Mark Graff - NOAA Federal

From:	Mark Graff - NOAA Federal
Sent:	Thursday, March 8, 2018 9:33 AM
To:	Adam Issenberg - NOAA Federal
Cc:	Gene Martin; John Almeida - NOAA Federal; Stacey.Nathanson@noaa.gov; Caroline Park; Robert Swisher - NOAA Federal; Lola Stith - NOAA Affiliate; Ed Kearns - NOAA Federal
Subject:	Re: FW: UMass Dartmouth public records request

Yes, that makes sense (b)(5) [redacted].

(b)(5) [redacted]

Mark H. Graff
FOIA Officer/Bureau Chief Privacy Officer (BCPO)
National Oceanic and Atmospheric Administration
(301) 628-5658 (O)
(b)(6) [redacted] (C)

Confidentiality Notice: This e-mail message is intended only for the named recipients. It contains information that may be confidential, privileged, attorney work product, or otherwise exempt from disclosure under applicable law. If you have received this message in error, are not a named recipient, or are not the employee or agent responsible for delivering this message to a named recipient, be advised that any review, disclosure, use, dissemination, distribution, or reproduction of this message or its contents is strictly prohibited. Please notify us immediately that you have received this message in error, and delete the message.

On Thu, Mar 8, 2018 at 9:17 AM, Adam Issenberg - NOAA Federal <adam.issenberg@noaa.gov> wrote:

> Mark -
>
> (b)(5) [redacted]

(b)(5) [redacted]

Perhaps John, Gene, Stacey or Caroline has additional thoughts.

ai

On Wed, Mar 7, 2018 at 5:39 PM, Mark Graff - NOAA Federal <mark.graff@noaa.gov> wrote:

Hello Adam,

(looping in NOAA FOIA folks to chime in if they see something I missed)

(b)(5) [redacted]

[redacted]

[redacted]

[redacted]

(b)(5) [redacted]

[redacted] If you need me to dig into that, or another aspect of this, please let me know. Thanks, Adam--

Mark H. Graff
FOIA Officer/Bureau Chief Privacy Officer (BCPO)
National Oceanic and Atmospheric Administration
(301) 628-5658 (O)
(b)(6) [redacted] (C)

Confidentiality Notice: This e-mail message is intended only for the named recipients. It contains information that may be confidential, privileged, attorney work product, or otherwise exempt from disclosure under applicable law. If you have received this message in error, are not a named recipient, or are not the employee or agent responsible for delivering this message to a named recipient, be advised that any review, disclosure, use, dissemination, distribution, or reproduction of this message or its contents is strictly prohibited. Please notify us immediately that you have received this message in error, and delete the message.

On Wed, Mar 7, 2018 at 4:24 PM, Mark Graff - NOAA Federal <mark.graff@noaa.gov> wrote:

Hi Adam,

I'll try to have you the background analysis on this tomorrow morning, along with a few use cases from NOAA's processing in the past.

Mark H. Graff
FOIA Officer/Bureau Chief Privacy Officer (BCPO)
National Oceanic and Atmospheric Administration
(301) 628-5658 (O)
(b)(6) [redacted] (C)

Confidentiality Notice: This e-mail message is intended only for the named recipients. It contains information that may be confidential, privileged, attorney work product, or otherwise exempt from disclosure under applicable law. If you have received this message in error, are not a named recipient, or are not the employee or agent responsible for delivering this message to a named recipient, be advised that any review, disclosure, use, dissemination, distribution, or reproduction of this message or its contents is strictly prohibited. Please notify us immediately that you have received this message in error, and delete the message.

On Wed, Mar 7, 2018 at 2:52 PM, Adam Issenberg - NOAA Federal <adam.issenberg@noaa.gov> wrote:

Thoughts? Mark, I believe you had mentioned some relevant precedents on this issue. Please share.

ai

---------- Forwarded message ----------
From: **John Hoey** <jhoey@umassd.edu>
Date: Wed, Mar 7, 2018 at 2:42 PM
Subject: FW: UMass Dartmouth public records request
To: John Quinn <jquinn3@umassd.edu>, "adam.issenberg@noaa.gov" <adam.issenberg@noaa.gov>

Adam: This response is not unexpected. Let me know your thoughts before I loop in our General Counsel. Thank you.

From: Ryan Mulvey [mailto:ryan.mulvey@causeofaction.org]
Sent: Wednesday, March 07, 2018 3:28 AM
To: John Hoey <jhoey@umassd.edu>
Cc: Ryan Merrill <rmerrill1@umassd.edu>
Subject: RE: UMass Dartmouth public records request

Mr. Hoey:

Thank you for your email. As a preliminary matter, I would appreciate if you could point me to the relevant provision of the Massachusetts Public Records Act that authorizes referral of a state public records request to a non-state entity, namely, an agency of the federal government.

Although the subject matter of our request concerns, in part, the National Oceanic and Atmospheric Administration ("NOAA"), we do not consider referral to be appropriate. If responsive records may discuss NOAA or the New England Fishery Management Council, that fact alone does deprive these documents their character as "public records" under the laws of the Commonwealth of Massachusetts. Among other things, we seek correspondence of a state employee, in his capacity as an official representative of the Commonwealth, on a state-funded email account hosted by the University of Massachusetts. Such correspondence plainly falls under the jurisdiction of the Public Records Act.

