also as cc: or bcc:) employees of the the Office of the Attorney General, except secretarial/administrative staff, which correspondence uses any of the following terms, anywhere in the email, including in the body, To, From, cc: and/or bcc: or Subject fields:**

- a) "climate denial"
- b) "climate denier"
- c) "climate risk"

For the above-described request: responsive records will be **dated over the approximately three-month period from January 1, 2016 through the date you process this request.**

2. We also request copies of all correspondence between employees of the Virginia Attorney General's Office, except secretarial/administrative staff, and employees of the New York Attorney General's Office, dated between March 20, 2016 and March 30, 2016.

If you have information to help further narrow this request please feel free to contact the undersigned. Requesters focus this request on records Virginia employees may have generated in a recent effort with the attorneys general of various other states and territories, to investigate "climate denial".¹

We request a rolling production, with responsive records being processed and produced independent of any others, as no such production is dependent upon other records being released.

We do not seek duplicates of responsive records.

We do not seek correspondence reflecting only the sending or forwarding of press releases or stories, if no other commentary or substantive commentary is added at any place in the email thread (consider *e.g.*, "interesting" or "FYI" as not being substantive comments).

While we request that the limited fees allowed by statute be waived, we nevertheless agree to pay legitimate expenses up to \$200.00. If you estimate costs will exceed that please notify us and break down the expected costs.

We request records in electronic form if available. By the nature of this request *most responsive records should be in electronic format, necessitating no photocopying expense.*

¹ See, *e.g.*, Robin Bravender, E&E News, Gore, State AGs beef up "fraud" probe, March 29, 2015.

None of the undersigned seek the information for a commercial purpose. FME Law and E&E Legal are organized and recognized by the Internal Revenue Service as a 501(c)3 educational organization (not a “Religious...Charitable, Scientific, Literary, Testing for Public Safety, to Foster National or International Amateur Sports Competition, or Prevention of Cruelty to Children or Animals Organization[.]”). As such, we also have no commercial interest possible in these records.

E&E Legal, for example, is also a media outlet for these purposes²: like other requesters it not only serves as a regular source of public information and substantive editorial comment about this information to numerous national (and/or local) media outlets but also applies substantive editorial input in its own publications disseminating public information.

² Examples of open records-derived publications by E&E Legal requesters include, Horner: Improper Collusion Between Environmental Pressure Groups and the EPA as Revealed By Freedom of Information Act Requests, <http://eelegal.org/wp-content/uploads/2014/09/EE-Legal-FOIA-Collusion-Report-9-15-2014.pdf>, Back to Square One: Unlawful Collusion With Green Pressure Groups Should Doom U.S. EPA's Greenhouse Gas Regulation As Revealed by Freedom of Information Act Requests, July 30, 2015, <http://eelegal.org/wp-content/uploads/2015/07/EE-Legal-GHG-Collusion-Report-Final.pdf>, Private Interests & Public Office: Coordination Between Governors, the Obama White House and the Tom Steyer-“Founded and Funded” Network of Advocacy Groups to Advance the “Climate” Agenda As Revealed by Public Records Requests, AUGUST 24, 2015, <http://eelegal.org/wp-content/uploads/2015/08/EE-Legal-111d-etc-Steyer-et-al-Report-8-24-15-Final2.pdf>, Ex Parte Communications & Outsourcing EPA's “Agency Expertise”: The Case for Vacating EPA's CHG Rules Due to an Incomplete Docket & Abandonment of Any Presumption of Expertise or Impartiality (“Chevron Deference”), Emails Obtained under the FOIA by the Energy & Environment Legal Institute, with additional emails obtained by the Competitive Enterprise Institute and Jeb Harmon, Prepared by Christopher C. Horner for the Energy & Environment Legal Institute February 22, 2016, <http://eelegal.org/wp-content/uploads/2016/02/Ex-Parte-and-Deference-Report-Goo-Yahoo-ESPS-NSPS-Final.pdf> Horner: [The FOIA coping response in climate scientists](#), WATTS UP WITH THAT, Jan. 21, 2014 (where ATI/E&E Legal disseminated FOIA-obtained information from NASA, University of Arizona and EPA on many additional occasions, see <http://wattsupwiththat.com/?s=horner>); [The Collusion of the Climate Crowd](#), WASHINGTON EXAMINER, Jul. 6, 2012. See also, Christopher Horner: [Yes, Virginia, you do have to produce those ‘Global Warming’ documents](#) (with David W. Schnare and Del. Robert Marshall), WASHINGTON EXAMINER, Jan. 5, 2011; David W. Schnare, [“FOIA and the Marketplace of Ideas”](#), E&E Legal Letter (Sept. 2013); [Why I Want Michael Mann's Emails](#), THE JEFFERSON JOURNAL, The Thomas Jefferson Institute for Public Policy, Dec. 7, 2011. Information is also disseminated is issue-specific pages of E&E Legal's website, see, e.g. [“FOIA Requests”](#) section.

