

SUPERIOR COURT
Washington Unit

PW
2017 OCT 18 A 8:07

CIVIL DIVISION
Docket No. 349-6-16 Wncv

Energy & Environment Legal et al vs. Attorney General

FILED
ENTRY REGARDING MOTION

Count 1, Declaratory Judgment (349-6-16 Wncv)

Title: Motion Expedited Motion to Stay Discovery (Motion 18)
Filer: William Sorrell
Attorney: David A. Boyd
Filed Date: October 12, 2017

Response filed on 10/16/2017 by Attorney Brady C. Toensing for Plaintiff
Reply filed on 10/17/2017 by Attorney David A. Boyd for Defendant William Sorrell

The motion is GRANTED IN PART.

Before electronic correspondence and documents, if a public official kept paper work correspondence and documents in a desk drawer at home rather than at the government office, the fact that he or she did that would not result in such documents being exempt from public access under the Public Records Act, no matter whether that happened unintentionally, negligently, or deliberately. The fact that the format of documents is now electronic should not change public access to government documents.

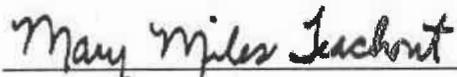
With respect to the deposition of William Sorrell, he is a party Defendant and his Motion to Dismiss has been denied. Exhibit 1 to the Plaintiff's Motion to Join, filed February 8, 2017, indicated that at least to some extent, Mr. Sorrell conducted public business on a private email account. This is a sufficient basis for him to be subject to discovery on the extent to which he did so in relation to the records sought in this case. Thus, the motion to stay discovery is denied as to his scheduled deposition. However, the scope of the deposition is limited to discovering only the extent to which he has documents and correspondence on his private email account and computer that relate to the specific public records request in this case. Questions beyond this focused topic would indeed raise the privacy issues identified by the Defendant. Discovery on this limited topic will help provide the facts that would enable the court to address the substantive legal issues in the case based on a factual context.

The other individuals whose depositions have been noticed are in a different situation in that they are not parties. The motion to stay discovery is granted temporarily as to any discovery requests other than the deposition of Mr. Sorrell. As noted in the Decision on the Motion to

Dismiss, there may be appellate law forthcoming that would provide guidance as to the scope of discovery available from public officials who have not been determined to be parties.

The motion for interlocutory appeal is denied at this time on the grounds that there is no controlling ruling of law in the case as yet; all that has been decided is that the complaint as to Mr. Sorrell is sufficient to survive a Rule 12 (b)(6) motion and the substantive legal issue is best decided in the light of facts developed by the evidence. The ruling above, staying all discovery except the deposition of Mr. Sorrell and limiting the scope of that deposition to the facts described above, should be sufficient to provide the factual basis necessary to permit the court to address and rule on the substantive question of law.

Electronically signed on October 17, 2017 at 04:58 PM pursuant to V.R.E.F. 7(d).



Mary Miles Teachout
Superior Court Judge

Notifications:

Brady C. Toensing (ERN 4933), Attorney for Plaintiff Energy & Environment Legal
William E. Griffin (ERN 3423), Attorney for Defendant Attorney General of Vermont
Matthew D. Hardin (ERN 7781), Attorney for party 1 Co-counsel
Matthew D. Hardin (ERN 7781), Attorney for party 2 Co-counsel
Brady C. Toensing (ERN 4933), Attorney for Plaintiff Free Market Environmental
David A. Boyd (ERN 4578), Attorney for Defendant William Sorrell
Chaim Mandelbaum (ERN N/A), Attorney for party 1 Co-counsel
Chaim Mandelbaum (ERN N/A), Attorney for party 2 Co-counsel