

Original sponsor: Parr

Offered: 2/12/76
Referred: Rules

1 IN THE HOUSE

BY THE JUDICIARY COMMITTEE

2 CS FOR SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 531 am

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 NINTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to freedom of public information; and
7 changing Rules 54, 65 and 82 of the Civil Rules of
8 Court and Rule 13 of the Administrative Rules of Court."

9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

10 * Section 1. AS 40 is amended by adding a new chapter to read:

11 CHAPTER 25. FREEDOM OF PUBLIC INFORMATION.

12 Sec. 40.25.010. STATE POLICY REGARDING RECORDS. It is the policy
13 of the state that

14 (1) all governmental units exist to aid in the conduct of the
15 people's business;

16 (2) the records of those units be open for public inspection
17 except as provided in this chapter;

18 (3) the people of this state do not yield their sovereignty
19 to the agencies which serve them;

20 (4) the people, in delegating authority, do not give their
21 public servants the right to decide what is best for the people to know
22 and what is not best for them to know;

23 (5) the people's right to remain informed shall be protected
24 so that they may retain control over the instruments they have created.

25 Sec. 40.25.020. RECORDS TO BE OPEN TO INSPECTION; EXCEPTIONS. (a)
26 Except as otherwise specifically provided by law, all records are open
27 to inspection and copying by any person during the regular office hours
28 of the custodian of the records. Access to records may not be denied to
29 any person; however, the custodian of the records shall take all neces-

1 sary precautions for their preservation and safekeeping.

2 (b) If the record is in active use or storage and not available at
3 the time a request to examine it is made, the custodian shall at that
4 time state this fact in writing to the applicant and set a date and hour
5 within a reasonable time at which the record may be examined.

6 (c) Every person having custody of records not included in the
7 exceptions in (d) of this section shall permit the inspection, and give
8 on demand and on payment of the legal fee required, a certified copy of
9 the writing or record, and the copy shall in all cases be evidence of
10 the original. Custodians shall permit memoranda, transcripts, and
11 copies of the public writings and records in their offices to be repro-
12 duced in any reasonable manner. In addition, custodians shall furnish
13 proper and reasonably accessible facilities, subject to reasonable rules
14 and regulations, as are necessary for the protection of the writings and
15 records and to prevent interference with the regular discharge of the
16 duties of the recorders and their employees.

17 (d) The following records are excluded from the provisions of this
18 section:

19 (1) those defined as confidential by state statute;

20 (2) any tax or information return required to be filed in
21 accordance with the provisions of title 43 of the Alaska Statutes,
22 except that access may not be denied to the person who is the subject of
23 the records, or that person's designee;

24 (3) personnel records, except that access may not be denied
25 to the person who is the subject of the records, or that person's
26 designee;

27 (4) school district records pertaining to an individual stu-
28 dent, except that access may not be denied to the student, a parent or
29 guardian of the student, a person responsible for supervising the

1 student, or his designee;

2 (5) University of Alaska records pertaining to an individual
3 student, except that access may not be denied to the student or his
4 designee;

5 (6) medical, psychological, and sociological data on indivi-
6 dual persons, exclusive of autopsy reports, except that access may not
7 be denied to the person who is the subject of the record, or his desig-
8 nee;

9 (7) archival materials to the extent of any limitations
10 placed on them as a condition of the contribution; however, these
11 limitations must be in writing and the statement of limitations must be
12 produced upon denial of access;

13 (8) circulation records maintained by public libraries,
14 public school libraries, and University of Alaska libraries showing
15 personal transactions by those borrowing from them;

16 (9) social services records identifying individual persons,
17 except that access may not be denied to the person who is the subject of
18 the records, or his designee;

19 (10) trade secrets, privileged information and confidential
20 commercial, financial, geological or geophysical data furnished in
21 compliance with state law or regulation, or in compliance with a municipi-
22 pal ordinance;

