
REQUEST UNDER THE MINNESOTA DATA PRACTICES ACT

December 20, 2018

Lori Swanson, Esq.
or Public Records Officer
Minnesota Attorney General
1400 Bremer Tower
445 Minnesota Street
St. Paul, MN 55101

VIA EMAIL: attorney.General@ag.state.mn.us

RE: Certain OAG correspondence

To Whom It May Concern:

On behalf of Energy Policy Advocates, a non-profit public policy institute incorporated in Washington state, and pursuant to Minnesota Data Practices Act, Minn. Stat. Chapter 13, I request copies of all electronic or hard-copy correspondence as described below, and its *accompanying information*,¹ including also any attachments:

- a) sent to or from **Karen Olson** (including also copying, whether as cc: or bcc:), 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) SherEdling, ii) Sher Edling, iii) DAGA, iv) @democraticags.org, v) alama@naag.org, and/or vi) Mike.Firestone@state.ma.us.

These 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**.

This request contemplates such information sent or received on official as well as non-official email addresses used at any time for work-related purposes, text and other instant messaging on any phone or device used at any time for work-related correspondence.

Please consider as responsive entire email “threads” containing any information responsive to this request, regardless whether any part of that thread falls outside the cited search parameters.

¹ See discussion of SEC Data Delivery Standards, *infra*.

Given the nature of the records responsive to this request, all should be in electronic format, and therefore there should be no photocopying costs. If there is any cost associated with the searching, copying or production of these records, however, please also notify me in writing immediately. Please provide an estimate of anticipated costs in the event that there are fees for processing this Request.

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).

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.

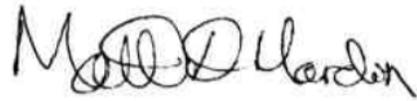
Native file productions may be produced without load files. However, native file productions must maintain the integrity of the original meta data, and must be produced as they are maintained in the normal course of business and organized by custodian-named file folders. A separate folder should be provided 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 timely response within a reasonable time, as required by law. If you have any questions, or would like to discuss this matter further, do not hesitate to contact me by email at MatthewDHardin@gmail.com. I look forward to your timely response.

² <https://www.sec.gov/divisions/enforce/datadeliverystandards.pdf>.

Sincerely,

A handwritten signature in black ink that reads "Matthew D. Hardin". The signature is written in a cursive style with some loops and flourishes.

Matthew D. Hardin

Executive Director, Energy Policy Advocates



EXHIBIT B

STATE OF MINNESOTA

OFFICE OF THE ATTORNEY GENERAL

January 4, 2019

SUITE 900
445 MINNESOTA STREET
ST. PAUL, MN 55101-2127
TELEPHONE: (651) 297-1075

Mr. Matthew D. Hardin, Executive Director
Energy Policy Advocates
c/o Registered Agents Inc.
170 S. Lincoln, Ste. 150
Spokane, WA 99201

Dear Mr. Hardin:

I write in response to your correspondence dated December 20, 2018, in which you request that this Office provide you with “copies of all electronic or hard-copy correspondence as described below, and its *accompanying information, including also any attachments:*”

- a) sent to or from **Karen Olson** (including also copying, whether as cc: or bcc:) 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) SherEdling, ii) Sher Edling, iii) DAGA, iv) @democraticags.org, v) alama@naag.org, and/or vi) Mike.Firestone@state.ma.us.

This Office is obligated to make available “Government data” classified as “public” pursuant to the Minnesota Government Data Practices Act (“MGDPA”). *See* Minn. Stat. § 13.01 *et seq.* The MGDPA defines “Government data” as “all data collected, created, received, maintained or disseminated by any government entity regardless of its physical form, storage media or conditions of use.” Minn. Stat. § 13.02, subd. 7. Not all government data maintained by this Office is public, however, as explained below.

“Data collected by a government entity as part of an active investigation undertaken for the purpose of the commencement or defense of a pending civil legal action, or which are retained in anticipation of a pending civil legal action, are classified as protected nonpublic data ... in the case of data not on individuals ... and confidential ... in the case of data on individuals.” Minn. Stat. § 13.39, subd. 2(a). The MGDPA defines “protected nonpublic data” as “data not on individuals made by statute or federal law applicable to the data (a) not public and (b) not accessible to the subject of the data.” Minn. Stat. § 13.02, subd. 13. “Confidential data on individuals” is defined as “data made not public by statute or federal law applicable to the data and are inaccessible to the individual subject of those data.” *Id.* at subd. 3.

