

COLORADO OPEN RECORDS ACT REQUEST

March 7, 2022

Office of General Counsel
Office of Legal Services
Colorado School of Mines
1500 Illinois Street
Golden, CO 80401

Via Fax: 303-273-3289, Email: Openrecordsrequests@mines.edu

Re: Certain correspondence and attachments, Morgan Bazilian

Dear Sir or Madam:

On behalf of Energy Policy Advocates, a non-profit public policy institute, and pursuant to the Colorado Open Records Act, C.R.S. § 24-72-201 to 206, I hereby request, within three working days, copies of *all electronic correspondence*, whether email, SMS, text, direct message or other instant message, Signal, WhatsApp, Telegram or otherwise, which was sent to or from (including copying, whether as cc: or bcc:) Morgan D. Bazilian, dated at any time during August 1, 2021 through October 4, 2021, inclusive, and which include, anywhere, whether to, from or copying, in the Subject field or body of an email “thread,” and/or in any attachment, one or more of the following: “Wall Street Journal”, op-ed, oped, and/or WSJ.

As CSM’s website states, “Morgan D. Bazilian is the Director of the Payne Institute and a Professor of public policy at the Colorado School of Mines,” and this request seeks records pertaining to such policy matters, the focus of Prof. Bazilian’s CSM employment. CSM touts Prof. Bazilian's recent Wall Street Journal oped on these topics on its website (<https://payneinstitute.mines.edu/news/>, last viewed October 4, 2021). On August 26, 2021, Mr. Brazilian published an oped with an outside activist in the Wall Street Journal as (and only as)

“the director of the Payne Institute and professor of public policy at the Colorado School of Mines.” These records are inarguably public records under the meaning of CORA.

We request entire “threads” of which any responsive electronic correspondence is a part, regardless whether any portion falls outside of the above time parameter.

To narrow this request, please consider as non-responsive electronic correspondence that merely receives or forwards newsletters or press summaries or ‘clippings’, such as news services or stories or opinion pieces, if that correspondence has no comment or no substantive comment added by a party other than the original sender in the thread (an electronic mail message that includes any expression of opinion or viewpoint would be considered as including substantive comment; examples of non-responsive emails would be those forwarding a news report or opinion piece with no comment or only “fyi”, or “interesting”). As such and for example, if Mr. Brazilian subscribes to the *Wall Street Journal* and/or has signed up for alerts, its update emails are non-responsive.

We note that in response to our October 4, 2021 request for other, related records, CSM wrongly withheld records on the basis of the Family Educational Rights and Privacy Act or FERPA. As you are aware, FERPA applies only to personally identifiable information contained in education records, institutional records that are preserved in the ordinary course of business by a single, central custodian. In a university context, registration forms and transcripts would be typical of such records. Personally identifiable student information is very limited. See, e.g., <https://www.mines.edu/compliance/ferpa-employees/>. We request the School not invoke FERPA which in our experience is in itself an obstructive response to records requests of this kind.

We also note that the School previously withheld all (other) records responsive to a related request dated before publication of the oped, on the grounds that they were deliberative, “details of bona fide research projects being conducted by a state institution.” We appreciate the acknowledgement that these are work-related records but note in advance that this, too, seems to be a questionable application of a CORA exemption.

As such, please also be informed EPA intends to protect and pursue its appellate remedies in response to this request and the School’s response.

Additionally, please inform us with any production of records whether any records have been withheld in full and the basis for any redactions or other withholdings. We also note that we had to ask for that information in followup correspondence despite having specified that the response indicate that basic factual information about the School’s response.

We understand that in some instances a public body may charge a fee for the cost of the search, examination, review, copying, separation of confidential from nonconfidential information, and mailing costs. If your Office expects to seek a charge associated with the searching, copying or production of these records, please provide an estimate of anticipated costs.

As noted earlier in this request, EPA is a non-profit public policy organization incorporated under the laws of Washington State and dedicated to informing the public of developments in the area of energy and environmental issues and relationships between governmental and non-governmental entities as they relate to those issues, recognized as a media organization for these purposes by, e.g., the federal government (see, e.g., Securities & Exchange Commission Requests No. 21-00769-FOIA, No. 21-01234-FOIA. EPA’s ability to obtain fee

waivers is essential to this work. EPA intends to use any responsive information to continue its work highlighting the nexus between interested non-governmental entities and government agency decision-making. The public is both interested in and entitled to know how regulatory, policy and enforcement decisions are reached. EPA ensures the public is made aware of its work and findings via media, its website epadvocates.org, as part of its mission to broadly disseminate energy and environmental policy news and developments. The public information obtained by EPA have been relied upon by established media outlets, including the Washington Times and Wall Street Journal editorial page.¹

Energy Policy Advocates requests records on your system, e.g., its backend logs, and does 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).

¹ See, e.g., EPA In the News at <http://epadvocates.org/news/>; see also, e.g., Stuart Parker, "Conservative Group Says States' Ozone Suit 'Trojan Horse' for GHG Limits," Inside EPA, February 24, 2021, and https://www.wsj.com/articles/bidens-backdoor-climate-plan-11616020338?mod=opinion_lead_pos1.

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

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 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.

We look forward to your response. If you have any questions, do not hesitate to contact me by email at schilling@allhookedup.com

Sincerely,
Rob Schilling
Executive Director
Energy Policy Advocates

A handwritten signature in black ink, appearing to be 'RS', written over a horizontal line that extends to the right.