

STATE OF RHODE ISLAND
PROVIDENCE, SC.

SUPERIOR COURT

FREE MARKET ENVIRONMENTAL LAW :
CLINIC and ENERGY & ENVIRONMENT :
LEGAL INSTITUTE :

Plaintiffs,

v.

RHODE ISLAND DEPARTMENT OF THE :
ATTORNEY GENERAL, :

Defendant. :

C.A. No. _____

Complaint

Parties

1. Plaintiff Energy & Environment Legal Institute (“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.
2. Plaintiff Free Market Environmental Law Clinic (“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.

3. Defendant is the Department of the Attorney General (DAG) for the State of Rhode Island and Providence Plantations whose office and authorities are established pursuant to Article IX, Section 12 of the Constitution of the State of Rhode Island and Chapter 9 of Title 42 of the General Laws of Rhode Island, and is located in Providence, Rhode Island.

Jurisdiction

4. This Court has jurisdiction over this matter pursuant to R.I.G.L. § 38-2-9, the “Access to Public Records Act.”
5. Venue is proper in this Court based upon the principal location of the defendant.

Allegations

6. On April 13, 2016, Plaintiffs submitted a written request to the Office of the Attorney General of Rhode Island seeking copies of records under the Rhode Island Access to Public Records Act. *See Exhibit 1.*
7. This request sought two categories of records. In the first category plaintiffs sought records which met the following description:
 1. Please provide us copies of all emails, including attachments, sent to or from (including also as cc: or bcc:) Greg Schultz of the Office of the Attorney General, which correspondence uses any of the following words or phrases, anywhere in the email, including in the body of the thread or any To, From, cc: and/or bcc: or Subject fields: a) “RICO” b) “climate denial” c) “climate denier” (which includes in “climate deniers”) d) “climate risk”, or e) “Gore”. For the above-described

request: responsive records will be dated over the approximately four-month period from January 1, 2016 through the date you process this request.”

8. In the second category of records plaintiffs sought records meeting the following description:
 2. We also request copies of all correspondence between Greg Schultz of the Office of the Attorney General, and any employee(s) of the New York Attorney General’s Office, dated from February 15, 2016 through April 13, 2016, inclusive. We request entire email threads.
9. On June 15, 2016 the DAG responded to plaintiffs, providing some records responsive to the request, and informing them that it was withholding 21 documents under various exemptions to the Access to Public Records Act. Defendant provided a log explaining which documents were being withheld in full, and which documents had been partially redacted. *See Exhibit 2.*
10. On June 21, 2016, plaintiffs submitted an appeal of the decision to withhold some of the records pursuant to R.I.G.L. § 38-2-8. *See Exhibit 3.* In their appeal, Plaintiffs explained that four of the documents listed by the DAG were intra-state communications regarding how to deal with media communications and thus were not covered by the exemptions claimed, which related to attorney work product, attorney client privilege, and the deliberative work product privilege.
11. Further, Plaintiffs noted that one of the records which had been provided contained an attachment which the DAG had failed to provide, had not claimed was exempt, and had not been listed in the list of documents being withheld. Plaintiffs reminded the DAG that

under R.I.G.L. § 38-2-7, it was not permitted to withhold documents that were not originally claimed as exempt, and that since the attachment had not been claimed as exempt, it was required to be released. *See Exhibit 3*, page 4, *and see Exhibit 4*.

12. On July 5, 2016 Plaintiffs received a response to their administrative appeal by email from Rebecca Partington, the Chief of the Civil Division of the Office of the Attorney General. That response denied the appeal in full. First Ms. Partington claimed that the exemptions as claimed with regard to the four withheld documents under appeal were appropriate despite the fact that the documents in question did not deal with litigation, and were shared outside the DAG's office. In addition, Ms. Partington determined that the attachment—which was not released nor claimed as exempt—did not need to be provided because it was not responsive to the second category of plaintiff's request. Ms. Partington stated that Plaintiffs “did not seek attachments” in the second category. However, Plaintiffs clearly requested “entire email threads,” which includes all attached documents. The denial letter claimed Rhode Island did not generate the attachment and that the request was only seeking records created by Rhode Island, despite the fact that this was not stated in Plaintiff's request. *See Exhibit 5*.

