

(c) The division may not assemble, or provide information respecting, individual records for commercial purposes that are outside the scope of this chapter. [Emphasis added].

It appears that this statute is inartfully drafted because it does not require a "governmental agency" that wishes to obtain an employee's medical records to establish any showing of necessity for the records. This issue arose in the present case when it was thought that someone in Governor Palin's office may have obtained copies of Trooper Michael Wooten's workers' compensation file. As drafted, any state governmental agency may obtain medical records of an injured employee by simply making the request. No showing of necessity is required. The problem is compounded because AS 23.30.395, the statute that defines terms of use for Chapter 30, does not define the term "governmental agency."

For this reason, the legislature should consider amending AS 23.30.107 (b)(1) to require that a "governmental agency" that seeks to acquire medical or rehabilitation records of an employee first establish a reasonable relationship between the request for the records and the purpose for obtaining the records.

#### THE SECOND RECOMMENDATION

The legislature should consider amending AS 39.25.080 to permit those who file complaints against peace officers to receive some feedback about the status and outcome of their complaint.

Sec. 39.25.080 Personnel records confidential; exceptions.

(a) State personnel records, including employment applications and examination and other assessment materials, are confidential and are not open to public inspection except as provided in this section.

(b) The following information is available for public inspection, subject to reasonable regulations on the time and manner of inspection:

- (1) the names and position titles of all state employees;
- (2) the position held by a state employee;
- (3) prior positions held by a state employee;
- (4) whether a state employee is in the classified, partially exempt, or exempt service;
- (5) the dates of appointment and separation of a state employee;
- (6) the compensation authorized for a state employee; and
- (7) whether a state employee has been dismissed or disciplined for a violation of AS 39.25.160 (1) (interference or failure to cooperate with the Legislative Budget and Audit Committee).

(c) A state employee has the right to examine the employee's own personnel files and may authorize others to examine those files.

(d) An applicant for state employment who appeals an examination score may review written examination questions relating to the examination unless the questions are to be used in future examinations.

(e) In addition to any access to state personnel records authorized under (b) of this section, state personnel records shall promptly be made available to the child support services agency created in AS 25.27.010 or the child support enforcement agency of another state. If the record is prepared or maintained in an electronic data base, it may be supplied by providing the requesting agency with access to the data base or a copy of the information in the data base and a statement certifying its contents. The agency receiving information under this subsection may use the information only for child support purposes authorized under law.

AS 39.25.900. is captioned "Penalties" and provides as follows:

(a) A person who wilfully violates a provision of this chapter or of the personnel rules adopted under this chapter is guilty of a misdemeanor.

(b) A state employee who is convicted of a misdemeanor under this chapter or the personnel rules adopted under this chapter immediately forfeits the employee's office or position.

### Discussion

In this case, there has been much said about the level of frustration that existed on the part of Sarah Palin's father Chuck Heath who filed the original complaint against Trooper Michael Wooten, and on the part of Sarah and Todd Palin, who attempted to learn the status of the investigation only to be told by Colonel Grimes that the matter was confidential by reason of AS 39.25.080. I believe their frustration was real as was their skepticism about whether their complaints were being zealously investigated. The irony is that the complaints were taken very seriously, and a thorough investigation was underway. However, the law prevented the Troopers from giving them any feedback whatsoever.

When a citizen files a complaint against a peace officer, there should be a balance in our law that on the one hand seeks to protect the confidentiality of the investigative process, but on the other recognizes that someone may have been aggrieved. At the very least, the law should provide for the release of some information to the complainant regarding the status of the case. When citizens are told no information can be released, it has the potential of engendering skepticism about whether the complaint

was taken seriously. There is likewise a great potential that the confidence we need to have in our law enforcement agencies will be undermined, and respect for those institutions will be eroded. This is especially so because in most instances, as was the case here, the officer is an employee of the very same agency that was conducts the investigation.

In sum, AS 39.25.080 should be studied to determine whether some relaxation of the law is possible to allow some feedback to a person who files a complaint against a law enforcement officer.