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STATE OF MARYLAND
OFFICE OF THE ATTORNEY GENERAL

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June 25, 2019

Via Electronic Mail

Matthew D. Hardin
Energy Policy Advocates
324 Logtrac Rd.
Stanardsville, VA 22973
matthewdhardin@gmail.com

Dear Mr. Hardin:

This letter responds to your request of May 31, 2019, under the Maryland Public Information Act, *see* Md. Code Ann., Gen. Prov. (“GP”) §§ 4-101, et. seq., for:

1. any common interest agreement, contingency fee or other fee agreement, and/or any retainer, representation and/or engagement agreements, entered into by your Office at any time in 2018 and/or 2019 with, or otherwise including as a party, Robert B. McKinstry, Jr.
2. all correspondence, and their accompanying information, including also any attachments, that were a) sent to, from, or copy (whether as cc: or bcc:) i) Carolyn Quattrocki and/or ii) Joshua Segal, at any email address, which b) includes, anywhere, @robertbmckinstryjr.com, be it in an email address, subject field, body of an email, or any attachments, and c) which is dated from January 1, 2018 through the date you process this request, inclusive.

With respect to the first part of your request, we found one responsive document. It is a common interest agreement, and that agreement—which was prepared by an attorney in anticipation of litigation—is protected from disclosure as attorney work product under GP §§ 4-301(1) and 4-344. *See Cranford v. Montgomery County*, 300 Md. 759, 775 (1984) (explaining that attorney work product is protected from disclosure under the PIA); *see also, e.g., ADP, LLC v. Ultimate Software Group, Inc.*, No. 17-cv-61274, 2017 WL 7794226, at *2 (S.D. Fla. Dec. 15, 2017) (holding that a common interest agreement “was



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‘produced in anticipation of litigation’ and is therefore protectable as work product”); *DataTreasury Corp. v. Wells Fargo & Co.*, No. 2:06CV72, 2007 WL 9636837, at *2 (E.D. Tex. June 26, 2007) (concluding that the work product privilege applied because “the [common interest agreement] itself is a document made by counsel for Defendants in furtherance of Defendants’ joint defense of Plaintiff’s allegations”); *Heartland Surgical Specialty Hosp., LLC v. Midwest Div., Inc.*, No. 05-2164-MLB-DWB, 2007 WL 950282, at *10 (D. Kan. Mar. 26, 2007) (“[A] properly asserted privilege protects the [common interest agreement] from being disclosed.”). Disclosure of the record would not be in the public interest because the agreement involves a matter that is currently in active litigation, and it would not be the kind of document routinely available by law to the opposing party in that litigation. In an effort to be helpful, however, I can tell you that the agreement does not involve an environmental or energy-related matter, which—based on the subject matter of your past requests and the duties of the specific individuals that you identified in this request—I assume was the focus of your inquiry.

With respect to the second part of your request for email communications involving Carolyn Quattrocki and Josh Segal, we have no documents that are responsive to that part of your request.

Please let me know if you have any questions or concerns. Alternatively, you may refer any concerns about this response to the Public Access Ombudsman under Subtitle 4-1B of the General Provisions Article. The Ombudsman’s procedures are posted at <http://news.maryland.gov/mpiaombuds/>. You also have the right to seek judicial review of our Office’s decision under GP § 4-362.

Sincerely,



Patrick B. Hughes
Assistant Attorney General

cc: Barbara Bond