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05609-1001

May 26, 2020

**BY EMAIL ONLY**

Matthew D. Hardin  
Executive Director  
Energy Policy Advocates

By email to: [MatthewDHardin@protonmail.com](mailto: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 14, 2020, 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, 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:) Nick Persampieri, 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 to Nick Persampieri from michael.myers@ag.ny.gov to participate in a November 18, 2019 telephone call.*

Specifically, you appeal the denial of seven records under item 1 of your request. With respect to those records, the Attorney General's Office stated that the 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." You also appeal the denial of one record under item 2 of your request. With respect to that record, the Attorney General's Office stated that it was "a communication among the Attorney General's offices of multiple states, including Vermont, regarding issues of common interest, made in connection with ongoing litigation." In your appeal, you asked that this Office further identify the "reasons and supporting facts for upholding the denial" of access to these records. *See* 1 V.S.A. § 318(c)(2)(B).

Five of the withheld records under item 1 are emails and email threads with related attachments among and between Attorney General offices regarding the parties' common interest agreement related to ongoing litigation, and discussion of related public records requests. 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 . . . ." Th records reflect confidential attorney-client communications made for the purpose of facilitating legal services. They are also work-product because they were prepared in anticipation of litigation. They are protected under the common interest privilege as they were made in furtherance of the States' shared interests and strategies.

One of the withheld records under item 1, and the withheld record under item 2, are emails and a related attachment regarding legal strategy and planning in ongoing litigation in an area of common interest among the parties. The remaining withheld record under item 1 is an email thread and related attachments relating to legal strategy, planning, and a common interest agreement regarding litigation development in an area of common interest among the parties. These records are exempt from disclosure for the same reasons as those discussed above.

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