

Westlaw

AS § 06.55.407

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Title 6. Banks and Financial Institutions

Chapter 55. Alaska Uniform Money Services Act. (Refs & Annos)

Article 4. Examinations, Reports, Records

→ § 06.55.407. Confidentiality

(a) Except as otherwise provided in (b) of this section, all **information** or reports obtained by the department from an applicant, a licensee, or an authorized delegate are **confidential** and not subject to disclosure under AS 40.25.100--40.25.295, including

(1) all **information** contained in or related to examination, investigation, operating, or condition reports prepared by, on behalf of, or for the use of the department; and

(2) financial statements, balance sheets, and authorized delegate **information**.

(b) The department may disclose **information** that is not otherwise subject to disclosure under (a) of this section to representatives of state or federal agencies who promise in a record that they will maintain the **confidentiality** of the **information** or if the department finds that the release is reasonably necessary for the protection of the public and in the interests of justice, and the money services licensee has been given previous notice by the department of its intent to release the **information**.

(c) This section does not prohibit the department from disclosing to the public a list of money services licensees or the aggregated financial data concerning those money services licensees.

(d) A money services licensee or an authorized delegate may not disclose to another person financial **information** provided to the money services licensee or the authorized delegate by a customer except when, and only to the extent that, the disclosure is

(1) authorized in writing by the customer;

(2) required by federal, state, or local law;

(3) required by an order issued by a court or an administrative agency; or

(4) part of the money services transaction ordered by the customer.

(e) In (d) of this section, "financial **information**" means an individual's social security number, individual tax-

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payer identification number, account number, credit card account number, debit card account number, personal identification number, payment instrument number, or access code.

CREDIT(S)

Added by SLA 2007, ch. 55, § 1, eff. July 1, 2008. Amended by SLA 2010, ch. 58, § 2, eff. June 10, 2010.

HISTORICAL AND STATUTORY NOTES

SLA 2007, ch. 55, § 2 provides:

“APPLICABILITY. This Act applies to the provision of money services on or after July 1, 2008.”

AS § 06.55.407, AK ST § 06.55.407

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Title 10. Corporations and Associations

Chapter 13. Alaska BIDCO Act

Article 8. General Provisions

→ § 10.13.930. Confidentiality

(a) The commissioner, deputies, and other employees of the department may not disclose **information** acquired by them in the discharge of their duties under this chapter except to the extent disclosure of the **information** is required by law, other than the public records provisions of AS 40.25.110 - 40.25.220, or is required by court order.

(b) Notwithstanding (a) of this section, the department may disclose **information** that is **confidential** under (a) of this section if the department determines that disclosure of the **information** is necessary to promote the public interest. This subsection does not authorize the disclosure of **information** acquired by the department in the course of an examination of a licensee.

(c) Notwithstanding (a) of this section, the department may furnish **information** that is **confidential** under (a) of this section to the Alaska Industrial Development and Export Authority if the **information** is related to a BIDCO that has received assistance under former AS 37.17.200--37.17.390.

(d) A BIDCO may provide to a current or prospective creditor or shareholder of the BIDCO a copy of an examination report on the BIDCO made by the department under this chapter.

CREDIT(S)

SLA 1992, ch. 133, § 1; SLA 2004, ch. 2, § 3.

AS § 10.13.930, AK ST § 10.13.930

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Title 11. Criminal Law

Chapter 56. Offenses Against Public Administration

Article 6. Abuse of Public Office

→ § 11.56.860. Misuse of confidential information

(a) A person who is or has been a public servant commits the crime of misuse of **confidential information** if the person

(1) learns **confidential information** through employment as a public servant; and

(2) while in office or after leaving office, uses the **confidential information** for personal gain or in a manner not connected with the performance of official duties other than by giving sworn testimony or evidence in a legal proceeding in conformity with a court order.

(b) As used in this section, “**confidential information**” means **information** which has been classified **confidential** by law.

(c) Misuse of **confidential information** is a class A misdemeanor.

CREDIT(S)

SLA 1978, ch. 166, § 6.

CROSS REFERENCES

Attempt, classification of offenses, see § 11.31.100.

Classification of offenses, see § 11.81.250.

Fines, see § 12.55.035.

Legal accountability based upon the conduct of another, see §§ 11.16.110 and 11.16.120.

Misdemeanors, sentences of imprisonment, see § 12.55.135.

Offenses defined by statute, see § 11.81.220.

Prior convictions, effect on sentencing, see § 12.55.145.


Restitution and compensation, see § 12.55.045.

Victims of crimes, rights, see § 12.61.010 et seq.

LIBRARY REFERENCES

AS § 11.56.860

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Officers and Public Employees  121.

Westlaw Key Number Search: 283k121.

C.J.S. Officers and Public Employees §§ 329 to 334.

AS § 11.56.860, AK ST § 11.56.860

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Title 12. Code of Criminal Procedure

Chapter 62. Criminal Justice Information and Records Check

Article 1. Criminal Justice Information

→ **§ 12.62.160. Release and use of criminal justice information; fees**

(a) Criminal justice information and the identity of recipients of criminal justice information are confidential and exempt from disclosure under AS 40.25. The existence or nonexistence of criminal justice information may not be released to or confirmed to any person except as provided in this section and AS 12.62.180(d).

(b) Subject to the requirements of this section, and except as otherwise limited or prohibited by other provision of law or court rule, criminal justice information

(1) may be provided to a person when, and only to the extent, necessary to avoid imminent danger to life or extensive damage to property;

(2) may be provided to a person to the extent required by applicable court rules or under an order of a court of this state, another state, or the United States;

(3) may be provided to a person if the information is commonly or traditionally provided by criminal justice agencies in order to identify, locate, or apprehend fugitives or wanted persons or to recover stolen property, or for public reporting of recent arrests, charges, and other criminal justice activity;

(4) may be provided to a criminal justice agency for a criminal justice activity;

(5) may be provided to a government agency when necessary for enforcement of or for a purpose specifically authorized by state or federal law;

(6) may be provided to a person specifically authorized by a state or federal law to receive that information;

(7) in aggregate form may be released to a qualified person, as determined by the agency, for criminal justice research, subject to written conditions that assure the security of the information and the privacy of individuals to whom the information relates;

(8) may be provided to a person for any purpose, except that information may not be released if the informa-

tion is nonconviction information or correctional treatment information;

(9) including information relating to a serious offense, may be provided to an interested person if the information is requested for the purpose of determining whether to grant a person supervisory or disciplinary power over a minor or dependent adult; and

(10) may be provided to the person who is the subject of the information.

(c) Unless otherwise provided for in regulations adopted by the commissioner, if access to criminal justice information is permitted under (b) of this section

(1) the information may be released only by the agency maintaining that information;

(2) the information may not be released under this section without first determining that the information is the most current information available within that criminal justice information system, unless the system is incapable of providing the most current information available within the necessary time period;

(3) the information may not be released under this section until the person requesting the information establishes the identity of the subject of the information by fingerprint comparison or another reliable means of identification approved by the department;

(4) the information may not be released under this section unless the criminal justice agency releasing the information records, and maintains for at least three years, the name of the person or agency that is to receive the information, the date the information was released, the nature of the information, and the statutory authority that permits the release; and

(5) information released under this section may be used only for the purpose or activity for which the information was released.

