

From: [Diamond, Joshua](#)
To: [Henry Epp](#)
Cc: [Mishaan, Jessica](#)
Subject: Public Records Appeal
Date: Tuesday, March 23, 2021 11:03:57 PM
Attachments: [PRA Appeal Response 3-23-21.pdf](#)

Dear Henry,

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

Regards, Josh

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March 23, 2021

Henry Epp
Vermont Public Radio
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BY EMAIL ONLY

Dear Mr. Epp:

I write in response to your email dated March 16, 2021. In that email you appealed a denial of access to public records pursuant to 1 V.S.A. § 318(c)(1) relating to your request of February 11, 2021, which sought the following:

- 1. Any and all correspondence between the Attorney General and the Vermont Economic Progress Council (VEPC) and its executive director related to a letter sent by VEPC to the Attorney General on Feb. 1st, 2021.**
- 2. Any and all correspondence between the Attorney General and Oliver Olsen of South Londonderry related to a letter sent by Olsen to the Attorney General on Feb. 3rd, 2021.**
- 3. Any and all correspondence, including but not limited to emails, text messages, letters and faxes between Auditor Doug Hoffer and staff of the Attorney General's office in regards to the following topics: "Vermont Employment Growth Incentive," "VEGI," "Vermont Economic Progress Council," "VEPC," and "Marvell" dated from Nov. 1st, 2019 to present.**

The Attorney General's Office declined to release records in response to this request on the grounds that all responsive records would be exempt from disclosure pursuant to 1 V.S.A. §§ 317(c)(3) & (4), the exemptions relating to professional ethical obligations and statutory and common law privileges. In your appeal, you request "as much information as possible as to what type of documents these are, who sent and received these documents, the dates they were sent and their subject matter."

The Attorney General's Office has four potentially responsive records that are the subject of your appeal. I have considered your appeal and deny the production of these documents because they are exempt from disclosure as previously referenced above pursuant to 1 V.S.A. §§ 317(c)(3) & (4). Notwithstanding, and without waiving any exemptions from disclosure or the privileges identified herein, a more detailed description of the withheld documents are as follows:

1. E-mail with attached letter from Vermont State Auditor Douglas Hoffer to Vermont Attorney General Donovan and Deputy Attorney General Diamond dated November 18, 2019, pertaining to Tax Incremental Financing (hereinafter "TIFs").
2. Email from Vermont State Auditor Douglas Hoffer's staff to Deputy Attorney General Diamond and Vermont State Auditor Douglas Hoffer dated November 11, 2019, pertaining to TIFs.
3. E-mail with attached document from Vermont State Auditor Douglas Hoffer to Vermont Attorney General Donovan and Deputy Attorney General Diamond dated February 1, 2021, pertaining to the Vermont Economic Progress Council and the Vermont Employment Growth Initiative.
4. E-mail from Vermont State Auditor Douglas Hoffer to Deputy Attorney General Diamond dated February 5, 2021, pertaining to the Vermont Economic Progress Council and the Vermont Employment Growth Initiative and another matter unrelated to this public records request.

The withheld documents all reflect confidential attorney-client communications made for the purpose of facilitating legal services. As such these documents are subject to 1 V.S.A. § 317(c)(4), which exempts from public inspection and copying "[r]ecords which, if made public pursuant to this subchapter, would cause the custodian to violate any statutory or common law privilege" In addition, as attorney-client communications, they fall within the confidentiality provisions under Vermont Rules of Professional Conduct 1.6. Thus, they are also subject to 1 V.S.A. § 317(c)(3), which exempts records from production that "...would cause the custodian to violate duly adopted standards of ethics or conduct of any profession regulated by the State."

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