

From: Diamond, Joshua <Joshua.Diamond@vermont.gov>
Sent: Tuesday, December 29, 2020 7:52 AM
To: Matthew D. Hardin <MatthewDHardin@protonmail.com>; Neal Cornett <ncornettlaw@gmail.com>
Cc: Alexander, Jon <jon.alexander@vermont.gov>; Mishaan, Jessica <Jessica.Mishaan@vermont.gov>
Subject: RE: Public Records Act Appeal

Dear Matt and Neal,

Please see attached response to your public records appeal.

Regards, Josh

Joshua R. Diamond, Deputy Attorney General
Vermont Attorney General's Office
109 State Street
Montpelier, Vermont 05609
802-595-8317
joshua.diamond@vermont.gov

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THOMAS J. DONOVAN, JR.
ATTORNEY GENERAL

JOSHUA R. DIAMOND
DEPUTY ATTORNEY GENERAL

SARAH E.B. LONDON
CHIEF ASST. ATTORNEY
GENERAL



TEL: (802) 828-3171

<http://www.ago.vermont.gov>

STATE OF VERMONT
OFFICE OF THE ATTORNEY GENERAL
109 STATE STREET
MONTPELIER, VT
05609-1001

December 28, 2020

Neal Cornett
Attorney at Law

By e-mail to: ncornettlaw@gmail.com

Re: Appeal of Vermont Public Records Act Request

Dear Attorney Cornett:

This is a determination, pursuant to 1 V.S.A. § 318(c), of the appeal of your client, Energy Policy Advocates (“EPA”), set forth in your June 12, 2020 email to this Office, which followed this Office’s June 9, 2020 response to EPA’s June 4, 2020 Vermont Access to Public Records Act (“PRA”) request. The parties agreed to toll the period for this Office’s determination on the appeal due to the pendency of *Energy Policy Advocates v. Attorney General’s Office*, Docket No. 173-4-20 Wncv. However, in a December 21, 2020 email, Matthew Hardin, attorney for EPA, asked us to resume processing the appeal in the usual course. Accordingly, I am providing this determination on the appeal at this time.

In your request, on behalf of EPA, you sought:

all electronic correspondence, and any accompanying information . . . including also any attachments, a) sent to or from or copying (whether as cc: or bcc:) Nick Persampieri, that b) includes “GHG Emissions Affirmative Litigation” in the subject field, and c) is dated from June 17, 2019 through June 3, 2020, inclusive.

In our June 9, 2020 response we advised you that we are withholding 6 records because they are exempt from disclosure pursuant to 1 V.S.A. § 371(c)(4) (attorney-client communications, attorney work product) and 1 V.S.A. § 317(c)(14) (relevant to litigation). We described the withheld records as communications among the Vermont Attorney General's Office and Attorneys General Offices of one or more other states regarding the states' review and comment on drafts of a common interest agreement, and Vermont's agreement to join the common interest agreement. We stated that the communications related to an issue of common interest among the states, and were made in anticipation of litigation. We identified and described the common interest agreement to which the withheld communications pertain by referring to a *Vaughn* Index filed in *Energy Policy Advocates v. Attorney General's Office*, Docket No. 173-4-20 Wncv.

In your June 12, 2020 appeal, you contend that this office "has not identified records it is withholding but has instead merely enumerated how many records it is withholding." You also contend that that the agency has not identified "reasons and supporting facts for the denial."

I have considered your appeal and am granting it in part by disclosing the attached redacted versions of 2 of the 6 records responsive to your request. To the extent that the portions of these records that I am disclosing are subject to an exemption from disclosure, the disclosure made with this letter shall not constitute a waiver of any exemption from disclosure with respect to the same subject matter reflected in other records. I am otherwise denying your appeal because the redacted portions of the 2 records and the entirety of the other 4 records are exempt from disclosure under 1 V.S.A. § 317(c)(4) and (c)(14).

The records and portions of records withheld each consist of one or more emails between the Attorneys General Offices of two or more states, including Vermont, regarding the states' review and comment on drafts of a common interest agreement. The 4 records withheld in their entirety and the withheld portions of the 2 records that we are providing to you in redacted form collectively include a total of 5 distinct emails. Additionally, each of the 4 records we are withholding in their entirety includes, as an email attachment, a draft of the common interest agreement referenced above. The withheld portions of one of the records we are providing to you in redacted form include, as an email attachment, an execution version of this common interest agreement, with the signature of Vermont, but not the signatures of the other parties.

The common interest agreement to which the 4 withheld records and 2 partially withheld records pertain is the “GHG Litigation CIA” described in Exhibit 1 to Defendant’s Answer and Affirmative Defenses to Plaintiff’s Complaint for Declaratory and Injunctive Relief, Defendant’s Index of Withheld Documents as Exempt from Public Inspection and Copying Pursuant to 1 V.S.A. § 317(c), *i.e.*, the above-referenced *Vaughn* Index, filed May 20, 2020 in *Energy Policy Advocates v. Attorney General’s Office*, Docket No. 173-4-20 Wncv. Please see our description of the GHG Litigation CIA in this *Vaughn* Index for the document with Bates Number Range AGO0001-AGO0030. Whether the GHG Litigation CIA is exempt from disclosure under the PRA is among the contested issues in that pending case.

The 4 withheld records and withheld portions of 2 other records were generated in furtherance of the states’ common interest in protecting the public health, public welfare and the environment from the dangers posed by climate change and in pursuing litigation toward that end. They were generated in anticipation of such litigation and for the purpose of facilitating the rendition of legal services to Vermont and the other states related to such anticipated litigation, and, therefore are exempt from disclosure under 1 V.S.A. § 317(c)(4).