23 (11) test questions, scoring keys and other examination data
24 pertaining to administration of a licensing examination, for employment,
25 or academic examination; except that written promotional examinations
26 and the scores or results of them shall be available for inspection, but
27 not copying or reproduction, after the conducting or grading of the
28 examination;

29 (12) intelligence and investigatory files maintained by state

1 or municipal law enforcement agencies, except police blotters and book-
2 ing records, including forms for this purpose used by the state troopers,
3 but only to the extent that the production of such records would

4 (A) interfere with enforcement proceedings;

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

7 (C) constitute an unwarranted invasion of personal
8 privacy;

9 (D) disclose the identity of a confidential source and,
10 in the case of a record compiled by a criminal law enforcement
11 authority in the course of a criminal security intelligence in-
12 vestigation, confidential information furnished only by the confi-
13 dential source;

14 (E) disclose investigative techniques and procedures;

15 (F) endanger the life or physical safety of law enforce-
16 ment personnel; or

17 (G) identify any rape victim or victim of any other
18 criminal sexual assault;

19 (13) police blotters and booking records, including forms used
20 for this purpose by the state troopers but only to the extent that they
21 would reveal the name or any other means of identification of any rape
22 victim or victim of any other criminal sexual assault;

23 (14) lists of names and addresses in the possession of a state
24 or municipal agency, except the voter list prepared by the lieutenant
25 governor under AS 15.15.400, if the lists would be used for private
26 commercial, or fund-raising purposes;

27 (15) marriage licenses, upon the request of both parties to
28 the marriage;

29 (16) records constituting attorney work product in the

1 possession of an agency, political subdivision or other body subject to
2 the open meeting provision of AS 44.62.310.

3 (e) When the lawful custodian of a record determines that the
4 record is exempt under the provisions of this section, he shall also
5 determine whether a deletion of the exempt parts of the record will make
6 it suitable for release. If a partial deletion of material will make
7 the record suitable for release, the deletion shall be made and the
8 record released, with the notation that exempt material has been re-
9 moved. If the custodian determines that the record, or a portion of the
10 record, is not open to inspection, he shall, in a certified writing,
11 inform the person requesting the record of his determination and that
12 under sec. 30 of this chapter he may bring suit to compel production of
13 records that are improperly withheld.

14 (f) No record more than 50 years old is excluded from the provi-
15 sions of this section unless a longer period is required under (d)(7) of
16 this section.

17 Sec. 40.25.030. ENFORCEMENT: INJUNCTIVE RELIEF. (a) A person
18 having custody or control of a record who obstructs or attempts to ob-
19 struct, or a person not having custody or control who aids or abets
20 another person in obstructing or attempting to obstruct, the inspection
21 of a record subject to inspection under sec. 20 of this chapter may be
22 enjoined by the superior court from obstructing, or attempting to ob-
23 struct, the inspection of records subject to inspection under sec. 20 of
24 this chapter.

25 (b) The court may charge no filing fee, and the Department of
26 Public Safety may charge no fee for service of process, from an appli-
27 cant seeking an injunction under this section. No security will be
28 required by the court from an applicant seeking an injunction under
29 this section. If the applicant is granted the injunction he shall be

1 entitled to recover costs and reasonable attorney fees from the agency,
2 political subdivision or other body subject to the open meeting provi-
3 sion of AS 44.62.310.

4 (c) The superior court shall make available to applicants, free
5 of charge, simplified forms for proceeding without counsel under this
6 section. The forms shall require only identification of the applicant
7 and the name of the custodian alleged to be improperly withholding
8 records, and a simple explanation of the records sought.

9 (d) In a suit brought under this section the court may enjoin
10 withholding of the records and order the production to the complainant
11 of records improperly withheld. In such a case the court shall deter-
12 mine the matter de novo, and may examine the contents of any records in
13 camera to determine whether the records or any portion of them may be
14 withheld under any of the exemptions set out in sec. 20 of this chapter,
15 and the burden is on the agency to sustain its action.

