

HOUSE BILL NO. 446

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTIETH LEGISLATURE - SECOND SESSION

BY REPRESENTATIVES BERKOWITZ, Croft, Kemplen

Introduced: 2/18/98

Referred: Judiciary, Finance

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to an individual's privacy interest in, and other aspects of,
2 records about individuals."

3 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

4 * **Section 1.** AS 09.25 is amended by adding new sections to read:

5 **Sec. 09.25.240. Conditions of disclosure.** A state agency may not disclose
6 a record that is contained in a system of records by any means of communication to
7 any person, or to another state agency, except under a written request by, or with the
8 prior written consent of, the individual to whom the record relates, unless disclosure
9 of the record is

10 (1) to those officers and employees of the agency that maintains the
11 record who have a need for the record in the performance of their duties;

12 (2) for a routine use under AS 09.25.246(a)(4)(D);

13 (3) to a recipient who has provided the agency with advance adequate
14 written assurance that the record will be used solely as a statistical research or

1 reporting record, and the record is to be transferred in a form that is not individually
2 identifiable;

3 (4) to the division of libraries, archives, and museums in the
4 Department of Education as a record that has sufficient historical or other value to
5 warrant its continued preservation by the state, or for evaluation by the division to
6 determine whether the record has historical or other value;

7 (5) to another state agency or to an instrumentality of any governmental
8 jurisdiction within or under the control of the state for a civil or criminal law
9 enforcement activity if the activity is authorized by law, and if the head of the agency
10 or instrumentality has made a written request to the agency that maintains the record
11 specifying the particular portion desired and the law enforcement activity for which
12 the record is sought;

13 (6) to a person upon a showing of compelling circumstances affecting
14 the health or safety of an individual if, upon the disclosure, notification is transmitted
15 to the last known address of the individual;

16 (7) to either house of the state legislature, or, to the extent of matter
17 within its jurisdiction, a committee or subcommittee of the state legislature;

18 (8) to the commissioner of revenue, or an authorized representative, in
19 the course of the performance of the duties of the commissioner; or

20 (9) under an order of a court of competent jurisdiction.

21 **Sec. 09.25.242. Accounting of certain disclosures.** A state agency shall, with
22 respect to each system of records under its control,

23 (1) except for disclosures made under AS 09.25.240(1), keep an
24 accurate accounting of

25 (A) the date, nature, and purpose of each disclosure of a record
26 to a person or to another agency made under AS 09.25.240; and

27 (B) the name and address of the person or agency to whom the
28 disclosure is made;

29 (2) retain the accounting made under (1) of this section for at least five
30 years or the life of the record, whichever is longer, after the disclosure for which the
31 accounting is made;

1 (3) except for disclosures made under AS 09.25.240(5), make the
2 accounting made under (1) of this section available to the individual named in the
3 record at the individual's request; and

4 (4) inform a person or another agency about any correction or notation
5 of dispute made by the agency under AS 09.25.244 of any record that has been
6 disclosed to the person or agency if an accounting of the disclosure was made.

7 **Sec. 09.25.244. Access to records.** (a) A state agency that maintains a
8 system of records shall

9 (1) upon request by an individual to gain access to the individual's
10 record or to any information pertaining to the individual that is contained in the
11 system, permit the individual, and, upon the individual's request, a person of the
12 individual's own choosing to accompany the individual to review the record and have
13 a copy made of all or any portion of the record in a form comprehensible to the
14 individual, except that the agency may require the individual to furnish a written
15 statement authorizing discussion of the individual's record in the accompanying
16 person's presence;

17 (2) permit the individual to request amendment of a record pertaining
18 to the individual and

19 (A) not later than 10 days, excluding Saturdays, Sundays, and
20 state holidays, after the date of receipt of the request, acknowledge in writing
21 receipt of the request; and

22 (B) promptly

23 (i) make any correction of any portion of the record that
24 the individual believes is not accurate, relevant, timely, or complete; or

25 (ii) inform the individual of the agency's refusal to
26 amend the record as requested, the reason for the refusal, the procedures
27 established by the agency for the individual to request a review of the
28 refusal by the head of the agency or an officer designated by the head
29 of the agency, and the name and business address of the agency head
30 or designated officer;

