



REQUEST FOR PUBLIC RECORDS

November 3, 2017

Public Information Officer
Wyoming Environmental Quality Council
122 West 25th Street
Herschler Building, 1W, Room 1714
Cheyenne, WY 82002

BY ELECTRONIC MAIL: eqc-all@wyo.gov

RE: FOIA Request – Certain Agency Records re: Environmentalist Pressure Groups

Freedom of Information Officer,

On behalf of the Energy & Environment Legal Institute (E&E Legal) please consider this request pursuant to the Wyoming Public Records Act, Wyo. Stat. § 16-4-201 et seq. We are a non-profit public policy and legal institute organized under section 501(c)3 of the federal tax code with research, legal, investigative journalism and publication functions, as well as a transparency initiative seeking public records relating to environmental and energy policy and how policymakers use public resources, all of which include broad dissemination of public information obtained under open records and freedom of information laws. We further note that E&E Legal is also a media outlet for purposes of open record requests (see, *infra*).

We write in the context of recent developments of significant public interest, covered by national media outlets. Specifically, this request involves the issue of Wyoming's consideration of and, to date, an internal bureaucratic split over granting the first mining permit of its kind in approximately four decades. Wyoming's Department of Environmental Quality approved the Surface Coal Mine Permit TFN 6 2-025, only to then reverse itself after a different body, EQC,

which was the focus of a notable pressure-group campaign, later denied the permit (Docket No. 17-4802).¹

Bearing this in mind, and the EQC Order of May 22, 1985,² please provide us, or inform us within seven working days of the unavailability of, copies of all records as follow:

1) all potentially **work-related** emails, which were sent to or from or which copy (whether as cc: or bcc) Jim Ruby, Executive Secretary of EQC, at the email address ruuuuu5@netscape.com, which were also sent to, from, or copy (whether as cc: or bcc:) i) any employee, officer, or member of the Powder River Basin Resource Council at any email account or address, ii) employees, officers, or members of Clean Energy Action, at any email account or address, *and/or* iii) David Bagley at any email account or address.³

¹ See Dylan Brown, “Wyoming Rejects Mine Permit”, E&E News, October 13, 2017, <https://www.eenews.net/eenewspm/2017/10/13/stories/1060063639> ; see also Dylan Brown, “Coal to cars? Ky. company bets that could be a thing”, E&E News, <https://www.eenews.net/greenwire/stories/1060058157>.

² Order, “Service of Documents Upon Members of the Environmental Quality Council”, Before the Environmental Quality Council, State of Wyoming, Signed by Harold L. Bergman, Chairman and available at <http://tinyurl.com/yaegsjea>. Under this Order “All documents to be delivered to the Environmental Quality Council must be delivered to the office of the Environmental Quality Council at Emerson Building, Room 304, 2001 Capitol Avenue, Cheyenne, WY, 82002” (Order, ¶ 1).

Bearing in mind this Order ¶ 3, this contemplates all documents including but not limited to correspondence, public comments or legal analyses. Text messages, other instant messages whether sent by text, SMS, or encrypted applications such as WhatsApp and Signal also are correspondence and therefore documents, for these purposes.

Bearing in mind this Order, this also contemplates all copies of all “documents delivered to the Environmental Quality Council”, and all “documents delivered to individual Council members”, and copies of all “prior approval from the Council’s office received for direct mailing” of any record to any individual Council member.

³ Records responsive to parts i and ii of this request are captured by our October 16, 2017 request to EQC which it acknowledged on October 19, 2017, but has not responded to. By choosing to specifically identify and include the account identified in this request we do not imply, assert or agree otherwise.

Responsive records will be dated from January 1, 2017 to the date you process this request. By virtue of the search parameters set forth, *supra*, most if not all records on this account satisfying the rest of these parameters are also work-related, regardless of what email account the corresponding parties chose to use for the occasion.

We specifically exclude from this request as non-responsive all records which merely forward news stories, clippings or reports with no comment or with no substantive comment (e.g., “FYI” is not substantive).

The requested records, all of which are work-related, are the only way for the public to obtain this information.

Our experience to date with Wyoming’s Public Records Act and its above-cited time limit is not an inspiring one, with our previous requests to a state agency also seeking records relating to state official relationships with environmentalist pressure groups languishing, even for more than two years after we submitted them, with no substantive response; more recent requests have also prompted only acknowledgement letters. That is the course that these requests seem to take in Wyoming and, as such, in keeping with the legislature’s intent, please note our intention to protect and pursue all administrative and appellate rights, and pursue available remedies, in the event we are unable to obtain timely compliance with state offices’ statutory obligations.

In addition to coverage of its FOI work in print publications, E&E Legal regularly disseminates its findings on broadcast media. E&E Legal is also regularly cited in newspapers and trade publications for its open records efforts.

We see some state offices set forth charges for “hard copies” of records. We note that printing paper copies or records whose native format is electronic is unnecessary, and as such generally not a “reasonable fee” per 16-4-204 given today’s technology and particularly given many and likely all of the records sought in this request are held in electronic format.

Nonetheless, as we owe the cost of duplicating those and any other records in our requested format (electronic), we are willing to pay up to \$200 in for materials required to duplicate the above-described records, appropriate time to do so and postage costs.

Please contact the undersigned to provide a cost estimate if “[t]he reasonable costs of producing a copy of the public record” are expected to exceed that amount. If such costs exceed \$200, undersigned hereby notify DEQ that they may, at their option, choose instead exercise their right to inspect records in person pursuant to Wyo. Stat. § 16-4-203.

We note the Wyoming Supreme Court has specifically required state agencies to provide as much non-exempt information as possible when answering Public Records Act requests, rather than withholding entire documents or categories of documents. *Allsop v. Cheyenne Newspapers*, 39 P.3d 1092 (Wyo.2002). “Put another way, the WPRA creates a presumption that the denial of inspection is contrary to public policy, and therefore places ‘the burden of proof upon the custodian to show that the exercise of his discretion does not run afoul of statutory limitations in any particular instance where custodial withdrawal is effected.’” *Powder River Basin Res. Council v. Wyoming Oil & Gas Conservation Comm’n*, 2014 Wy. 37, quoting *Sheridan Newspapers, Inc. v. Sheridan*, 660 P.2d 785, 795-96 (Wy. 1983).

We also ask that you also consider waiving fees on the basis that release of these records is in the public interest, as demonstrated in part by the extent and content of the related media coverage of late, prompting this request. We further note that E&E Legal is also a media outlet for these purposes, both as concluded by, e.g., the federal government⁴ and by virtue of E&E Legal's experience serving as a regular source of public information and adding 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. Requesters point to E&E Legal's website for examples of their reports and publications (*see e.g.*, <https://eelegal.org> and <https://eelegal.org/legal-letters/>). and coverage of their work (<https://eelegal.org/category/press/>).

Respectfully submitted,



Craig E. Richardson
President, E&E Legal

⁴ *See e.g.*, Securities and Exchange Commission Request No. 15-01086-FOIA, Department of Energy FOIA HQ-2015-00479-F.