

Sec. 40.25.120. Public records; exceptions; certified copies.

(a) Every person has a right to inspect a public record in the state, including public records in recorders' offices, except

(1) records of vital statistics and adoption proceedings, which shall be treated in the manner required by AS 18.50;

(2) records pertaining to juveniles unless disclosure is authorized by law;

(3) medical and related public health records;

(4) records required to be kept confidential by a federal law or regulation or by state law;

(5) to the extent the records are required to be kept confidential under 20 U.S.C. 1232g and the regulations adopted under 20 U.S.C. 1232g in order to secure or retain federal assistance;

(6) records or information compiled for law enforcement purposes, but only to the extent that the production of the law enforcement records or information

(A) could reasonably be expected to interfere with enforcement proceedings;

(B) would deprive a person of a right to a fair trial or an impartial adjudication;

(C) could reasonably be expected to constitute an unwarranted invasion of the personal privacy of a suspect, defendant, victim, or witness;

(D) could reasonably be expected to disclose the identity of a confidential source;

(E) would disclose confidential techniques and procedures for law enforcement investigations or prosecutions;

(F) would disclose guidelines for law enforcement investigations or prosecutions if the disclosure could reasonably be expected to risk circumvention of the law; or

(G) could reasonably be expected to endanger the life or physical safety of an individual;

(7) names, addresses, and other information identifying a person as a participant in the Alaska Higher Education Savings Trust under AS 14.40.802 or the advance college tuition savings program under AS 14.40.803 - 14.40.817;

(8) public records containing information that would disclose or might lead to the disclosure of a component in the process used to execute or adopt an electronic signature if the

disclosure would or might cause the electronic signature to cease being under the sole control of the person using it;

(9) [See delayed repeal note]. reports submitted under AS 05.25.030 concerning certain collisions, accidents, or other casualties involving boats;

(10) records or information pertaining to a plan, program, or procedures for establishing, maintaining, or restoring security in the state, or to a detailed description or evaluation of systems, facilities, or infrastructure in the state, but only to the extent that the production of the records or information

(A) could reasonably be expected to interfere with the implementation or enforcement of the security plan, program, or procedures;

(B) would disclose confidential guidelines for investigations or enforcement and the disclosure could reasonably be expected to risk circumvention of the law; or

(C) could reasonably be expected to endanger the life or physical safety of an individual or to present a real and substantial risk to the public health and welfare;

(11) the written notification regarding a proposed regulation provided under AS 24.20.105 to the Department of Law and the affected state agency and communications between the Legislative Affairs Agency, the Department of Law, and the affected state agency under AS 24.20.105;

(12) records that are

(A) proprietary, privileged, or a trade secret in accordance with AS 43.90.150 or 43.90.220(e);

(B) applications that are received under AS 43.90 until notice is published under AS 43.90.160.

(b) Every public officer having the custody of records not included in the exceptions shall permit the inspection, and give on demand and on payment of the fees under AS 40.25.110 - 40.25.115 a certified copy of the record, and the copy shall in all cases be evidence of the original.

(c) Recorders shall permit memoranda, transcripts, and copies of the public records in their offices to be made by photography or otherwise for the purpose of examining titles to real estate described in the public records, making abstracts of title or guaranteeing or insuring the titles of the real estate, or building and maintaining title and abstract plants, subject to reasonable rules and regulations as are necessary for the protection of the records and to

prevent interference with the regular discharge of the duties of the recorders and their employees.

