



STATE OF NEW YORK
OFFICE OF THE ATTORNEY GENERAL

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June 15, 2016

via e-mail: hans.bader@cei.org

Mr. Hans Bader
Competitive Enterprise Institute
1899 L Street, NW, #1200
Washington, DC 20036

RE: Freedom of Information Law (FOIL) Request #160290

Dear Mr. Bader:

This letter responds to your correspondence dated May 5, 2016, which, pursuant to the FOIL, requested the following:

“[O]n behalf of the Competitive Enterprise Institute (CEI), please provide us within five (5) business days copies of any and all records as described herein. CEI is a non-profit public policy institute organized under section 501(c)3 of the tax code with research, legal, investigative journalism and publication functions, as well as a transparency initiative seeking public records relating to environmental and energy policy and how policymakers use public resources, all of which include broad dissemination of public information obtained under open records and freedom of information laws.

Please provide us copies of any Common Interest Agreement(s) entered into by the Office of Attorney General and which are signed by, mention or otherwise include any of the following: John Passacantando, Kert Davies, the Eco-Accountability Project, Matt Pawa, the Pawa Law Group, the Center for International Environmental Law, the Climate Accountability Institute, or the attorney general for any other U.S. state or territory.

Responsive records will be dated over the approximately four-month period from January 1, 2015 through the date you process this request, inclusive.

We request responsive records in electronic format.

The already tightly narrowed nature of this request notwithstanding, if you have information to help further narrow this request please feel free to contact the undersigned.

We request a rolling production, with responsive records being processed and produced independent of any others, as no such production is dependent upon other records being released.

We do not seek duplicates of responsive records.

While we request that the limited fees allowed by statute be waived, we nevertheless agree to pay legitimate expenses up to \$150.00. If you estimate costs will exceed that please notify us and break down the expected costs.

We request records in electronic form if available. By the nature of this request most responsive records should be in electronic format, necessitating no photocopying expense.

We not seek the information for a commercial purpose. CEI is organized and recognized by the Internal Revenue Service as a 501(c)3 educational organization. As such, we also have no commercial interest possible in these records.

CEI is also a media outlet for these purposes, as acknowledged by several federal agencies in applying the Freedom of Information Act: it not only serves as a regular source of public information and substantive editorial comment about this information to numerous national (and/or local) media outlets but also applies substantive editorial input in its own publications disseminating public information.

In addition to coverage of its FOIAs in print publications, CEI regularly disseminates its findings on broadcast media.

CEI is also regularly cited in newspapers and trade publications for their open records efforts.

The requested information is of critical importance to the nonprofit policy advocacy groups engaged on these relevant issues, news media covering the issues, and others concerned with government activities on the critical subject of attorneys general and working with private activists to initiate investigation under color of state law of political speech in opposition to the 'climate' policy agenda.

Given its non-profit transparency and journalism activities, we ask that any fees permitted by FOIL be waived.

We will treat a failure to substantively respond within the statutory period a denial of our request, consistent with FOIL.

We repeat our request for a rolling production of records, such that the State should furnish records electronically to the undersigned as soon as they are identified, on a rolling basis if necessary, and any hard copies to 1899 L Street #1200, Washington, DC 20036.

If you have any questions please do not hesitate to contact me.”

On May 10, 2016, we received the following revision to your request:

“[T]here was a typo in our May 5 Freedom of Information Law (FOIL) request. The roughly four-month period specified in the public records request was intended to be in 2016, not 2015. The reference to 2015 in the following sentence was a typo (as the reference to ‘through the date you process this request’ shows):

Responsive records will be dated over the approximately four-month period from January 1, 2015 through the date you process this request, inclusive.

The words ‘January 1, 2015’ should read ‘January 1, 2016.’

The typo has been corrected in the attached PDF file containing the public records request.”

The Office of the Attorney General has conducted a diligent search for the records that you have requested.

Please be advised that the records responsive to your request are exempt from disclosure and have been withheld for one or more of the following reasons:

- pursuant to Public Officers Law § 87(2)(a), which provides that records that are exempt from disclosure by state or federal statute are exempt from disclosure under FOIL. Records responsive to your request constitute:
 - confidential communication made between attorney and client, which is exempt from disclosure under Civil Practice Law and Rules § 4503(a); or
 - attorney work product, which is exempt from disclosure under Civil Practice Law and Rules § 3101(c);
- pursuant to New York Public Officers Law § 87(2)(e), because the documents requested were compiled for law-enforcement purposes and would, if disclosed,

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interfere with law-enforcement investigations or judicial proceedings; and

- pursuant to Public Officers Law § 87(2)(g), because the records are inter-agency or intra-agency materials.

You have a right to appeal the foregoing decision. If you should elect to file such an appeal, your written appeal must be submitted, within 30 days, to Kathryn Sheingold, Records Appeals Officer, State of New York, Office of the Attorney General, Division of Appeals and Opinions, The Capitol, Albany, New York 12224. You may reach the Records Appeals Officer at (518) 776-2009.

Very truly yours,

A handwritten signature in black ink, appearing to read "Michael Jerry", with a long, sweeping flourish extending to the right.

Michael Jerry
Assistant Attorney General