

**IN THE CIRCUIT COURT
FOR BALTIMORE CITY**

ENERGY POLICY ADVOCATES

170 S. Lincoln St.
Suite 150
Spokane, WA 99201

Plaintiff,

v.

Civil Case No. _____

**CITY OF BALTIMORE
DEPARTMENT OF LAW**

City Hall, Room 101
100 N. Holliday St.
Baltimore, MD 21202

Defendant.

COMPLAINT

Plaintiff Energy Policy Advocates, by and through its undersigned counsel, and for its complaint against defendant City of Baltimore Department of Law, allege as follows:

1. This is an action for equitable and monetary relief arising from defendant's serial refusal to comply with the obligations imposed by the Maryland Public Information Act, Md. Code, GP, §§ 4 – 101 through 4 – 601("MPIA"), which requires a governmental custodian of record to permit any person to inspect any public record at any reasonable time or provide copies of any public record.

THE PARTIES

2. Plaintiff Energy Policy Advocates (EPA) is a nonprofit organization incorporated in the State of Washington and dedicated to transparency and open government. EPA uses state and federal open records laws to shed light on -- and thereby educate the public on -- private influences on government policymaking and the use of public offices and institutions. Part of EPA's effort has been the record requests at issue in this matter and similar requests in AG offices nationwide.
3. Defendant Department of Law ("The Department") is a department of the City established by the City Charter. It is the recipient of the MPIA request, custodian of the information requested, and was responsible for improperly withholding the information. Its address is City Hall, Room 101, 100 N. Holliday Street, Baltimore, MD 21202.

JURISDICTION AND VENUE

4. This Court has jurisdiction over this matter pursuant to Md. Code, GP § 4-362(a).
5. Venue is proper in this Court pursuant to Md. Code, GP § 4-362(a)(3), as the public information request is located in Baltimore City.

FACTUAL ALLEGATIONS

6. On July 20, 2018, the City of Baltimore filed suit against numerous businesses involved in the exploration, extraction, production and distribution of hydrocarbon energy sources.¹
7. In a July 20, 2018 press release, the City of Baltimore announced that its case against the energy companies was assisted by outside counsel Sher Edling LLP.

¹ <https://mayor.baltimorecity.gov/news/press-releases/2018-07-20-baltimore-takes-fossil-fuel-companies-protect-taxpayers-costs-and>

8. Plaintiff, a public-interest transparency group, has documented the Sher Edling firm's far-flung range of consultancies and others aiding its efforts to recruit governmental plaintiffs to its "climate tort" litigation campaign,² helping the public understand how this by-now tsunami of governmental "climate nuisance" litigation has come about, and how public institutions, from municipal to state governments, offices of attorneys general, and the courts, come to the actions they take and/or come to be used the way they are.
9. Such public records are of great public interest.
10. On January 21, 2020, plaintiff requested any agreements entered into by the City of Baltimore and Sher Edling LLP, as well as certain correspondence to or from or using the email domain of Sher Edling LLP. **Exhibit A (January 21, 2020 MPIA Request)**
11. On February 3, 2020, defendant responded by withholding all responsive records, including even any agreements reflecting the City's arrangements with the outside party, in full, citing to attorney-client privilege and attorney work product/deliberative material privilege. It declined to redact reasonably segregable information for any responsive records claiming that to do so would undermine the City's case and create "an un-level playing field." **Exhibit B (February 3, 2020 MPIA Response)**
12. On Friday, March 6, 2020, at 1:37 PM, plaintiff submitted, via electronic mail, an MPIA request seeking, *inter alia*, correspondence with activist groups which, other public records show, have helped coordinate between putative governmental tort plaintiffs, law

² See Energy Policy Advocates' Proposed Amicus Brief in *State of Rhode Island v. Shell et al.*, Case No. 19-1818, U.S. Circuit Court of Appeals for the First Circuit, and citations therein. For the convenience of this Court, the 1st Circuit filing is attached as Exhibit E.

