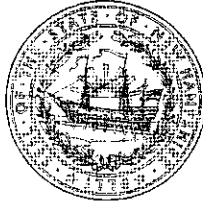


**ATTORNEY GENERAL
DEPARTMENT OF JUSTICE**

33 CAPITOL STREET
CONCORD, NEW HAMPSHIRE 03301-6397

KELLY A. AYOTTE
ATTORNEY GENERAL



ORVILLE B. "BUD" FITCH II
DEPUTY ATTORNEY GENERAL

Hand Delivered

February 6, 2008

William McGraw, Clerk
Merrimack County Superior Court
P. O. Box 2880
Concord, New Hampshire 03302-2880

Re: ATV Watch, et al v. State of NH Department of Transportation
Docket No. 08-E-0030

Dear Mr. McGraw:

Enclosed please find an Answer to Petition for Declaratory Judgment; a Partial Motion to Dismiss; and a Hearing Memorandum to be filed with reference to the above-captioned case.

Thank you for your attention to this matter.

Very truly yours,

A handwritten signature in black ink, appearing to read "Edith L. Pacillo".

Edith L. Pacillo
Assistant Attorney General
Transportation & Construction Bureau
(603) 271-3675

ELP:mc
Enclosure
cc: ✓ ATV Watch, Andrew Walters, Director
246124.doc

THE STATE OF NEW HAMPSHIRE

MERRIMACK, SS.

SUPERIOR COURT

Docket No. 08-E-0030

ATV Watch and Andrew Walters

v.

State of New Hampshire
Department of Transportation

ANSWER TO PETITION FOR DECLARATORY JUDGMENT

NOW COMES the State of New Hampshire, Department of Transportation , by and through its attorneys, the Office of the Attorney General and in the event a Response is required to the Petition for Declaratory Judgment, the State says as follows:

1. The DOT admits Paragraphs 1 through 6 of Plaintiff's Petition with the exception of the second sentence of Paragraph 1, which the DOT denies.
2. The DOT denies Paragraphs 1 through 4 under the heading "Petition."
3. To the extent that the allegations under the heading "Background On Subject of Right to Know Requests" contain conclusions of law, no answer is required.
4. The DOT denies that it recognized that ATVs were prohibited by federal statutes and that it "reinterpreted federal statutes" and decided they could "test the waters." To the extent that the Petition contains allegations concerning the Department of Resources and Economic Development (DRED) the Department is without sufficient information to admit or deny these allegations. The DOT admits that the New Hampshire General Court is considering legislation concerning ATV use on rail trails, but denies that the bills would "moot" DOT's request for a waiver.

5. To the extent that the arguments under the heading “Public Interest Considerations” contain conclusions of law, no answer is required. The DOT denies that more than 80% of the public comments received on the New Hampshire Rail Trails Plan indicated that the public was opposed to ATV use on the rail trails.

6. With respect to the allegations under the heading “Violation 1 – Untimely Release of Documents,” the DOT generally denies the characterization of the DOT’s responses to Mr. Walters’ various requests. The DOT further denies Mr. Walters’ calculation of relevant timeframes. By way of further answer, the DOT has simultaneously submitted a Partial Motion to Dismiss this claim and incorporates that motion herein.

7. With respect to the assertions made under the heading “Violation 2 – Failure to Disclose that Documents Were Being Withheld,” the DOT denies that the DOT violated RSA 91-A. To the extent that this section contains conclusions of law, no answer is required. By way of further answer, the DOT has simultaneously submitted a Partial Motion to Dismiss this claim and incorporates that motion herein.

8. With respect to the allegations under the heading “Violation 3 – Failure to Provide Reasons for Denying Disclosure,” the DOT denies Mr. Walters’ characterization of the DOT’s responses as violating RSA 91-A. By way of further answer, the DOT has simultaneously submitted a Partial Motion to Dismiss this claim and incorporates that motion herein.

