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VT SUPERIOR COURT  
WASHINGTON UNIT  
CIVIL DIVISION

diGENOVA & TOENSING, LLP 2016 JUN 13 A 11:09  
ATTORNEYS-AT-LAW

June 13, 2016

FILED

By Hand

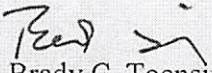
Tina de la Bruere  
Acting Clerk  
Washington Superior Court  
Civil Division  
65 State Street  
Montpelier, VT 05602

RE: Energy & Environment Legal Institute and Free Market Environmental Law Clinic v. The Attorney General of Vermont, Docket No. 349-6-16Wncw

Dear Ms. de la Bruere:

Enclosed for filing with the Court is an original Complaint for filing in the above-referenced matter. Also enclosed is a check in the amount of \$295 for the filing fee. Please feel free to contact me if you have any questions. Thank you for your assistance with this matter.

Sincerely,

  
Brady C. Toensing

Enc.



VT SUPERIOR COURT  
WASHINGTON UNIT  
2016 JUN 13 A 11:09  
STATE OF VERMONT

SUPERIOR COURT  
Washington Unit

CIVIL DIVISION  
Docket No. 349-6-16 Wncd

Energy & Environment	)
Legal Institute and	)
Free Market Environmental	)
Law Clinic,	)
	)
Plaintiffs,	)
	)
v.	)
	)
The Attorney General of Vermont	)
	)
Defendant.	)

**COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF**

Plaintiffs, Energy & Environment Legal Institute (“E&E Legal”) and Free Market Environmental Law Clinic (“FME Law”), for their complaint against Defendant Attorney General for the State of Vermont (“the AG” or “OAG”), allege as follows:

**Nature of Action**

1. This is an action under the Vermont Public Records Law, 1 V.S.A. §§ 315-320, to compel production under a records request made jointly by both plaintiffs.
2. The records request at issue in this case was sent via electronic mail on May 10, 2016 and sought from two OAG employees records containing certain keywords relating to racketeering and an effort of the Vermont Office of the Attorney General, in conjunction with officials in other states and territories, to investigate and/or prosecute political speech, specifically speech opposing a certain political agenda which effort has already resulted in subpoenas to public policy groups. **Exhibit 1.**

3. Defendant acknowledged the May 10, 2016 request on May 13, 2016, but provided no substantive response or records at that time, instead stating that the requesters would receive a response on May 24, 2016. **Exhibit 2.**
4. To date, plaintiffs have received no substantive response or records of any kind in response to their May 10, 2016 request.
5. According to 1 V.S.A. § 318(5), defendant owed plaintiffs a response no later than May 24, 2016.
6. Accordingly, plaintiffs file this lawsuit to compel OAG to comply with the law and produce properly described public records.

#### **Parties**

7. Plaintiff E&E Legal is a nonprofit research, public policy and public interest litigation center incorporated in Virginia, with offices in Washington, DC. E&E Legal is dedicated to advancing responsible regulation and, in particular, economically sustainable environmental and energy policy. E&E Legal's programs include analysis, publication, and a transparency initiative seeking public records relating to environmental and energy policy and how policymakers use public resources.
8. Plaintiff FME Law is a nonprofit public policy-based research, and public interest litigation center incorporated in Virginia, with offices in Washington, DC. FME Law is dedicated to providing counsel in support of responsible regulation and in particular economically sustainable environmental policy, and training law students and young lawyers in advocacy. FME Law's programs include publication and litigation relating to environmental and energy policy and how policymakers use public resources.

9. Defendant Attorney General of Vermont is a Constitutional Officer of the State of Vermont, and is in possession of the records plaintiffs seek. He is sued in his official capacity only.

#### **Jurisdiction and Venue**

10. This Court has jurisdiction pursuant to 4 V.S.A. § 31 and 1 V.S.A. § 319, because the defendants have failed to respond in a timely manner to the request at issue in this case and are, therefore, deemed to have exhausted all administrative remedies.
11. Furthermore, jurisdiction and venue are proper under 1 V.S.A. § 319, because this matter is brought in the Superior Court of Washington County.

