



diGENOVA & TOENSING, LLP
ATTORNEYS-AT-LAW

August 7, 2017

By Hand

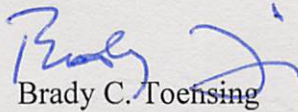
Donna Waters
Court Office Manager
Washington Superior Court
Civil Division
65 State Street
Montpelier, VT 05602

RE: Energy & Environment Legal Institute v The Attorney General of Vermont and William Sorrell, Docket No. _____

Dear Ms. Waters:

Enclosed for filing with the Court is an original Complaint for filing in the above-referenced matter. Also enclosed is a check in the amount of \$295 for the filing fee. Please feel free to contact me if you have any questions. Thank you for your assistance with this matter.

Sincerely,


Brady C. Toensing

Enc.

STATE OF VERMONT

SUPERIOR COURT
Washington Unit

CIVIL DIVISION
Docket No. _____

Energy & Environment Legal Institute

Plaintiff,

v.

The Attorney General of Vermont

and

William Sorrell,

Defendants.

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Plaintiff, Energy & Environment Legal Institute (E&E Legal), for its complaint against Defendant Attorney General of Vermont (“the AG” or “the OAG”), and William Sorrell, the former Attorney General of Vermont, alleges as follows:

Nature of Action

1. This is an action under the Vermont Public Records Act (PRA), 1 V.S.A. §§ 315-320, to compel production under a records request made by plaintiff.
2. The records request at issue in this matter (**Exhibit 1**) was addressed to both Mr. Sorrell and the Attorney General, and asked for communications between Mr. Sorrell and Eric Schneiderman, the current attorney General of New York, which communications were exchanged via Gmail.
3. The OAG initially responded to the request by claiming it held no responsive records. **Exhibit 2.** After an administrative appeal (**Exhibit 3**), the OAG again said it had no responsive records, and added a claim that it is not the custodian of records held on the

former Attorney General's Gmail account, **Exhibit 4**, which Mr. Sorrell used for state business. **Exhibit 5**.

4. Mr. Sorrell did not respond either to the records request or to the administrative appeal.
5. Accordingly, Plaintiff files this lawsuit to compel the OAG and the former Attorney General Sorrell to comply with the law and produce responsive public records.

Parties

6. Plaintiff, Energy & Environment Legal Institute, is a nonprofit research, public policy and public interest litigation center incorporated in Virginia, with offices in Washington, DC. E&E Legal is dedicated to advancing responsible regulation and, in particular, economically sustainable environmental and energy policy. E&E Legal's programs include analysis, publication, and a transparency initiative seeking public records relating to environmental and energy policy and how policymakers use public resources.
7. Defendant Attorney General of Vermont is a Constitutional Officer of the State of Vermont, and is the *de jure* custodian, in constructive or actual possession or control, of the records plaintiff seeks. He is sued in his official capacity only.
8. Defendant William Sorrell is the former Attorney General of Vermont. In that capacity, he created and/or controlled and/or maintained and/or had access to the records plaintiff seeks. He is sued in his capacity as *de facto* custodian of those records and as the former Attorney General of Vermont.

Jurisdiction and Venue

9. This Court has jurisdiction pursuant to 4 V.S.A. § 31 and 1 V.S.A. § 319, because Mr. Sorrell did not respond within the statutory timeframe to the request(s) at issue in this case, and because the OAG responded, which decision Plaintiff then appealed and the OAG denied. Therefore, Plaintiff has exhausted all administrative remedies.

10. Furthermore, jurisdiction and venue are proper under 1 V.S.A. § 319, because this matter is brought in the Superior Court of Washington County.

Factual Background

11. On June 9, 2017, Plaintiff submitted a PRA Request to Mr. Sorrell as former Attorney General, and to the current Attorney General of Vermont. That request asked for records reflecting public business which, upon information and belief, and as revealed through public record production(s), were likely to be held on Mr. Sorrell's Gmail account. **Exhibit 1.**
12. Ultimately, on July 19, 2017, after some delay, the OAG informed the plaintiff that it possessed no responsive records. **Exhibit 2.**
13. On July 25, 2017, Plaintiff appealed the OAG's determination that it possessed no responsive records. Plaintiff pointed out that the request sought records held on Gmail, but that the response indicated only state-maintained accounts were searched for records. Plaintiff reiterated its belief that official records were housed on Gmail and that by this request it sought them. **Exhibit 3.**
14. On August 1, 2017, the OAG again stated that it possessed no responsive records, but denied the administrative appeal asking that nongovernmental accounts be searched, adding for the first time a claim that it is not the Custodian of the Gmail records of the former Attorney General (Mr. Sorrell).

