

PETER SHUMLIN
Governor



State of Vermont
OFFICE OF THE GOVERNOR

March 30, 2012

Sandra Levine
CLF Vermont
15 East State Street, Suite 4
Montpelier, VT 05602
slevine@clf.org

Delivered by Email

Re: Appeal, CLF PRA Request February 29, 2012

Dear Ms. Levine,

I am writing in response to your March 26, 2012 public records appeal. I am granting your appeal for all but one email exchange. To review, the Governor's Office sought to provide you with four PDFs of 42 to 86 pages each via email on March 15, 2012 in response to your February 29, 2012 request. When email receipt was not successful, we provided you printed copies of those PDFs on March 16, 2012. Certain emails were initially withheld under the doctrine of executive privilege or attorney-client privilege.

Executive privilege extends to the Governor's staff. As stated in one of the cases you cite, "[i]t is not protection of governmental officials, but rather protection of the effectiveness of the overall governmental system that is at stake" when it comes to executive privilege. *Killington, Ltd. v. Lash*, 153 Vt. 628, 637 (1990). Communications need not directly involve the Governor for the privilege to apply when they involve staff who regularly provide policy and decision-making advice to the Governor. Courts construing executive privilege in the context of the President have similarly held that communications need not directly involve the President for the privilege to apply. However, I have reviewed the withheld documents and concluded that all but one email chain do not reveal policy advice or deliberations among the Governor's senior staff and high-ranking agency personnel. Accordingly, I am releasing those records.

I am withholding one email chain (four total emails) among Governor's Counsel Sarah London, myself, Deputy Chief of Staff and Secretary of Civil and Military Affairs Alex MacLean, and Commissioner Elizabeth Miller, all from February 15, 2012, regarding the generating tax, spent nuclear fuel tax, VELCO, Vermont Yankee, Vermont's Renewable Portfolio Standard, and liquid natural gas. These four emails are exempt from disclosure under the doctrine of executive privilege and attorney-client confidentiality because they contain legal advice and deliberations regarding the Governor's policy and decision-making with respect to each of the above areas.

Please note that you have the right to challenge my determination in court under 1 V.S.A. § 319.

Sincerely,

A handwritten signature in black ink, appearing to read 'Bill Lofy', with a long horizontal flourish extending to the right.

Bill Lofy, Chief of Staff
Office of Governor Peter Shumlin