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IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT ANCHORAGE

ANDREE McLEOD,)
)
Plaintiff,)
)
)
v.)
) No. 3AN-08-10869 CI
SARAH PALIN, in Her Official)
Capacity as Governor of Alaska,)
and the OFFICE OF THE GOVERNOR)
OF ALASKA,)
)
Defendants.)
_____)

COMPLAINT
FOR DECLARATORY AND INJUNCTIVE RELIEF
SEEKING PRESERVATION OF PUBLIC RECORDS

INTRODUCTION

1. This is a civil action that seeks a declaratory judgment that defendants Sarah Palin and Office of the Governor of Alaska (hereinafter "Office of the Governor") have a nondiscretionary duty to comply with the Alaska Public Records Act, A.S. 40.25.110 et seq., by making available to plaintiff Andree McLeod emails that defendant Palin and employees of defendant Office of the Governor have sent on their private email accounts regarding the

conduct of official business of the State of Alaska, rather than on the email accounts they have been given by the State of Alaska for the purpose of conducting official business. This action also seeks a mandatory injunction directing defendants Palin and Office of the Governor to comply with the Public Records Act.

PARTIES

Plaintiff

2. Plaintiff Andree McLeod is a resident of Anchorage, Alaska, a thirty-year resident of the State of Alaska, and a former vice chair of the Alaska Republican Party for House District 24.

3. Pursuant to A.S. 40.25.110, on October 1, 2008 plaintiff Andree McLeod filed a public records request with defendant Office of the Governor that inter alia requested defendant Office of the Governor to provide to plaintiff McLeod a copy of the following public records:

Every email that, from December 4, 2006 to the date of your receipt of this public records request, was sent to or from sarah_palin@gov.state.ak.us, as well as to or from every other email account that the State of Alaska has issued to you for the purpose of conducting official business of the State of Alaska.

Every email that, from December 4, 2006 to the date of your receipt of this public records request, was sent to or from gov.sarah@yahoo.com, gov.palin@yahoo.com, or any other private email account that you have used if the subject of the email involves, or is in any way related to, the conduct of official business of the State of Alaska.

Every email that, from December 4, 2006 to the date of your receipt of this public records request, was sent to or from fek9wnr@yahoo.com, or any other private email account that Todd Palin has used if the subject of the email involves, or is in any way related to, the conduct of official business of the State of Alaska.

Defendants

4. Defendant Sarah Palin is the Governor of Alaska. Pursuant to Article III, Section 16, of the Alaska Constitution, defendant Palin has a nondiscretionary duty to faithfully execute the laws of the State of Alaska, including the Public Records Act.

5. Defendant Office of the Governor is the agency of the government of the State of Alaska headed by defendant Sarah Palin. The Public Records Act imposes a nondiscretionary duty on employees of defendant Office of the Governor to comply with the requirements of that Act.

STATEMENT OF FACTS

A. With the Knowledge of Defendant Office of the Governor Defendant Sarah Palin and Employees of Defendant Office of the Governor Have Used Their Private Email Accounts to Conduct Official Business of the State of Alaska.

6. The Public Records Act, A.S. 40.25.115(d)(1), imposes a nondiscretionary duty on the State of Alaska to create an email account system for its officials and employees that protects the security and integrity of the information systems of public agencies, including defendant Office of the Governor, and of information systems shared by public agencies.

7. On December 4, 2006 when defendant Sarah Palin became Governor of Alaska the State of Alaska discharged the nondiscretionary duty described in paragraph no. 6 by providing defendant Palin with an official, secure email account (hereinafter "state email account") for the purpose of enabling defendant Palin to conduct official business of the State of Alaska.

8. Rather than using her state email account, throughout her two-year tenure as Governor of Alaska, defendant Sarah Palin, as a matter of routine, has used, and, on information and belief, continues to use, (at least) two private email accounts - gov.sarah@yahoo.com. and gov.palin@yahoo.com - to conduct official business of the State of Alaska.

9. On June 17, 2008 plaintiff Andree McLeod filed a request pursuant to the Public Records Act in which she requested defendant Office of the Governor to provide her with copies of emails and other public records sent by or to two employees of defendant Office of the Governor, Frank Bailey and Ivy Frye, because plaintiff McLeod believed that Mr. Bailey and Ms. Frye had used public resources of defendant Office of the Governor to engage in partisan political activities.

10. In a letter dated July 18, 2008 Linda Perez, the Administrative Director of defendant Office of the Governor, informed plaintiff Andree McLeod that defendant Office of the

Governor was partially approving and partially denying her public records request by providing to plaintiff McLeod many of the public records she had requested, but withholding or redacting public records that contained "confidential or privileged information", as well as documents that are not "public records" as defined by AS 40.25.220(3).

11. Defendant Office of the Governor then provided plaintiff Andree McLeod with four boxes of email and telephone records, most of which had been redacted. With respect to the records plaintiff McLeod was provided of emails that defendant Sarah Palin had sent or received, all but one had been sent by or to defendant Palin on her yahoo.com private email accounts, rather than on her state email account.

