

STATE OF VERMONT

SUPERIOR COURT
Washington Unit

CIVIL DIVISION
Docket No.: 349-6-16 Wncv

ENERGY & ENVIRONMENT LEGAL)
INSTITUTE, and FREE MARKET)
ENVIRONMENTAL LAW CLINIC,)
Plaintiffs)
)
v.)
)
THE ATTORNEY GENERAL OF)
VERMONT,)
Defendant)

MOTION TO DISMISS FOR LACK OF SUBJECT MATTER JURISDICTION

NOW COMES the Defendant, the Office of the Attorney General (“AGO”), and hereby moves pursuant to V.R.C.P. 12(b)(1) to dismiss the plaintiffs’ First Amended Complaint, for lack of subject matter jurisdiction. Plaintiffs failed to exhaust their administrative remedies, as required by the Vermont Public Records Act, and therefore this Court is without subject matter jurisdiction.

INTRODUCTION

The plaintiffs, Energy & Environment Legal Institute (“EELI”) and Free Market Environmental Law Clinic (“FMELC”) submitted two public records requests to the Attorney General’s Office (“AGO”). In connection with one of the requests – submitted May 10, 2016 – an assistant attorney general (“AAG”) responded that no responsive documents exist.

In their amended complaint, plaintiffs are attempting to question the underlying search that was undertaken by the AAG. However, after being informed that no documents exist, plaintiffs did not present any questions to the AAG concerning the search. Before initiating litigation, plaintiffs never raised any concerns and, therefore, the AAG did not

have an opportunity to respond to any concerns that the plaintiffs may have. Thus, any claimed dispute concerning the search is not ripe at this time. Moreover, even assuming plaintiffs had made inquiries concerning the search and were dissatisfied with a response from the AAG, they would have had to pursue an appeal to the head of the AGO to exhaust their administrative remedies. In sum, they have not demonstrated exhaustion of their administrative remedies.

In connection with a second request – submitted May 6, 2016 – an AAG requested clarification from the plaintiffs and, in addition, requested that they narrow the scope of their public records request in light of the voluminous amount of records requested. The AAG and plaintiffs’ representatives proceeded to enter into discussions with respect to these requests for clarification and narrowing. Plaintiffs agreed to narrow their request in some respects. However, the records request was still extensive. Therefore, the AAG requested some further narrowing and clarification of search terms and suggested areas where the terms might be clarified and narrowed.

In addition, an AAG requested that the plaintiffs consider an alternative method of conducting a search – through the use of a private consultant with greater expertise and personnel resources than available in the AGO – that would result in a more expeditious response to plaintiffs’ requests given the voluminous nature of the request. The AAG proposed that plaintiffs pay for this more expeditious search. While asserting and reserving objections to the proposed alternative, along with a right to seek reimbursement if they decided to pay for a private contractor to undertake the search, plaintiffs’ representatives requested an estimate of the cost. When a cost estimate was provided to them by the AGO, their legal counsel indicated that he would confer with his clients and “would get back” to the AAG.

Without any further communication concerning the request for further narrowing and clarification and without regard to their counsel's commitment to "get back" to the AGO with respect to whether plaintiffs wanted to proceed with a private contractor search, plaintiffs proceeded to file this action pursuant to § 319 of the PRA.

As set forth in this Memorandum, under these circumstances plaintiffs have failed to exhaust their administrative remedies under the PRA. Accordingly, their claims should be dismissed without prejudice.

FACTUAL BACKGROUND

The May 10, 2016 Request

On May 10, 2016, EELI and FMELC submitted a public records request to the AGO. **Exhibit 1 (attached to Amended Complaint ("AC") as Exhibit 1).** On May 13, 2016, AAG Michael Duane responded, pursuant to 1 V.S.A. § 318(a)(5)(A), that a determination would be provided on or before May 24, 2016. **Exhibit 2 (AC Complaint Exhibit 2).** On May 23, 2016, AAG Duane responded to EELI and FMELC's representatives by certifying "in accordance with 1 V.S.A. § 318(a)(4) that the records you requested in your May 10, 2016 communication to our Office do not exist." **Exhibit 3 (AC Complaint Exhibit 3).** A copy of the envelope containing the May 23 letter was retained by EELI. It bears a postmark of May 23, 2016. **Exhibit 4 (AC Complaint Exhibit 3).** AAG Duane has submitted an affidavit in which he affirms that he caused the May 23, 2016 letter to be placed in first-class mail on May 23, 2016 and that, after it was deposited in the mail, the letter was never returned to the AGO. **Exhibit 5, Affidavit of Michael O. Duane, ¶ 3 & Attachment A.**

On June 15, 2016, the AGO was served with a June 13, 2016 Complaint by EELI and FMELC in the above matter. The complaint included an allegation that the AGO had

“missed its statutory deadline to substantively respond [to the May 10, 2016 records request]” Complaint, ¶ 17. Prior to filing the Complaint, plaintiff did not inquire of AAG Duane as to whether a substantive response had been sent. **Duane Affidavit, ¶ 4.** On June 17, 2016, Chief AAG William Griffin notified plaintiff’s counsel by telephone that a response had, in fact, been transmitted on May 23, 2016, and he emailed to plaintiff’s counsel a copy of the letter. **Exhibit 6, Affidavit of William E. Griffin, ¶ 4 & Attachment A.** Prior to filing the Amended Complaint in this matter, Plaintiffs did not file any administrative appeal to the Attorney General or Deputy Attorney General challenging Assistant Attorney General Michael Duane’s May 23, 2016 certification that no records exist in response to the May 10, 2016 request.

The May 6, 2016 Request

On May 6, 2016, EELI and FMELC submitted a public records request to the AGO. The letter requested “all emails, including attachments, sent to or from (including also as cc: or bcc:) employees of the Office of the Attorney General, except secretarial/administrative staff, which correspondence uses any of the following [sixteen listed] terms, anywhere in the mail, including in the body, To, From, cc: and/or bcc: or Subject fields:” **Exhibit 7 (AC Complaint Exhibit 5).** The list of sixteen terms actually encompassed even more search terms. For example, it requested records of “any” email address associated with several organizational email addresses. **Id.** The letter requested that the search be undertaken for all responsive records “dated January 9, 2016 through February 29, 2016; and March 31, 2016 through the date OAG processes this request.” **Id. (emphasis omitted).**

On May 11, 2016, AAG Duane responded by letter. Observing that the AGO employs approximately 90 AAGs within six major divisions, he requested that EELI and

FMELC narrow and clarify their request by identifying specific individuals and by reducing the number of search terms. He indicated that the AGO has in the past utilized a private contractor to undertake “a search of this apparent scope” and offered to provide a cost estimate for a contractor search. **Exhibit 5, Duane Affidavit, ¶ 5 & Attachment B.**

On May 18, 2016, a representative of EELI and FMELC responded by narrowing to two the number of individual AAGs subject to their request. In their response, EELI and FMELC reiterated all 16 search terms set forth in their original request. **Exhibit 8 (AC Complaint Exhibit 6).**

On June 1, 2016, AAG Duane indicated that without a further narrowing of the search terms the AGO would be inclined to utilize a private contractor (Competitive Computing or “C2”) to assist with the search and, in that event, would look to the requesters to pay the expense of the private contractor. The letter ends by stating that “[i]f, pursuant to 1 V.S.A. § 316(c) you would like us to proceed with engaging C2 and would like an estimate of the charges, please let me know.” **Exhibit 9 (AC Complaint Exhibit 7).**

On June 9, 2016, EELI and FMELC responded by registering objections to paying charges for a private contractor to conduct a search and by requesting an administrative appeal in connection with various issues relating to charges in connection with public records requests, including charges for a private contractor to conduct a search. **Exhibit 10 at 2-3 (AC Complaint Exhibit 8).** At the same time, while reserving their objections, EELI and FMELC requested “an estimate of the costs for C2 to perform these searches and produce these records, including the estimated time to complete this task.” **Id. at 3.** Moreover, they reserved their “right to seek reimbursement” if they decided to proceed with payment of the private contractor. **Id. at 4.**

On June 15, 2016, Chief AAG Griffin sent an email to Attorney Matthew Hardin, who had previously communicated with the AGO on June 9 on behalf of EELI and FMELC. The email provided a cost estimate from C2 for the search and requested a response as to whether EELI and FMELC would agree to pay the C2 charges. The estimate was that C2 could complete the search in 4-8 hours at a cost of \$600 - \$1,200. The email requested a response to the proposal and offered to provide any additional information upon request. **Exhibit 6, Griffin Affidavit, ¶ 7 & Attachment B (email, Griffin to Hardin, 6/15/16 at 4:57 p.m.).**