Mr. Matthew D. Hardin, Executive Director
Energy Policy Advocates
January 4, 2019
Page 2

In addition, this Office provides legal services to various state agencies. Minnesota Statutes section 13.393 provides that “dissemination of data by an attorney acting in a professional capacity for a government entity shall be governed by statutes, rules, and professional standards” generally applicable to attorneys. Thus, documents, information, or communications protected by the attorney-client privilege or attorney work product doctrine are not publicly available under the MGDPA. *See, e.g.*, Minn. Stat. § 595.02(b) (attorney-client privilege); Minn. R. Prof. Conduct 1.6 (attorney-client privilege); *Brown v. Saint Paul City Ry. Co.*, 62 N.W.2d 688, 700 (Minn. 1954) (describing attorney-client privilege); *Kobluk v. Univ. of Minn.*, 574 N.W.2d 436, 440 (Minn. 1998) (quotations omitted) (recognizing the purpose of the attorney-client privilege “is to encourage the client to confide openly and fully in his attorney without fear that the communications will be divulged and to enable the attorney to act more effectively on behalf of his client.”)

Accordingly, this Office’s communications are subject to a number of legal privileges, including the attorney work product, the attorney-client, and the deliberative process privileges. *See, e.g.*, Minn. Stat. § 595.02, subd. 1(b) & Minn. R. Evid. 501. Such communications are further subject to the common interest doctrine, which provides an exception to the general rule that the attorney-client privilege is waived when privileged information is disclosed to a third party. *In re Grand Jury Subpoena Duces Tecum*, 112 F.3d 910, 922 (8th Cir. 1997) (if two or more entities with a common interest, whether it be legal, factual or strategic, are represented by counsel and agree to share information in a matter, privileged matters will retain that privilege as to outside parties); *see also, e.g., Cohen v. Beachside Two-I Homeowners’ Ass’n*, No. CIV. 05-706 ADM/JS, 2006 WL 1795140, at *5-6 (D. Minn. June 29, 2006); *cf. State ex rel. Humphrey v. Philip Morris Inc.*, 606 N.W.2d 676, 682 n.2 (Minn. Ct. App. 2000).

This Office has no documents sent to or from Karen Olson and containing the search terms “DAGA,” “@democraticags.org,” or “alama@naag.org” responsive to your MGDPA request. With regard to the remainder of your MGDPA request, this Office has no public data that is responsive.

I thank you again for your letter. If you have any questions, please do not hesitate to contact me.

Sincerely,



MAX KIELEY
Assistant Attorney General

(651) 757-1244 (Voice)
(651) 297-4139 (Fax)

**REQUEST UNDER THE MINNESOTA DATA PRACTICES ACT**

December 26, 2018

Lori Swanson, Esq.
or Public Records Officer
Minnesota Attorney General
1400 Bremer Tower
445 Minnesota Street
St. Paul, MN 55101

VIA EMAIL: attorney.General@ag.state.mn.us

RE: Certain OAG correspondence

To Whom It May Concern:

On behalf of Energy Policy Advocates (EPA), a non-profit public policy institute incorporated in Washington state, and pursuant to Minnesota Data Practices Act, Minn. Stat. Chapter 13, I request copies of all electronic or hard-copy correspondence as described below, and its *accompanying information*,¹ including also any attachments:

- a) sent to or from **Karen Olson** (including also copying, whether as cc: or bcc:), 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) @ucsusa.org, iv) Dropbox, v) box.com (including as used in any url containing box.com), and/or vi) SharePoint.

These terms are not case sensitive.

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¹ See discussion of SEC Data Delivery Standards, *infra*.

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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).

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² <https://www.sec.gov/divisions/enforce/datadeliverystandards.pdf>.

We look forward to your timely response within a reasonable time, as required by law. If you have any questions, or would like to discuss this matter further, do not hesitate to contact me by email. I look forward to your timely response.

