

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF LYON

FIFTH JUDICIAL DISTRICT

Case Type: Other Civil

Energy Policy Advocates,

Plaintiff,

v.

COMPLAINT

Keith Ellison, in his official capacity
as Attorney General of Minnesota, and

The Office of the Attorney General, and

The State of Minnesota,

Defendants.

Plaintiff Energy Policy Advocates (hereinafter Plaintiff or “EPA”), by and through undersigned counsel, files this Complaint against Defendant, Attorney General Keith Ellison, in his official capacity, and the Minnesota Office of the Attorney General (hereinafter “OAG”), pursuant to Minn. Stat. § 13.08. EPA is seeking the release of improperly withheld government data under the Minnesota Government Data Practices Act (“MGDPA”), Minn. Stat. § 13. Plaintiff states and alleges as follows:

INTRODUCTION

1. In 2017, Bloomberg Philanthropies, a charity organized by “climate” activist Michael Bloomberg, contributed \$5.6 million to create a State Energy & Environmental Impact Center providing legal support, privately-funded lawyers, and public relations support to state attorneys general for the purpose of advancing lawsuits related to environmental and climate change

litigation (the “Bloomberg NYU Program” or “SEEIC”).¹ Mr. Bloomberg housed this effort at the New York University School of Law.

2. The Bloomberg Center offered to pay the salary and benefits of so-called Special Assistant Attorneys General (“SAAG”) that it would hire for placement for two-year terms in attorneys general offices that agreed to use the SAAG position and their own offices to “advanc[e] progressive clean energy, climate change, and environmental legal positions,” in the words of the Bloomberg Center’s Director² or, as put by the Virginia Office of Attorney General, “to advance the agenda represented by” Bloomberg’s group.³

3. Interested attorneys general were invited to submit an application outlining, among other things, “needs within their offices related to the advancement and defense of progressive clean energy, climate change, and environmental matters,” and a demonstrated “commitment to and acute need for additional support on clean energy, climate change, and environmental issues of regional or national importance, such as those matters that cross jurisdictional boundaries or raise legal questions or conflicts that have nationwide applicability.”

4. On March 15, 2019, Attorney General Ellison submitted such an application seeking these private resources. That application cited a desire to do more in certain areas of known public interest to Mr. Bloomberg and his SEEIC. Among the issues AG Ellison emphasized for possible greater focus, if only the OAG had more resources than the legislature appropriated for

¹ See, e.g., “the new Bloomberg-supported State Energy and Environmental Impact Center”, November 14, 2017 10:57 AM email from Christopher Moyer to OAG’s Michael Kelly, Subject: Introduction, and also, e.g., the news report that this project is “financed by Michael Bloomberg”, Juliet Eilperin, “NYU Law launches new center to help state AGs fight environmental rollbacks,” *Washington Post*, August 16, 2017, https://www.washingtonpost.com/politics/nyu-law-launches-new-center-to-help-state-ags-fight-environmental-rollbacks/2017/08/16/e4df8494-82ac-11e7-902a-2a9f2d808496_story.html?utm_term=.fd5d7fd9a8b8. The Bloomberg Center scrubbed its website of references to Bloomberg after attention similar to the instant matter though those remain available on the Internet’s Wayback Machine, <https://web.archive.org>.

²<https://climatelitigationwatch.org/wp-content/uploads/2018/08/FN-3-Organic-NYU-Hayes-email-to-OAGs-copy.pdf>

³<https://climatelitigationwatch.org/virginia-ag-office-promises-to-advance-the-agenda-represented-by-bloomberg-activist-group/>

him, was “multistate initiatives...including...supporting state-led efforts to investigate Exxon Mobil [sic]Through participation in NYU’s Program, and the appointment of one or more SAAG(s), I hope the Office can expand its role in the federal multistate arena”. AG Ellison suggested OAG’s SAAG(s) be paid by the Bloomberg Center between \$96,000 and \$130,000 per year.

5. OAG then accepted two Bloomberg-funded, SEEIC-hired, so-called SAAGs: Pete Surdo and Leigh Currie.

6. Upon information and belief, Ms. Currie joined OAG sometime prior to October 15, 2019 under a “Secondment Agreement” dated June 5, 2019.