12. Because in her letter dated July 18, 2008 Linda Perez, the Administrative Director of defendant Office of the Governor, informed plaintiff Andree McLeod that defendant Office of the Governor was withholding documents that are not "public records" as defined by A.S. 40.25.220(3), on information and belief, defendant Sarah Palin has commingled in her private email accounts emails that relate to her conduct of official business of the State of Alaska and emails that relate to defendant Palin's activities as a private citizen. Assuming so, other than by reading each email sent to or from defendant Palin on her

private email accounts to determine into which category it should be placed, unlike emails sent to or from defendant Palin on her state email account, there is no way for defendant Office of the Governor to know whether a particular email sent to or from defendant Palin on her private email accounts is a public record. For that reason, on further information and belief, defendant Office of the Governor withheld from disclosure to plaintiff McLeod emails that were public records to which plaintiff McLeod is entitled.

13. The fact that defendant Office of the Governor has allowed defendant Sarah Palin to use her private email accounts to conduct official business of the State of Alaska has compromised the ability of the State of Alaska to comply with A.S. 40.25.115(d)(1) by protecting the security and integrity of the information system of defendant Office of the Governor was confirmed when, on or about September 15, 2008, a hacker group called "Anonymous" broke into defendant Palin's gov.palin@yahoo.com private email account and posted screen shots of emails from that account on the Internet. Several of the emails Anonymous posted were emails whose subject lines indicated that they involved official business of the State of Alaska, including an email to which defendant Palin had attached a draft letter to California Governor Arnold Schwarzenegger, as well as emails labeled "Confidential Ethics Matter," "Request for

Information and Documents," and "DPS" (the acronym for the Alaska Department of Public Safety).

14. Many of the redacted emails that defendant Office of the Governor provided to plaintiff Andree McLeod in the aforementioned four boxes of email and telephone records indicate on their face that defendant Sarah Palin and employees of defendant Office of the Governor sent the emails without redaction to defendant Palin's husband, Todd Palin, at his fek9wnr@yahoo private email account, even though Mr. Palin is not an employee of the State of Alaska and has - or should have - no involvement in the official business of the State of Alaska. In addition, defendant Office of the Governor also provided to plaintiff McLeod a log that described approximately 1,100 emails that defendant Office of the Governor withheld from disclosure on the ground of deliberative process executive privilege, even though the log indicates that many of those emails were sent to Todd Palin. On information and belief, Todd Palin has routinely attempted to influence the conduct of official business of the State of Alaska by sending from his private email accounts emails to defendant Sarah Palin on her private email accounts, thereby circumventing the Public Records Act.

B. Defendant Sarah Palin's Use of Her Private Email Accounts to Conduct Official Business of the State of Alaska Threatens the Loss and Improper Disclosure of Public Records.

15. The hacking by Anonymous into gov.sarah@yahoo is evidence that when she has used her private email accounts to conduct official business of the State of Alaska, defendant Sarah Palin risked the destruction of public records and the unauthorized disclosure of confidential information contained in public records. Defendant Palin's failure to keep public records safe and secure violates A.S. 40.25.120, which requires protection of confidential information from disclosure to the public, as well as the Records Management Act, A.S. 40.21.010 et seq., which requires all public records to be maintained and preserved. In addition, when it discovered that Anonymous had hacked gov.sarah@yahoo.com, Yahoo (on information and belief, at defendant Palin's direction, or with her knowledge and concurrence) deactivated defendant Palin's yahoo.com private email accounts, preventing access to, and risking the destruction of public records sent to and from those accounts. In that regard, Yahoo has internal procedures that automatically and permanently purge deleted emails, as well as emails from accounts that have been closed. Also, when an email is deleted by the owner of a Yahoo private email account, Yahoo removes the email from its storage system within days or, at most, months. And Yahoo retains in its storage system emails sent to or from a closed private email account for only a limited period of time.

16. Defendant Sarah Palin's use of her private email accounts to conduct official business of the State of Alaska also

threatens the integrity and preservation of public records in yet another way, since emails in private email accounts often are deleted after a certain period of time. So unless on a regular basis defendant Palin takes affirmative action to archive emails sent by or to her on her private email accounts in order to ensure their proper categorization as public records - and consequent preservation - there is substantial likelihood that the records will be lost. If no back-up tape exists, the records may be gone forever.

C. At Both the Direction of, and With the Knowledge and Concurrence of, Defendant Sarah Palin, Employees of Defendant Office of the Governor Have Intentionally Used Their Private Email Accounts in Order to Protect Communications Involving Their Conduct of Official Business of the State of Alaska From Disclosure Pursuant to the Public Records Act.

