



REQUEST UNDER THE VERMONT ACCESS TO PUBLIC RECORDS ACT

October 20, 2017

Vermont Attorney General's Office
109 State Street
Montpelier, VT 05609-1001

By Electronic mail: ago.info@vermont.gov

RE: Certain of the OAG's separation forms - Kline, Morgan, Sorrell

To Whom it May Concern:

Pursuant to the Vermont Access to Public Records Act, 1 V.S.A § § 315-320, we request copies of any and all records as described herein. The Energy & Environment Legal Institute (E&E Legal) is a non-profit educational foundation incorporated in Virginia, with offices in Washington, DC, with an established public records transparency practice, and “media” classification for purpose of public records requests. Given the non-profit transparency and journalism activities of the requester, described below, we ask that those limited fees permitted by § 316 be waived.

Noting the recordkeeping and disposition requirements of the Vermont Access to Public Records Act, particularly § § 317 and 317a,¹ please provide us copies of all forms, attestations

¹ § 317a. Disposition of public records. 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). (Added 2007, No. 96 (Adj. Sess.), § 1.) See also § 320(c), Penalties.

See also, e.g., “When state employees leave office, they are supposed to turn over all public records, documents and correspondence to the state archive. . . . Donovan confirmed that all relevant public records must be archived, but when asked if it applied to digital records held privately, he said “I don’t have an answer for that.”” John Walters, “Walters: Judge Orders ‘Limited’ Sorrell Deposition”, Seven Days, October 19, 2017, <https://www.sevendaysvt.com/OffMessage/archives/2017/10/19/walters-judge-orders-limited-sorrell-deposition>.

and/or other departure- or separation-related paperwork submitted by or on behalf of a) Scott Kline, b) Wendy Morgan, and/or c) William Sorrell preceding, accompanying or otherwise relating to their departure from the Office.

OAG surely has its own name and or form number for recording its execution of required recordkeeping and other best practices. A federal equivalent would be, e.g., the U.S. Environmental Protection Agency’s Form 3110-49, “EPA Records Management Checklist for Separating/Transferring or Separated Personnel”, which requires, *inter alia*, “Electronic Documents & Records on all media should be transferred to an EPA recordkeeping system (including email, hard drives, portable electronic storage devices, LAN, servers, collaboration tools, etc)”, with specific attestation that, e.g., “Email records including accounts such as private/personal or secondary (group and/or special purpose) email accounts” have been turned over to Agency custody, continuing the applicability of relevant maintenance and disposal law and policy.

State of Vermont agencies have termination checklists and other required paperwork for separating employees. We note, e.g., the State of Vermont Department of Finance and Management’s “Internal Control — Best Practices” memo “Applicable to All State Agencies, Departments, and Offices”:

Objective

When employees separate or transfer to another position within State service, departments are responsible for ensuring that the State’s assets are protected and that any department owned property has been returned. ...

Risks...

- * Lost, stolen or damaged assets

Best Practices Include

- * Utilize a checklist to ensure a consistent, thorough, and documented procedure.
[Documentation]
- * Tailor the components of the checklist to reflect each department's operating environment (even within a department, not all items on the checklist will be applicable to all employees). [Safeguarding of Assets]
- * Depending on the contents, it may be necessary to assign different staff to complete individual sections of the checklist, but one staff person (e.g. personnel officer, business manager, employee's supervisor) should be delegated overall responsibility for ensuring the checklist is completed. [Authorization]
- * When department property is returned, the recovered items should be indicated on the checklist and signed by the separating employee and staff person who took custody of the items. [Verification and Safeguarding of Assets]
- * Complete the separation checklist, including any necessary remedial actions, prior to the employee's last working day (when possible) to allow time for resolving outstanding issues before termination. [Safeguarding of Assets]
- * Inform executive management (e.g. secretary, commissioner, or their deputies, etc.) when a separating employee does not return department property and take appropriate actions to resolve. [Compliance]
- * The checklist should be reviewed and approved by the staff person who has been delegated responsibility for completion; exceptions should be investigated and actions taken should be noted.
- * Separation checklists should be retained as official department records.

[Approval] [Documentation]

...

Notices

- * In consideration of these best practices, the objective should be on adherence and not on rationalizing ways and means for circumvention.



If you have information to help further focus or narrow this request — for example, your Office's/the State's specific form names and/or numbers required to be completed as part of the process of employee separation — please contact the undersigned with that information.

As you are aware, § 317 (b) provides that “public record” or “public document” means any written or recorded information, regardless of physical form or characteristics, which is produced or acquired in the course of public agency business regardless of that record's location.

We request a rolling production, if/as you see necessary and appropriate within the Vermont Access to Public Records Act, with responsive records being processed and produced independent of any others, as no such production is dependent upon other records being released.

We do not seek duplicates of responsive records.

While we request that the limited fees allowed by statute be waived, we nevertheless agree to pay legitimate expenses up to \$150.00. If you estimate costs will exceed that please notify us and break down the expected costs.

We request records in electronic form if available, also necessitating no photocopying expense.

The undersigned does not seek the information for a commercial purpose. E&E Legal is 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 Without citing examples of, but merely incorporating by reference to, the vast media coverage of E&E Legal battles with OAG over the latter's continuing failure to produce requested records, of which coverage OAG is well aware, other 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 is 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 FOIAs in print publications, E&E Legal regularly disseminates its findings on broadcast media. E&E Legal 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 Batasch, 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 the mailing address provided below.

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

Respectfully submitted,

A handwritten signature in black ink that reads 'Craig E. Richardson'. The signature is fluid and cursive, with the first letters of each word being capitalized and prominent.

Craig E. Richardson
Executive Director, E&E Legal
Richardson@EELegal.org