

From: [Mishaan, Jessica](#)
To: MatthewDHardin@protonmail.com
Subject: public records appeal, dated April 15, 2020
Date: Thursday, April 23, 2020 9:30:30 AM
Attachments: [Hardin appeal response 20200423.pdf](#)

Mr. Hardin,

Please see the attached.

Thank you,

Jessica Mishaan | Paralegal

Office of the Attorney General | General Counsel and Administrative Law Division

109 State Street Montpelier, VT 05609-1001

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OFFICE OF THE ATTORNEY GENERAL
109 STATE STREET
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April 23, 2020

BY EMAIL ONLY

Matthew D. Hardin
Executive Director
Energy Policy Advocates

By e-mail to: MatthewDHardin@protonmail.com

Re: Appeal of Vermont Public Records Act Request

Dear Mr. Hardin:

I write in response to your email dated April 15, 2020, which was sent after the close of business and therefore received by the Vermont Attorney General's Office on the following business day, Thursday, April 16. 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 March 27, which sought the following records:

1. all electronic correspondence, and any accompanying information (see discussion of SEC Data Delivery Standards, infra), including also any attachments, a) sent to or from or copying (whether as cc: or bcc:) i) Alison Milbury Stone and/or ii) Robert McDougall, that b) includes, anywhere, whether in an email address, in the sent, to, from, cc, bcc fields, or the Subject fields or body of an email or email "thread", including also in any attachments, i) Bachmann, and/or ii) Goffman, and c) is dated from November 1, 2019 through the date you process this request, inclusive;

2. all electronic correspondence, and any accompanying information (see discussion of SEC Data Delivery Standards, infra), including also any attachments, a) sent to or from or copying (whether as cc: or bcc:) i) Alison Milbury Stone and/or ii) Robert McDougall, that b) was sent from

michael.myers@ag.ny.gov, and c) is dated from November 4, 2019 through November 8, 2019, inclusive and November 17, 2019;

3. any invitation sent or received from michael.myers@ag.ny.gov to participate in a November 18, 2019 telephone call, and

4. any common interest agreements concerning i) carbon dioxide or CO₂, ii) greenhouse gas emissions or GHG, and/or iii) National Ambient Air Quality Standards or NAAQS entered into by the Office of the Attorney General at any time in 2019 and/or 2020.

Specifically, with respect to items 1 through 3 of your March 27 request, you seek a certification that the requested records do not exist, along with a brief description of the Office's efforts to search for responsive records. Please see the attached certification from Assistant Attorney General (AAG) Alison Milbury Stone. For item 1, the named AAGs searched their email mailboxes for the terms "Bachmann" and "Goffman," within the date range provided, and for item 2 they searched their email inboxes for michael.myers@ag.ny.gov within the date range provided. As to item 3, AAGs McDougall, Stone, and Persampieri searched their inboxes for invitations from michael.myers@ag.ny.gov relating to a November 18, 2019 telephone call, and also looked on their Outlook calendars for a record of such a call.

With respect to item 4 of the request at issue, the Attorney General's Office stated that "6 records which may be responsive to your request have been withheld as exempt from disclosure. These potentially responsive records are exempt from disclosure pursuant to 1 V.S.A. § 317(c)(4) (attorney-client communications, attorney work product)." In response to your request that this Office identify the records in some more descriptive fashion, please be advised that six records are common interest agreements entered into by the Office of the Attorney General in the years identified – five in 2019 and one in 2020. These agreements relate to greenhouse gas emissions (GHG). None of the agreements relate to National Ambient Air Quality Standards (NAAQS).

Next, you asked that this Office further identify the "reasons and supporting facts for the denial." 1 V.S.A. § 318 (b)(2)(B). The common interest agreements that you request are exempt from disclosure pursuant 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...." The agreements are subject to attorney-client privilege because they are confidential communications between the parties' attorneys to facilitate the rendition of legal services to clients. In addition, the agreements constitute attorney work product because they were prepared by attorneys in anticipation of litigation. Furthermore, the agreements are subject to the common interest privilege as they were made in furtherance of the parties' shared interests and strategies.

Finally, 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

Enclosure

CERTIFICATION OF ASSISTANT ATTORNEY GENERAL
ALISON MILBURY STONE PURSUANT TO 1 V.S.A. § 318(b)(4)

I, Alison Milbury Stone, Assistant Attorney General for the State of Vermont, hereby certify pursuant to 1 V.S.A. § 318(b)(4) that the following records do not exist:

1. electronic correspondence, and any accompanying information (see discussion of SEC Data Delivery Standards, infra), including also any attachments, a) sent to or from or copying (whether as cc: or bcc:) i) Alison Milbury Stone and/or ii) Robert McDougall, that b) includes, anywhere, whether in an email address, in the sent, to, from, cc, bcc fields, or the Subject fields or body of an email or email "thread", including also in any attachments, i) Bachmann, and/or ii) Goffman, and c) is dated from November 1, 2019 through the date you process this request, inclusive;

2. electronic correspondence, and any accompanying information (see discussion of SEC Data Delivery Standards, infra), including also any attachments, a) sent to or from or copying (whether as cc: or bcc:) i) Alison Milbury Stone and/or ii) Robert McDougall, that b) was sent from michael.myers@ag.ny.gov, and c) is dated from November 4, 2019 through November 8, 2019, inclusive and November 17, 2019; and

3. any invitation sent or received from michael.myers@ag.ny.gov to participate in a November 18, 2019 telephone call.

Dated this 20th day of April, 2020.



Alison Milbury Stone, Esq.
Assistant Attorney General
Office of the Attorney General
109 State Street
Montpelier, VT 05609-1001