History -

(Sec. 3.23 ch 101 SLA 1962; am Sec. 5 ch 200 SLA 1990; am Sec. 1 ch 113 SLA 1994; am Sec. 1 ch 102 SLA 1997; am Sec. 2 ch 65 SLA 1998; am Sec. 1 ch 3 SLA 2000; am Sec. 24 ch 28 SLA 2000; am Sec. 1 ch 36 SLA 2002; am Sec. 4 ch 164 SLA 2004; am Sec. 5 ch 22 SLA 2007; am Sec. 2 ch 76 SLA 2008)

Postponed Repeal Effective Date -

Delayed repeal of paragraph (a)(9). - Under secs. 27 and 30, ch. 28, SLA 2000, as amended by sec. 3, ch. 34, SLA 2004, sec. 1, ch. 19, SLA 2009, and sec. 1, ch. 47, SLA 2010, paragraph (a)(9) of this section is repealed effective on the earlier of July 1, 2013, or the occurrence of the contingency described in sec. 30(2), ch. 28, SLA 2000, which is ""90 days after the date the chair of the Alaska Legislative Council notifies the revisor of statutes that in the previous state fiscal year the state did not receive and does not anticipate receiving federal funding for a statewide boating and safety education program; the director of the division of legislative finance shall notify the chair of the Alaska Legislative Council when the state, in the previous fiscal year, did not receive federal funding for a statewide boating and safety program; the chair of the Alaska Legislative Council may not give the notice described in this paragraph unless the notice is approved by a vote of a majority of the members of the Alaska Legislative Council."

Revisors Notes -

Formerly AS 09.25.120. Renumbered in 2000, at which time, in subsection (b), "AS 40.25.110 - 40.25.115" was substituted for "AS 09.25.110 - 09.25.115" to reflect the 2000 renumbering of AS 09.25.110 and 09.25.115.

Reorganized into subsections in 1994.

Amendment Notes -

The 2007 amendment, effective June 8, 2007, added paragraph (a)(12).

The 2008 amendment, effective July 1, 2008, deleted "and shall furnish proper and reasonable facilities to persons having lawful occasion for access to the public records for those purposes" following "abstract plants" in subsection (c), and deleted "in conformity to the direction of the court" following "rules and regulations" in that subsection.

AG Opinions -

Disclosing library use records, while deleting any references which would allow the library patron to be identified, should, in most cases, satisfy the policies underlying the Freedom of Information Act without interfering with privacy interests. There may, however, be some instances in which the release of names is necessary to accomplish an important public interest. Such requests should be reviewed on a case-by-case basis with advice from the Department of Law. July 13, 1984 Op. Att'y Gen.

The Alaska Judicial Council is a public agency, and its records are public records subject to the provisions of this section. Oct. 3, 1984 Op. Att'y Gen.

The Judicial Council is authorized to adopt rules and regulations regarding the confidentiality of its own records, provided they are consistent with state statutes, including this section. For those cases where considerations favoring disclosure are nearly equal to those favoring confidentiality, rules or regulations may, and indeed should, be adopted to set guidelines for use in deciding whether disclosure should be made. Oct. 3, 1984 Op. Att'y Gen.

Any letters concerning judicial applicants which are transferred by the Judicial Council to the governor remain confidential in the hands of the governor and should not be disclosed to the public. Oct. 3, 1984 Op. Att'y Gen.

Portions of trip memoranda prepared by the governor which related to personal matters were not public records subject to release. Further, the "public record" portion of the trip memoranda were communications which the governor's office, in its discretion, could have declined to release under the doctrine of executive privilege. Finally, even if the governor waived any claim to executive privilege, he should have declined to release material which compromised an individual's privacy rights, unless a waiver was obtained. Sept. 24, 1985 Op. Att'y Gen.

The radio frequencies of the Department of Fish and Games telemetry transmitters that are used to track wildlife in the state should not normally be disclosed to the public because this disclosure would be against the public interest. While there is no state statute specifically requiring these radio frequencies to be kept confidential, there are two other sources of "state law" under which records may be required to be kept confidential: (1) the right of privacy specified in article I, section 22 of the Alaska Constitution: and (2) the common-law "public interest" exception. Oct. 21, 1985 Op. Att'y Gen.

In response to a public records request received by the Division of Retirement and Benefits concerning former state troopers, firemen, and fish and wildlife protection officers who were receiving occupational disability benefits under the Public Employees' Retirement System (PERS), which request included asking for the recipients' names, former positions with the state, dates of injury, types of injury or disability, retirement dates, and amounts of

monthly benefits, the public interest was served by providing the requested information, but, in order to protect the privacy interests of the benefit recipients, all personal references and information that would have easily allowed identification of individuals had to be deleted. Aug. 6, 1986 Op. Att'y Gen.