That same day, June 15, Attorney Hardin responded by email. He confirmed that he represented EELI and FMELC and he stated: "I will get back to you with a substantive response after I am able to review the file and talk with my clients." **Exhibit 6, Griffin Affidavit, ¶ 8 & Attachment B (email, Hardin to Griffin, 6/15/16 at 5:04 p.m.).**

In a separate letter to EELI and FMELC on June 16, 2016, AAG Duane requested further narrowing and clarification of the public records request and suggested some terms that might be narrowed or clarified: "[I]t may be useful if you were to further narrow or clarify your request pursuant to 1 V.S.A. § 318(d) to assist us in responding to your request For example, search terms such as: 'RICO', 'Rockefeller' '@ag.ny.org' are very broad. If you were able to describe what documents you believe may exist, or what topic you were seeking information about, it may facilitate the production of any documents." **Exhibit 11 (AC Complaint Exhibit 9); see also Duane Affidavit, ¶ 6 & Attachment C.**

Subsequent to the June 15 email communication between AAG Griffin and Attorney Hardin and prior to the filing of the Amended Complaint on June 20, 2016, the AGO received no communication from Attorney Hardin or any other representative of the plaintiffs with respect to the C2 proposal. **Griffin Affidavit, ¶ 9.** Subsequent to the June 16

letter from AAG Duane to EELI and FMELC and prior to the filing of the Amended Complaint on June 20, 2016, the AGO received no communication from any representative of the plaintiffs in connection with the June 16 request by AAG Duane for further narrowing and clarification of the public records request. **Duane Affidavit, ¶ 7.**

MEMORANDUM OF LAW

The Vermont Supreme Court has held that a party requesting public records under the Access to Public Records Act (“PRA”) must exhaust the administrative remedies available under 1 V.S.A. § 318 and that a failure to exhaust those administrative remedies deprives the Superior Court of subject matter jurisdiction to entertain an enforcement action under § 319 of the Act. *Bloch v. Angney*, 149 Vt. 29, 31, 538 A.2d 174, 175 (1987). In *Bloch*, the Court concluded that the exhaustion requirement includes the right of appeal to the head of an agency that is set forth in § 318(a)(2). *Id.* In affirming the trial court’s dismissal for lack of subject matter jurisdiction, the Court concluded that “§ 319(a) makes the procedural requirements of § 318 a prerequisite to an action in the superior courts.” *Id.*

The Vermont Supreme Court has repeatedly held that “when administrative remedies are established by statute or regulation, a party must pursue, or “exhaust,” all such remedies before turning to the courts for relief.” *Rennie v. State*, 171 Vt. 584, 585, 762 A.2d 1272, 1274 (2000). Moreover, a statutory requirement to exhaust administrative remedies is without exception. *Stone v. Errecart*, 165 Vt. 1, 4, 675 A.2d 1322, 1325 (1996) (futility doctrine “has no place . . . in the face of a clear legislative command that exhaustion is required”); *see also Town of Bridgewater v. Dept. of Taxes*, 173 Vt. 509, 511, 787 A.2d 1234, 1237 (2001). The Court has explained that the exhaustion doctrine “serves the dual purposes of protecting the authority of the administrative agency and promoting judicial efficiency.” *Jordan v. State*, 166 Vt. 509, 512, 702 A.2s 58, 60 (1991). The requirement is

“designed to ensure that a grievance is fully explored.” *Rennie*, 171 Vt. at 585. Exhaustion is required “so that the agency may function efficiently and so that it may have an opportunity to correct its own errors, to afford the parties and the courts the benefit of its experience and expertise, and to compile a record which is adequate for judicial review.” *Luck Bros., Inc. v. Agency of Transp.*, 2014 VT 59, ¶ 20, 196 Vt. 584, 594, 99 A.3d 997, 1003 (2014) (quoting *Weinberger v. Salfi*, 422 U.S. 749, 765, 95 S.Ct. 2457, 45 L.Ed.2d 522 (1975)).

In 2011, the Legislature added various provisions to § 318 of the PRA that also bear on the exhaustion requirement. *See* 2011 Vt. Acts. No. 59, § 4. One of the 2011 amendments, codified as 3 V.S.A. § 318(d), provides as follows:

In responding to a request to inspect or copy a record under this subchapter, a public agency shall consult with the person making the request in order to clarify the request or to obtain additional information that will assist the public agency in responding to the request and, when authorized by this subchapter, in facilitating production of the requested record for inspection or copying. In unusual circumstances, as that term is defined in subdivision (a)(5) of this section, a public agency may request that a person seeking a voluminous amount of separate and distinct records narrow the scope of a public records request.

Id.

Given that the Legislature has authorized state agencies to seek clarification and obtain additional information in order to respond to a request for public records and has also authorized state agencies to request narrowing of a public records request, it necessarily follows that a public records requester must respond to such requests by a state agency and afford the state agency a reasonable time period to proceed based on the response. Section 318 must be read as a whole and the Legislature’s requirement of exhaustion must be construed in light of the provisions in § 318(d). Common sense also calls for this interpretation. A state agency cannot reasonably be expected to undertake a search for

records and review such records until the task at hand has been finally determined. Requests for clarification and narrowing are part and parcel of determining the scope of the request.

The fact that the Legislature, in 2011, made it easier for plaintiffs to recover attorney's fees in PRA actions, *see* 2011 Vt. Acts No. 59, § 5 (codified at 1 V.S.A. § 319(d)), makes it even more imperative that the exhaustion doctrine apply to requests for clarification and/or narrowing. Plaintiffs seeking attorney's fees – as these plaintiffs do in the Amended Complaint – must ensure that every issue they seek to present in superior court has first been presented and exhausted at the administrative level. In sum, the provisions of § 318(d) are now part of the landscape of the exhaustion requirement under the PRA. Public records requesters must respond to agency requests under §318(d).

ARGUMENT

I. Plaintiffs Failed To Exhaust Available Administrative Remedies With Respect To The Certification That No Records Exist In Response To The May 10, 2016 Request.

In their Amended Complaint, plaintiffs attempt to challenge the certification by AAG Duane that no records exist that are responsive to the May 10, 2016 request. They seek to inquire through the litigation as to “the adequacy of the May 23 response to plaintiffs’ request.” *See* Amended Complaint, ¶¶ 14, 32. Plaintiffs argue, among other things, that they were not provided with sufficient details about the search that was conducted. *Id.*

However, plaintiffs fail to allege that they presented any of the issues that they now seek to litigate to AAG Duane for his consideration. There is no record of any presentation of these issues on the administrative level. The exhaustion doctrine prevents plaintiffs from ambushing a state agency in court with claims that were never presented at the administrative level. Under the PRA, the AGO is entitled to have those issues presented to

it and to have an opportunity to respond before litigation is commenced. Moreover, judicial efficiency requires that exhaustion occur. Exhaustion serves to fully explore the existence and extent of any dispute between the requester and the state agency.

In addition, even assuming plaintiffs had presented issues and made requests to AAG Duane in connection with the May 23 certification and further assuming that AAG Duane had dismissed their requests, plaintiffs still have the obligation under the exhaustion requirement to pursue an appeal to the head of the AGO. Plaintiffs fail to allege that they have pursued an appeal in connection with their claim concerning the May 23 response.

The court should reject the attempt by plaintiffs to establish jurisdiction based on their assertion that an alleged delay in receiving the May 23 response “gives rise to an inference” that statutory deadlines for responding were violated. First, it is undisputed that the letter was sent on May 23. The postage-stamped envelope retained by EELI supports the proposition that the May 23 letter was, in fact, deposited in the mail on May 23. And the attached Affidavit of Michael Duane confirms that fact. Second, there is no legal authority supporting plaintiff’s “inference” theory. On the contrary, there is a presumption that the letter was sent and received in due course. *See Mary Fletcher Hospital v. City of Barre*, 117 Vt. 430, 432, 94 A.2d 226, 228 (1953); *see also Town of Barnet v. Town of Norton*, 90 Vt. 544, 550, 99 A. 238, 240-41 (1916).¹ Third, if there was any delay on the part of the U.S. Postal Service, that was obviously not attributable to the AGO and cannot be the basis for an alleged violation of the PRA. And, finally, plaintiffs cannot rule out the possibility that their own mail handling practices or an isolated mail handling incident caused any delay in their

¹ In the *Mary Fletcher Hospital* case, the Court observed that “the presumption is strengthened by the fact that the envelope bore the sender’s return card and never came back.” *Id.* at 432. That was also the case here, where the envelope containing the May 23 letter which was received and retained by EELI bears the AGO’s return address in the upper left hand corner. **Exhibit 4.**

becoming aware of the May 23 letter.² Surely, jurisdiction and avoidance of the obligation to exhaust administrative remedies cannot be premised on a mere allegation that mail was not promptly received. If that were so, then the exhaustion requirement could be easily side-stepped in any case and a state agency would have no ability to enforce the exhaustion requirement of the PRA. That cannot be.

