Your June 21, 2016 correspondence Inbox x

Michael Field <MField@riag.ri.gov> 12:31 PM (2 minutes ago)
to richardson, me

Attached please find the response to your appeal from Rebecca Partington, Civil Division Chief.

Dear Messrs. Richardson and Horner:

Your Access to Public Records Act ("APRA") appeal dated June 21, 2016 has been directed to me by the Attorney General for a response. You appeal three (3) issues.

First, you appeal the withholding of items 3, 4, 17, and 18. As related by your correspondence, these items "all relate to work done in anticipation of a press event and/or on press releases by your office and the New York Attorney General's office (NY OAG)," and none of the exemptions cited by this Department (E, K, and S) apply to this situation. You submit that "[a]s work on a press event or release – generally or in this specific case – does not relate to litigation activity nor client representations, these documents are not privileged and these exemptions cannot apply." You also contend that "Exemption K deals with drafts and working papers; however, as these documents were not internal to your office, but were shared with the NY OAG, this exemption cannot apply." It is notable that you provide no legal authority for your position and case law contradicts your argument.

Various cases have established that discussions regarding how to present an agency decision to the public is covered by the deliberative process privilege. See e.g. Ford Motor Company v. United States, 94 Fed. Cl. 211 (2010). Accordingly, your assertion that the exemptions cited can relate solely to "litigation activity [or] client representations," and not to the situation presented herein, is incorrect. Similarly, Exemption K does not apply solely to communications withinr the Department of Attorney General but can apply to situations where the Attorney General is engaged in common interest litigation or discussions. For this reason, Exemption K was also appropriately cited. Implicitly you recognize the accuracy of this Department's assertion that the requested documents represent drafts and/or working papers – since you do not challenge this contention – but instead only challenge that this exemption does not apply since the responsive documents "were not internal to your office, but were shared with the NY OAG." Again, you cite no case law for this assertion and it conflicts with case law. See Tobaccoville USA, Inc. v. McMaster, 692 S.E.2d 526, 530 (S.C. 2010)("We find it instructive that one court has previously held that similar documents between a state attorney general and the NAAG were protected by the attorney-client privilege."). Accordingly, the fact that these documents were exchanged between the NY OAG in the present circumstances is of no moment and the asserted exemption is upheld.

Next, you contend that item 6, which concerns "an email sent by the NY OAG regarding an update on the regulation process" was improperly withheld. Similar to the above argument, you suggest that Exemption (A)(I)(a) concerns "the attorney-client relationship, which does not exist between the Rhode Island Office of the Attorney General and the NY OAG, as the Rhode Island Attorney General does not represent New York or its Attorney General's Office." Your other assertions make similar arguments. But see Tobaccoville, 692 S.E.2d at 530 ("We hold that the attorney-client privilege may apply to this very narrow factual scenario because the AG, as a paid member, has solicited the NAAG attorneys for legal advice and consultation on matters relating to the tobacco litigation, the MSA, subsequent enforcement of the MSA, and tobacco regulation."). Accordingly, this exemption is upheld.

Lastly, you contend that an attachment to an April 12, 2016 e-mail was not provided and was not exempted, and as such, this document must be disclosed. Your APRA request, however, made clear that the April 12, 2016 attachment that you now claim must be disclosed, was not responsive to your APRA request.

Specifically, your April 13, 2016 APRA request sought two categories of documents. In category one, you sought "copies of all emails, including attachments," and in category two, you sought "all correspondence." Whereas in category one you made clear that you sought "attachments," category two was notably absent in this regard and instead sought "all correspondence" and the "entire email threads," but did not seek "attachments." This is precisely what this Department provided.

Moreover, the body of your April 13, 2016 APRA request further supports this Department's interpretation, namely your assertion that "[r]equesters focus this request on records Rhode Island employees may have generated in a recent effort with the attorneys general of various other states and territories along with environmental investor and activist Al Gore, to investigate political opponents of the 'climate' policy agenda." There can be no question that Rhode Island did not "generate[]" the document that you now claim was responsive to your APRA request and the e-mail thread that was provided makes clear that Rhode Island neither generated this document nor its redline edits. For these reasons, the attachment was not responsive to your April 13, 2016 APRA request and this appeal is also denied. See Assassination Archives and Research v. Central Intelligence Agency, 720 F.Supp. 217, 219 (D.D.C. 1989)("it is the requester's responsibility to frame requests with sufficient particularity to ensure that searches are not unreasonably burdensome, and to enable the searching agency to determine precisely what records are being requested").

This decision can be appealed pursuant to R.I. Gen. Laws § 38-2-8.

/s/ Rebecca Partington

Civil Division, Chief