

REQUEST UNDER THE FLORIDA PUBLIC RECORDS LAW

July 6, 2020

Michael Burke
Broward County Attorney's Office
115 S. Andrews Ave., Suite 423
Ft. Lauderdale, FL 33301

By Electronic Mail: mwburke@broward.org

Re: Certain Correspondence

Dear Mr. Burke:

On behalf of the public policy group Energy Policy Advocates (EPA), recognized by the Internal Revenue Service as a non-profit public policy institute under § 501(c)(3) of the Internal Revenue Code, and pursuant to Article I, section 24 of the Florida Constitution, and chapter 119, F.S., please provide copies of the following records:

1. copies of any notice sent from Mark A. Journey and/or Andrew Myers to or copying any party with an email address ending in @doj.ca.gov, providing notice of Broward's withdrawing from a purported confidentiality agreement and/or common interest agreement, that was sent any time from September 1, 2017, through today; and
2. all electronic correspondence, and any accompanying information (see discussion of SEC Data Delivery Standards, *infra*), including also any attachments, a) sent to or from or copying (whether as cc: or bcc:) Mark Journey and/or Andrew Myers, that b) provides or receives notice of any i) public records request or ii) public records lawsuit, or c) otherwise discusses or references any public records request or lawsuit, any of which requests or suits were d) submitted or filed by i) Matthew (or Matt) Hardin, ii) Neal Cornett, iii) Christopher (or Chris) Horner, and/or iv) Energy Policy Advocates, and c) is

dated from, December 1, 2017 through today, inclusive. Some but not necessarily all records responsive to this request will state that they have been sent pursuant to a common interest agreement.

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

Please consider as non-responsive electronic correspondence that merely receives or forwards newsletters or press summaries or ‘clippings’, such as news coverage, daily news summaries or newsletters (e.g., Politico’s “Morning Energy” and its ilk, if forwarded without comment is not responsive), 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. We consider an electronic mail message that includes any expression of opinion or viewpoint 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”.

Additionally, please consider all published or docketed materials, including pleadings, regulatory comments, ECF notices, news articles, and/or newsletters, as non-responsive, unless forwarded to or from the named persons with substantive commentary added by the sender.

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.

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.¹ 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 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.

¹ <https://www.sec.gov/divisions/enforce/datadeliverystandards.pdf>.

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 ncornettlaw@gmail.com.

Sincerely,
Neal Cornett
Attorney at Law