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Referred: State Affairs and
Judiciary

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1 IN THE HOUSE

2 *CS* HOUSE BILL NO. 131 *Just Com.*
3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 TENTH LEGISLATURE - FIRST 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
9 Court."

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

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

12 CHAPTER 25. FREEDOM OF PUBLIC INFORMATION.

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

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

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

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

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

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

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

1 any person; however, the custodian of the records shall take all neces-
2 sary precautions for their preservation and safekeeping.

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

7 (c) Every person having custody of records not included in the
8 exceptions in (e) of this section shall make them available for public
9 inspection and shall give a copy of the record on request and payment of
10 fees, if any, which may not exceed the direct costs of duplication. A
11 certified copy is not necessary. If a certified copy is requested, that
12 copy is in all cases evidence of the original. A custodian shall
13 permit memoranda, transcripts, and copies of the public writings and
14 records in his office to be reproduced in any reasonable manner. In
15 addition, a custodian shall furnish proper and reasonably accessible
16 facilities, subject to reasonable restrictions, as are necessary for the
17 protection of the writings and records and to prevent interference with
18 the regular discharge of the duties of the recorders and their employees.

19 (d) Copies of records may be requested by mail. These requests
20 shall be treated in accordance with the provisions of (a) - (c) of this
21 section.

22 (e) The following records are excluded from the provisions of this
23 section:

- 24 (1) those defined as confidential by state statute;
25 (2) any tax or information return required to be filed in
26 accordance with the provisions of AS 43, except that access may not be
27 denied to the person who is the subject of the records, or that person's
28 designee;
29 (3) personal information in files maintained for public

1 employees, except that access may not be denied to the person who is the
2 subject of the records, or that person's designee;

3 (4) personal information in files maintained for students in
4 public schools, except that access may not be denied to the student, a
5 parent or guardian of the student, a person responsible for supervising
6 the student, or his designee;

7 (5) personal information in files maintained for students at
8 the University of Alaska, except that access may not be denied to the
9 student or his designee;

10 (6) personal information in medical, psychological, and
11 sociological files maintained for individual persons, exclusive of
12 autopsy reports, except that access may not be denied to the person who
13 is the subject of the record, or his designee;

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

18 (8) circulation records maintained by public libraries,
19 public school libraries, and University of Alaska libraries showing
20 personal transactions by those borrowing from them;

21 (9) personal information in files maintained for recipients
22 of social services, except that access may not be denied to the person
23 who is the subject of the records, or his designee;

24 (10) trade secrets, privileged information and confidential
25 commercial, financial, geological or geophysical data furnished in
26 compliance with state law or regulation, or in compliance with a munici-
27 pal ordinance;

28 (11) test questions, scoring keys and other examination data
29 pertaining to administration of a licensing examination, for employment,

1 or academic examination; except that written promotional examinations
2 and the scores or results of them shall be available for inspection, but
3 not copying or reproduction, after the conducting or grading of the
4 examination;

5 (12) intelligence and investigatory files maintained by state
6 or municipal law enforcement agencies, except original entry records,
7 but only to the extent that the production of the records would

8 (A) interfere with enforcement proceedings;

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

11 (C) constitute an unwarranted invasion of personal
12 privacy;

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

18 (E) disclose investigative techniques and procedures;

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

21 (G) identify any rape victim or victim of any other
22 criminal sexual assault;

23 (13) original entry records of law enforcement agencies but
24 only to the extent that they would reveal the name or any other means of
25 identification of any rape victim or victim of any other criminal sexual
26 assault;

27 (14) security systems established for the purpose of

28 (A) the protection of persons or public property, or

29 (B) securing a penal institution or place of detention

1 of persons accused or convicted of a crime;

2 (15) records constituting attorney work product in the pos-
3 session of an agency, political subdivision or other body subject to the
4 open meeting provision of AS 44.62.310.

