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May 26, 2020

BY EMAIL ONLY

Matthew D. Hardin
Executive Director
Energy Policy Advocates

By email to: MatthewDHardin@protonmail.com

Re: Appeal of Vermont Public Records Act Request

Dear Mr. Hardin:

I write in response to your email dated May 18, 2020. 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 April 13, 2020,¹ 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:) Nick Persampieri, 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, "Multistate AG Coordination Call", and c) was sent or received on October 29, 2019, December 3, 2019, and/or December 17, 2019; and*
- 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:) Nick Persampieri, that b) includes in the subject field, i) GHG Emissions Affirmative Legislation and/or ii) Affirmative Climate, and c) is dated from June 17, 2019 through April 9, 2020, inclusive.*

Specifically, you appeal the denial of thirty-five records under item 2 of your request. With respect to those records, the Attorney General's Office stated that the

¹ The request was sent at 10:41pm after the close of business on April 12 and therefore received by the Attorney General's Office on April 13.

“thirty-five withheld records consist of communications among Attorney General’s offices of multiple states, including Vermont, regarding issues of common interest made in connection with anticipated litigation.” In your appeal, you asked that this Office further identify the “reasons and supporting facts for upholding the denial.” See 1 V.S.A. § 318(c)(2)(B).

The withheld records are emails and email threads including related attachments among Attorney General offices regarding litigation development in an area of common interest among the States. The records include discussion and sharing of legal strategy, legal research issues, planning and related materials (e.g., legal memos, links, and articles) about the subject matter of the common interest; a common interest agreement; and emails related to the common interest agreement.

These records 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 records are work-product because they were prepared in anticipation of litigation. They also reflect confidential attorney-client communications made for the purpose of facilitating legal services. They are protected under the common interest privilege as they were made in furtherance of the States’ shared interests and strategies.

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