

THOMAS J. DONOVAN, JR.
ATTORNEY GENERAL

JOSHUA R. DIAMOND
DEPUTY ATTORNEY GENERAL

WILLIAM E. GRIFFIN
CHIEF ASST. ATTORNEY
GENERAL



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

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

STATE OF VERMONT
OFFICE OF THE ATTORNEY GENERAL
109 STATE STREET
MONTPELIER, VT
05609-1001

July 12, 2017

VIA U.S. MAIL

Anne Galloway and Dan Schwartz
VT Digger
97 State Street
Montpelier, VT 05602

Re: Request for tax and financial records regarding Cynthia Diaz

Dear Ms. Galloway and Mr. Schwartz:

I am writing in response to your e-mail and the attached letter that this office received on July 5, 2017, concerning your request for records pertaining to a criminal investigation regarding alleged financial or tax misconduct by Cynthia Diaz. The letter refers to three items:

“4. Twenty-five pages reflecting wire transfers and wiring instruction pertaining to Ms. Diaz’s personal financial accounts regarding the foreign banks the AGO identified.”

“18. Discovery correspondence and materials between the AGO and opposing counsel.”

“19: The file entitled ‘Diaz v. State – Taxes’ ”

I will address each item in turn.

Twenty-five pages reflecting wire transfers and wiring instructions pertaining to Ms. Diaz’s personal financial accounts regarding the foreign banks the AGO identified

Your request for these records has already been addressed in previous responses—please refer to letters from this office dated April 20, 2017, June 7, 2017, and June 29, 2017. Records “reflecting wire transfers” include financial statements concerning transactions between private individuals. These financial statements are comprised entirely of information relating to personal finances, and are

therefore exempt from public inspection and copying pursuant to 1 V.S.A. § 317(c)(7). Notwithstanding the applicability of the exemption for “information in any files relating to personal finances,” *id.*, certain information about wire transfers was reflected in documents that were filed in the Vermont Superior Court. That information is publicly available, and this office provided it to you in a previous response regarding your request for “Reports from Gosselin, Clark, Bottino, Howell, Letourneau, Palmer, and Chapman.”

Discovery correspondence and materials between the AGO and opposing counsel

Your request for discovery correspondence and materials has been addressed in letters sent from this office on June 18, 2017, and June 29, 2017. These letters indicate that there are approximately 1,168 pages of records that are responsive to your request for “discovery correspondence and materials” that have not been provided to you previously. As explained in the June 18 letter, fully reviewing these records page by page to identify information that is exempt from public inspection and then producing redacted copies could require up to 5,840 minutes, or approximately 97.4 hours, of senior-level staff time. Advanced payment of \$3,328.80 would be required.

In preparing the response that our office sent on June 18, 2017, I conducted a preliminary and cursory review of these records and determined that approximately 583 pages appear to consist solely of personal financial information. As stated in the June 18 letter, these records appear to include copies of personal checks, bank account statements, and wire-transfer documents. It is extremely likely that these 583 pages of records are categorically exempt pursuant to 1 V.S.A. § 317(c)(7) as personal financial information.

Excluding the records described above—i.e. the 583 pages of records that are extremely likely to be exempt in their entirety—approximately 585 pages of other discovery records remain. As stated in the June 18 letter, these other discovery records include copies of correspondence, charging documents, analysis of personal finances, investigative memoranda, as well as bank deposit slips and associated checks.¹ It appeared from the preliminary review that these other discovery records contain both exempt and non-exempt information. As previously explained in the June 18 and June 29 letters, producing redacted copies of only these other discovery records could require up to 2,925 minutes, or approximately 48.8 hours, of senior-level staff time; advance payment of \$1,667.25 would be required. If you wish for us to proceed with conducting a page-by-page review to produce redacted copies of only these other discovery records—i.e. the 585 pages of records that are not extremely

¹ Please note that some of these materials have already been provided to you with other responses. For example, charging documents were sent to you on January 31, 2017, and investigative memoranda were sent on June 28 in response to your request for “Reports from Gosselin, Clark, Bottino, Howell, Letourneau, Palmer, and Chapman.” To the extent that it was not exempt, analyses of personal finances that supported law enforcement reports were included with the investigative memoranda that were sent to you.

likely to be exempt in their entirety—please provide advance payment in the amount estimated, \$1,667.25.²