II. In Connection With Their May 6, 2016 Request, Plaintiffs Failed to Respond to Pending Requests for Clarification and For Narrowing of the Request and For Additional Information and, Therefore, Failed to Exhaust Their Administrative Remedies.

Plaintiffs' May 6 request was extensive. Even after plaintiffs agreed to limit the number of individuals subject to the request, the request contained no less than sixteen search terms – with multiple potential iterations of some of the search terms. It is not a typical public records request. Accordingly, in the face of this extensive request, and in the interests of providing an expeditious response, the AGO proposed that a private contractor conduct the search. In the alternative, the AGO asked EELI and FMELC to further narrow and clarify their search terms.

While plaintiffs lodged objections to paying for a private contractor to conduct the search, in the same communication they affirmatively requested a cost estimate and reserved the right to seek reimbursement if they opted to pay the private contractor, C2. Moreover, after a cost estimate was provided by AAG Griffin, plaintiffs' counsel stated on June 15 that he would confer with his clients and “get back” to AAG Griffin with a response to the proposal. However, notwithstanding this commitment and without first providing a

² Plaintiffs cannot rule out those possibilities. And, of course, that is one of the underlying reasons for the mail delivery presumption. In addition, even assuming that plaintiffs were not aware of the May 23 letter until June 15, as they allege, or that plaintiffs' own mail handling practices were not the cause of their lack of awareness, it should be noted that plaintiffs never asked for any additional information concerning the AGO's mailing of the letter before alleging a violation of the PRA. This lack of a diligent inquiry is consistent with plaintiffs' lack of diligence in exhausting its administrative remedies.

response and affording an opportunity for the AGO to undertake the search using AGO office resources, plaintiffs proceeded to assert their claims with respect to the May 6 request in the June 20, 2016 Amended Complaint. The claims concerning the May 6, 2016 request were asserted for the first time in the Amended Complaint.³

Similarly, plaintiffs filed no response to AAG Duane's June 16 request for further clarification and narrowing of the search terms. They simply proceeded to file suit on June 20.

In their lawsuit, plaintiffs ask for various declarations as to whether private contractors may charge for searches undertaken by private contractors and what fees may be charged under the PRA for searches of public records, and they allege that the AGO has "constructively denied" their request. *See* Amended Complaint, ¶¶ 35-38. However, these requests for relief are not ripe under the circumstances presented. Plaintiffs must exhaust the administrative process before seeking relief and have failed to do so.

Plaintiffs had to provide a response to the AGO's private contractor proposal and afford an opportunity for the AGO to conduct the search with AGO in-house resources before filing. Their counsel requested a cost estimate and indicated that he would discuss it with his clients and respond. The AGO was awaiting a response when the claim was filed on June 20. Plaintiffs' counsel could have said "no" to the proposal; however, he had to provide an answer and then afford an opportunity to conduct the search.

Contrary to plaintiffs' allegation, AAG Duane's June 16 letter did not identify the private contractor as the exclusive means of conducting the search. In his June 16 letter, AAG Duane indicated that the AGO was "exploring whether there might be other methods

³ The only subject of the original June 13, 2016 Complaint filed in this matter was the May 10, 2016 public records request.

of complying with your request.” **Exhibit 5, Duane Affidavit, ¶ 6 & Attachment C (Duane to Richardson and Horner, 6/16/16).**

Plaintiffs may try to argue that they exhausted their administrative remedies by requesting an administrative appeal on the issues related to private contractors in the same June 9 letter in which they asked for a cost estimate. But plaintiffs cannot have it both ways. Having requested a costs estimate and holding out the possibility that it would elect to proceed with a private contractor search, the issue was not ripe for an administrative appeal. There would be no reason to address an appeal on those issues while plaintiffs were still entertaining the private contractor proposal from AAG Griffin. And Attorney Hardin confirmed that the proposal had not been ruled out as of June 15.

By failing to respond to both the private contractor proposal and the request for further narrowing of the public records request, plaintiffs left the AGO hanging. To be clear, the AGO is not saying that the plaintiffs could not have said “no” to the proposal; the point is that plaintiffs did not respond at all after holding open the possibility that they might say “yes” or “no.”

Likewise, the plaintiffs could have said “no” to the request for further clarification and narrowing. However, they did have to say something. Otherwise, the administrative process was left in limbo.

If plaintiffs had said “no” to both requests, then the AGO could have proceeded with a search using state resources and potentially avoided the need to litigate some or all of the issues presented by the plaintiffs in the Amended Complaint concerning the use of private contractors. The AGO was – and is – entitled to that opportunity. It is untenable to suggest, as plaintiffs have, that the AGO had to simultaneously complete a search using state

resources while at the same time awaiting responses to its proposal for the use of a private contractor and its request for narrowing of the scope of the search.

When the Legislature adopted § 318(d), it must necessarily have contemplated that a state agency's requests for additional information, for clarification, and for narrowing would require responses from a requester of public records. The Legislature could not have intended that a state agency could be subjected to suit whenever a requester fails to respond. A requester cannot hijack the administrative process through a non-response.

In addition, the Legislature must have contemplated that a state agency would have a reasonable period of time to search for and produce any non-exempt responsive documents once responses to such inquiries were received from a requester. In the interests of having a reasonable time period that is predictable to all parties, and consistent with 1 V.S.A. § 318(a)(5), it makes sense that a state agency be allowed ten business days to conduct a search and respond to a request for records from the date on which a response has been received to a request for additional information or for clarification or for narrowing of a public records request.

In sum, the plaintiffs' claims with respect to the May 6, 2016 request should be dismissed for failure to exhaust the administrative process. Their claims are not yet ripe.

CONCLUSION

Plaintiff's claims should be dismissed for failure to exhaust administrative remedies. With respect to the May 10 request, plaintiffs should be required to present to the AGO in the first instance any questions that they may have concerning the certification that no responsive records exist. With respect to the May 6 request, plaintiffs should be required to inform the AGO of their position with respect to (1) the AGO's private contractor proposal; and (2) the AGO's June 16 request for further clarification and narrowing. In the event that


the plaintiffs decline the AGO's requests, the AGO should be allowed to have 10 business days thereafter in which to transmit a response to plaintiffs' May 6 public records request in accordance with the provisions of 1 V.S.A. § 318.

Dated: July 26, 2016

STATE OF VERMONT

WILLIAM H. SORRELL
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CERTIFICATE OF SERVICE

I hereby certify that on this 26th day of July, 2016, I served Defendant's Motion to Dismiss for Lack of Subject Matter Jurisdiction in the above-captioned matter by sending same via first class mail, postage prepaid, and via email to the following:

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DATED at Montpelier, Vermont this 26th day of July, 2016.

STATE OF VERMONT

WILLIAM H. SORRELL
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By: 

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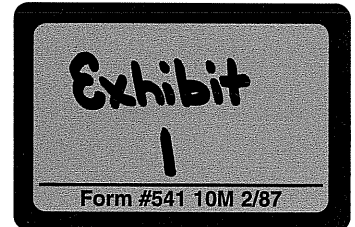
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**Office of the
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REQUEST UNDER THE VERMONT PUBLIC RECORDS ACT

May 10, 2016

Vermont Attorney General's Office
109 State Street
Montpelier, VT 05609-1001



By Electronic mail: ago.info@vermont.gov

RE: Certain of the AG's correspondence records

To whom it may concern:

Pursuant to the Vermont Access to Public Records Act, Vt. Stat. Ann. Title 1, §§ 315-320, the undersigned groups 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 offices in Washington, DC, with established public records transparency practices. Consistent with the Vermont Access to Public Records Act, we expect a prompt, substantive reply to our request. Given the non-profit transparency and journalism activities of the requesters, described below, we ask that those limited fees permitted by § 316 be waived.

1. Please provide us copies of all emails, including attachments, a) sent to or from (including also as cc: or bcc:) Scott Kline, b) which emails were sent to or from Mr. Kline using *an account(s) other than* his official @Vermont.gov email address(es), c) dated from January 4, 2016 through the date you process this request, inclusive, and d) which contain one or more of the following keywords or phrases, whether in the body of the email, or in the to:, from:, cc:, or bcc:, or Subject fields, which content affirms they are public records, discussing public business:

- i) Pawa (including also in e.g., mp@pawalaw.com)
- ii) Passacantando
- iii) fraud
- iv) Fahr (including also in e.g., "@fahrllc.com")
- v) "Climate denial"
- vi) "Climate denier" (including also in "climate deniers")
- vii) lemsrolovic@gmail.com, and/or
- viii) michaelmeade@gmail.com

2. We also request copies of all emails, including attachments, a) sent to or from (including also as cc: or bcc:) William Sorrell, b) which emails were sent to or from Mr. Sorrell using *an account(s) other than* his official @Vermont.gov email address(es), c) dated from January 4, 2016 through the date you process this request, inclusive, and d) which contain one or more of the following keywords or phrases, whether in the body of the email, or in the to:, from:, cc:, or bcc:, or Subject fields, which content affirms they are public records, discussing public business (note this includes different search terms than the Kline request):

- i) Pawa (including also in e.g., mp@pawalaw.com)
- ii) Passacantando
- iii) fraud
- iv) Fahr (including also in e.g., "@fahrllc.com")
- v) "Climate denial"
- vi) "Climate denier" (including also in "climate deniers"), and/or
- vii) Schneiderman

If you have information to help further narrow this request please feel free to contact the undersigned. On information and belief, we suggest that the two Vermont OAG officials above may have conducted the public business of the state of Vermont on private email accounts. As you are aware, § 317 (b) provides that "public record" or "public document" means any written or recorded information, regardless of physical form or characteristics, which is produced or acquired in the course of public agency business" regardless of that record's location.