7. Ms. Currie has represented and continues to represent OAG in public filings and comments,⁴ including as counsel of record in OAG’s June 2020 lawsuit against, *inter alia*, ExxonMobil, on which she also was the Minn. Stat. § 549.211 Acknowledgement signatory.⁵

8. The Executive Director of a “climate” activist group called “Fresh Energy,” Michael Noble, who has acknowledged that his group “helped put this idea in front of Attorney General Keith Ellison shortly after he was sworn in” after “a national organization who [sic] leads on this kind of climate liability, climate litigation...brought this concept to Fresh Energy the Fall of 2018,” publicly boasted soon after Ms. Currie filed the aforementioned matter of awareness that

⁴ See, e.g., Comments of Attorneys General of California, et al. Re: EERE-2018-BT-STD-0005 <https://oag.ca.gov/system/files/attachments/press-docs/FINAL%20DOE%20Dishwasher%20State%20AGs%20Comment%20Oct%2016%2019.pdf>

⁵ See, e.g., Mike Hughlett, “Minnesota files climate change lawsuit against oil companies including Koch Industries, ExxonMobil,” Star Tribune, June 24, 2020, <https://www.startribune.com/minn-files-climate-change-lawsuit-against-oil-companies-including-koch-exxon-mobil/571466182/>. Complaint available at https://www.ag.state.mn.us/Office/Communications/2020/docs/ExxonKochAPI_Complaint.pdf.

“attorney Leigh Currie on the Attorney General’s staff and Pete Surdo have basically been working on this full time over the last few months.”⁶

9. Publicly available information shows that Ms. Currie and Mr. Noble serve together on the “Advisory Board” of an environmental activist group called Climate Generation,⁷ of which both are also “Former Board member/past Board Chair” (referring to the governing Board of Directors⁸).

10. Upon information and belief, SEEIC engagement letters with its privately hired attorneys placed in OAGs set forth the parties’ relationship, and SAAGs’ tasks and compensation.

11. Upon information and belief, the Office of Attorney General rushed into this arrangement with little consideration of the implications, including, e.g., even failing to obtain the terms of these private attorneys’ employment with the donor’s organization.

12. Defendant OAG recently acknowledged to Plaintiff in other MGDPA litigation that it had not obtained those details of Ms. Currie’s or Mr. Surdo’s arrangements with SEEIC prior to bringing them on as if they were OAG employees.⁹

13. Upon information and belief, Offices of Attorneys General have required “SAAGs” to submit attestations of past work, potential conflicts, and, e.g., “Request(s) for Permission to Engage in Outside Activity”.

⁶ See e.g., https://climatelitigationwatch.org/wp-content/uploads/2020/07/Minnesota-is-Suing-Climate-Polluters_Clip1.mov. Entire video of July 1, 2020 webinar available at <https://www.youtube.com/watch?v=2MqX14GTm-o>.

⁷ <https://www.climategen.org/who-we-are/advisory-board/>, last viewed November 3, 2020.

⁸ According to the Internet’s “Wayback Machine” (Archive.org), the reference to “Former Board Member/Past Board Chair” refers to Ms. Currie’s and Mr. Noble’s previous service on and Chairing the group’s governing Board of Directors, of which Ms. Currie was the group’s first chair, <https://www.climategen.org/who-we-are/board-of-directors/>, a position she held until sometime after September 27, 2017 and before October 27, 2017, <https://web.archive.org/web/20170927222307/https://www.climategen.org/who-we-are/board-of-directors/> (both viewed November 3, 2020). Not a statement that Ms. Currie is no longer on the Board of Advisors.

⁹ “One update. I have obtained the appointment letters from NYU to Pete Surdo and Leigh Currie.” Email from OAG’s Oliver Larson to Plaintiff counsel James Dickey, October 12, 2020. “As an FYI, we didn’t locate the appointment letters in question in our files, I obtained them recently for purposes of seeing if that would close this issue [of OAG withholding those letters in a separate MGDPA suit].” Email from OAG’s Oliver Larson to Plaintiff counsel James Dickey, October 30, 2020.

14. Because Plaintiff seeks to shed light on the facts surrounding Minnesota's involvement with Ms. Currie, and specifically what disclosures were made when about Ms. Currie's relationship with Climate Generation, Fresh Energy and Michael Noble before being brought in to OAG, and/or before filing the lawsuit against energy companies of which Mr. Noble boasted knowledge, Plaintiff submitted a Minnesota Government Data Practices Act request to the Defendant on September 4, 2020. See Exhibit A.