COUNT I

13. Plaintiffs reallege paragraph 1-12 as though fully alleged herein.
14. Defendant's denial of Plaintiffs' appeal and refusal to release certain withheld documents is the equivalent of denial of access to the public records and none of the records sought in Plaintiffs' appeal are properly exempted from disclosure by any of the exceptions set forth in R.I.G.L. § 38-2-2.

15. The refusal by defendant to release or make available for inspection the requested records is a violation of the Plaintiffs' rights under the Access to Public Records Act in General Laws Sec. 38-2-1 *et seq*, and the common law of Rhode Island and Providence Plantation.
16. Defendant, having failed to claim the attachment noted by Plaintiffs in the June 21, 2016 appeal was exempt when responding to the request on June 15, 2016, may not now claim it is exempt from disclosure pursuant to R.I.G.L. § 38-2-7 (a) which states "Except for good cause shown, any reason not specifically set forth in the denial shall be deemed waived by the public body."

Wherefore, Plaintiffs request this Honorable Court:

- A. Declare that Plaintiffs are entitled to access the requested records pursuant to the Access to Public Records Act and the common law;
- B. Issue such orders incident to the forgoing as necessary to command the Defendants to make available Plaintiffs' requested records forthwith;
- C. Award Plaintiffs their costs, including attorney fees, and issue such other further relief as this Court may deem necessary

Respectfully Submitted,

FREE MARKET ENVIRONMENTAL LAW
CLINIC and ENERGY & ENVIRONMENT
LEGAL INSTITUTE

By their attorneys

/s/ William K. Wray Jr.

William K. Wray, Jr. Esq. (#9022)

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Dated: July 27, 2016

REQUEST UNDER THE RHODE ISLAND ACCESS TO PUBLIC RECORDS ACT

April 13, 2016

Rhode Island Attorney General's Office
150 South Main Street
Providence, Rhode Island 02903

By Electronic Mail: opengovernment@riag.ri.gov

RE: Certain records describing Attorney General Office RICO-related efforts

To Whom it May Concern:

Pursuant to the Rhode Island Access to Public Records Act, R.I. General Laws § 38-2-1 *et seq.*, the undersigned groups request copies of any and all records held by your office 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 Rhode Island 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 copying charges permitted by § 38-2-4 be waived.

1. Please provide us **copies of all emails, including attachments, sent to or from (including also as cc: or bcc:) Greg Schultz of the Office of the Attorney General, which correspondence uses any of the following words or phrases, anywhere in the email, including in the body of the thread or any To, From, cc: and/or bcc: or Subject fields:**

- a) “RICO”
- b) “climate denial”
- c) “climate denier” (which includes in “climate deniers”)
- d) “climate risk”, or
- e) “Gore”

For the above-described request: responsive records will be dated over the approximately four-month period from January 1, 2016 through the date you process this request.

2. **We also request** copies of all correspondence between Greg Schultz of the Office of the Attorney General, and any employee(s) of the New York Attorney General’s Office, dated from February 15, 2016 through April 13, 2016, inclusive. We request entire email threads.

If you have information to help further narrow this request please feel free to contact the undersigned. Requesters focus this request on records Rhode Island employees may have generated in a recent effort with the attorneys general of various other states and territories along with environmental investor and activist Al Gore, to investigate political opponents of the “climate” policy agenda.¹

We request a rolling production, 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.

We do not seek correspondence reflecting only the sending or forwarding of press releases or stories, if no other commentary or substantive commentary is added at any place in the email thread (consider *e.g.*, “interesting” or “FYI” as not being substantive comments).

¹ See, *e.g.*, Robin Bravender, E&E News, Gore, State AGs beef up “fraud” probe, March 29, 2015.

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 *most 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 (not a “Religious...Charitable, Scientific, Literary, Testing for Public Safety, to Foster National or International Amateur Sports Competition, or Prevention of Cruelty to Children or Animals 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 purposes²: like other requesters 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.

² 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 is 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.³

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.

³ 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, THE 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 Batasch, 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.

We repeat our request for a rolling production of records, such that you 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,



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Christopher C. Horner, Esq.
for the Free Market Environmental Law Clinic
chris@chornelaw.com
202.262.4458



State of Rhode Island and Providence Plantations

DEPARTMENT OF ATTORNEY GENERAL

150 South Main Street • Providence, RI 02903
(401) 274-4400 - TDD (401) 453-0410

VIA EMAIL ONLY

Peter F. Kilmartin, Attorney General

June 15, 2016

Richardson@EELegal.org
Chris@chornerlaw.com

Dear Messrs. Richardson and Horner:

This Department has completed its search for records responsive to your Access to Public Records Act ("APRA") request.