We request a rolling production, if/as you see necessary and appropriate within the Vermont Access to Public Records Act, 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.

While we request that the limited fees allowed by statute be waived, we nevertheless agree to pay legitimate expenses up to \$150.00. 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 *all responsive records should be in electronic format, necessitating no photocopying expense.*

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. As such, we also have no commercial interest possible in these records.

E&E Legal, for example, is also a media outlet for these purposes¹: 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.

¹ Examples of open records-derived publications by E&E Legal requesters include, 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 in 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.²

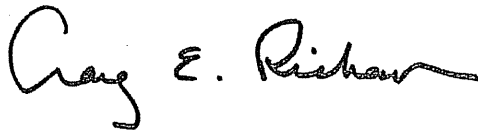
The requested information is of critical importance to the nonprofit policy advocacy groups engaged on these relevant issues, news media covering the issues, and others concerned with government activities on this critical subject, or as the United States Supreme Court once noted in the context of the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

² 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, 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, 2014.

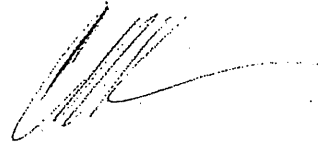
We repeat our request for a rolling production of records, such that the State should furnish records electronically to the undersigned as soon as they are identified, on a rolling basis if necessary, and any hard copies to 722 12th Street Northwest #400, Washington, DC 20005.

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

Respectfully submitted,



Craig E. Richardson
Executive Director, E&E Legal
Richardson@EELegal.org
703.981.5553



Christopher C. Horner, Esq.
for the Free Market Environmental Law Clinic
chris@chornelaw.com
202.262.4458

WILLIAM H. SORRELL
ATTORNEY GENERAL

SUSANNE R. YOUNG
DEPUTY ATTORNEY GENERAL

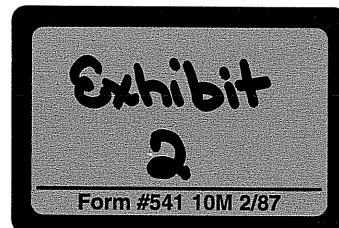
WILLIAM E. GRIFFIN
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May 13, 2016 .

Mr. Craig E. Richardson
Executive Director, E&E Legal
Mr. Christopher C. Horner
Free Market Environmental Law Clinic
722 12th Street Northwest #400
Washington, DC 20005

RE: Certain of the AG's correspondence records – private account request

Dear Merrs. Richardson and Horner:

Our Office is in receipt of your request for public records dated May 10, 2016 seeking emails and attachments sent to or from Scot Kline and to or from William Sorrell using accounts other than their official email addresses from January 4, 2016 to the present containing certain search terms.

In accordance with 1 V.S.A. § 318(a)(5)(A) we will need to conduct a search from sources outside of our Office. I except that we will be able to respond to your request no later than May 24, 2016.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael O. Duane".

Michael O. Duane
Senior Assistant Attorney General
Director, General Counsel and Administrative
Law Division

WILLIAM H. SORRELL
ATTORNEY GENERAL

SUSANNE R. YOUNG
DEPUTY ATTORNEY GENERAL

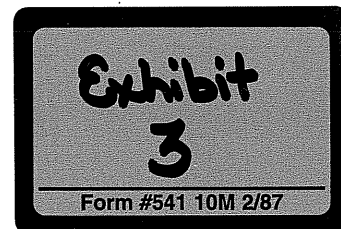
WILLIAM E. GRIFFIN
CHIEF ASST. ATTORNEY
GENERAL



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May 23, 2016

Mr. Craig E. Richardson
Executive Director, E&E Legal
Mr. Christopher C. Horner
Free Market Environmental Law Clinic
722 12th Street Northwest #400
Washington, DC 20005

RE: Certain of the AG's correspondence records – private account request

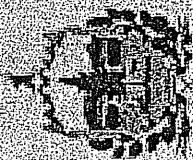
Dear Merrs. Richardson and Horner:

As a follow up to my letter to you dated May 13, 2006, this is to certify in accordance with 1 V.S.A. § 318(a)(4) that the records you requested in your May 10, 2016 communication to our Office do not exist.

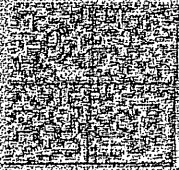
Sincerely,

A handwritten signature in black ink, appearing to read "Michael O. Duane".

Michael O. Duane
Senior Assistant Attorney General
Director, General Counsel and Administrative
Law Division



AG1
Office of the Attorney General
109 State Street
Montpelier, VT 05609



U.S. POSTAGE PERMIT NO. 10000



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05-10-2010 MAY 23 2010

Mr. Craig E. Richardson
Executive Director, E&E Legal
Mrs. Christopher C. Horner
Free Market Environmental Law Clinic
722 12th Street Northwest #400
Washington, DC 20005

2000523557 0013



Exhibit
4

Form #541 10M 2/87

STATE OF VERMONT

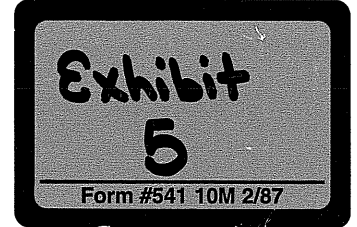
SUPERIOR COURT
Washington Unit

CIVIL DIVISION
Docket No.: 349-6-16 Wncv

ENERGY & ENVIRONMENT LEGAL)
INSTITUTE, and FREE MARKET)
ENVIRONMENTAL LAW CLINIC,)
Plaintiffs)

v.)

THE ATTORNEY GENERAL OF)
VERMONT,)
Defendant)



AFFIDAVIT OF MICHAEL O. DUANE

NOW COMES Michael O. Duane, and having been duly sworn, deposes and states as follows:

1. I am an Assistant Attorney General employed by the State of Vermont Office of the Attorney General (AGO).

2. On May 10, 2016, the AGO received a public records request from the Energy & Environment Legal Institute (EELI) and the Free Market Environmental Law Clinic (FMELC). On May 13, 2016, I caused a letter to be sent, by first-class U.S. mail, to Craig Richardson of EELI and Christopher Horner of FMELC in which I indicated, pursuant to the provisions of 1 V.S.A. § 318(a)(5)(A), that I would respond to the public records request no later than May 24, 2016. My May 13, 2016 letter was never returned by the Postal Service to the AGO as undeliverable or for any other reason.

3. On May 23, 2016, I caused a letter to be sent, by first-class U.S. mail, in response to Craig Richardson of EELI and Christopher Horner of FMELC in further response to the May 10, 2016 public records request. A true and accurate copy of my May 23, 2016 letter is attached hereto as **Attachment A**. My May 23, 2016 letter was never returned by the Postal Service to

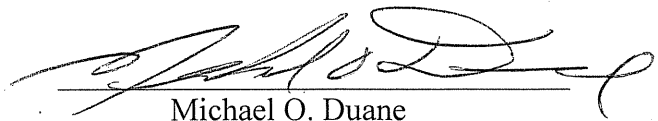
the AGO as undeliverable or for any other reason.

4. Prior to the filing of the June 13, 2016 Complaint in the above matter, neither Mr. Richardson nor Mr. Horner nor any other representative of EELI or FMELC inquired of me as to whether a substantive response had been sent by the AGO in response to EELI's and FMELC's May 10, 2016 public records request.

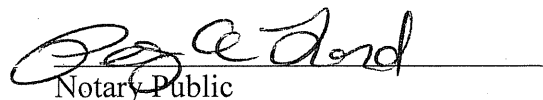
5. In connection with a separate public records request made by EELI and FMELC and dated May 6, 2016, I caused a letter dated May 11, 2016 to be sent, by first-class U.S. mail, to Craig Richardson of EELI and Christopher Horner of FMELC. A true and accurate copy of my May 11, 2016 letter is attached hereto as **Attachment B**. My May 11, 2016 letter was never returned by the Postal Service to the AGO as undeliverable or for any other reason.