#### **Factual Background**

12. In a May 10, 2016, request sent by electronic mail to OAG, plaintiffs requested (emphases in original):

copies of all emails, including attachments, a) sent to or from (including also as cc: or bcc:) Scott Kline, b) which emails were sent to or from Mr. Kline using *an account(s) other than* his official @Vermont.gov email address(es), c) dated from January 4, 2016 through the date you process this request, inclusive, and d) which contain one or more of the following keywords or phrases, whether in the body of the email, or in the to:, from:, cc:, or bcc:, or Subject fields, which content affirms they are public records, discussing public business:

- i) Pawa (including also in e.g., [mp@pawalaw.com](mailto:mp@pawalaw.com))
- ii) Passacantando
- iii) fraud
- iv) Fahr (including also in e.g., “@fahrllc.com”)
- v) “Climate denial”
- vi) “Climate denier” (including also in “climate deniers”)
- vii) lemsrolovic@gmail.com, and/or
- viii) michaelmeade@gmail.com

13. Plaintiffs also requested:

copies of all emails, including attachments, a) sent to or from (including also as cc: or bcc:) William Sorrell, b) which emails were sent to or from Mr. Sorrell using *an account(s) other than* his official @Vermont.gov email address(es), c) dated from January 4, 2016 through the date you process this request, inclusive, and d) which

contain one or more of the following keywords or phrases, whether in the body of the email, or in the to:, from:, cc:, or bcc:, or Subject fields, which content affirms they are public records, discussing public business (note this includes different search terms than the Kline request):

- i) Pawa (including also in e.g., mp@pawalaw.com)
- ii) Passacantando
- iii) fraud
- iv) Fahr (including also in e.g., "@fahrllc.com")
- v) "Climate denial"
- vi) "Climate denier" (including also in "climate deniers"), and/or
- vii) Schneiderman

### **Defendant's Reply and Subsequent Proceedings**

14. Defendant acknowledged this request on May 13, 2016 when OAG mailed a letter, via regular U.S. Mail, received by plaintiffs on May 18, informing plaintiffs that the OAG would respond by May 24, 2016.
15. According to 1 V.S.A. § 318(5), defendant owed plaintiffs the responsive records no later than May 24.
16. Plaintiffs have not received any responsive records or further correspondence from Vermont OAG regarding the May 10, 2016 request.
17. By failing to respond to plaintiffs' request in the required time, defendant has missed its statutory deadline to substantively respond, and the plaintiffs are entitled to relief in this Court.

### **Legal Arguments**

18. Under the Vermont Public Records Law 1 V.S.A. § 318(2) , after an individual submits a request, an agency must ordinarily provide responsive records within three working days, although in unusual circumstances an agency may take up to ten days to respond pursuant to 1 V.S.A. § 318(5).

19. Under no circumstances may an agency delay a response longer than ten business days.

*Id.*

20. Defendant owed plaintiffs records responsive to the request at issue in this suit, subject to legitimate withholdings, and has failed to provide records, in violation of statutory deadlines. Despite OAG's assurances it would produce records per the statutory deadlines, OAG did not do so. Plaintiffs have received no response since they received OAG's letter promising a further response by May 24. This failure to respond suggests that the request either is not being processed at all, or is not being processed in accordance with 1 V.S.A. § 318(2) or 1 V.S.A. § 318(5), and forces plaintiffs to seek relief in this Court.

**FIRST CLAIM FOR RELIEF**  
**Seeking Declaratory Judgment**

21. Plaintiffs re-allege paragraphs 1-20 as if fully set out herein.

22. Plaintiffs have sought and been denied production of responsive records reflecting the conduct of official business, because defendants have failed to provide a substantive response to the public records request at issue in this case.

23. Plaintiffs ask this Court to enter a judgment declaring that:

- a. The records as specifically described in plaintiffs' request, and any attachments thereto, are public records, and as such, are subject to release under the Vermont Public Records Law;
- b. The defendant must release those requested records or segregable portions thereof subject to legitimate exemptions;
- c. The defendant is estopped from seeking costs and fees for the request at issue in this case, due to the balance of the equities and the incorporation of

common law principles by 1 V.S.A. § 271 into the Vermont Public Records Law.