The names and addresses of individual trappers, contained on Alaska Department of Fish and Game wolf sealing forms, are not expressly exempted from the public disclosure requirements of AS 09.25.110 (now AS 40.25.110), and there is no constitutional or common-law requirement for confidentiality. Sept. 3, 1986 Op. Att'y Gen.

Certain private business records in the possession of the Department of Commerce and Economic Development, which were submitted voluntarily, in order for the department to carry out its statutory duty to conduct economic development studies relating to domestic fish harvesting, which records included those used by seafood processors to formulate business plans for future years - data on volume/species mixes, target areas of the state, and market share information - were probably not a matter of public record, but this result may have varied depending on the content of particular documents. Without a regulation based on statutory or constitutional authority, the department had to, in each case, balance the interest of the business with the public's right to know. Dec. 8, 1986 Op. Att'y Gen.

Certain oil and gas leasing receipts from University of Alaska trust lands between 1981 and 1985 were improperly allocated among the Alaska permanent fund, the general fund, and the public school fund, and should have been allocated to the fund established under AS 14.40.100. This requirement stems directly from federal law, which supersedes the provisions of state law in this instance. 1987-1 Inf. Op. Atty. Gen. 233 (April 8; 663-87-0465).

Active investigation files of the Alaska Public Offices Commission (APOC) cannot be viewed and copied. There are at least three demonstrable public and private interests which, at least in the aggregate, outweigh the public's right to have access to these files: (1) the agency and the public have an interest in preserving the integrity and effectiveness of law enforcement investigations, and that interest may be jeopardized by the release of active investigative files; (2) release of unevaluated information to the public may unfairly impair the reputation of the subjects of the investigation, and may come perilously close to violating their due process rights guaranteed by the state and federal constitutions; and (3) Alaska's constitutional right to privacy requires APOC to use extreme caution in disclosing unverified or unevaluated charges of materials obtained by the agency in the course of an investigation. Apr. 30, 1987 Op. Att'y Gen.

The Child Support Enforcement Division could release a list of child support obligors who are in arrears, pursuant to a request by a newspaper under the state's public records statutes. In releasing this information, however, the division could not identify those cases

which were related to Aid to Family with Dependent Children. The division also had to explain to the newspaper that the existence of arrears was disputable by the individual obligors. May 30, 1989 Op. Att'y Gen.

Information in grant status reports by the former Alaska Science and Technology Foundation was public, and the reports had to be presented in open session in accordance with the Open Meetings Act. However, confidential information under former AS 37.17.090 could be presented in executive session, and omitted from a grant status report provided for public inspection. 1991 Op. Atty. Gen. No. 173.

The Workers' Compensation Division may not, in response to a public information request, release its electronic data base in its entirety, but may release the information contained in the data base if social security numbers are deleted. Public agencies are prohibited under the federal Privacy Act of 1974 from disclosing claimants' social security numbers if the claimants were not informed whether the disclosure was voluntary or mandatory or told of the potential uses of the numbers when the number was provided. Furthermore the release of an electronic data base that contains names matched with individual social security numbers in response to a public information request appears to violate the protections intended under the Privacy Act. Nov. 13, 1992 Op. Att'y Gen.

Teacher transcripts sent to the Alaska Department of Education for the purpose of obtaining teacher certification are not subject to the provisions of the Family Education Rights and Privacy Act of 1974 (FERPA), and are public records subject to disclosure upon request. 1992 Op. Atty. Gen. No. 235.

The first step when a request for records is received is to determine whether the requestor is involved in litigation, or is representing someone involved in litigation, with the state or one of its agencies. If so, the request must be denied. The person should be advised that the records can only be produced in response to a subpoena or discovery order. In other instances, a specific determination as to the existence of an exemption should be made, especially in cases related to criminal investigations. 1994 Op. Atty. Gen. No. 1.