enforcement, “prospective funders”, activists and the plaintiff’s tort bar in this campaign, and also certain correspondence prior to the Sher Edling firm filing suit on the City’s behalf:

- A. All electronic correspondence and any attachments a) sent to or from or copying (whether as cc: or bcc:) i) Elena DiPietro, and/or ii) Andre Davis, that b) includes, *anywhere*, whether in the sent, to, from, cc, bcc or Subject fields, or otherwise, including also in any attachments, i) @ucsusa.org, and/or ii) @climateintegrity.org that is c) dated from October 1, 2017 through the date you process this request, inclusive;
- B. All electronic correspondence and any attachments a) sent to or from or copying (whether as cc: or bcc:) i) Elena DiPietro, ii) Andre Davis, iii) Suzanne Sangree, and/or iv) Michael Schrock, that b) includes, *anywhere*, whether in the sent, to, from, cc, bcc or Subject fields, or otherwise, including also in any attachments, @sheredling, that is c) dated from October 1, 2017 through the date you process this request, inclusive; and
- C. any common interest agreement, contingency fee or other fee agreement, and/or any retainer, representation and/or engagement agreements, entered into by the City of Baltimore, at any time in 2017 and/or 2018 with, or otherwise including as a party, Sher Edling LLP.

Exhibit C (March 6, 2020 MPIA Request).³

13. Early the next business day, 10:18 AM on Monday, March 9, 2020, defendant responded, via electronic mail, categorically denying access to the requested correspondence, every record,

³ The scope of plaintiff’s March 9, 2020 request encompasses that of its January 21, 2020 request, and as such plaintiff only sues on the March request in this matter.

in full, on the grounds that it “seek[s] legal advice in confidence and [is] therefore privileged attorney-client communication.” Defendant denied access to the requested agreement as it “embodies the ‘legal theories of an attorney or other representative of’ the City in active litigation as well as the ‘analysis of pending or possible claims’ making it attorney work product and deliberative material.” **Exhibit D (March 9, 2020 MPIA Response).**

14. Neither the time elapsed nor the response suggests that defendant searched for or reviewed any potentially responsive records, but merely categorically denied plaintiff, as plaintiff’s experience indicates is defendant’s practice.
15. Defendant’s application of these privileges is overly broad. Communications between an attorney and a client are not privileged by virtue of the relationship alone. Moreover, the request covers the period of time when the firm and/or its network of plaintiff-recruiters would have been wooing the City to file suit, prior to the establishment of any attorney-client relationship. Further, certain aspects of an attorney-client relationship, particularly fee arrangements, are subject to public disclosure. That is how, e.g., plaintiff has obtained such records from other actual and potential governmental plaintiffs under open record laws.
16. Further still, while all public records are by statute presumptively subject to release barring demonstration of the application of some exemption or privilege, this presumption is particularly strong as to any correspondence with the outside activist groups covered in plaintiff’s March 9, 2020 PIA request.
17. Despite its statutory obligations and the tremendous public and media interest in and public policy importance of the release of the non-exempt requested information, the Department summarily withheld, and continues to withhold, non-exempt, non-privileged requested

information and seemingly without conducting an actual search or review, all in violation of the MPIA.

APPLICABLE LAW

18. The MPIA establishes a general rule that “[a]ll persons are entitled to have access to information about the affairs of government and the official acts of public officials and employees.” Md. Code, GP § 4-103(a).
19. Defendant must perform a search reasonably calculated to uncover all relevant documents. Maryland Public Information Act Manual § 2-5. The MPIA permits a custodian to deny access to a public record only to the extent provided in the MPIA. Md. Code, GP § 4-201(a)(2).
20. Defendant has the burden of sustaining a decision to deny inspection or copies of a public record. Md. Code, GP § 4-362(b)(2).
21. Defendant must justify all of its withholdings. The 2015 Office of the Maryland Attorney General’s Maryland Public Information Act Manual states “ [t]o satisfy the statutory burden, any entity or official withholding a record must put forth evidence sufficient to justify the decision.” Maryland Public Information Act Manual §5-2.
22. Records custodians may not rely on generic exemptions and “the burden of justifying the non-disclosure of even part of a record is squarely cast upon the custodian of the record”. *Blythe v. State*, 161 Md.App. 492, 521 (Md. Ct. Spec. App. 2005) citing *Cranford v. Montgomery County*, 300 Md. 759, 777, 481 A.2d 221 (Md. 1984).