6. In connection with the May 6, 2016 public records request by EELI and FMELC, I caused a letter dated June 16, 2016 to be sent, by first-class U.S. mail, to Craig Richardson of EELI and Christopher Horner of FMELC. A true and accurate copy of my June 16, 2016 letter is attached hereto as **Attachment C**. My June 16, 2016 letter was never returned by the Postal Service to the AGO as undeliverable or for any other reason.

7. Prior to the filing of the June 20, 2016 Amended Complaint, I received no communication from Mr. Richardson or Mr. Horner or from any other representative of EELI or FMELC in connection with my June 16, 2016 letter.


Michael O. Duane

Subscribed and sworn to before me this 25 day of July, 2016.


Notary Public

My Commission Expires: 2/10/19

WILLIAM H. SORRELL
ATTORNEY GENERAL

SUSANNE R. YOUNG
DEPUTY ATTORNEY GENERAL

WILLIAM E. GRIFFIN
CHIEF ASST. ATTORNEY
GENERAL



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<http://www.ago.vermont.gov>

May 23, 2016

Mr. Craig E. Richardson
Executive Director, E&E Legal
Mr. Christopher C. Horner
Free Market Environmental Law Clinic
722 12th Street Northwest #400
Washington, DC 20005

RE: Certain of the AG's correspondence records – private account request

Dear Merrs. Richardson and Horner:

As a follow up to my letter to you dated May 13, 2006, this is to certify in accordance with 1 V.S.A. § 318(a)(4) that the records you requested in your May 10, 2016 communication to our Office do not exist.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael O. Duane", with a long horizontal line extending to the left.

Michael O. Duane
Senior Assistant Attorney General
Director, General Counsel and Administrative
Law Division

Attachment A

WILLIAM H. SORRELL
ATTORNEY GENERAL

SUSANNE R. YOUNG
DEPUTY ATTORNEY GENERAL

WILLIAM E. GRIFFIN
CHIEF ASST. ATTORNEY
GENERAL



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May 11, 2016

Mr. Craig E. Richardson
Executive Director, E&E Legal
Mr. Christopher C. Horner
Free Market Environmental Law Clinic
722 12th Street Northwest #400
Washington, DC 20005

RE: Certain of the AG's correspondence records

Dear Merrs. Richardson and Horner:

Our Office is in receipt of your request for public records dated May 6, 2016.

You are requesting copies of emails sent to or from employees of the Office of the Attorney General (except for secretarial and administrative staff) from January 9, 2016 through February 29, 2016, and from March 31, to the present, using any of 16 terms you have identified in your request.

Our Office employs approximately 90 assistant attorneys general within 6 major divisions. In accordance with 1 V.S.A. § 318(d), and with your offer to further narrow your request, we ask that you assist us by clarifying your request, if possible, to identify particular individuals or divisions covered by your request and narrow the 16 identified terms to facilitate a response to your request.

Otherwise, based on past experiences, we have employed a contractor to undertake a search of this apparent scope, and we can provide you with the cost estimates for such an undertaking as well.

Thank you for your anticipated response to our request for clarification.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael O. Duane".

Michael O. Duane
Senior Assistant Attorney General

Attachment B

WILLIAM H. SORRELL
ATTORNEY GENERAL

SUSANNE R. YOUNG
DEPUTY ATTORNEY GENERAL

WILLIAM E. GRIFFIN
CHIEF ASST. ATTORNEY
GENERAL



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June 16, 2016

Mr. Craig E. Richardson
Executive Director, E&E Legal
Mr. Christopher C. Horner
Free Market Environmental Law Clinic
722 12th Street Northwest #400
Washington, DC 20005

RE: Certain of the AG's correspondence records

Dear Messrs. Richardson and Horner:

Thank you for your letter dated June 9, 2016 which was received on that date through an email attachment. Please allow me to respond to the matters raised in your letter as follows.

Preliminarily, an appeal to the head of a state agency under Vermont's access to public records act is available under 1 V.S.A. § 318(a)(2) and (3) when there has been a denial of a request for public records. There has been no denial of your May 6, 2016 request in this matter and, therefore, any appeal is not yet ripe.

You have also raised in your letter issues regarding charging for copies of public records, charges for staff time for reviewing records and charges for a contractor to process your request. We believe that our Office is authorized by the Access to Public Records Act to charge for the time associated with complying with a request for a copy of a public record, as well as for the cost of providing a copy of a public record.

You have also requested an estimate of the costs of complying with your public records request. We have received an estimate that complying would require 4 to 8 hours of a technician's time at a cost of \$150.00 an hour. Chief Assistant Attorney General William Griffin has communicated with attorney Matt Hardin regarding these estimated costs. We are also exploring whether there might be other methods of complying with your request.

Upon reviewing the terms of your request as described in both your May 6, 2016 request, and in Mr. Mandelbaum's May 18, 2016 email communication, it may be useful if you were to further narrow or clarify your request pursuant to 1 V.S.A. § 318(d) to assist us in responding to your request, and perhaps facilitating the production of any records that may exist. For example, search terms such as: "RICO", "Rockefeller"

Attachment C

"@ag.ny.org" are very broad. If you were able to describe what documents you believe may exist, or what topic you were seeking information about, it may facilitate the production of any documents.

Please let me know if you are able to clarify or narrow the scope of your request.

Sincerely,

A handwritten signature in black ink, appearing to read "M. Duane", with a long horizontal flourish extending to the right.

Michael O. Duane
Senior Assistant Attorney General
Director, General Counsel and Administrative
Law Division

STATE OF VERMONT

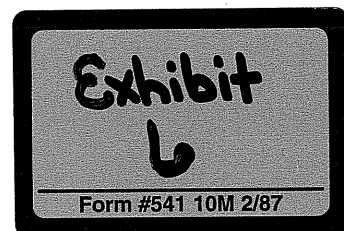
SUPERIOR COURT
Washington Unit

CIVIL DIVISION
Docket No.: 349-6-16 Wncv

ENERGY & ENVIRONMENT LEGAL)
INSTITUTE, and FREE MARKET)
ENVIRONMENTAL LAW CLINIC,)
Plaintiffs)

v.)

THE ATTORNEY GENERAL OF)
VERMONT,)
Defendant)



AFFIDAVIT OF WILLIAM E. GRIFFIN

1. I am an Assistant Attorney General employed by the State of Vermont Office of the Attorney General (AGO). I represent the State of Vermont in this action.

2. On June 15, 2016, the AGO was served with a June 13, 2016 Complaint by the Energy & Environment Legal Institute (EELI) and the Free Market Environmental Law Clinic (FMELC) in the above matter. The Complaint included an allegation that the AGO had "missed its statutory deadline to substantively respond [to the May 10, 2016 records request]" Complaint, ¶ 17.

3. On June 16 and June 17, 2016, I confirmed that Assistant Attorney General Michael Duane had responded to the Plaintiffs' May 10, 2016 records request, by a letter that was dated May 23, 2016.

4. On June 17, 2016, I notified plaintiffs' counsel by a phone message and then by email that Assistant Attorney General Duane had, in fact, responded to the Plaintiffs' records request on May 23, 2016. I attached a copy of the Duane letter to my email to Plaintiffs' counsel. True and accurate copies of my June 17 email and AAG Duane's May

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GENERAL
109 State Street
Montpelier, VT
05609

23 letter are attached to this Affidavit as **Attachment A (email, Griffin to Toensing, 6/17/16; letter, Duane to Richardson, 5/23/16).**

5. Prior to filing the Amended Complaint in this matter, Plaintiffs did not file any administrative appeal to the Attorney General or Deputy Attorney General challenging Assistant Attorney General Michael Duane's May 23, 2016 certification that no records exist in response to Plaintiffs' May 10, 2016 request.

* * * * *

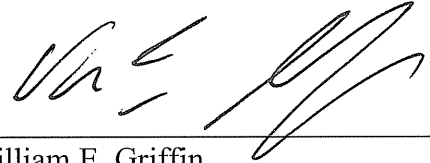
6. On June 9, 2016, attorney Matthew Hardin sent an email to Assistant Attorney General Michael Duane transmitting a June 9, 2016 letter from EELI and FMELC to Duane. The June 9 letter, attached to Plaintiffs' Amended Complaint in this matter as Exhibit 8, included a request that the AGO provide a cost estimate for a private contractor, Competitive Computing (C2), to perform a search for records requested by EELI and FMELC in a public records requests to the AGO dated May 6, 2016.

