

STATE OF NEW HAMPSHIRE
DEPARTMENT of RESOURCES and ECONOMIC DEVELOPMENT
OFFICE of the COMMISSIONER
172 Pembroke Road P.O. Box 1856 Concord, New Hampshire 03302-1856

R. SEAN O'KANE
Commissioner

603-271-2411
FAX: 603-271-2629
E-MAIL: sokane@dred.state.nh.us

November 10, 2005

Mr. Andrew Walters, Director
ATV Watch
PO Box 34
Fitzwilliam, NH 03447

Dear Mr. Walters:

On Monday, October 31, 2005, DRED produced documents to you under your various Right-To-Know requests. In that release, DRED accidentally included attorney-client privileged documents. DRED is not waiving its privilege and these documents must be returned to DRED.

You must return to DRED all such documents and any copies that you have made of these documents, specifically including the e-mails dated January 20, 2005, to DRED. We are also aware that you have released these documents in violation of our privilege. As a result, you must provide us with a list of the parties to whom you released these documents. And, you must make an effort to retrieve these documents from those parties.

All originals and copies of these documents must be returned to DRED or you will be violating DRED's privilege.

I look forward to the return of these documents within one week.

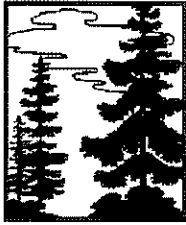
Sincerely,

R. Sean O'Kane
Commissioner

RSO/jc

Cc: Anne Edwards, Associate Attorney General
Paul Gray, Bureau of Trails
Allison McLean, Director of Parks and Recreation





File Copy
ATV Watch New Hampshire
PO Box 34
Fitzwilliam, New Hampshire 03447
ATVWatch.COM (603) 785-7722

December 21, 2005

Mr. Sean O'Kane
State of New Hampshire
Department of Resources and Economic Development
PO Box 1856
Concord, NH 03302

Dear Mr. O'Kane:

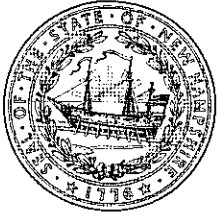
I am in receipt of your letter Dated ^{Nov 10, 2005} ~~December 11, 2005~~. In this letter you have requested return of emails which you indicate were accidentally disclosed to ATV Watch and a list of names of the parties which they were distributed to.

I am taking this issue very, very seriously. Could you please indicate whether you believe the entire documents or only parts of the documents are exempt from disclosure under New Hampshire's right to know law. Also, if you could please provide the specific reasons, under New Hampshire's Right to know law, for their claimed exemption from disclosure that would be appreciated.

Please respond at your earliest convenience so we can resolve this matter.

Sincerely,

Andrew Walters, Director
ATV Watch
Andrew@ATVWatch.com



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R. SEAN O'KANE
Commissioner

603-271-2411
FAX: 603-271-2629
E-MAIL: sokane@dred.state.nh.us
January 4, 2006

Andrew Walters, Director
ATV Watch
PO Box 34
Fitzwilliam, NH 03447

Dear Mr. Walters:

The e-mails that you were asked to return, in their entirety are attorney/client privileged which has been protected by New Hampshire law for hundreds of years. See New Hampshire Rule of Evidence 502; and *Stevens v. Thurston*, 112 NH 118, 119 (1972) (The communications are protected in the absence of waiver by the client); and New Hampshire Rule of Evidence 511 (A claim of privilege is not defeated by a disclosure that was compelled erroneously or by a disclosure that was made inadvertently during the course of discovery). DRED did not waive disclosure of these e-mails. As you know, they were released accidentally. Further, the Right-to-Know law also exempts confidential documents from being subject to disclosure. RSA 91-A: 5, IV.

Once Associate Attorney General Edwards alerted the Court that attorney/client privileged documents had been inadvertently released, you were questioned by Judge McGuire as to why you had not returned those documents. You stated that you were waiting for a letter from DRED. You received that letter more than a month ago and not only have you not returned the documents but you did not respond within the timeframe outlined in that letter.