15. That request, which is the at issue in this matter, sought all application and hiring paperwork and other documentation including, but not limited to, all requests for waivers or permissions to engage in outside activities, conflicts-related statements, statements of affiliations (both contemporary and on-going), and related attestations, all records pertaining to arranging for Ms. Currie to work for or be seconded to OAG that are pursuant to or which reference HR/LR Policies including, but not limited to, certain named Minnesota government forms completed by or for Ms. Currie as part of arranging for Ms. Currie to work for or be seconded to OAG, and other application documentation.

16. The information sought by Plaintiff EPA's MGDPA request pertains to the disclosures and attestations required of Ms. Currie by OAG in bringing her into OAG, as if she was an employee, is public information, relates to a highly unusual arrangement between a private organization and Minnesota's chief law enforcement officer, and is of great public interest.

PARTIES

17. 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 office. Part of EPA's effort has been the record request at issue in this matter and similar requests in attorneys general offices

nationwide.

18. Defendant Keith Ellison is the Attorney General of the State of Minnesota and is sued in his official capacity as such. He, his office, and/or employees who report to him are in possession of the records that are at issue in this case.

19. Defendant OAG is the Attorney General's Office for the State of Minnesota. It is the recipient of the MGDPA request at issue, is the authority responsible for the data sought, and was responsible for improperly withholding public data. Its address is 445 Minnesota Street, Saint Paul, Minnesota 55101.

20. The State of Minnesota is a proper defendant in this matter because it employs Defendant Ellison, because the Office of the Attorney General is a constituent part of the State Government, and because Minn. Stat. § 13.08, Subd. 3 contemplates that actions of this nature may be brought against the State.

JURISDICTION AND VENUE

21. This Court has jurisdiction over this matter pursuant to Minn. Stat. § 13.08, Subd. 3, and Minn. Stat. § 484.01.

22. Venue is proper in this Court pursuant to Minn. Stat. § 13.08, Subd. 3, authorizing an action against the state under Chapter 13 to be brought in any county.

THE GOVERNMENT DATA PRACTICES ACT REQUEST

The September 4, 2020 Request

23. On September 4, 2020, EPA requested certain described correspondence and other records, by letter emailed to datapracitices@ag.mn.state.us, which is an address that the defendant has established for the specific purpose of receiving MGDPA requests. See EXHIBIT A.

24. These records specifically included: "1. All application and hiring paperwork and other

documentation including, but not limited to, all requests for waivers or permissions to engage in outside activities, conflicts-related statements, statements of affiliations (both contemporary and on-going), attestations that Ms. Currie would resign from or otherwise cease any activity or affiliation prior to beginning work for the Office of the Attorney General (OAG); **2.** All records pertaining to arranging for Ms. Currie to work for or be seconded to OAG that are pursuant to or which reference HR/LR Policies including, but not limited to, HR/LR 1421 and HR/LR Procedure #1421P, any Waiver of Liability, and/or Applicant Authorization for Release of Information from Current and Former Employers; **3.** All Minnesota Management & Budget form(s) completed by or for Ms. Currie as part of arranging for Ms. Currie to work for or be seconded to OAG; and **4.** Any other application documentation and accompanying materials relating to arranging for Ms. Currie to work for or be seconded to OAG.”

25. On the same date OAG provided an email from datapracitices@ag.state.mn.us, titled “Automatic reply: MGDPA Request” stating, *inter alia*, “Thank you for your email to the Minnesota Attorney General’s Office. This automatic response acknowledges its receipt.”

26. To date, OAG has provided no further response to this request.

STATEMENT OF CLAIMS

Count I

(Action to Compel Disclosure Pursuant to Minn. Stat. § 13.08)

27. Plaintiff realleges and incorporates by reference the allegations above.

28. The MGDPA “establishes a presumption that all government data are public and are accessible by the public for both inspection and copying unless there is federal law, a state statute, or a temporary classification of data that provides that certain data are not public.” Minn. Stat. § 13.01, Subd. 3.

29. OAG has ignored the request in violation of MGDPA.

30. Plaintiff is entitled to disclosure of the requested data pursuant to Minn. Stat. §§ 13.03, Subd. 1, and 13.08, Subd. 4.
31. Defendants have constructively denied Plaintiff access to requested records in violation of the MGDPA.
32. Defendants' denial of access was willful.
33. Plaintiff was harmed as a result of Defendants' willful violation of the MGDPA.
34. For these reasons, Plaintiff has standing to challenge Defendants' response.
35. Defendants' willful violations of the MGDPA entitle Plaintiff to its costs and disbursements, including reasonable attorneys' fees. Minn. Stat. § 13.08, Subd. 4.
36. Defendants' willful denial of Plaintiff's request justifies assessment of a civil penalty under Minn. Stat. § 13.08, Subd. 4.
37. Plaintiff is entitled to an immediate injunction preventing continuation of Defendants' willful and continued violations of the MGDPA. Minn. Stat. § 13.08, Subd. 2.

