

From: Neal Cornett <ncornettlaw@gmail.com>
Sent: Monday, February 8, 2021 11:28 AM
To: Diamond, Joshua <Joshua.Diamond@vermont.gov>
Subject: PRA Appeal

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Mr. Diamond:

Please see the attached PRA appeal, agency response, and PRA request. If you have any questions, please let me know.

Thank you,
Neal Cornett

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February 8, 2021

Joshua Diamond
Deputy Attorney General
State of Vermont
Office of the Attorney General
109 State Street
Montpelier, VT 05609-1001

Dear Mr. Diamond

I write, on behalf of my client Energy Policy Advocates, to appeal a denial of access to public records pursuant to 1 V.S.A. § 318 (c)(3). Please see attached a public records request I submitted to the Attorney General's Office on December 14, 2020, and the Office's response, dated December 29, 2020.

The PRA request sought "all common interest agreements, confidentiality agreements, information sharing agreements, and/or non-disclosure agreements addressing consumer protection, consumer fraud and/or failure to warn claims, and/or any possible legal actions about the same, which were entered into by the Vermont Attorney's General Office at any time in 2019 or 2020. The Attorney General's Office's response withheld as exempt from disclosure all "documents potentially responsive". EPA appeals the withholding of these records.

1 V.S.A. § 318 (b)(2) lays out four requirements that apply when an agency wishes to deny access to a record. These statutory requirements have not been satisfied.

First, an agency is required to identify the records it is withholding and the agency must identify the "reasons and supporting facts for the denial." 1 V.S.A. § 318 (b)(2)(A)-(B). The Attorney General's Office's response is wholly insufficient. It fails to identify any potentially responsive record, the amount of records withheld, or even the amount of potentially responsive records. It is Energy Policy Advocates' position that the Attorney General must specifically identify the records in a more descriptive fashion to satisfy its statutory burden. At minimum, the Office's description should include the date(s) the agreements were entered, specific parties to, and general subject matter of each withheld record.

Second, an agency must include the statutory basis for denial and a brief statement of the reasons and supporting facts for denial. In the instant matter, the Attorney General's Office cites 1 V.S.A. § 317(c)(4) (would violate adopted standards or ethics of a regulated profession, attorney-client communications, attorney work product, exempt from production due to pending litigation), and/or the common interest doctrine to withhold the potentially responsive agreements. This broad use of a statutory exemption and the common interest doctrine to withhold records in their entirety combined with the lack of any identified records makes it impossible to determine if the records were promptly withheld. As such, the Attorney General's Office should, at a minimum, provide a *Vaughn* style index listing the agreement(s), date(s) entered, specific parties to, general subject matter, and the specific exemption or doctrine that applies. Alternately, the Vermont Attorney General's Office should release the agreements.

Third, the agency must "provide the names and titles or positions of each person responsible for the denial of the request." 1 V.S.A. § 318 (b)(2)(C). Here, although the letter is signed by the Chief of the Public Protection Division, there is no assertion that he is the only agency official responsible for the denial of the request. Energy Policy Advocates has the statutory right to know whether any additional agency employees were responsible for denying access to records.

Fourth, the agency must "notify the person of his or her right to appeal to the head of the agency any adverse determination." 1 V.S.A. § 318 (b)(2)(D). Here, the agency gave notice of a right to appeal, but asked that such an appeal be directed to the Deputy Attorney General. While Energy Policy Advocates does not quarrel with how the agency wishes to handle administrative appeals internally, I do feel

compelled to note, for purposes of clarifying the record should litigation ensue, that Energy Policy Advocates is following the procedures to appeal that the agency itself has requested be followed. It is for that reason that this correspondence is not directed to the “head of the agency,” and we trust that the Attorney General will not later claim that this appeal was directed to the wrong party.

The Attorney General’s Office should release the agreements responsive to this request or, at a minimum, provide a *Vaughn* index detailing the precise nature of the records withheld, including date(s) of, specific parties to, and general subject matter of the withheld agreements.

Sincerely,
Neal Cornett
Attorney at Law

REQUEST UNDER VERMONT PUBLIC RECORDS ACT

December 14, 2020

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

By Electronic Mail: ago.info@vermont.gov

Re: Certain Agreements

Dear Sir or Madam:

On behalf of Energy Policy Advocates (EPA), recognized by the Internal Revenue Service as a non-profit public policy institute under § 501(c)(3) of the Internal Revenue Code, and pursuant to the Vermont Public Records Act, 1 V.S.A. §§315-320, please provide copies of all common interest agreements, confidentiality agreements, information sharing agreements, and/or non-disclosure agreements addressing consumer protection, consumer fraud and/or failure to warn claims, and/or any possible legal actions about the same, which were entered into by the Vermont Attorney General's Office at any time in 2019 or 2020.