31 (3) permit an individual who disagrees with the refusal of the agency

1 to amend the individual's record to request a review of the refusal, and not later than
 2 30 days, excluding Saturdays, Sundays, and state holidays, from the date on which the
 3 individual requests the review, complete the review and make a final determination
 4 unless, for good cause shown, the head of the agency extends the 30-day period; and
 5 if, after review, the reviewing official also refuses to amend the record as requested,
 6 permit the individual to file with the agency a concise statement giving the reasons for
 7 the disagreement with the refusal of the agency, and notify the individual of the
 8 provisions for judicial review of the reviewing official's determination under
 9 AS 09.25.250(a)(1); and

10 (4) in a disclosure, containing information about which the individual
 11 has filed a statement of disagreement, occurring after the filing of the statement under
 12 (3) of this subsection, clearly note a portion of the record that is disputed and provide
 13 copies of the statement and, if the agency determines it to be appropriate, copies of a
 14 concise statement of the reasons of the agency for not making the amendments
 15 requested to persons or other agencies to whom the disputed record has been disclosed.

16 (b) Nothing in this section allows an individual access to information compiled
 17 in reasonable anticipation of a civil action or proceeding in court.

18 **Sec. 09.25.246. Agency requirements.** A state agency that maintains a system
 19 of records shall

20 (1) maintain in its records only the information about an individual that
 21 is relevant and necessary to accomplish a purpose of the agency required to be
 22 accomplished by law;

23 (2) collect information to the greatest extent practicable directly from
 24 the subject individual when the information may result in adverse determinations about
 25 an individual's rights, benefits, and privileges under state programs;

26 (3) inform each individual whom it asks to supply information, on the
 27 form that it uses to collect the information or on a separate form that can be retained
 28 by the individual of

29 (A) the authority that authorizes the solicitation of the
 30 information and whether disclosure of the information is mandatory or
 31 voluntary;

1 (B) the principal purpose for which the information is intended
2 to be used;

3 (C) the routine uses that may be made of the information, as
4 published under (4)(D) of this section; and

5 (D) the effects, if any, on the individual of not providing all or
6 a part of the requested information;

7 (4) subject to the provisions of (11) of this section, publish in the
8 Alaska Administrative Journal a notice of the existence and character of the system of
9 records; the notice must include

10 (A) the name and location of the system of records;

11 (B) the categories of individuals on whom records are
12 maintained in the system;

13 (C) the categories of records maintained in the system;

14 (D) each routine use of the records contained in the system,
15 including the categories of users and the purpose of the use;

16 (E) the policies and practices of the agency regarding storage,
17 retrievability, access controls, retention, and disposal of the records;

18 (F) the title and business address of the agency official who is
19 responsible for the system of records;

20 (G) the agency procedures for notifying an individual at the
21 individual's request if the system of records contains a record pertaining to the
22 individual;

23 (H) the agency procedures for notifying an individual at the
24 individual's request how the individual can gain access to a record pertaining
25 to the individual contained in the system of records, and how the individual can
26 contest its content; and

27 (I) the categories of sources or records in the system of records;

28 (5) maintain all records that are used by the agency in making a
29 determination about an individual with the accuracy, relevance, timeliness, and
30 completeness that is reasonably necessary to assure fairness to the individual in the
31 determination;

1 (6) before disseminating a record about an individual to a person other
2 than a state agency, make reasonable efforts to assure that the records are accurate,
3 complete, timely, and relevant for agency purposes;

4 (7) maintain no record describing how an individual exercises rights
5 guaranteed by the First Amendment to the United States Constitution and art. I, sec.
6 5, of the Constitution of the State of Alaska, unless expressly authorized by statute or
7 by the individual about whom the record is maintained or unless pertinent to and
8 within the scope of an authorized law enforcement activity;

9 (8) make reasonable efforts to serve notice on an individual when a
10 record on the individual is made available to a person under compulsory legal process
11 when the process becomes a matter of public record;

12 (9) establish rules of conduct for persons involved in the design,
13 development, operation, or maintenance of a system of records, or in maintaining a
14 record, and instruct each of the persons about the regulations and the requirements of
15 AS 09.25.240 - 09.25.290, including other regulations and procedures adopted under
16 AS 09.25.240 - 09.25.290 and the penalties for noncompliance;

