



COMMON CAUSE
RHODE ISLAND

August 13, 2008

The Honorable Patrick C. Lynch
Attorney General, State of Rhode Island
150 South Main Street
Providence, RI 02903

Dear Attorney General Lynch,

On July 16, the Judicial Nominating Commission (JNC) requested an advisory opinion on the applicability of the Rhode Island Access to Public Records Act, RIGL Chapter 38-2. This was in response to a request by the Providence Journal for copies of written letters of recommendation received on behalf of finalists for judicial office. Common Cause Rhode Island believes that letters of recommendation and any written letter submitted by members of the public to the JNC about a finalist for judicial office should be public record.

The public's interest in the selection of judges is extraordinary as demonstrated by the Constitutional amendment passed by Rhode Island in 1994. Following the second judicial scandal in a decade in which the Chief Justice of the Rhode Island Supreme Court was forced to resign under a cloud of pending impeachment, Rhode Island voters approved the Constitutional amendment establishing judicial merit selection by an overwhelming 70 percent. The central principle behind merit selection is that an independent, nonpartisan JNC would provide a list of 3-5 highly qualified candidates for each judicial vacancy based on merit and through a public process.

In the letter requesting an advisory opinion, Chairman Stephen J. Carlotti argues that, "While there is no requirement that applicants submit letters of recommendation, it has been the custom and practice for applicants to request people to write on their behalf. ... The Commission believes that the application and the accompanying letters are documents of a nature exempted under the provisions of Section 38-2-2(4)(a) ... in that they are part of files maintained as part of the process for 'hiring' judges."

While we agree that the letters of recommendation are not required as part of an application, we disagree with the reasoning that simply because the letters are kept in the same file with the application that they should be exempt from disclosure. Whether a member of the public attends a hearing and provides oral comments, or submits a letter in writing about a finalist for judicial office, the public should be able to ascertain who is having input into the selection of judges in Rhode Island.

Common Cause Rhode Island strongly urges you to consider the spirit as well as the letter of the public records law and help ensure that letters submitted by members of the public about finalists for judicial office are accessible and clearly public. We hope you will take this opportunity to safeguard the integrity of the process that selects those charged with the important task of upholding the laws of Rhode Island.

Sincerely,

Christine Lopes
Executive Director

245 Waterman Street
Suite 400A
Providence
Rhode Island
02906-5215
Tel 401.861.2322
Fax 401.331.9676

www.CommonCauseRI.org