

From: Persampieri, Nick
Sent: Friday, January 27, 2023 4:42 PM
To: ASmith@historyassociates.com
Subject: History Associates Inc., Cost Estimate for Vermont Public Records Request No. 2

Ms. Smith,

I understand from Brandi Backus' recent email that you are our new point of contact for History Associates' Vermont Public Records Act requests to our office. As you may know, James Mitchell, on behalf of History Associates, submitted nine separate public records requests to our office in July, 2022. We have responded to five of the requests, and four of the requests remain outstanding- Requests 2, 3, 4 and 6. Our office is now working on Request No. 2, which James Mitchell emailed to us on July 8, 2022, at 4:35 p.m.

As I previously advised Brandi, our office charges requesters for the staff time associated with complying with public records requests. 1 V.S.A. § 316(c). The first 30 minutes of staff time is free. *Id.* Beyond 30 minutes, we follow the Secretary of State's (SOS) Uniform Charges Schedule, available on the SOS's website. <https://sos.vermont.gov/vsara/manage/information-governance/compliance/uniform-charges-schedule/> In short, for an attorney's time spent fulfilling your request, we charge \$0.57/minute; for other staff time we charge \$0.45/minute, except when the time spent is photocopying pages. In the latter case, we charge \$0.33/minute. If hard copies are requested, the Uniform Charges Schedule provides for those costs, as well.

Each of the requests asked that we provide a cost estimate if costs exceed \$250. We estimate that it will require approximately 5040 minutes or 84 hours of additional time divided evenly between lawyers and paralegals- approximately \$2,570.40- to collect and review the requested records, analyze the potential applicability of statutory exemptions from disclosure, perform any necessary redactions and prepare records for production. If you would like us to proceed with processing the request, please mail a check made out to the State of Vermont in the amount of \$2,570.40 to the following address:

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

Attn: Nick Persampieri, Assistant Attorney General

While we have already devoted significantly more than one-half hour to your fifth request, we will treat that time as consuming only the 30 minutes of free time. We will begin assessing charges when we resume our work following receipt of the check. If the actual cost is less than our cost estimate, we will refund the difference between the amount of your check and the actual cost.

We do have a couple of questions about the requests and your responses to them may reduce the costs.

First, the request asks for email correspondence that contains certain terms in either the "subject line" or the "message body." It is unclear to us whether we should consider an email's signature block to be part of the message body. Excluding the signature block from the message body may substantially reduce the number of responsive emails. There appear to be hundreds, if not more than 1,000 emails, from an attorney from the New York Attorney General's Office, Michael Myers, for which the

signature block lists Mr. Myers' title as "Senior Counsel for Air Pollution and Climate Change Litigation." These emails potentially fall within your request for emails containing "Climate Change Litigation" in "the message line or subject body," and "that includes in either the subject line or message body, any of the following terms: 'fossil fuel,' 'greenhouse gas,' 'GHG,' 'greenwash,' 'global warming' and/or 'climate change.'" Many of the emails from Mr. Myers, which include the title "Senior Counsel for Air Pollution and Climate Change Litigation," are not relevant to climate related issues. For example, there are emails regarding litigation concerning chemical accident safety, EPA's Coronavirus enforcement policy and enforcement action against a motorcycle manufacturer who used defeat devices to exceed NOx emission standards. And many of Mr. Myers emails are likely privileged and subject to claims of exemption from disclosure, and, therefore, will require careful review. Please let us know if you want us to consider the signature block of an email to be part of the message body.

Relatedly, I note that your request encompasses emails containing both "Climate Change Litigation" and "climate change" in "the message line or subject body." But the term "Climate Change Litigation," includes the term "climate change." Thus, any email containing "Climate Change Litigation" is arguably potentially responsive, including emails with Mr. Myers signature block, which have nothing to do with climate change related issues. Another way to limit the number of potentially responsive emails containing Mr. Myers' signature block, would be to consider as responsive only those emails containing "Climate Change Litigation," which also contain "climate change" (or one of the other search terms) elsewhere in the document outside the phrase "Climate Change Litigation."

Please let me know your preference regarding these two issues and feel free to telephone me if you would like to discuss them. Thank you, and have a great weekend.

Nick

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