17 (10) establish appropriate administration, technical, and physical
18 safeguards to ensure the security and confidentiality of records and to protect against
19 anticipated threats or hazards to their security or integrity that could result in
20 substantial harm, embarrassment, inconvenience, or unfairness to an individual on
21 whom information is maintained;

22 (11) at least 30 days before publication of information under (4)(D) of
23 this section, publish in the Alaska Administrative Journal notice of a new use or
24 intended use of the information in the system and provide an opportunity for interested
25 persons to submit written data, views, or arguments to the agency; and

26 (12) if the agency is a recipient agency or a source agency in a
27 matching program with a nonstate agency, with respect to an establishment or revision
28 of a matching program, at least 30 days before conducting the program, publish in the
29 Alaska Administrative Journal notice of the establishment or revision.

30 **Sec. 09.25.248. State agency regulations.** (a) In order to carry out the
31 provisions of AS 09.25.240 - 09.25.290, a state agency that maintains a system of

1 records shall adopt regulations under AS 44.62 (Administrative Procedure Act) that

2 (1) establish procedures for notifying an individual in response to the
3 individual's request if a system of records named by the individual contains a record
4 pertaining to the individual;

5 (2) define reasonable times, places, and requirements for identifying an
6 individual who requests the individual's record or information pertaining to the
7 individual before the agency makes the record or information available to the
8 individual;

9 (3) establish procedures for the disclosure to an individual upon the
10 individual's request of the individual's record or information pertaining to the
11 individual, including special procedures, if determined necessary, for the disclosure to
12 an individual of medical records, including psychological records, pertaining to the
13 individual;

14 (4) establish procedures for reviewing a request from an individual
15 concerning the amendment of a record or information pertaining to the individual, for
16 making a determination on the request, for an appeal within the agency of an initial
17 adverse agency determination, and for whatever additional means may be necessary
18 for an individual to be able to exercise fully the individual's rights under AS 09.25.240
19 - 09.25.290; and

20 (5) establish fees, if any, to be charged to an individual for making
21 copies of the individual's record, excluding the cost of a search for and review of the
22 record.

23 (b) The lieutenant governor shall biennially compile and publish in the Alaska
24 Administrative Journal the regulations adopted under this section and state agency
25 notices published under AS 09.25.246(4) in a form available to the public at low cost.

26 **Sec. 09.25.250. Civil remedies.** (a) An individual may bring a civil action
27 against a state agency when the agency

28 (1) makes a determination under AS 09.25.244(a)(3) not to amend an
29 individual's record as requested by the individual or fails to make a review as required
30 by AS 09.25.244(a)(3);

31 (2) refuses to comply with an individual's request under

1 AS 09.25.244(a)(1);

2 (3) fails to maintain a record concerning an individual with the
3 accuracy, relevance, timeliness, and completeness that is necessary to assure fairness
4 in a determination relating to the qualifications, character, rights, or opportunities of
5 or benefits to the individual that may be made on the basis of the record, and
6 consequently a determination is made that is adverse to the individual; or

7 (4) fails to comply with a provision of AS 09.25.240 - 09.25.290, or
8 a regulation adopted under the provision in a way that has an adverse effect on an
9 individual.

10 (b) In a suit brought under (a)(1) of this section, the court may order the state
11 agency to amend the individual's record as requested by the individual or in another
12 way the court directs, and the court shall determine the matter de novo.

13 (c) In a suit brought under (a)(2) of this section, the court may enjoin the state
14 agency from withholding the records and order the production to the complainant of
15 any agency records improperly withheld from the complainant. The court shall
16 determine the matter de novo and may examine the contents of any agency records in
17 camera to determine whether the records or a portion of the records may be withheld
18 under an exemption in AS 09.25.256, and the burden is on the agency to sustain its
19 action.

20 (d) In a suit brought under (a)(3) or (4) of this section in which the court
21 determines that the state agency acted intentionally or knowingly, the agency is liable
22 to the individual in an amount equal to the sum of

23 (1) actual damages sustained by the individual as a result of the refusal
24 or failure, but a person entitled to recovery may not receive less than \$1,000; and

25 (2) costs and attorney fees as provided by court rule.