(d) Notwithstanding AS 40.25, a criminal justice agency may charge fees, established by regulation or municipal ordinance, for processing requests for records under this chapter, unless the request is from a criminal justice agency or is required for purposes of discovery in a criminal case. In addition to fees charged under AS 44.41.025 for processing fingerprints through the Alaska automated fingerprint system, the department may charge fees for other services in connection with the processing of information requests, including fees for contacting other jurisdictions to determine the disposition of an out-of-state arrest or to clarify the nature of an out-of-state conviction. The department may also collect and account for fees charged by the Federal Bureau of Investigation for processing fingerprints forwarded to the bureau by the department. The annual estimated balance in the account maintained by the commissioner of administration under AS 37.05.142 may be used by the legislature to make appropriations to the department to carry out the purposes of this chapter.

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(e) When an interested person requests information under (b)(9) of this section, the department may also obtain a national criminal history record check under AS 12.62.400 if the person submits the fingerprints and fees required for that check under (d) of this section.


CREDIT(S)

SLA 1994, ch. 118, § 2; SLA 2001, ch. 53, § 1; SLA 2004, ch. 79, § 6. Amended by SLA 2009, ch. 41, § 12, eff. June 21, 2009.

HISTORICAL AND STATUTORY NOTES

SLA 2009, ch. 41, in subsec. (a) substituted “are” for “is”.

LIBRARY REFERENCES

Criminal Law  1226.
Westlaw Key Number Search: 110k1226.
C.J.S. Criminal Law § 1734.

RESEARCH REFERENCES

Treatises and Practice Aids

Guide to Employment Law and Regulation 2d § 22:2, Antidiscrimination Law.

HRS Policies and Practices § 40:3, Alaska.


Investigating Employee Conduct App C, Arrest and Conviction Records.

Termination of Employment § 4:20, Arrests and Convictions.

NOTES OF DECISIONS

In general I

1. In general

The legislature has expressed a bias in favor of public disclosure of public records, and doubtful cases should be resolved by permitting public inspection. AS 12.62.160, 40.25.120(a). *Johnson v. State* (2002) Alaska App., 50 P.3d 404. Records  30

In cases where there is no express exception to the state's disclosure laws and a party is requesting that access to

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public records be restricted, Court of Appeals balances the public interest in disclosure on the one hand, and the privacy and reputation interests of the affected individuals together with the government's interest in confidentiality, on the other. AS 12.62.160, 40.25.120(a). *Johnson v. State* (2002) Alaska App., 50 P.3d 404. Records 32

In a case involving criminal records where a party is requesting that access to those records be restricted, Court of Appeals balances the public's right to know about an individual's past crimes against the convicted individual's right to privacy. AS 12.62.160, 40.25.120(a). *Johnson v. State* (2002) Alaska App., 50 P.3d 404. Records 32

Even if trial court had the authority to seal court criminal records if presented with extraordinary circumstances to override public access, trial court did not abuse its discretion in refusing to restrict access to records of felon convicted of kidnapping and rape whose probation and parole supervision ended nine years before he asked court to restrict access; felon had four letters praising him from co-workers, friends and a landlord, had won an award from an employer, had recently married, and was receiving harassing phone calls, had shed and truck vandalized, was falsely accused by co-worker of threatening him, had superiors display bad attitudes towards him, and believed co-workers had information on his convictions because company did background check. AS 12.62.160, 40.25.120(a). *Johnson v. State* (2002) Alaska App., 50 P.3d 404. Records 32

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Title 16. Fish and Game (Refs & Annos)

Chapter 05. Fish and Game Code (Refs & Annos)

Article 6. Miscellaneous Provisions

→ **§ 16.05.815. Confidential nature of certain reports and records**

(a) Except as provided in (b) and (c) of this section, records required by regulations of the department concerning the landings of fish, shellfish, or fishery products, and annual statistical reports of fishermen, buyers, and processors required by regulation of the department are confidential and may not be released by the department or by the Alaska Commercial Fisheries Entry Commission except as set out in this subsection. The department may release the records and reports set out in this subsection to the Alaska Commercial Fisheries Entry Commission. The department and the Alaska Commercial Fisheries Entry Commission may release the records and reports set out in this subsection to the recipients identified in this subsection if the recipient, other than a recipient under (5)–(9) of this subsection, agrees to maintain the confidentiality of the records and reports. The department and the Alaska Commercial Fisheries Entry Commission may release

(1) any of the records and reports to the National Marine Fisheries Service and the professional staff of the North Pacific Fishery Management Council as required for preparation and implementation of the fishery management plans of the North Pacific Fishery Management Council within the exclusive economic zone;

(2) any of the records and reports to the professional staff of the Pacific States Marine Fisheries Commission who are employed in the Alaska Fisheries Information Network project for the purpose of exchanging information with users authorized by the department;

(3) any of the records and reports to the Department of Revenue to assist the department in carrying out its statutory responsibilities;

(4) records or reports of the total value purchased by each buyer to a municipality that levies and collects a tax on fish, shellfish, or fishery products if the municipality requires records of the landings of fish, shellfish, or fishery products to be submitted to it for purposes of verification of taxes payable;

(5) such records and reports as necessary to be in conformity with a court order;

(6) on request, the report of a person to the person whose fishing activity is the subject of the report, or to a designee of the person whose fishing activity is the subject of the report;

(7) on request, annual statistical reports of a fisherman, buyer, or processor to the fisherman, buyer, or processor whose activity is the subject of the report, or to a designee of the fisherman, buyer, or processor whose activity is the subject of the report;

(8) any of the records and reports to the Department of Public Safety for law enforcement purposes;

(9) fish tickets, fish ticket information, records required of sport fishing guides, and annual statistical reports of fishermen, buyers, and processors and information in those reports to the law enforcement personnel of the National Marine Fisheries Service and the National Oceanic and Atmospheric Administration for the purpose of enforcing fishery laws in waters of this state and in waters of the exclusive economic zone adjacent to this state;

(10) fish tickets, fish ticket information, and records required of sport fishing guides regarding halibut to the International Pacific Halibut Commission;

(11) any of the records and reports to the child support services agency created in AS 25.27.010, or the child support enforcement agency of another state, for child support purposes authorized under law;

(12) any of the records and reports to the Department of Natural Resources to assist the department in carrying out its statutory responsibilities in regard to sport fishing operations and sport fishing guides within the Kenai River Special Management Area under AS 41.21.500--41.21.514; and

(13) fish ticket information and records or reports of the total value purchased by each fisherman, buyer, or processor to the National Marine Fisheries Service for the purpose of enforcing the industry fee system of a fishing capacity reduction program under 16 U.S.C. 1861a (Magnuson-Stevens Fishery Conservation and Management Act).

(b) Except as provided in (c) of this section, records or reports received by the department which do not identify individual fishermen, buyers, or processors or the specific locations where fish have been taken are public **information**.

(c) Crab stock abundance survey **information** that reveals crab catch by sampling location is **confidential** and is not subject to inspection or copying under AS 40.25.110 - 40.25.120 until the close of the fishing season for which the survey was conducted.

