

**VIRGINIA:
IN THE CIRCUIT COURT OF THE CITY OF RICHMOND**

Craig Richardson,

AND

Energy & Environment Legal Institute,
Petitioners,

v.

CASE NO.: _____

Mark Herring, in his Official Capacity
as Attorney General of Virginia

Respondent.

SERVE:
Office of the Attorney General
202 North 9th Street
Richmond, Virginia 23219

PETITION FOR WRIT OF MANDAMUS AND INJUNCTIVE RELIEF

NOW COME the Petitioners, Craig Richardson and the Energy & Environment
Legal Institute, by counsel, and allege the following:

1) This matter is brought under the Virginia Freedom of Information Act (FOIA), Virginia Code § 2.2-3713(A) which authorizes this Writ and gives this Court jurisdiction. Venue is proper in this Court pursuant to Va. Code § 2.2-3713(A)(3).

2) Craig Richardson, as a Virginia domiciliary and Executive Director of the Energy & Environment Legal Institute, pursuant to Virginia Code § 2.2-3700 *et. seq.*, transmitted the two Virginia Freedom of Information Act requests at issue here by mail to the Office of the Attorney General of Virginia, seeking documents related to climate change, and communications between the Office of the Attorney General and the Office of the Attorney

General of New York. Specifically, the Petitioners sought “records Virginia employees may have generated in a recent effort with the attorneys general of various other states and territories, to investigate ‘climate denial’.”

3) The Petitioners submitted the first request on or about March 30, 2016, which on April 4, 2016 the Virginia Office of the Attorney General acknowledged that it received. Petitioners submitted the second request at issue on or about August 30, 2016, which the Office of the Attorney General acknowledged it received on September 2, 2016.

4) The Office of the Attorney General responded to the first request on May 5, 2016. It responded to the second request on September 21, 2016. In both responses, however, it improperly withheld and redacted material from the records provided.

5) Under the Virginia Freedom of Information Act, records may be withheld only when they meet the specific conditions, including;

a) Pursuant to § 2.2-3704 (B)(1), if all responsive records are being withheld, the public body must “identify with reasonable particularity the volume and subject matter of withheld records, and cite, as to each category of withheld records, the specific Code section that authorizes the withholding of the records.”

b) Pursuant to § 2.2-3704 (B)(2), if a public body is providing the records in part and withholding them in it must “identify with reasonable particularity the subject matter of withheld portions, and cite, as to each category of withheld records, the specific Code section that authorizes the withholding of the records.”

6) None of the records withheld or redacted were accompanied by any properly cited or detailed explanation of how such records fit any category and code section authorizing their withholding or redaction.

7) Under Virginia Code § 2.2-3704 (D), a single instance of denial of the rights and privileges conferred by the Virginia Freedom of Information Act shall be sufficient to invoke the jurisdiction of this Court and seek mandamus and appropriate attorney's fees.

8) Any denial of a Virginia Freedom of Information request or improper withholding of documents without justification by an enumerated exemption may be reviewed and overturned by a court of appropriate jurisdiction pursuant to Virginia Code § 2.2-3713(A).

August 30 Request

9) The request sent on or about August 30, 2016 sought documents related to a purported Common Interest Agreement signed between the Commonwealth and other states, dated on or after April 29, 2016. This agreement purported to recognize common legal interests in a wide-ranging laundry list of potential pursuits against opponents of several enumerated political agenda items, including, *inter alia*, "potentially taking actions to compel...federal measures to limit greenhouse gases", "potentially taking actions to defend federal measures to...limit greenhouse gases", "potentially conducting investigations of representations made by companies to investors, consumers and the public regarding fossil fuels", "potentially conducting investigations of representations made by companies to investors, consumers and the public regarding...renewable energy", "potentially conducting investigations of representations made by companies to investors, consumers and the public regarding...climate change".

10) Petitioners' request sought all correspondence sent or received which related to the agreement described, which petitioners learned from another public records production was signed by the Office of Attorney General on May 9, 2016.