Attached to this letter please find an exemption log detailing documents responsive to your APRA request, yet exempt pursuant to R.I. Gen. Laws § 38-2-2. The alphabetical letter for each exemption(s) is detailed after the description for each document. References to Exemptions E and S, include, but are not limited to, privileges recognized by Rhode Island law, such as attorney/client privilege, work product privilege, law enforcement privilege, and deliberative process privilege.

In addition to these exemptions, the provided documents have in some cases been redacted. Portions of documents that were reasonably segregable were provided. Additionally, the disclosure of redacted information does not shed light on government operations, and therefore, does not advance the public interest in disclosure. See e.g., United States Department of Justice v. Reporters Committee for Freedom of the Press, 489 U.S. 749 (1989); also Direct Action for Rights and Equality v. Gannon, 713 A.2d 218 (R.I. 1998)(balancing test). The exempted documents are as follows:

1. Email chain dated April 1 - 12, 2016, consisting of three (3) pages from New York Attorney General's Office to various Attorney General Offices re: Ozone Transport Region Petition Lawsuit. (A)(I)(a), (E), (K), (S), (P)
2. Email dated April 5, 2016 consisting of one (1) page from New York Attorney General's Office to various Attorney General Offices re: wood heaters rule/enforcement issues. (A)(I)(a), (E), (K), (S), (P)
3. Email chain dated March 25 - 29, 2016 consisting of six (6) pages from New York Attorney General's Office and Rhode Island Attorney General's Office re: Climate Change Press Release and discussing draft press release. (E), (K), (S)

4. Email chain dated March 25 – 28, 2016 consisting of four (4) pages from New York Attorney General's Office and Rhode Island Attorney General's Office re: Climate Change Press Release and discussing draft press release. (E), (K), (S)
5. Email dated March 24, 2016 consisting of one (1) page from New York Attorney General's Office to various Attorney General Offices re: telephone conference call on Volkswagen and setting agenda. (A)(I)(a), (E), (K), (S), (P)
6. Email dated March 28, 2016 consisting of one (1) page from New York Attorney General's Office to various Attorney General Offices re: update on regulation process. (A)(I)(a), (E), (K), (S), (P)
7. Email chain dated February 2, 2016 – March 25, 2016 consisting of three (3) pages from New York Attorney General's Office to various Attorney General Offices re: draft of brief on Clean Power Plan litigation, including internal emails discussing whether to support brief. (A)(I)(a), (E), (K), (P), (S)
8. Email chain dated March 21 - 22, 2016 consisting of two (2) pages from New York Attorney General's Office to various Attorney General Offices re: Climate Change Meeting and seeking comments for meeting. (A)(I)(a), (E), (K), (S), (P)
9. Email chain dated March 11, 2016 consisting of two (2) pages from New York Attorney General's Office to/from Rhode Island Special Assistant Attorney General Gregory Schultz re: Volkswagen investigation and enforcement. (A)(I)(a), (E), (K), (S), (P)
10. Email dated March 11, 2016 consisting of two (2) pages from New York Attorney General's Office to various Attorney General Offices re: status on Clean Power Plan litigation. (A)(I)(a), (E), (K), (P), (S)
11. Email chain dated April 1 - 5, 2016 consisting of four (4) pages from New York Attorney General's Office to various Attorney General Offices and RI Attorney General's Office re: Ozone Transport Region Petition Lawsuit and discussing recommendation/suggestion. (A)(I)(a), (E), (K), (S), (P)
12. Email chain dated February 23, 2016 – March 8, 2016 consisting of three (3) pages from New York Attorney General's Office to various Attorney General Offices re: Volkswagen mediation/seeking and providing draft information. (A)(I)(a), (E), (K), (P), (S)
13. Email dated March 10, 2016 consisting of one (1) page from New York Attorney General's Office to various Attorney General Offices re: telephone conference call on Volkswagen and setting agenda. (A)(I)(a), (E), (K), (S), (P)
14. Email dated February 18, 2016 consisting of one (1) page from New York Attorney General's Office to various Attorney General Offices re: telephone

conference call on methane regulation and setting agenda. (A)(I)(a), (E), (K), (S), (P)

