



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Kwame Raoul
ATTORNEY GENERAL

February 21, 2019

Via electronic mail

Mr. Matthew D. Hardin
Energy Policy Advocates
324 Logtrac Road
Stanardsville, Virginia 22973
MatthewDHardin@gmail.com

RE: FOIA Requests for Review – 2019 PAC 56591, 2019 PAC 56592

Dear Mr. Hardin:

The Office of the Attorney General, Public Access Bureau, has received the enclosed response to your Requests for Review from the Office of the Attorney General. Please note that certain information provided confidentially has been redacted pursuant to section 9.5(d) of FOIA¹ (5 ILCS 140/9.5(d) (West 2016)).

You may, but are not required to, reply in writing to the public body's enclosed response. If you choose to reply, you must submit your reply to this office within 7 business days of your receipt of this letter. 5 ILCS 140/9.5(d) (West 2016). Please send a copy of your reply to the Office of the Attorney General as well.

If you have any questions about this matter, please contact me at (312) 814-6756.

Very truly yours,

A handwritten signature in black ink, appearing to read "Steve Silverman", is written over a horizontal line.

STEVE SILVERMAN
Bureau Chief
Public Access Bureau

¹Section 9.5(d) requires the Public Access Counselor to send the requester a copy of the public body's response "with any alleged confidential information to which the request pertains redacted from the copy."

Mr. Matthew D. Hardin
February 21, 2019
Page 2

Cc: *Via electronic mail*
Ms. Caitlin Q. Knutte
Assistant Attorney General and Senior FOIA Officer
Office of the Attorney General
State of Illinois
100 West Randolph Street
Chicago, Illinois 60601
foiaofficer@atg.state.il.us



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

KWAME RAOUL
ATTORNEY GENERAL

February 20, 2019

VIA ELECTRONIC MAIL

Mr. Steve Silverman
Bureau Chief
Public Access Bureau
Office of the Illinois Attorney General
100 West Randolph Street
Chicago, Illinois 60601
SSilverman@atg.state.il.us

RE: FOIA Request for Review - 2019 PAC 56591 (2018 FOIA 056206); 2019
PAC 56592 (2018 FOIA 056258)

Dear Mr. Silverman:

I am in receipt of your further inquiry letter dated and received on February 7, 2019, wherein you request, pursuant to section 9.5(c) of the Freedom of Information Act (FOIA) (5 ILCS 140/9.5(c) (West 2016)), a written response to Matthew Hardin's allegations that the Office of the Illinois Attorney General improperly withheld records pursuant to section 7(1)(f) of FOIA (5 ILCS 140/7(1)(f) (West 2017 Supp.)) in response to his two FOIA requests. Specifically, you have requested unredacted copies of the records that were withheld with respect to each of the FOIA responses in question and a detailed explanation of the factual and legal bases for the applicability of the section 7(1)(f) exemption asserted by this office in each of the responses. Mr. Hardin's requests for review relate to two Freedom of Information request files of this office, file No. 2018 FOIA 056206 and file No. 2018 FOIA 056258.

With respect to file No. 2018 FOIA 056206, a FOIA request that was submitted to and received by this office on December 20, 2018, Mr. Hardin requested the following:

[(1)] [A]ll electronic or hard-copy correspondence as described below and *its accompanying information, including also any attachments:*

- a) sent to or from (including also copying, whether as cc: or bcc:) James Gignac, Matthew Dunn, and/or Jason James, which also



Steve Silverman
February 20, 2019
Page 2

- b) contain *any* of the following, anywhere in the correspondence of which it is a part, whether in the To or From, cc: and/or bcc: fields, the Subject field, and/or the email body or body of the thread or in any attachment thereto: i) SherEdling, ii) Sher Edling, iii) DAGA, iv) @democraticags.org, v) alama@naag.org, and/or vi) Mike.Firestone@state.ma.us.

There terms are not case sensitive.

Records responsive to this request will be dated from **July 1, 2018** through the date you process this request. We request the entire thread in which any email responsive to the above description appears regardless of if portions of the thread (s) pre-date **2018**. (Bold and italics in original.)

This office provided its final response to file No. 2018 FOIA 056206 on January 7, 2019. We advised Mr. Hardin that we located no records related to James Gignac, and we denied the remainder of his request pursuant to sections 7(1)(a) and 7(1)(f) of FOIA. 5 ILCS 140/7(1)(a), (f) (West 2017 Supp.). It is my understanding that Mr. Hardin has not challenged this office's withholding of records with respect to section 7(1)(a) of FOIA.

Mr. Hardin has also challenged this office's response with respect to file No. 2018 FOIA 056258, a FOIA request that was submitted to and received by this office on December 28, 2018, wherein Mr. Hardin requested the following:

[(1)] [A]l electronic or hard-copy correspondence as described below and *its accompanying information, including also any attachments:*

- a) sent to or from (including also copying, whether as cc: or bcc:) **James Gignac, Matthew Dunn, and/or Jason James, which also**
- b) contain *any* of the following, anywhere in the correspondence of which it is a part, whether in the To or From, cc: and/or bcc: fields, the Subject field, and/or the email body or body of the thread or in any attachment thereto: i) @Googlegroups.com, ii) "Google doc" (including also in "Google Docs"[]), iii) Dropbox, iv) box.com (including as used in any url containing box.com), and/or v) SharePoint.