11) The request specifically sought “copies of *all email or text correspondence, attachments, and any other records which are related to or reference the purported Common Interest Agreement* and which were sent to or were received from any person working outside your office or which were sent to any person in your office by a person in another State Attorney General’s office, and which are dated on or after April 29, 2016.” (italics in original).

12) The request further specified that the requester was seeking the entire chain or thread of any correspondence which had responsive material, stating “We request entire email/text threads.”

13) Additionally, the request noted, “We request records in **electronic form** if available and, being electronic mail, they are in electronic form, necessitating no photocopying expense.” (**emphasis** in the original).

14) On September 21, 2016 the Office of the Attorney General responded to the request, providing thousands of double-sided pages of photocopied paper documents, some of them partially redacted. The Office stated in its response that only two documents were partially redacted as containing non-responsive material. *See Exhibit 1.*

15) As petitioners specifically sought the “entire thread” of any emails containing material responsive to the request, there was no possible non-responsive material, as everything within the email thread was responsive to the request.

16) Further, however, the thousands of pages of documents in this production included numerous pages bearing often substantial redactions, none of them bearing any explanation as to which Code section authorized the withholding of the record. *See Exhibit 2.*

March 30 Request

17) The request sent on or about March 30, 2016 sought records relating to efforts by the Office of the Attorney General in conjunction with other state Attorneys General to investigate parties for opposition to the “climate change” and renewable energy agendas, using e.g., RICO statutes.

18) The request specifically asked for “all emails, including attachments, sent to or from employees of the Office of the Attorney General..., which correspondence uses any of the following terms anywhere in the email... a) climate denial, b) climate denier, c) climate risk.” The request also sought all correspondence between the Office of the Attorney General and the New York Attorney General’s Office dated between March 20 and March 30, 2016.

19) On May 5, 2016 the Office of the Attorney General provided the second of two sets of records responsive to the request. However, some records were redacted. The Office noted these redactions were pursuant to Virginia Code 3705.7(2). *See Exhibit 3.*

20) Va. Code §2.2-3705.7(2) exempts from mandatory production “working papers and correspondence” of the Office of the Governor and others including the Attorney General.

21) The statute specifically defines “working papers” as “those records prepared by or for an above named official for his personal or deliberative use.”

22) The statute further specifically names the “Office of the Governor” as an exempt body and defines who is included within this office, however it names only the Attorney General himself as exempt.

23) The material redacted on the basis that it was the “working papers and correspondence” of the Attorney General concerned email communications between two Deputy Attorney Generals, and between a staff employee working for the Attorney General in public relations

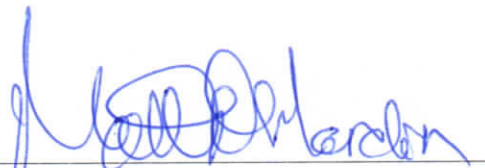
communicating with individuals working for the New York Office of the Attorney General. The Attorney General himself was not party to the conversation and thus the material could not be his “working papers or correspondence.” See **Exhibit 4**.

Prayer for Relief

WHEREFORE, the Petitioners respectfully pray, through counsel, that this Court,

- a) Hold a hearing on this matter expeditiously in the spirit of Va. Code § 2.2-3713(C);
- b) Order the Office of the Attorney General to to release records for which there is no codified justification for withholding,;
- c) Enjoin the Office from seeking fees pursuant to Va. Code § 2.2-3704(F) unless such fees are required to produce discrete responsive records, and such fees are itemized and reviewable by the Petitioner and the Court;
- d) Order the Office, pursuant to § 2.2-3713 (D) to pay Petitioner’s reasonable costs and fees associated with this instant matter, and,
- f) Order such necessary and proper injunctive relief or any other relief as this Court deems just and proper.

Respectfully submitted this 15th day of November, 2016,



Craig Richardson
Energy & Environment Legal Institute

By Counsel:

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CERTIFICATE OF SERVICE

I hereby certify that on this the 15th day of November, 2016, I mailed a copy of the foregoing to

Attorney General of Virginia
202 North 9th Street
Richmond, Virginia 23219

via first class mail, postage prepaid.



Matthew D. Hardin
Counsel for Petitioners