(d) Except as otherwise provided in this section, the department shall keep **confidential** (1) personal **information** contained in fish and wildlife harvest and usage data; and (2) the records of the department that concern (A) telemetry radio frequencies of monitored species; (B) denning sites; (C) nest locations of raptors that require special attention; (D) the specific location of animal capture sites used for wildlife research or management; and (E) the specific location of fish and wildlife species. The department may release records and **information** that

are kept **confidential** under this subsection if the release is necessary to comply with a court order, if the requestor is a state or federal agency, if the requestor is under contract with the state or federal agency to conduct research on a fish or wildlife population, or if the requestor has been authorized by the department to perform specific activities and agrees to use the records and **information** only for purposes as provided under a contract or agreement with the department. After 25 years, the records and **information** that are kept **confidential** under this subsection become public records subject to inspection and copying under AS 40.25.110 - 40.25.140 unless the department determines that the release of the records or **information** may be detrimental to the fish or wildlife population. In this subsection, "personal **information**" has the meaning given in AS 40.25.350.

CREDIT(S)

SLA 1970, ch. 117, § 1; SLA 1974, ch. 117, § 1; SLA 1980, ch. 66, § 1; SLA 1982, ch. 72, §§ 1, 2; SLA 1985, ch. 84, § 1; SLA 1988, ch. 115, §§ 1, 2; SLA 1989, ch. 32, § 1; SLA 1990, ch. 200, § 10; SLA 1994, ch. 89, § 1; SLA 1997, ch. 87, § 19; SLA 1999, ch. 59, § 1; SLA 2002, ch. 119, § 1; SLA 2004, ch. 70, § 5. Amended by SLA 2007, ch. 41, § 1, eff. July 4, 2007; SLA 2010, ch. 74, § 1, eff. June 12, 2010.

HISTORICAL AND STATUTORY NOTES

SLA 2004, ch. 70, § 9 provides:

"Transition; Regulations. The Board of Fisheries and the Department of Fish and Game each may proceed to adopt regulations necessary to implement the changes made by secs. 1, 3, 4, 5, and 6 of this Act. The regulations take effect under AS 44.62 (Administrative Procedure Act), but not before January 1, 2005."

NOTES OF DECISIONS

Fish ticket **information** 2 Governmental agencies and divisions 1

1. Governmental agencies and divisions

The Commercial Fisheries Entry Commission may provide **confidential** fisheries data to the Legislative Audit Division because the division has the authority to obtain otherwise **confidential** data from state agencies, and statutory safeguards under AS 24.20.301(a) are in place to protect the **confidentiality** of that data once it has been transferred. Alaska Op.Atty.Gen. 663-91-0321, (March 27, 1991) 1991 WL 541948.

2. Fish ticket **information**

In light of the **confidentiality** provisions of AS 16.05.815, unless the individual on whose permit the fish tickets were reported signs a waiver, or unless a court order is obtained, fish ticket **information** can not be provided to the owner of the vessel from which fishing occurred, if the fishing was attributable to a permit holder other than the vessel owner. Alaska Op.Atty.Gen. 663-92-0516, (June 26, 1992) 1992 WL 564955.

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AS § 16.05.815, AK ST § 16.05.815

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Title 18. Health, Safety, and Housing

Chapter 08. Emergency Medical Services

→ § 18.08.087. Disclosure of medical records

When requested for the purpose of evaluating the performance of an emergency medical technician, mobile intensive care paramedic, or physician who provided emergency medical care or other assistance to a sick or injured person, a licensed physician, advanced nurse practitioner, or physician assistant may disclose to an emergency medical technician, a mobile intensive care paramedic, or physician the medical or hospital records of a sick or injured person to whom the paramedic, technician, or physician is providing or has rendered emergency medical care or assistance. However, the disclosing physician, nurse practitioner, or physician assistant shall limit disclosure under this section to the records that are **considered** necessary by the discloser for evaluation of the paramedic's, technician's, or physician's performance in providing the emergency medical care or assistance. A mobile intensive care paramedic, emergency medical care technician, or physician to whom **confidential** records are disclosed under this section may not further disclose the **information** to a person not entitled to receive that **information** under this section or another law.

CREDIT(S)

SLA 1993, ch. 36, § 19.

LIBRARY REFERENCES

Health ↪ 196, 642.

Westlaw Key Number Searches: 198Hk196; 198Hk642.

AS § 18.08.087, AK ST § 18.08.087

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Title 18. Health, Safety, and Housing

Chapter 16. Regulation of Abortions (Refs & Annos)

→ § 18.16.060. Informed consent requirements

(a) Except as provided in (d) of this section, a person may not knowingly perform or induce an abortion without the voluntary and informed consent of

- (1) a woman on whom an abortion is to be performed or induced;
- (2) the parent, guardian, or custodian of a pregnant, unemancipated minor if required under AS 18.16.020; or
- (3) a pregnant, unemancipated minor if authorized by a court under AS 18.16.030.

(b) Consent to an abortion is informed and voluntary when the woman or another person whose consent is required certifies in writing that the physician who is to perform the abortion, a member of the physician's staff who is a licensed health care provider, or the referring physician has verbally informed the woman or another person whose consent is required of the name of the physician who will perform the procedure and the gestational estimation of the pregnancy at the time the abortion is to be performed and has provided either

- (1) the Internet **information** required to be maintained under AS 18.05.032; the physician or a member of the physician's staff who is a licensed health care provider shall provide a copy of the Internet **information** if a person requests a written copy; if a member of the physician's staff provides the **information** required under this paragraph, the member of the physician's staff shall offer the opportunity to consult with the physician; or
- (2) **information** about the nature and risks of undergoing or not undergoing the proposed procedure that a reasonable patient would **consider** material to making a voluntary and informed decision of whether to undergo the procedure .

(c) The **information** required in (b) of this section shall be provided before the procedure in a private setting to protect privacy, maintain the **confidentiality** of the decision, ensure that the **information** focuses on the individual circumstances, and ensure an adequate opportunity to ask questions. Provision of the **information** telephonically or by electronic mail, regular mail, or facsimile transmittal before the person's appointment satisfies the requirements of this subsection as long as the person whose consent is required under (a) of this section has an opportunity to ask questions of the physician after receiving the **information**.

(d) Notwithstanding (a) of this section, informed consent that meets the requirements of (a)--(c) of this section is not required in the case of a medical emergency or if the pregnancy is the result of sexual assault under AS 11.41.410--11.41.427, sexual abuse of a minor under AS 11.41.434--11.41.440, incest under AS 11.41.450, or an offense under a law of another jurisdiction with elements similar to one of these offenses. In this subsection, "medical emergency" means a condition that, on the basis of a physician's good faith clinical judgment, so complicates the medical condition of a pregnant woman that

(1) the immediate termination of the woman's pregnancy is necessary to avert the woman's death; or

(2) a delay in providing an abortion will create serious risk of substantial and irreversible impairment of a major bodily function of the woman.

CREDIT(S)

SLA 2004, ch. 178, § 5.