23. The Department's response does not directly address the first part of the request, thereby implying that the Department asserts the Union of Concerned Scientists and the Center for Climate Integrity both provide legal counsel to the Department.
24. The Department asserts all communications between the named public officials and Sher Edling, LLP are privileged attorney-client communications. However, "only those attorney-client communications pertaining to legal advice and made with the intention of confidentiality are within the ambit of the privilege." *E. I. Du Pont de Nemours & Co. v. Forma-Pack, Inc.*, 351 Md. 396, 415-416, 718 A.2d 1129, 1138 (Md. 1998). The mere existence of an attorney-client relationship between the City and Sher Edling, LLP is insufficient to privilege all communications between the two.
25. The Department asserts the agreement between the City and Sher Edling, LLP is both attorney work product and deliberative material. It further alleges the agreement cannot be parsed into "reasonably severable" portions without "violat[ing] the substance of the exemption" asserted.
26. Attorney work product shields certain documents "prepared in anticipation of litigation" from discovery. Maryland Rule 2-402(d). It is not unlimited. The doctrine protects "the mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a party concerning the litigation." *Id.*
27. The Department's complete withholding of the agreement with only a conclusory statement that there is no reasonably segregable content is contrary to the MPIA which requires a custodian allow inspection of any part of the record that is subject to inspection. Md. Code, GP § 4-203(c)(1)(ii).

28. Attorney work product privilege, like the attorney-client privilege, is not without limits.

While it protects certain communications and records, Maryland courts recognize that communications made by a client to an attorney for the purpose of obtaining legal advice are privileged, but the fees charged are not. *Moberly v. Herboldsheimer*, 276 Md. 211, 226 (Md. Ct. Spec. App. 1975). There is similarly no law supporting withholding all details of the relationship or records documenting those details.

29. In the alternative, the Department's agreement with Sher Edling, LLP is subject to public inspection under Md. Code, SF&P § 13-210(b). Procurement is defined as "the process of... obtaining...services." Md. Code SF&P 11-101(n)(1)(ii). The services of an attorney are included in the definition of "Services" under Md. Code, SF&P § 11-101(u).

30. Md. Code, SF&P § 13-210(b)(1)(ii) mandates that, subject to the MPIA, "after an award, all proposals shall be open to public inspection." The Department's award of a contract to Sher Edling, LLP must be open to public inspection.

31. For any and/or all of the reasons set forth above, the defendant has violated the MPIA and plaintiff is entitled to relief.

PRAYER FOR RELIEF

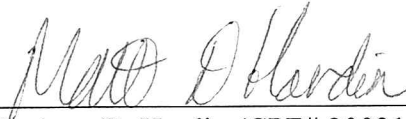
WHEREFORE, the plaintiff respectfully prays, through counsel, that this Court,

- A. Enter an injunction directing defendant to comply fully with the PIA without further delay and to furnish plaintiff the public records at issue in this matter, subject only to demonstrated, legally permissible withholdings, and perform the statutorily required search for records if not already performed;

- B. Alternately, perform an *in camera* review of the information withheld by the defendant and compel defendant to release all information for which the defendant is unable to carry its burden to prove each withholding is privileged and not subject to disclosure; and further,
- C. Enter judgement that defendant has wrongfully withheld information under the MPIA;
- D. Enter judgement in plaintiff's favor for nominal damages;
- E. Award plaintiff reasonable attorneys' fees and costs as authorized by Md. Code, GP § 4-362(f); and
- F. Order such additional relief as the Court may deem just and proper.