Count II

(Disclosure of Civil Investigative Data Pursuant to Minn. Stat. § 13.39, Subd. 2a)

38. Plaintiff realleges and incorporates by reference the allegations above.
39. OAG denied Plaintiff's request for records by ignoring it.
40. The MGDPA allows disclosure of government records related to a pending civil legal action if "the benefit to the person bringing the action or to the public outweighs any harm to the public, the government entity, or any person identified in the data." Minn. Stat. § 13.39, Subd 2a
41. The public has a substantial interest in the practice of private institutions recruiting elected officials to place privately hired individuals in public offices to further private goals, whether or not those are shared goals with the official running that office.

42. The public has a substantial interest in disclosure of potential conflicts of interest, and agency compliance with legal and ethical requirements including those involving privately hired attorneys placed in the Office of the Attorney General by a private donor.

43. This is particularly true when such evidence emerges showing past and continuing relationships which raise legitimate questions about the propriety of such an attorney's participation in particular matters, and about her continued communication with an interested party advocating a certain prosecution in which that attorney played a leading role.

44. Disclosure of the records sought will provide a significant benefit to the public by demonstrating how this practice occurs while also providing transparency on the operations of an elected, constitutional officer.

45. Defendant has identified no potential harms to the public or OAG that may result from the release of the requested materials.

46. Any possible chilling effect on the placement of privately-funded officials in public offices cannot plausibly outweigh the public's interest in these materials and Defendant has identified no harms to the public or their office in their response.

47. The benefits of disclosure outweigh any conceivable harms and the Court should authorize disclosure under Minn. Stat. § 13.39, Subd.2a.

COUNT III

(Disclosure of Information Pursuant to Minn. Stat. § 13.393)

48. Plaintiff realleges and incorporates by reference the allegations above.

49. Minn. Stat. § 13.393 requires the dissemination of data by an attorney acting in a professional capacity for a government agency to be governed by the statutes, rules, and professional standards concerning discovery, production of documents, introduction of evidence, and professional responsibility.

50. Defendants can present no evidence to support claims to the contrary and/or to support their withholding of the requested information.

51. Absent evidence the responsive records are legitimately privileged and/or that the public's interest is better served by keeping the information from the public than releasing it for public scrutiny, the Court should order disclosure of the records.

COUNT IV

(Disclosure of Information Pursuant to Minn. Stat. § 13.65)

52. Plaintiff realleges and incorporates by reference the allegations above.

53. Defendants can present no evidence to support the position that required attestations and disclosures by a privately hired attorney brought into OAG in an unprecedented arrangements, to perform as if any employee of OAG but while actually privately employed, would be anything other than public personnel data as defined in Minn. Stat. 13.43, subd. 2.

54. Absent a demonstration that the requested disclosures and attestations relating to the placement of Ms. Currie in OAG and the terms of their engagement are somehow non-public personnel data, the Court should order disclosure of the requested records.

PRAYER FOR RELIEF

WHEREFORE, the Plaintiff respectfully prays that this Court:

- a) Issue a declaratory judgment that the information requested is public information within the meaning of the Minnesota Government Data Practices Act, and that the OAG has improperly failed to produce such information;
- b) Enter a permanent injunction directing Defendants to comply fully with the MGDPA, and without further delay, to furnish Plaintiff the government data at issue in this matter, in the native format requested, subject only to legally-allowable withholdings justified by sufficient identification of the reasons for

withholding;

c) Assess a civil penalty as authorized in Minn. Stat. § 13.08, Subd. 4;

d) Alternately, perform an *in camera* review of the information sought to be redacted by OAG and compel OAG to release all information for which the OAG is unable to carry its burden to prove each withholding is privileged or otherwise not subject to disclosure;

e) Award Plaintiff fees, costs, and disbursements, including reasonable attorneys' fees, as authorized in Minn. Stat. § 13.08, Subd. 4; and

f) Order such additional relief as the Court may deem just and proper.

Respectfully submitted this the 3rd day of December, 2020,

ENERGY POLICY ADVOCATES
By Counsel

/s/Matthew D. Hardin
Matthew D. Hardin, I.D. No. 0397178
1725 I Street NW, Suite 300
Washington, DC 20006
Phone: (202) 802-1948
Email: MatthewDHardin@protonmail.com