



Office of the Governor
State of Rhode Island and Providence Plantations
State House
Providence, Rhode Island 02903-1196
401-222-2080

Donald L. Carcieri
Governor

March 18, 2008

VIA FAX (831-7175) AND REGULAR MAIL

Steven Brown
Executive Director
RI Affiliate, American Civil Liberties Union
128 Dorrance Street, Suite 220
Providence, RI 02903

Re: Records Request dated March 4, 2008

Dear Mr. Brown:

You had sent a letter to Governor Carcieri dated March 4, 2008, hereafter referred to as the "Request". In your Request you requested copies of "documents . . . (1) setting out the chain of command for state governance in your absence; (2) authorizing Maj. Gen. Bray to officially act in your absence; (3) describing the powers given Maj. Gen. Bray in your absence, and any limits on those powers; (4) describing the circumstances that trigger Maj. Gen. Bray's authority to act in your absence; (5) establishing the procedures for Maj. Gen. Bray to assume any powers in your absence; and (6) analyzing any of the constitutional issues raised by Article I, Section 18 of the Rhode Island Constitution under these circumstances." Your Request is governed by RIGL §38-2-1 *et seq.* entitled "Access to Public Records" (the "Act"). I am responding on behalf of the Office of the Governor.

The Act describes the procedures that govern the release of a public record, as defined in the Act in RIGL § 38-2-2(4)(i). The Act provides that public records shall be publicly disclosed upon request, unless these records are specifically exempt from disclosure.

Your request contains six subcategories. Although your request has been submitted as a records request under the provisions of the Act, most of the subcategories you describe do not ask for records, but rather seek general information. While such information may subsequently be provided to you, such information need not be provided to you in response to request for records under the Act.

Steven Brown, Executive Director
March 18, 2008
Page Two

On behalf of the Governor's Office, I have conducted a search for any records that you seek. As a result of this search, I have obtained a copy of a press release dated Tuesday, March 4, 2008 this release is entitled "Governor Will Not Cede Constitutional Authority to Manage State Emergencies" and is enclosed within.

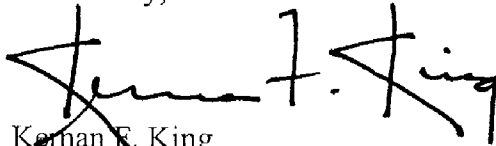
The only other records that appear to be responsive to your request are certain emails that have been prepared by members of the Governor's staff. These emails are internal documents that were created for internal purposes. They were not intended to be publically disclosed, nor have they been publically disclosed.

These emails are exempt from public disclosure pursuant to at least one exemption set forth in the Act. RIGL §38-2-2(4)(i)(K) exempts from disclosure "Preliminary drafts, notes, impressions, memoranda, working papers, and work products[.]"). All these emails meet at least one of these criteria.

Aside from the above described press release and emails, on behalf of the Governor's Office, I have not been able to identify any other records that are responsive to your request. As you are aware, RIGL § 38-2-3(f) states that "Nothing in this section shall be construed as requiring a public body to reorganize, consolidate, or compile data not maintained by the public body in the form requested at the time the request to inspect the public records was made except to the extent that such records are in an electronic format and the public body would not be unduly burdened in providing such data."

If you wish to appeal this decision, RIGL § 38-2-8 (a) states that any person or entity denied the right to inspect a record of a public body by the custodian of the record may petition the chief administrative officer of that public body for a review of the determinations made by his or her subordinate. The chief administrative officer shall make a final determination whether or not to allow public inspection within ten (10) business days after the submission of the review petition. For the purposes of any such appeal, the Chief Administrative Officer is Donald L. Carcieri. His address is State House Room 222, Providence, Rhode Island 02908.

Yours truly,

A handwritten signature in black ink that reads "Keran F. King". The signature is written in a cursive style with a large, stylized 'K' and 'K' at the end.

Keran F. King
Executive Counsel

Enclosure



Donald L. Carcieri
Governor

NEWS

Office of the Governor

State of Rhode Island and Providence Plantations, State House, Providence, RI 02903

FOR IMMEDIATE RELEASE
Tuesday, March 4, 2008

CONTACT: Jeff Neal
222-8290

GOVERNOR WILL NOT CEDE CONSTITUTIONAL AUTHORITY TO MANAGE STATE EMERGENCIES

The Office of Governor Donald L. Carcieri today issued the following statement regarding the role of the Adjutant General of the Rhode Island National Guard when the Governor is out of state. A story in today's Providence Journal questioned whether it was constitutional for the Governor to cede his authority to the Adjutant General. Governor Carcieri has made it clear that he has no intention of ceding any constitutional authority.

"In December, Governor Carcieri made it clear that the Adjutant General of the Rhode Island National Guard — as the head of the Emergency Management Agency — would be in charge of coordinating the state's response to any real or potential emergency when the Governor himself is out of state," the Governor's press secretary, Jeff Neal, said. "As the Director of the Emergency Management Agency, that is the General's role in any case. But the Governor has also made it clear that he would never cede his constitutional authority to the Adjutant General, as a story in the Providence Journal today wrongly suggests."

"Instead, Governor Carcieri would continue to retain his constitutional authority at all times," Neal continued. "The Governor never said that his authority under the constitution would be devolved to the Adjutant General or to any other appointed official. The Adjutant General would act under the instructions and direction of the Governor, as is the case when the Governor is in the state."

"The Governor's statement was merely an indication that he and every other Governor act through the various department directors," Neal said. "In short, the Governor mandates a course of action and department directors are responsible for carrying out those instructions. That is true whether the Governor is in Rhode Island or not. No matter where he is, however, the Rhode Island constitution mandates that the Governor's authority travels with him."

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“This information was conveyed to the Providence Journal more than a month ago,” Neal concluded. “An email sent on January 11 to the Providence Journal responding to inquiries on this subject said, in part, that *‘...the constitution makes it clear that gubernatorial authority travels with the Governor. At all times, the Adjutant General is acting under the authority of the Governor. The Governor never cedes that authority. Instead, the Adjutant General simply assumes the practical on-the-ground role that would otherwise be filled by the Governor. That includes communicating the state's efforts to the public and the media.’*”

“Unfortunately, the article in today's Providence Journal is premised on the false idea that the Governor intends to cede his authority to the Adjutant General,” Neal concluded. “The Providence Journal knew that wasn't the case, but chose to run a story based on this false premise anyway.”

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