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STATE OF ALASKA
Division of Elections
Office of the Lieutenant Governor

October 26, 2010

Mr. Brad Friedman
Publisher Editor
The BRAD BLOG

SENT BY EMAIL ONLY TO: Brad.Friedman@cville.com

Re: Response to Public Records Request

Dear Mr. Friedman:

I am in receipt of your email dated October 22, 2010, requesting documents, under the Public Records Act, from this office. You asked for a list of write-in candidates, and the instructions for sharing that list with voters seeking help to vote for write-in candidates, for elections prior to 2010.

Prior to the 2010 general election, the division did not supply a list of write-in candidates to all polling places for workers to share with voters who are seeking assistance with the write-in portion of the ballot.

The requested records do not exist and therefore, we must deny your request for copies under 2 AAC 96.335, DENIAL OF REQUEST. The administrative regulation 2 AAC 96.335(a)(1) reads:

2 AAC 96.335 DENIAL OF REQUEST. (a) A request for a public records that complies with this chapter may be denied only if

(1) the record is not known to exist after the public agency makes a diligent search for it;

Because this is considered a denial of a request for public records, we are required by law to advise you that you have the right to administratively appeal this denial by complying with the procedures in 2 AAC 96.340. A copy of the appeal procedure is enclosed. You also have the option of obtaining immediate judicial review of this denial by seeking an injunction from

the superior court under AS 40.25.125. Choosing not to pursue an injunction in superior court will have no adverse effect on your rights in the administrative appeal. An administrative appeal from the denial of a request for public records requires no appeal bond.

Sincerely,



Gail Fenumiai
Director

Enclosure

2 AAC 96.335-350

cc: The Honorable Craig Campbell, Lieutenant Governor
Sarah Felix, Assistant Attorney General, Department of Law

2 AAC 96.335. Denial of request

(a) A request for a public record that complies with this chapter may be denied only if

(1) the record is not known to exist after the public agency makes a diligent search for it;

(2) the record is not in the public agency's possession, and after a diligent search the public agency does not know where the record is to be found;

(3) the record has been destroyed in accordance with an applicable record-retention schedule;

(4) nondisclosure of the record is authorized by a federal law or regulation, or by state law; or

(5) the record is believed to be in the agency's possession but has not yet been located, in which case the public agency shall proceed under (f) of this section.

(b) A request may be denied by the public agency head or by an agency employee to whom denial authority has been delegated by the public agency head.

(c) An initial denial of a written request must be in writing; must state the reasons for the denial, including any specific legal grounds for the denial; and must be dated and signed by the person issuing the denial. If a request is denied by a public agency employee to whom denial authority has been delegated, the notice of denial must reflect this delegation. A copy of 2 AAC 96.335 - 2 AAC 96.350 must be enclosed with the denial.

(d) A denial of a written request, in whole or in part, must state that

(1) the requestor may administratively appeal the denial by complying with the procedures in 2 AAC 96.340;

(2) the requestor may obtain immediate judicial review of the denial by seeking an injunction from the superior court under AS 40.25.125 ;

(3) an election not to pursue injunctive remedies in superior court shall have no adverse effects on the rights of the requestor before the public agency; and

(4) an administrative appeal from a denial of a request for public records requires no appeal bond.

(e) A denial of a written request is considered to be issued at the time the denial is either delivered to the United States Postal Service for mailing, or hand-delivered to the requestor by an employee or agent of the public agency.

(f) If a written request is denied because a record has not yet been located and the record is believed to exist in the agency's possession, the office in the public agency responsible for maintaining the record is believed to exist in the agency's possession, the office in the public agency responsible for maintaining the record shall continue to search until the record is located or until it appears that the record does not exist or is not in the public agency's possession. The public agency shall periodically inform the requestor of its progress in searching for the requested record.

(g) A record that is the subject of a public records request that has been denied shall not be destroyed or transferred from the public agency's custody, except that records may be transferred to state archives and records management services as provided by AS 40.21 and regulations adopted under AS 40.21. A public agency may not destroy or transfer custody of a record to which access has been denied or restricted until at least 60 working days after the requestor is notified in writing that the request has been denied, or if there is an administrative or judicial appeal or other legal action pending at the end of the 60-working-day period, until the requestor has exhausted those actions.

2 AAC 96.340. Appeal from denial; manner of making

(a) A requestor whose written request for a public record has been denied, in whole or in part, may ask for reconsideration of the denial by submitting a written appeal to the agency head.

(b) An appeal under (a) of this section must be mailed or hand-delivered to the agency head within 60 working days after the denial is issued and must include the date of the denial and the name and address of the person issuing the denial. The appeal must also identify the records to which access was denied and which are the subject of the appeal. If an appeal is from the failure of the agency to respond to the records request within the appropriate time limit under ~~2 AAC 96.325~~, the appeal must so state, must identify the records sought, and must identify the public agency to which the request was directed and the date of the request.

(c) The 60 working days within which an appeal must be filed begins to run upon the issuance of the denial or, if no denial is issued, upon the expiration of the time period within which the public agency should have responded.

2 AAC 96.350. Contents of determination denying appeal

A determination under 2 AAC 96.345 responding to an appeal must be in writing, must specify the specific statute, regulation, or court decision that is the basis for the denial, and must state briefly the reason for the denial. A denial under this section is the final agency decision. A denial must further state that, as provided by AS 40.25.124 , the requestor may obtain judicial review of the denial by appealing the denial to the superior court.