**SECOND CLAIM FOR RELIEF**  
**Seeking Injunctive Relief**

24. Plaintiffs re-allege paragraphs 1-23 as if fully set out herein.
25. Plaintiffs are entitled to injunctive relief compelling defendant to produce all records in its possession responsive to plaintiffs' Vermont Public Records Law request, without fees, subject to legitimate withholdings.
26. Plaintiffs ask the Court to order the defendant to produce to plaintiffs, within 5 business days of the date of the order, the requested records described in plaintiffs' request, and any attachments thereto, subject to legitimate withholdings.
27. Plaintiffs ask the Court to order the Parties to consult regarding withheld documents and to file a status report to the Court within 10 days after plaintiffs receive the last of the produced documents, addressing defendant's preparation of a withholdings log and a briefing schedule for resolution of remaining issues associated with plaintiffs' challenges to defendant's withholdings and any other remaining issues.

**THIRD CLAIM FOR RELIEF**  
**Seeking Costs and Fees**


28. Plaintiffs re-allege paragraphs 1-27 as if fully set out herein.
29. Pursuant to 1 V.S.A. § 314(d), in most cases, the Court shall award reasonable attorney fees and other litigation costs reasonably incurred in any case under this section in which the complainant has substantially prevailed.
30. Plaintiffs are statutorily entitled to recover fees and costs incurred as a result of defendant's refusal to fulfill the open records request at issue in this case.

31. Plaintiffs ask the Court to order the defendant to pay reasonable attorney fees and other litigation costs reasonably incurred in this case.

WHEREFORE, Plaintiffs request the declaratory and injunctive relief herein sought, and an award for their attorney fees and costs and such other and further relief as the Court shall deem proper.

Dated at Charlotte, Vermont this 13th day of June 2016.

**Energy & Environmental Legal Institute  
and  
Free Market Environmental Law Clinic**

By:  \_\_\_\_\_  
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Matthew D. Hardin  
Attorney-at-Law  
Attorney for Plaintiffs  
(Application for admission *pro hac vice* to be filed)  
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(804) 608-6456  
[MatthewDHardin@gmail.com](mailto:MatthewDHardin@gmail.com)



# Exhibit 1

**REQUEST UNDER THE VERMONT PUBLIC RECORDS ACT**

May 10, 2016

Vermont Attorney General's Office  
109 State Street  
Montpelier, VT 05609-1001

**By Electronic mail: [ago.info@vermont.gov](mailto:ago.info@vermont.gov)**

**RE: Certain of the AG's correspondence records**

To whom it may concern:

Pursuant to the Vermont Access to Public Records Act, Vt. Stat. Ann. Title 1, §§ 315-320, the undersigned groups request copies of any and all records as described herein. The Free Market Environmental Law Clinic (FME Law) and Energy & Environment Legal Institute (E&E Legal) are both non-profit educational foundations incorporated in Virginia, with offices in Washington, DC, with established public records transparency practices. Consistent with the Vermont Access to Public Records Act, we expect a prompt, substantive reply to our request. Given the non-profit transparency and journalism activities of the requesters, described below, we ask that those limited fees permitted by § 316 be waived.

1. Please provide us copies of all emails, including attachments, a) sent to or from (including also as cc: or bcc:) Scott Kline, b) which emails were sent to or from Mr. Kline using *an account(s) other than his official @Vermont.gov email address(es)*, c) dated from January 4, 2016 through the date you process this request, inclusive, and d) which contain one or more of the following keywords or phrases, whether in the body of the email, or in the to:, from:, cc:, or bcc:, or Subject fields, which content affirms they are public records, discussing public business:

