



# COMMONWEALTH of VIRGINIA

Office of the Attorney General

Mark R. Herring  
Attorney General

May 27, 2016

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The Honorable Lamar Smith, Chairman  
Congress of the United States  
House of Representatives  
Committee on Science, Space, and Technology  
2321 Rayburn House Office Building  
Washington, D.C. 20515-6301

Dear Mr. Chairman:

I am responding on behalf of Virginia Attorney General Mark R. Herring to your letter of May 18, 2016 regarding the very important and pressing issue of climate change. This office has considered your request for information under the state's Freedom of Information Act. As you likely know, the Commonwealth has responded to similar FOIA requests by other entities following a thorough and comprehensive review of our files and electronic records. The results of that review and the associated production have been posted to numerous websites and I am confident your committee staff has acquired a copy or can easily do so.

With respect to your specific request, please be advised that non-residents of Virginia are not entitled to avail themselves of the benefits of the Virginia Freedom Of Information Act, Virginia Code §2.2-3700 et seq., and we will not be providing additional information at this time. Please be further advised that the Supreme Court of the United States in *McBurney v. Young*, 133 S.Ct. 1709 (2013) determined that declining to respond to out of state interests did not violate the federal Constitution.

It is important for you and your Committee to know and appreciate certain concerns raised by your request. Fundamentally, we question whether it is within the jurisdiction of the Committee on Science, Space, and Technology to make such a demand of a state law enforcement official such as the Virginia Attorney General.

With respect to the specific claims and allegations in your letter, I appreciate the challenge of drafting blast correspondence to numerous parties. However, the correspondence received by this office, first by press release then by mail several days later, contains numerous false claims that cannot go unaddressed. As an example, your correspondence goes into great detail regarding a "2012 Workshop to Explore Legal Avenues to Demonize the Fossil fuel Industry." The current Attorney General of Virginia was elected in 2013 and sworn into office on January 11, 2014, making participation in the event which you suggest as fundamental to your investigation an

impossibility. Further, by implication, your broad representations and accusations suggest that the Virginia Attorney General participated in an alleged January, 2016 Rockefeller Family Fund meeting in Manhattan. That too is false and inaccurate.

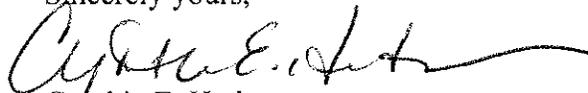
Attorney General Herring did participate, on March 29, 2016, in a meeting in New York to discuss climate change with colleagues. He makes no apologies for that as it was an opportunity to share and receive information on an important and timely issue. As you may know, the Commonwealth of Virginia is uniquely vulnerable to the effects of climate change and associated sea level rise. The Hampton Roads region is Virginia's second most populated region, its second largest regional economy, and the country's second most vulnerable area as sea levels rise. The area has the tenth most valuable assets in the world threatened by sea level rise, including billions of dollars of military assets, most notably the largest concentration of naval power in the world.

In just the last 85 years, the relative sea level in Hampton Roads has risen by fourteen inches, resulting in regular nuisance and occasionally severe flooding. The federal government has been a key ally to the region as the Navy, the Commonwealth of Virginia, and the communities of Hampton Roads continue to address resiliency issues and plan for our new reality of rising waters. We greatly appreciate the investment and partnership to date, and hope the partnership will continue to be a productive one. But ultimately, such efforts are treating the symptom and not the disease.

As I hope you can understand, we feel strongly about climate change in Virginia because it is not a theoretical idea to us. We are already feeling its effects. To interfere with this office as we explore ways to mitigate the negative effects of climate change is an inappropriate intrusion into this Commonwealth's prerogatives. To use untrue and inapplicable claims to accuse the duly elected Attorney General of Virginia of activity that "may rise to a level of an abuse of prosecutorial discretion" is offensive, not based in fact, and flat-out irresponsible.

The productive partnership between the federal, state, and local governments of Hampton Roads has shown the most promising path forward to mitigate the effects of climate change while work continues to reduce the carbon emissions that contribute to it. On behalf of Attorney General Herring, I suggest a continuation of this collaborative approach rather than the one represented by your Committee's letter. Such an approach only makes it more difficult to build consensus and make progress on a pressing issue of concern to this Commonwealth and our nation.

Sincerely yours,



Cynthia E. Hudson  
Chief Deputy Attorney General

Cc: Rep. Frank Lucas, Rep. F. James Sensenbrenner, Rep. Dana Rohrabacher, Rep. Randy Neugebauer, Rep. Mo Brooks, Rep. Ralph Lee Abraham, Rep. Bill Posey, Rep. Jim Bridenstine, Rep. Randy Weber, Rep. John Moolenaar, Rep. Brian Babin, Rep. Barry Loudermilk