Legal Arguments

15. Under the PRA, 1 V.S.A. § 318(2), after an individual submits a request, an agency must ordinarily provide responsive records within three working days, although in "unusual circumstances" an agency may take up to ten days to respond pursuant to 1 V.S.A. §

318(5). Under no circumstances may an agency delay a response longer than ten business days. *Id.*

16. Under the PRA, an agency is required to produce any record, “regardless of physical form or characteristics, which is produced or acquired in the course of public agency business.” 1 V.S.A. § 317(b). There is no limitation as to whether those records were created on public or private accounts. This means that any records related in any way to public business or created as a result of the employee’s employment must be produced, regardless of where the records are stored.
17. Under the PRA, the burden is on the agency to justify a denial and a requester does not have a burden to prove that responsive records may exist in order to trigger an agency’s obligation to search for responsive records. 1 V.S.A. § 315.
18. Plaintiff did nonetheless demonstrate that at least one Gmail account was used for public business which might reasonably house records responsive to this request.
19. Defendant Sorrell owed OAG all work-related or potentially work-related records on any non-official email account used at any time for work-related purposes.
20. Defendant OAG owed Plaintiff records responsive to the request at issue in this suit, subject to legitimate withholdings, and has failed to provide, or even search for, responsive records.
21. According to the OAG website, the “Attorney General is the chief law enforcement officer” in Vermont and “is charged with representing the state in all matters in which the state is a party or has an interest.”
22. However, as a result of its decision to limit application of the PRA to only governmental email accounts, the OAG impermissibly creates a loophole the legislature never

intended, inviting an employee, or even the Attorney General himself, to utilize non-official email and text messaging accounts to escape the reach of the PRA. Such a result completely undermines and defeats the purpose of this important government accountability statute.

23. Federal courts have routinely recognized that emails relating to the public business, even if held on a nongovernmental email account controlled by a public official, are accessible under transparency laws. At the U.S. District Court level, the State Department made headlines for releasing tens of thousands of emails held by the former Secretary of State on a private email server, which records related to public business. Among dozens of lawsuits, most still pending, and most in the District of Columbia, *Judicial Watch v. U.S. Department of State*, 1:15-cv-00687 (D.D.C) is but one example of how federal courts have proceeded on the assumption that public records held on the former Secretary of State's private email accounts are within the ambit of transparency laws and subject to the jurisdiction of the courts, ordering production of correspondence therefrom.
24. Among other courts, the D.C. Circuit has held that former employees who control nongovernmental accounts which they used during the course of employment, may be subject to jurisdiction of the court for purposes of preserving and producing those records, and that the agency is in constructive control and possession of such records, even when they are held on nongovernmental accounts. *Competitive Enterprise Institute v. Office of Science and Technology Policy*, 827 F.3d 145 (D.C. Cir. 2016)
25. The D.C. Circuit cited *Ryan v. Department of Justice*, 617 F.2d 781 (D.C. Cir. 1980), in which "a requestor sought documents from the Department of Justice which were within

the exclusive control of the Attorney General.” In *Ryan*, the Department of Justice had “asserted that the documents were not within the agency since they were under the exclusive control of its head.” In rejecting that argument, the D.C. Circuit held there is no basis in the FOIA “to view the Attorney General as distinct from his department for FOIA purposes.”