7. In response to attorney Hardin's June 9 email and the attached request by EELI and FMELC for a cost estimate from C2, I obtained a proposal and cost estimate from Competitive Computing (C2) – an IT consulting firm – and on June 15, 2016, I sent a responsive email to attorney Hardin. The email provided a cost estimate from C2 for the search and requested a response as to whether EELI and FMELC would agree to pay the C2 charges. The estimate was that C2 could complete the search in 4-8 hours at a cost of \$600 - \$1,200. The email offered to provide any additional information upon request. A true and accurate copy of my email to attorney Hardin is set forth in **Attachment B (email, Griffin to Hardin, 6/15/16 at 4:57 p.m.)**

8. That same day, June 15, attorney Hardin responded to me by email. He confirmed that he represented EELI and FMELC and he stated: "I will get back to you with

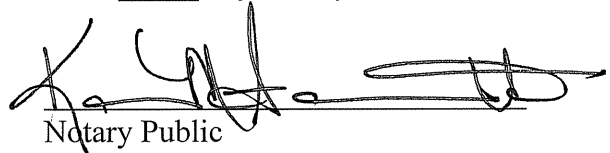
a substantive response after I am able to review the file and talk with my clients.” A true and accurate copy of Attorney Hardin’s June 15 email to me is set forth in **Attachment B (email, Hardin to Griffin, 6/15/16 at 5:04 p.m.)**.

9. Subsequent to attorney Hardin’s June 15 email to me and prior to the Plaintiffs’ filing of the Amended Complaint, I did not receive any communication from attorney Hardin or any other representative of the plaintiffs concerning the C2 proposal. The next correspondence that I received from Plaintiffs’ counsel was a June 21, 2016 email from Brady Toensing, attaching a copy of the First Amended Complaint in this action.



William E. Griffin

Subscribed and sworn to before me on this 25th day of July, 2016.


Notary Public

My Commission Expires:

2.15.19

Office of the
ATTORNEY
GENERAL
109 State Street
Montpelier, VT
05609

From: Griffin, Bill

Sent: Friday, June 17, 2016 6:45 PM

To: Brady Toensing <toensing@gmail.com>; Brady Toensing (brady@digtoe.com) <brady@digtoe.com>

Subject: Energy & Env'l Legal Institute et al v. Attorney General of Vermont, 349-6-16 Wncv

Brady,

To confirm my phone message, I think that the lawsuit that you filed against the Attorney General on June 13, 2016 is based on a false premise. It is based on an allegation that the plaintiffs - the two organizations that you represent -- "received no substantive response" to a records request they sent to the Attorney General's Office on May 10, 2016. See Complaint, para. 4. That allegation is not true.

AGO files show that we received a records request from your clients on or about May 10. Their request did not define any particular record or records. Rather, they requested that the AGO conduct a search to determine whether records having various characteristics might exist. This letter is attached to the Complaint.

AGO files show that Assistant Attorney General Michael Duane responded to your clients on May 13, 2016. He sent them a letter saying that we would search for responsive records and respond again not later than May 24, 2016. This letter is attached to the Complaint.

AGO files show that Mr. Duane responded to your clients again, on May 23, 2016. This time he informed your clients that the AGO did not have any records responsive to their request. See attached letter from Duane to Richardson and Horner ("the records you requested in your May 10 communication to our Office do not exist."). This letter, which is not attached to the Complaint, is a substantive response to your clients' May 10 records request.

Therefore, I am requesting that you dismiss the lawsuit that you filed against the Attorney General on June 13, 2016. I am requesting that you do so promptly so that the State will not incur additional expense responding to the lawsuit.

Thank you.

William Griffin

Chief Assistant Attorney General

802-828-5503

Attachment A

WILLIAM H. SORRELL
ATTORNEY GENERAL

SUSANNE R. YOUNG
DEPUTY ATTORNEY GENERAL

WILLIAM E. GRIFFIN
CHIEF ASST. ATTORNEY
GENERAL



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<http://www.ago.vermont.gov>

May 23, 2016

Mr. Craig E. Richardson
Executive Director, E&E Legal
Mr. Christopher C. Horner
Free Market Environmental Law Clinic
722 12th Street Northwest #400
Washington, DC 20005

RE: Certain of the AG's correspondence records – private account request

Dear Merrs. Richardson and Horner:

As a follow up to my letter to you dated May 13, 2006, this is to certify in accordance with 1 V.S.A. § 318(a)(4) that the records you requested in your May 10, 2016 communication to our Office do not exist.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael O. Duane", with a long horizontal flourish extending to the left.

Michael O. Duane
Senior Assistant Attorney General
Director, General Counsel and Administrative
Law Division

From: Matt Hardin [mailto:matthewdhardin@gmail.com]
Sent: Wednesday, June 15, 2016 5:04 PM
To: Griffin, Bill <bill.griffin@vermont.gov>
Cc: Duane, Michael <michael.duane@vermont.gov>; Chaim Mandelbaum <Chaim12@gmail.com>
Subject: Re: Richardson/Horner request for a cost estimate for a search of emails and email attachments using variations of sixteen search terms

Mr. Mandelbaum and I both represent Messrs. Richardson and Horner, in their capacities with the Energy & Environment Legal Institute and the Free Market Environmental Law Clinic, so communicating with either of us works.

I will get back to you with a substantive response after I am able to review the file and talk with my clients.

Matthew D. Hardin
Attorney-at-Law

314 West Grace Street, Suite 304
Richmond, VA 23220
Telephone: (804) 608-6456
Facsimile: (877) 310-3847
Email: MatthewDHardin@gmail.com

Virginia State Bar # 87482, North Dakota Bar I.D. # 08212, Minnesota Lawyer I.D. # 0397178.

The information contained in this message may be privileged. It is intended by the sender to be confidential. If you suspect you may not be the intended recipient, please notify the sender and delete all copies.

On Jun 15, 2016, at 4:57 PM, Griffin, Bill <bill.griffin@vermont.gov> wrote:

Mr. Hardin,

Your June 9 email to Assistant Attorney General Michael Duane enclosed a June 9 letter from two individuals – Craig Richardson, Executive Director of the Energy & Environmental Law Institute and Christopher Horner from the Free Market Environmental Law Clinic. Among other things, Messrs. Richardson and Horner requested a cost estimate for a search of emails and email attachments using variations of sixteen search terms.

The Richardson/Horner request for a cost estimate seems to relate back to a May 18 email from an Attorney Chaim Mandelbaum to Mr. Duane. Attorney Mandelbaum's email suggested that he represented Messrs. Richardson and Horner in this matter. In any event, I'll respond to you and ask that you let me know if I should be writing to Attorney Mandelbaum or someone else. For your information, Mr. Duane and I are colleagues in the Vermont Attorney General's Office and we represent the State of Vermont.

The May 18 email from Attorney Mandelbaum stated in part that:

Therefore the gravamen of the request now seeks: copies of all emails, including attachments, sent to or from (including also as cc: or bcc:) Scott Kline, or William Sorrell, 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:

Attachment B

- a) RICO
 - b) racketeer (which includes also in e.g., "racketeering")
 - c) "climate denial"
 - d) "climate denier" (which also includes in "climate deniers")
 - e) Rockefeller
 - f) Pawa (including but not limited to in e.g., Matt Pawa, mp@pawalaw.com, Pawa Law Group),
 - g) Frumhoff (including but not limited to e.g., PFrumhoff@ucsusa.org),
 - h) Passacantando
 - i) Kert (as in Kert Davies)
 - j) Eco-Accountability
 - k) Steyer
 - l) any @fahrl.com email address
 - m) any @ag.ny.gov address
 - n) any @rffund.org email address
 - o) NextGen (including in any usage, e.g., NextGen Climate, any @nextgenclimate.org address, etc.), and/or
 - p) any @democraticags.org address.
- This request seeks records dated January 9, 2016 through February 29, 2016; and March 31, 2016 through the date OAG processes this request (approximately 11 weeks, total).*

I shared this search request with C2-Competitive Computing. C2 is a digital technology company that has assisted the Attorney General's Office with projects like this in the past. C2 tells me that one of their technicians could complete this search in four to eight hours at a cost of \$150 – meaning \$600 to \$1200 total. They informed me that they could fit the work into their schedule and deliver an electronic file of the results to the AGO within three business days. The AGO would then review any responsive documents to determine what legal or ethical rules might bar the release of documents to you or your clients. We cannot estimate the time and expense of the legal/ethical review until C2 delivers an electronic file of the search results to us.

If you agree to pay the C2 charges up to \$1200 let me know that and I will ask C2 to assign a technician to begin the search.

If you have questions or need additional information about the cost estimate for this search, please call me.

Mr. Duane will get back to you on the other matters in the Richardson/Horner letter that was attached to your June 9 email.

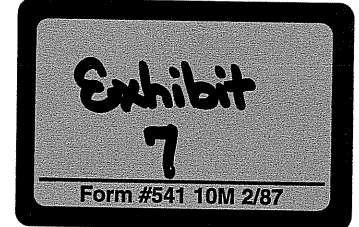
Thank you.