26 (e) An action to enforce a liability created under AS 09.25.240 - 09.25.290
27 may be brought without regard to the amount in controversy within two years from the
28 date on which the cause of action arises, except that, if a state agency has materially,
29 and intentionally or knowingly, misrepresented information required under
30 AS 09.25.240 - 09.25.290 to be disclosed to an individual and the information
31 misrepresented is material to establishment of the liability of the agency to the

1 individual under AS 09.25.240 - 09.25.290, the action may be brought at any time
2 within two years after discovery by the individual of the misrepresentation. Nothing
3 in this section shall be construed to authorize any civil action by reason of any injury
4 sustained as the result of a disclosure of a record before the effective date of this Act.

5 **Sec. 09.25.252. Rights of legal guardians.** For the purposes of AS 09.25.240
6 - 09.25.290, the parent of a minor, or the legal guardian of an individual who has been
7 declared to be incompetent due to physical or mental incapacity or age by a court of
8 competent jurisdiction, may act on behalf of the minor or individual.

9 **Sec. 09.25.254. Criminal penalties.** (a) An officer or employee of a state
10 agency who, because the officer's or employee's employment or official position, has
11 possession of, or access to, state agency records that contain individually identifiable
12 information the disclosure of which is prohibited by AS 09.25.400 - 09.25.290 or by
13 regulations established under AS 09.25.240 - 09.25.290, and who, knowing that
14 disclosure of the specific material is prohibited, knowingly discloses the information
15 or records in any manner to any person or state agency not entitled to receive the
16 information or records is guilty of a class A misdemeanor.

17 (b) An officer or employee of a state agency who knowingly maintains a
18 system of records without meeting the notice requirements of AS 09.25.246(4) is guilty
19 of a class A misdemeanor.

20 (c) a person who knowingly requests or obtains a record concerning an
21 individual from a state agency under false pretenses is guilty of a class A
22 misdemeanor.

23 **Sec. 09.25.256. Exemptions.** (a) The head of a state agency may adopt
24 regulations under AS 44.62 (Administrative Procedure Act) to exempt a system of
25 records within the agency from AS 09.25.242(3), 09.25.244, 09.25.246(1) and (4)(G) -
26 (I), and 09.25.248, if the system of records is

27 (1) investigatory material compiled for law enforcement purposes,
28 except that, if an individual is denied a right, privilege, or benefit that the individual
29 would otherwise be entitled to by state law, or for which the individual would
30 otherwise be eligible, as a result of the maintenance of the material, the material shall
31 be provided to the individual, except to the extent that the disclosure of the material

1 would reveal the identity of a source who furnished information to the state under an
2 express promise that the identity of the source would be held in confidence, or, before
3 the effective date of this Act, under an implied promise that the identity of the source
4 would be held in confidence;

5 (2) required by statute to be maintained and used solely as statistical
6 records;

7 (3) investigatory material compiled solely for the purpose of
8 determining suitability, eligibility, or qualifications for state employment, military
9 service, or state contracts, but only to the extent that the disclosure of the material
10 would reveal the identity of a source who furnished information to the state under an
11 express promise that the identity of the source would be held in confidence, or, before
12 the effective date of this Act, under an implied promise that the identity of the source
13 would be held in confidence;

14 (4) testing or examination material used solely to determine individual
15 qualifications for appointment or promotion in state employment if the disclosure
16 would compromise the objectivity or fairness of the testing or examination process; or

17 (5) evaluation material used to determine potential for promotion in the
18 Alaska National Guard, Alaska Naval Militia, or Alaska State Militia, but only to the
19 extent that the disclosure of the material would reveal the identity of a source who
20 furnished information to the state under an express promise that the identity of the
21 source would be held in confidence, or, before the effective date of this Act under an
22 implied promise that the identity of the source would be held in confidence.

23 (b) When regulations are adopted under this section, the state agency shall
24 include in the statement required under AS 44.62.190 the reasons why the system of
25 records is to be exempted from a provision of AS 09.25.240 - 09.25.290.