Steve Silverman
February 20, 2019
Page 3

There terms are not case sensitive.

Records responsive to this request will be dated from **July 1, 2018** through the date you process this request. We request the entire thread in which any email responsive to the above description appears regardless if portions of the thread (s) pre-date **2018**. (Bold, italics, and underscore in original.)

This office provided its final response to file No. 2018 FOIA 056258 on January 14, 2019. We advised Mr. Hardin that we located no records related to James Gignac, and we denied the remainder of his request pursuant to section 7(1)(f) of FOIA. 5 ILCS 140/7(1)(f) (West 2017 Supp.).

James Gignac's E-mails

As an initial matter, with regard to Mr. Hardin's question about why this office advised him that it possessed no responsive records related to James Gignac for either of Mr. Hardin's FOIA requests, please be advised that Mr. Gignac concluded his employment with the Office of the Illinois Attorney General on March 9, 2018. Accordingly, Mr. Gignac did not send or receive any e-mails after that date, including on or after July 1, 2018, the date identified by Mr. Hardin in his FOIA request as establishing the parameters for responsive records.

Withheld Records - File No. 2018 FOIA 056206

Turning to the applicability of section 7(1)(f) of FOIA to the records in question in file No. 2018 FOIA 056206, section 7(1)(f) exempts from disclosure "[p]reliminary drafts, notes, recommendations, memoranda, and other records in which opinions are expressed, or policies or actions are formulated[.]" "Courts have extended section 7(1)(f) to communications *between government agencies* * * * whose analyses and recommendations 'played essentially the same part in an agency's process of deliberation as documents prepared by agency personnel might have done.'" (Emphasis added.) Ill. Att'y Gen. PAC Req. Rev. Ltr. 19002, issued May 23, 2012, citing *Harwood v. McDonough*, 344 Ill. App. 3d 242, 248 (2003), quoting *Department of the Interior v. Klamath Water Users Protective Ass'n*, 532 U.S. 1, 10, 121 S. Ct. 1060, 1067 (2001).

Specifically, in the response to file No. 2018 FOIA 056206, this office withheld three e-mail exchanges between the personnel of this office and the personnel of other government agencies, who had a common interest in and discussions regarding potential courses of action related to certain environmentally related legal and legislative matters under the group's review. Additionally, one of the three e-mails also includes an internal exchange among the staff

Steve Silverman
February 20, 2019
Page 4

of this office that discusses this office's position with regard to a legal matter addressed by the group. Finally, this office withheld draft documents attached to the e-mails and draft text included within the e-mails exchanged among the staff of this office and the other government agencies. All of the withheld records constitute communications among government agency personnel related to the consideration of possible courses of action to be taken with respect to particular legal and legislative matters of common interest to the group.

