

APPEAL UNDER THE VERMONT PUBLIC RECORDS ACT

February 9, 2017

Attorney General T.J. Donovan
c/o Deputy Attorney General Susanne Young
Office of the Attorney General
109 State Street
Montpelier, VT 05609

By FAX: 802-828-3187

RE: Appeal of February 8 letter from Melanie Kehne

To the Office of the Attorney General:

We write to appeal the Office of the Attorney General's Response dated February 8, 2017, to an Access to Public Records Request we submitted on January 25, 2017.

Pursuant to 1 V.S.A § 318(c), the undersigned hereby appeal the response insofar as the documents provided do not appear to meet the description of the documents that were requested, and the fee demanded included in the letter is higher than both the statutorily-permitted amount and the amount requesters had agreed to pay. Specifically, the response included voluminous electronic copies of news articles, with no substantive correspondence, and a demand for fees in the amount of \$169.65.

We remind the Office of the Attorney General that the request dated January 25, 2016 included the following statement as to its scope: *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).* Given that the entirety of the February 8 document production

consists of that which we clearly set forth as being not responsive — press articles, without substantive commentary — it appears none of the records received on February 8 are responsive to our request of January 25. As such, the Office should either conduct a new search for records meeting the descriptions set forth in the request, or provide a proper certification from the custodian as required by 1 V.S.A. § 318 (4).

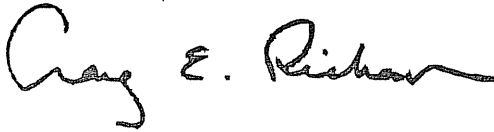
Further, for the same reason, the fee request is for producing records we did not request. We therefore also appeal the Office of the Attorney General's fee demand. First, the January 25, 2017 request for records included a statement that: "While we request that the limited fees allowed by statute be 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." For reasons already noted, the amount billed does not reflect "legitimate expenses", and of course it exceeds the amount agreed to for legitimate expenses. Also, we were not notified and did not consent to that charge exceeding the ceiling we agreed to *for legitimate expenses*.

Moreover, it is not at all clear that the charges incurred, as itemized in the February 8, 2017 letter, were "actual cost[s] of providing" copies of the records. This therefore also implicates 1 V.S.A. § 316 (b), which states that "the agency may charge and collect from the person requesting the copy the actual cost of providing the copy". However, there appears to be no connection between the itemized fee demand and actual copying charges (or, again for reasons stated, for legitimate expenses given it is for records we did not request and indeed which the request explicitly excluded). It is our position that OAG is statutorily permitted only to recover from the requester the copying charges, rather than all assorted and sundry expenses involved in processing a request. This position is set forth in a case currently pending in

Washington Superior Court, in which both requesters are plaintiffs. *Energy & Environment Legal Institute et al. v. Attorney General of Vermont*, 349-6-16 Wncv.

We ask that you overturn Ms. Kehne's decision and comply with the Access to Public Records Act with respect to the January 25, 2017 request for records.

Respectfully submitted,



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