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. - AS 09.25.110 (now AS 40.25.110) and this section articulate a broad policy of open records. *City of Kenai v. Kenai Peninsula Newspapers, Inc.*, 642 P.2d 1316 (Alaska 1982).

Effect of "in the state" language. - When the legislature chose to say "in the state," and not "of the state" in the first sentence of this section, they were conscious of the fact that they were defining scope and had it been intended to limit the application of this section to state agencies and departments, it could easily and clearly have done so. *City of Kenai v. Kenai Peninsula Newspapers, Inc.*, 642 P.2d 1316 (Alaska 1982).

The word "public" as used in AS 09.25.110 (now AS 40.25.110) and this section 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).

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).

Application to municipalities. - The provisions of AS 09.25.110 (now AS 40.25.110) and 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 AS 09.25.110 (now AS 40.25.110) and this section 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).

Criminal records. - Even if the superior court had the power to seal a court file for a convicted criminal, if presented with extraordinary circumstances to override public access, the superior court could reasonably conclude that defendant had not shown such extraordinary circumstances and the state laws and the court rules expressed a clear preference for public

records to remain accessible; thus, the superior court did not abuse its discretion when it denied defendant's motion to seal his court records. *Johnson v. State*, 50 P.3d 404 (Alaska Ct. App. 2002).

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).

Documents concerning citizen's petition to oust police chief were not subject to inspection since the citizens had a reasonable expectation that their contacts with the police department would not be publicly disclosed. *Ramsey v. City of Sand Point*, 936 P.2d 126 (Alaska 1997).

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).

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).

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).

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).

Governor's Reapportionment Board. - Where the Governor's Reapportionment Board ignored some written requests for records and released certain materials in an untimely manner, the Board violated the Public Records Act. *Hickel v. Southeast Conference*, 868 P.2d 919 (Alaska 1994).

Collateral Refs -

66 Am. Jur. 2d, Records and Recording Laws, Sec. 27-31.

76 C.J.S., Records, Sec. 8-20.

Validity, construction, and application of statutes making public proceedings open to the public. 38 ALR3d 1070.

Confidentiality of records as to recipients of public welfare. 54 ALR3d 768.

Validity, construction, and application of statutory provisions relating to public access to police records. 82 ALR3d 19.

Restricting access to judicial records of state courts. 84 ALR3d 598.

Payroll records of individual government employees as subject to disclosure to public. 100 ALR3d 699.

What constitutes "agency" for purposes of Freedom of Information Act (5 U.S.C. Sec. 552). 165 ALR Fed. 591.

Actions brought under Freedom of Information Act, 5 U.S.C.A. Sec. 552 et seq. - Supreme Court cases. 167 ALR Fed. 545.

What are interagency or intra-agency memorandums or letters exempt from disclosure under the Freedom of Information Act (5 U.S.C.A. 552(b)). 168 ALR Fed. 143.

What matters are exempt from disclosure under Freedom of Information Act (5 U.S.C.A. Sec. 552(b)) as "specifically authorized under criteria established by an executive order to be kept secret in the interest of national defense or foreign policy." 169 ALR Fed. 495.

What constitutes "confidential source" within Freedom of Information Act exemption permitting nondisclosure of confidential source and, in some instances, of information furnished by confidential source (5 U.S.C.A. Sec. 552(b)). 171 ALR Fed. 193.

Construction and application of FOIA exemption 7(f), 5 U.S.C.A. Sec. 552(b)(7)(F), which permits withholding of information compiled for law enforcement purposes if disclosure could reasonably be expected to endanger life or physical safety. 184 ALR Fed. 435.

Use of affidavits to substantiate federal agency's claim of exemption from request for documents under Freedom of Information Act (5 U.S.C.A. Sec. 552). 187 ALR Fed. 1.

When are government records reasonably "expected to interfere with enforcement proceedings" so as to be exempt from disclosure under Freedom of Information Act provision (5 U.S.C.A. Sec. 552(b)(7)(a)) exempting any information "compiled for law enforcement purposes" whenever it "could reasonably be expected to interfere with enforcement proceedings." 189 ALR Fed. 1.