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05609-1001

January 11, 2018

Benjamin E. Novogroski, Esq.
Barr Law Group
125 Mountain Road
Stowe, VT 05672

Dear Mr. Novogroski:

I write in response to your appeal of the denial of your public record act requests dated November 10, 2017. By way of context, the AGO has potentially responsive records to the appealed portions of your request by virtue of being counsel to the State, both in prosecuting and defending pending litigation involving Vermont EB-5 projects and Vermont's EB-5 program. As previously explained, the requested records are relevant to pending litigation in which the State is a party of record. 1 V.S.A. § 317(c)(14); more specifically, the records are relevant to the pending matters *State v. Quiros, et al.*, Docket # 217-4-16 Wncv; and *Sutton, et al. v. Vermont Regional Center, et al.*, Docket # 100-5-17, in which your firm represents the plaintiffs.

As you know, discovery has been an actively litigated issue in the *Sutton* case. In fact, you have sought many of the same categories of records and specific documents in discovery as you have through your access to public records act requests. The policy justification behind the relevant to litigation exemption is to avoid "enabling a litigant to use the Public Records Act to attempt an end run around the Vermont Rules of Civil Procedure" and avoid "eviscerat[ing] the inherent power of courts to control discovery in litigation pending before them." *Wesco, Inc. v. Sorrell*, 2004 VT 102, ¶ 16. The policy of § 317(c)(14) as articulated by the Supreme Court in *Wesco* applies to your request, and I deny your appeal on this basis.

As previously explained, additional exemptions also apply in whole or in part to various records you have requested, including 1 V.S.A. § 317(c)(7) and § 317(c)(9), as the requested records include personal financial information of investors, and/or financial or proprietary information of a business or corporation. Finally, various records you have requested are subject to statutory or common-law privileges, and are exempt in whole or in part as otherwise confidential by law, 1 V.S.A. § 317(c)(1), or as attorney-client or otherwise privileged communications, 1 V.S.A. §§ (c)(3), (c)(4).

Again, given that the AGO has potentially responsive documents by virtue of serving as the State's lawyers in pending litigation, the relevant to litigation exemption, § 317(c)(14), is most applicable to your request at this time and is my primary basis for denying your appeal.

Benjamin E. Novogroski, Esq.

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However, if and when the documents at issue are ruled discoverable or the litigation concludes, please note that review and redactions of potentially responsive records will likely involve costs. The AGO is happy to further consult with you regarding the records you seek and applicable costs following the conclusion of all EB-5 litigation.

Finally, my understanding is that you are not reiterating your request for records related to the "arrest, detainment or holding of any state employee while traveling overseas in promotion of the Vermont Regional Center and its related projects." As previously noted to you as a courtesy, the AGO does not have records responsive to this request and other state agencies have previously processed public record act requests similar to this request. As previously noted to you, the numerous Jay Peak/EB-5 related public record act requests fielded by the Department of Financial Regulation and the Agency of Commerce and Community Development prior to commencement of the above-noted litigation are available online. Please check the Department of Financial Regulation's website, (<http://www.dfr.vermont.gov/jay-peak-lawsuit>), for more information.

You may appeal this determination to the Civil Division of the Superior Court pursuant to 1 V.S.A. § 319.

I hope the above information is helpful to you.

Sincerely,

A handwritten signature in black ink, appearing to read 'W. E. Griffin', written in a cursive style.

William E. Griffin
Chief Assistant Attorney General