

**Sec. 40.25.110. Public records open to inspection and copying; fees.**

(a) Unless specifically provided otherwise, the public records of all public agencies are open to inspection by the public under reasonable rules during regular office hours. The public officer having the custody of public records shall give on request and payment of the fee established under this section or AS 40.25.115 a certified copy of the public record.

(b) Except as otherwise provided in this section, the fee for copying public records may not exceed the standard unit cost of duplication established by the public agency.

(c) If the production of records for one requester in a calendar month exceeds five person-hours, the public agency shall require the requester to pay the personnel costs required during the month to complete the search and copying tasks. The personnel costs may not exceed the actual salary and benefit costs for the personnel time required to perform the search and copying tasks. The requester shall pay the fee before the records are disclosed, and the public agency may require payment in advance of the search.

(d) A public agency may reduce or waive a fee when the public agency determines that the reduction or waiver is in the public interest. Fee reductions and waivers shall be uniformly applied among persons who are similarly situated. A public agency may waive a fee of \$5 or less if the fee is less than the cost to the public agency to arrange for payment.

(e) Notwithstanding other provisions of this section to the contrary, the Bureau of Vital Statistics and the library archives in the Department of Education and Early Development may continue to charge the same fees that they were charging on September 25, 1990, for performing record searches, and may increase the fees as necessary to recover agency expenses on the same basis that was used by the agency immediately before September 25, 1990. Notwithstanding other provisions of this section to the contrary, the Department of Commerce, Community, and Economic Development may continue to charge the same fees that the former Department of Commerce and Economic Development was charging on July 1, 1999, for performing record searches for matters related to banking, securities, and corporations, and may increase the fees as necessary to recover agency expenses on the same basis that was used by the former Department of Commerce and Economic Development immediately before July 1, 1999.

(f) Notwithstanding other provisions of this section to the contrary, the Board of Regents of the University of Alaska may establish reasonable fees for the inspection and copying of public records, including record searches.

(g) Notwithstanding other provisions of this section to the contrary, the board of directors of the Alaska Railroad Corporation may establish reasonable fees for the inspection and copying of public records, including record searches.

(h) Notwithstanding other provisions of this section to the contrary, the judicial branch may establish by court rule reasonable fees for the inspection and copying of public records, including record searches.

(i) Electronic information that is provided in printed form shall be made available without codes or symbols, unless accompanied by an explanation of the codes or symbols.

#### History -

(Sec. 3.22 ch 101 SLA 1962; am Sec. 2, 3 ch 200 SLA 1990; am Sec. 1 ch 58 SLA 1999; am Sec. 22 ch 14 SLA 2005)

#### Revisors Notes -

Formerly AS 09.25.110. Renumbered in 2000, at which time, in subsection (a), "AS 40.25.115" was substituted for "AS 09.25.115" to reflect the 2000 renumbering of AS 09.25.115. In 2004, in (e) of this section, a reference to "Department of Community and Economic Development" was changed to "Department of Commerce, Community, and Economic Development", in accordance with Sec. 3, ch. 47, SLA 2004.

#### Cross References -

For proof of public records, see Evid. R. 1005; for management and preservation of public records, see AS 40.21.

#### Amendment Notes -

The 2005 amendment, effective May 6, 2005, in the second sentence of subsection (e) deleted "division of banking, securities, and corporations in the" preceding "Department" and inserted "for matters related to banking, securities, and corporations."

#### AG Opinions -

As to confidentiality of oil and gas documents held by state agencies, see Nov. 24, 1980 Op. Att'y Gen.

When the taxpayer files the notice of appeal, a Department of Revenue hearing decision may be made public because the taxpayer is, in effect, waiving any right to confidentiality he may have had. June 16, 1983 Op. Att'y Gen., modifying March 12, 1980 Op. Att'y Gen. to the

extent that the time when the decision becomes a part of the public record is changed from the issuance of a court order to prepare the record to the filing of the notice of the appeal.

Certain provisions contained in a Subscriber Service Agreement with the Credit Bureau of Alaska, which provided that the subscriber (the Division of Accounting and Collections) agreed to make available to the credit bureau "all its consumer credit experience records pertaining to individuals located with the Bureau's geographic area of file building," did not violate the individual privacy of borrowers. May 11, 1984 Op. Att'y Gen.

Documents of the Alaska Real Estate Commission, including complaints (both licensing and surety fund), investigative files (to the extent that they do not contain constitutionally protected private information and insofar as the integrity of the investigation is not compromised), closed license files, hearing officer's proposed decisions, and subpoenas are public information and may not be kept confidential. Also, the hearing officer's proposed decisions are public record. 1984-2 Inf. Op. Atty. Gen. 269 (October 9; 166-154-85).

All materials received in response to the request for proposals (RFP) for the Anchorage Office Complex (AOC) were "public documents" subject to disclosure, but disclosure of certain records could have been delayed until a tentative contract award. During the evaluation process, the financial component of any proposal was not subject to disclosure. Further, the state or its agents could have properly declined to disclose records which would have compromised the anonymity of the aesthetic evaluation process. Jan. 30, 1985 Op. Att'y Gen.

