

From: Matthew D. Hardin <MatthewDHardin@protonmail.com>
Sent: Wednesday, May 20, 2020 9:54 PM
To: Diamond, Joshua <Joshua.Diamond@vermont.gov>
Subject: Re: Vermont Public Records Act Appeal

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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)(1). Please see below the response letter provided by Mr. Persampieri on behalf of the Office of the Attorney General. The response is dated May 12, 2020, and relates to a request OAG received on April 28, 2020.

Specifically, Energy Policy Advocates appeals the denial of records Mr. Persampieri describes as follows:

1. "We have withheld 11 records because they are exempt from disclosure pursuant to 1 V.S.A. § 371(c)(4) (attorney-client communications, attorney work product) and/or 1 V.S.A. § 317(c)(14) (relevant to litigation). These records consist of communications among the Attorney General's offices of multiple states, including Vermont, regarding issues of common interest, made in connection with ongoing or anticipated litigation."
2. "We have withheld 24 records because they are exempt from disclosure pursuant to 1 V.S.A. § 371(c)(4) (attorney-client communications, attorney work product) and/or 1 V.S.A. § 317(c)(14) (relevant to litigation). These records consist of communications among the Attorney General's offices of multiple states, including Vermont, regarding issues of common interest, made in connection with ongoing or anticipated litigation.."

It is OAG's burden to identify the "reasons and supporting facts for the denial." 1 V.S.A. § 318 (b)(2)(B). In the instant matter, the Attorney General's Office has only asserted conclusory legal opinions in denying access. No facts of any type or variety are to be found in the denial letter, much less facts that establish a *prima facie* case that the records are within the ambit of any privilege, including but not limited to the Common Interest Privilege. Moreover, Energy Policy Advocates doubts that any privilege or work product protection could, as a matter of law, apply to the records at issue. As such, we appeal OAG's denial of access to these records.

I look forward to your response. Let me know if you have any questions.

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