Sincerely,

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Matthew D. Hardin
Executive Director
Energy Policy Advocates



EXHIBIT D

STATE OF MINNESOTA

OFFICE OF THE ATTORNEY GENERAL

January 4, 2019

SUITE 900
445 MINNESOTA STREET
ST. PAUL, MN 55101-2127
TELEPHONE: (651) 297-1075

Mr. Matthew D. Hardin, Executive Director
Energy Policy Advocates
c/o Registered Agents Inc.
170 S. Lincoln, Ste. 150
Spokane, WA 99201

Dear Mr. Hardin:

I write in response to your correspondence dated December 26, 2018, in which you request that this Office provide you with "copies of all electronic or hard-copy correspondence as described below, and its *accompanying information, including also any attachments:*"

- a) sent to or from **Karen Olson** (including also copying, whether as cc: or bcc:), 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) @ucsusa.org, iv) Dropbox, v) box.com (including as used in any url containing box.com), and/or vi) SharePoint.

This Office is obligated to make available "Government data" classified as "public" pursuant to the Minnesota Government Data Practices Act ("MGDPA"). *See* Minn. Stat. § 13.01 *et seq.* The MGDPA defines "Government data" as "all data collected, created, received, maintained or disseminated by any government entity regardless of its physical form, storage media or conditions of use." Minn. Stat. § 13.02, subd. 7. Not all government data maintained by this Office is public, however, as explained below.

"Data collected by a government entity as part of an active investigation undertaken for the purpose of the commencement or defense of a pending civil legal action, or which are retained in anticipation of a pending civil legal action, are classified as protected nonpublic data ... in the case of data not on individuals ... and confidential ... in the case of data on individuals." Minn. Stat. § 13.39, subd. 2(a). The MGDPA defines "protected nonpublic data" as "data not on individuals made by statute or federal law applicable to the data (a) not public and (b) not accessible to the subject of the data." Minn. Stat. § 13.02, subd. 13. "Confidential data on individuals" is defined as "data made not public by statute or federal law applicable to the data and are inaccessible to the individual subject of those data." *Id.* at subd. 3.

Mr. Matthew D. Hardin, Executive Director
Energy Policy Advocates
January 4, 2019
Page 2

In addition, this Office provides legal services to various state agencies. Minnesota Statutes section 13.393 provides that “dissemination of data by an attorney acting in a professional capacity for a government entity shall be governed by statutes, rules, and professional standards” generally applicable to attorneys. Thus, documents, information, or communications protected by the attorney-client privilege or attorney work product doctrine are not publicly available under the MGDPA. *See, e.g.*, Minn. Stat. § 595.02(b) (attorney-client privilege); Minn. R. Prof. Conduct 1.6 (attorney-client privilege); *Brown v. Saint Paul City Ry. Co.*, 62 N.W.2d 688, 700 (Minn. 1954) (describing attorney-client privilege); *Kobluk v. Univ. of Minn.*, 574 N.W.2d 436, 440 (Minn. 1998) (quotations omitted) (recognizing the purpose of the attorney-client privilege “is to encourage the client to confide openly and fully in his attorney without fear that the communications will be divulged and to enable the attorney to act more effectively on behalf of his client.”)

Accordingly, this Office’s communications are subject to a number of legal privileges, including the attorney work product, the attorney-client, and the deliberative process privileges. *See, e.g.*, Minn. Stat. § 595.02, subd. 1(b) & Minn. R. Evid. 501. Such communications are further subject to the common interest doctrine, which provides an exception to the general rule that the attorney-client privilege is waived when privileged information is disclosed to a third party. *In re Grand Jury Subpoena Duces Tecum*, 112 F.3d 910, 922 (8th Cir. 1997) (if two or more entities with a common interest, whether it be legal, factual or strategic, are represented by counsel and agree to share information in a matter, privileged matters will retain that privilege as to outside parties); *see also, e.g., Cohen v. Beachside Two-I Homeowners’ Ass’n*, No. CIV. 05-706 ADM/JS, 2006 WL 1795140, at *5-6 (D. Minn. June 29, 2006); *cf. State ex rel. Humphrey v. Philip Morris Inc.*, 606 N.W.2d 676, 682 n.2 (Minn. Ct. App. 2000).

Based on your organization’s website and the text of your request, this Office interpreted your correspondence as seeking documents solely related to energy and environmental issues. *See, e.g., <http://epadvocates.org>* (“Energy Policy Advocates . . . seek[s] to bring transparency to the realm of energy and environmental policy”) (last accessed January 4, 2019). Assuming this Office correctly interpreted your MGDPA request, we have no responsive government data. In the event you intended to seek government data related to subjects other than energy and environmental issues, this Office nevertheless has no public data responsive to your request.