If you do not intend to process our request, I kindly ask you to confirm that your previous email constitutes an adverse determination. Please provide the legal bases for your denial, as well as all other information required by 950 CMR 32.06(3). We intend to appeal your denial to the Supervisor of Records pursuant to 950 CMR 32.08(1) and, if necessary, consider all other relief available under the law, including judicial review.

Thank you again.

Best regards,

Ryan Mulvey

Ryan P. Mulvey | Counsel

Cause of Action Institute

1875 Eye Street NW, Suite 800

Washington, D.C. 20006

(o) 202.400.2729 / ((b)(6) [redacted]

Ryan.Mulvey@causeofaction.org

Admitted to the practice of law in New York State and the District of Columbia

CAUSE of ACTION INSTITUTE

Confidentiality: *The information contained in, and attached to, this communication may be confidential, and is intended only for the use of the recipient named above. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution, or copying of this communication, or any of its contents, is strictly prohibited. If you have received this communication in error, please re-send this communication to the sender and delete the original message and any copy of it from your computer system. Thank you.*

From: John Hoey [mailto:jhoey@umassd.edu]
Sent: Tuesday, March 06, 2018 12:47 PM

To: Ryan Mulvey <ryan.mulvey@causeofaction.org>
Cc: Ryan Merrill <rmerrill1@umassd.edu>
Subject: UMass Dartmouth public records request

Dear Mr. Mulvey:

Thank you for your public records request. Given that your request is related to National Oceanic and

Atmospheric Administration, it should be treated as a request under the federal Freedom of Information Act. Therefore, we have referred your request to NOAA.

Sent from my iPhone

On Feb 27, 2018, at 1:59 AM, Ryan Mulvey <ryan.mulvey@causeofaction.org> wrote:

> Ryan,
>
> Thank you for your email. I have completed the online request form. Obviously, given the nature of that form, I can't provide all the same details that are included in the footnotes and exhibits of the PDF I sent you. I would appreciate if the records officer who ends up processing the request could refer to the PDF, in addition to the online submission. Thanks so much!
>
> Best,
>
> Ryan Mulvey
>
> ---
>
> **From:** UMassD PublicAffairs [mailto:publicaffairs@umassd.edu]
> **Sent:** Monday, February 26, 2018 4:14 PM
> **To:** Ryan Mulvey <ryan.mulvey@causeofaction.org>
> **Cc:** John Hoey <jhoey@umassd.edu>
> **Subject:** RE: Massachusetts Public Records Act Request - Submission by CoA Institute
>
> Mr. Mulvey,
>
> Thank you for your public records request.
>
> We have received the information you have sent through email, but please submit your request through our official channel - https://www.umassp.edu/public-records/public-records-requests

We will contact you soon regarding the status of your request.

Thank you.

-Ryan

Ryan C. Merrill

Public Affairs Specialist

UMass Dartmouth

Office: 1.508.910.6884

Cel (b)(6) [redacted]

From: Ryan Mulvey [mailto:ryan.mulvey@causeofaction.org]
Sent: Monday, February 26, 2018 2:01 PM
To: UMassD PublicAffairs <publicaffairs@umassd.edu>
Subject: Massachusetts Public Records Act Request - Submission by CoA Institute

Dear Mr. Hoey,

Please find attached a public records act request from Cause of Action Institute. As detailed in our letter, we are seeking public records under the control of Dr. John Quinn.

Thank you for your assistance in processing this request. I look forward to your response.

Kind regards,

Ryan Mulvey

Ryan P. Mulvey | Counsel

Cause of Action Institute

1875 Eye Street NW, Suite 800

Washington, D.C. 20006

(o) 202.400.2729 / ((b)(6)

Ryan.Mulvey@causeofaction.org

Admitted to the practice of law in New York State and the District of Columbia

<image001.png>

Confidentiality: *The information contained in, and attached to, this communication may be confidential, and is intended only for the use of the recipient named above. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution, or copying of this communication, or any of its contents, is strictly prohibited. If you have received this communication in error, please re-send this communication to the sender and delete the original message and any copy of it from your computer system. Thank you.*

--

Adam Issenberg

Section Chief

Fisheries and Protected Resources Section

NOAA Office of the General Counsel

U.S. Department of Commerce

Phone: 301-713-9670

Email: Adam.Issenberg@noaa.gov

Confidentiality Notice: This e-mail message is intended only for the named recipients. It contains information that may be confidential, privileged, attorney work product, or otherwise exempt from disclosure under applicable law. If you have received this message in error, are not a named recipient, or are not the employee or agent responsible for delivering this message to a named recipient, be advised that any review, disclosure, use, dissemination, distribution, or reproduction of this message or its contents is strictly prohibited. Please notify us immediately that you have received this message in error, and delete the message.

--

Adam Issenberg

Section Chief

Fisheries and Protected Resources Section

NOAA Office of the General Counsel

U.S. Department of Commerce

Phone: 301-713-9670

Email: Adam.Issenberg@noaa.gov

Confidentiality Notice: This e-mail message is intended only for the named recipients. It contains information that may be confidential, privileged, attorney work product, or otherwise exempt from disclosure under applicable law. If you have received this message in error, are not a named recipient, or are not the employee or agent responsible for delivering this message to a named recipient, be advised that any review, disclosure, use, dissemination, distribution, or reproduction of this message or its contents is strictly prohibited. Please notify us immediately that you have received this message in error, and delete the message.