

From: Mishaan, Jessica
Sent: Friday, May 13, 2016 4:33 PM
To: agalloway@vtdigger.org
Subject: Your request

Anne,

Please see the email below from Sarah London.

Thank you,
Jessica

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

Anne, I write in response to your request below. You have asked to inspect approximately 10,000 stored emails without paying costs associated with restoring and copying the records into a readable format, identifying the public records in the account, and redacting information contained in public records that is confidential by law. The Governor's Office is denying your request for the reasons set forth below, but we encourage you to seek either existing productions from this account, and/or to make a more targeted request. As explained further below, we have produced hundreds of pages of records from Alex MacLean's account in response to more targeted requests, and we are happy to send you those productions at no cost.

Copying and restoration necessary to view these emails:

First, please be aware that the emails you have requested cannot be inspected or fully read without restoration and copying. The emails you have requested are stored in a truncated electronic format in the Symantec Enterprise Vault. In their stored format, the full text of these emails and associated attachments is not always visible, or appears in an altered format. An example of common formatting appearing in these emails is below:

He's not available Tuesday or Wednesday but I'm setting up a phone call for next week or 2 – waiting for confirmation. Is there anything else you want me to try?

To read these emails and attachments, which are accessed through existing outlook accounts in the Governor's Office, each email must be copied into a restored "whole item" view. Once the above message is copied into the restored view, it appears as below:

He's not available Tuesday or Wednesday but I'm setting up a phone call for next week or 2 – waiting for confirmation. Is there anything else you want me to try?

Non-agency business not subject to the public records act:

Second, your request for every remaining email slated for deletion in Alex MacLean's account involves records that were not produced or acquired in the course of agency business, and therefore not subject to the public records act. See 1 VSA 317(b). For example, there are emails that are from family members and friends that relate entirely to personal matters. In order to comply with your request, and to respect the privacy of former staff and their families, we would need to separate the agency business from the non-agency business. This requires significant staff time due to the volume of records associated with your request.

Information that is confidential by law:

Third, there is information contained in Alex MacLean's emails that is confidential by law. Release of such information could create a litigation risk for the State. An example is the names of candidates for a variety of positions, including judicial candidates and public service board candidates. There are also a number of emails that contain sensitive information of identified constituents, personal contact information, Alex MacLean's own protected information such as her SSN, and daily security information about the Governor. This information is exempt from public disclosure under various provisions and exemptions to the public records act, and would need to be redacted to comply with your request. See, e.g., 4 VSA 602(c); 1 VSA 317(c)(7), (25); 9 VSA 2435, 2440.

Resources necessary to comply with your request:

As explained below, the necessary copying and redacting to comply with your request exceeds the resources of this office. To comply with your request, this office would need to contract for, or hire, additional staff as well as purchase additional software licenses that we estimate to cost a few hundred dollars each. See, e.g., 1 VSA 316(g) (limitation on agency requirements regarding additional copying services and personnel in complying with public record act requests), (j) ("public agency may make reasonable rules to prevent disruption of operations").

We have encouraged all requesters to make more targeted requests, and many have. Since the 5500 page production on April 29, we have produced hundreds of pages of additional records from former staff accounts at no charge, including records reflecting use of Alex's Gmail account, and her records related to Vermont Health Connect. If you would like any of those productions, free of cost, let us know.

As for your request to inspect Alex MacLean's text messages, we are happy to send you transcriptions of her texts that we have previously produced in response to public record act requests from the time period you have identified.

More detailed information about our estimated costs associated with complying with your request are below. Please let us know if you would like to make a more targeted request and/or receive previous productions from Alex's account.

Sincerely,

Sarah

Below reflects a conservative estimate of the time and costs associated with the April 29 production – electronic access to 5500 pages of former staff email via Dropbox:

The April 29 production required in excess of 200 hours of staff time. Had we charged for that production, the cost would have been about \$5,000. A breakdown of how we arrived at that estimate is below. As for the number of records you have requested – every sent, received, and deleted (stored in trash) email slated for deletion from Alex MacLean’s account from January 2011 through October 2012, we estimate total responsive records to exceed 10,000. To comply with this request, we would need at least two more productions similar to the one we made before, which would put us in the \$10,000 range.

The uniform fee schedule for public record act requests is available here:

<https://www.sec.state.vt.us/archives-records/certifications-fees/uniform-fee-schedule.aspx>

Break down of time on previous production: 200 hours (176 for Sarah London and paralegal Jessica Mishaan, 25+ of additional office staff) x 60 = 12,000 minutes

Half of the total time was spent duplicating the records – copying them from the enterprise vault so that they are fully readable and could be redacted:

That is 6000 minutes at .33 a minute (minus the first 30 mins per statute) = \$1970.1

The other half of the time was spent redacting information so as not to reveal personal information of constituents, personnel information of employees, attorney-client communications, etc.

That is 6000 minutes at .45 a minute = \$2700
\$2700 + 1970 = \$4670

Printing costs (to allow for redactions – this office has one Adobe Pro software license) totaled around \$300.

Total = \$5,000

From: Anne Galloway [<mailto:agalloway@vtdigger.org>]

Sent: Thursday, May 12, 2016 1:32 PM

To: Coriell, Scott <Scott.Coriell@vermont.gov>; London, Sarah <Sarah.London@vermont.gov>

Subject: Request for inspection of remaining Alex MacLean emails

Dear Scott Coriell:

Thank you for sending a representative sample of the emails from a three month period.

I am following up on a request made by Erin Mansfield on April 25.

“I am seeking copies of emails from top aides that the Shumlin administration sought to delete on April 1 and April 8. The Shumlin administration has described the emails in question as "transitory" communication from 2013 and earlier. They were scheduled to be deleted as opposed to archived.

I am seeking the same emails that the Vermont Press Bureau, the Burlington Free Press, and Seven Days have already requested. They should include emails from the accounts of Bill Lofy, Bianca Slota, Ariel Weingroff, and Elizabeth Bankowski.”

Pursuant to the Vermont Public Records Act, I am withdrawing our original request.

I am now requesting an opportunity to inspect all of the remaining emails, not included in the litigation hold, to and from Alex MacLean, both from her personal and government accounts, from January 2011 through the last day of October 2012. I am also requesting to inspect all attachments to those emails. In addition, I request inspection of all of texts to and from Alex for the same time period.

I anticipate that there be no cost associated with this request. Judge Geoffrey Crawford ruled in Washington Superior Court in January 2011 that “the burden of inspection is part of the cost of government to be borne by the polity at large and not imposed upon individuals or organizations seeking information.” Here is a link to the decision: <http://vtdigger.wpengine.com/wp-content/uploads/2011/01/PRRcrawford.pdf>

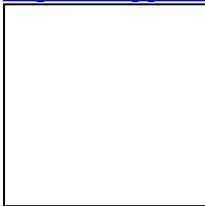
Thank you in advance for your assistance.

Anne Galloway

Editor, VTDigger

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