- i) Pawa (including also in e.g., [mp@pawalaw.com](mailto:mp@pawalaw.com))
- ii) Passacantando
- iii) fraud
- iv) Fahr (including also in e.g., “[@fahrllc.com](mailto:@fahrllc.com)”)
- v) “Climate denial”
- vi) “Climate denier” (including also in “climate deniers”)
- vii) [lemsrolovic@gmail.com](mailto:lemsrolovic@gmail.com), and/or
- viii) [michaelmeade@gmail.com](mailto:michaelmeade@gmail.com)

2. We also request copies of all emails, including attachments, a) sent to or from (including also as cc: or bcc:) William Sorrell, b) which emails were sent to or from Mr. Sorrell using *an account(s) other than* his official [@Vermont.gov](mailto:@Vermont.gov) email address(es), c) dated from January 4, 2016 through the date you process this request, inclusive, and d) which contain one or more of the following keywords or phrases, whether in the body of the email, or in the to:, from:, cc:, or bcc:, or Subject fields, which content affirms they are public records, discussing public business (note this includes different search terms than the Kline request):

- i) Pawa (including also in e.g., [mp@pawalaw.com](mailto:mp@pawalaw.com))
- ii) Passacantando
- iii) fraud
- iv) Fahr (including also in e.g., “[@fahrllc.com](mailto:@fahrllc.com)”)
- v) “Climate denial”
- vi) “Climate denier” (including also in “climate deniers”), and/or
- vii) Schneiderman

If you have information to help further narrow this request please feel free to contact the undersigned. On information and belief, we suggest that the two Vermont OAG officials above may have conducted the public business of the state of Vermont on private email accounts. As you are aware, § 317 (b) provides that "public record" or "public document" means any written or recorded information, regardless of physical form or characteristics, which is produced or acquired in the course of public agency business" regardless of that record's location.

**We request a rolling production, if/as you see necessary and appropriate within the Vermont Access to Public Records Act, with responsive records being processed and produced independent of any others, as no such production is dependent upon other records being released.**

**We do not seek duplicates of responsive records.**

While we request that the limited fees allowed by statute be waived, we nevertheless agree to pay legitimate expenses up to \$150.00. If you estimate costs will exceed that please notify us and break down the expected costs.

**We request records in electronic form if available. By the nature of this request *all responsive records should be in electronic format, necessitating no photocopying expense.***

None of the undersigned seek the information for a commercial purpose. FME Law and E&E Legal are organized and recognized by the Internal Revenue Service as a 501(c)3 educational organization. As such, we also have no commercial interest possible in these records.



E&E Legal, for example, is also a media outlet for these purposes<sup>1</sup>: it not only serves as a regular source of public information and substantive editorial comment about this information to numerous national (and/or local) media outlets but also applies substantive editorial input in its own publications disseminating public information.

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<sup>1</sup> Examples of open records-derived publications by E&E Legal requesters include, Horner: *The FOIA coping response in climate scientists*, WATTS UP WITH THAT, Jan. 21, 2014 (where ATI/E&E Legal disseminated FOIA-obtained information from NASA, University of Arizona and EPA on many additional occasions, see <http://wattsupwiththat.com/?s=horner>); *The Collusion of the Climate Crowd*, WASHINGTON EXAMINER, Jul. 6, 2012. See also, Christopher Horner: *Yes, Virginia, you do have to produce those 'Global Warming' documents* (with David W. Schnare and Del. Robert Marshall), WASHINGTON EXAMINER, Jan. 5, 2011; David W. Schnare, "FOIA and the Marketplace of Ideas", E&E Legal Letter (Sept. 2013); *Why I Want Michael Mann's Emails*, THE JEFFERSON JOURNAL, The Thomas Jefferson Institute for Public Policy, Dec. 7, 2011. Information is also disseminated in issue-specific pages of E&E Legal's website, see, e.g. "FOIA Requests" section.