Respectfully submitted this 26th day of March, 2020

ENERGY POLICY ADVOCATES
By Counsel



Matthew D. Hardin (CPF# 2003160003)
324 Logtrac Rd.
Stanardsville, VA 22973
Phone: (434) 202-4224
Email: MatthewDHardin@protonmail.com

Exhibit A

MARYLAND PUBLIC INFORMATION ACT REQUEST

January 21, 2020

Khadeja Farahmand
Baltimore City Law Department
City Hall, Room 101
100 N. Holliday Street
Baltimore, MD 21202

By Electronic Mail: khadeja.farahmand@baltimore.gov

Re: Certain Correspondence and Agreements

Dear Ms. Farahmand:

On behalf of Energy Policy Advocates, recognized by the Internal Revenue Service as a non-profit public policy institute under § 501(c)(3) of the Internal Revenue Code, pursuant to the Maryland Public Information Act, G.P. §§ 4-101 - 4-601, I hereby request copies of the following records:

1. all electronic correspondence, and any accompanying information (see discussion of SEC Data Delivery Standards, *infra*), including also any attachments, a) sent to or from or copying (whether as cc: or bcc:) i) **Elena DiPietro**, ii) **Andre Davis**, and/or iii) **Michael Schrock**, that b) includes, *anywhere*, whether in the sent, to, from, cc, bcc or Subject fields, or otherwise, including also in any attachments, or the body of an email including anywhere in an email "thread", @sheredling.com, that is c) dated from October 1, 2018 through the date you process this request, inclusive; and
2. any common interest agreement, contingency fee or other fee agreement, and/or any retainer, representation and/or engagement agreements, entered into by the City of Baltimore, at any time in 2018 with, or otherwise including as a party, Sher Edling LLP.

To narrow this request, please consider as non-responsive electronic correspondence that merely receives or forwards press clippings, such as news services or stories or opinion pieces, if that correspondence has no comment or no substantive comment added by a party other than the original sender in the thread (an electronic mail message that includes any expression of opinion or viewpoint would be considered as including substantive comment; examples of non-responsive emails would be those forwarding a news report or opinion piece with no comment or only “fyi”, or “interesting”).

Additionally, please consider as non-responsive all otherwise responsive records that are merely published or docketed materials, including pleadings, news articles, and/or newsletters, and any electronic case filing notifications, unless forwarded to or from the named staff with substantive commentary of any sort added by the sender.

We note the requirements of GP §4-202(c) and request that, if your Office is not the custodian of these records, you provide the name of the custodian and location or potential location for the records.

We understand that in some instances a public body may charge a fee for the cost of the search, examination, review, copying, separation of confidential from nonconfidential information, and mailing costs. If your Office expects to seek a charge associated with the searching, copying or production of these records, please provide an estimate of anticipated costs.

As noted earlier in this request, EPA is a non-profit public policy organization dedicated to informing the public of developments in the area of energy and environmental issues and relationships between governmental and non-governmental entities as they relate to those issues.

EPA's ability to obtain fee waivers is essential to this work. EPA intends to use any responsive information to continue its work highlighting the nexus between interested non-governmental entities and government agency decision-making. The public is both interested in and entitled to know how regulatory, policy and enforcement decisions are reached. EPA ensures the public is made aware of its work and findings via its partnership with the non-profit public interest law firm Government Accountability & Oversight, P.C., and the [ClimateLitigationWatch.org](https://www.climateactionwatch.org/) project dedicated to broadly disseminating energy and environmental policy news and developments. The public information obtained by EPA and published on [ClimateLitigationWatch.org](https://www.climateactionwatch.org/) have been relied upon by established media outlets, including the Washington Times and Wall Street Journal editorial page.¹

