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

August 14, 2017

VIA U.S. MAIL

Vermonters for a Clean Environment
Attn: Annette Smith, Executive Director
798 Baker Brook Road
Danby, Vermont 05739

Re: Public Records Request.

Dear Ms. Smith:

I am writing in response to your July 31, 2017 request to the Attorney General's Office for public records.

Request

In your letter, you requested:

Copies of all letters, reports, studies and other writings, including electronic mail telephone logs, and other documentation, issued, produced, recorded, or received by [the Attorney General's Office] between September 1, 2015 and February 19, 2016 in regards to the Attorney General's investigation into Annette Smith and/or Vermonters for a Clean Environment allegedly engaging in the Unlicensed Practice of Law.

Except for the date range, this request appears to be substantially similar to a request you made on January 21, 2016. In that request, you asked for:

Copies of all letter, reports, studies and other writings, including electronic mail, telephone logs, and other documentation, issued,

produced, recorded, or received by [the Attorney General's Office] in regards to documents related to a number of different proceedings before the Public Service Board regarding Annette Smith and/or Vermonters for a Clean Environment.

On January 22, 2016 you clarified, over the telephone, that through your January 21, 2016 request you were seeking records relating to a complaint received by the Attorney General that you may have engaged in the unlicensed practice of law before the Public Service Board in five different dockets. On January 27, 2016, the Attorney General's Office responded to your January 21, 2016 public records request, as clarified, and provided you with approximately 590 pages of records. Reviewing the materials that were sent to you in response to your January 21, 2016 request, it is apparent that many of those records contained duplicative content. For example, among the records previously provided to you were multiple emails belonging to the same thread—duplication occurred where each new e-mail in a thread included the entirety of every email sent before it in that thread.

Response to Request

As your request pertains to an investigation conducted by the Criminal Division conducted by the Attorney General's Office, this response comes from that Division.

The Criminal Division of the Vermont Attorney General's Office has identified records that are responsive to your current request, including records previously provided to you in response to your January 21, 2016, request, as well as additional records that were not included with that response. I have separated the records into two categories.

1. Records subject to production

The Attorney General's Office has identified and will produce approximately 570 page of records that are responsive to your request and are enclosed with this letter. Please note that where possible, I have tried to avoid producing duplicative content. For this reason, there are fewer pages enclosed with this letter than were previously provided to you in response to your January 21, 2016 request. While the number of pages enclosed with this letter is lower than what was previously provided to you, the enclosures with this letter in fact contain more substantive material than what was previously provided.

Some information within these records has been redacted pursuant to 1 V.S.A. §§ 317(c)(5)(A)(iii) and 317(c)(5)(D). The information is being redacted

because it deals with the detection and investigation of crime and its production could reasonably be expected to constitute an unwarranted invasion of personal privacy, or to reveal information that could be used to identify a private individual who is a witness to or victim of a crime. The provisions of § 317(c)(5)(D), concerning witnesses' identities, are mandatory. In the time that has elapsed since this office responded to your first request, the identities of certain individuals considered to be witnesses have become matters of public knowledge. Accordingly, in this instance, information that could be used to identify these individuals is not being redacted because their identities are already publicly known.

Notwithstanding the provisions of 1 V.S.A. § 317(c)(5)(A)(iii) and (D), the Attorney General's Office is not redacting references to the identity of private individuals from records in its custody that appear in 1) copies of filings, hearing transcripts, orders, or decisions in Public Service Board proceedings; 2) newsletters that have been distributed by Vermonters for a Clean Environment; or 3) commentary published on the World Wide Web. Those records have already publicized the identities of any individuals mentioned therein.

Where the Attorney General's Office received unsolicited commentary from private individuals regarding the investigation, this office does not consider those individuals' identities to be exempt from production, as they were not witnesses to the events that were investigated. Their contact information has been redacted as production could reasonably be expected to constitute an unwarranted invasion of personal privacy. 1 V.S.A. § 317(c)(5)(A)(iii).

2. Records not subject to production

The Attorney General's Office has identified additional records in its possession that may be responsive to your request but that are exempt from disclosure under Vermont's Public Records Act. These records consist of attorney-work product.

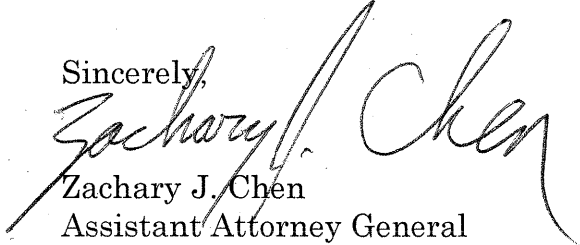
Attorney-work product is privileged pursuant to 1 V.S.A. § 317(c)(4), which provides that "[r]ecords which, if made public pursuant to this subchapter, would cause the custodian to violate any statutory or common law privilege" The Vermont Rules of Criminal Procedure provide for the attorney-work-product privilege, which covers "legal research or of records, correspondence, reports, or memoranda to the extent that they contain the mental impressions, conclusions, opinions, or legal theories of the prosecuting attorney, members of his legal staff, or other agents of the prosecution, including investigators and police officers." V.R.Cr.P. 16(d)(1).

Right to Appeal

To the extent that that this letter constitutes a denial of your request, you may appeal to the Deputy Attorney General. Any appeal should be in writing and addressed to:

Joshua Diamond
Deputy Attorney General
109 State Street
Montpelier, VT 05609-1001

Sincerely,



Zachary J. Chen
Assistant Attorney General

Enc.