HISTORICAL AND STATUTORY NOTES

SLA 2004, ch. 178, § 1 provides:

"Legislative Findings. The legislature finds that

"(1) duties of the state include regulating medical practice and fostering the development of standards of professional conduct in a critical area of medical practice;

"(2) the state is interested in protecting the lives and health of pregnant women;

"(3) women have a right to know the medical risks associated with their reproductive options;

"(4) the creation of an unbiased, scientific **information** site on the Internet that is reviewed and approved for medical accuracy by recognized obstetrical and gynecological specialists designated by the State Medical Board and that sufficiently describes reproductive options and their potential consequences will protect, inform, and promote a woman's free and private choices between permanent and life-affecting alternatives;

"(5) the creation of an unbiased, scientific **information** site on the Internet that is reviewed and approved for medical accuracy by recognized obstetrical and gynecological specialists designated by the State Medical Board and that sufficiently describes reproductive options and their potential consequences will reduce costly and undue litigation, will promote judicial economy and resources, and will provide physicians with a clear understanding of what constitutes informed consent for abortion;

"(6) considerable testimony has been received indicating that women have, on occasion, received abortions in the state without **considering** sufficient **information**."


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SLA 2004, ch. 178, § 7 provides:

“Severability. Under AS 01.10.030, the provisions of this Act are severable.”

LIBRARY REFERENCES

Abortion and Birth Control  112.
Westlaw Key Number Search: 4k112.

AS § 18.16.060, AK ST § 18.16.060

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Title 18. Health, Safety, and Housing

Chapter 23. Health Care Services **Information** and Review Organizations

Article 2. Medical Review Organizations

→ § 18.23.030. Confidentiality of records of review organization

(a) Except as provided in (b) of this section, all data and **information** acquired by a review organization in the exercise of its duties and functions shall be held in confidence and may not be disclosed to anyone except to the extent necessary to carry out the purposes of the review organization and is not subject to subpoena or discovery. Except as provided in (b) of this section, a person described in AS 18.23.020 may not disclose what transpired at a meeting of a review organization except to the extent necessary to carry out the purposes of a review organization, and the proceedings and records of a review organization are not subject to discovery or introduction into evidence in a civil action against a health care provider arising out of the matter that is the subject of consideration by the review organization. Information, documents, or records otherwise available from original sources are not immune from discovery or use in a civil action merely because they were presented during proceedings of a review organization, nor may a person who testified before a review organization or who is a member of it be prevented from testifying as to matters within the person's knowledge, but a witness may not be asked about the witness's testimony before a review organization or opinions formed by the witness as a result of its hearings, except as provided in (b) of this section.

(b) Testimony, documents, proceedings, records, and other evidence adduced before a review organization that are otherwise inaccessible under this section may be obtained by a health care provider who claims that denial is unreasonable or may be obtained under subpoena or discovery proceedings brought by a plaintiff who claims that **information** provided to a review organization was false and claims that the person providing the **information** knew or had reason to know the **information** was false.

(c) Nothing in AS 18.23.005-18.23.070 prevents a person whose conduct or competence has been reviewed under AS 18.23.005-18.23.070 from obtaining, for the purpose of appellate review of the action of the review organization, any testimony, documents, proceedings, records, and other evidence adduced before the review organization.

(d) Notwithstanding the provisions of (b) and (c) of this section, **information** contained in a report submitted to the State Medical Board, and **information** gathered by the board during an investigation, under AS 08.64.336 is not subject to subpoena or discovery unless and until the board takes action to suspend, revoke, limit, or condition a license of the person who is the subject of the report or investigation.


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CREDIT(S)

SLA 1976, ch. 102, § 40; SLA 1987, ch. 87, § 19.

LIBRARY REFERENCES

Witnesses  184(1).
Westlaw Key Number Search: 410k184(1).
C.J.S. Witnesses § 297.

RESEARCH REFERENCES

Treatises and Practice Aids

The Legal Audit: Corporate Internal Investigation § 9:63, Current Issues Concerning Protection of Auditing Materials--State Audit Privilege Legislation--Other Self-Evaluative Privilege Legislation.

The Legal Audit: Corporate Internal Investigation § 9:66, Current Issues Concerning Protection of Environmental Auditing Materials--Protection by Self-Evaluative Privilege.


Wright & Miller: Federal Prac. & Proc. § 5431, General Rule--Other Novel Privileges.


NOTES OF DECISIONS

Confidentiality 1

Construction and application 1/2

1/2. Construction and application

Peer review statute governing the **confidentiality** of peer review records does not bar the use of evidence that is available from an independent source. Grandstaff v. State (2007) Alaska App., 171 P.3d 1176. Privileged Communications And **Confidentiality**  422(1)

Inculpatory statements made by defendant during peer review investigation into his sexual conduct with patients was not protected under statute governing peer review privilege, in prosecution for sexual assault, issuance of prescriptions that had no medical purpose to patients, and stealing Medicaid funds, as legislative history, coupled with consistent reading of provisions under statute, indicated that privilege applied to civil actions only. Grandstaff v. State (2007) Alaska App., 171 P.3d 1176. Privileged Communications And **Confidentiality**  422(1)

1. **Confidentiality**

While total **confidentiality** of the **information** held by the Infant Mortality Review Committee cannot be assured, the circumstances under which **information** can be obtained will be extremely rare. The **confidentiality**

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provisions restricting the disclosure of **information** help to encourage candor by an individual who communicates **information** to the IMRC, which in turn allows the IMRC to better accomplish its mission. Alaska Op.Atty.Gen. 663-96-0336, (July 31, 1996) 1996 WL 1062224.

AS § 18.23.030, AK ST § 18.23.030

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AS § 18.66.400

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Title 18. Health, Safety, and Housing

Chapter 66. Domestic Violence and Sexual Assault

Article 5. Domestic Violence Fatality Review Teams

→ § 18.66.400. Domestic violence fatality review teams

(a) The commissioner of public safety may establish domestic violence fatality review teams in areas of the state. A municipality may establish a domestic violence fatality review team in a municipality. When the investigation of fatal incidents of domestic violence and incidents of domestic violence involving serious physical injury has been completed or adjudicated by law enforcement or at an earlier appropriate time, a domestic violence fatality review team may review those incidents for the purpose of preventing domestic-violence-related fatalities, improving the response of law enforcement and other agencies to domestic violence, and providing consultation and coordination for agencies involved in the prevention and investigation of domestic violence. The review may include a review of events leading up to the domestic violence incident, available community resources, current laws and policies, actions taken by agencies and persons related to the incident and persons involved in the incident, and other **information** the team determines to be relevant to the review. The **confidential** and other records of a department or agency of the state or a municipality relating to the domestic violence incident may be examined by the domestic violence fatality review team or a member of the team. The domestic violence fatality review team and each member of the team shall preserve the **confidentiality** of any records examined. In this subsection, "serious physical injury" has the meaning given in AS 11.81.900.

(b) The membership of a domestic violence fatality review team shall be determined by the commissioner of public safety or the municipality, as appropriate. Membership may include representatives from

- (1) law enforcement agencies within the area or municipality;
- (2) the district attorney for the area or municipality and municipal prosecutor if created by a municipality;
- (3) the office of the chief medical examiner;
- (4) the Department of Corrections;
- (5) employees of the Department of Health and Social Services who deal with domestic violence;
- (6) local agencies and organizations involved with crime victim and domestic violence protection, reporting, and counseling and assistance;

AS § 18.66.400

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(7) other organizations, departments, and agencies determined to be appropriate.

(c) The victims' advocate under AS 24.65 is an ex officio member of each domestic violence fatality review team created under this section and may attend any meeting and review any **information** available to or **considered** by a team.

(d) Except for a public report issued by a domestic violence fatality review team that does not contain **confidential information**, records or other **information** collected by a team or any member of a team related to duties under this section is **confidential** and not subject to public disclosure under AS 40.25.100 and 40.25.110. Meetings of a domestic violence fatality review team are closed to the public and are not subject to the provisions of AS 44.62.310 - 44.62.319 (Open Meetings Act).