Others include Horner: *Obama Admin Hides Official IPCC Correspondence from FOIA Using Former Romney Adviser John Holdren*, BREITBART, Oct. 17, 2013; *Most Secretive Ever? Seeing Through 'Transparent' Obama's Tricks*, WASHINGTON EXAMINER, Nov. 3, 2011; *NOAA releases tranche of FOIA documents -- 2 years later*, WATTS UP WITH THAT (two-time "science blog of the year"), Aug. 21, 2012; *The roadmap less traveled*, WATTS UP WITH THAT, Dec. 18, 2012; *EPA Doc Dump: Heavily redacted emails of former chief released*, BREITBART, Feb. 22, 2013; *EPA Circles Wagons in 'Richard Windsor' Email Scandal*, BREITBART, Jan. 16, 2013; *DOJ to release secret emails*, BREITBART, Jan. 16, 2013; *EPA administrators invent excuses to avoid transparency*, WASHINGTON EXAMINER, Nov. 25, 2012; *Chris Horner responds to the EPA statement today on the question of them running a black-ops program*, WATTS UP WITH THAT, Nov. 20, 2012; *FOIA and the coming US Carbon Tax via the US Treasury*, WATTS UP WITH THAT, Mar. 22, 2013; *Today is D-Day -- Delivery Day -- for Richard Windsor Emails*, WATTS UP WITH THAT, Jan. 14, 2013; *EPA Doubles Down on 'Richard Windsor' Stonewall*, WATTS UP WITH THAT, Jan. 15, 2013; *Treasury evasions on carbon tax email mock Obama's 'most transparent administration ever' claim*, WASHINGTON EXAMINER, Oct. 25, 2013; *Peeking behind the Green Curtain*, WASHINGTON TIMES, FEB. 17, 2015.

In addition to coverage of its FOIAs in print publications, E&E Legal regularly disseminates its findings on broadcast media. E&E Legal and FME Law are also regularly cited in newspapers and trade publications for their open records efforts.<sup>2</sup>

The requested information is of critical importance to the nonprofit policy advocacy groups engaged on these relevant issues, news media covering the issues, and others concerned with government activities on this critical subject, or as the United States Supreme Court once noted in the context of the federal FOIA, what their government is up to.

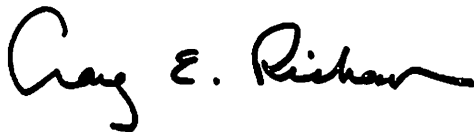
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<sup>2</sup> Print examples, only, to the exclusion of dozens of national electronic media broadcasts, include, *e.g.*, Dawn Reeves, EPA Emails Reveal Push To End State Air Group's Contract Over Conflict, *INSIDE EPA*, Aug. 14, 2013; Editorial, Public interest group sues EPA for FOIA delays, claims agency ordered officials to ignore requests, *WASHINGTON EXAMINER*, Jan. 28, 2013; Michal Conger, Emails show green group influence on EPA coal rule, *WASHINGTON EXAMINER*, Jan. 9, 2014; C.J. Ciaramella, Sierra Club Pressed EPA to Create Impossible Coal Standards, *WASHINGTON FREE BEACON*, Jan. 10, 2014; C.J. Ciaramella, Emails Show Extensive Collaboration Between EPA, Environmentalist Orgs, *WASHINGTON FREE BEACON*, Jan. 15, 2014; Stephanie Paige Ogburn, Climate scientists, facing skeptics' demands for personal [sic] emails, learn how to cope, *E&E NEWS*, Jan. 21, 2014; Anthony Watts, New FOIA emails show EPA in cahoots with enviro groups, giving them special access, *WATTS UP WITH THAT*, Jan. 15, 2014; Stephen Dinan, Obama energy nominee Ron Binz faces rocky confirmation hearing, *WASHINGTON TIMES*, Sept. 17, 2013; Stephen Dinan, Top Obama energy nominee Ron Binz asked oil company employees for confirmation help, *WASHINGTON TIMES*, Sept. 17, 2013; Vitter, Issa Investigate EPA's Transparency Problem, More Suspicious E-mail Accounts, *WATTS UP WITH THAT*, Jan. 29, 2013 ("It should also be noted that this has come to light thanks to the work of Chris Horner and ATI, who forced production of these documents by EPA in their FOI litigation."); Stephen Dinan, Obama energy nominee in danger of defeat, *WASHINGTON TIMES*, Sept. 18, 2013; Stephen Dinan, Greens, lobbyists and partisans helping Ron Binz, Obama's FERC pick, move through Senate, *WASHINGTON TIMES*, Sept. 12, 2013; Stephen Dinan, Energy nominee Ron Binz Loses voltage with contradictions, Obama coal rules, *WASHINGTON TIMES*, Sept. 22, 2013; Conn Carroll, FOIA reveals NASA's Hansen was a paid witness, *WASHINGTON EXAMINER*, Nov. 7, 2011; NASA Scientist accused of using celeb status among environmental groups to enrich himself, *FOX NEWS*, Jun. 22, 2011; Editorial, The EPA: A leftist agenda, *PITTSBURGH TRIBUNE-REVIEW*, Jan. 18, 2014; John Roberts, "Secret dealing"? Emails show cozy relationship between EPA, environmental groups, *FOX NEWS*, Jan. 22, 2014; Elana Schor, Proponents pounce on emails between EPA, enviros on pipeline, *E&E NEWS*, Jan. 23, 2014; Mike Bastasch, Analysis: Green Hypocrisy in Keystone XL pipeline opposition, *DAILY CALLER*, Feb. 6, 2014; Mark Tapscott, Emails expose close coordination between EPA, Sierra Club and other liberal environmental activist groups, *WASHINGTON EXAMINER*, Jan. 23, 2014; Editorial, EPA has ties to radical environmentalists, *DETROIT NEWS*, Feb. 13, 2014; Michael Bastasch, Report: EPA coal plant rule tainted by secretiveness, collusion with green groups, *DAILY CALLER*, Mar. 10, 2014; Jennifer G. Hickey, Legality of EPA Rules Questioned by Environmental Litigators, *NEWSMAX*, Mar. 21, 2014; Michael Bastasch, Confidential document reveals the Sierra Club's plan to shut down the coal industry, *DAILY CALLER*, Mar. 26, 2014; Michael Bastasch, Conservative group sues EPA over its 'IRS-like' tactics, *DAILY CALLER*, Apr. 1, 2014; Stephen Dinan, Conservative group sues EPA over open-records requests, *WASHINGTON TIMES*, Apr. 1, 2014.