26. Simply put, an agency always acts through its employees; records in the possession of an employee are therefore in possession of the agency. “If one of them possesses what would otherwise be agency records, the records do not lose their agency character just because the official who possesses them takes them out the door or because he is the head of the agency.” *Id.* at 787.
27. Moreover, 1 V.S.A. § 317a provides that “A custodian of public records shall not destroy, give away, sell, discard, or damage any record or records in his or her charge, unless specifically authorized by law or under a record schedule approved by the State Archivist pursuant to 3 V.S.A. § 117(a)(5).”
28. The OAG does not have a record schedule approved by the State Archivist. As such, any destruction of the records at issue by that office or a custodian would be unlawful.
29. A custodian who destroys or alters public records without authorization in contravention of 3 V.S.A. § 117(a)(5) is subject to penalties. 1 V.S.A. § 320 (c) (“A person who willfully destroys, gives away, sells, discards, or damages a public record without having authority to do so shall be fined at least \$50.00 but not more than \$1,000.00 for each offense”).

FIRST CLAIM FOR RELIEF
Seeking Declaratory Judgment

30. Plaintiff re-alleges paragraphs 1-29 as if fully set out herein.

31. Plaintiff has sought and been denied production of responsive records reflecting the conduct of official business, because defendants have refused to produce or even search for responsive records.

32. Plaintiff asks this Court to enter a judgment declaring that:

- a. Any records responsive to Plaintiff's request(s) that are related in any way to the individual's employment at the state agency, regardless of whether those records are stored on a government or nongovernmental account, are public records subject to release under the PRA;
- b. The PRA requires a good-faith search for records, including a search of nongovernmental accounts where public records are located;
- c. The PRA, 1 V.S.A. § 318(a)(4), requires that all custodians of records certify in writing that a good faith search was conducted and, if applicable, that records do not exist;
- d. Defendant Sorrell must produce records potentially responsive to this request.
- e. Defendant OAG must obtain and release those requested records or segregable portions thereof subject to legitimate exemptions;
- f. Defendant OAG must create a withholding log, listing the date, recipients and subject matter, of any potentially responsive records that are not produced for future, potential *in camera* review by this Court.

SECOND CLAIM FOR RELIEF
Seeking Injunctive Relief

33. Plaintiff re-alleges paragraphs 1-32 as if fully set out herein.

34. Plaintiff is entitled to injunctive relief compelling defendants to produce (or order the OAG employees or past employees to produce) all records responsive to Plaintiff's PRA Request, subject to legitimate withholdings.
35. Plaintiff asks the Court to order defendants to ensure each custodian of records searches in good faith for public records responsive to plaintiff's requests and provide proper proof of such searches and the results thereof to the Court and Plaintiff, including a written certification by each custodian of records that he or she produced all responsive records or that there were no responsive records.
36. Plaintiff asks the Court to order defendant to produce to plaintiff, within 5 business days of the date of the order, the requested records described in plaintiff's request(s), and any attachments thereto, subject to legitimate withholdings.
37. Plaintiff asks the Court to order the defendant to produce along with the records a withholding log, listing the date, recipients and subject matter, of any potentially responsive records that are not produced for future, potential *in camera* review by this Court.
38. Plaintiff asks the Court to order the Parties to consult regarding withheld documents and to file a status report to the Court within 10 days after plaintiff receives the last of the produced documents, addressing defendants' preparation of a withholdings log and a briefing schedule for resolution of remaining issues associated with plaintiff's challenges to defendants' withholdings and any other remaining issues.

THIRD CLAIM FOR RELIEF

Seeking Costs and Fees

39. Plaintiff re-alleges paragraphs 1-38 as if fully set out herein.

40. Pursuant to 1 V.S.A. § 314(d), in most cases, the Court shall award reasonable attorney fees and other litigation costs reasonably incurred in any case under this section in which the complainant has substantially prevailed.
41. Plaintiff is statutorily entitled to recover fees and costs incurred as a result of defendants' refusal to fulfill the open records request at issue in this case.
42. Plaintiff asks the Court to order the defendants to pay reasonable attorney fees and other litigation costs reasonably incurred in this case.

WHEREFORE, Plaintiff requests the declaratory and injunctive relief herein sought, and an award for his attorney fees and costs and such other and further relief as the Court shall deem proper.

Dated at Charlotte, Vermont this 7th day of August 2017.