26 **Sec. 09.25.258. Archival records.** (a) A state agency record that is sent to
27 the state archives for storage, processing, and servicing is, for the purposes of
28 AS 09.25.240 - 09.25.290, considered to be maintained by the state agency that
29 deposited the record and is subject to AS 09.25.240 - 09.25.290. The state archivist
30 may not disclose the record except to the state agency that maintains the record or
31 under regulations adopted by that state agency that are not inconsistent with

1 AS 09.25.240 - 09.25.290. A state agency record pertaining to an identifiable
2 individual that was transferred to the state archives as a record that has sufficient
3 historical or other value to warrant its continued preservation by the state before the
4 effective date of this Act, shall, for the purposes of AS 09.25.240 - 09.25.290, be
5 considered to be maintained by the state archives and is not subject to the provisions
6 of AS 09.25.240 - 09.25.290, except that a statement generally describing the records,
7 modeled after the requirements relating to records subject to AS 09.25.246(a)(4)(A) -
8 (G), shall be published in the Alaska Administrative Journal.

9 (b) A state agency record pertaining to an identifiable individual that is
10 transferred to the state archives as a record that has sufficient historical or other value
11 to warrant its continued preservation by the state for the purposes of AS 09.25.240 -
12 09.25.290 is considered to be maintained by the state archives and is exempt from all
13 requirements of AS 09.25.240 - 09.25.290 except AS 09.25.246(4)(A) - (G) and (9).

14 **Sec. 09.25.260. Government contractors.** When a state agency provides by
15 a contract for the operation by or on behalf of the agency of a system of records to
16 accomplish an agency function, the agency shall, consistent with its authority, cause
17 the requirements of AS 09.25.240 - 09.25.290 to be applied to the system. For
18 purposes of AS 09.25.254, the contractor and any employee of the contractor are
19 considered to be employees of the agency.

20 **Sec. 09.25.262. Mailing lists.** An individual's name and address may not be
21 sold or rented by a state agency unless specifically authorized by law. This provision
22 may not be construed to require the withholding of names and addresses otherwise
23 permitted to be made public.

24 **Sec. 09.25.264. Matching program agreements.** (a) A record that is
25 contained in a system of records may not be disclosed to a recipient agency or nonstate
26 agency for use in a computer matching program except under a written agreement
27 between the source agency and the recipient agency or nonstate agency specifying

- 28 (1) the purpose and legal authority for conducting the program;
29 (2) the justification for the program and the anticipated results,
30 including a specific estimate of any savings;
31 (3) a description of the records that will be matched, including each

1 data element that will be used, the approximate number of records that will be
2 matched, and the projected starting and completion dates of the matching program;

3 (4) procedures for providing individualized notice at the time of
4 application and periodically afterwards as directed by the agency to applicants for and
5 recipients of financial assistance or payments under state benefit programs, and
6 applicants for and holders of positions as state personnel, that any information
7 provided by the applicants, recipients, holders, and individuals may be subject to
8 verification through matching programs;

9 (5) procedures for verifying information produced in the matching
10 program as required by AS 09.25.266;

11 (6) procedures for the retention and timely destruction of identifiable
12 records created by a recipient agency or nonstate agency in the matching program;

13 (7) procedures for ensuring the administrative, technical, and physical
14 security of the records matched and the results of the matching program;

15 (8) prohibitions on duplication and redisclosure of records provided by
16 the source agency within or outside the recipient agency or the nonstate agency, except
17 where required by law or essential to the conduct of the matching program;

18 (9) procedures governing the use by a recipient agency or nonstate
19 agency of records provided in a matching program by a source agency, including
20 procedures governing return of the records to the source agency or destruction of
21 records used in the program;

22 (10) information on assessments that have been made on the accuracy
23 of the records that will be used in the matching program; and

24 (11) that the office of management and budget may have access to all
25 records of a recipient agency or a nonstate agency that the department determines
26 necessary in order to monitor or verify compliance with the agreement.

27 (b) A copy of each agreement entered into under (a) of this section

28 (1) shall be transmitted to the state affairs committee of each house;
29 and

30 (2) must be available upon request to the public.

31 (c) An agreement entered into under (a) of this section is not effective until

1 30 days after the date on which a copy is transmitted under (b)(1) of this section.

2 (d) An agreement entered into under (a) of this section remains in effect only
3 for the period, not to exceed 18 months, that the agency determines is appropriate in
4 light of the purposes and length of time necessary for the conduct of the matching
5 program.

6 (e) Within three months before the expiration of an agreement under (d) of this
7 section, the data integrity board of the agency may, without additional review, renew
8 the matching program agreement for a current, ongoing matching program for not
9 more than one additional year if

10 (1) the program will be conducted without change; and

11 (2) each party to the agreement certifies to the agency in writing that
12 the program has been conducted in compliance with the agreement.