We repeat our request for a rolling production of records, such that the State should furnish records electronically to the undersigned as soon as they are identified, on a rolling basis if necessary, and any hard copies to 722 12th Street Northwest #400, Washington, DC 20005.

If you have any questions please do not hesitate to contact undersigned counsel.

Respectfully submitted,



Craig E. Richardson  
Executive Director, E&E Legal  
[Richardson@EELegal.org](mailto:Richardson@EELegal.org)  
703.981.5553



Christopher C. Horner, Esq.  
for the Free Market Environmental Law Clinic  
[chris@chornelaw.com](mailto:chris@chornelaw.com)  
202.262.4458

# Exhibit 2



**WILLIAM H. SORRELL**  
ATTORNEY GENERAL

**SUSANNE R. YOUNG**  
DEPUTY ATTORNEY GENERAL

**WILLIAM E. GRIFFIN**  
CHIEF ASST. ATTORNEY  
GENERAL



**STATE OF VERMONT**  
**OFFICE OF THE ATTORNEY GENERAL**  
109 STATE STREET  
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05609-1001

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

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

May 13, 2016

Mr. Craig E. Richardson  
Executive Director, E&E Legal  
Mr. Christopher C. Horner  
Free Market Environmental Law Clinic  
722 12<sup>th</sup> Street Northwest #400  
Washington, DC 20005

RE: Certain of the AG's correspondence records – private account request

Dear Merrs. Richardson and Horner:

Our Office is in receipt of your request for public records dated May 10, 2016 seeking emails and attachments sent to or from Scot Kline and to or from William Sorrell using accounts other than their official email addresses from January 4, 2016 to the present containing certain search terms.

In accordance with 1 V.S.A. § 318(a)(5)(A) we will need to conduct a search from sources outside of our Office. I except that we will be able to respond to your request no later than May 24, 2016.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael O. Duane".

Michael O. Duane  
Senior Assistant Attorney General  
Director, General Counsel and Administrative  
Law Division