I thank you again for your letter. If you have any questions, please do not hesitate to contact me.

Sincerely,



MAX KIELEY
Assistant Attorney General

(651) 757-1244 (Voice)
(651) 297-4139 (Fax)

EXHIBIT E

REQUEST UNDER MINNESOTA GOVERNMENT DATA PRACTICES ACT

February 8, 2019

Keith Ellison, Esq.
or Public Records Officer
Office of Minnesota Attorney General
445 Minnesota St.
Suite 1400
St. Paul, MN 55101-2131

BY ELECTRONIC MAIL: Attorney.General@ag.state.mn.us
RE: Certain records regarding special assistant attorneys general

Dear Sir or Madam:

On behalf of Energy Policy Advocates, recognized by the Internal Revenue Service as a non-profit public policy institute under § 501(c)(3) the Internal Revenue Code, pursuant to Minnesota Statutes, Chapter 13, the Minnesota Government Data Practices Act please provide us as soon as practicable, copies of the following records, and their *accompanying information*,¹ including also any attachments.:

- I. all opinions, analyses and/or or determinations concluding that a) your Office has the legal authority to hire or otherwise bring into the Office, under any title whether Special Assistant Attorney General, Special Counsel, or otherwise, an NYU Fellow²; b) a Special Assistant Attorney General/Counsel, or anything else offered or provided by NYU, does or does not constitute an impermissible gift under applicable law, code or regulation; and/or that c) a Special Assistant

¹ See discussion of SEC Data Delivery Standards, *infra*.

² By NYU we refer to a New York University School of Law fellow, which has been offered, among other inducements, to OAG through the State Energy & Environmental Impact Center”.

Attorney General/Counsel, or anything else provided by NYU, does or does not comply with or violate applicable ethics, professional conduct or anti-corruption law, code or regulation. Records responsive to this request will have been dated from August 25, 2017 through the present, inclusive; also,

- II. all correspondence i) sent to, from, or copying (whether as cc: or bcc:) a) Max Kieley, b) Nur Ibrahim, and/or c) Karen Olson, that ii) includes, anywhere, “NYU”, be it in an email address (e.g., @nyu.edu), Subject field, body of an email or any attachments. Records responsive to this request will have been dated from November 6, 2018 through the present, inclusive.

These terms are not case sensitive.

Please provide records in electronic format and to the email used to transmit this request. Please consider as responsive entire email “threads” containing any information responsive to this request, regardless whether any part of that thread falls outside the cited search parameters.

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 according to the fee schedule permitted by Minn. Stat. § 13.03. Given the nature of the records responsive to this request, all should be in electronic format, and there should be no photocopying 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.

EPA 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 Standards³**. 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.

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

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Matthew D. Hardin
Executive Director
Energy Policy Advocates

EXHIBIT F

REQUEST UNDER MINNESOTA GOVERNMENT DATA PRACTICES ACT

February 21, 2019

Keith Ellison, Esq.
Or Responsible Authority
Office of the Attorney General
445 Minnesota St.
Suite 1400
St. Paul, MN 55101-2131

By Electronic Mail: Attorney.General@ag.state.mn.us

Dear Sir or Madam:

Pursuant to Minnesota Statutes, Chapter 13, Minnesota Government Data Practices Act, on behalf of the public policy group Energy Policy Advocates (EPA), I request your Office provide us copies of: any Common Interest Agreement, contingency fee or other fee agreement, and/or and any retainer agreement and/or engagement agreements, entered into by your Office at any time in 2018 and/or 2019 with, or otherwise including as a party, a) Union of Concerned Scientists, and/ or b) any law firm or other entity that includes in its name: i) Edling and/or ii) Earth.

We make this request confident that the OAG maintains such agreements together in a discrete location and the search should not require appreciable time or other resources. For electronic records, there should be no photocopying costs. If there is any cost associated with the searching, copying or production of these records, however, please also notify me in writing promptly. Please provide an estimate of anticipated costs in the event that there are fees for processing this Request.

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We look forward to your timely response within a reasonable time, as required by law. If you have any questions, or would like to discuss this matter further, do not hesitate to contact me by email at MatthewDHardin@gmail.com. I look forward to your timely response.

Sincerely,

Matthew D. Hardin
Executive Director
Energy Policy Advocates