We understand that in some instances a public body may charge a fee for the cost of the search, examination, review, copying, separation of confidential from nonconfidential information, and mailing costs. If your Office expects to seek a charge associated with the searching, copying or production of these records, please provide an estimate of anticipated costs.

As noted earlier in this request, EPA is a non-profit public policy organization dedicated to informing the public of developments in the area of energy and environmental issues and relationships between governmental and non-governmental entities as they relate to those issues.

EPA's ability to obtain fee waivers is essential to this work. EPA intends to use any responsive information to continue its work highlighting the nexus between interested non-governmental entities and government agency decision-making. The public is both interested in and entitled to know how regulatory, policy and enforcement decisions are reached. EPA ensures the public is made aware of its work and findings via its partnership with the non-profit public interest law firm Government Accountability & Oversight, P.C., and the [ClimateLitigationWatch.org](https://www.climateactionwatch.org/) project dedicated to broadly disseminating energy and environmental policy news and developments. The public information obtained by EPA and published on [ClimateLitigationWatch.org](https://www.climateactionwatch.org/) have been relied upon by established media outlets, including the Washington Times and Wall Street Journal editorial page.¹

We look forward to your response. If you have any questions, do not hesitate to contact me by email at ncornettlaw@gmail.com.

Sincerely,
Neal Cornett
Attorney at Law

¹ See, e.g., The Editorial Board, "State AGs' Climate Cover-Up" Wall Street Journal, June 7, 2019, <https://www.wsj.com/articles/state-ags-climate-cover-up-11559945410>. Valerie Richardson, "Motivated or manipulated? Rise of youth climate activism fuels alarms over exploitation" Washington Times, March 15, 2019, <https://www.washingtontimes.com/news/2019/mar/13/youth-climate-strike-sparks-debate-use-students-pr/>, see also "Climate Strike Sparks Debate on Use of Students as Props", https://www.realclearpolicy.com/2019/03/15/climate_strike_sparks_debate_on_use_of_students_as_props_41180.html. Valerie Richardson, "Democratic AGs team up with George Soros-funded group on anti-Trump lawsuit" Washington Times, August 1, 2019, <https://www.washingtontimes.com/news/2019/aug/1/george-soros-funded-group-democratic-ags-partner-a/>. Anthony Watts, "Emails reveals how children become pawns of climate alarmism", Watts Up With That (two-time Science Website of the Year), March 13, 2019, <https://wattsupwiththat.com/2019/03/13/emails-reveal-how-children-become-pawns-of-climate-alarmism/>.

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

December 29, 2020

Neil Cornett, Esq.
o/b/o Energy Policy Advocates
Sent By Electronic Mail: ncornettlaw@gmail.com

Dear Attorney Cornett,

Thank you for your public records request dated December 14, 2020 (and following initial response extending time for response issued to you December 17, 2020). You requested: “copies of all common interest agreements, confidentiality agreements, information sharing agreements, and/or non-disclosure agreements addressing consumer protection, consumer fraud and/or failure to warn claims, and/or any possible legal actions about the same, which were entered into by the Vermont Attorney General’s Office at any time in 2019 or 2020.”

Please be advised that with respect to the requested items the documents potentially responsive to your request are withheld as exempt from disclosure. These potentially responsive records are exempt from disclosure pursuant to 1 V.S.A. § 371(c)(3), (4), (c)(14) (would violate adopted standards or ethics of a regulated profession, attorney-client communications, attorney work product, exempt from production due to pending litigation), and/or the common interest doctrine.

If you would like to narrow your request, or if there is something specific you were seeking that you would like to discuss, or that I can assist you with, please don’t hesitate to contact me at: christopher.curtis@vermont.gov; 802-279-5496.

If you feel any information or records have been withheld in error, you may appeal to Deputy Attorney General Joshua Diamond at the following email address: Joshua.Diamond@vermont.gov.

Thank you for your consideration.

Sincerely,

/s/ Christopher J. Curtis

Christopher J. Curtis

Chief, Public Protection Division