(e) The determinations, conclusions, and recommendations of a domestic violence fatality review team or its members are not admissible in a civil or criminal proceeding. A member may not be compelled to disclose a determination, conclusion, recommendation, discussion, or thought process through discovery or testimony in a civil or criminal proceeding. Records and **information** collected by the team are not subject to discovery or subpoena in connection with a civil or criminal proceeding.

(f) Notwithstanding (e) of this section, an employee of a state or a municipal agency may testify in a civil or criminal proceeding concerning cases reviewed by a domestic violence fatality review team even though the agency's records were reviewed by a team and formed the basis of that employee's testimony and the team's report.

(g) A person who serves on a domestic violence fatality review team is not liable for damages or other relief in an action brought by reason of the performance of a duty, function, or activity of the team.

CREDIT(S)

SLA 2004, ch. 19, § 1.

HISTORICAL AND STATUTORY NOTES

In 2010, "AS 44.62.310 - 44.62.319 (Open Meetings Act)" was substituted for "AS 44.62.310 and 44.62.312" in subsec. (d) by the revisor.

LAW REVIEW AND JOURNAL COMMENTARIES

A sexual relationship, did we have one? A review of the definition of "sexual relationship" within the context of Alaska's domestic violence laws. Beth Goldstein Lewis Trimmer, 24 Alaska L. Rev. 237 (December 2007).

AS § 18.66.400, AK ST § 18.66.400

AS § 18.66.400

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Title 21. Insurance

Chapter 06. The Director of Insurance (Refs & Annos)

→ § 21.06.060. Records

(a) The director shall enter in permanent form records of official transactions, examinations, investigations, and proceedings and keep those records in the office of the director. The records and insurance filings in the office of the director are open to public inspection, except as otherwise provided in (b)--(g) of this section or other provisions of this title with respect to particular records or filings.

(b) **Information** and records, including written documents and electronic data, designated as **confidential** or not available for public inspection under this section or other provisions of this title

(1) are not subject to inspection and copying under AS 40.25.110--40.25.220;

(2) may not be obtained from the director by subpoena, except for a subpoena issued by a state or federal law enforcement agency or grand jury;

(3) may be used by the director in a regulatory or legal proceeding; and

(4) may be released for public inspection if the person who provided the **information** or records to the director consents or releases incomplete or misleading **information** on the same topic to the public.

(c) The director or a person acting under the authority of the director who receives **information** or records designated in this title as **confidential** or not available for public inspection may not be permitted or required to testify about the **information** or records in a civil action not involving the state or a state agency, officer, or employee.

(d) A person required or requested to provide **information** or records to the director under this title does not waive a claim of privilege that the person may have by providing the **information** or records to the director.

(e) In the performance of duties under this title, the director may

(1) disclose **confidential information** or records to the legislature, state, federal, and international regulatory or law enforcement agencies, or the National Association of Insurance Commissioners if the recipient will maintain the **confidentiality** of the **information** or records;

AS § 21.06.060


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HISTORICAL AND STATUTORY NOTES

SLA 2009, ch. 30, deleted "Financial" at the beginning of subsec. (f), par. (4).

LIBRARY REFERENCES

Insurance  1046, 1580.

Records  31.

Westlaw Key Number Searches: 217k1046; 217k1580; 326k31.

C.J.S. Criminal Law § 449.

C.J.S. Insurance § 50.

C.J.S. Records §§ 74 to 92.

AS § 21.06.060, AK ST § 21.06.060

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Title 21. Insurance

Chapter 07. Regulation of Managed Care Insurance Plans

→ § 21.07.040. Confidentiality of managed care information

(a) Medical and financial **information** in the possession of a managed care entity regarding an applicant or a current or former person covered by a managed care plan is **confidential** and is not subject to public disclosure.

(b) This section does not apply to medical **information** that is disclosed if

(1) the individual whose identity is disclosed gives oral, electronic, or written consent to the disclosure;

(2) the **information** is disclosed for research

(A) that is subject to federal law and regulations protecting the rights and welfare of research participants; or

(B) using health **information** that protects the **confidentiality** of participants by coding or encryption of **information** that would otherwise identify the patient;

(3) the **information** is disclosed for purposes of obtaining reimbursement under health insurance;

(4) the **information** is disclosed at the written request of the covered person;

(5) the disclosure is required by law.

(c) Nothing in this section may be construed to prohibit the exchange of medical **information** between and among health care providers of an applicant or a person currently or formerly covered by a managed care plan for purposes of providing medical care services.

(d) This section does not apply to a managed care entity that is subject to AS 21.36.

CREDIT(S)


SLA 2000, ch. 99, § 2; SLA 2002, ch. 38, § 6; SLA 2004, ch. 96, §§ 3, 4; SLA 2006, ch. 80, § 7, eff. July 1, 2006.

LIBRARY REFERENCES

Health  196.

AS § 21.07.040

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Insurance  1594.

Westlaw Key Number Searches: 198Hk196; 217k1594.

AS § 21.07.040, AK ST § 21.07.040

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Title 23. Labor and Workers' Compensation (Refs & Annos)

Chapter 20. Alaska Employment Security Act

Article 1. Administration (Refs & Annos)

→ § 23.20.110. Information obtained by department

(a) Except for disclosures required by 42 U.S.C. 503, as amended, and 20 C.F.R. 603, as amended, and disclosures authorized under this section, the department shall hold **information** obtained from an employing unit or individual in the course of administering this chapter and determinations as to the benefit rights of an individual **confidential** and may not disclose them or open them to public inspection in a manner that reveals the identity of the individual or employing unit. A claimant or an employing unit is entitled to **information** from the records of the department only to the extent necessary to properly present or protest a claim or determination under this chapter. The department may not provide **information** that is **confidential** under this section to a person for use in any civil or administrative matter not directly involving the presentation or protest of a claim or determination under this chapter; however, subject to restrictions that the department prescribes by regulation, the information must be made available to the United States Department of Homeland Security, Bureau of Citizenship and Immigration Services, for the purpose of verifying a claimant's immigration status, to the United States Railroad Retirement Board, to an agency of this state or another state or federal agency charged with the administration of an unemployment compensation law or the maintenance of a system of public employment offices, to the United States Department of the Treasury, Internal Revenue Service, for the purposes of the Federal Unemployment Tax Act, [FN1] or to the Department of Revenue for tax purposes. Information obtained in the course of administering this chapter or in connection with the administration of the employment service may be made available to persons or agencies for purposes appropriate to the operation of a public employment service or the administration of employment and training programs planned or coordinated by the Alaska Workforce Investment Board under AS 23.15.550--23.15.585.

(b) Upon request the department shall furnish to an agency of the United States charged with the administration of public works or assistance through public employment, and may furnish to a state agency similarly charged, the name, address, ordinary occupation, and employment status of each recipient of benefits and the recipient's rights to benefits under this chapter.