13 **Sec. 09.25.266. Verification and opportunity to contest findings.** (a) In
14 order to protect an individual whose records are used in matching programs, a recipient
15 agency, nonstate agency, or source agency may not suspend, terminate, reduce, or
16 make a final denial of financial assistance or payment under a state benefit program
17 to the individual or take other adverse action against the individual as a result of
18 information produced by the matching programs, until

19 (1) the agency has independently verified the information, or a data
20 integrity board of the agency, or, in the case of a nonstate agency, the data integrity
21 board of the source agency, determines under guidance issued by the director of the
22 office of management and budget that

23 (A) the information is limited to identification and amount of
24 benefits paid by the source agency under a state benefit program; and

25 (B) there is a high degree of confidence that the information
26 provided to the recipient agency is accurate;

27 (2) the individual receives a notice from the agency containing a
28 statement of its findings and informing the individual of the opportunity to contest the
29 findings; and

30 (3) the expiration of any time period established for the program by
31 statute or regulation for the individual to respond to that notice, or, in the case of a

1 program for which no time period is established, the end of the 30-day period
2 beginning on the date on which notice under (2) of this subsection is mailed or
3 otherwise provided to the individual.

4 (b) Independent verification referred to in (a) of this section requires
5 investigation and confirmation of specific information relating to an individual that is
6 used as a basis for an adverse action against the individual, including where applicable
7 investigation and confirmation of

8 (1) the amount of any asset or income involved;

9 (2) whether the individual actually has or had access to the asset or
10 income for the individual's own use; and

11 (3) the period when the individual actually had the asset or income.

12 (c) Notwithstanding (a) of this section, an agency may take any appropriate
13 action otherwise prohibited by (a) of this section if the agency determines that the
14 public health or public safety may be adversely affected or significantly threatened
15 during a notice period required by (a) of this section.

16 **Sec. 09.25.268. Sanctions.** (a) Notwithstanding any other provision of law,
17 a source agency may not disclose a record that is contained in a system of records to
18 a recipient agency or nonstate agency for a matching program if the source agency has
19 reason to believe that the requirements of AS 09.25.266, or a matching program
20 agreement entered into under AS 09.25.264, or both, are not being met by the recipient
21 agency.

22 (b) A source agency may not renew a matching program agreement unless the
23 recipient agency or nonstate agency has certified that it has complied with the
24 provisions of that agreement and the source agency does not have reason to believe
25 that the certification is inaccurate.

26 **Sec. 09.25.270. Report on new systems and matching programs.** A state
27 agency that proposes to establish or make a significant change in a system of records
28 or a matching program shall provide adequate advance notice of the proposal in
29 duplicate to the state affairs committee of each house and the office of management
30 and budget in order to permit an evaluation of the probable or potential effect of the
31 proposal on the privacy or other rights of individuals.

1 **Sec. 09.25.272. Biennial report.** The governor shall biennially submit to the
2 speaker of the house of representatives and the president of the senate a report

3 (1) describing the exercise of individual rights of access and
4 amendment under AS 09.25.240 - 09.25.290 during the reporting period; and

5 (2) identifying changes in or additions to systems of records.

6 **Sec. 09.25.274. Effect of other laws.** (a) A state agency may not rely on an
7 exemption contained in AS 09.25.100 - 09.25.220 to withhold from an individual a
8 record that is otherwise accessible to the individual under AS 09.25.240 - 09.25.290.

9 (b) A state agency may not rely on an exemption in AS 09.25.240 - 09.25.290
10 to withhold from an individual a record that is otherwise accessible to the individual
11 under AS 09.25.100 - 09.25.220.

12 **Sec. 09.25.276. Data integrity boards.** (a) A state agency conducting or
13 participating in a matching program shall establish a data integrity board to oversee
14 and coordinate among the various components of the agency the agency's
15 implementation of AS 09.25.240 - 09.25.290.

16 (b) A data integrity board shall consist of senior officials designated by the
17 head of the state agency and shall include any senior official designated by the head
18 of the agency as responsible for implementation of AS 09.25.240 - 09.25.290.