15. Email dated March 9, 2016 consisting of two (2) pages from New York Attorney General's Office to various Attorney General Offices re: West Virginia v. EPA and related climate/energy issues. (A)(I)(a), (E), (K), (S), (P)
16. Email chain dated February 23 – March 3, 2016 consisting of six (6) pages from New York Attorney General's Office to various Attorney General Offices re: Volkswagen litigation and discussing issue. (A)(I)(a), (E), (K), (S), (P)
17. Email dated February 19, 2016 consisting of two (2) pages between New York Attorney General's Office and Rhode Island Special Assistant Attorney General Gregory Schultz re: Clean Air Act and possible argument. (A)(I)(a), (E), (K), (S), (P)
18. Email dated March 25 – 28, 2016 consisting of five (5) pages between New York Attorney General's Office and Rhode Island Special Assistant Attorney General Gregory Schultz (one email from New York forwarding draft press release, remaining emails RI Attorney General internal emails discussing press release) re: Climate Change (A)(I)(a), (E), (K), (S)
19. Internal email dated March 29, 2016 consisting of one (1) page between Rhode Island Department of Attorney General employees re: climate change, press release, and travel arrangements. (E), (K), (S)
20. Email dated April 11, 2016 consisting of one (1) page between New York Attorney General's Office and Rhode Island Special Assistant Attorney General Gregory Schultz re: Volkswagen with an attachment containing Rhode Island Volkswagen and Porsche sales data. (A), (B), (E), (K), (S), (P), and balancing test described above.
21. Email dated March 11 - 25 2016 consisting of three (3) pages between New York Attorney General's Office and Rhode Island Special Assistant Attorney General Gregory Schultz re: Rhode Island Volkswagen and Porsche sales data/enforcement claims. (A), (B), (E), (K), (S), (P), and balancing test described above.

The attached responsive redacted documents are as follows:

- a. Email dated March 30, 2016 consisting of two (2) pages from the New York Attorney General's Office and various Attorney General Offices, including a response from Rhode Island Special Assistant Attorney General Gregory Schultz. The redacted portion concerns legal recommendation. (A)(I)(a), (E), (K), (S)

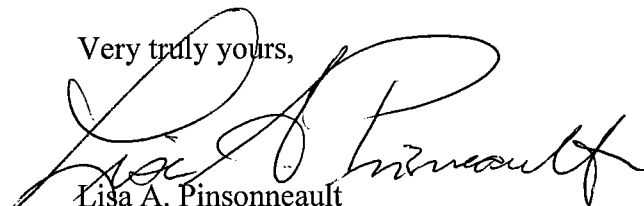
- b. Redacted Conference Call telephone number and conference code. (K). See also Direct Action for Rights and Equality v. Gannon, 713 A.2d 218 (R.I. 1998)(balancing test).
- c. Email dated April 5, 2016 from the New York Attorney General's Office to various Attorney General Offices. The redacted portion concerns legal analysis and strategy. (A)(I)(a), (E), (K), (S)
- d. Email dated April 1, 2016 from the New York Attorney General's Office and various Attorney General Offices. The redacted portion concerns legal deadlines, updates, and strategy. (A), (E), (K), (S)
- e. Email dated April 5, 2016 from the New York Attorney General's Office to various Attorney General Offices. The redacted portion concerns legal agenda/discussion item. (A)(I)(a), (E), (K), (S)
- f. Email dated April 1 - 12, 2016 from the New York Attorney General's Office and various Attorney General Offices, including a response from Rhode Island Special Assistant Attorney General Gregory Schultz. The redacted portion concerns legal deadlines, state sign-ons, and legal strategy. (A)(I)(a), (E), (K), (S), (P)
- g. Email dated February 17, 2016 from the New York Attorney General's Office and various Attorney General Offices. The redacted portion concerns legal recommendation. (A)(I)(a), (E), (K), (S)
- h. Email dated February 17, 2016 from the New York Attorney General's Office and various Attorney General Offices. The redacted portion concerns legal recommendation. (A)(I)(a), (E), (K), (S)
- i. Email dated February 25, 2016 from the New York Attorney General's Office and various Attorney General Offices. The redacted portions include Conference Call telephone number and conference code. (K). See also Direct Action for Rights and Equality v. Gannon, 713 A.2d 218 (R.I. 1998)(balancing test).
- j. Email dated March 16, 2016 from Vermont Law School to various Attorney General Offices, including a response from the New York Attorney General's Office. The redacted portion concerns legal recommendation. (A)(I)(a), (E), (K), (S)
- k. Email dated March 21, 2016 from Harvard Law School to various Attorney General Offices, including a response from the New York Attorney General's Office. The redacted portion concerns legal recommendation. (A)(I)(a), (E), (K), (S)