Others include Horner: [Obama Admin Hides Official IPCC Correspondence from FOIA Using Former Romney Adviser John Holdren](#), BREITBART, Oct. 17, 2013; [Most Secretive Ever? Seeing Through 'Transparent' Obama's Tricks](#), WASHINGTON EXAMINER, Nov. 3, 2011; [NOAA releases tranche of FOIA documents -- 2 years later](#), WATTS UP WITH THAT (two-time “science blog of the year”), Aug. 21, 2012; [The roadmap less traveled](#), WATTS UP WITH THAT, Dec. 18, 2012; [EPA Doc Dump: Heavily redacted emails of former chief released](#), BREITBART, Feb. 22, 2013; [EPA Circles Wagons in ‘Richard Windsor’ Email Scandal](#), BREITBART, Jan. 16, 2013, [DOJ to release secret emails](#), BREITBART, Jan. 16, 2013; [EPA administrators invent excuses to avoid transparency](#), WASHINGTON EXAMINER, Nov. 25, 2012; [Chris Horner responds to the EPA statement today on the question of them running a black-ops program](#), WATTS UP WITH THAT, Nov. 20, 2012; [FOIA and the coming US Carbon Tax via the US Treasury](#), WATTS UP WITH THAT, Mar. 22, 2013; [Today is D-Day -- Delivery Day -- for Richard Windsor Emails](#), WATTS UP WITH THAT, Jan. 14, 2013; [EPA Doubles Down on ‘Richard Windsor’ Stonewall](#), WATTS UP WITH THAT, Jan. 15, 2013; [Treasury evasions on carbon tax email mock Obama's 'most transparent administration ever' claim](#), WASHINGTON EXAMINER, Oct. 25, 2013, [Peeking behind the Green Curtain](#), WASHINGTON TIMES, FEB. 17, 2015.

In addition to coverage of its FOIAs in print publications, E&E Legal regularly disseminates its findings on broadcast media. E&E Legal and FME Law are also regularly cited in newspapers and trade publications for their open records efforts.³

The requested information is of critical importance to the nonprofit policy advocacy groups engaged on these relevant issues, news media covering the issues, and others concerned with government activities on this critical subject, or as the United States Supreme Court once noted in the context of the federal FOIA, what their government is up to.