19 (c) A data integrity board

20 (1) shall review, approve, and maintain all written agreements for
21 receipt or disclosure of agency records for matching programs to ensure compliance
22 with AS 09.25.264 and all relevant statutes, regulations, and guidelines;

23 (2) shall review all matching programs in which the state agency has
24 participated during the year, either as a source agency or recipient agency, determine
25 compliance with applicable laws, regulations, guidelines, and state agency agreements,
26 and assess the costs and benefits of the programs;

27 (3) shall review all recurring matching programs in which the state
28 agency has participated during the year, either as a source agency or recipient agency,
29 for continued justification for the disclosures;

30 (4) shall compile an annual report, which shall be submitted to the head
31 of the state agency and the office of management and budget and made available to

1 the public on request, describing the matching program activities of the agency,
2 including

3 (A) matching programs in which the agency has participated as
4 a source agency or recipient agency;

5 (B) matching program agreements proposed under AS 09.25.264
6 that were disapproved by the board;

7 (C) changes in membership or structure of the board in the
8 preceding year;

9 (D) the reasons for any waiver of the requirement in (d) of this
10 section for completion and submission of a cost-benefit analysis before the
11 approval of a matching program;

12 (E) violations of matching program agreements that have been
13 alleged or identified and any corrective action taken; and

14 (F) other information required by the director of the office of
15 management and budget to be included in the report;

16 (5) shall serve as a clearinghouse for receiving and providing
17 information on the accuracy, completeness, and reliability of records used in matching
18 programs;

19 (6) shall provide interpretation and guidance to agency components and
20 personnel on the requirements of AS 09.25.240 - 09.25.290 for matching programs;

21 (7) shall review agency record keeping and disposal policies and
22 practices for matching programs to assure compliance with this section; and

23 (8) may review and report on agency matching activities that are not
24 matching programs.

25 (d) Except as provided in (e) - (f) of this section, a data integrity board may
26 not approve a written agreement for a matching program unless the state agency has
27 completed and submitted to the board a cost-benefit analysis of the proposed program
28 and the analysis demonstrates that the program is likely to be cost effective.

29 (e) A data integrity board may waive the requirements of (d) of this section
30 if the board determines in writing, under guidelines prescribed by the director of the
31 office of management and budget, that a cost-benefit analysis is not required.

1 (f) A cost-benefit analysis may not be required under (d) of this section before
2 the initial approval of a written agreement for a matching program that is specifically
3 required by statute. A subsequent written agreement for a program may not be
4 approved by a data integrity board unless the state agency has submitted a cost-benefit
5 analysis of the program as conducted under the preceding approval of the agreement.

6 (g) If a matching program agreement is disapproved by a data integrity board,
7 a party to the agreement may appeal the disapproval to the director of the office of
8 management and budget. Timely notice of the filing of the appeal shall be provided
9 by the director of the office of management and budget to the state affairs committee
10 of each house.

11 (h) The director of the office of management and budget may approve a
12 matching program agreement notwithstanding the disapproval of a data integrity board
13 if the director determines that

14 (1) the matching program will be consistent with all applicable legal,
15 regulatory, and policy requirements;

16 (2) there is adequate evidence that the matching program agreement
17 will be cost-effective; and

18 (3) the matching program is in the public interest.

19 (i) The decision of the director to approve a matching program agreement does
20 not take effect until 30 days after it is reported to the committees described in (g) of
21 this section.

22 (j) If a data integrity board and the director of the office of management and
23 budget disapprove a matching program proposed by a state agency, the agency may
24 report the disapproval to the head of the agency and to the legislature.

25 (k) The director of the office of management and budget shall biennially
26 consolidate in a report to the legislature the information contained in the reports from
27 the various data integrity boards under (c)(4) of this section. The report must include
28 detailed information about costs and benefits of matching programs that are conducted
29 during the period covered by the consolidated report and must identify each waiver
30 granted by a data integrity board of the requirement for completion and submission of
31 a cost-benefit analysis and the reasons for granting the waiver.

1 (l) In the reports required by (c)(4) and (k) of this section, state agency
 2 matching activities that are not matching programs may be reported on an aggregate
 3 basis if and to the extent necessary to protect ongoing law enforcement investigations.

