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May 26, 2020

BY EMAIL ONLY

Matthew D. Hardin
Executive Director
Energy Policy Advocates

By email to: MatthewDHardin@protonmail.com

Re: Appeal of Vermont Public Records Act Request

Dear Mr. Hardin:

I write in response to your email dated May 19, 2020. In that email you appealed a denial of access to public records pursuant to 1 V.S.A. § 318(c)(1) relating to your request of April 17, 2020, which sought the following records:

1. *all a) notices of, cancellations of, and/or invitations to participate in a “Multistate” call and/or “Coordination Call”, that b) were sent to Nick Persampieri, c) from Emma Borg and/or Steve Novick, that d) are dated October 22, 2019 through the date you process this request, inclusive; also*
2. *all electronic correspondence, and any accompanying information (see discussion of SEC Data Delivery Standards, infra), including also any attachments, a) sent to Nick Persampieri, b) from Emma Borg and/or Steve Novick, that c) is dated July 10, 11, or 12, 2019.*

Specifically, you appeal the denial of nine records under item 1 of your request and three records under item 2 of your request. With respect to these records, the Attorney General’s Office stated that the records “consist of communications among the Attorney General’s offices of multiple states, including Vermont, regarding issues of common interest, made in connection with anticipated litigation.” In your appeal, you asked that this Office further identify the “reasons and supporting facts for upholding the denial.” See 1 V.S.A. § 318(c)(2)(B).

The withheld records are emails and email threads including related attachments among Attorney General offices regarding litigation development in an area of common interest among the States. The records include discussion and sharing of legal strategy and related materials (e.g., links, articles) and planning about the subject matter of the common interest; a common interest agreement; and emails related to the common interest agreement.

These records are exempt from disclosure pursuant to 1 V.S.A. § 317(c)(4), which exempts from public inspection and copying “[r]ecords which, if made public pursuant to this subchapter, would cause the custodian to violate any statutory or common law privilege” The records are work-product because they were prepared in anticipation of litigation. They also reflect confidential attorney-client communications made for the purpose of facilitating legal services. They are protected under the common interest privilege as they were made in furtherance of the States’ shared interests and strategies.

Please be advised that any person aggrieved by the denial of a request for public records may apply to the Civil Division of the Superior Court pursuant to 1 V.S.A. § 319.

Sincerely,

/s/ Joshua R. Diamond
Joshua R. Diamond
Deputy Attorney General