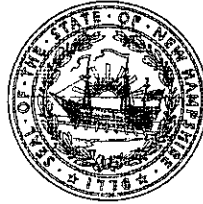


**ATTORNEY GENERAL
DEPARTMENT OF JUSTICE**

33 CAPITOL STREET
CONCORD, NEW HAMPSHIRE 03301-6397

KELLY A. AYOTTE
ATTORNEY GENERAL



ORVILLE B. "BUD" FITCH II
DEPUTY ATTORNEY GENERAL

Hand Delivered

February 25, 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 the State's Objection and Motion to Strike Summary Judgment Motion and Hearing Memorandum and Reply to Objection to State's Motion to Dismiss; and Motion to Reconsider Order on ATV Watch Motion for Access to Documents Provided to the Court by the Attorney General and Motion That These Documents be Incorporated as Part of the Court Record to be filed with reference to the above-captioned case.

Very truly yours,

A handwritten signature in black ink, appearing to read "Edith L. Pacillo", with a long horizontal flourish extending to the right.

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

ELP:mc
Enclosures
cc: Andrew Walters
251035.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

**MOTION TO RECONSIDER ORDER ON ATV WATCH MOTION
FOR ACCESS TO DOCUMENTS PROVIDED TO THE COURT BY
THE ATTORNEY GENERAL AND MOTION THAT THESE
DOCUMENTS BE INCORPORATED AS PART OF THE COURT RECORD**

NOW COMES the State of New Hampshire, Department of Transportation , by and through its attorneys, the Office of the Attorney General and moves for reconsideration and says as follows:

1. Prayer for Relief # 6 of Petitioner's January 31, 2008 Petition for Declaratory Judgment was that the Court conduct an *in camera* review of the documents that the DOT withheld as exempt from disclosure. At the February 11, 2008 hearing, the State agreed to provide the documents, along with an index of withheld and redacted documents that the State prepared for the Court's benefit. On February 19, 2008, Petitioner filed a motion seeking access to the documents and the index. On February 21, 2008, the Court ruled on Petitioner's motion and denied access to the documents, but granted access to the index. The State was not afforded an opportunity to respond to Petitioner's motion before the Court ruled on the motion. Accordingly, the State requests that the Court reconsider its ruling that the State must provide Petitioner a copy of the index.

2. First, Petitioner has waived any objection. Petitioner did not object to the State providing the documents *in camera* or providing an index when the matter was discussed at the February 11, 2008 hearing. The contemporaneous objection requirement is not relaxed because a litigant is appearing *pro se*. *State v. Brodowski*, 135 N.H. 197, 200 (1991).

3. Second, the fact that the State has knowledge of the documents does not disadvantage Petitioner because neither the State nor Petitioner has the ability to argue their case on a document-by-document basis. Rather, the Court will review the documents independently to make a determination whether the DOT properly withheld or redacted documents. Both parties are in the same position vis-à-vis the Court's review of the documents.

4. While in some cases a *Vaughn* index might be required to provide the party seeking disclosure with adequate information to pursue its challenge, that is not the case here. Rather, the DOT already provided Petitioner with a description of the withheld documents and the reasons for withholding them in its August 22, 2007 and September 13, 2007 letters to Petitioner.

WHEREFORE, the State moves this Honorable Court to:

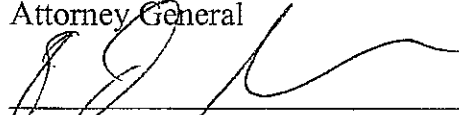
- A. Reconsider its order granting access to the index of documents provided to this Court; and
- B. For such other and further relief as may be deemed just and equitable.

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: 2/25/08

Certificate of Service

I certify that a copy of the foregoing has on this 25 day of February, 2008, been mailed, postage prepaid to Andrew B. Walters, President of ATV Watch.



Edith L. Pacillo