- l. Email dated March 21, 2016 from an attorney in New York to various Attorney General Offices, including a response from the New York Attorney General's Office. The redacted portion concerns legal recommendation and discussion involving recommendation. (A)(I)(a), (E), (K), (S)
- m. Email dated April 5, 2016 (Internal RI AG email). The redacted portion contains a private citizen's name and telephone number. (A)(I)(b) and balancing test as described above.

You provided pre-payment in the amount of \$345.00 which represented twenty-four (24) hours, with the first hour free. See R.I. Gen. Laws § 38-2-4(b). The actual search and retrieval for your request totaled seventeen (17) hours. The number of copies totaled thirty-nine (39) pages. See R.I. Gen. Laws § 38-2-4(a). We will issue you a reimbursement check in the amount of \$99.15 under separate cover.

This decision can be appealed pursuant to R.I. Gen. Laws § 38-2-8.

Very truly yours,



Lisa A. Pinsonneault
Special Assistant Attorney General

**APPEAL UNDER THE RHODE ISLAND AND PROVIDENCE PLANTATION
PUBLIC RECORDS ACT**

June 21, 2016

Peter Kilmartin
Rhode Island Attorney General's Office
150 South Main Street
Providence, Rhode Island 02903

By Electronic mail: aprarequest@riag.ri.gov

RE: Appeal of June 15, 2016 denial of access to records

Attorney General Kilmartin:

Pursuant to the Rhode Island Access to Public Records Act, R.I. General Laws § 38-2-8 the undersigned groups hereby appeal the partial denial of their April 13, 2016 request for records, made by your office on June 15, 2016.

On April 13, 2016, requesters submitted a Public Records Act request seeking documents from the Office of the Attorney General meeting the following description:

1. Please provide us **copies of all emails, including attachments, sent to or from (including also as cc: or bcc:) Greg Schultz of the Office of the Attorney General, which correspondence uses any of the following words or phrases, anywhere in the email, including in the body of the thread or any To, From, cc: and/or bcc: or Subject fields:**

“RICO”

“climate denial”

“climate denier” (which includes in “climate deniers”)

“climate risk”, or

“Gore”

For the above-described request: responsive records will be dated over the approximately four-month period from January 1, 2016 through the date you process this request.

2. **We also request** copies of all correspondence between Greg Schultz of the Office of the Attorney General, and any employee(s) of the New York Attorney General's Office, dated from February 15, 2016 through April 13, 2016, inclusive. We request entire email threads.

On June 15, 2016, your office responded to this request, releasing some records, withholding some records in part and withholding some records in full, and enumerating all claimed withholdings. Requesters now appeal certain of these partial and complete withholdings, as described below. Further, evidence from the records released affirms that certain portions of some records were neither provided nor was a justification for their withholding offered in the exemption log included in the letter sent by your office June 15, 2016.

First, requesters address the withholdings of items 3, 4, 17, and 18 as listed on the exemption log provided by your office. These all relate to work done in anticipation of a press event and/or on press releases by your office and the New York Attorney General's office (NY OAG). Your office withheld these under three exemptions: E, K, and S. However none of these exemptions apply. Exemptions E and S both relate to privilege, as exemption E deals with records that would not be available in the discovery process and S deal with documents state or federal law require to be withheld. As work on a press event or release — generally or in this specific case — does not relate to litigation activity nor client representation, these documents are not privileged and these exemptions cannot apply. Exemption K deals with drafts and working papers; however, as these documents were not internal to your office, but were shared with the NY OAG, this exemption cannot apply. Thus these documents are improperly withheld and must be released.