(c) Upon request of an agency of this or another state or of the federal government which administers or operates one or more programs of public assistance under either federal law or the law of this state, or which is charged with any duty or responsibility under any such program, and if that agency is required by law to impose safeguards for the confidentiality of information at least as effective as required under this section, the department shall provide, with respect to any named individual specified by the requesting agency, the following information:

(1) whether the individual is receiving, has received, or has made application for unemployment compensation under this chapter;

(2) the period, if any, for which unemployment compensation was payable and the weekly rate of compensation paid;

(3) the individual's most recent address; and

(4) whether the individual has refused an offer of employment, and, if so, the date of the refusal and a description of the employment refused, including duties, conditions of employment, and rate of pay.

(d) The department may require that an agency or authorized person to which it provides information under this section reimburse the department for its costs of furnishing that information.

(e) The department shall provide wage and unemployment compensation information

(1) requested by a state or federal agency under an income and eligibility verification system that meets the requirements of 42 U.S.C. 1320b-7 (Social Security Act);

(2) as required by federal law for child support purposes;

(3) to the United States Secretary of Health and Human Services for the National Directory of New Hires as required by 42 U.S.C. 503 and 42 U.S.C. 653; or

(4) to a state or a political subdivision of a state that administers a program funded under 42 U.S.C. 601--619 that provides temporary assistance for needy families.

(f) Repealed.

(g) A recipient of records disclosed under this section may not use the disclosed records for a purpose other than the purpose for which the disclosure was made. The requirements concerning the confidentiality of information obtained in the course of administering this chapter apply to officers and employees of a state, federal, municipal, or other agency to whom the department provides information as authorized by this section.

(h) Repealed by SLA 2008, ch. 45, § 13, eff. May 29, 2008.

(i) Repealed by SLA 2008, ch. 45, § 13, eff. May 29, 2008.

(j) Repealed by SLA 2008, ch. 45, § 13, eff. May 29, 2008.

(k) If an individual who is applying for or participating in a housing assistance program administered by the United States Department of Housing and Urban Development gives authorization, the department shall disclose, to the United States Department of Housing and Urban Development or to representatives of the housing assistance program operating the program, wage information and unemployment compensation information. The authorization shall be made by the individual on a consent form approved by the department. The form must state the information authorized to be released and require the signature of the individual. In this subsection,

(1) "unemployment compensation information" means whether the individual is receiving, has received, or has applied for unemployment compensation, and the amount of unemployment compensation that the individual is receiving, has received, or is eligible to receive, and the individual's current address and other contact information;

(2) "wage information" means the social security number, or numbers if there are more than one, and quarterly wages of an employee, and the name, address, state, and, if known, federal employer identification number of an employer reporting wages under this chapter.

(l) The department may provide information obtained under this chapter to an agency of this state or to a person under contract with the state to

(1) verify the eligibility of an applicant for a public benefit or a publicly financed payment;

(2) assist the state in the collection of fines, penalties, judgments of restitution on behalf of victims of crimes or delinquent acts, or other payments ordered by a court or an administrative agency; or

(3) collect money owed to the fund under this chapter.

(m) The department may not release **information** under this section to a state agency or to a person under contract with the state until the department and the agency or person have entered into a written agreement that governs the release of **information**. The written agreement must specify

(1) the purpose for the **information**;

(2) a description of the **information** to be provided;

(3) a description of the procedure for transmitting, securing, using, and disposing of the **information**;

(4) the method of reimbursement, if any, for the cost of providing the **information**; and

(5) that the department may perform on-site inspections to ensure that the **confidentiality** requirements of this section are met.

(n) Notwithstanding (a) of this section, the department may produce statistical and other public reports based on **information** obtained in the course of administering this chapter, so long as the department complies with the requirements of 20 C.F.R. 603, as amended, regarding the use or release of **confidential** records.

(o) Upon request and for child support purposes authorized under law, the department shall provide to the child support services agency created in AS 25.27.010, or the child support enforcement agency of another state, the following:

(1) the name, address, social security number, ordinary occupation, and employment status of each applicant for or recipient of benefits under this chapter;

(2) information about the applicant's or recipient's right to benefits under this chapter;

(3) the name, address, and employer identification number of the applicant's or recipient's current or former employer;

(4) information, if available, on the applicant or recipient concerning

(A) earnings or other income of the applicant or recipient;

(B) benefits from employment, including rights to or enrollment in group health care coverage; and

(C) the type, status, location, and amount of assets of or debts owed by or to the applicant or recipient.

(p) Upon the written request by a state district attorney, a municipal attorney, a United States attorney, or the Federal Bureau of Investigation, the department may release to the requestor information under this section for the investigation or prosecution of a crime or to enforce an order of a court in a criminal matter, including enforcing probation or parole conditions.

(q) The confidentiality requirements of this section do not apply to disclosure of decisions and records on appeal in any matter before the department as long as the federal social security number of the claimant and the employer's federal employer identification number and federal social security number are redacted or removed before disclosure is made.

(r) In this section, "judgment of restitution" has the meaning given in AS 09.38.500.

CREDIT(S)

1st Ex. Sess. 1955, ch. 5, § 323; SLA 1969, ch. 79, § 1; SLA 1977, ch. 122, § 2; SLA 1980, ch. 9, § 3; SLA 1982, ch. 115, § 2; SLA 1985, ch. 60, § 1, 2; SLA 1988, ch. 40, §§ 2, 3; SLA 1989, ch. 100, § 2; SLA 1996, ch. 43, §§ 1--3; SLA 1997, ch. 87, §§ 33, 34; SLA 1999, ch. 58, § 27; SLA 2000, ch. 51, § 1; SLA 2001, ch. 92, §§ 15, 16; SLA 2002, ch. 86, § 41; SLA 2004, ch. 130, §§ 1, 2. Amended by SLA 2008, ch. 45, §§ 1 to 7, 13, eff. May 29, 2008.

[FN1] See 26 U.S.C.A. § 3301 et seq.

HISTORICAL AND STATUTORY NOTES

SLA 2008, ch. 45, rewrote the section, which had read:

“(a) Except as provided in (h) and (i) of this section, the department shall hold information obtained from an employing unit or individual in the course of administering this chapter and determinations as to the benefit rights of an individual confidential and may not disclose them or open them to public inspection in a manner that reveals the identity of the individual or employing unit. A claimant or an employing unit, or the legal representative of the claimant or the employing unit, is entitled to information from the records of the department to the extent necessary to properly present or protest a claim or determination under this chapter. Subject to restrictions that the department prescribes by regulation, the information may be made available to an agency of this state or another state or federal agency charged with the administration of an unemployment compensation law or the maintenance of a system of public employment offices, or, for the purposes of the Federal Unemployment Tax Act, to the Internal Revenue Service of the United States, or, for tax purposes, to the Department of Revenue. Information obtained in the course of administering this chapter or in connection with the administration of the employment service may be made available to persons or agencies for purposes appropriate to the operation of a public employment service or the administration of employment and training programs planned or coordinated by the Alaska Workforce Investment Board under AS 23.15.550--23.15.585.

“(b) Upon request the department shall furnish to an agency of the United States charged with the administration of public works or assistance through public employment, and may furnish to a state agency similarly charged, the name, address, ordinary occupation, and employment status of each recipient of benefits and the recipient's rights to benefits under this chapter.

