





# STATE OF MINNESOTA

OFFICE OF THE ATTORNEY GENERAL

May 31, 2016

LORI SWANSON  
ATTORNEY GENERAL

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

Dear Chairman Smith:

I thank you for your correspondence dated May 18, 2016.

You request that this Office provide the following documents for the period of January 1, 2012 to the present:

1. All documents and communications between or among employees of the Office of the Attorney General of Minnesota and any officer or employee of the Climate Accountability Institute, the Union of Concerned Scientists, Greenpeace, 350.org, the Rockefeller Brothers Fund, the Rockefeller Family Fund, the Global Warming Legal Action Project, the Pawa Law Group, or the Climate Reality Project, referring or relating to your office's investigation or potential prosecution of companies, nonprofit organizations, scientists, or other individuals related to the issue of climate change.

Response: This Office has no such documents.

2. All documents and communications between or among employees of the Office of the Attorney General of Minnesota and any other state attorney general office referring or relating to your office's investigation or potential prosecution of companies, nonprofit organizations, scientists, or other individuals related to the issue of climate change.

Response: In any given year, staff attorneys in this Office are involved in thousands of communications with their counterparts in attorneys general offices in other states. Cooperation and dialogue among staff attorneys in legal matters has long been a common practice and consistent with principles of efficiency, federalism, professionalism, and state's rights. Moreover, this Office provides legal representation to the Minnesota Pollution Control Agency in a number of legal matters relating to the issue of climate change, such as the federal litigation involving the Clean Power Plan, making it prudent and necessary for our staff attorneys to communicate on such legal matters with their counterparts in other states.

This Office's communications as it relates to such legal matters are subject to a number of legal privileges, including the attorney work product, the attorney-client, and the deliberative process privileges. *See, e.g.,* Minn. Stat. § 595.02, subd. 1(b) & Minn. R. Evid. 501. Such communications are further subject to the common interest

The Honorable Lamar Smith  
May 31, 2016  
Page 2

doctrine, which provides an exception to the general rule that the attorney-client privilege is waived when privileged information is disclosed to a third party. *In re Grand Jury Subpoena Duces Tecum*, 112 F.3d 910, 922 (8th Cir. 1997) (if two or more entities with a common interest, whether it be legal, factual or strategic, are represented by counsel and agree to share information in a matter, privileged matters will retain that privilege as to outside parties); *see also, e.g., Cohen v. Beachside Two-1 Homeowners' Ass'n*, No. CIV. 05-706 ADM/JS, 2006 WI. 1795140, at \*5-6 (D. Minn. June 29, 2006); *cf. State ex rel. Humphrey v. Philip Morris Inc.*, 606 N.W.2d 676, 682 n.2 (Minn. Ct. App. 2000).

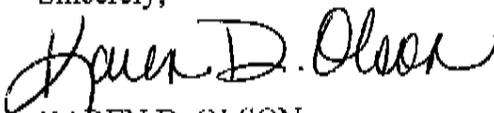
Principles of federalism and state's rights also support the conclusion that the actions of a state attorney general's office in its exercise of its legal authority are not subject to federal supervision. *See, e.g., New York v. U.S.*, 505 U.S. 144, 162 (1992) ("the Constitution has never been understood to confer upon Congress the ability to require the States to govern according to Congress' instructions.") (citation omitted); *Hutcheson v. U.S.*, 369 U.S. 599, 624 (1962) ("the congressional power of inquiry . . . must be related to, and in furtherance of, a legitimate task of the Congress . . .") (citation and quotation omitted); *Watkins v. U.S.*, 354 U.S. 178, 187 (1957) (noting that the congressional power of investigation is "not unlimited" and "comprehends probes into departments of the Federal Government . . ."); *F.E.R.C. v. Mississippi*, 456 U.S. 742, 777-78 (1982) (relying on the Tenth Amendment for proposition that "each state is sovereign within its own domain . . .").

3. All documents and communications between or among employees of the Office of the Attorney General of Minnesota and any official or employee of the U.S. Department of Justice, U.S. Environmental Protection Agency, or the Executive Office of the U.S. President referring or relating to your office's investigation or potential prosecution of companies, nonprofit organizations, scientists, or other individuals related to the issue of climate change.

Response: This Office has no such documents.

I thank you again for your letter. If you or your staff have any questions, please do not hesitate to contact me.

Sincerely,

  
KAREN D. OLSON  
Deputy Attorney General

cc: The Honorable Eddie Bernice Johnson, Ranking Member