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RE: RE: R Wall PRA Request 9-28-23

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From: Ombudsman General e-mail Account <OmbudsmanGeneral.e-mailAccount@akleg.gov>

Sent: Tue, Oct 10, 2023 at 11:34 am

To: rkwallak@reagan.com

Thank you for sending this, Mr. Wall.

I will reopen your complaint for further review.

Also, if we need to reach out to the agency regarding your request, do we have your permission to let them know that you have contacted our office regarding this matter?

Marie Laroza
Intake Assistant
Alaska State Ombudsman

From: rkwallak@reagan.com <rkwallak@reagan.com>
Sent: Monday, October 9, 2023 11:17 AM
To: Ombudsman General e-mail Account <OmbudsmanGeneral.e-mailAccount@akleg.gov>
Subject: FW: RE: R Wall PRA Request 9-28-23

Marie, Please review this interaction, and assist me in obtaining the reports that I am requesting.

You can see that the Governors Office has refused to release this report for the last 2 years unredacted.

Would you go read the report, and see for yourself why the report needs to be known to the public. I have gathered enough information, and through other FOIA endeavors, and have a clear understanding of what it contains. The very fact that they guard it so carefully has made all the Precinct Captains and district Chairs on the Kenai in the Republican party realize this report must be a document the People need to see.

Respectfully,
Robert Wall

-----Original Message-----

From: "rkwallak@reagan.com" <rkwallak@reagan.com>
Sent: Monday, October 9, 2023 2:08pm
To: "Bell, Guy B (GOV)" <guy.bell@alaska.gov>
Cc: "Bentley, Michaela L (GOV)" <michaela.bentley@alaska.gov>
Subject: RE: R Wall PRA Request 9-28-23

Guy, Thank you for responding.

Item 1. Correspondence. Query all emails from the Governors office, Lt Gov. office, Chiefs of Staff for both the Governor and Lt Governor, Division of elections director, AG office that discuss, Dominion Voting tabulators, voting machines, election processes, voter rolls. Start with those key phrases, to and from Kelly Tshibaka and the mentioned offices for me please. Covering the time period described in my initial request. This should be viewed as a clear request of public records from a citizen, and your office should do whatever it can to assist me in my search. You mentioned you may process my request. I suggest you review the

exact wording the Federal FOIA act uses in describing the priority a public records request owns in the position of importance to the Government. It is dominant. Thank you.

Item 2 The Public interest out weighs the Executive Privilege's claimed by the Governor. The State wide elections are the Peoples Elections, not the Office of the Governor. The very fact that this important report can not be pried free from his grasp speaks volumes to the exact need to release it.

Under which statutes does the State claim allow the report to only be seen fully redacted. Please be specific.

Thank you.

Robert Wall

-----Original Message-----

From: "Bell, Guy B (GOV)" <guy.bell@alaska.gov>

Sent: Friday, October 6, 2023 10:41am

To: "rkwallak@reagan.com" <rkwallak@reagan.com>

Cc: "Bentley, Michaela L (GOV)" <michaela.bentley@alaska.gov>

Subject: R Wall PRA Request 9-28-23

Good morning Mr. Wall:

On September 27, 2023, the Alaska Office of the Governor received your public records request for the following records:

1. Any correspondence, including emails and written communication, between the Office of the Governor, Lt. Governor's Office and the Attorney General's Office and Kelly Tshibaka, Commissioner of Administration from 2019 to 2021.
2. Documents related to the State of Alaska's Election Integrity Report that Ms. Tshibaka authored and provided to the Governor, the Attorney General and the Lt. Governor. Mike Showers, Senator, received a redacted report; I ask for the full report with no redaction.

Response to Item 1

Written communications between state offices are typically (almost exclusively) in the form of emails or attachments to emails. Our search for non-email correspondence between Governor Dunleavy and then-Commissioner Tshibaka produced three records (copies enclosed).

Because we need to use a search tool to find the emails (if any) you want, your request falls under the electronic services and products section of the Alaska Public Records Act, AS 40.25.115. *See* AS 40.25.220(1)(E) (defining electronic services and products as providing an "alphanumeric query and printing").

Providing electronic services and products is discretionary: an agency "may" provide electronic services and products involving public records, but doing so "may not" take priority over its primary responsibilities. AS 40.25.115(a). Accordingly, the Governor's Office will decide whether to grant your request for an email search after you provide the following additional information, which will help my office identify the records you want, speed the response, and lessen the burden of responding, *see* 2 AAC 96.315(a):

1. what is the Office of the Governor-related subject of interest of the records you seek; and
1. who are the current and former employees in the Governor's Office whose records you want (Please identify them by name or, at least, position—e.g., Governor, Chief of Staff)?

Identifying the Office of the Governor-related subject of interest of the records, rather than merely search criteria, will lessen the likelihood that the Governor's Office collects and reviews records solely because they contain a search term but are not on a subject that you are interested in, which wastes resources and delays the response to your request and others' requests.

If the Governor's Office grants your request for an email search, I will work with the State Security Office (SSO), which searches the State of Alaska's email system for emails of the Governor's Office, to provide a search description and cost quote (usually \$70.06). I will ask the SSO to undertake the search once you sign and return the search description with a check or money order made payable to the State of Alaska. The fees must be paid before the work is undertaken. *See* AS 40.25.115(a).

Upon receiving the emails from the SSO, my office will—as deadlines and workloads allow—review them for responsiveness and protected information. Once we complete the review, we will provide non-protected, responsive records. A record is not responsive if, for example, it does not concern the identified subject, does not fall within the definition of a "public record" (e.g., because it is beyond its retention age), or is statutorily excluded from the Alaska Public Records Act. *See* AS 40.25.220(3).

Response to Item 2

The document you request can only be provided in its redacted version, as certain content is protected under the executive communications and/or deliberative process privileges or because disclosing it could jeopardize the security of a State of Alaska information system, including one containing elections-related information. *See* AS 40.25.120(a)(4) (protecting records that a federal law or regulation or a state law makes confidential); AS 40.25.120(a)(10) (protecting records that, if disclosed, could jeopardize state security); *Griswold v. Homer City Council*, 428 P.3d 180, 186 (Alaska 2018) (stating that AS 40.25.120(a)(4) applies “to express exceptions contained in state law and to common law exceptions”); *Doe v. Alaska Superior Court*, 721 P.2d 617, 623 (Alaska 1986) (stating that a governor “is entitled to an executive privilege analogous to the President’s”).

As the Office of the Governor is withholding the unredacted report because it is not subject to disclosure under the Alaska Public Records Act, this response constitutes a denial. *See* 2 AAC 96.335(a). You may administratively appeal by complying with 2 AAC 96.340. An administrative appeal requires no appeal bond. Also, you may seek immediate judicial review by pursuing an injunction from the superior court under AS 40.25.125. Not pursuing an injunction will not adversely affect your rights before the Office of the Governor, including in administratively appealing the denial. I have been delegated the authority to deny Alaska Public Records Act requests. Enclosed are 2 AAC 96.335 – 2 AAC 96.350.

Sincerely,

Guy Bell

Guy Bell
Special Projects Assistant
Public Records Officer
Office of Governor Mike Dunleavy
Phone: (907) 465-3915
guy.bell@alaska.gov