The records and portions of records withheld are also relevant to litigation to which this Office is a party of record: *Energy Policy Advocates v. Attorney General’s Office*, Docket No. 173-4-20 Wncv- and, therefore, are independently exempt from disclosure under 1 V.S.A. § 317(c)(14).

Please be advised that any person aggrieved by the denial of a request for public records may apply to the Civil Division of the Superior Court pursuant to 1 V.S.A. § 319.

Sincerely,

/s/ Joshua R. Diamond
Joshua R. Diamond
Deputy Attorney General

From: [Persampieri, Nick](#)
To: [Novick Steve](#)
Subject: RE: Draft Common Interest Agreement/GHG Emissions Affirmative Litigation - CORRECTION
Date: Tuesday, June 25, 2019 4:32:00 PM
Attachments: [REDACTED]

Steve,

I attach Vermont's signed Addendum to the Common Interest Agreement. Thank you for coordinating on this one.

Nick

Nicholas F. Persampieri
Assistant Attorney General
Office of the Attorney General
109 State Street
Montpelier, VT 05609
(802) 828-6902
nick.persampieri@vermont.gov

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From: [Novick Steve](#)
To: [Persampieri, Nick](#)
Subject: Re: Draft Common Interest Agreement/GHG Emissions Affirmative Litigation - CORRECTION
Date: Tuesday, June 25, 2019 4:41:02 PM

Thanks, Nick!

On Jun 25, 2019, at 1:33 PM, Persampieri, Nick
<nick.persampieri@vermont.gov<<mailto:nick.persampieri@vermont.gov>>> wrote:

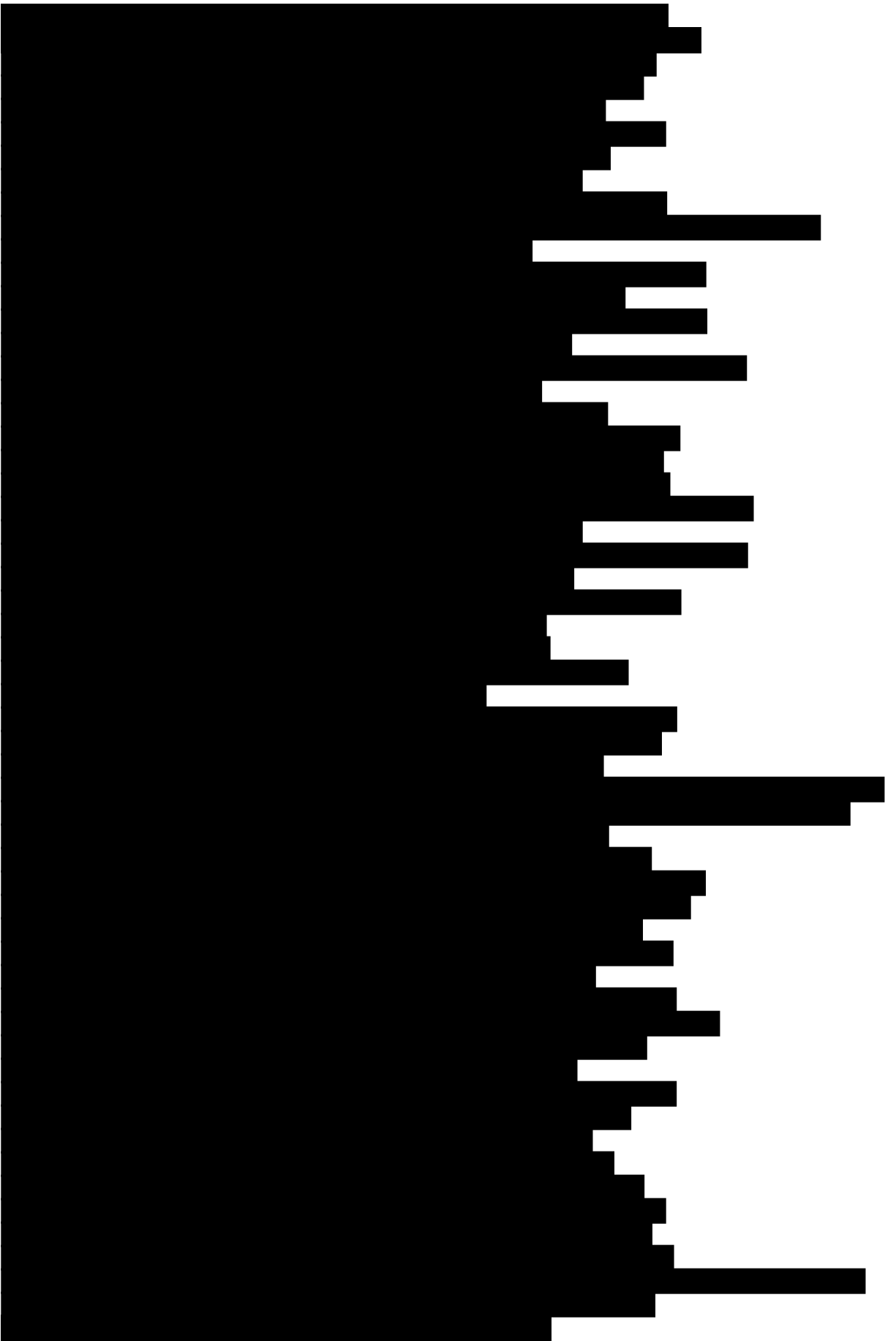
Steve,

I attach Vermont's signed Addendum to the Common Interest Agreement. Thank you for coordinating on this one.

Nick

Nicholas F. Persampieri
Assistant Attorney General
Office of the Attorney General
109 State Street
Montpelier, VT 05609
(802) 828-6902
nick.persampieri@vermont.gov<<mailto:nick.persampieri@vermont.gov>>





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