

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF LYON

FIFTH JUDICIAL DISTRICT

Case Type: Other Civil

Energy Policy Advocates,

Plaintiff,

v.

COMPLAINTKeith Ellison, in his official capacity
as Attorney General of Minnesota, and

The Office of the Attorney General, and

The State of Minnesota,

Defendants.

Plaintiff Energy Policy Advocates (hereinafter “Plaintiff” or “EPA”), by and through undersigned counsel, files this Complaint against Defendant, Attorney General Keith Ellison, in his official capacity, and the Minnesota Office of the Attorney General (hereinafter “OAG”), and the State of Minnesota, pursuant to Minn. Stat. § 13.08. EPA is seeking the release of improperly withheld government data under the Minnesota Government Data Practices Act (“MGDPA”), Minn. Stat. § 13. Plaintiff states and alleges as follows:

PARTIES

1. Plaintiff Energy Policy Advocates (EPA) is a nonprofit organization incorporated under the laws of the State of Washington and dedicated to open and transparent government. EPA uses state and federal open records laws to shed light on—and thereby educate the public on—private influences on government policymaking and the use of public office, and otherwise the operations of government. Part of EPA’s effort has been the record request at issue in this matter

and similar requests in attorneys general offices nationwide.

2. Defendant Keith Ellison is the Attorney General of the State of Minnesota and is sued in his official capacity as such. He, his office, and/or employees who report to him are in possession of the records that are at issue in this case.

3. Defendant Office of the Attorney General is the Attorney General's Office for the State of Minnesota. It is the recipient of the MGDPA request at issue, is the authority responsible for the data sought, and was responsible for improperly withholding public data. Its address is 445 Minnesota Street, Saint Paul, Minnesota 55101.

4. The State of Minnesota is a proper defendant in this matter because it employs Defendant Ellison, because the Office of the Attorney General is a constituent part of the State Government, and because Minn. Stat. § 13.08, Subd. 3 contemplates that actions of this nature may be brought against the State.

JURISDICTION AND VENUE

5. This Court has jurisdiction over this matter pursuant to Minn. Stat. § 13.08, Subd. 3, and Minn. Stat. § 484.01.

6. Venue is proper in this Court pursuant to Minn. Stat. § 13.08, Subd. 3, authorizing an action against the state under Chapter 13 to be brought in any county.

BACKGROUND

7. On June 24, 2020, the State of Minnesota filed suit against the American Petroleum Institute, Exxon Mobil Oil Corporation, Koch Industries, Inc., Flint Hills Resources LP, and Flint Hills Resources Pine Bend, alleging, *inter alia*, violations of Minnesota's consumer fraud, deceptive trade practices, and false statements in advertising statutes.¹ The suit seeks, *inter alia*,

¹ Complaint available at http://blogs2.law.columbia.edu/climate-change-litigation/wp-content/uploads/sites/16/case-documents/2020/20200624_docket-62-CV-20-3837_complaint.pdf.

restitution for asserted harm and injury caused to the State, and disgorgement of all profits made as a result of the alleged unlawful conduct. The case was removed to the Federal District Court for the District of Minnesota on July 27, 2020, remanded to state court on March 31, 2021, which remand was stayed on August 20, 2021, awaiting ruling by the United States Court of Appeals for the Eighth Circuit.

8. In this suit, the State did not seek a specific dollar amount of damages, but Attorney General Ellison has asserted the damages may be akin to Minnesota's \$7 billion dollar tobacco settlement.²

9. Other sources also cite the Master Tobacco Settlement (\$200 billion, in 1998 dollars) as the starting point for settlement of this litigation campaign.³

10. This is one of numerous and nearly identical lawsuits filed across the United States, differing principally in the state law invoked. It also is the subject of a purported "Common Interest Agreement Regarding the Sharing of Information Related to State Lawsuits Against Fossil Fuel Companies for Deceptive Acts and Practices and Other State Law Claims" which was subsequently signed, on October 5, 2020, by "Special Assistant Attorney General" Leigh Currie. Ms. Currie is one of two privately hired attorneys who, public records show, were given to and placed in the Office of the Attorney General for certain specific purposes including filing this lawsuit.

11. Since that time, Plaintiff has obtained public records under MGDPA documenting that this suit was exported to the Office of the Attorney General, and to other governmental plaintiffs

² <https://www.startribune.com/minn-files-climate-change-lawsuit-against-oil-companies-including-koch-exxon-mobil/571466182/>.