Withheld Records - File No. 2018 FOIA 056258

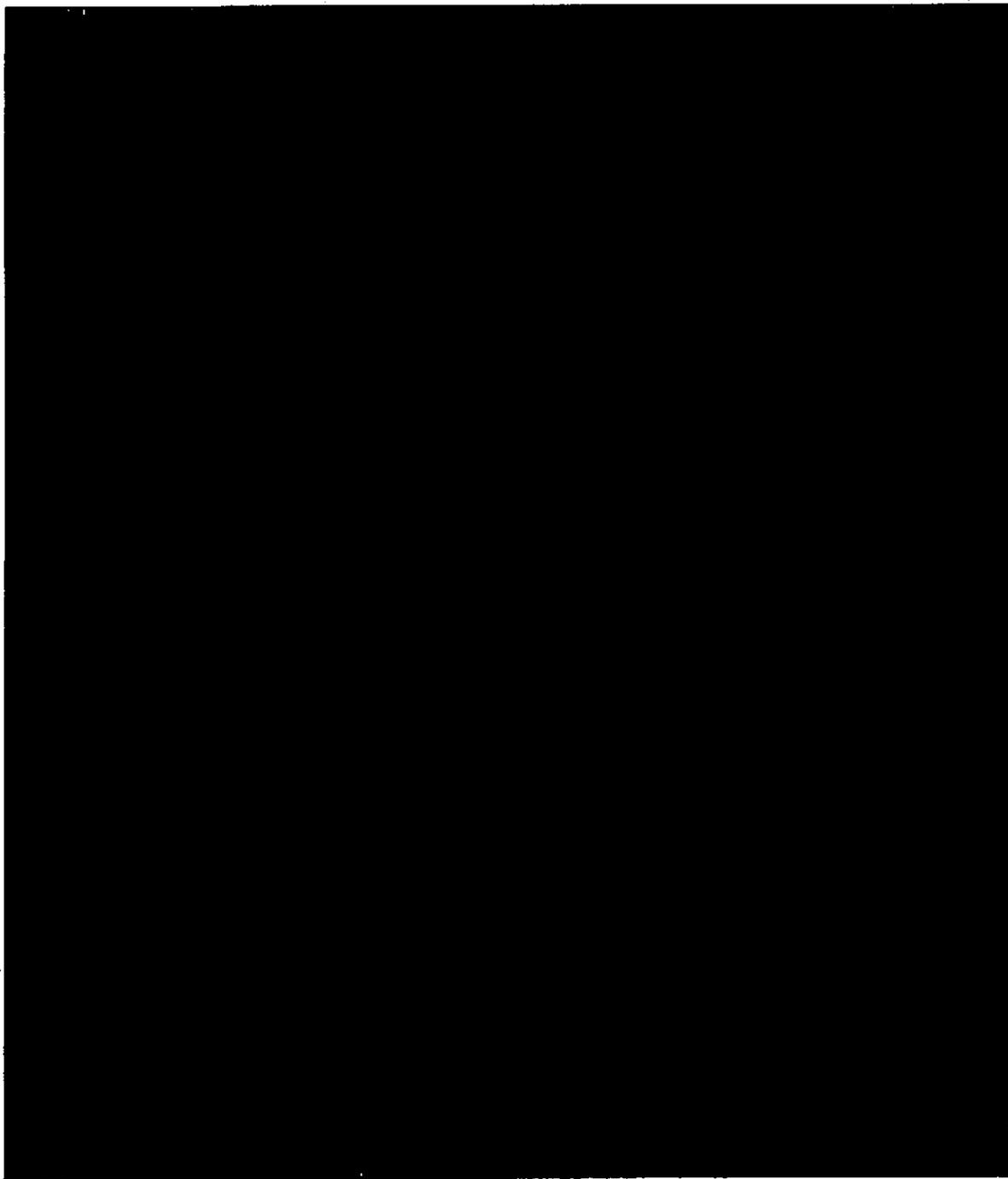
Similarly, file No. 2018 FOIA 056258 also included redactions undertaken pursuant to section 7(1)(f) of FOIA. As previously noted, section 7(1)(f) exempts from disclosure "[p]reliminary drafts, notes, recommendations, memoranda, and other records in which opinions are expressed, or policies or actions are formulated[.]" "Courts have extended section 7(1)(f) to communications *between government agencies* * * * whose analyses and recommendations played essentially the same part in an agency's process of deliberation as documents prepared by agency personnel might have done." (Emphasis added.) Ill. Att'y Gen. PAC Req. Rev. Ltr. 19002, issued May 23, 2012, citing *Harwood v. McDonough*, 344 Ill. App. 3d 242, 248 (2003), quoting *Department of the Interior v. Klamath Water Users Protective Ass'n*, 532 U.S. 1, 10, 121 S. Ct. 1060, 1067 (2001).

Specifically, in response to file No. 2018 FOIA 056258, this office withheld ten e-mail exchanges circulated among the personnel of this office and the personnel of other government agencies, who had a common interest in and discussions regarding potential courses of action related to certain environmentally related legal matters under the group's review and one e-mail that was received but to which no response was sent. The e-mails include information regarding legal research undertaken by the various participating government agencies, as well as suggestions for additional research to be undertaken. Further, the e-mails set out proposed courses of action for addressing identified legal issues. Additionally, three of the ten exchanges also include an internal e-mail exchange of the staff of this office related to legal research that was being undertaken by this office and how it relates to the issues being reviewed by the other members of the group. Finally, this office withheld draft documents and legal research attached to the e-mails exchanged among the staff of this office and the other government agencies.

CONFIDENTIAL ANALYSIS - File No. 2018 FOIA 056258



Steve Silverman
February 20, 2019
Page 5



Steve Silverman
February 20, 2019
Page 6

END OF CONFIDENTIAL ANALYSIS

The records withheld are exempt under the rationale that public bodies must be able to evaluate information internally, as well as with other government agencies that may similarly be affected by the information, to explore possible courses of action confidentially before making final determinations that should be shared with the public. See Ill. Att'y Gen. PAC Req. Rev. Ltr. 19002, issued May 23, 2012; *McDonough*, 344 Ill. App. 3d at 247 ("as a matter of public policy, section 7(1)(f) exempts from disclosure predecisional materials used by a public body in its deliberative process"). Disclosing these e-mails would disclose this office's and other government agencies' legal theories and attorney mental impressions of those legal theories. Accordingly, the records responsive to Mr. Hardin's requests are exempt from disclosure under section 7(1)(f).

Per your request, I have attached unredacted copies of the records in question for your review. The attached records contain confidential information pursuant to section 7(1)(f) of FOIA and are not to be provided by the Public Access Bureau to the requester. Should you have any questions or require any additional information, please contact me at (312) 814-1493.

Very truly yours,

Caaitlin Q. Knutte (CQK)

CAITLIN Q. KNUTTE
Assistant Attorney General
Senior FOIA Officer

CQK:ga

Attachments