By: _____



Brady C. Toensing
diGenova & Toensing
Attorney for Plaintiff
1776 K Street, NW, Suite 737
Washington, DC 20006
(202) 289-7701
Brady@digtoe.com

Exhibit 1

REQUEST UNDER THE VERMONT PUBLIC RECORDS ACT

June 9, 2017

T. J. Donovan, Esq.
Vermont Attorney General's Office
109 State Street
Montpelier, VT 05609-1001

By Electronic mail: ago.info@vermont.gov and whsorrell@gmail.com

RE: Certain records generated and/or held by Attorney General Sorrell

General Donovan and former Attorney General Sorrell:

Pursuant to the Vermont Access to Public Records Act, 1 V.S.A. §§ 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 established public record 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.

Please provide us records held by the Office of the Attorney General, and/or any of its present agents or employees and/or Mr. Sorrell, which meet the following description:

All correspondence sent to or from the email address “whsorrell@gmail.com” which correspondence was also sent to or from the Attorney General of New York, Eric Schneiderman, at any address whether it be a “@oag.ny.gov”, “@ag.ny.gov,” or a non-official address/account.

Records responsive to this request will be dated from March 1, 2016 through January 5, 2017, inclusive.

We request entire email/text threads.

If you have information to help further narrow this request please feel free to contact the undersigned. We note that the Attorney General of New York has at least two “official” email accounts and at least one “private” email account which he may have used to correspond with Mr. Sorrell during Mr. Sorrell’s tenure as Attorney General of Vermont, such that a response to this request will likely entail searching whsorrell@gmail.com for correspondence with at least three email addresses used by the Attorney General of New York, as indicated herein.

We further remind the Attorney General and the former Attorney General that 1 V.S.A. § 317a provides that “A custodian of public records shall not destroy, give away, sell, discard, or damage any record or records in his or her charge, unless specifically authorized by law or under a record schedule approved by the State Archivist pursuant to 3 V.S.A. § 117(a)(5).”¹

We request a rolling production.

While we request that the limited fees allowed by statute be waived, we nevertheless agree to pay legitimate expenses up to \$250.00. 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.*

¹ If the Attorney General’s Office takes the position that any records responsive to this request may have been destroyed pursuant to a duly-adopted records-retention policy, we hereby request a copy of that policy.

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 purposes²: it not only serves as a regular source of public information and substantive editorial comment about this information to numerous national (and/or local) media outlets but also applies substantive editorial input in its own publications disseminating public information.

² Examples of open records-derived publications by E&E Legal requesters include, Horner: *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 FOI requests in print publications, E&E Legal regularly disseminates its findings on broadcast media. E&E Legal and FME Law are also regularly cited in newspapers and trade publications for their open records efforts.³

The requested information is of critical importance to the nonprofit policy advocacy groups engaged on these relevant issues, news media covering the issues, and others concerned

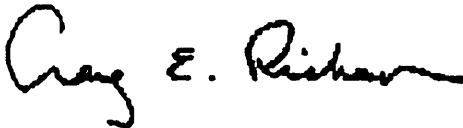
³ Print examples, only, to the exclusion of dozens of national electronic media broadcasts, include, *e.g.*, Dawn Reeves, EPA Emails Reveal Push To End State Air Group's Contract Over Conflict, INSIDE EPA, Aug. 14, 2013; Editorial, Public interest group sues EPA for FOIA delays, claims agency ordered officials to ignore requests, WASHINGTON EXAMINER, Jan. 28, 2013; Michal Conger, Emails show green group influence on EPA coal rule, WASHINGTON EXAMINER, Jan. 9, 2014; C.J. Ciaramella, Sierra Club Pressed EPA to Create Impossible Coal Standards, WASHINGTON FREE BEACON, Jan. 10, 2014; C.J. Ciaramella, Emails Show Extensive Collaboration Between EPA, Environmentalist Orgs, WASHINGTON FREE BEACON, Jan. 15, 2014; Stephanie Paige Ogburn, Climate scientists, facing skeptics' demands for personal [sic] emails, learn how to cope, E&E NEWS, Jan. 21, 2014; Anthony Watts, New FOIA emails show EPA in cahoots with enviro groups, giving them special access, WATTS UP WITH THAT, Jan. 15, 2014; Stephen Dinan, Obama energy nominee Ron Binz faces rocky confirmation hearing, 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 3033 Wilson Blvd., Ste. E576, Arlington, VA 22201.