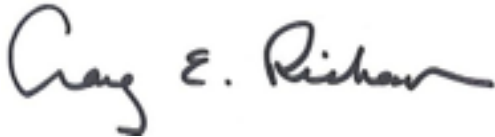
Second, requesters address the withholding of item 6 on the exemption log, which deals with an email sent by the NY OAG regarding an update on the regulation process. Your office claimed this as exempt pursuant to exemptions A(I)(a), E, K, S, and P. However none of these exemptions apply. Exemption A(I)(a) deals with the attorney-client relationship, which does not exist between the Rhode Island Office of the Attorney General and the NY OAG, as the Rhode Island Attorney General does not represent New York or its Attorney General's office. Thus, this exemption is invalidly claimed. Likewise exemptions E and S cannot apply as an update which does not relate to ongoing litigation is neither attorney work product nor protected by the attorney client relationship. Exemption K cannot apply as this document is not the work product of your office, it is wholly the work of the NY OAG. Finally, Exemption P cannot apply as an update on the regulatory process has no bearing on any investigation into violations of law or statute. As a result, these documents are improperly withheld and must be released.

Finally, requesters address the withholding/failure to provide the attachment to the April 12, 2016 email time-stamped at 4:03 pm, from Monica Wagner of the NY OAG with the Subject 'Re: Climate Change Common Interest Agreement 041216 pm'. Your office provided Mr. Schultz's April 13, 2016 (2:59 pm) response to that email, if not the original email which clearly shows Mr. Schultz as a recipient (and which his response affirms he in fact received). That original included, as an attachment, the referenced Climate Change Common Interest Agreement that Mr. Schultz commented on in his response. Your office provided neither the original email separately (only as part of the thread with Mr. Schultz's response) nor, more importantly, the attached portion of that record which the Subject field and Ms. Wagner's email plainly indicate ("Here's the agreement with redlining showing the revisions made since this morning....")

Moreover, your office made no mention of withholding this attachment in its exemption log provided us, nor did it provide any justification for its withholding. Under Rhode Island General Law § 38-2-7 no new basis for withholding this document may now be offered, as none was given at the time denial of access to certain records responsive to this request were made. As a result, this record is improperly withheld and must be released.

We look forward to hearing from you and promptly resolving this matter. If you have any questions please do not hesitate to contact the undersigned.

Respectfully submitted,



Craig E. Richardson
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703.981.5553



Christopher C. Horner, Esq.
for the Free Market Environmental Law Clinic
chris@chornelaw.com
202.262.4458

Karen Ragosta

From: Gregory Schultz
Sent: Wednesday, April 13, 2016 2:59 PM
To: 'Monica Wagner'
Subject: RE: Climate Change Common Interest Agreement 041216 pm

Monica:

No comments. I will sign. My signature block info is below.

Greg

Gregory S. Schultz
Special Assistant Attorney General
Rhode Island Department of Attorney General
150 South Main Street Providence, RI 02903
Tel.: (401) 274-4400, Ext. 2400
Fax: (401) 222-3016

CONFIDENTIALITY NOTE:

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From: Monica Wagner [<mailto:Monica.Wagner@ag.ny.gov>]

Sent: Tuesday, April 12, 2016 4:03 PM

To: Allen Brooks; Amy Winn; Christopher Courchesne; Dennis Ragen; Elizabeth Wilkins; Gregory Schultz; Heather Leslie; James Gignac; Jerry Reid; John Daniel; John Oleske; Josh Auerbach; Karen Olson; Laura Watson; Lemuel Srolovic; Leslie Seffern; Linda Singer; Matthew Levine; Melissa Hoffer; Michael J. Myers; Michele Van Gelderen; Patrick Flanagan; Paul Garrahan; Peter Washburn; Ralph Durstein; Rhodes Ritenour; Robert Snook ; Sally Magnani; Scot Kline; Tam Ormiston; Tania Maestas; Tannis Fox; Tim Nord; Wendy Morgan; William Grantham

Subject: Climate Change Common Interest Agreement 041216 pm

Here's the agreement with redlining showing the revisions made since this morning. Please let me know by noon tomorrow whether you have any further revisions. Also, please send a signature block for the person in your office who will sign it.

Thanks,

Monica

Monica Wagner
Deputy Chief
Environmental Protection Bureau
Office of the Attorney General of New York
120 Broadway, 26th Floor
New York, NY 10271



Michael Field <MField@riag.ri.gov>

to richardson, me ▾

12:31 PM (2 minutes ago) ☆



Attached please find the response to your appeal from Rebecca Partington, Civil Division Chief.

Dear Messrs. Richardson and Horner:

Your Access to Public Records Act (“APRA”) appeal dated June 21, 2016 has been directed to me by the Attorney General for a response. You appeal three (3) issues.

