

WASHINGTON PUBLIC RECORDS ACT REQUEST

January 19, 2020

Randi Stratton, or
Senate Public Records
Officer Washington State
Senate
P.O. Box 40482
Olympia, WA 98504-0482

Via Electronic Mail: Senate.PublicRecords@leg.wa.gov
Re: Certain Correspondence

Dear Ms. Stratton or Records Officer:

On behalf of Energy Policy Advocates (EPA), a non-profit public policy institute incorporated in Washington, and pursuant to the Washington Public Record Act, RCW Chapter 42.56, I hereby request copies of all electronic correspondence, and any accompanying information (see discussion of SEC Data Delivery Standards, *infra*), including also any attachments, that a) was sent to or from or copying (whether as cc: or bcc:) i) David.Flasterstein@leg.wa.gov and/or ii) David.Hackney@leg.wa.gov, that b) includes, *anywhere*, whether in the sent, to, from, cc, bcc or Subject fields, or otherwise, including also in any attachments, body of an email or anywhere in an email “thread”, subject to narrowing noted below, i) Exxon, ii) Ferguson, and/or iii) accountable, and c) is dated from **November 18, 2021 through January 18, 2022**, inclusive.

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”).

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 staff with substantive commentary added by the sender.

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

As you process this request, please consider the requirements of RCW 42.56.100, which states “[i]f a public record request is made at a time which such record exists but is scheduled for destruction in the near future...the office of the secretary of the senate...shall retain possession of the record, and may not destroy or erase the record until the request is resolved.”

Pursuant to RCW Chapter 42.56.120, there is no charge for locating these documents, and we request all documents be released to us in electronic form, either via an email attachment or a CD. Given that, and that the statute clearly states that “charges shall not exceed the amount necessary to reimburse the agency...for its actual costs directly incident to such copying,” we expect the costs to be minimal. Nonetheless, in the interests of expediting the search and processing of this Request, we are prepared to reimburse up to \$100 for these records if necessary and justified. Should you anticipate the costs will exceed this limit, please contact us as soon as possible to explain and discuss additional steps.

As noted earlier in this request, EPA is a non-profit public policy organization 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. 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 broadly disseminating energy and environmental policy news and developments. The public information obtained by EPA and published on ClimateLitigationWatch.org have been relied upon by established media outlets, including the Washington Times and Wall StreetJournal editorial page.¹

The Washington Public Records Act is “a strongly-worded mandate for broad disclosure of public records.” *Rental Hous. Ass'n of Puget Sound v. City of Des Moines*, 165 Wn.2d 525, 535 (Wash. 2009). Exemptions are to be “narrowly construed” under RCW Chapter 42.56.030.

¹ See EPA In the News at <http://epadvocates.org/news/>, and, e.g., The Editorial Board, “State AGs’ Climate Cover-Up” Wall Street Journal, June 7, 2019, <https://www.wsj.com/articles/state-ags-climate-cover-up-11559945410>. Valerie Richardson, “Motivated or manipulated? Rise of youth climate activism fuels alarms over exploitation” Washington Times, March 15, 2019, <https://www.washingtontimes.com/news/2019/mar/13/youth-climate-strike-sparks-debate-use-students-pr/>, see also “Climate Strike Sparks Debate on Use of Students as Props”, https://www.realclearpolicy.com/2019/03/15/climate_strike_sparks_debate_on_use_of_students_as_props_41180.html. Valerie Richardson, “Democratic AGs team up with George Soros-funded group on anti-Trump lawsuit” Washington Times, August 1, 2019, <https://www.washingtontimes.com/news/2019/aug/1/george-soros-funded-group-democratic-ags-partner-a/>. Anthony Watts, “Emails reveals how children become pawns of climate alarmism”, Watts Up With That (two-time Science Website of the Year), March 13, 2019, <https://wattsupwiththat.com/2019/03/13/emails-reveal-how-children-become-pawns-of-climate-alarmism/>.

None of the exemptions under RCW Chapter 42.56 are likely to apply to the documents requested. However, should your Office believe that an exemption applies that allows withholding or redaction of any documents, we ask that you provide a detailed exemption log, listing which documents are withheld or redacted, pursuant to any exemption(s) claimed, and briefly describe the content of the document in general terms. We note a recent Washington State Appellate Court decision which held “When an agency claims an exemption under the PRA, it must provide identifying information that includes a brief explanation of how the statutory exemption applies to each specific record.” *Zink v. City of Mesa*, 162 Wn. App. 688, 723 (Wash. Ct. App. 2011).

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).

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.

A handwritten signature in black ink, appearing to read 'Rob Schilling', with a long horizontal flourish extending to the right.

Rob Schilling
Executive Director
Energy Policy Advocates