Energy Policy Advocates requests records on your system, e.g., its backend logs, and does not seek only those records which survive on an employee's own machine or account. We do not demand your office produce requested information in any particular form, instead **we request records in their native form**, with specific reference to the U.S. Securities and

¹ See, e.g., The Editorial Board, "State AGs' Climate Cover-Up" Wall Street Journal, June 7, 2019, <https://www.wsj.com/articles/state-ags-climate-cover-up-11559945410>. Valerie Richardson, "Motivated or manipulated? Rise of youth climate activism fuels alarms over exploitation" Washington Times, March 15, 2019, <https://www.washingtontimes.com/news/2019/mar/13/youth-climate-strike-sparks-debate-use-students-pr/>, see also "Climate Strike Sparks Debate on Use of Students as Props", https://www.realclearpolicy.com/2019/03/15/climate_strike_sparks_debate_on_use_of_students_as_props_41180.html. Valerie Richardson, "Democratic AGs team up with George Soros-funded group on anti-Trump lawsuit" Washington Times, August 1, 2019, <https://www.washingtontimes.com/news/2019/aug/1/george-soros-funded-group-democratic-ags-partner-a/>. Anthony Watts, "Emails reveals how children become pawns of climate alarmism", Watts Up With That (two-time Science Website of the Year), March 13, 2019, <https://wattsupwiththat.com/2019/03/13/emails-reveal-how-children-become-pawns-of-climate-alarmism/>.

Exchange Commission Data Delivery Standards.² The covered information we seek is electronic information, this includes electronic *records*, and other public *information*.

To quote the SEC Data Delivery Standards, “Electronic files must be produced in their native format, i.e. the format in which they are ordinarily used and maintained during the normal course of business. For example, an MS Excel file must be produced as an MS Excel file rather than an image of a spreadsheet. *(Note: An Adobe PDF file is not considered a native file unless the document was initially created as a PDF.)*” (emphases in original).

In many native-format productions, certain public information remains contained in the record (e.g., metadata). Under the same standards, to ensure production of all information requested, if your production will be de-duplicated it is vital that you 1) preserve any unique metadata associated with the duplicate files, for example, custodian name, and, 2) make that unique metadata part of your production.

Native file productions may be produced without load files. However, native file productions must maintain the integrity of the original meta data, and must be produced as they are maintained in the normal course of business and organized by custodian-named file folders. A separate folder should be provided for each custodian.

In the event that necessity requires your office to produce a PDF file, due to your normal program for redacting certain information and such that native files cannot be produced as they are maintained in the normal course of business, in order to provide all requested information each PDF file should be produced in separate folders named by the custodian, *and* accompanied by a load file to ensure the requested information appropriate for that discrete record is

² <https://www.sec.gov/divisions/enforce/datadeliverystandards.pdf>.

associated with that record. The required fields and format of the data to be provided within the load file can be found in Addendum A of the above-cited SEC Data Standards. All produced PDFs must be text searchable.

We look forward to your response. If you have any questions, do not hesitate to contact me by email at MatthewDHardin@protonmail.com.

Sincerely,

Matthew D. Hardin

Exhibit B

From: Farahmand, Khadeja Khadeja.Farahmand@baltimorecity.gov 
Subject: Re: Records Request
Date: February 3, 2020 at 11:06 AM
To: MatthewDHardin@protonmail.com



Mr. Hardin-

The Baltimore City Law Department received your attached request, which is governed by the Maryland Public Information Act ("PIA"). Md. Code, Gen. Prov., §4-101, *et. seq.* The other federal laws and the legal references you cite do not apply. Each governmental entity, including each Baltimore City agency, is the custodian of its own records. Md. Code, Gen. Prov., §4-101; Baltimore City Code, Art. 1 §10-1. The PIA requires that a request be directed to the custodian of the record requested. This response is on behalf of the Law Department.