9. With respect to the allegations under the heading “Alleged Violation 4 - Failure to Disclose Documents in Their Entirety or in Part,” the DOT denies that the DOT arbitrarily stamps communication as “confidential” or “privileged.” To the extent that this claim concerns the Attorney General’s Office, the DOT is without sufficient knowledge to

admit or deny. By way of further answer, the DOT has submitted a Partial Motion to Dismiss this claim and incorporates that Memorandum herein.

10. The DOT denies that the attorney/client privilege has been waived. By way of further answer, the DOT has submitted a Partial Motion to Dismiss this claim and incorporates that Motion herein.

11. The DOT denies that it violated RSA 91-A or the New Hampshire Constitution by withholding documents that constitute "personal notes." By way of further answer, the DOT has simultaneously submitted a Hearing Memorandum on this claim, and incorporates that Memorandum herein.

12. The Department denies that RSA 91-A:5, IX violates Pt. 1, Art. 8 of the New Hampshire Constitution. By way of further answer, the Department has submitted simultaneously a Hearing Memorandum concerning this claim and incorporates that Memorandum herein.

13. With respect to allegations under the heading "Violation 5 – Limiting the Content Scope of Search for Records Requested," the DOT admits that DOT circulated an e-mail internally on August 15, 2007 and further admits that it contained the language quoted in the Petition. The Department denies that it violated RSA 91-A. By way of further answer, the DOT has submitted a Partial Motion to Dismiss this claim and incorporates that motion herein.

14. With respect to the allegations under the heading "Violation 6 – Limiting the Range of Search for Records Requested," the DOT admits that it circulated an August 15, 2007 e-mail containing among other things the language quoted in the Petition. The DOT

denies that it violated RSA 91-A. By way of further answer, the DOT has submitted a Partial Motion to Dismiss this claim and incorporates that motion herein.

14. With respect to the allegations under the heading “Violation 7 – Failure to Search or Provide Documents in Response to a Request,” the DOT admits that it received a November 2, 2007 request from ATV Watch. The DOT admits that it replied on November 5, 2007 and that the reply contained among other things the language quoted in the Petition. The DOT denies that it violated RSA 91-A. By way of further answer, the DOT has submitted a Partial Motion to Dismiss this claim and incorporates that motion herein.

15. With respect to the allegations under the heading “Summary,” the DOT admits that the DOT sent copies of its correspondence with ATV Watch to the Attorney General’s Office. To the extent that this section contains conclusions of law, no answer is required. The DOT denies that it acted in bad faith or that it violated RSA 91-A.

BY WAY OF FURTHER ANSWER the DOT submits the following affirmative defenses:

1. The remedies for violations of RSA 91-A are set forth in RSA 91-A:8. Therefore, Petitioner’s prayer for relief No. 7, 12, and 13 are not authorized.
2. Petitioner cannot request attorney’s fees, as he is not licensed to practice law in New Hampshire. A *pro se* litigant who is not an attorney cannot take advantage of a statutory provision that allows for attorney’s fees to collect payment for their time. *Emerson v. Town of Stratford*, 139 N.H. 629, 632 (1995); *see also ATV Watch v. NH Department of Resources*, 155 NH 434 (2007).

WHEREFORE, DOT respectfully requests that this Honorable Court:

- A. Dismiss the Petition in part;
- B. If the Court desires, review the documents that DOT has withheld, *in camera*

to make a determination regarding DOT's legal position on each document; and

- C. Grant such other relief as may be just and equitable.

Respectfully submitted,

THE STATE OF NEW HAMPSHIRE

By its attorneys,

Kelly A. Ayotte
Attorney General



Edith L. Pacillo
Assistant Attorney General
Transportation & Construction Bureau
33 Capitol Street
Concord, New Hampshire 03301-6397
(603) 271-3675

Date: 2/6/08

Certificate of Service

I certify that a copy of the foregoing has on this 6 day of February, 2008, been mailed, postage prepaid to ATV Watch, Andrew Walters, Director, P.O. Box 34, Fitzwilliam, NH 03447.



Edith L. Pacillo