³ See, e.g., "Could \$200 Billion Tobacco-Type Settlement Be Coming Over 'Climate Change?'," Bloomberg Law, June 14, 2016, <https://news.bloomberglaw.com/business-and-practice/could-200-billion-tobacco-type-settlement-be-coming-over-climate-change>.

throughout the country, by an entity in New York City using local, in this case Minnesota, intermediary-activists. The entity is the Rockefeller Family Fund, who provided the local activists with ghost co-authors described in emails as “lawyers advising Rockefeller family fund” [sic], a group called Center for Climate Integrity.

12. The records requested involve correspondence sent to or from any of five OAG staff which also are sent to or from parties, including Profs. Klass and Cox, who are identified in public records as having participated in this successful campaign to lobby the Office of the Attorney General to file suit against private parties, at the instigation of and underwritten by private outside parties who affirmatively worked to obscure their involvement. These records also pertain to how and why the Office of the Attorney General provided an email account to an outside party used to correspond with these parties about this project, presumably seeking to manufacture claims of privilege.

13. These records will fill in further information about this use of not one but at least two state institutions this way, on behalf of and paid for by private parties, to use police powers to pursue other private parties, as part of a legal and media campaign which, pleadings in state and federal courts affirm, is ultimately underwritten by the Rockefeller Family Fund.⁴

14. Plaintiff has already obtained public records showing that the Office of the Attorney General’s lawsuit was outlined in a memorandum to the Attorney General arranged for by Rockefeller Family Fund through a local intermediary, a group Called “Fresh Energy,” whose director Michael Noble wrote that he “only accepted a modest amount of money” at the outset of this effort because the outcome was uncertain.

⁴ See generally Government Accountability & Oversight, P.C., “Private Funders, Public Institutions: ‘Climate’ Litigation and a Crisis of Integrity” (May 18, 2021), available at: <https://climatelitigationwatch.org/wp-content/uploads/2021/05/GAO-EPA-CCI-RFF-Climate-Paper.pdf>.

15. Other public records, specifically an email written by the same individual, confirms that the Office of Attorney General waited to file this suit until Ms. Currie, and another privately hired-and-placed “SAAG”, Mr. Peter Surdo, were provided to the Office by a different New York City-based entity created by climate activist and major political donor Michael Bloomberg, for this purpose.

16. Public records affirm that OAG was presented with and asked to file this lawsuit in a memorandum on University of Minnesota stationery, nominally prepared by University of Minnesota Law Professor Alexandra Klass and four students, but which was ghost-co-authored by attorneys in New York working for the Center for Climate Integrity, on behalf of the Rockefeller Family Fund (“RFF”).

17. Other public records obtained by Plaintiff under MGDPA show that, almost immediately after Ellison was elected in November 2018, Lee Wasserman, Director of RFF, had provided Fresh Energy’s Noble with sample pleadings to assist in preparation before “making initial calls” to enlist University law faculty in “this project,” what Noble called, in another email to RFF’s Wasserman, “our joint project.”

18. Emails and text messages obtained by Plaintiff under other MGDPA requests show that that project was to use University stationery to present an argument for the attorney general to sue identified private parties, presented as University scholarship yet produced on behalf of paying private entities, and actually ghost-co-written by parties advising the private interest underwriting the project none of which was disclosed in the “University” memorandum.

19. Emails obtained by Plaintiff under MGDPA show that after Wasserman engaged him, Noble then contacted University of Minnesota Law Professor, Alexandra Klass about this “Big idea! Need your reaction (and hopefully enthusiasm)”, then to work with “lawyers advising the

Rockefeller family fund [sic]” so as to learn “what is needed” in the memo to Minnesota’s AG urging him to file this lawsuit.

20. The professor then produced a memo with these outside lawyers Center for Climate Integrity but placed on Minnesota letterhead as the scholarship of the professor and four research-assistant students.

21. Other public records obtained by Plaintiff under MGDPA, specifically text messages between Noble and Klass, state that prior to sending it to AG Ellison Noble and CCI both ran the draft “University of Minnesota” memo for approval by RFF’s Director Wasserman, and “Rick,” who Plaintiff states on information and belief is Rick Reed, a consultant for RFF.

22. Emails obtained by Plaintiff under other MGDPA requests show that the four law students listed as co-authors on the memo to Ellison were paid by Fresh Energy, which “only accepted a modest amount of money” at the outset, with this expense very intentionally run through the University, on the grounds that, as one email from Noble states, Prof. Klass also “strongly agrees that there shouldn’t be Fresh Energy funding law students direct.” [sic] Whether that funding came from Rockefeller Family Fund is unclear, but of great public interest and quite possibly answered in the records at issue in this matter.