The correspondence you have requested is between the City's attorneys, including Solicitor Andre M. Davis, Ms. DiPietro, Mr. Schrock, in the Law Department, or outside counsel, seek legal advice in confidence and are therefore privileged attorney-client communication and the client has not waived that privilege. Md. Code, Gen. Prov., §4-301 (protecting records that are privileged or confidential by operation of other law); *see also Maryland Bd. Of Physicians*, 225 Md. App. 114, 153 (2015) (holding confidentiality of communications between administrative employees and their government counsel); *Ehrlich v. Grove*, 396 Md. 550 (2007)(confirming that governments in Maryland have attorney-client relationships with their lawyers); *accord AC v. v. Office of the Attorney Gen.*, No. 791, Sept. Term 2016, 2018 WL 878989, *28 (Md. Ct. Spec. App. Feb. 13, 2018)(unreported)(affirming that lawyers do not lose their status as lawyers and become administrators simply because they work for the government).

Also, your request for the agreement between the Law Department and outside counsel embodies the "legal theories of an attorney or other representative of" the City in active litigation as well as the "analysis of pending or possible claims" making it attorney work product and deliberative material. *AC, supra*, *19, *22. Deliberative material, a subset of which is attorney work product, is able to be withheld from disclosure in response to a PIA request when its release would not be in the public interest. Md. Code, Gen. Prov., §4-344. Citizens are best served when their government can have the benefit of confidential legal advice just as any other private litigant and when their government can deliberate about how it desires to handle its legal affairs. *N. L. R. B. v. Sears, Roebuck & Co.*, 421 U.S. 132, 149-50 (1975) (Supreme Court noted that attorney client and attorney work product privileges are "available to all litigants" even the government and the legislature recognized that "the 'frank discussion of legal or policy matters' in writing might be inhibited if the discussion were made public; and that the 'decisions' and 'policies formulated' would be the poorer as a result."); *accord Stromberg Metal Works, Inc. v. University of Maryland*, 382 Md. 151, 163-64 (2004)(deliberative privilege is designed "to protect from legislatively mandated disclosure" communications or memoranda that "would not be available by law to a private party in litigation with the unit" of government so as to create a level litigation playing field); *Hamilton v. Verdow*, 287 Md. 544, 558 (1980)(recognizing that a government's decision making process is best fostered through facilitating candid communications that "may well be hampered if their contents are expected to become public knowledge"); *accord AC, supra*, *10 ("when a privilege applies to protect a document from disclosure, there is a presumption that disclosure of the document is contrary to the public interest. That is because the interest that underlies a

privilege suffices to prove that inspection of the document is contrary to the public interest.”).

Selective redaction of the agreement sought by your request would undermine the deliberative and attorney work product privileges in that it would create an un-level playing field in any litigation by allowing the government’s opposing parties to have access to information about government representation and strategy that is generally not available to private parties in litigation. *AC, supra*, at *18 (“attorney work product is not routinely discoverable and therefore generally is not available by law to a party in litigation with the agency.”). As Maryland’s highest court has recognized, a document cannot be parsed into “reasonably severable” portions when such parsing would “violate the substance of the exemption” asserted. *Glass v. Anne Arundel County*, 453 Md. 201, 244 (2017).

Nothing in this response is intended to indicate that any records sought from City agencies exist or to waive any privileges held by the Mayor and City Council. You may contest this response by filing a complaint in Circuit Court pursuant to GP § 4-362.

Sincerely,



DEPARTMENT OF LAW

Khadeja Farahmand, L.L.M

Legal Advice & Opinions
Baltimore City Department of Law

100 N. Holliday Street, Suite 101
Baltimore, MD 21202
Khadeja.Farahmand@baltimorecity.gov

Office: (410)396-3257
Fax: (410) 396-3257

From: Matthew D. Hardin <MatthewDHardin@protonmail.com>
Sent: Tuesday, January 21, 2020 8:56 PM
To: Farahmand, Khadeja <Khadeja.Farahmand@baltimorecity.gov>
Subject: Records Request

[THIS EMAIL IS FROM AN EXTERNAL SENDER]
Please see the attached request for public records.