16 Sec. 40.25.040. MISHANDLING OF RECORDS. A person who has the
17 legal custody of and who wilfully destroys, conceals, or mutilates a
18 record, book, paper, or writing, or a person who wilfully destroys,
19 conceals, or mutilates a record, book, paper or writing, or wrongfully
20 takes a public record, book, paper, or writing from the person having
21 legal custody of it, or who has obtained possession wrongfully and re-
22 fuses or neglects to return or produce it when lawfully required or
23 demanded so to do, upon conviction, is punishable by a fine of not
24 more than \$500, or by imprisonment for not more than one year, or by
25 both.

26 Sec. 40.25.050. OBSTRUCTION OF ACCESS TO RECORDS. A person who
27 has custody or control of a record who intentionally obstructs or at-
28 tempts to obstruct, or a person not having custody or control who inten-
29 tionally aids or abets another person in obstructing or attempting to

1 obstruct, the inspection of a record subject to inspection under sec. 20
2 of this chapter is guilty of a misdemeanor and, upon conviction, is
3 punishable by a fine of not mor more than \$500. Upon a subsequent
4 conviction, that person is guilty of a misdemeanor and is punishable by
5 a fine of not more than \$1,000, or by imprisonment for not more than six
6 months, or by both.

7 Sec. 40.25.060. DEFINITIONS. In this chapter, unless the context
8 otherwise requires

9 (1) "attorney work product" means documents and tangible
10 things, prepared in anticipation of litigation for trail by or for
11 another party, or by or for that party's representative (including his
12 attorney, consultant, surety, indemnitor, insurer or agent);

13 (2) "record" means any document, paper, book, letter, draw-
14 ing, map, plat, photo, photographic file, motion picture, film, micro-
15 film, microphotograph, exhibit, magnetic or paper tape, punched card, or
16 other document of any other material, regardless of physical form or
17 characteristic, developed or received under law or in connection with
18 the transaction of official business and preserved or appropriate for
19 preservation by an agency, political subdivision or other body subject
20 to the open meeting provision of AS 44.62.310, as evidence of the organ-
21 ization, function, policies, decisions, procedures, operations or other
22 activities of the state or political subdivision or because of the
23 informational value in them; it also includes staff manuals and instruc-
24 tions to staff that affect the public.

25 * Sec. 2. AS 44.62.310 is amended by adding new subsections to read:

26 (g) No resolution, ordinance, rule, contract, regulation or motion
27 adopted, passed or agreed to in an executive or closed meeting shall
28 become effective unless the public body, following the meeting, re-
29 convenes in open meeting and takes a vote of the membership on the

1 resolution, ordinance, rule, contract, regulation or motion.

2 (h) Nothing in this section may be construed to prevent the hold-
3 ing of conferences between two or more public bodies, or their repre-
4 sentatives, but these conferences are subject to the same regulations
5 for holding executive or closed sessions as are applicable to any other
6 public body.

7 * Sec. 3. AS 44.62.310(d)(1) is amended to read:

8 (1) judicial [OR QUASI-JUDICIAL] bodies when holding a meet-
9 ing solely to make a decision in an adjudicatory proceeding;

10 * Sec. 4. AS 44.62.310(c)(3) is amended to read:

11 (3) matters which by state statute [LAW MUNICIPAL CHARTER,
12 OR ORDINANCE] are required to be confidential.

13 * Sec. 5. AS 06.20 is amended by adding a new section to read:

14 Sec. 06.20.345. CONFIDENTIAL FILES. Intelligence and investiga-
15 tory files maintained by the department are confidential and may be
16 revealed only with the consent of the department.

17 * Sec. 6. AS 18.80 is amended by adding a new section to read:

18 Sec. 18.80.147. CONFIDENTIAL FILES. Investigatory files maintained
19 by the commission are confidential and may be revealed only with the
20 consent of the commission.

