



THE COMMONWEALTH OF MASSACHUSETTS
OFFICE OF THE ATTORNEY GENERAL

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March 20, 2019

VIA E-MAIL ONLY

Christopher Horner
Competitive Enterprise Institute
chris.horner@cei.org

Re: Your Public Records Request and SPR19/0396

Dear Mr. Horner:

I write concerning your January 18, 2019 public records request made to the Office of the Attorney General (AGO) (the "January 18 request"), and the above-referenced appeal filed with the Supervisor of Records ("Supervisor") concerning the AGO response to that request.

In the January 18 request, you requested "all correspondence dated from January 1, 2016, through April 15, 2016 ... sent to or from or copying ... Christopher [sic] Courchesne and/or Michael Firestone ... to, from or copying ... [any of a number of specific and general e-mail addresses]."

In a response letter dated February 5, 2019, we stated that the records responsive to your request relate to open investigation(s) being conducted by the AGO and related litigation. We also stated that responsive records in our possession and any identification of those records are exempt from disclosure under G.L. c. 4, § 7, cl. 26(f), as they are materials necessarily compiled out of the public view to avoid prejudice to law enforcement efforts and related pending litigation. We further explained that disclosure of these records could prejudice ongoing and incomplete investigations by revealing the nature and extent of our information gathering to both targets and other parties - to the detriment of the AGO and the general public, whose interests we represent.

You appealed our February 5 response to the Supervisor on February 18, and the above-referenced appeal was opened. The Supervisor determined in a March 5 letter that "the AGO must provide additional information regarding the nature of the responsive records, categories of records, or portions of the records it intends to withhold under exemption (f)." The



Christopher Horner
March 20, 2019
page 2

Supervisor also asked the AGO to "explain why segregable portions cannot be provided." Our supplemental response follows.

The Massachusetts AGO is, as you know, currently investigating ExxonMobil Corporation ("ExxonMobil") and is currently engaged with ExxonMobil in pending litigation over AGO's investigation of the Company.¹ Pursuant to G.L. c. 4, § 7, cl. 26(f), records related to an open investigation that alert targets to the nature and course of that investigation, or that reveal investigative "techniques" or sources of information are exempt from disclosure.

In this case, the AGO has six (6) pages of e-mails that are responsive to your request. We can give you no further information about these records without compromising our investigation or litigation strategies to the same extent as disclosing the records themselves.² The senders and recipients, the dates, and the content of these e-mails relate to our ongoing ExxonMobil investigation, or, in one instance, other potential environmental enforcement, and, if released, might not only prejudice the investigation going forward, but would also likely impact the related litigation. Further, redaction in this case would render these e-mails meaningless, as the entire bodies as well as the senders, recipients, and dates are exempt from disclosure under G.L. c. 4, § 7, cl. 26(f) as described above.

You have the right to appeal this response to the Supervisor of Records pursuant to G.L. c. 66, § 10A(a), and to seek judicial review of an unfavorable decision by commencing a civil action in the superior court under G.L. c. 66, § 10A(c).

Very truly yours,



Lorraine A.G. Tarrow
Assistant Attorney General & Records Access Officer
General Counsel's Office

¹ See Exxon Mobil Corp. v. Healey, No. 18-1170 (2d Cir.). See also Exxon Mobil Corp. v. Schneiderman, 316 F.Supp.3d 679 (2018); Exxon Mobil Corp. v. Att'y Gen., 479 Mass. 312 (2018).

² See Phillippi v. Central Intelligence Agency, 549 F.2d 1009 (1976); Phillippi v. Central Intelligence Agency, 655 F.2d 1325, 211 U.S.App.D.C. 95; Hunt v. Central Intelligence Agency, 981 F.2d 1116; and Att'y General's Memorandum on the 1986 Amendments to the Freedom of Info. Act 26 (Dec. 1987) (explaining the "Glomarization" doctrine wherein it is appropriate to neither confirm nor deny the existence of records containing information falling under an exemption to disclosure when any other response to the request would reveal the exempt information).