William Griffin
Chief Assistant Attorney General
State of Vermont
802-828-5503

REQUEST UNDER THE VERMONT PUBLIC RECORDS ACT

May 6, 2016

Vermont Attorney General's Office
109 State Street
Montpelier, VT 05609-1001



By Electronic mail: ago.info@vermont.gov

RE: Certain of the AG's correspondence records

To whom it may concern:

Pursuant to the Vermont Access to Public Records Act, Vt. Stat. Ann. Title 1, §§ 315-320, the undersigned groups 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 offices in Washington, DC, with established public records transparency practices. Consistent with the Vermont Access to Public Records Act, we expect a prompt, substantive reply to our request. Given the non-profit transparency and journalism activities of the requesters, described below, we ask that those limited fees permitted by § 316 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) RICO
- b) racketeer (which includes also in e.g., "racketeering")
- c) "climate denial"
- d) "climate denier" (which also includes in "climate deniers")

- e) Rockefeller
- f) Pawa (including but not limited to in e.g., Matt Pawa, mp@pawalaw.com, Pawa Law Group),
- g) Frumhoff (including but not limited to e.g., PFrumhoff@ucsusa.org),
- h) Passacantando
- i) Kert (as in Kert Davies)
- j) Eco-Accountability
- k) Steyer
- l) any @fahr.llc.com email address
- m) any @ag.ny.gov address
- n) any @rffund.org email address
- o) NextGen (including in any usage, e.g., NextGen Climate, any @nextgenclimate.org address, etc.), and/or
- p) any @democraticags.org address.

This request seeks records dated *January 9, 2016 through February 29, 2016; and March 31, 2016 through the date OAG processes this request* (approximately 11 weeks, total).

If you have information to help further narrow this request please feel free to contact the undersigned.

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. Nor do we seek records the Office of the Attorney General has previously produced to us pursuant to other requests.

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 \$150.00. 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.*

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 purposes¹: it not only serves as a regular source of public information and substantive editorial comment about this information

¹ Examples of open records-derived publications by E&E Legal requesters include, 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.

to numerous national (and/or local) media outlets but also applies substantive editorial input in its own publications disseminating public information.

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.²

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

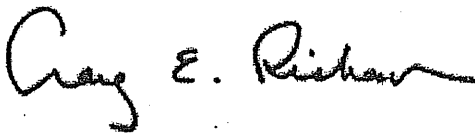
² Print examples, only, to the exclusion of dozens of national electronic media broadcasts, include, e.g., Dawn Reeves, EPA Emails Reveal Push To End State Air Group's Contract Over Conflict, INSIDE EPA, Aug. 14, 2013; Editorial, Public interest group sues EPA for FOIA delays, claims agency ordered officials 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 Bastasch, 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, 2014.

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.

We repeat our request for a rolling production of records, such that the State 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.

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

Respectfully submitted,



Craig E. Richardson
Executive Director, E&E Legal
Richardson@EELegal.org
703.981.5553



Christopher C. Horner
for the Free Market Environmental Law Clinic
chris@chornelaw.com
202.262.4458



Chaim Mandelbaum <chaim12@gmail.com>

Re: Request to the Office of the Attorney General by the Energy and Environment Legal Institute

1 message

Chaim Mandelbaum <chaim12@gmail.com>

Wed, May 18, 2016 at 12:43 PM

Reply-To: chaim12@gmail.com

To: Michael.Duane@vermont.gov

Bcc: Chris Horner <chris@chornelaw.com>, Matt Hardin <matthewdhardin@gmail.com>

Senior Assistant Attorney General Michael Duane,

On behalf of Craig E. Richardson, the Executive Director of the Energy & Environment legal Institute and Christopher C. Horner of the Free Market Environmental Legal Institute, I write in response to your letter, dated May 11, 2016, asking that the request for records submitted to your office on May 6, 2016 pursuant to the Vermont Access to Public Records Act, Vt. Stat. Ann. Title 1, §§ 315-320, be narrowed to allow for easier processing.

On behalf of the requesters, I am authorized to inform you that the request is theretofore being modified to accommodate this narrowing.

The request no longer seeks records from all personnel in the Office of the Attorney general, which as you noted, consists of 90 assistant attorney general's across six divisions. The request seeks records from only two individuals; Scott Kline, or William Sorrell. In all other respects the request is unchanged.

Therefore the gravamen of the request now seeks: *copies of all emails, including attachments, sent to or from (including also as cc: or bcc:) Scott Kline, or William Sorrell, 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) RICO
- b) racketeer (which includes also in e.g., "racketeering")
- c) "climate denial"
- d) "climate denier" (which also includes in "climate deniers")
- e) Rockefeller
- f) Pawa (including but not limited to in e.g., Matt Pawa, mp@pawalaw.com, Pawa Law Group),
- g) Frumhoff (including but not limited to e.g., Pfrumhoff@ucsusa.org),
- h) Passacantando
- i) Kert (as in Kert Davies)
- j) Eco-Accountability
- k) Steyer
- l) any @fahr.llc.com email address
- m) any @ag.ny.gov address
- n) any @rffund.org email address
- o) NextGen (including in any usage, e.g., NextGen Climate, any @nextgenclimate.org address, etc.), and/or
- p) any @democraticags.org address.

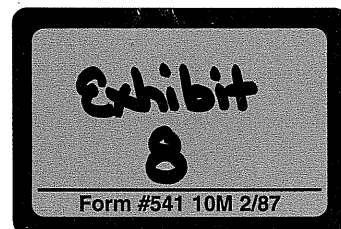
This request seeks records dated January 9, 2016 through February 29, 2016; and March 31, 2016 through the date OAG processes this request (approximately 11 weeks, total).

Pursuant to Vermont statute, if you intend to deny access to these records, we expect to be notified within three business days. We note this is not a new request, merely our effort to assist you by narrowing the existing request as you asked. Given that the records in question are electronic, we prefer to receive electronic copy if possible.

Thank you.

Chaim Mandelbaum
Attorney-at-Law

726 N Nelson St,
Suite 9
Arlington, VA 22203
Telephone: 703-577-9973



Request to the Office of the Attorney General by the Energy and Environment Legal Institute

Email: Chaim12@gmail.com



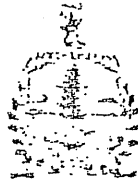
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WILLIAM H. SORRELL
ATTORNEY GENERAL

SUSANNE R. YOUNG
DEPUTY ATTORNEY GENERAL

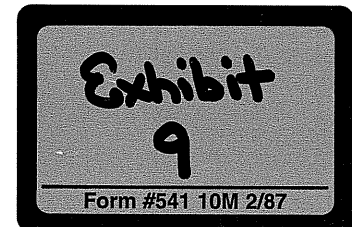
WILLIAM E. GRIFFIN
CHIEF ASST. ATTORNEY
GENERAL



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MONTPELIER, VT
05609-1001

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TTY: (802) 828-3667

<http://www.ago.vermont.gov>



Chaim Mandelbaum
Attorney-at-Law
726 N Nelson St.
Suite 9
Arlington, VA 22203

June 1, 2016

Re: Vermont Access to Public Records Act

Dear Attorney Mandlebaum:

Thank you for your email communication of May 18, 2016 in response to my letter of May 11, 2016 to Messrs. Richardson and Horner, and thank you also for clarifying the public records request received by our Office from Messrs. Richardson and Horner dated May 6, 2016. The request, according to your email communication, seeks email records sent to or from only Scot Kline and William Sorrell using the 16 terms (a-p) set forth in your May 18, 2016 email and in Messrs. Richardson and Horner's May 6, 2016 request, rather than to or from every attorney in our Office.

Given the breadth of the 16 terms you have asked for in your records request, without a further narrowing of those terms, we would engage an outside contractor, Competitive Computing [C2], to assist us in facilitating the production of your request. In accordance with 1 V.S.A. § 316(c) we would require that the charges associated with complying with your request be paid by you prior to providing the documents. Once any responsive documents are collected and appropriately examined, we will then be able to make a determination regarding whether any of the documents are exempt from production at which time any non-exempt records shall be made available promptly.

If, pursuant to 1 V.S.A. § 316(c), you would like us to proceed with engaging C2 and would like an estimate of the charges, please let me know. Thank you.

Sincerely,

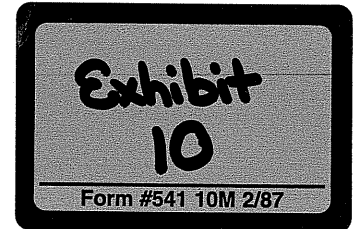
A handwritten signature in black ink, appearing to read "Michael O. Duane".

