

**STATE OF RHODE ISLAND
PROVIDENCE, SC.**

SUPERIOR COURT

**RHODE ISLAND AFFILIATE, AMERICAN :
CIVIL LIBERTIES UNION, INC. AND :
STEVEN BROWN :**

VS. :

C.A. NO:

**DONALD L. CARCIERI, in his capacity as :
Governor of the State of Rhode Island :**

COMPLAINT

Parties

1. Plaintiff, Rhode Island Affiliate, American Civil Liberties Union, Inc. (RI ACLU) is a non-profit corporation existing under the laws of the State of Rhode Island with a principal place of activity in Providence, Rhode Island.

2. Plaintiff Steven Brown is a resident of the Town of Barrington, Bristol County, Rhode Island and is Executive Director of Rhode Island Affiliate, American Civil Liberties Union, Inc.

3. Defendant Donald L. Carcieri, (“Carcieri”) is sued in his capacity as Governor of the State of Rhode Island.

4. This action is brought pursuant to R.I. Gen. Laws §§ 38-2-1, *et seq.*, entitled, “Access to Public Records,” (“Act”) and more particularly pursuant to R.I. Gen. Laws § 32-2-8(b).

The Snow Event

5. On or about December 13, 2007, the State of Rhode Island was hit by a snow storm which caused traffic gridlock and, in some cities, stranding school children on buses for several hours.

6. On the aforesaid date Carcieri was without the State and also without the Country and, it was represented, unable to be contacted.

7. Agency responsibility for dealing with the effects of the snowstorm in the absence of Carcieri was unclear. On said date, Robert J. Warren, was Executive Director of the Rhode Island Emergency Management Agency.

8. Upon his return to Rhode Island, Carcieri removed the aforesaid Robert J. Warren from his position as Executive Director of the Rhode Island Emergency Management Agency.

9. At that time Carcieri named Major General Robert T. Bray, Adjutant General head of the Rhode Island National Guard, as Interim Executive Director of the Rhode Island Emergency Management Agency.

10. In addition, Carcieri announced that in the event of a future emergency at a time when Carcieri was without the State that the aforesaid Major General Bray will be in charge of coordinating the state's response.

11. This announcement has caused some confusion concerning its ambiguity and concern concerning its constitutionality or other legality.

The Public Records Request

12. On or about March 4, 2008, Plaintiffs RI ACLU and Steven Brown, individually and as the Executive Director of RI ACLU, filed a written "APRA" request upon Carcieri for copies of any materials or documents, generated, maintained or received by Carcieri's office:

1. Setting out the chain of command for State governance in Carcieri's absence;
2. Authorizing Major General Bray to officially act in Carcieri's absence;

3. Describing the powers given Major General Bray in Carcieri's absence and any limits on those powers;
4. Describing the circumstances that trigger Major General Bray's authority to act in Carcieri's absence;
5. Establishing the procedures for Major General Bray to assume any powers in Carcieri's absence; and
6. Analyzing any of the constitutional issues raised by Article I Section 18 of the Rhode Island Constitution under these circumstances. (See letter attached hereto as Exhibit A.)

13. On or about March 18, 2008, Kernan F. King, Executive Counsel to Carcieri, responded to Plaintiffs' records request as aforesaid and indicated therein that he had conducted a search for records that would be responsive to Plaintiffs' request. With his responsive letter Kernan King provided a copy of a news release dated March 4, 2008. (See attached hereto as Exhibit B, copy of letter from King together with attachments.)

14. King's letter went on to represent that the only other records responsive to Plaintiffs' "APRA" request were certain e-mails identified as internal documents created for internal purposes, not intended to be publicly disclosed, "nor have they been publicly disclosed."

15. The King letter further alleged that the aforesaid e-mails were exempt from public disclosure pursuant to R.I.Gen.Laws § 38-2-2(4)(i)(K).

16. Thereafter pursuant to the provisions of R.I. Gen. Laws § 38-2-8(a), Plaintiffs sought a review of King's determinations to the chief administrative officer of the office of the Governor, that officer being identified as Defendant Carcieri. (See letter of March 21, 2008 to Governor Carcieri attached hereto as Exhibit C.)

17. On or about April 3, 2008, Carcieri, in a letter to Steven Brown, denied Plaintiffs' administrative appeal of the determinations of Executive Counsel King. (See April 3, 2008 letter from Carcieri attached hereto as Exhibit D.)

18. Other than the aforesaid news release Carcieri has refused to provide any other documents, materials or any e-mails in response to Plaintiff's documents request, even refusing to provide a copy of a January 11, 2008, e-mail, apparently provided to the Providence Journal, referred to in two news articles by that publication on or about March 4, 2008, and March 5, 2008, and also specifically referred to in the news release provided by Carcieri in response to Plaintiffs' documents request.

19. The documents requested by Plaintiffs are public records pursuant to R.I. Gen. Laws § 38-2-1 *et seq.* None of them are exempted from disclosure by any of the exceptions to the Access to Public Records Act.

20. RI ACLU and Steven Brown have exhausted their statutory administrative remedies, their request having been denied by the Chief Administrative Officer of the Office of the Governor, and Plaintiffs are clearly entitled to all of the records pursuant to R.I. Gen. Laws § 38-2-2.

21. Plaintiffs now seek an Order of this Court:

- a. Declaring that the requested records are public and ordering Defendant Donald L. Carcieri, in his capacity as Governor of the State of Rhode Island, to produce all of the documents requested in Plaintiff Steven Brown's letter to Governor Carcieri dated March 4, 2008;
- b. In the alternative, ordering the release of the January 11, 2008 e-mail cited in Carcieri's news release and further ordering an in camera review of all other documents withheld by Carcieri for a determination of their availability pursuant to the aforesaid Act.

22. Plaintiffs RI ACLU and Steven Brown are also entitled to payment of \$1,000.00

as a civil fine from Carcieri, in his capacity as Governor of the State of Rhode Island as provided by R.I. Gen. Laws § 38-2-9(d), as said Defendant has willfully violated R.I. Gen. Laws § 38-2-2 by failing to produce the subject records to RI ACLU and Steven Brown.

WHEREFORE, Plaintiffs RI ACLU and Steven Brown demand judgment of this Court:

a. Declaring that the requested records are public and ordering the Defendant Donald L. Carcieri forthwith to produce the documents requested;

b. In the alternative ordering the release of the January 11, 2008 e-mail cited in Carcieri's news release and further ordering the release of all other documents withheld by Carcieri which this Court, following an in camera review of said documents, declares to be public pursuant to the aforesaid Act;

c. Imposing a civil fine payable by Defendant Donald L. Carcieri in his capacity as Governor of the State of Rhode Island to Plaintiffs Rhode Island Affiliate, American Civil Liberties Union, Inc. and Steven Brown in the amount of \$1,000.00 plus costs, statutory interest, attorneys fees and any other relief this Court deems just and proper;

d. For such other relief as this Court deems just.

RHODE ISLAND AFFILIATE, AMERICAN
CIVIL LIBERTIES UNION, INC. AND
STEVEN BROWN
By their Attorney,

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