

From: Chris Horner [<mailto:Christopher.Horner@cei.org>]

Sent: Wednesday, February 28, 2018 9:57 AM

To: AGO - Info <AGO.Info@vermont.gov>

Subject: REQUEST UNDER THE VERMONT PUBLIC RECORDS ACT -- Certain records pertaining to NYU

Please see attached.



REQUEST UNDER THE VERMONT PUBLIC RECORDS ACT

February 28, 2018

Vermont Attorney General's Office
109 State Street
Montpelier, VT 05609-1001

By Electronic mail: ago.info@vermont.gov

RE: Certain records pertaining to NYU

To Whom it May Concern:

On behalf of the Competitive Enterprise Institute (CEI), a non-profit public policy institute in Washington, DC and to the Vermont Access to Public Records Act, Vt. Stat. Ann. Title 1, §§ 315-320, please provide us within the statutorily prescribed time certain described *information*, as follows:

I. Copies of all correspondence dated from **August 1, 2017** through the date you process this request, inclusive, **and its accompanying information¹, including also any attachments**, which was sent to or from or copying (whether as cc: or bcc:) **Natalie Silver** which are also sent from or to including also copying (again whether as cc: or bcc:):

1) elizabeth.Klein@nyu.edu

2) ek3041@nyu.edu

3) david.hayes@nyu.edu

¹ This includes public records, and associated public information, see discussion of Data Delivery Standards, *infra*.

- 4) davidjhayes01@gmail.com
- 5) djh466@nyu.edu and/or
- 6) Daniel Firger (note that Firger addresses include both those identifying him, e.g., daniel.firger@bloomberg.org, and not, e.g., daniel@bloomberg.org)

Please consider as responsive entire email “threads” containing any information responsive to this request, regardless whether any part of that thread falls outside the cited search parameters.

II. **Also**, please provide us copies of any agreement that includes both your Office and New York University, New York University’s School of Law, and/or the (NYU) State Energy & Environmental Impact Center, that was in effect at any time during 2017 or during 2018. This includes but is not limited to, e.g., 1) any agreement to hire, house, second or otherwise place any attorney or attorneys or staff in your Office; 2) any purported common interest agreement with any of those entities; and/or 3) any confidentiality agreement with any of those entities.

III. **Also**, please provide us copies of any agreement of any sort with any individual staff or attorney(s) who to your Office’s knowledge came to your employ or secondment through any of the groups named in II, or who is otherwise placed in and/or works for or in your Office through any of those groups, which agreement(s) was in effect at any time during 2017 or during 2018.

As this matter involves a significant issue of public interest, please produce responsive information as it becomes available on a rolling basis but consistent with the Act’s prescribed timelines.



In the interests of expediting the search and processing of this Request, CEI is willing to pay fees up to \$100. Please provide an estimate of anticipated costs in the event that fees for processing this Request will exceed \$100. To keep costs and copying to a minimum **please provide copies of all productions to the email used to send this request.** Given the nature of the records responsive to this request, all should be in electronic format, and therefore there should be no photocopying costs (see discussion, *infra*).

We request records on your system, e.g., its backend logs, and do *not* seek only those records which survive on an employee's own machine or account.

We do not demand your Office produce requested information in any particular form, instead **we request records in their native form, with specific reference to the U.S.**

Securities and Exchange Commission Data Delivery Standards.² The covered information we seek is electronic information, this includes electronic *records*, and other public *information*.

To quote the SEC Data Delivery Standards, "Electronic files must be produced in their native format, i.e. the format in which they are ordinarily used and maintained during the normal course of business. For example, an MS Excel file must be produced as an MS Excel file rather than an image of a spreadsheet. (*Note: An Adobe PDF file is not considered a native file unless the document was initially created as a PDF.*)" (emphases in original).

In many native-format productions, certain public information remains contained in the record (e.g., metadata). Under the same standards, to ensure production of all information

² <https://www.sec.gov/divisions/enforce/datadeliverystandards.pdf>.



requested, if your production will be de-duplicated it is vital that you 1) preserve any unique metadata associated with the duplicate files, for example, custodian name, and, 2) make that unique metadata part of your production.

Native file productions may be produced without load files. However, native file productions must maintain the integrity of the original meta data, and must be produced as they are maintained in the normal course of business and organized by custodian-named file folders. A separate folder should be provided for each custodian.

In the event that necessity requires your Office to produce a PDF file, due to your normal program for redacting certain information and such that native files cannot be produced as they are maintained in the normal course of business, in order to provide all requested information each PDF file should be produced in separate folders named by the custodian, *and* accompanied by a load file to ensure the requested information appropriate for that discrete record is associated with that record. The required fields and format of the data to be provided within the load file can be found in Addendum A of the above-cited SEC Data Standards. All produced PDFs must be text searchable.

In the context of our experience with responsive agencies taking the effort to physically print, then (often, poorly) scan *electronic* mail into (typically, non-searchable) PDF files, we note that production of electronic records necessitates no such additional time, effort or other resources, and no photocopying expense. Any such effort as described is most reasonably viewed as an effort to frustrate the requester's use of the public information.

1310 I Street, NW, 7th Floor
Washington, DC 20005
cei.org

202.331.1010 *voice*
202.331.0640 *fax*



If you have any questions, or would like to discuss this matter further, do not hesitate to contact me by email. We look forward to your timely response.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Chris Horner", is written over a light gray horizontal line.

Christopher C. Horner
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202.262.4458