VT SUPERIOR COURT
WASHINGTON UNIT

STATE OF VERMONT

SUPERIOR COURT
Washington Unit

2017 OCT -4 P 12:54

CIVIL DIVISION
Docket No. 349-6-16 Wncv

Energy & Environment Legal Institute and
Free Market Environmental Law Clinic,
Plaintiffs

FILED

v.

The Attorney General of Vermont and
William Sorrell,
Defendants

ENTRY
Mr. Sorrell's Motion to Dismiss, MPR 13
Mr. Sorrell's Motion to Quash, MPR 14
Plaintiff's Motion to Compel, MPR 15

Over the AG's objection, the court allowed Plaintiffs to join former Attorney General William Sorrell as a defendant in this public records case. They seek to determine whether he possesses in his personal e-mail account any public records responsive to their request to the Office of the Attorney General. After amending their complaint, Plaintiffs promptly sought to depose Mr. Sorrell. Mr. Sorrell then filed a Rule 12(b)(6) motion to dismiss the complaint as far as it applies to him and a motion for a protective order quashing the deposition notice. Plaintiffs oppose dismissal and seek an order compelling Mr. Sorrell's deposition.

Mr. Sorrell argues that the complaint against him should be dismissed because the only proper defendant in a Vermont Public Records Act case is the governmental agency that fielded the request and he is an individual former State employee, not an agency.[1] He also argues that the court should adopt a rebuttable presumption against searching any State employee's private e-mail account absent some showing that public records in fact will be found there. He argues that the complaint lacks adequate allegations sufficient to overcome such a presumption for pleading purposes. Mr. Sorrell resists compliance with Plaintiffs' discovery demands largely because he believes he should not be a party in this case at all.

The court declines to rule on the substantive legal issues presented by Mr. Sorrell at this time. The Vermont Supreme Court has been clear that the pleading standard in Vermont is exceptionally minimal. See *Bock v. Gold*, 2008 VT 81, ¶ 4, 184 Vt. 575 ("the threshold a

[1] But cf. *Prison Legal News v. Corrections Corp. of America*, No. 332-5-13 Wncv, 2014 WL 2565746 (Vt. Super. Ct. Jan. 10, 2014) (extending the Act to private entities operating as the functional equivalent of governmental agencies); *Whitaker v. Vermont Information Technology Leaders, Inc.*, No. 781-12-15 Wncv, 2016 WL 8260068 (Vt. Super. Ct. Oct. 28, 2016) (same).

plaintiff must cross in order to meet our notice-pleading standard is 'exceedingly low'"); *Colby v. Umbrella, Inc.*, 2008 VT 20, ¶ 13, 184 Vt. 1 ("The complaint is a bare bones statement that merely provides the defendant with notice of the claims against it."). Plaintiffs' claims against Mr. Sorrell are novel and address complicated issues in a developing area of the law with competing policy interests and no binding precedent with any useful specificity.[2] Such claims are better "explored in the light of facts as developed by the evidence." *Alger v. Dep't of Labor & Indus.*, 2006 VT 115, ¶ 12, 181 Vt. 309.

Discovery may proceed to develop those facts.

Accordingly, Mr. Sorrell's motions to dismiss and to quash are denied. Plaintiffs' motion to compel is granted.

Dated at Montpelier, Vermont this 4th day of October 2017.

Mary Miles Teachout

Mary Miles Teachout
Superior Judge

[2] The court is aware that the Chittenden Civil Division has ruled on closely related issues in *Toensing v. The Attorney General of Vermont*, No. 500-6-16 Cncv (Vt. Super. Ct. Feb. 8, 2017) and that the *Toensing* case now is on appeal before the Supreme Court, docketed as No. 2017-090. A review of the issues presented to the Supreme Court strongly suggests that its ruling will likely have a substantial effect on the issues of this case as far as Mr. Sorrell goes. However, the trial court decision in *Toensing* is not binding, the Supreme Court has not yet ruled, and no one has sought a stay pending its ruling.