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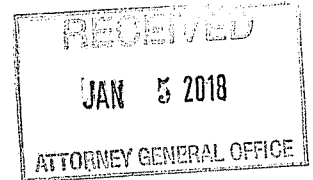
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January 4, 2018

Attn: Josh Diamond
Office of the Attorney General
109 State Street
Montpelier, VT 05609



Re: Appeal for Public Records Request

Dear Mr. Diamond,

This is an appeal under the Freedom of Information Act, 5 U.S.C § 552, and under the Vermont Public Records Law, § 315 et seq. I received your reply in denial of the five public record requests on November 28, 2017. The requests included the following:

- Any and all third-party payment authorization forms related to the overseas promotion and marketing of the Vermont Regional Center EB-5 program and its projects since the year 2006;
- Any and all complaints submitted to ACCD by investors concerning the EB-5 program and its related projects since the year 2006;
- Any and all complaints submitted to ACCD by current and former employees about the EB-5 program and its related projects since the year 2006;
- Any and all content distributed, displayed or sponsored by state employees in the overseas promotion and marketing of the Vermont Regional Center EB-5 program and its projects
- Any and all records of communication between the Office of the Governor and Vermont Regional Center employees related to the EB-5 program
- Any and all documents related to the review and approval of Jay Peak EB-5 projects
- Any and all documents related to the FDA application and approval of Jay Peak AnCBio VT projects; and
- Any and all documents related to Act 250 permits, including dates of issuance for all Jay Peak projects and the EB-5 program

In your denial, you cite the reasons for such are that the records requested are exempt from public inspection and copying under 1 V.S.A. § 317(c)(14), as well as also being protected by other exemptions, including 1 V.S.A. § 317(c)(3), 1 V.S.A. § 317(c)(4), 1 V.S.A. § 317(c)(1), 1 V.S.A. 317(c)(7) and 1 V.S.A. § 317(c)(9). Your reasons cited include that the records requested contain personal financial information of investors and/or financial proprietary information of a business or corporation and “various records are subject to statutory or common-law privileges,

exempt in whole or in part. The information I requested is clearly releasable under FOIA and, in my opinion, may not be validly protected by any of the Act's exemptions.

The exemption under 1 V.S.A. § 317(c)(14) which was your central reasoning for denial, pertains to "records which are relevant to litigation to which the public agency is party of record..." This exemption seeks to protect record disclosure during litigation as it relates to "inter-agency or intra-agency memorandum or letters" which would be privileged information in civil litigation. 5 U.S.C § 552(b)(5). I have not requested any records that would be considered privileged communications between any party.

Additionally, you include that the State has made available online all public records that have been previously requested. In keeping with your department's dedication to transparency, I believe a reconsideration of your denial would be valuable to your cause. It is important to also note that FOIA requires that if a document validly falls under one exemption, any portion of that document that is not exempt must still be released. Specifically, any "reasonably segregable portion" must be disclosed to a requester after the redaction of the parts which may be exempt. 5 U.S.C. § 552 (b). Your argument that various records that have been requested may be "exempt in part" is not valid reasoning for withholding the entire document.

FOIA implores any agency to consider whether the public interest served by not disclosing these documents outweighs the public interest served by their disclosure. The benefit of your transparency will only serve in your favor.

I trust that upon re-consideration, you will reverse the decision denying me access to this material and grant my original request. As I have made this request and this information is of timely value, I would appreciate your expeditious consideration of my appeal in every way possible.

Sincerely,



Benjamin E. Novogroski