The Office of Management and Budget (OMB) has the authority to provide the public with copies of the audits it receives under 2 AAC 45.010 (audits submitted by entities that have received state financial assistance from state agencies). Aug. 12, 1987 Op. Att'y Gen.

The Mental Health Board may have access to documents reflecting communications between the Department of Law and the Department of Health and Social Services to the extent that the commissioner of health and social services believes is appropriate. To the extent that the commissioner authorizes such access for documents which nonetheless are not subject to public disclosure (e.g., subject to the attorney/client privilege or the executive privilege), the board is required to preserve that confidentiality. Aug. 15, 1988 Op. Att'y Gen.

The names of purchasers of homes and condominiums, and the sales prices, are not confidential, and thus may be released to the public. Jan. 9, 1989 Op. Att'y Gen.

College transcripts of certified teachers or certificate applicants are not confidential, and they must be released at the request of a member of the public. Nov. 4, 1992 Op. Att'y Gen.

The policy favoring disclosure of public records supports the conclusion that records maintained by the charitable gaming division are open to public scrutiny. Any conclusion to the contrary would require compelling evidence of legislative intent to shroud these records in confidentiality. In the absence of such evidence, these records are open to public inspection. 1996 Op. Atty. Gen. No. 4.

Decisions -

For discussion of the history of this section, see *City of Kenai v. Kenai Peninsula Newspapers, Inc.*, 642 P.2d 1316 (Alaska 1982).

Broad policy. - This section and AS 09.25.120 (now AS 40.25.120) articulate a broad policy of open records. *City of Kenai v. Kenai Peninsula Newspapers, Inc.*, 642 P.2d 1316 (Alaska 1982).

The "agencies and departments" language used in this section must be read as referring to the agencies and departments of the governments to which the statute applies, but that language itself does not define what the applicable level of government is. *City of Kenai v. Kenai Peninsula Newspapers, Inc.*, 642 P.2d 1316 (Alaska 1982) (decided prior to 1990 amendment).

The word "public" as used in this section and AS 09.25.120 (now AS 40.25.120) with "officer" refers both to state and local officials. *City of Kenai v. Kenai Peninsula Newspapers, Inc.*, 642 P.2d 1316 (Alaska 1982).

Deliberative process privilege. - Legislative proposals by state departments and agencies sent to the Governor to aid him in deciding what legislation to propose to the legislature were predecisional and deliberative and fell within the deliberative process privilege. *Capital Info. Group v. State, Office of Governor*, 923 P.2d 29 (Alaska 1996).

Budget impact memoranda prepared by state department heads at the request of the director of the Office of Management and Budget pursuant to AS 37.07.050, although meeting the threshold requirements of the deliberative process privilege, were required to be disclosed by the terms of AS 37.07.050(g). *Capital Info. Group v. State, Office of Governor*, 923 P.2d 29 (Alaska 1996).

Application to municipalities. - The provisions of this section are applicable to municipalities. *City of Kenai v. Kenai Peninsula Newspapers, Inc.*, 642 P.2d 1316 (Alaska 1982).

In light of the common law rule, legislative history, and the court's reading of the sections, the state supreme court will construe this section and AS 09.25.120 (now AS 40.25.120) as that court would have construed them prior to 1957, which is as a strong legislative declaration that records in the possession of municipalities shall be available for

public inspection, subject to exceptions based on need. *City of Kenai v. Kenai Peninsula Newspapers, Inc.*, 642 P.2d 1316 (Alaska 1982).

Fees held proper. - Homer, Alaska regulations and municipal code charge a fee for the production of documents to the extent that such production exceeds five hours of working time, and such charges are not in violation of this section. *Fuller v. City of Homer*, Op. No. 5902, 113 P.3d 659 (Alaska 2005).

No fee allowed for time spent on privilege review. - "Production," under this section and under Homer, Alaska regulations, does not include a privilege review; where an individual was charged for the time spent on the production of records, remand was proper to determine if any time charged for was time spent on such a review. *Fuller v. City of Homer*, Op. No. 5902, 113 P.3d 659 (Alaska 2005).

Disclosure of applications for public posts. - Strong public interest in the disclosure of the affairs of government generally, and in an open selection process for high public officials in particular, requires public disclosure and inspection of applications for posts having substantial discretionary authority. *City of Kenai v. Kenai Peninsula Newspapers, Inc.*, 642 P.2d 1316 (Alaska 1982).

Lawsuit settlement agreement terms. - A public agency may not circumvent the statutory disclosure requirements by agreeing to keep the terms of a lawsuit settlement agreement confidential. *Anchorage Sch. Dist. v. Anchorage Daily News*, 779 P.2d 1191 (Alaska 1989).

University of Alaska. - The legislature intended to include the University of Alaska within the scope of state agencies subject to the public records statute. *Carter v. Alaska Pub. Employees Ass'n*, 663 P.2d 916 (Alaska 1983).

