

STATE OF VERMONT

SUPERIOR COURT
Washington Unit

CIVIL DIVISION
Docket No.: 349-6-16 Wncv

ENERGY & ENVIRONMENT LEGAL)
INSTITUTE, and FREE MARKET)
ENVIRONMENTAL LAW CLINIC,)
Plaintiffs,)
)
v.)
)
THE ATTORNEY GENERAL OF)
VERMONT,)
Defendant)

ANSWER TO SECOND AMENDED COMPLAINT

Defendant, the Office of the Attorney General, answers plaintiffs' Second Amended Complaint dated September 29, 2016 as follows:

1. Plaintiffs' characterization of the complaint does not require an answer.
2. No answer is required as to the allegations of jurisdiction. The allegation that defendant has violated the Public Records Law is denied.
3. No answer is required as to the allegations of jurisdiction and venue.
4. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations.
5. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations.
6. Admitted that the Attorney General is an officer of the State of Vermont and that the Attorney General has possession of public records maintained

by the Office of the Attorney General. Defendant is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations.

7. Admitted that plaintiffs sent and defendant received the records request dated May 6, 2016 that is attached to the Complaint and marked Exhibit A.

8. Admitted that plaintiffs sent and defendant received the records request dated May 6, 2016 that is attached to the Complaint and marked Exhibit A, which speaks for itself. To the extent that plaintiffs' characterization of the document differs from the text, the allegations are denied.

9. Admitted that plaintiffs sent and defendant received the records request dated May 6, 2016 that is attached to the Complaint and marked Exhibit A, which speaks for itself. To the extent that plaintiffs' characterization of the document differs from the text, the allegations are denied. In addition, defendant denies that plaintiffs narrowly tailored their May 6 request.

10. Admitted that defendant sent to the plaintiffs the May 11, 2016 letter which is attached to the Complaint and marked Exhibit B, which speaks for itself. To the extent that plaintiffs' characterization of the document differs from the text, the allegations are denied.

11. Admitted that plaintiffs sent and defendant received the email dated May 18, 2016 that is attached to the Complaint and marked Exhibit C, which speaks for itself. To the extent that plaintiffs' characterization of the document differs from the text, the allegations are denied.

12. Admitted that defendant sent to the plaintiffs the letter dated June 1, 2016 that is attached to the Complaint and marked Exhibit D, which speaks for itself. To the extent that plaintiffs' characterization of the document differs from the text, the allegations are denied.

13. Denied that there is any pending proposal to the plaintiffs to consider the use of an outside contractor. Plaintiffs' allegations concerning the Public Records Law constitutes a legal conclusion to which no response is required. To the extent that plaintiffs suggest that defendant engaged in any conduct contrary to the Public Records Law, the allegations are denied. Defendant is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations.

14. Admitted that plaintiffs sent and defendant received the letter dated June 9, 2016 that is attached to the Complaint and marked Exhibit E, which speaks for itself. To the extent that plaintiffs' characterization of the document differs from the text, the allegations are denied.

15. Admitted that plaintiffs sent and defendant received the letter dated June 9, 2016 that is attached to the Complaint and marked Exhibit E, which speaks for itself. To the extent that plaintiffs' characterization of the document differs from the text, the allegations are denied. Plaintiffs' allegation as to what is permitted by section 316 is a legal conclusion to which no response is required.

16. Admitted that defendant sent to the plaintiffs an email dated June 15, 2016, which speaks for itself. To the extent that plaintiffs' characterization of the document differs from the text, the allegations are denied. Admitted that the

Secretary of State's Uniform Fee Schedule is attached to the Complaint and marked Exhibit F and that it speaks for itself. Admitted that the Fee Schedule provides for charges of 57 cents per minute for "senior-level staff time, and information technology specialists' time spent extracting data from databases or performing similar tasks necessary to comply with a request to create a new public record." To the extent that plaintiffs' allegations imply that defendant could not propose, as an alternative to the use of AGO in-house staff, that plaintiffs consider using the services of an outside contractor, the allegations are denied.

17. Admitted that defendant sent to the plaintiffs the letter dated June 16, 2016 that is attached to the Complaint and marked Exhibit G, which speaks for itself. To the extent that plaintiffs' characterization of the document differs from the text, the allegations are denied.

18. Admitted that the First Amended Complaint in this action was filed on or about June 20, 2016. The First Amended Complaint and the original Complaint in this action speak for themselves.

19. Admitted that Attorney Hardin sent a letter dated July 5, 2016 to Attorney Griffin, which speaks for itself. To the extent that plaintiffs' characterization of the document differs from the text, the allegations are denied.

20. Admitted that on or about July 6, 2016 Attorney Griffin sent an email to plaintiffs' counsel referencing Office 365 software, which speaks for itself. To the extent that plaintiffs' characterization of the document differs from the text, the

allegations are denied. The allegation that the AGO never provided any update about its efforts to utilize software is denied.

