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Citing Longstanding Precedent, New Emails, GAO Files Motion Asking NY Court to Unseal “#ExxonKnew” Documents Sent from Tort Lawyer to NY Attorney General

New Emails obtained in AG open records litigation affirm: plaintiff’s lawyer who recruited NY OAG to investigate his litigation target was not “whistleblower”, docs aren’t privileged

NEW YORK, NY – On Friday, an attorney for the public interest law firm Government Accountability & Oversight, P.C. (GAO) filed a motion to intervene in the New York Attorney General’s (NY OAG) failed climate litigation against ExxonMobil, for the limited purpose of unsealing the company’s Amended Answer to NYOAG’s claim, its Reply Brief, certain exhibits sent to NY OAG by plaintiff’s tort lawyer Matt Pawa, and other related pleadings. Friday was the last day for NY OAG to appeal its disastrous December defeat.

Filed on behalf of the public records group Energy Policy Advocates (EPA), a filed memo also notes longstanding statutory and common-law rights of public access to judicial documents, and an even more expansive right under the First Amendment. The motion also explained how these particular records are of key public interest given their importance to ongoing debates about the enlistment of law enforcement by private parties, even toward supporting private ends.

At NY OAG’s request, the Court had sealed certain records from public view involving OAG’s machinations with Mr. Pawa. Recently, in litigation filed on EPA’s behalf by GAO, EPA obtained emails between Pawa and Massachusetts’ OAG — which Pawa also successfully pitched to investigate ExxonMobil. These newly revealed public records deeply undermine any notion that the emails and slide show used to recruit NY OAG are somehow privileged.

Massachusetts Attorney General Maura Healey refused for months to release her own Pawa correspondence, claiming it would undermine her ExxonMobil investigation. As the deadline came for her Office to answer EPA’s complaint — and respond to very specific, troubling factual allegations about Pawa’s relationship with and influence on Healey’s Office — OAG abruptly released all of the emails in dispute. These show that MA OAG insisted on hiding these similar records from the public improperly, as they are in no way investigative, but only revelatory.

For example, we now know that Mr. Pawa’s firm described his “global warming presentation on Exxon” to OAGs as being about “information that has recently come to light”, and “documents that recently came to light”. His emails specify what this information was – *public* stories which, the public record also shows, were arranged for by parties promoting this same campaign (see, e.g., here, here, here and here).

The same Massachusetts OAG/Pawa correspondence strongly suggests that it was this information that Pawa presented to NY OAG, e.g., “I have been giving this presentation to

various government officials and am told that it has been very helpful to their understanding of the situation as they consider options similar to those the NY AG has commenced.”

NY OAG was one of numerous attorneys general offices Mr. Pawa pitched to undertake these investigations. Other public records show Mr. Pawa or his firm gave this presentation seeking “a single sympathetic attorney general” to aid his cause to, e.g., California’s OAG on January 14, 2016, Illinois OAG on March 21, 2016, Connecticut OAG on April 19, 2016, Maryland AG Brian Frosh on February 18, 2016, Massachusetts OAG on January 11, 2016, and to many AGs on March 29, 2016 — presentations the AGs and Mr. Pawa sought to conceal.

After speaking to major political donor Wendy Abrams one Illinois OAG aide wrote to a colleague, “The NY AG is investigating the company and [Abrams] wanted to know if this was something the AG may be interested in supporting or signing on to...She would like to bring in a lawyer named Matt Pawa, who has offices in Boston and DC. Wendy says he may have been the one to go to the NY AG’s office about Exxon.” Ms. Abrams’s and Pawa emails to IL OAG also affirm that Pawa was pitching the same news items arranged for by allies.

A December 2015 Pawa email to Massachusetts’ Office of Attorney General arranging his slide show confirms that this “information that had come to light” was those “articles that have generated so much attention on this issue”, placed by allies. Pawa had “been giving this presentation to various government officials...[as] just information provided as a public service that [OAG] may be able to use as [OAG] consider whether to take a closer look at this matter”.

It is now clear that, NY OAG insistence otherwise notwithstanding, the “information” was not “What Matt Pawa Knew”, presenting some confidential informant- or “whistleblower”-type information, but titled “What Exxon Knew”, asserting claims made in publicly available stories targeting the company that were arranged for by the Rockefeller Family Fund.

These sealed materials reflect an effort by a tort lawyer to help his own cases by enlisting attorneys general to subpoena his targets. It is “going after climate denialism [sic]—along with a bunch of state and local prosecutors nationwide”. One federal court, referencing another Pawa presentation on the subject, called this a ““strateg[y] to win access to internal documents’ of fossil fuel companies”.

Public records already obtained from other institutions affirm the NY OAG’s role in the effort to use its authorities at the request of tort lawyers and activists. For example, it participated in what one participant called a “secret” briefing by this campaign for AG staff and “prospective funders” in pursuit of “potential state causes of action against major carbon producers”.

These records illuminate how a plaintiffs’ tort lawyer enlisted law enforcement to pursue private parties in aid of his litigation campaign, are of immense public interest, and should be unsealed.

Government Accountability & Oversight is a 501(c)3 non-profit organization dedicated to transparency in public officials’ dealings on matters of energy, environment and law enforcement