

REQUEST UNDER DISTRICT OF COLUMBIA FREEDOM OF INFORMATION ACT

April 10, 2019

Runako Kumbula Allsopp
FOIA Officer
Office of the Attorney of the District of Columbia
1350 Pennsylvania Avenue, NW, Suite 409
Washington, DC 20004

By Electronic Mail: runako.kumbula-allsopp@dc.gov
Re: Certain Correspondence

Dear Ms. Allsopp:

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) the Internal Revenue Code, and pursuant to the D.C. Freedom of Information Act, D.C. Code §§2-531-539, I request your Office provide copies of all correspondence connected with the transaction of public business that a) was sent to or from or copies (whether as cc: or bcc:) any non-official email account(s) for i) Natalie Ludaway, ii) Sarah Kogel-Smucker, iii) Elizabeth Wilkins, and/or iv) Robyn Bender, be it GMail or other that b) is also sent to or from or copies (whether as cc: or bcc:), i) djh466@nyu.edu, ii) [davidjhayes01@gmail.com](mailto: davidjhayes01@gmail.com), iii) david.hayes@nyu.edu, iv) ek3041@nyu.edu, and/or v) elizabeth.klein@nyu.edu, and is c) dated between July 1, 2018 and the date you process this request, inclusive.

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

Any records meeting this description are presumptively work-related by virtue of the parties involved. Specifically, Mr. David Hayes and Ms. Elizabeth (Liz) Klein are employees of an organization created for the purpose of working with state attorneys general offices. Further, these parties have a documented pattern of corresponding with office of attorneys general officials (including with attorneys general) on this specific, inherently work-related project of theirs by using AGs' and other officials' non-official email accounts. Communications made by a public employee acting in her capacity as a public employee are communications of the employee's agency, irrespective of whether such communications were associated with a personal email account. *See Vining v. District of Columbia* Docket No. 2013 CA 8189 B, Civil 2 Calendar #11.

We understand that 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, however, please provide an estimate of anticipated costs in the event that there are fees for processing this Request. Given EPA's non-profit and public interest nature and intention to broadly disseminate relevant findings, EPA requests a waiver or reduction of any applicable fees.

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*.

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

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.

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.

In responding to this request, please consider that D.C. Ann. Code §2-533(a)(1) requires that any denial be accompanied with “specific reasons for the detail, including citations to the particular exemption(s) under §2-534 relied on as authority for the denial”. Further D.C. Ann. Code § 2-534(b) requires that “any reasonably segregable portion of a public record shall be provided to any person requesting the record after deletion of those portions which may be withheld from disclosure pursuant to subsection (a) of this section”.

We look forward to your response and should you have any questions, feel free to reach me at MatthewDHardin@gmail.com.

Sincerely,

Matthew Hardin
Executive Director
Energy Policy Advocates