³ Print examples, only, to the exclusion of dozens of national electronic media broadcasts, include, *e.g.*, Dawn Reeves, EPA Emails Reveal Push To End State Air Group's Contract Over Conflict, INSIDE EPA, Aug. 14, 2013; Editorial, Public interest group sues EPA for FOIA delays, claims agency ordered officials to ignore requests, WASHINGTON EXAMINER, Jan. 28, 2013; Michal Conger, Emails show green group influence on EPA coal rule, WASHINGTON EXAMINER, Jan. 9, 2014; C.J. Ciaramella, Sierra Club Pressed EPA to Create Impossible Coal Standards, WASHINGTON FREE BEACON, Jan. 10, 2014; C.J. Ciaramella, Emails Show Extensive Collaboration Between EPA, Environmentalist Orgs, WASHINGTON FREE BEACON, Jan. 15, 2014; Stephanie Paige Ogburn, Climate scientists, facing skeptics' demands for personal [sic] emails, learn how to cope, E&E NEWS, Jan. 21, 2014; Anthony Watts, New FOIA emails show EPA in cahoots with enviro groups, giving them special access, WATTS UP WITH THAT, Jan. 15, 2014; Stephen Dinan, Obama energy nominee Ron Binz faces rocky confirmation hearing, THE WASHINGTON TIMES, Sept. 17, 2013; Stephen Dinan, Top Obama energy nominee Ron Binz asked oil company employees for confirmation help, WASHINGTON TIMES, Sept. 17, 2013; Vitter, Issa Investigate EPA's Transparency Problem, More Suspicious E-mail Accounts, WATTS UP WITH THAT, Jan. 29, 2013 ("It should also be noted that this has come to light thanks to the work of Chris Horner and ATI, who forced production of these documents by EPA in their FOI litigation."); Stephen Dinan, Obama energy nominee in danger of defeat, WASHINGTON TIMES, Sept. 18, 2013; Stephen Dinan, Greens, lobbyists and partisans helping Ron Binz, Obama's FERC pick, move through Senate, WASHINGTON TIMES, Sept. 12, 2013; Stephen Dinan, Energy nominee Ron Binz Loses voltage with contradictions, Obama coal rules, WASHINGTON TIMES, Sept. 22, 2013; Conn Carroll, FOIA reveals NASA's Hansen was a paid witness, WASHINGTON EXAMINER, Nov. 7, 2011; NASA Scientist accused of using celeb status among environmental groups to enrich himself, FOX NEWS, Jun. 22, 2011; Editorial, The EPA: A leftist agenda, PITTSBURGH TRIBUNE-REVIEW, Jan. 18, 2014; John Roberts, "Secret dealing"? Emails show cozy relationship between EPA, environmental groups, FOX NEWS, Jan. 22, 2014; Elana Schor, Proponents pounce on emails between EPA, enviros on pipeline, E&E NEWS, Jan. 23, 2014; Mike Bastasch, Analysis: Green Hypocrisy in Keystone XL pipeline opposition, DAILY CALLER, Feb. 6, 2014; Mark Tapscott, Emails expose close coordination between EPA, Sierra Club and other liberal environmental activist groups, WASHINGTON EXAMINER, Jan. 23, 2014; Editorial, EPA has ties to radical environmentalists, DETROIT NEWS, Feb. 13, 2014; Michael Batasch, Report: EPA coal plant rule tainted by secretiveness, collusion with green groups, DAILY CALLER, Mar. 10, 2014; Jennifer G. Hickey, Legality of EPA Rules Questioned by Environmental Litigators, NEWSMAX, Mar. 21, 2014; Michael Bastasch, Confidential document reveals the Sierra Club's plan to shut down the coal industry, DAILY CALLER, Mar. 26, 2014; Michael Bastasch, Conservative group sues EPA over its 'IRS-like' tactics, DAILY CALLER, Apr. 1, 2014; Stephen Dinan, Conservative group sues EPA over open-records requests, WASHINGTON TIMES, Apr. 1.

We repeat our request for a rolling production of records, such that the Commonwealth should furnish records electronically to the undersigned as soon as they are identified, on a rolling basis if necessary, and any hard copies to 722 12th Street Northwest #400, Washington, DC 20005.

Lastly, due to our experiences with various Virginia agencies lately, we remind your office of its specific obligations under VFOIA. Please note that Va. Code § 2.2-3704 (B) requires your office to provide a response within five days. Such a response can take several forms:

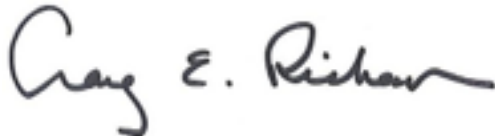
- 1) Pursuant to § 2.2-3704 (B)(1), you can withhold all responsive records, but only if you “identify with reasonable particularity **the volume** and subject matter of withheld records, and cite, as to each category of withheld records, the specific Code section that authorizes the withholding of the records.”
- 2) Pursuant to § 2.2-3704 (B)(2), you can provide the records in part and withhold them in part, but only if you “identify with reasonable particularity the subject matter of withheld portions, and cite, as to each category of withheld records, the specific Code section that authorizes the withholding of the records.”
- 3) Pursuant to Va. Code § 2.2-3704(B)(3), you can claim that no records exist.
- 4) Pursuant to Va. Code 2.2-3704(B)(4), you can claim an extra seven days are needed to make one of the responses delineated in ##1-3, above.

We have been informed lately that certain public bodies are in the practice of requiring payment of fees merely to complete a search for responsive public records, without actually producing or pledging to produce responsive records. While this practice, if occurring, is improper, I remind you that Va. Code 2.2-3704(F) allows a public body to “make reasonable charges not to exceed its actual cost incurred in accessing, duplicating, supplying, or searching for the requested records.” The statute does not allow a public body to charge for a mere determination that records are exempt and therefore withheld pursuant to Va. Code § 2.2-3704 (B)(1), in which case the public body must nevertheless identify the volume of the records it is

withholding and the statutory basis for doing so. Similarly, an agency may claim it has no responsive records pursuant to § 2.2-3704 (B)(3), but it may not charge for such a response.

If you have any questions please do not hesitate to contact the undersigned.

Respectfully submitted,



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