The president of the University of Alaska is a public officer for purposes of this section. *Carter v. Alaska Pub. Employees Ass'n*, 663 P.2d 916 (Alaska 1983).

Disclosure withheld from Office of Governor. - Because the seven disputed documents were all predecisional and deliberative, and because plaintiff's need for the documents did not outweigh the interest of the Office of the Governor in preventing interference with its decisionmaking process, the documents were properly withheld as privileged. *Gwich'in Steering Comm. v. State*, 10 P.3d 572 (Alaska 2000).

Letters sent by citizens to governor regarding appointments are public records within the scope of the public records statute, AS 09.25.110 - 09.25.120 (now AS 40.25.110 - 40.25.120). *Doe v. Alaska Superior Court*, 721 P.2d 617 (Alaska 1986).

Exceptions to disclosure requirements. - Exceptions to the disclosure requirements of this section are construed narrowly in furtherance of the legislature's expressed bias in favor of broad public access. *Municipality of Anchorage v. Anchorage Daily News*, 794 P.2d 584 (Alaska 1990).

The Open Meetings Act, which provides for closed executive sessions when subjects potentially prejudicial to reputation are discussed, does not establish an express exception to the pro-disclosure requirements of the Public Records Act or otherwise permit the suppression of documents produced at such sessions. *Municipality of Anchorage v. Anchorage Daily News*, 794 P.2d 584 (Alaska 1990).

Sex offenders. - Alaska Sex Offender Registration Act (ASORA) requires release of information that is in part not otherwise public or readily available; taken in conjunction with AS 40.25.110(a), ASORA's treatment of this information, confirmed by the regulations, seems to require that the information be publicly available, and the harmful effects of ASORA stem not just from the conviction but from the registration, disclosure, and dissemination provisions. *Doe v. State*, 189 P.3d 999 (Alaska 2008).

Registry of users of marijuana for medical purposes. - Alaska's medical marijuana law does not require medical marijuana users to divulge any details about the debilitating conditions they suffer, and although it does require them to register and to identify their approving physicians, the law explicitly requires the department to keep the registry confidential; therefore, the law's confidential registration process does not violate the constitutional right to privacy. *Rollins v. Ulmer*, 15 P.3d 749 (Alaska 2001).

Child custody proceedings. - Although the public records law provides that public records are open to inspection, because AS 25.20.120 allows the court to close the records of child custody proceedings "if it is in the best interests of the child," an order sealing those records was proper. *In Re Alaback*, 997 P.2d 1181 (Alaska 1999).

Report of mayor's blue ribbon fiscal policy committee, appointed to investigate city's economic condition, was not exempt from ordinary disclosure requirements, where the report was the product of a public process and was intended for public dissemination. *Municipality of Anchorage v. Anchorage Daily News*, 794 P.2d 584 (Alaska 1990).

Documents for city petition for annexation. - Alaska Public Records Act, AS 40.25.110(a), required disclosure of documents used to prepare a city petition for annexation; the deliberative process privilege did not apply because the public's interest in having access to these documents outweighed the city's interest in confidentiality. *Fuller v. City of Homer*, 75 P.3d 1059 (Alaska 2003).

Time sheets. - Time sheets which indicate merely the hours worked for a public employer are included in the definition of "public records" in AS 09.25.220(3) (now AS 40.25.220(3)), and they are not subject to the confidentiality provisions of AS 39.25.080. *Alaska Wildlife Alliance v. Rue*, 948 P.2d 976 (Alaska 1997).

Under the right of privacy provision, Alaska Const., art. I, Sec. 22, the Department of Fish & Game was entitled to redact the names of public employees and private contractors from time sheets requested under the Public Records Act, where those individuals had received threats against their lives. *Alaska Wildlife Alliance v. Rue*, 948 P.2d 976 (Alaska 1997).

Superior court order requiring city library advisory board to release to a newspaper a performance evaluation report pertaining to a head librarian was affirmed, where the evaluation did not in any way deal with the personal, intimate, or otherwise private life of the librarian. *Municipality of Anchorage v. Anchorage Daily News*, 794 P.2d 584 (Alaska 1990).

Government bears burden of justifying denial of access. - When the government seeks to deny access to a particular public document, it is the government which bears the initial burden of presenting evidence justifying denial. *Municipality of Anchorage v. Anchorage Daily News*, 794 P.2d 584 (Alaska 1990).

A governmental agency is not entitled to delay access to a public document through the use of depositions where it has presented no prima facie defense to release. *Municipality of Anchorage v. Anchorage Daily News*, 794 P.2d 584 (Alaska 1990).

Applied in *Meiners v. Bering Strait Sch. Dist.*, 687 P.2d 287 (Alaska 1984).

Cited in *O'Leary v. Superior Court*, 816 P.2d 163 (Alaska 1991).

Collateral Refs -

Admissibility of report of public officer or employee on cause of or responsibility for injury to person or damage to property. 69 ALR2d 1148.