

From: Diamond, Joshua <Joshua.Diamond@vermont.gov>
Sent: Thursday, March 11, 2021 7:59 PM
To: Neal Cornett <ncornettlaw@gmail.com>
Cc: Mishaan, Jessica <Jessica.Mishaan@vermont.gov>
Subject: RE: PRA Appeal

Dear Mr. Cornett,

I'm providing a revised response to your public records appeal referenced below. Recently, our office discovered five additional documents responsive to your original public records request. These additional records are also exempt from disclosure pursuant to 1 V.S.A. sec. 317(c)(4) as described more fully in the revised correspondence.

Regards, Josh Diamond

Joshua R. Diamond, Deputy Attorney General
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March 11, 2021

Neal Cornett
o/b/o Energy Policy Advocates
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BY EMAIL ONLY

Dear Mr. Cornett:

I write in response to your email dated February 8, 2021. 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 December 14, 2020, which sought “all common interest agreements, confidentiality agreements, information sharing agreements, and/or non-disclosure agreements addressing consumer protection, consumer fraud and/or failure to warn claims, and/or any possible legal actions about the same, which were entered into by the Vermont Attorney’s General Office at any time in 2019 or 2020.” The Attorney General’s Office declined to release records in response to this request on the ground that all responsive records would be exempt from disclosure pursuant to 1 V.S.A. § 317(c)(3), (4), and (14), the exemptions relating to professional ethical obligations, statutory and common law privileges, and pending litigation, respectively. In your appeal, you request that the Attorney General’s Office 1) identify the records it is withholding, 2) include the statutory basis for the denial of the request and supporting reasons, and 3) identify the person responsible for the denial of the request.¹ In response, the Attorney General’s Office will produce one set of documents that may be responsive to your request and has been filed publicly, and will otherwise provide further description of the records being withheld and the basis for that withholding.

Please find enclosed documents related to the Vermont Attorney General’s Office’s participation in an Acknowledgement and Agreement To Be Bound By Protective Order in the matter involving Purdue Pharma and Joint Motion to Adopt The Parties’ Proposed Protective Order in the matter involving Cardinal Health, Inc., and McKesson Corporation that may be responsive to your request.

¹ Your request also notes some concern as to whether the Deputy Attorney General should have been identified as the “head of the agency” to whom your appeal should be directed and asks that the Attorney General’s Office not deny the appeal as having been submitted to the wrong party. I can confirm your appeal was directed to the correct party.

The Attorney General's Office has withheld 24² potentially responsive records, the production of which was denied by Consumer Protection Division Chief Christopher Curtis. 15 of the withheld records are Common Interest Agreements the Attorney General's Office entered into with other State's Attorneys General to engage in joint investigations into the following subjects: data breaches and other consumer privacy matters (7); pharmaceutical matters (2); predatory lending claims (2); accounting services (2); tobacco issues (1); and product safety issues (1). 8 of the withheld records are Confidentiality Agreements agreed to with targets of investigations, investigations related to the following subjects: data breaches and other consumer privacy matters (5); pharmaceutical matters (2); and a product safety matter (1). The remaining document is an agreement with federal authorities related to access to confidential records into a consumer privacy matter (1). Note that none of these withheld records relate to environmental and/or energy policy.

The withheld documents all concern the sharing of information in anticipation of litigation and administrative proceedings arising out of consumer protection matters. 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 reflect confidential attorney-client communications made for the purpose of facilitating legal services. They are also work-product because they were prepared in anticipation of litigation. 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

Enclosures

² Note this paragraph has been amended to reflect 5 newly discovered documents since our initial appeal response on February 16th, 2021.