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

Respectfully submitted,



Executive Director, E&E Legal
1350 Beverly Rd, Suite 115-445
McLean, VA 22101



Executive Director, FME Law
Free Market Environmental Law Clinic
chaim12@gmail.com
703-577-9973

Exhibit 2

THOMAS J. DONOVAN, JR.
ATTORNEY GENERAL

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

JOSHUA R. DIAMOND
DEPUTY ATTORNEY GENERAL

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

WILLIAM E. GRIFFIN
CHIEF ASST. ATTORNEY
GENERAL



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

July 19, 2017

Matthew D. Hardin, Esq.
Attorney at Law
314 West Grace Street, Suite 308
Richmond, VA 23220

Chaim Mandelbaum
Executive Director, FME Law
Free Market Environmental
Law Clinic
3033 Wilson Blvd., Ste. E576
Arlington, VA 22201

Craig E. Richardson
Executive Director, E&E Legal
1350 Beverly Rd., Ste. 115-445
McLean, VA 22101

Re: Certain records generated and/or held by Attorney General Sorrell Public
Records Request

Gentlemen:

In response to your public records request dated June 9, 2017, I conducted a thorough search of Mr. Sorrell's work email account. Please be advised that I have no responsive records to your request.

Thank you.

Sincerely,

A handwritten signature in black ink, appearing to read "Karen M. Farnsworth".

Karen M. Farnsworth
Paralegal

Exhibit 3

APPEAL UNDER THE VERMONT PUBLIC RECORDS ACT

July 25, 2017

Attorney General T.J. Donovan
c/o Deputy Attorney General Susanne Young
Office of the Attorney General
109 State Street
Montpelier, VT 05609

By FAX: 802-828-3187

RE: Appeal of July 19 letter from Karen Farnsworth

To the Office of the Attorney General:

We write to appeal the Office of the Attorney General's Response dated July 19, 2017, to an Access to Public Records Request we submitted on June 9, 2017.

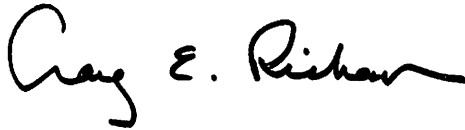
Pursuant to 1 V.S.A § 318(c), the undersigned hereby appeal the response insofar as it appears the Attorney General's Office neither searched for the records we requested, nor provided a proper certification that no records exist pursuant to 1 V.S.A. § 318 (4).

We remind the Office of the Attorney General that the request dated June 9, 2017 specifically sought: "All correspondence sent to or from the email address 'whsorrell@gmail.com.'" The June 9 request further iterated why requesters sought documents from that address, based on information and belief that it was used for the creation or storage of public records. However, it appears from the July 19 response that no search of Mr. Sorrell's gmail account was ever conducted.

As such, the Office should either conduct a new search for records meeting the descriptions set forth in the request, or provide a proper certification from the custodian as required by 1 V.S.A. § 318 (4).

We ask that you overturn Ms. Farnsworth's decision and comply with the Access to Public Records Act with respect to the June 9, 2017 request for records.

Respectfully submitted,



Craig E. Richardson
President, E&E Legal
Richardson@EELegal.org
703.981.5553



Chaim Mandelbaum,
Executive Director, FME Law Clinic
Chaim12@gmail.com
571.210.2042

Exhibit 4

THOMAS J. DONOVAN, JR.
ATTORNEY GENERAL

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

JOSHUA R. DIAMOND
DEPUTY ATTORNEY GENERAL

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

WILLIAM E. GRIFFIN
CHIEF ASST. ATTORNEY
GENERAL



STATE OF VERMONT
OFFICE OF THE ATTORNEY GENERAL
109 STATE STREET
MONTPELIER, VT
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August 1, 2017

Craig E. Richardson
President, E&E Legal
Richardson@EELegal.org

Chaim Mandelbaum
Executive Director, FME Law Clinic
Chaim12@gmail.com

Re: July 25, 2017 Letter

Dear Mr. Richardson and Mr. Mandelbaum:

I write in response to your letter to the Attorney General's Office dated July 25, 2017. You seek to "appeal" the Attorney General's Office response to your June 9, 2017 public records act request. You requested: "records held by the Office of the Attorney General, and/or any of its present agents or employees and/or Mr. Sorrell, which meet the following description: All correspondence sent to or from the email address whsorrell@gmail.com which correspondence was also sent to or from the Attorney General of New York, Eric Schneiderman, at any address whether it be a "@oag.ny.gov", "@ag.ny.gov," or a non-official address/account. Records responsive to this request will be dated from March 1, 2016 through January 5, 2017, inclusive."