4 **Sec. 09.25.278. Office of management and budget responsibilities.** The
 5 director of the office of management and budget shall

6 (1) develop and, after notice and opportunity for public comment,
 7 prescribe guidelines and regulations for the use of state agencies in implementing the
 8 provisions of AS 09.25.240 - 09.25.290; and

9 (2) provide continuing assistance to and oversight of the
 10 implementation of AS 09.25.240 - 09.25.290 by state agencies.

11 **Sec. 09.25.290. Definitions.** In AS 09.25.240 - 09.25.290,

12 (1) "individual" means a citizen of the United States or an alien
 13 lawfully admitted for permanent residence;

14 (2) "intentionally" has the meaning given in AS 11.81.900;

15 (3) "knowingly" has the meaning given in AS 11.81.900;

16 (4) "maintain" includes maintain, collect, use, or disseminate;

17 (5) "matching program"

18 (A) means a computerized comparison of

19 (i) two or more automated systems of records or a
 20 system of records with nonstate records for the purpose of recouping
 21 payments or delinquent debts under state benefit programs, or
 22 establishing or verifying the eligibility of, or continuing compliance
 23 with statutory and regulatory requirements by, applicants for, recipients
 24 or beneficiaries of, participants in, or providers of services with respect
 25 to, cash or in-kind assistance or payments under state benefit programs;
 26 or

27 (ii) two or more automated state personnel or payroll
 28 systems of records or a system of state personnel or payroll records
 29 with nonstate records;

30 (B) does not include a computerized comparison

31 (i) performed to produce aggregate statistical data

1 without any personal identifiers;

2 (ii) performed to support a research or statistical project,
3 the specific data of which may not be used to make decisions
4 concerning the rights, benefits, or privileges of specific individuals;

5 (iii) performed by a state agency, or a component of an
6 agency, that performs as its principal function an activity pertaining to
7 the enforcement of criminal laws, subsequent to the initiation of a
8 specific criminal or civil law enforcement investigation of a named
9 person for the purpose of gathering evidence against the person; or

10 (iv) if the purpose of the match is not to take adverse
11 financial, personnel, disciplinary, or other adverse action against state
12 personnel, computerized comparisons conducted by a state agency using
13 only records from systems of records maintained by that agency or
14 using records predominantly relating to state personnel that are
15 performed for routine administrative purposes and subject to guidance
16 provided by the director of the office of management and budget;

17 (6) "nonstate agency" means a federal or local governmental agency
18 that receives records contained in a system of records from a source agency for use
19 in a matching program;

20 (7) "recipient agency" means a state agency, or contractor of a state
21 agency, receiving records contained in a system of records from a source agency for
22 use in a matching program;

23 (8) "record" means any item, collection, or grouping of information
24 about an individual, including the individual's education, financial transactions, medical
25 history, and criminal or employment history, that is maintained by a state agency and
26 that contains the individual's name, or an identifying number, symbol, or other
27 identifying particular assigned to the individual, such as a finger or voice print or a
28 photograph; "record" includes information that is characterized as confidential under
29 another statute and that otherwise qualifies as a record under this paragraph;

30 (9) "routine use" means, with respect to the disclosure of a record, the
31 use of the record for a purpose that is compatible with the purpose for which it was

1 collected;

2 (10) "source agency" means a state agency that discloses records
3 contained in a system of records to be used in a matching program, or federal, state,
4 or local government, or a federal, state, or local governmental agency that discloses
5 records to be used in a matching program;

6 (11) "state agency" has the meaning given to "public agency" in
7 AS 09.25.220;

8 (12) "state benefit program" means a program administered or funded
9 by the state, or by an agent of the state, providing cash or in-kind assistance in the
10 form of payments, grants, loans, or loan guarantees to individuals;

11 (13) "state personnel" means officers and employees of the state,
12 members of the uniformed services, including members of the Alaska National Guard,
13 Alaska Naval Militia, and Alaska State Militia, and individuals entitled to receive
14 immediate or deferred retirement benefits under a retirement program of the state,
15 including survivor benefits;

16 (14) "statistical record" means a record in a system of records
17 maintained for statistical research or reporting purposes only and not used in whole or
18 in part in making a determination about an identifiable individual;

19 (15) "system of records" means a group of records under the control
20 of a state agency from which information is retrieved by the name of the individual
21 or by an identifying number, symbol, or other identifying particular assigned to the
22 individual.