23. These records obtained by Plaintiff under MGDPA additionally show that the local activist Noble also worked on this project with Ellison transition team members soon after the 2018 election, including another Minnesota Law faculty member, Prentiss Cox, who, public records show, either then began using an Office of the Attorney General email account around that time, or had been provided one and, at this time, he provided that email address to Noble to correspond about this matter despite Cox having no publicly acknowledged position with the AG’s Office. That correspondence and how this email account came to be provided to Prof. Cox,

when, under what arrangement, for what purposes and with what limitations and conditions, is among the records at issue in this matter and also is of great public interest.

24. Another email obtained by Plaintiff, from Noble to RFF's Wasserman, copying Prof. Klass, an outside activist named Jeff Blodgett, and one of "the lawyers advising Rockefeller family fund", states, *inter alia*, "As you recall, we are waiting for the hire of the "environmental fellows". They have been chosen... One is longtime MCEA Energy and Climate Program Director Leigh Currie who Fresh Energy has worked with extremely closely her entire public interest career (woo hoo, yay!!). She starts after Labor Day, and the other has just started, Pete Burda [sic] of the Robins firm, who is an experienced class action litigator. I will reach out to him next week and send Leigh our doc tomorrow. I already spoke to her today to congratulate her and she was super excited to hear about our request to AG".

25. The "environmental fellows" refers to two lawyers hired, paid for and provided to OAG by the private foundation of climate activist and major political donor Michael Bloomberg, through a group he established for the of advancing the "climate" agenda.⁵ These "Special Assistant Attorney Generals" or SAAGs are provided to "advanc[e] progressive clean energy, climate change, and environmental legal positions". In his application seeking these private lawyers Ellison specifically cited his past efforts in pursuing Exxon Mobil, claiming that activities such as "supporting state- led efforts to investigate Exxon Mobil" were and would remain curtailed, barring provision of additional resources to his Office such as those on offer from the Bloomberg group (AG Ellison's request for these resources is available at

⁵ See, e.g., Editorial, "State AGs' Climate Cover-up", Wall Street Journal, June 7, 2019, <https://www.wsj.com/articles/state-ags-climate-cover-up-11559945410>; see also, Editorial, "State AGs for Rent", Wall Street Journal, Nov 6, 2018, <https://www.wsj.com/articles/state-ags-for-rent-1541549567>.

<https://climatelitigationwatch.org/wp-content/uploads/2019/09/MN-OAG-NYU-Application.pdf>).

26. Those two “fellows” or SAAGs placed in the Minnesota Office of the Attorney General in fact filed AG Ellison’s lawsuit against the private parties.

27. On a July 6, 2020, Zoom call posted on YouTube soon after these SAAGs filed this suit Noble boasted of personal knowledge that these two attorneys, by name, had “basically been working on this full time over the last few months.” (<https://www.youtube.com/watch?v=jbK9XjjkJrs>, last viewed August 23, 2021, full video available at <https://www.youtube.com/watch?v=2MqX14GTm-o>, see 1:45 - 2:26).

28. Another email and a text message obtained by Plaintiff under MGDPA, both from Noble to Klass, both state, *inter alia*, “When we get a meeting, our delegation will be me, you, CEO of Climate Integrity, CEO Rockefeller Family Fund and Jeff Blodgett”. Jeff Blodgett is an outside activist.

29. Other public records obtained by Plaintiff under MGDPA show a meeting on this memorandum between Fresh Energy and OAG occurred on September 30, 2019, with Noble, Ellison, his Chief of Staff Donna Cassutt and 3 OAG attorneys including the two Bloomberg-provided SAAGs, described in the scheduling email as “AG Meet w/ Michael Noble RE Climate Change/Fossil/Fuels [sic] (Donna)”.

30. These records strongly suggest coordination by OAG and other public and private institutions on the filing of the above-described lawsuit against private parties, using the Office of Attorney General’s police powers on behalf of private parties. These outside parties, e.g., Rockefeller Family Fund and Michael Bloomberg, are investing in the same agenda, with one providing the ammunition and the other the weapon, with compliant elected attorneys general

providing the organization to formally execute the job. This use of public institutions is of great public interest, as are the records sought by Plaintiff and at issue in this matter.

THE GOVERNMENT DATA PRACTICES ACT REQUEST

The July 17, 2021 Request

31. Considering the foregoing revelations, on July 12, 2021, EPA requested certain described correspondence, by letter emailed to datapractices@ag.mn.state.us, which is an address that the defendant OAG has established for the specific purpose of receiving MGDPA requests.