5 (f) When the lawful custodian of a record determines that contents
6 of a record render it exempt under the provisions of this section, he
7 shall also determine whether a deletion of the exempt parts of the
8 record will make it suitable for release. If a partial deletion of
9 material will make the record suitable for release, the deletion shall
10 be made and the record released, with the notation that exempt material
11 has been removed. If the custodian determines that the record, or a
12 portion of the record, is not open to inspection, he shall, in a certi-
13 fied writing, inform the person requesting the record of his determina-
14 tion, of the statutory basis for his decision, and that under sec. 30 of
15 this chapter a suit may be brought to compel production of records that
16 are improperly withheld.

17 (g) Information contained in records exempted from disclosure
18 under (e) of this section may be released for valid statistical or other
19 information-gathering purposes if

20 (1) any information which would identify the person to whom
21 the record pertains is deleted; and

22 (2) disclosure is made in a manner which would not compromise
23 or defeat the purposes of any statutory provision designed to maintain
24 the confidentiality of certain information.

25 (h) No record more than 50 years old is excluded from the provi-
26 sions of this section unless a longer period is required under (e)(7) of
27 this section.

28 Sec. 40.25.030. ENFORCEMENT: INJUNCTIVE RELIEF. (a) A person
29 having custody or control of a record who obstructs or attempts to

1 obstruct, or a person not having custody or control who aids or abets
2 another person in obstructing or attempting to obstruct, the inspection
3 of a record subject to inspection under sec. 20 of this chapter may be
4 enjoined by the superior court from obstructing, or attempting to ob-
5 struct, the inspection of records subject to inspection under sec. 20 of
6 this chapter.

7 (b) The court may charge no filing fee, and the Department of
8 Public Safety may charge no fee for service of process, from an appli-
9 cant seeking an injunction under this section. No security will be
10 required by the court from an applicant seeking an injunction under this
11 section. If the applicant is granted the injunction he shall be en-
12 titled to recover costs and reasonable attorney fees from the agency,
13 political subdivision or other body subject to the open meeting provi-
14 sion of AS 44.62.310.

15 (c) The superior court shall make available to an applicant, free
16 of charge, a simplified form for proceeding without counsel under this
17 section. The form shall require only identification of the applicant
18 and the name of the custodian alleged to be improperly withholding
19 records, and a simple explanation of the records sought.

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

27 Sec. 40.25.040. MISHANDLING OF RECORDS. A person who has the
28 legal custody of and who unlawfully and wilfully destroys, conceals, or
29 mutilates a record, book, paper, or writing, or a person who unlawfully

1 and wilfully destroys, conceals, or mutilates a record, book, paper or
2 writing, or wrongfully takes a public record, book, paper, or writing
3 from the person having legal custody of it, or who has obtained posses-
4 sion wrongfully and refuses or neglects to return or produce it when
5 lawfully required or demanded so to do, upon conviction, is punishable
6 by a fine of not more than \$500, or by imprisonment for not more than
7 one year, or by both.

8 Sec. 40.25.050. OBSTRUCTION OF ACCESS TO RECORDS. A person who
9 has custody or control of a record who intentionally obstructs or at-
10 tempts to obstruct, or a person not having custody or control who inten-
11 tionally aids or abets another person in obstructing or attempting to
12 obstruct, the inspection of a record subject to inspection under sec. 20
13 of this chapter is guilty of a misdemeanor and, upon conviction, is
14 punishable by a fine of not more than \$500. Upon a subsequent convic-
15 tion, that person is guilty of a misdemeanor and is punishable by a fine
16 of not more than \$1,000, or by imprisonment for not more than six months,
17 or by both.

18 Sec. 40.25.055. REGULATIONS. A department or agency may by
19 regulation provide for the confidentiality of records not exempted from
20 the provisions of this chapter nor specifically made a public record by
21 another statute; however, the regulation is only effective until the
22 45th day of the next session of the legislature unless approved by a
23 majority of the members of the legislature.