Thank you,
Matthew D. Hardin
(434) 202-4224
MatthewDHardin@protonmail.com

The information contained in this message may be privileged. It is intended by the sender to be confidential. If you suspect you may not be the intended recipient, please notify the sender and delete all copies.



1.21.2020
Baltim...py.pdf

Exhibit C

MARYLAND PUBLIC INFORMATION ACT REQUEST

March 6, 2020

Khadeja Farahmand or Records Officer
Baltimore City Law Department
City Hall, Room 101
100 N. Holliday Street
Baltimore, MD 21202

By Electronic Mail: khadeja.farahmand@baltimore.gov

Re: Certain Correspondence and Agreements

Dear Ms. Farahmand:

On behalf of Energy Policy Advocates, recognized by the Internal Revenue Service as a non-profit public policy institute under § 501(c)(3) of the Internal Revenue Code, pursuant to the Maryland Public Information Act, G.P. §§ 4-101 - 4-601, I hereby request copies of the following records:

1. all electronic correspondence, and any accompanying information (see discussion of SEC Data Delivery Standards, *infra*), including also any attachments, a) sent to or from or copying (whether as cc: or bcc:) i) **Suzanne Sangree**, and/or **Andre Davis**, that b) includes, *anywhere*, whether in the sent, to, from, cc, bcc or Subject fields, or otherwise, including also in any attachments, or the body of an email including anywhere in an email “thread”, i) **@ucsusa.org**, and/or ii) **@climateintegrity.org**, and c) is dated any time from **October 1, 2017** through the date you process this request, inclusive;
2. all electronic correspondence, and any accompanying information (see discussion of SEC Data Delivery Standards, *infra*), including also any attachments, a) sent to or from or copying (whether as cc: or bcc:) i) **Suzanne Sangree**, ii) **Elena DiPietro**, iii) **Andre**

Davis, and/or iv) **Michael Schrock**, that b) includes, anywhere, whether in the sent, to, from, cc, bcc or Subject fields, or otherwise, including also in any attachments, or the body of an email including anywhere in an email “thread”, **@sheredling.com**, and c) is dated from **October 1, 2017 through July 19, 2018**, inclusive; and

3. any common interest agreement, contingency fee or other fee agreement, and/or any retainer, representation and/or engagement agreements, entered into by the City of Baltimore, at any time in 2017 and/or 2018 with, or otherwise including as a party, Sher Edling LLP.

For ## 1 and 2, above, we request entire “threads” of which any responsive electronic correspondence is a part, regardless whether any portion falls outside of the above time parameter.

Also for ## 1 and 2, to narrow this request, please consider as non-responsive electronic correspondence that merely receives or forwards newsletters or press summaries or ‘clippings’, such as news services or stories or opinion pieces, **if** that correspondence has no comment or no substantive comment added by a party other than the original sender in the thread (an electronic mail message that includes any expression of opinion or viewpoint would be considered as including substantive comment; examples of non-responsive emails would be those forwarding a news report or opinion piece with no comment or only “fyi”, or “interesting”).

Additionally, please consider all other published or docketed materials, including pleadings, regulatory comments, ECF notices, published scientific journal articles, news articles,

and/or newsletters, as non-responsive, **unless** forwarded to or from the named persons with substantive commentary added by the sender.

We note the requirements of GP §4-202(c) and request that, if your Office is not the custodian of these records, you provide the name of the custodian and location or potential location for the records.

We understand that in some instances a public body may charge a fee for the cost of the search, examination, review, copying, separation of confidential from nonconfidential information, and mailing costs. If your Office expects to seek a charge associated with the searching, copying or production of these records, please provide an estimate of anticipated costs.