“(c) Upon request of an agency of this or another state or of the federal government which administers or operates one or more programs of public assistance under either federal law or the law of this state, or which is charged with any duty or responsibility under any such program, and if that agency is required by law to impose safeguards for the **confidentiality of information** at least as effective as required under this section, the department shall provide, with respect to any named individual specified by the requesting agency, the following **information**:

“(1) whether the individual is receiving, has received, or has made application for unemployment compensa-

tion under this chapter;

“(2) the period, if any, for which unemployment compensation was payable and the weekly rate of compensation paid;

“(3) the individual's most recent address; and

“(4) whether the individual has refused an offer of employment, and, if so, the date of the refusal and a description of the employment refused, including duties, conditions of employment, and rate of pay.

“(d) The department may require that an agency or authorized person to which it provides information under this section reimburse the department for its costs of furnishing that information.

“(e) The department shall provide information

“(1) requested by a state or federal agency under an income and eligibility verification system that meets the requirements of 42 U.S.C. 1320b-7 (Social Security Act); or

“(2) as required by federal law for child support purposes.

“(f) Repealed.

“(g) The requirements of this section concerning the **confidentiality** of **information** obtained in the course of administering this chapter apply to officers and employees of a state, federal, or municipal agency to whom the department provides **information** as authorized by this section.

“(h) The department shall make **information** obtained from an employing unit or an individual available on request to an administrator of a joint administered defined pension benefit plan established under 29 U.S.C. 1001 - 1461 (Employee Retirement Income Security Act) to assist the administrator in verifying whether a person receiving a retirement benefit from the plan has been employed in the last six months. To the extent the **information** is available to the department, the department shall provide the administrator with the name and address of the person's current employer and the person's current occupation. The administrator shall keep **information** received under this subsection **confidential**. However, the administrator may reveal the **information** if it is relevant to a legal proceeding in which the administrator or the plan is a party. The department may require the plan to reimburse the department for the cost of furnishing the **information**.

“(i) The department shall publicly disclose **information** obtained from an employing unit or an individual as provided in this subsection to encourage employers to voluntarily **consider** the availability of qualified job seekers who are residents of the state. The department shall issue a report that discloses the names of all public and private employers who employ at least 20 employees. The report must address the employment record of each employer subject to this subsection and must contain the results of the department's analysis of the employers' practices of hiring persons who are not residents of the state. The department may not use the results of the

analysis to limit or deny services or benefits or to discriminate against an employer. The department may not disclose information under this subsection that would individually identify an employee.

“(j) Notwithstanding (h) or (i) of this section, the department may not release information to an administrator under (h) of this section or on an employer’s hiring practices under (i) of this section if the United States Secretary of Labor rules that release of the information would be grounds to find that the state is in substantial non-compliance with 42 U.S.C. 503(a).

“(k) If an individual who is applying for or participating in a housing assistance program administered by the United States Department of Housing and Urban Development gives authorization, the department shall disclose, to the United States Department of Housing and Urban Development or to representatives of the housing assistance program operating the program, wage information and unemployment compensation information. The authorization shall be made by the individual on a consent form approved by the department. The form must state the information authorized to be released and require the signature of the individual. In this subsection,

“(1) ‘unemployment compensation information’ means whether the individual is receiving, has received, or has applied for unemployment compensation, and the amount of unemployment compensation that the individual is receiving or will receive;

“(2) ‘wage information’ means the social security number, or numbers if there are more than one, and quarterly wages of an employee, and the name, address, state, and, if known, federal employer identification number of an employer reporting wages under this chapter.

“(l) The department may provide information obtained under this chapter to an agency of this state or to a person under contract with the state to

“(1) verify the eligibility of an applicant for a public benefit or a publicly financed payment;

“(2) assist the state in the collection of fines, penalties, judgments of restitution on behalf of victims of crimes or delinquent acts, or other payments ordered by a court or an administrative agency; or

“(3) collect money owed to the fund under this chapter.

“(m) The department may not release information under this section to a state agency or to a person under contract with the state until the department and the agency or person have entered into a written agreement that governs the release of information. The written agreement must specify

“(1) the purpose for the information;

“(2) a description of the information to be provided;

“(3) a description of the procedure for transmitting, securing, using, and disposing of the information; and

“(4) the method of reimbursement, if any, for the cost of providing the information.

“(n) The department may produce statistical and other public reports based on information obtained in the course of administering this chapter, so long as the reports do not reveal wage and payroll data for an employing unit or the name or number identifying an individual. The reports may include the firm name, address, North American Industry Classification System code, census area code, number of workers employed, and occupational staffing patterns for an employing unit.

“(o) Upon request and for child support purposes authorized under law, the department shall provide to the child support services agency created in AS 25.27.010, or the child support enforcement agency of another state, the following:

“(1) the name, address, social security number, ordinary occupation, and employment status of each applicant for or recipient of benefits under this chapter;

“(2) information about the applicant's or recipient's right to benefits under this chapter;

“(3) the name, address, and employer identification number of the applicant's or recipient's current or former employer;

“(4) information, if available, on the applicant or recipient concerning

“(A) earnings or other income of the applicant or recipient;

“(B) benefits from employment, including rights to or enrollment in group health care coverage; and

“(C) the type, status, location, and amount of assets of or debts owed by or to the applicant or recipient.

“(p) Upon the written request by a state district attorney, a municipal attorney, a United States attorney, or the Federal Bureau of Investigation, the department may release to the requestor information under this section for the investigation or prosecution of a crime or to enforce an order of a court in a criminal matter, including enforcing probation or parole conditions.

“(q) In this section, ‘judgment of restitution’ has the meaning given in AS 09.38.500.”

SLA 2008, ch. 45, § 14 provides:

“TRANSITION: REGULATIONS. Notwithstanding sec. 16 of this Act, the Department of Labor and Workforce Development may immediately proceed to adopt regulations necessary to implement the changes made by this Act. The regulations take effect under AS 44.62 (Administrative Procedure Act), but not before the effective date of the statutory change.”

AS § 23.20.110

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In 2008 new subsec. (r) was redesignated as (q) and existing subsec. (q) as (r) by the revisor.

LIBRARY REFERENCES

Records 30 to 35.
 Westlaw Key Number Searches: 326k30 to 326k35.
 C.J.S. Criminal Law § 449.
 C.J.S. Records §§ 60, 62 to 65, 67 to 93, 95.

NOTES OF DECISIONS

Grand jury subpoenas 1

1. Grand jury subpoenas

State was required by Supremacy Clause to comply with federal grand jury subpoena for production of individual's unemployment compensation records, despite state confidentiality statute, regardless of whether there was separate court order for enforcement of subpoena. U.S.C.A. Const. Art. 6, cl. 2; AS 23.20.110. In re Grand Jury Subpoena (2002) D.Alaska, 198 F.Supp.2d 1113. Grand Jury 36.3(1); Grand Jury 36.4(1)

State was barred by Supremacy Clause from prosecuting employees of state department of labor for complying with federal grand jury subpoena to produce individual's unemployment benefit records, despite state confidentiality statute. U.S.C.A. Const. Art. 6, cl. 2; AS 23.20.110. In re Grand Jury Subpoena (2002) D.Alaska, 198 F.Supp.2d 1113. Records 31; States 18.15

AS § 23.20.110, AK ST § 23.20.110

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Title 27. Mining

Chapter 21. Alaska Surface Coal Mining Control and Reclamation Act

Article 2. Surface Coal Mining

→ § 27.21.100. Public information and inspection

(a) An applicant for a permit shall file a copy of the application for public inspection at a location designated by the commissioner near the area of the proposed surface coal mining operation. The applicant may exclude from the copy filed under this subsection **information** that is **confidential** under (c) of this section.