21 * Sec. 7. AS 34.55 is amended by adding a new section to read:

22 Sec. 34.55.040. CONFIDENTIAL FILES. Intelligence and investiga-
23 tory files maintained by the department are confidential and may be
24 revealed only with the consent of the department.

25 * Sec. 8. AS 16.10 is amended by adding a new section to read:

26 Sec. 16.10.340. RECORDS CONFIDENTIAL. Information in the records
27 of the department that is intended for use in the evaluation of loans
28 made under this chapter, including but not limited to personal financial
29 statements, personal bank confirmations, personal credit reports and

1 references, personal character references, state and federal income tax
2 returns, correspondence pertaining to loan investigations, loan record
3 cards, appraisals and marine surveys, and financial information reveal-
4 ing the financial structure of a business organization or entity provide
5 to a state agency for the purposes of securing a public loan is
6 confidential and may be revealed only with the consent of the depart-
7 ment, except that the department may not deny access to the records to
8 the loan applicant or his designee.

9 * Sec. 9. AS 26.15 is amended by adding a new section to read:

10 Sec. 26.15.180. RECORDS CONFIDENTIAL. Information in the records
11 of the department that is intended for use in the evaluation of loans
12 made under this chapter, including but not limited to personal financial
13 statements, personal bank confirmations, personal credit reports and
14 references, personal character references, state and federal income tax
15 returns, correspondence pertaining to loan investigations, loan record
16 cards, appraisals and marine surveys, and financial information reveal-
17 ing the financial structure of a business organization or entity pro-
18 vided to a state agency for the purposes of securing a public loan is
19 confidential and may be revealed only with the consent of the depart-
20 ment, except that the department may not deny access to the records to
21 the loan applicant or his designee.

22 * Sec. 10. AS 45.90 is amended by adding a new section to read:

23 Sec. 45.90.050. RECORDS CONFIDENTIAL. Information in the records
24 of the department that is intended for use in the evaluation of loans
25 made under this chapter, including but not limited to personal financial
26 statements, personal bank confirmations, personal credit reports and
27 references, personal character references, state and federal income tax
28 returns, correspondence pertaining to loan investigations, loan record
29 cards, appraisals and marine surveys, and financial information reveal-

1 ing the financial structure of a business organization or entity pro-
2 vided to a state agency for the purposes of securing a public loan is
3 confidential and may be revealed only with the consent of the depart-
4 ment, except that the department may not deny access to the records to
5 the loan applicant or his designee.

6 * Sec. 11. AS 45.95 is amended by adding a new section to read:

7 Sec. 45.95.080. RECORDS CONFIDENTIAL. Information in the records
8 of the department that is intended for use in the evaluation of loans
9 made under this chapter, including but not limited to personal financial
10 statements, personal bank confirmations, personal credit reports and
11 references, personal character references, state and federal income tax
12 returns, correspondence pertaining to loan investigations, loan record
13 cards, appraisals and marine surveys, and financial information reveal-
14 ing the financial structure of a business organization or entity pro-
15 vided to a state agency for the purposes of securing a public loan is
16 confidential and may be revealed only with the consent of the depart-
17 ment, except that the department may not deny access to the records to
18 the loan applicant or his designee.

19 * Sec. 12. AS 24.20 is amended by adding a new section to read:

20 Sec. 24.20.202. RECORDS CONFIDENTIAL. Audit files and preliminary
21 report drafts are confidential and may not be open to public inspection.

22 * Sec. 13. In sec. 1 of this Act, AS 40.25.030(b) and (c) has the effect
23 of changing Rules 54, 65 and 82 of the Civil Rules relating to security
24 deposits required in civil actions, and allowance of attorney fees as costs
25 in civil actions; Rule 13 of the Administrative Rules by adding an exemption
26 from payment of filing fees in civil actions for any action filed under this
27 chapter; and Supreme Court Order No. 16 relating to fees for service of
28 process in civil actions.

29 * Sec. 14. AS 09.25.110, 09.25.120, 09.25.125, AS 11.30.240 and 11.30.245

1 are repealed.

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