Michael O. Duane
Senior Assistant Attorney General
Director, General Counsel and Administrative
Law Division

APPEAL TO HEAD OF AGENCY UNDER THE VERMONT PUBLIC RECORDS ACT

June 9, 2016

Michael Duane, Senior Assistant Attorney General
General Counsel, Administrative Law Division
Office of the Attorney General
109 State Street
Montpelier, VT 05609-1001



By Electronic mail: michael.duane@vermont.gov

RE: Certain of the AG's correspondence records

Dear Mr. Duane:

On behalf of the Free Market Environmental Law Clinic and the Energy & Environment Legal Institute, we write to you today in response to your letter of June 1, 2016, received by us via U.S. regular mail on June 6, 2016. In that correspondence you responded to our May 18, 2016 narrowing of our original May 6, 2016 Public Records Act request made to your office seeking certain described records containing one or more of 16 keywords.

We had, in response to your demand to narrow our request on May 11, 2016, limited our request to only documents containing those keywords which were sent or received by Scott Kline and William Sorrell during an 11 week period, *in toto*, including January 9, 2016 through February 29, 2016, and March 31, 2016 through May 6, 2016, both inclusive. In spite of this narrowing, and after delays, your most recent letter indicates that you wish to retain an outside company, Computer Consulting (C2), to process this request and that you seek to charge us for their efforts, ostensibly pursuant to 1 V.S.A. §316(c).

However, the clear text of 1 V.S.A. §316(c) states an “agency may also charge and collect the cost of **staff time** associated with complying with a request for a copy of a public record.” It is not clear to us how an outside consultant qualifies as staff of the Office of the Attorney General (OAG) such that we may be charged for the time spent by them on this request. That is, OAG may engage an outside consultant, consistent with its statutory authority, obligations and other considerations, but requesters are only responsible for *staff time*, directly related to the actual cost of producing copies of the requested records. Because outside consultants’ time and work are not staff time, this expense is OAG’s at its own discretion. Further, there is no provision in the statute to allow OAG additional time to respond to requests in such event, and OAG has already exceeded the statutory time allowed for lawful processing of this request.

Further, 1 V.S.A. §316(c) makes clear that permissible charges are those derived from staff *copying records*, whoever does the copying, not the search for or review of those records. Indeed 1 V.S.A. §316(d) makes clear that agencies may only properly charge requesters for the costs established in the uniform schedule of public records charges as promulgated by the Secretary of State, which delineates both the charges for the copying and staff time used for that purpose. Thus it is incumbent on OAG to promptly direct us to the authority it claims authorizes OAG to bring in an outside contractor and to charge requesters for those costs.

Notwithstanding delays presented us to date and by OAG’s assertion of the right to charge us for an outside contractor, there has been no tolling of the applicable statutory deadlines for processing this request, which have already been exceeded. Please therefore also consider this letter an administrative appeal of OAG’s constructive denial of, or refusal to process, our

May 6, 2016 request according to applicable statutory deadlines. In particular, pursuant to 1 V.S.A. § 318(c)(1), we appeal the following decisions to the head of the agency:

- The apparent decision to provide us with, and charge us for, paper copies of records despite our request for records in electronic format, most of which are electronic in their original form;
- The decision to charge us for the cost of staff time for the review of records when the statute only allows for a state agency to charge to “the actual cost of providing the copy” of the requested records;
- The decision to charge us for the cost of hiring an outside contractor to process our request for public records when the statute only allows the agency to charge for the “actual cost” of providing a copy of records according to a Uniform Fee Schedule established by the Secretary of State.

Notwithstanding the appeal of these issues, and with the above stated objections — including our position that OAG’s decision to engage an outside contractor for this purpose is discretionary, and is not something it may permissibly require a requester to underwrite — while this appeal is being processed, we request an estimate of the costs for C2 to perform these searches and produce these records, including the estimated time to complete this task. By this, in no way do we assent to or authorize further time for OAG to process this request, nor does this toll, suspend or extend the applicable statutory provision of time to respond.

As the time within which C2 can perform this task and OAG can produce these records has already exceeded ten days, we also at this time request access to inspect these records,

pursuant to 1 V.S.A. §316(a), for which the Vermont Public Records Act contemplates no charges or fees. We offer to do so as early as this Friday June 10, 2016, or next week. If this option is preferable to you, please make the records available and let us know what dates you prefer our representative to appear at your office to inspect all responsive records, on premises, pursuant to V.S.A. §316(a)(1).

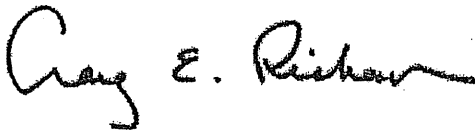
In requesting an estimate for the cost for C2 to perform these tasks, we continue to regard such charges (and other charges outside of producing a copy of the “actual record”) as unlawful under the Vermont Public Records Act and reserve our right to seek relief in the form of reimbursement of this unlawful assessment. However, given the inarguable public interest in and importance of timely production of the records sought in this matter, it is important to make this attempt to get OAG to initiate the legally required processing of these records now.

Following the public reaction to OAG’s April 5, 2016 production to us on related matters, OAG has slow-walked productions and responses to us. This evident slow-walking includes the ongoing practice of photocopying electronic records requested in electronic format, then mailing them via the U.S. post in lieu of electronic transmission, just as the June 6 response was mailed as opposed to emailed despite the Open Records Act’s obvious bias toward timely production. We again request that your office respond to us by email and produce the requested records in electronic format. If you refuse to comply with this request, we ask that this refusal also be made part of our appealed issues pursuant to 1 V.S.A. § 318(c)(1).

We repeat that we expect OAG to respond to our request in a timely fashion, as well as to our appeal, and intend to fully protect our appellate rights as OAG makes necessary.

We look forward to hearing from you regarding a request that by statute should already have been fulfilled. If you have any questions please do not hesitate to contact undersigned.

Respectfully submitted,



Craig E. Richardson
Executive Director, E&E Legal
Richardson@EELegal.org
703.981.5553



Christopher C. Horner
for the Free Market Environmental Law Clinic
chris@chornelaw.com
202.262.4458

WILLIAM H. SORRELL
ATTORNEY GENERAL

SUSANNE R. YOUNG
DEPUTY ATTORNEY GENERAL

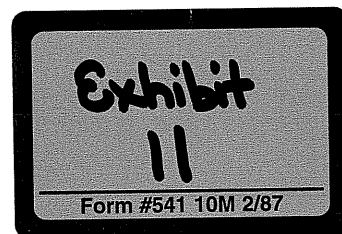
WILLIAM E. GRIFFIN
CHIEF ASST. ATTORNEY
GENERAL



STATE OF VERMONT
OFFICE OF THE ATTORNEY GENERAL
109 STATE STREET
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05609-1001

TEL: (802) 828-3171
FAX: (802) 828-3187
TTY: (802) 828-3665

<http://www.ago.vermont.gov>



June 16, 2016

Mr. Craig E. Richardson
Executive Director, E&E Legal
Mr. Christopher C. Horner
Free Market Environmental Law Clinic
722 12th Street Northwest #400
Washington, DC 20005

RE: Certain of the AG's correspondence records

Dear Messrs. Richardson and Horner:

Thank you for your letter dated June 9, 2016 which was received on that date through an email attachment. Please allow me to respond to the matters raised in your letter as follows.

Preliminarily, an appeal to the head of a state agency under Vermont's access to public records act is available under 1 V.S.A. § 318(a)(2) and (3) when there has been a denial of a request for public records. There has been no denial of your May 6, 2016 request in this matter and, therefore, any appeal is not yet ripe.

You have also raised in your letter issues regarding charging for copies of public records, charges for staff time for reviewing records and charges for a contractor to process your request. We believe that our Office is authorized by the Access to Public Records Act to charge for the time associated with complying with a request for a copy of a public record, as well as for the cost of providing a copy of a public record.


You have also requested an estimate of the costs of complying with your public records request. We have received an estimate that complying would require 4 to 8 hours of a technician's time at a cost of \$150.00 an hour. Chief Assistant Attorney General William Griffin has communicated with attorney Matt Hardin regarding these estimated costs. We are also exploring whether there might be other methods of complying with your request.

Upon reviewing the terms of your request as described in both your May 6, 2016 request, and in Mr. Mandelbaum's May 18, 2016 email communication, it may be useful if you were to further narrow or clarify your request pursuant to 1 V.S.A. § 318(d) to assist us in responding to your request, and perhaps facilitating the production of any records that may exist. For example, search terms such as: "RICO", "Rockefeller"

"@ag.ny.org" are very broad. If you were able to describe what documents you believe may exist, or what topic you were seeking information about, it may facilitate the production of any documents.

Please let me know if you are able to clarify or narrow the scope of your request.

Sincerely,

A handwritten signature in black ink, appearing to read "M. Duane", with a long horizontal flourish extending to the right.

Michael O. Duane
Senior Assistant Attorney General
Director, General Counsel and Administrative
Law Division