



MAURA HEALEY
ATTORNEY GENERAL

THE COMMONWEALTH OF MASSACHUSETTS
OFFICE OF THE ATTORNEY GENERAL

ONE ASHBURTON PLACE
BOSTON, MASSACHUSETTS 02108

(617) 727-2200
www.mass.gov/ago

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Theodore V. Wells, Jr., Esq.
Paul, Weiss, Rifkind, Wharton & Garrison, LLP
1285 Avenue of the Americas
New York, NY 10019-6064

Dear Ted:

We write to request your assurance and confirmation that ExxonMobil Corporation (Exxon) is properly preserving documents that may be responsive to Civil Investigative Demand No. 2016-EPD-36 (CID) issued by the Office of the Attorney General (AGO). As you know, we agreed to allow Exxon to exhaust available challenges, including appeals, in the two existing cases brought by Exxon before the AGO will receive production of the documents demanded by the CID. However, Exxon is required to preserve all potentially responsive documents while the two cases are pending and until the documents are produced, and the AGO wants to ensure that Exxon is in fact doing so.

In a March 13, 2017, letter sent from the New York Office of the Attorney General to the Honorable Barry R. Ostrager regarding *People of the State of New York, by Eric T. Schneiderman, Attorney General of the State of New York, v. PricewaterhouseCoopers, LLP and Exxon Mobil Corporation*, Index No. 451962/2016 (the "March 13 Letter"), the New York Attorney General identified several deficiencies in Exxon's search and collection process in responding to a subpoena issued in that case. The letter asserts that Exxon failed to identify, preserve, and search all sources of potentially responsive documents and, in particular, failed to disclose and preserve documents on alias email addresses used by Exxon's former Chairman and Chief Executive Officer, U.S. Secretary of State Rex Tillerson (e.g., email addresses associated with "Wayne Tracker"), as well as other top executives, board members, and assistants.

Such alias email addresses and similar identifiers are directly relevant and responsive to the CID issued by the AGO. The AGO issued the CID in order to investigate apparent inconsistencies between what company scientists told Exxon management about the expected impact of fossil fuels on climate and of climate change on the company's business and what Exxon told (or failed to tell) investors and consumers about those issues. To that end, the CID demands documents and communications concerning several decisions and statements made by Exxon executives and specifically requires Exxon to provide relevant individuals' "name[s], title(s), *any aliases*, place(s) of employment, telephone number(s), e-mail address(es), mailing addresses and physical



address(es).” CID, at 5 (emphasis added). Proper compliance with the CID requires that alias email addresses of Exxon executives and documents associated with them must be preserved.

Exxon’s reported failure to identify the aliases in the New York case raises serious concerns about whether Exxon is taking proper steps to fulfill its preservation obligations in connection with the CID in Massachusetts.¹ In your response to the March 13 Letter, you indicate that “ExxonMobil’s collection and production efforts have focused on specific *custodians* . . . , not specific *email accounts*.” Letter from Theodore V. Wells, Jr., to the Honorable Barry R. Ostrager regarding *People of the State of New York, by Eric T. Schneiderman, Attorney General of the State of New York, v. PricewaterhouseCoopers, LLP and Exxon Mobil Corporation*, Index No. 451962/2016 (March 16, 2017), at 2. However, you also indicate that Exxon’s automated processes did not preserve secondary email accounts for some period of time. It is not clear whether or to what extent this fact may have impacted Exxon’s preservation of documents that may be responsive to the CID.

To address the AGO’s concerns and to ensure that responsive documents are properly preserved, we ask that you provide a written assurance that all responsive documents—including those related to email aliases—have been preserved since the issuance of the CID and are available for production to the AGO at the conclusion of the lawsuits.

Sincerely,



Richard A. Johnston
Chief Legal Counsel

¹ M.G.L. c. 93A, § 7, provides:

A person upon whom a notice is served pursuant to the provisions of section six shall comply with the terms thereof unless otherwise provided by the order of a court of the commonwealth. Any person who . . . with intent to avoid, evade, or prevent compliance, in whole or in part, with any civil investigation under this chapter, removes from any place, conceals, withholds, or destroys, mutilates, alters, or by any other means falsifies any documentary material in the possession, custody or control of any person subject to any such notice, or knowingly conceals any relevant information, shall be assessed a civil penalty of not more than five thousand dollars.

. . . Any disobedience of any final order entered under this section by any court shall be punished as a contempt thereof.