The June 29 letter included an additional point of clarification regarding records described in the June 18 letter as “approximately 12 pages of records that can be classified as ‘correspondence.’” These records include letters containing witness-lists and general descriptions of the other discovery material that was provided to the defense. These records appear to contain—but not consist solely of—information that is exempt from production pursuant to 1 V.S.A. § 317(c)(5)(D) (witness identity) and possibly other provisions concerning financial and tax information, including 1 V.S.A. §§ 317(c)(6) and 317(c)(7), 32 V.S.A. § 3102(a), as well as 26 U.S.C. § 6103. Fully reviewing and producing redacted copies could require up to 60 minutes of senior-level staff time. If you would like AGO to conduct a page by page review of only these “discovery correspondence” records and produce redacted copies, please provide advance payment of \$34.20.

“The file entitled ‘Diaz v. State – Taxes’ ”

The letter sent to you on June 18, 2017, explained that a folder bearing the label “Diaz, Cynthia v. State – Taxes” contains approximately 206 pages of records.³ Records from this folder were previously sent to you on January 31, 2017.⁴ Other records from the folder that were not sent include draft pleadings and internal communications containing attorneys’ mental impressions and opinions. These other records are protected under the attorney-work product privilege. See, e.g. *In re PCB File No. 92.27*, 167 Vt. 379, 382, 708 A.2d 568, 570 (1998) (“[T]he mental impressions, conclusions, opinions and legal theories of an attorney are absolutely protected from discovery regardless of any showing of need.” (citing *Killington, Ltd. v. Lash*, 153 Vt. 628, 647, 572 A.2d 1368, 1379-80 (1990))). They are therefore exempt from production pursuant to 1 V.S.A. § 317(c)(3) (“Records which, if made public pursuant to this subchapter, would cause the custodian to violate duly adopted standards of ethics or conduct for any profession regulated by the State”) and 1 V.S.A. § 317(c)(4) (“Records which, if made public pursuant to this subchapter, would cause the custodian to violate any statutory or common law privilege other than the common law deliberative process privilege as it applies to

² The 48.8-hour estimate refers to worker-hours required to complete the process of reviewing the records and producing copies with exempt information redacted. These tasks are performed by AGO personnel in addition to and concurrently with other duties. Accordingly, the amount of time that would elapse between initiating the review process and producing records would exceed 48.8 hours.

³ Also found in this folder was the deposition transcript of Randall Northrop. The deposition transcript and related materials have been provided to you. The 206-page approximate count does not include records that are otherwise subject to the Northrop-deposition request.

⁴ The records that were sent to you on January 31, 2017, included copies of pages where the only information that appeared was a stamp indicating the date on which a court notice was received by AGO. The 206-page approximate count does not include these date-stamped pages.

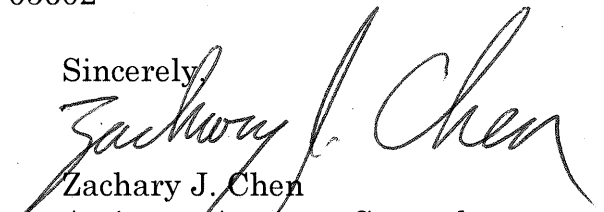
the General Assembly and the Executive Branch agencies of the State of Vermont.”). The folder bearing the label “Diaz, Cynthia v. State – Taxes” contains no additional records other than those discussed here.

Your most recent letter states: “[I]t is clear that correspondences, e-mails and communications between the AGO and state agencies have not been provided. Also missing from that file are income, banking, and tax schedule/records.” Regarding “correspondences, e-mails and communications between the AGO and state agencies,” please refer to the responses that were sent to you on June 7, 18, and 28. The materials enclosed with those responses include correspondence between this office and the State Auditor’s office and reports from law enforcement personnel. Likewise, your request for “Income, banking, and tax schedule/records” has been addressed in the responses regarding your request for discovery correspondence and materials. Otherwise, certain financial and tax information became publicly available when documents containing that information were filed in the Vermont Superior Court; that information can be found in records that have been sent to you in response to your request for “Reports from Gosselin, Clark, Bottino, Howell, Letourneau, Palmer, and Chapman.”

To the extent you consider this response and previous correspondence to be a denial of your request, you may submit an appeal in writing to:

Joshua Diamond
Deputy Attorney General
109 State Street
Montpelier, VT 05602

Sincerely,



Zachary J. Chen
Assistant Attorney General

cc: file