

From: [Diamond, Joshua](#)
To: [REDACTED]
Cc: [Mishaan, Jessica](#)
Subject: Public Records Appeal
Date: Tuesday, July 28, 2020 10:38:51 PM
Attachments: [Marlboro PRA Appeal final.pdf](#)

Dear Mr. Heck,

Please see attached the AGO's response your public records appeal.

Sincerely, Joshua Diamond

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July 28, 2020

Martin Heck
[REDACTED]
Putney, VT 05346

BY E-MAIL ONLY

RE: Response to Public Records Appeal

Dear Mr. Heck:

I write in response to the appeal of your public records request to the Vermont Attorney General's Office.

I. Background

On March 2nd and 4th, 2020, you made requests under the Vermont Public Records Act (the "PRA") seeking records and communications related to the possible sale of Marlboro College. After Public Protection Division Chief Christopher Curtis spoke with you to clarify your requests and discuss the process by which materials would be delivered to you, the Vermont Attorney General's Office (the "AGO") began making productions of the materials responsive to your requests.

On July 17th, 20th, and 21st, 2020, in emails and telephone correspondence, you communicated that you wished to appeal aspects of the AGO's response to your public records request. This appeal challenges the AGO's decision to redact in part or withhold in full certain documents otherwise responsive to your requests. Your communications regarding the appeal conveyed a general disagreement with most of the AGO's redactions and/or withholding of documents. You did not identify specific redactions in dispute or specific documents that the AGO should have allegedly produced. The AGO's response to your appeal is set forth below.

II. Response to Appeal of Materials Redacted or Withheld by the AGO

The following is the AGO's response to your appeal of the decision to make redactions from or withhold the following documents:

A. Documents produced to you on July 13 and made publicly available at <https://ago.vermont.gov/wp-content/uploads/2020/07/2020-07-13-Renner-response-to-Heck-w-docs.pdf>

This production consists of documents related to gifts to Marlboro College, including solicitations of gifts, receipts for gifts, correspondence thanking donors for gifts, and documents tracking gifts. The redacted portions of these documents essentially contain the names of donors. Disclosure of such information would result in the release of personal financial information. Personal financial information is exempt from production under 1 V.S.A. § 317 (c)(7). *See, also, Welch v. Seery*, 138 Vt. 126, 129-130 (1980)(documents relating to personal finances are exempt from disclosure). However, considering your appeal and in the interest of transparency, we have requested that Marlboro College identify whether any such donor names and gifts have been publicized by the College or otherwise not kept confidential. To the extent we learn that any of this information has been made public, we will un-redact references to such information. We will produce any less redacted version of these documents to you by this Friday, July 31.

B. Documents produced to you on July 19 and made publicly available at <https://ago.vermont.gov/wp-content/uploads/2020/07/2020-07-19-Renner-response-w-docs-and-10-day-ltr-to-Heck.pdf>

This production consists of Marlboro College's Disclosure Schedules to the Marlboro College Asset Exchange Agreement. The AGO redacted pages 4, 8-13, and 28 of this document, where it included information that identified donors to Marlboro College. The disclosure of personal financial information is exempt under the PRA. *Supra.*, II.A. As stated above, we have requested Marlboro College's assistance to identify whether any of this information has been made public. Should we determine that it is appropriate to un-redact any of this information about donors and their gifts, we will produce a new version of this document to you by July 31.

Additionally, the AGO made redactions on page 25 to protect the personal financial information of seven individual employees of the college who were retained for a limited period of time. These redactions were appropriate given the exemption for personal financial information. *Supra.*, II. A.

C. Documents produced to you on July 20.

This production contains a variety of additional documents produced to our office from Marlboro College regarding the sale.

Although there are redactions on page 145 of this production, where the salaries of former Marlboro College faculty are referenced, these materials were redacted prior to the AGO's receipt of the document, and so those redactions are not within the scope of this appeal, as discussed in greater detail below. *Infra.*, at p. 3.

The AGO redacted page 131 of this production, where a memorandum to the Marlboro College Board of Trustees and Strategic Options Task Force discussed the details of bids to acquire Marlboro College's assets other than the bid from Democracy Builders. These redactions, which consisted of the identities of the bidders, were appropriate, as information about these alternate bids are exempt from disclosure under the exception for personal financial information. *Supra.*, at II.A.

The AGO also made redactions on pages 224-226 of this production, where an email and its attachments discussed a particular gift to Marlboro College. The redactions consist of the identities of specific donors. The disclosure of such information is excluded as personal financial information. *Supra.*, at II.A. As described above, if we learn from Marlboro College that this information was publicized, we will produce to you an un-redacted version of these pages by July 31.

The AGO withheld in its entirety a document known as the "Ernst & Young Parthenon Report from February 2019." This document was properly withheld because this documentation reflects Ernst & Young's proprietary methodology and is exempt from disclosure as confidential trade secrets. 1 V.S.A. § 317(c)(9).

For the reasons set forth above, to the extent your appeal relates to redactions of personal financial information related to donors and their gifts, we will work with Marlboro College to identify any such information that we may un-redact and produce to you. To the extent your appeal relates to personal financial information of employees of Marlboro College, to personal financial information concerning alternate bids for the purchase of Marlboro College, or to the confidential and trade secret methodology of one of Marlboro College's consultants, your appeal is denied. Under 1 V.S.A. § 319, you may seek judicial review of this determination from the Civil Division of the Vermont Superior Court.

Please note that your communications regarding this appeal contained objections to Marlboro College's decision to redact information in documents it provided to the AGO. This does not fall within the scope of an appeal under the PRA. Where another party redacts a document before providing it to the AGO, these redactions were not the result of decisions made by AGO document custodians, and thus cannot be appealed. The AGO does not have within its custody or control the unredacted versions of those documents to produce. Specifically, the following documents produced in response to your public records request were received by the AGO in redacted form and therefore the redactions cannot be appealed:

- Documents produced to you on June 11 and made publicly available at <https://ago.vermont.gov/wp-content/uploads/2020/06/2020-06-11-Curtis-further-response-to-Heck-w-docs.pdf>
- Documents produced to you on July 1 and made publicly available at <https://ago.vermont.gov/wp-content/uploads/2020/07/2020-07-01-PRA-Production-re-Marlboro-College-Part-I.pdf> and <https://ago.vermont.gov/wp-content/uploads/2020/07/2020-07-01-PRA-Production-re-Marlboro-College-Part-II.pdf>

In addition, subsequent to your appeal, Marlboro College produced an unredacted version of the Marlboro College Purchase & Sale Agreement. The AGO in turn produced that document to you in unredacted form on July 24th.

Finally, based upon your discussions with Christopher Curtis, the AGO understands that your appeal does include redactions contained from correspondence by members of the public to the AGO regarding the Marlboro College asset sale. As a result, this letter does not address the redactions of personally identifiable information from those materials.

Sincerely,

Joshua R. Diamond
Deputy Attorney General