As noted earlier in this request, EPA is a non-profit public policy organization dedicated to informing the public of developments in the area of energy and environmental issues and relationships between governmental and non-governmental entities as they relate to those issues. EPA's ability to obtain fee waivers is essential to this work. EPA intends to use any responsive information to continue its work highlighting the nexus between interested non-governmental entities and government agency decision-making. The public is both interested in and entitled to know how regulatory, policy and enforcement decisions are reached. EPA ensures the public is made aware of its work and findings via its partnership with the non-profit public interest law firm Government Accountability & Oversight, P.C., and the ClimateLitigationWatch.org project dedicated to broadly disseminating energy and environmental policy news and developments. The public information obtained by EPA and published on ClimateLitigationWatch.org have

been relied upon by established media outlets, including the Washington Times and Wall Street Journal editorial page.¹

Energy Policy Advocates requests records on your system, e.g., its backend logs, and does not seek only those records which survive on an employee's own machine or account. We do not demand your office produce requested information in any particular form, instead **we request records in their native form**, with specific reference to the U.S. Securities and Exchange Commission Data Delivery Standards.² The covered information we seek is electronic information, this includes electronic *records*, and other public *information*.

To quote the SEC Data Delivery Standards, "Electronic files must be produced in their native format, i.e. the format in which they are ordinarily used and maintained during the normal course of business. For example, an MS Excel file must be produced as an MS Excel file rather than an image of a spreadsheet. (*Note: An Adobe PDF file is not considered a native file unless the document was initially created as a PDF.*)" (emphases in original).

In many native-format productions, certain public information remains contained in the record (e.g., metadata). Under the same standards, to ensure production of all information

¹ See, e.g., The Editorial Board, "State AGs' Climate Cover-Up" Wall Street Journal, June 7, 2019, <https://www.wsj.com/articles/state-ags-climate-cover-up-11559945410>. Valerie Richardson, "Motivated or manipulated? Rise of youth climate activism fuels alarms over exploitation" Washington Times, March 15, 2019, <https://www.washingtontimes.com/news/2019/mar/13/youth-climate-strike-sparks-debate-use-students-pr/>, see also "Climate Strike Sparks Debate on Use of Students as Props", <https://www.realclearpolicy.com/2019/03/15/climate-strike-sparks-debate-on-use-of-students-as-props-41180.html>. Valerie Richardson, "Democratic AGs team up with George Soros-funded group on anti-Trump lawsuit" Washington Times, August 1, 2019, <https://www.washingtontimes.com/news/2019/aug/1/george-soros-funded-group-democratic-ags-partner-a/>. Anthony Watts, "Emails reveals how children become pawns of climate alarmism", Watts Up With That (two-time Science Website of the Year), March 13, 2019, <https://wattsupwiththat.com/2019/03/13/emails-reveal-how-children-become-pawns-of-climate-alarmism/>.

² <https://www.sec.gov/divisions/enforce/datadeliverystandards.pdf>.

requested, if your production will be de-duplicated it is vital that you 1) preserve any unique metadata associated with the duplicate files, for example, custodian name, and, 2) make that unique metadata part of your production.

Native file productions may be produced without load files. However, native file productions must maintain the integrity of the original meta data, and must be produced as they are maintained in the normal course of business and organized by custodian-named file folders. A separate folder should be provided for each custodian.

In the event that necessity requires your office to produce a PDF file, due to your normal program for redacting certain information and such that native files cannot be produced as they are maintained in the normal course of business, in order to provide all requested information each PDF file should be produced in separate folders named by the custodian, *and* accompanied by a load file to ensure the requested information appropriate for that discrete record is associated with that record. The required fields and format of the data to be provided within the load file can be found in Addendum A of the above-cited SEC Data Standards. All produced PDFs must be text searchable.

We look forward to your response. If you have any questions, do not hesitate to contact me by email at MatthewDHardin@protonmail.com.

Sincerely,

Matthew D. Hardin