

From: Mishaan, Jessica
Sent: Friday, March 18, 2016 10:00 AM
To: barrykade@hush.com
Subject: response to appeal

Mr. Kade,

Please find the attached letter from Darren Springer.

Thank you,

Jessica

Jessica Mishaan | Paralegal
Office of the Governor
109 State Street
Montpelier, VT 05609-0101
802.828.3333

PETER SHUMLIN
Governor



State of Vermont
OFFICE OF THE GOVERNOR

March 18, 2016

Barry Kade
604 North Main Street
P.O. Box 55
Montgomery, VT 05470

Dear Mr. Kade,

I understand you are appealing the partial denial of your public records act request dated February 16, 2016.

You asked for two categories of documents:

“(1) written communications in any form received by the Governor from any Vermont judge, health care provider, Vermont Chapter of NAMI, Dr. Simpatico, DVHA, DMH, Peter Albert (Brattleboro Retreat) or Jill Olson (lobbyist for the hospital association)” that were “created on or after October 1, 2015 and that mention involuntary medication by that or similar term”; and

“(2) Any records in the possession of the Governor’s Office relied on for the Governor’s statement [noted earlier in your request] that it has been proven that they work.”

After clarification, my office responded that we do not have records that are responsive to item (2) of your request.

As for item (1) of your request, the following records have been withheld:

(A) 5 pages from three weekly reports from Secretary Hal Cohen to Governor Shumlin. The reports are dated December 30, 2015, January 29, 2016, and February 12, 2016. Although these reports come to the Governor through the Secretary of AHS as opposed to directly through DMH and DVHA, they have been identified as potentially responsive to item (1) of your request. Each of the three reports contains the word “involuntary medication,” and contains substantive policy advice for the Governor. These five pages were withheld as executive privileged communications pursuant to 1 § V.S.A. 317(c)(1) & (4).

(B) A cover email from Secretary Hal Cohen to the Governor’s Chief of Staff and an attached memorandum from AHS General Counsel Allan Sullivan to Secretary Cohen, cc’ing Commissioners Reed and Costantino. The following people are cc’d on the cover email: the

Governor's Deputy Chief of Staff, Commissioner Costantino, DVHA General Counsel Howard Pallotta, Commissioner Reed, DMH General Counsel Karen Barber, Chief Financial Officer of AHS Sarah Clark, and Dixie Henry and Paul Dragon (the latter two were in the process of transitioning the AHS Deputy Secretary position at the time). The cover email contains substantive policy advice for the Governor. The memo also contains substantive policy and legal advice for the Governor and his senior advisers, with the input of DVHA and DMH. It is titled "Legislative Reform of the Involuntary Medication Protocols Applicable to Acutely Affected Psychiatric Patients," and outlines possible statutory changes to the process through which involuntary medication orders are obtained.

The cover email and the seven-page memo were withheld as executive privilege and attorney client communications pursuant to 1 § V.S.A. 317(c)(1), (3), (4).

I understand you have asked that this office certify that we are not in possession of additional records that may be responsive to your request. I certify that we are not.

I understand you would also like a more detailed accounting of the records withheld. I hope the above detail regarding the withheld records is helpful to you.

Finally, I understand that you may disagree that executive privilege applies to the above records, and that you feel that the Governor should provide more information regarding the basis for his position that our current involuntary treatment laws should be reformed. After review of the few documents withheld, I believe that the doctrine of executive privilege as construed by Vermont courts, as well as the doctrine of attorney client privilege, protects the above documents, and that application of exemptions 1 V.S.A. § 317(c)(1), (3), and (4) was appropriate here. These exemptions have been invoked to protect a limited zone of confidentiality that is necessary for the Governor and his senior advisors to formulate policy alternatives to be presented to the legislature for action. As you know, since proposal of the Governor's budget, we have had a robust public debate regarding possible statutory changes to our involuntary treatment laws, and we look forward to continuing that conversation with all stakeholders as the legislative session progresses.

I hope the above information is helpful to you. Please be aware you may appeal this determination pursuant to 1 V.S.A. § 319.

Sincerely,

A handwritten signature in black ink, appearing to read "Darren Springer", with a long horizontal flourish extending to the right.

Darren Springer
Chief of Staff