

REQUEST UNDER THE MASSACHUSETTS PUBLIC RECORDS ACT

January 22, 2019

Lorraine A.G. Tarrow
Records Access Officer
Office of the Attorney General
One Ashburton Place, 18th Floor
Boston, MA 02108

By Electronic Mail: agorecordsaccessofficer@state.ma.us

RE: Certain agreements with outside counsel or other parties

To Whom it May Concern:

On behalf of Energy Policy Advocates (“EPA”), a Washington nonprofit corporation recognized as a 501(c)3 by the Internal Revenue Service and with an interest in governmental transparency, pursuant to the Massachusetts Public Records Act (M. G. L. § 66-10 *et seq.*), we request that your custodian of records provide us within the statutorily prescribed time copies of any Common Interest Agreement, retainer agreement, engagement agreements, and/or fee agreements, entered at any time in 2016, 2017 and/or 2018 with, or otherwise including as a party, any law firm that includes in its name: a) Edling, b) Hagens, c) Pawa, and/or d) Bordas.

We make this request confident that the OAG maintains such agreements in a discrete location and the search should not require appreciable time or other resources.

We make this request aware of the requirement that covered agencies shall release any segregable portion of a responsive record, and shall identify any records, categories of records or portions of records that the agency or municipality intends to withhold, and provide the specific reasons for such withholding.

The records responsive to this request should be in or readily convertible to electronic format, and therefore there should be little or no photocopying costs. If there is any cost associated with the searching, copying or production of these records, however, please also notify us in writing immediately consistent with the Public Records Act.

We request records on your system, e.g., its backend logs, and do *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.

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

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 if there are different custodians of the information requested.

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 the context of our experience with responsive agencies taking the effort to physically print, then (often, poorly) scan electronic mail into (typically, non-searchable) PDF files, we note that production of electronic records necessitates no such additional time, effort or other resources, and no photocopying expense. Any such effort as described is most reasonably viewed as an effort to frustrate the requester's use of the public information.

If you have any questions, or would like to discuss this matter further, do not hesitate to contact me by email. We look forward to your timely response.

Regards,

A handwritten signature in black ink, appearing to read "M. O. Gordon". The signature is written in a cursive, somewhat stylized font.

Matthew D. Hardin
Executive Director
Energy Policy Advocates