You must return those documents, and all copies, with a list of the parties you disclosed them to as you were immediately informed that they were released inadvertently and that they were attorney/client privileged. If you do not return those documents with the list, DRED will file a motion with the Court to have you ordered to return them.

Sincerely,

A handwritten signature in black ink that reads "R. Sean O'Kane".

R. Sean O'Kane
Commissioner

CC: Anne Edwards, Associate Attorney General



File copy made 01-21-06
ATV Watch New Hampshire
PO Box 34
Fitzwilliam, New Hampshire 03447
ATVWatch.COM (603) 785-7722

January 20, 2006

Mr. Sean O'Kane
State of New Hampshire
Department of Resources and Economic Development
PO Box 1856
Concord, NH 03302

Dear Mr. O'Kane:

I am in receipt of your letter dated January 4, 2006 regarding return of the emails. Since I was notified that DRED considered the emails to not be subject to release under New Hampshire's right to know law I have respected that position. However, contrary to DRED's position I am not certain that the emails, in their entirety, are exempt from disclosure under New Hampshire's right to know law.

The courts have addressed the issue of the right to know law and confidentially repeatedly. My sincere concern is that without constraints, a "confidential" stamp could be used to undermine the right to know law in the very instances where the public's right to know is most essential to our democratic society.

It does not appear to me that a return of the emails, in their entirety, with a list of the names of the people or organization which I may have disclosed them to is required under the law. I will continue to hold the emails until DRED has had sufficient time to take the matter up with the Court at which time I hope the Court provides an opportunity to address what parts of the emails may or may not be subject to disclosure under the law.

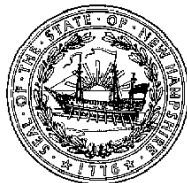
Sincerely,

Andrew Walters, Director
ATV Watch
Andrew@ATVWatch.com

**ATTORNEY GENERAL
DEPARTMENT OF JUSTICE**

33 CAPITOL STREET
CONCORD, NEW HAMPSHIRE 03301-6397

KELLY A. AYOTTE
ATTORNEY GENERAL



ORVILLE B. "BUD" FITCH II
DEPUTY ATTORNEY GENERAL

April 4, 2007

Joshua L. Gordon, Esquire
26 South Main Street #175
Concord, New Hampshire 03301

Re: Inadvertent disclosure of documents

Dear Attorney Gordon:

I am writing to follow up on your letter of February 2, 2007 and our telephone conversations since then. This issue arose following a request by your client, Andrew Walters, pursuant to RSA 91-A for certain documents in the possession of the Department of Resources and Economic Development (DRED). As part of the response to your client's RSA 91-A request, three e-mails were made available to your client. Following that disclosure, Mr. Walters was notified that the three e-mails in question were privileged, and should not have been disclosed. Several demands were made for the return of the e-mails and to date, they have not been returned.

We continue to believe that when attorney-client privileged documents are inadvertently disclosed in response to a 91-A request, the recipient of those documents has an obligation to return them. Nevertheless, in this particular case, given the passage of time and the fact that Mr. Walters has already made some or all of the confidential materials public, this office does not intend to seek a declaratory ruling from the court. Nevertheless, our request to Mr. Walters that he either destroy or return the privileged documents remains outstanding.

As we also discussed, it is my understanding that Mr. Walters may intend to use these documents before legislative committees or commissions. In order to allow the Office of the Attorney General to respond to any questions that will inevitably arise, I am respectfully requesting that Mr. Walters give us some advance notice of his intent to use these e-mails before any public body in order to give us the opportunity to participate.

I appreciate your continued courtesy and cooperation regarding this matter.
Should you have any questions, please do not hesitate to give me a call.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Richard W. Head', written over a horizontal line.

Richard W. Head
Associate Attorney General
(603) 271-1248

RWH/llm
180563.doc