After advising you of the need for additional time to conduct the search, the AGO advised you on July 19, 2017 that it has no records responsive to your request.

Using software provided by the Vermont Agency of Digital Services, the Attorney General's Office queried the accounts of all current and former employees of the Attorney General's Office, including the former Attorney General, during the time period you identified. The AGO carefully reviewed all records of the former Attorney General during the relevant time period, and spent over three hours running the search you requested. As a courtesy, the Attorney General's Office also consulted with the New York Attorney General's Office. As you know, both the Vermont and the New York Attorney General's Office have advised you that they do not have records responsive to your request. The Vermont Attorney General's Office has not charged you for any time spent in processing your request.

Craig E. Richardson
Chaim Mandelbaum
August 1, 2017
Page 2

Pursuant to 1 V.S.A. § 318(a)(4), the Attorney General's Office certifies that there are no records that are responsive to your request. The Attorney General's Office is not the custodian of the former Attorney General's gmail account.

Sincerely,



Joshua R. Diamond
Deputy Attorney General

Exhibit 5

From: Wendy Morgan
Sent: Sunday, July 15, 2012 11:18 PM
To: 'Bill Sorrell'; Wendy Morgan
Cc: Sorrell, Bill; mike pieciak; Elliot Burg; Mumane, Janet
Subject: RE: Realtors CP work

Categories: : Printed

I'm sorry, thanks for the reminder — Elliot and I could not think of any cases other than lead. We were thinking more of enforcement against them but even with your "efforts/plans" I can't think of anything beyond lead

Re lead, the amendments to the lead law that came out of the Get the Lead Out of VT Initiative included provisions re disclosures on lead when selling pre-1978 housing and the obligation of a buyer to perform Essential Maintenance Practices after purchasing a pre-1978 rental unit even if they have not been done previously — It's been a while since I looked at the specifics — do you need more detail?

—Original Message—

From: Bill Sorrell [mailto:whsorrell@gmail.com]
Sent: Sunday, July 15, 2012 6:37 PM
To: Wendy Morgan; Wendy Morgan
Cc: Bill Sorrell; mike pieciak
Subject: Realtors CP work

Wendy, did you or Elliot send me that info on the AGO's issues/cases/efforts/plans with or relating to realtors and consumer protection?

My answers are due on the 20th.

Thanks.

From: Kalani, Lori E. <lkalan1@orrick.com>
Sent: Friday, April 20, 2012 3:26 PM
To: Bill Sorrell
Subject: Do you have a personal email?

I would like to talk to you about a non work topic. Thanks.


ORRICK

LORI KALANI
Senior Counsel

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CRIME/NEWS

Did Sorrell Take Official Action to Punish Opponent's Donor?

POSTED BY PAUL HEINTZ ON THU, JAN 28, 2016 AT 5:05 PM



Attorney General Bill Sorrell

FILE: JEU WALLACE-BRODEUR

An email obtained during an investigation of Attorney General Bill Sorrell suggests he sought to punish a donor to a rival's campaign during the course of official business.

First disclosed in this week's Fair Game political column, the email pertains to a September 2014 press conference organized by then-lieutenant gubernatorial candidate Dean Corren and attended by Sorrell. Standing in front of McCaffrey's Sunoco in Burlington, the two called for legislation requiring gasoline distributors to disclose pricing information to the attorney general's office.

After the event, the head of a local business group raised concerns about Sorrell's participation, prompting the AG to reply, "I care about the issue, not to mention the \$4k a whole seller gave a prior opponent ..."

The "whole seller" in question appears to be Skip Vallee, a political lightning rod whose Colchester-based business, R.L.

2/4/2016*

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Vallee, Inc., has been accused of driving up gas prices in Chittenden County. Now the Vermont chairman of Sen. Marco Rubio's (R-Fla.) presidential campaign, Vallee has contributed generously to Republican candidates over the years, including President George W. Bush, who in 2005 appointed him ambassador to Slovakia.

