

THOMAS J. DONOVAN, JR.
ATTORNEY GENERAL

JOSHUA R. DIAMOND
DEPUTY ATTORNEY GENERAL

SARAH E.B. LONDON
CHIEF ASST. ATTORNEY GENERAL



TEL: (802) 828-3171
FAX: (802) 828-3187
TTY: (802) 828-3665

<http://www.ago.vermont.gov>

STATE OF VERMONT
OFFICE OF THE ATTORNEY GENERAL
109 STATE STREET
MONTPELIER, VT
05609-1001

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 20, 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 28, 2020, which sought the following records:

all electronic correspondence, including also any attachments, and accompanying information (see discussion of SEC Data Delivery Standards, infra), that was sent to or from or which copies Nick Persampieri, dated from February 1, 2020 through April 28, 2020, inclusive, that:

- 1. 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 or attachment, and including as part of that record, a) the word "complaint" and b) i) "criteria pollutant" (which also includes "criteria pollutants"), ii) "greenhouse gas", (which includes "greenhouse gases"), and/or iii) "GHG"; or that*
- 2. provides notice pursuant to any common interest agreement of any public records request, or otherwise discusses or references any public records request or public records lawsuit, submitted to any party by a) Matthew Hardin, b) Neal Cornett, c) Chris or Christopher Horner, and/or d) Energy Policy Advocates.*

Specifically, you appeal the denial of eleven records under item 1 of your request and twenty-four records under item 2 of your request. With respect to these 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.” 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).

Th eleven records withheld under item 1 are emails, email threads, and attachments among Attorney General offices regarding legal strategy, drafting, and planning in ongoing and anticipated litigation in areas of common interest among the parties. The twenty-four records withheld under item 2 are emails and email threads with related attachments among and between Attorney General offices regarding the parties’ common interest agreements related to ongoing and anticipated 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” The 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.

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