

From: London, Sarah
Sent: Wednesday, July 09, 2014 10:40 AM
To: Mishaan, Jessica
Subject: FW: follow-up to IBM records request

From: Paul Heintz [<mailto:paul@sevendaysvt.com>]
Sent: Tuesday, July 01, 2014 3:49 PM
To: London, Sarah
Subject: Re: follow-up to IBM records request

Okay. Thanks for your help, Sarah.

On Tue, Jul 1, 2014 at 3:41 PM, London, Sarah <Sarah.London@state.vt.us> wrote:

Hi Paul, below is (I hope) all the information we discussed yesterday.

(1) The Governor, a member of his senior staff, and/or the Secretary of Commerce have attended roughly annual meetings with New York IBM officials. Those meetings have occurred in both New York and Vermont. IBM chooses its attendees; Rod Adkins and John Kelly have routinely attended.

(2) The Governor has roughly quarterly meetings with Janette Bombardier and a member of the Governor's senior staff and/or a cabinet member. These meetings have occurred in Essex and in Montpelier and the location is determined by convenience of scheduling.

(3) Executive privileged emails: (1) I have looked through the roughly 100 pages of withheld documents from the Governor's Office and AoA productions, and the roughly 30 pages of withheld documents from the ACCD production. We have sought to produce the non-privileged portions of email chains (e.g., emails related to scheduling and portions of email chains that involve non-state officials). It is not practicable to produce the withheld emails in a redacted form. (Also, my count is a total of 28 pages of executive privileged records withheld from the total ACCD production, and I understand that you will receive or have received the last of the ACCD records today.)

(4) Louis Porter has searched his records and does not have additional responsive and non-privileged emails or other records regarding toxics or WARN or other bills with IBM officials. (You will note that emails involving Louis Porter appear in the records you have received.)

If I missed anything or if you have any further questions, just let me or Liz know. Thanks,

Sarah

From: London, Sarah
Sent: Friday, June 27, 2014 5:41 PM
To: 'Paul Heintz'
Subject: RE: follow-up to IBM records request

Dear Paul,

I will look into the scheduling question and get back to you.

You are correct – I did not include IBM emails on legislative matters not directly related to specific employment actions or the sale of any facility, including bills like WARN and toxics. In terms of communications with IBM representatives on bills, the only document that fits your request, including those of Louis Porter, is the attached between Liz Miller and Janet Doyle. Agency and Department staff took the lead on the bills you mentioned; if you want information on who to contact on particular bills just let us know.

Here's the legal answer regarding executive privilege. Our Supreme Court, like courts in many other states, has taken the position that a governor's executive privilege is akin to presidential executive privilege and has relied on federal case law interpreting presidential executive privilege in construing our own. Federal cases make clear that the chief executive him or herself need not have received a document for executive privilege to attach. Courts have said that "communications made by presidential advisers in the course of preparing advice for the President come under the presidential communications privilege, even when these communications are not made directly to the President." In *re Sealed Case*, 121 F.3d 729, 752 (D.C. App. Ct. 1997). The policy justification for this approach has been that "advisors do not explore alternatives only in conversations with the President" and need to have the ability to investigate and obtain frank input from those with relevant expertise in order to advise the chief executive. *Id.* at 750. We have applied executive privilege to communications among

the Governor's senior staff and appointed officials when formulating advice or recommended action on behalf of the Governor.

I hope that's helpful. Any other questions, let us know.

Have a great weekend,

Sarah

From: Paul Heintz [<mailto:paul@sevendaysvt.com>]
Sent: Friday, June 27, 2014 11:35 AM
To: London, Sarah; Miller, Elizabeth
Subject: follow-up to IBM records request

Hi Sarah and Liz,

First of all, thanks for taking the time to comb through your records to comply with my records request. And thanks for looking for "GlobalFoundries," in addition to "GlobalFoundaries" — whatever that is!

A couple follow-ups:

-I'm fine with you withholding emails involving the governor's schedule this time, but could you provide me the dates of any visits he's made to IBM corporate headquarters in Armonk, the Essex/Williston facility and any other IBM or GlobalFoundries entities?

-Did you end up withholding IBM emails concerning other legislative matters, not directly related to the possible sale of its Vermont facilities?

-Can you tell me why you withheld communications between and *among* the governor, his senior staff and senior appointed advisors? My understanding was that communications directly with the governor could be withheld, but not those just between members of his senior staff. I am certainly still interested in those documents.

Those are the only questions I have for now, but I may follow up with more later on.

Thanks again. I really do appreciate your help.

Paul

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