32. The request specifically sought four categories of records: all electronic correspondence and accompanying information that was sent to or from or which copies: 1) john.Keller@ag.state.mn.us and a) was also sent to or from or copies i) Jeff Blodgett, ii) Michael Noble, iii) aklass@umn.edu, iv) any address ending in @fresh-energy.org, and/or v) any address ending in @conservationminnesota.org, and b) is dated at anytime from April 19, 2019 through June 24, 2020, inclusive; 2) a) Donna.Cassutt@ag.state.mn.us and a) was also sent to or from or copies i) Jeff Blodgett, ii) Michael Noble, iii) aklass@umn.edu, iv) any address ending in @freshenergy.org, and/or v) any address ending in @conservationminnesota.org, and b) is dated at any time from April 19, 2019 through June 24, 2020, inclusive; 3) prentiss.cox@ag.state.mn.us and a) was also sent to or from or copies i) Jeff Blodgett, ii) Michael Noble, iii) aklass@umn.edu, iv) any address ending in @fresh-energy.org, and/or v) any address ending in @conservationminnesota.org, and b) is dated at any time from April 19, 2019 through June 24, 2020, inclusive; and 4) a) i) Keith.Ellison@ag.state.mn.us and/or ii) Donna.Cassutt@ag.state.mn.us and b) i) was also sent to or from or copies coxxx211@umn.edu and/or ii) includes “Prentiss”.

33. Given the parameters of the request, it is likely that the information responsive to it will reveal further details of great public interest about the Attorney General's Office involvement in a lobbying campaign by private actors, orchestrated out of New York City through local parties engaged for the purpose and providing "local color" to a plan to persecute Minnesota businesses, and whether those outside actors were transparent about their own interests and on whose behalf they performed these tasks.

34. To date, the Office of the Attorney General has only provided a same-day automated email response acknowledging receipt of the request (*inter alia*, "Thank you for your email to the Minnesota Attorney General's Office. This automatic response acknowledges its receipt."). It has not otherwise responded to this request.

35. The Office of the Attorney General's failure to process this request, or even after more than two months to provide any indication that it is in fact processing the request or a timeline for response to the request at issue demonstrates a failure to adhere to the statutory requirement that policies and procedures be in place ensuring "requests for government data are received and complied with in an appropriate and prompt manner." Minn. Stat. §13.03 Subd. 2(a).

STATEMENT OF CLAIMS

Count I

(Action to Compel Disclosure Pursuant to Minn. Stat. § 13.08)

36. Plaintiff realleges and incorporates by reference the allegations above.

37. The MGDPA "establishes a presumption that all government data are public and are accessible by the public for both inspection and copying unless there is federal law, a state statute, or a temporary classification of data that provides that certain data are not public." Minn. Stat. § 13.01, Subd. 3.

38. Defendants have ignored and otherwise failed to process the request in violation of

MGDPA.

39. The records otherwise sought by Plaintiff in its request are public records barring some showing to the contrary.

40. Plaintiff is entitled to disclosure of the requested data pursuant to Minn. Stat. §§ 13.03, Subd. 1, and 13.08, Subd. 4.

41. Defendants have constructively denied Plaintiff access to requested records in violation of the MGDPA.

42. Defendants' denial of access was willful.

43. Plaintiff was harmed as a result of Defendants' willful violation of the MGDPA.

44. For these reasons, Plaintiff has standing to challenge Defendants' response.

45. Defendants' willful, constructive violation of the MGDPA entitles Plaintiff to its costs and disbursements, including reasonable attorneys' fees. Minn. Stat. § 13.08, Subd. 4.

46. Defendants' willful, constructive denial of Plaintiff's request justifies assessment of a civil penalty under Minn. Stat. § 13.08, Subd. 4.

47. Plaintiff is entitled to an immediate injunction preventing continuation of Defendants' willful and continued violation of the MGDPA. Minn. Stat. § 13.08, Subd. 2.

PRAYER FOR RELIEF

WHEREFORE, the Plaintiff respectfully prays that this Court:

- a) Issue a declaratory judgment that the information requested is public information within the meaning of the Minnesota Government Data Practices Act, and that the OAG has improperly failed to produce such information;
- b) Enter a permanent injunction directing Defendants to comply fully with the MGDPA, and without further delay, to furnish Plaintiff the government data at

issue in this matter, in the native format requested, subject only to legally-allowable withholdings justified by sufficient identification of the reasons for withholding;

- c) Assess a civil penalty as authorized in Minn. Stat. § 13.08, Subd. 4;
- d) Alternately, perform an *in camera* review of the information sought to be redacted by OAG and compel OAG to release all information for which the OAG is unable to carry its burden to prove each withholding is privileged or otherwise not subject to disclosure;
- e) Award Plaintiff fees, costs, and disbursements, including reasonable attorneys' fees, as authorized in Minn. Stat. § 13.08, Subd. 4; and
- f) Order such additional relief as the Court may deem just and proper.

Respectfully submitted this the 15th day of September 2021,

ENERGY POLICY ADVOCATES
By Counsel

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