(b) Copies of records, permits, inspection materials, data obtained under AS 27.21.120, or other **information** obtained under this chapter by the commissioner relating to a surface coal mining and reclamation operation, other than **information** that is **confidential** under (c) of this section, must be made immediately and conveniently available to the public at the district office of the department closest to the location of the surface coal mining and reclamation operation.

(c) Information

(1) gathered from the proposed permit area included in the application for a permit and pertaining to coal seams, test borings, core samplings, or soil samples must be made available to any person with an interest that is or may be adversely affected, except that **information** that relates only to the analysis of the chemical and physical properties of the coal, other than **information** regarding the mineral or elemental content that is potentially toxic in the environment, must be kept **confidential** and not made a matter of public record;

(2) in the applicant's reclamation plan relating to the competitive rights of the applicant, including but not limited to trade secrets, commercial or financial **information**, and geologic **information** specifically identified as **confidential** by the applicant and determined by the commissioner to be not essential for public review shall be kept **confidential** and not be made a matter of public record.

CREDIT(S)

SLA 1982, ch. 29, § 1; SLA 1997, ch. 56, § 1.

LIBRARY REFERENCES

Mines and Minerals ⚓ 92.18.

Westlaw Key Number Search: 260k92.18.

AS § 27.21.100

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C.J.S. Mines and Minerals § 383.

AS § 27.21.100, AK ST § 27.21.100

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Title 31. Oil and Gas

Chapter 05. Alaska Oil and Gas Conservation Act

Article 1. Administration

→ § 31.05.035. **Confidential reports**

(a) For all wells for which a permit to drill has been issued by the commission, the commission may require

(1) the making and filing of reports, well logs, drilling logs, electric logs, lithologic logs, directional surveys, and all other subsurface **information** on a well for which a permit to drill has been issued by the commission;

(2) the filing of flow test **information** and all logs, except experimental logs and velocity surveys run on a well and not required by (1) of this subsection; and

(3) the operator to make available for copying the digitized log **information**, if it is available, on any log required to be filed under (1) or (2) of this subsection.

(b) Reports and **information** required under (a)(1) and (2) of this section shall be filed within 30 days after the completion, abandonment, or suspension of a well. However, under (a)(1) of this section, the commission may not require the making of a log on a well completed, abandoned or suspended before June 19, 1970.

(c) The reports and information required in (a) of this section that relate to an exploratory or stratigraphic test well and those portions of an application for a permit to drill an exploratory or stratigraphic test well that the commission determines contain proprietary engineering or geotechnical **information** shall be kept **confidential** for 24 months following the 30-day filing period unless the owner of the well gives written permission to release the application and reports and **information** at an earlier date. If the commissioner of natural resources finds that the required reports and **information** contain significant **information** relating to the valuation of unleased land in the same vicinity, the commissioner shall keep the reports and **information** **confidential** for a reasonable time after the disposition of all affected unleased land, unless the owner of the well gives written permission to release the reports and **information** at an earlier date. Well surface and bottom hole locations, well depth, well status, production data, and production reports required by the commission to be filed subsequent to the 30-day filing period shall be **considered** public **information** and may not be classified **confidential**. Production data, as used in this subsection, means volume, gravity, and gas-oil ratio of all production of oil or gas after the well begins regular production.

(d) Engineering, geological, and other **information** not required by (a) of this section but voluntarily filed with

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the commission shall be kept **confidential** if the person filing the **information** so requests.

(e) Notwithstanding (c) of this section, claims of **confidentiality** will be denied for **information** disclosed to the commission under AS 31.05.030(h) that is required to be disclosed under 42 U.S.C. 300h - 4.

(f) **Confidentiality** under (d) of this section is not applicable to **information** submitted with or as part of a petition for a commission order or to **information** submitted for or as part of a hearing before the commission.

CREDIT(S)

SLA 1970, ch. 209, § 2; SLA 1978, ch. 160, §§ 3--6; SLA 1984, ch. 6, § 86; SLA 1984, ch. 91, § 2. Amended by SLA 2007, ch. 54, §§ 6 to 8, eff. July 13, 2007.


CROSS REFERENCES

Exploration incentive credits, see § 41.09.010.
Oil and gas exploration, alternative tax credit, see § 43.55.025
Pipeline Act, records inspection, see § 42.06.440.


NOTES OF DECISIONS

Period of **confidentiality** 2
Trade secrets 1

1. Trade secrets

Oil drillers' oil well data submitted to Department of Natural Resources pursuant to Alaska Oil and Gas Conservation Act constituted "trade secrets" protected under both Alaska and United States Constitutions, for purposes of takings claim, since value of data depended on its secrecy and companies obviously attempted to keep it secret. AS 31.05.035(a, c), 45.50.910 et seq., 45.50.940(3); Const. Art. 1, § 1. State Dept. of Natural Resources v. Arctic Slope Regional Corp., 1991, 834 P.2d 134, petition for rehearing filed. Eminent Domain  87

2. Period of **confidentiality**

Department of Natural Resources' use of oil drillers' oil well data submitted pursuant to Alaska Oil and Gas Conservation Act without compensation after initial **confidentiality** period did not constitute unconstitutional taking of property under State or Federal Constitutions, where companies had no reasonable, investment-backed expectation that DNR would not use well data for internal departmental purposes following initial **confidentiality** period. Const. Art. 1, § 18; U.S.C.A. Const.Amend. 5; Rules Civ.Proc., Rule 52(a); Rule 77(m) (1990); 18 U.S.C.A. § 1905; AS 31.05.035(c). State Dept. of Natural Resources v. Arctic Slope Regional Corp., 1991, 834 P.2d 134, petition for rehearing filed. Eminent Domain  2.14

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West's Alaska Statutes Annotated Currentness

Title 40. Public Records and Recorders

⌕ Chapter 25. Public Record Disclosures (Refs & Annos)

⌕ Article 1. Inspection and Copying of Public Records

→ **§ 40.25.100. Disposition of tax information**

(a) Information in the possession of the Department of Revenue that discloses the particulars of the business or affairs of a taxpayer or other person is not a matter of public record, except as provided in AS 43.05.230(i) or for purposes of investigation and law enforcement. The information shall be kept confidential except when its production is required in an official investigation, administrative adjudication under AS 43.05.405--43.05.499, or court proceeding. These restrictions do not prohibit the publication of statistics presented in a manner that prevents the identification of particular reports and items, prohibit the publication of tax lists showing the names of taxpayers who are delinquent and relevant information that may assist in the collection of delinquent taxes, or prohibit the publication of records, proceedings, and decisions under AS 43.05.405--43.05.499.

(b) If a copy of a record of tax information is requested under (a) of this section for the purposes of child support administration, the copy may be released only to the child support services agency created in AS 25.27.010 or a child support enforcement agency of another state. The Department of Revenue shall provide the requesting agency with a copy of the record. The requesting agency receiving information under this subsection may use it only for child support purposes authorized under law.

CREDIT(S)

SLA 1962, ch. 101, § 3.21; SLA 1996, ch. 108, § 2; SLA 1997, ch. 87, §§ 10, 11; SLA 1998, ch. 37, § 1; SLA 2004, ch. 163, § 61.

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