17. When defendant Sarah Palin took office as Governor of Alaska, employees of defendant Office of the Governor who had been hired by defendant Palin exchanged email messages in which they discussed between themselves the benefits of using their private email accounts to conduct official business of the State of Alaska. One employee explicitly noted that email messages sent to defendant Palin's BlackBerry "would be confidential and not subject to subpoena." In another email exchange the employees suggested that defendant Palin was intentionally not using her state email account, and had instructed employees of defendant

Office of the Governor not to send emails to her on that account. In an email sent February 7, 2008, Frank Bailey, defendant Palin's director of boards and commissions, sent defendant Palin a message on her state email account. An employee of defendant Office of the Governor who had received Mr. Bailey's email promptly emailed Mr. Bailey: "Frank, This is not the Governor's personal e-mail account," to which Mr. Bailey in an email he sent to that employee responded, "Whoops!". In an exchange of emails in March 2008 an employee of defendant Office of the Governor asked if she would be audited or "dinged in any way" if her personal and state email accounts both routed to the same device, stating "I would gladly buy my own Blackberry if it and its contents were truly mine. Any thoughts here?" Ten minutes later, the Director of the Division of Finance sent the employee an email in which he advised that defendant Office of the Governor was waiting for guidance on confidentiality issues from attorneys in the Alaska Department of Law, but that using a personal Blackberry made an audit much less likely. The employee subsequently forwarded a copy of that email exchange to defendant Palin and to Todd Palin.

D. The Unknown Status and Volume of Public Records Located in Defendant Sarah Palin's Private Email Accounts and in the Private Email Accounts of Employees of Defendant Office of the Governor Raise Further Concerns About the Integrity and Preservation of Those Records.

18. Throughout her two-year tenure as Governor of Alaska defendant Sarah Palin has not taken any steps to preserve emails in her private email accounts that involve her conduct of official business of the State of Alaska. When Anand Dubey, the Director of the Enterprise Technology Services Division of the Alaska Department of Administration, recently was asked by the Anchorage Daily News whether his agency had copies of the emails in defendant Palin's private email accounts, he responded: "If you are asking do we have those e-mails, then the answer is no. We don't control Yahoo or Gmail or Hotmail or anything like that." After interviewing other employees of the State of Alaska, the Anchorage Daily News further reported:

Just how much of the state's business does Palin conduct through her BlackBerrys? Her chief of staff didn't respond to that question. But she often is glued to her devices.

No one in the Palin administration could say if the governor is saving her Yahoo e-mails.

[Ivy] Frye [an employee in the Office of the Governor who received copies of emails in which other employees discussed whether use of private email accounts would avoid the risk of public disclosure] did not respond to requests for comment.

19. Given defendant Sarah Palin's repeated use of her private email accounts to conduct official business of the State of Alaska for the express purpose of shielding her communications from disclosure pursuant to the Public Records Act, there is a substantial risk that public records that are subject to the

public records request that plaintiff Andree McLeod has filed with defendant Office of the Governor and that is described in paragraph no. 3 may be lost or destroyed by Yahoo and other Internet companies that have issued private email accounts to defendant Palin and employees of defendant Office of the Governor.

CLAIM FOR RELIEF
(Injunction - Public Records Act)

20. Plaintiff Andree McLeod incorporates paragraph nos. 1 through 19 by reference.

21. The emails described in paragraph no. 3 that are the subject of the public records request that plaintiff Andree McLeod has filed with defendant Office of the Governor are "public records" as that term is defined in A.S. 40.25.220(3) that A.S. 40.25.110 grants plaintiff McLeod the right to inspect.

22. A.S. 40.25.125 states:

A person having custody or control of a public record who denies, obstructs, or attempts to obstruct, or a person not having custody or control who aids or abets another person in denying, obstructing, or attempting to obstruct, the inspection of a public record subject to inspection under A.S. 40.25.110 or 40.25.120 may be enjoined by the superior court from denying, obstructing, or attempting to obstruct, the inspection of public records subject to inspection under A.S. 40.25.110 or 40.25.120. A person may seek injunctive relief under this section without exhausting the person's remedies under A.S. 40.25.123 - 40.25.124.

23. By purposefully using her private email accounts to conduct official business of the State of Alaska defendant Sara Palin and employees of defendant Office of the Governor who are

subject to the supervision and control of the State of Alaska have denied and obstructed the inspection by plaintiff Andree McLeod of the public records described in paragraph no. 3.

PRAYER FOR RELIEF

Wherefore, plaintiff Andree McLeod requests that the court:

(1) Issue a declaratory judgment that each email described in paragraph no. 3 of the complaint is a "public record" as defined in A.S. 40.25.220(3);

(2) Issue a temporary restraining order, preliminary injunction, and permanent injunction compelling

(A) defendants Sarah Palin and Office of the Governor to preserve all emails (including attachments thereto) described in paragraph no. 3 of the complaint by archiving such emails (and attachments) in a manner consistent with the requirements of A.S. 40.21.010 et seq. so that they will be available to defendant Office of the Governor for the purpose of enabling it to comply with plaintiff Andree McLeod's public records request;

(B) defendant Sarah Palin and employees of defendant Office of the Governor to stop using their private email accounts to conduct official business of the State of Alaska;

(C) defendant Palin and defendant Office of the Governor to retrieve all emails described in paragraph no. 3

of the complaint that have been intentionally or automatically deleted by Yahoo and other Internet companies;

(3) Award plaintiff Andree McLeod her costs and reasonable attorney's fees incurred in this action; and

(4) Grant plaintiff Andree McLeod such other and further relief as the Court deems just and proper.

DATED: October 1, 2008

Donald Craig Mitchell
Attorney for Plaintiff