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Offered: 3/8/77
Referred: Judiciary

1 IN THE HOUSE

BY THE STATE AFFAIRS COMMITTEE

2 CS FOR HOUSE BILL NO. 131

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. PRIVACY AND 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) except as provided in this chapter, the records of those
18 units be open for public inspection unless the inspection infringes on a
19 person's right to privacy;

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

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

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

27 Sec. 40.25.020. RECORDS TO BE OPEN TO INSPECTION; EXCEPTIONS. (a)
28 Except as otherwise specifically provided by law, all records are open
29 to inspection and copying by any person during the regular office hours

1 of the lawful custodian of the records or his designee. Access to
2 records may not be denied to any person; however, the custodian of the
3 records shall take all necessary precautions for their preservation and
4 safekeeping.

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

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

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

24 (e) The following records are excluded from the provisions of this
25 section:

- 26 (1) those not subject to disclosure under state statute;
- 27 (2) any tax or information return, or record or report relat-
28 ing to that return, which is required to be filed in accordance with the
29 provisions of AS 43, except that access may not be denied to the person

1 who is the subject of the records, or that person's designee;

2 (3) personal information in files maintained for public
3 employees, except that access may not be denied to the person who is the
4 subject of the records, or that person's designee;

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

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

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

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

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

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

26 (10) trade secrets, privileged information and confidential
27 commercial, financial, geological, geophysical or other proprietary data
28 furnished in compliance with state law or regulation, or in compliance
29 with a municipal ordinance;

1 (11) test questions, scoring keys and other examination data
2 pertaining to administration of a licensing examination, for employment,
3 or academic examination; except that written promotional examinations
4 and the scores or results of them shall be available for inspection, but
5 not copying or reproduction, after the conducting or grading of the
6 examination;

7 (12) intelligence, investigatory files, and original entry
8 records, maintained by state or municipal law enforcement agencies, or
9 any other agency or department subject to the provisions of AS 44.62.310,
10 but only to the extent that the production of the records would

11 (A) interfere with enforcement proceedings;

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

14 (C) constitute an unwarranted invasion of personal
15 privacy;

16 (D) disclose the identity of a confidential source and,
17 in case of a record compiled by a criminal law enforcement author-
18 ity in the course of a criminal security intelligence investigation,
19 confidential information furnished only by the confidential source;

20 (E) disclose investigative techniques and procedures;

21 (F) endanger the life or physical safety of any person;

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

24 (H) disclose any information otherwise exempt under this
25 chapter or state statute;

26 (13) security systems and procedures established for the
27 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 or persons under the
2 jurisdiction of the court under AS 47.10;

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

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

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

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

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

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

29 (i) The exemptions provided under this chapter do not preclude the

1 release or production of records or information to a state or municipal
2 law enforcement agency during the course of an investigation;

3 Sec. 40.25.030. ENFORCEMENT: INJUNCTIVE RELIEF. (a) A person
4 having custody or control of a record who obstructs or attempts to
5 obstruct, or a person not having custody or control who aids or abets
6 another person in obstructing or attempting to obstruct, the inspection
7 of a record subject to inspection under sec. 20 of this chapter may be
8 enjoined by the superior court from obstructing, or attempting to ob-
9 struct, the inspection of records subject to inspection under sec. 20 of
10 this chapter.

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

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

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

1 and the burden is on the agency to sustain its action.

2 Sec. 40.25.040. MISHANDLING OF RECORDS. A person who has the
3 legal custody of and who unlawfully and wilfully destroys, conceals, or
4 mutilates a record, book, paper, or writing, or a person who unlawfully
5 and wilfully destroys, conceals, or mutilates a record, book, paper or
6 writing, or wrongfully takes a public record, book, paper, or writing
7 from the person having legal custody of it, or who has obtained posses-
8 sion wrongfully and refuses or neglects to return or produce it when
9 lawfully required or demanded so to do, upon conviction, is punishable
10 by a fine of not more than \$500, or by imprisonment for not more than
11 one year, or by both.

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

22 Sec. 40.25.055. REGULATIONS. When the legislature is not in ses-
23 sion a department or agency may by regulation provide for the confiden-
24 tiality of records not exempted by the provisions of this chapter nor
25 specifically made a public record by another statute. Prior approval of
26 the Legislative Council is required for promulgation of the regulations,
27 and the regulations are effective only until the 45th day of the next
28 session of the legislature unless approved by a majority of the members
29 of the legislature.

1 Sec. 40.25.060. DEFINITIONS. In this chapter, unless the context
2 otherwise requires,

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

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

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

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

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

28 (h) Nothing in this section may be construed to prevent the hold-
29 ing of conferences between two or more public bodies, or their repre-

1 sentatives, but these conferences are subject to the same regulations
2 for holding executive or closed sessions as are applicable to any other
3 public body.

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

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

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

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

10 * Sec. 5. In sec. 1 of this Act, AS 40.25.030(b) and (c) has the effect
11 of changing Rules 54, 65 and 82 of the Civil Rules relating to security
12 deposits required in civil actions, and allowance of attorney fees as costs
13 in civil actions; Rule 13 of the Administrative Rules by adding an exemption
14 from payment of filing fees in civil actions for any action filed under this
15 chapter; and Supreme Court Order No. 16 relating to fees for service of
16 process in civil actions.

17 * Sec. 6. AS 09.25.110, 09.25.120, 09.25.125, AS 11.30.240 and 11.30.245
18 are repealed.