21. Admitted that on or about September 2, 2016, after defendant had filed its Motion to Dismiss for Failure to Exhaust Administrative Remedies in this action and after the Court issued its Entry Order dated August 30, 2016, plaintiffs submitted a revised records request, which speaks for itself. To the extent that plaintiffs' characterization of the September 2, 2016 revised records request differs from the text, the allegations are denied.

22. Denied.

23. Admitted that prior to September 2, 2016, when plaintiffs submitted their revised records request to defendant, defendant did not provide to plaintiffs any documents responsive to plaintiffs' May 6 records request. The remaining allegations are denied.

24. Admitted that as part of a September 1, 2016 agreement between the parties that narrowed the plaintiffs' records request, plaintiffs agreed to pay a deposit of \$500 to cover the cost of AGO staff time; that plaintiffs sent an initial deposit of \$500 on or about September 2; and that plaintiffs have paid a total of \$1,500 for costs associated with processing plaintiffs' September 2, 2016 revised records request. The remaining allegations are denied.

25. The allegations constitute legal argument and, therefore, no answer is required. To the extent that the allegations imply that the AGO demanded that

plaintiffs use a private contractor to conduct a search in connection with their records request, the allegations are denied.

26. Admitted that plaintiffs submitted a revised request to defendant on September 2, 2016 and that on September 19, 2016, defendant transmitted its response to the revised public records request. Admitted that in response to plaintiffs' September 2 revised request, defendant produced some records and withheld other records or parts thereof on grounds that they are exempt under the Public Records Act. To the extent that the allegations imply that plaintiffs were entitled to receive public records prior to September 19, the allegations are denied.

27. Denied.

28. Denied.

29. Denied.

30. The allegations constitute legal conclusions to which no response is required.

31. Denied.

32. The allegations constitute legal conclusions to which no response is required.

33. Admitted that Vermont has adopted a uniform fee schedule establishing costs for staff time and materials used to respond to public records requests, which fee schedule speaks for itself. The remaining allegations constitute legal argument to which no response is required.

34. Admitted that defendant sent a letter to plaintiffs' counsel dated June 16, 2016 that is attached to the Complaint and marked Exhibit G, which speaks for itself. To the extent that plaintiffs' characterization of the letter differs from the text, the allegations are denied. In addition, the allegations that defendant's letter constructively denied plaintiffs' June 9, 2016 appeal are denied; and the allegations that the AGO demanded fees to be used in hiring a private contractor as a condition of processing the plaintiffs' May 6 request are denied.

35. The allegations constitute legal argument to which no response is required.

36. The allegations constitute legal argument to which no response is required.

37. Denied.

38. Denied.

39. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations.

40. Admitted that the AGO provided electronic copies of records; otherwise, denied.

41. The allegations constitute legal argument to which no response is required.

42. The allegations constitute legal argument to which no response is required.

43. Denied.

44. Defendant's responses to paragraphs 1-43 are restated.

45. Denied.

46. Denied.

47. Denied.

48. The allegations constitute a request for relief and, therefore, no answer is required. If a response is required, defendant denies that plaintiffs are entitled to the requested relief.

49. Defendant's responses to paragraphs 1-48 are restated.

50. The allegations constitute legal argument and, therefore, no answer is required. If a response is required, the allegations are denied.

51. The allegations constitute a request for relief and, therefore, no answer is required. If a response is required, defendant denies that plaintiffs are entitled to the requested relief.

52. The allegations constitute a request for relief and, therefore, no answer is required. If a response is required, defendant denies that plaintiffs are entitled to the requested relief.

53. The allegations constitute a request for relief and, therefore, no answer is required. If a response is required, defendant denies that plaintiffs are entitled to the requested relief.

54. The allegations constitute a request for relief and, therefore, no answer is required. If a response is required, defendant denies that plaintiffs are entitled to the requested relief.

55. Defendant's responses to paragraphs 1-54 are restated.

56. The allegations constitute legal argument and, therefore, no answer is required.

57. Denied.

58. The allegations constitute a request for relief and, therefore, no answer is required. If a response is required, defendant denies that plaintiffs are entitled to the requested relief.

59. The allegations constitute a request for relief and, therefore, no answer is required. If a response is required, defendant denies that plaintiffs are entitled to the requested relief.

AFFIRMATIVE DEFENSES

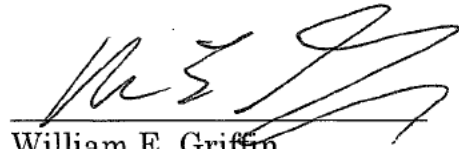
1. Plaintiffs have failed to state a claim upon which relief may be granted.
2. 1 V.S.A. § 317(c)(3).
3. 1 V.S.A. § 317(c)(4).
4. 1 V.S.A. § 317(c)(14).
5. Mootness/Lack of Actual Controversy.
6. Waiver.
7. Estoppel.
8. Failure to Exhaust Administrative Remedies.

Dated: November 17, 2016

STATE OF VERMONT

WILLIAM H. SORRELL
ATTORNEY GENERAL

By:



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