In August 2012, Vallee and his wife, Denise, donated \$4,000 to Chittenden County State's Attorney T.J. Donovan's Democratic primary campaign against Sorrell. Though Donovan came close to unseating Sorrell, he ended up losing the election by 714 votes, just 11 days after the Vallees made their contributions.

Forwarded a copy of the email, Vallee would not say whether he thought he was the target of Sorrell's ire.

"You should ask General Sorrell," he replied.

Sorrell did not immediately respond to a request for comment.

Had Sorrell sought retribution against a rival's donor at a political event, it could have been considered politics as usual. But Sorrell has long claimed that he participated in the press conference in the course of his official duties.

"This was not a campaign rally," Sorrell wrote in a sworn affidavit submitted in July 2015 to a panel of state's attorneys investigating separate allegations against him. "Indeed, it was much like other issue-focused events I participated in during 2014 — as part of my job as Attorney General."

The nature of the press conference became an issue last spring when Vermont Republican Party vice chair Brady Toensing accused the AG of failing to report Corren's expenses at the event as in-kind contributions to Sorrell's reelection campaign. In response, Sorrell argued that he did not have to disclose the information because he did not drop by McCaffrey's as a political candidate.

"While Dean Corren may have treated it as a campaign event," Sorrell's lawyer, David Kirby, wrote last July in a separate filing, "attendance was simply part of General Sorrell's job promoting public awareness of an issue and legislation addressed to that issue."

A panel of state's attorneys that investigated Toensing's allegations agreed with the AG, writing in a report released last week that the press conference "was not staged as a Sorrell campaign event."

Vallee declined to comment directly on the email, but he addressed it obliquely in a statement to *Seven Days*.

"It is never appropriate for an elected law enforcement official to settle political scores using the power granted to him as a guardian of the public trust," Vallee wrote.

Beyond the Vallee reference, Sorrell's email exchange provides an intriguing glimpse inside of Vermont's political ecosystem. The correspondence began with Lake Champlain Chamber of Commerce president Tom Torti scolding Sorrell for attending the press conference.

"I'm sure you have heard about the level of displeasure Mazza feels about you standing with Corren," Torti wrote, referring to Sen. Dick Mazza (D-Grand Isle). "Just wanted to pass on what was mentioned to me."

Mazza, a powerful figure in the Chittenden County political and business communities, is a staunch ally of Republican Lt. Gov. Phil Scott. At the time, Corren was campaigning for Scott's job.

"I went out and talked with [Mazza] beforehand, before I committed to doing it," Sorrell replied. "He said 'you have to

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do what you have to do.' I left on good terms. He's hosting a fundraiser for me. He called me a couple of hours later, suggesting I just give a quote for [the Corren campaign's press] release. But in the interim, I'd committed to participate."

Sorrell concluded: "I didn't endorse Corren. I care about the issue, not to mention the \$4k a whole seller gave a prior opponent..."

Torti replied, "Just being the messenger ..."

Sorrell turned the email and five others over to the state's attorneys investigating him. Though the information was considered privileged, Sorrell voluntarily provided some of the documentation to *Seven Days*, upon request.

Here is the email in full, with addresses redacted:

From: William Sorrell
Date: September 16, 2014 at 4:01:13 PM EDT
To: Tom Torti
Subject: Re: Gas, Corren, Mazza

Yup

Sent from my iPhone

On Sep 16, 2014, at 11:03 AM, Tom Torti wrote:

Just being the messenger....

From: William Sorrell
Sent: Tuesday, September 16, 2014 10:28 AM
To: Tom Torti
Subject: Re: Gas, Corren, Mazza

I went out and talked with him beforehand, before I committed to doing it. He said "you have to do what you have to do." I left on good terms. He's hosting a fundraiser for me. He called me a couple of hours later, suggesting I just give a quote for their release. But in the interim, I'd committed to participate.

I didn't endorse Corren. I care about the issue, not to mention the \$4k a whole seller gave a prior opponent...

Sent from my iPhone

On Sep 16, 2014, at 7:15 AM, Tom Torti wrote:

I'm sure you have heard about the level of displeasure Mazza feels about you standing with Corren. Just wanted to pass on what was mentioned to me.

T

Tags: Bill Sorrell, Skip Valasek, Brady Toensing, Image

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