24 Sec. 40.25.060. DEFINITIONS. In this chapter, unless the context
25 otherwise requires,

26 (1) "attorney work product" means documents and tangible
27 things, prepared in anticipation of litigation for trial by or for
28 another party, or by or for that party's representative (including his
29 attorney, consultant, surety, indemnitor, insurer or agent);

1 (2) "record" means any document, paper, book, letter, draw-
2 ing, map, plat, photo, photographic file, motion picture, film, micro-
3 film, microphotograph, exhibit, magnetic or paper tape, punched card, or
4 other document of any other material, regardless of physical form or
5 characteristic, developed or received under law or in connection with
6 the transaction of official business and preserved or appropriate for
7 preservation by an agency, political subdivision or other body subject
8 to the open meeting provision of AS 44.62.310, as evidence of the organ-
9 ization, function, policies, decisions, procedures, operations or other
10 activities of the state or political subdivision or because of the
11 informational value in them; it also includes staff manuals and instruc-
12 tions to staff that affect the public;

13 (3) "personal information" means information about an indi-
14 vidual person, the disclosure of which would constitute an unwarranted
15 invasion of personal privacy.

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

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

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

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

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

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

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

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

5 Sec. 06.20.345. CONFIDENTIAL FILES. Intelligence and investiga-
6 tory files maintained by the department are confidential only to the
7 extent that the production of those records would interfere with enforce-
8 ment proceedings, deprive a person of a right to fair trial or an impar-
9 tial adjudication, constitute an unwarranted invasion of personal
10 privacy or disclose the identity of a confidential source and, in the
11 case of a record compiled by a criminal law enforcement authority in the
12 course of a criminal security intelligence investigation, confidential
13 information furnished only by the confidential source.

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

15 Sec. 18.80.147. CONFIDENTIAL FILES. Investigatory files main-
16 tained by the department are confidential only to the extent that the
17 production of those records would interfere with enforcement proceed-
18 ings, deprive a person of a right to a fair trial or an impartial ad-
19 judication, constitute an unwarranted invasion of personal privacy or
20 disclose the identity of a confidential source and, in the case of a
21 record compiled by a criminal law enforcement authority in the course of
22 a criminal security intelligence investigation, confidential information
23 furnished only by the confidential source.

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

25 Sec. 34.55.040. CONFIDENTIAL FILES. Intelligence and investiga-
26 tory files maintained by the department are confidential only to the
27 extent that the production of those records would interfere with enforce-
28 ment proceedings, deprive a person of a right to a fair trial or an
29 impartial adjudication, constitute an unwarranted invasion of personal

1 privacy or disclose the identity of a confidential source and, in the
2 case of a record compiled by a criminal law enforcement authority in the
3 course of a criminal security intelligence investigation, confidential
4 information furnished only by the confidential source.

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

6 Sec. 16.10.340. RECORDS CONFIDENTIAL. Information in the records
7 of the department that is intended for use in the evaluation of loans
8 made under this chapter is confidential to the extent that disclosure of
9 the information would constitute an unwarranted invasion of personal
10 privacy. The department may not deny access to the records to the loan
11 applicant or his designee.

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

13 Sec. 26.15.180. RECORDS CONFIDENTIAL. Information in the records
14 of the department that is intended for use in the evaluation of loans
15 made under this chapter is confidential to the extent that disclosure of
16 the information would constitute an unwarranted invasion of personal
17 privacy. The department may not deny access to the records to the loan
18 applicant or his designee.

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

20 Sec. 45.90.050. RECORDS CONFIDENTIAL. Information in the records
21 of the department that is intended for use in the evaluation of loans
22 made under this chapter is confidential to the extent that disclosure of
23 the information would constitute an unwarranted invasion of personal
24 privacy. The department may not deny access to the records to
25 the loan applicant or his designee.

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

27 Sec. 45.95.080. RECORDS CONFIDENTIAL. Information in the records
28 of the department that is intended for use in the evaluation of loans
29 made under this chapter is confidential to the extent that disclosure of

1 the information would constitute an unwarranted invasion of personal
2 privacy. The department may not deny access to the records to the loan
3 applicant or his designee.

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

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

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

14 * Sec. 14. AS 09.25.110, 09.25.120, 09.25.125, AS 11.30.240 and 11.30.245
15 are repealed.

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