First, you appeal the withholding of items 3, 4, 17, and 18. As related by your correspondence, these items “all relate to work done in anticipation of a press event and/or on press releases by your office and the New York Attorney General’s office (NY OAG),” and none of the exemptions cited by this Department (E, K, and S) apply to this situation. You submit that “[a]s work on a press event or release – generally or in this specific case – does not relate to litigation activity nor client representations, these documents are not privileged and these exemptions cannot apply.” You also contend that “Exemption K deals with drafts and working papers; however, as these documents were not internal to your office, but were shared with the NY OAG, this exemption cannot apply.” It is notable that you provide no legal authority for your position and case law contradicts your argument.

Various cases have established that discussions regarding how to present an agency decision to the public is covered by the deliberative process privilege. See e.g. Ford Motor Company v. United States, 94 Fed. Cl. 211 (2010). Accordingly, your assertion that the exemptions cited can relate solely to “litigation activity [or] client representations,” and not to the situation presented herein, is incorrect. Similarly, Exemption K does not apply solely to communications within the Department of Attorney General but can apply to situations where the Attorney General is engaged in common interest litigation or discussions. For this reason, Exemption K was also appropriately cited. Implicitly you recognize the accuracy of this Department’s assertion that the requested documents represent drafts and/or working papers – since you do not challenge this contention – but instead only challenge that this exemption does not apply since the responsive documents “were not internal to your office, but were shared with the NY OAG.” Again, you cite no case law for this assertion and it conflicts with case law. See Tobaccoville USA, Inc. v. McMaster, 692 S.E.2d 526, 530 (S.C. 2010)(“We find it instructive that one court has previously held that similar documents between a state attorney general and the NAAG were protected by the attorney-client privilege.”). Accordingly, the fact that these documents were exchanged between the NY OAG in the present circumstances is of no moment and the asserted exemption is upheld.

Next, you contend that item 6, which concerns “an email sent by the NY OAG regarding an update on the regulation process” was improperly withheld. Similar to the above argument, you suggest that Exemption (A)(I)(a) concerns “the attorney-client relationship, which does not exist between the Rhode Island Office of the Attorney General and the NY OAG, as the Rhode Island Attorney General does not represent New York or its Attorney General’s Office.” Your other assertions make similar arguments. But see Tobaccoville, 692 S.E.2d at 530 (“We hold that the attorney-client privilege may apply to this very narrow factual scenario because the AG, as a paid member, has solicited the NAAG attorneys for legal advice and consultation on matters relating to the tobacco litigation, the MSA, subsequent enforcement of the MSA, and tobacco regulation.”). Accordingly, this exemption is upheld.

Lastly, you contend that an attachment to an April 12, 2016 e-mail was not provided and was not exempted, and as such, this document must be disclosed. Your APRA request, however, made clear that the April 12, 2016 attachment that you now claim must be disclosed, was not responsive to your APRA request.

Specifically, your April 13, 2016 APRA request sought two categories of documents. In category one, you sought “copies of all emails, including attachments,” and in category two, you sought “all correspondence.” Whereas in category one you made clear that you sought “attachments,” category two was notably absent in this regard and instead sought “all correspondence” and the “entire email threads,” but did not seek “attachments.” This is precisely what this Department provided.

Moreover, the body of your April 13, 2016 APRA request further supports this Department’s interpretation, namely your assertion that “[r]equesters focus this request on records Rhode Island employees may have generated in a recent effort with the attorneys general of various other states and territories along with environmental investor and activist Al Gore, to investigate political opponents of the ‘climate’ policy agenda.” There can be no question that Rhode Island did not “generate[]” the document that you now claim was responsive to your APRA request and the e-mail thread that was provided makes clear that Rhode Island neither generated this document nor its redline edits. For these reasons, the attachment was not responsive to your April 13, 2016 APRA request and this appeal is also denied. See Assassination Archives and Research v. Central Intelligence Agency, 720 F.Supp. 217, 219 (D.D.C. 1989)(“it is the requester’s responsibility to frame requests with sufficient particularity to ensure that searches are not unreasonably burdensome, and to enable the searching agency to determine precisely what records are being requested”).

This decision can be appealed pursuant to R.I. Gen. Laws § 38-2-8.

/s/ Rebecca Partington

Civil Division, Chief