

Original sponsors: Parr, Bradley,
Brown, et al

Offered: 4/7/77
Referred Rules

1 IN THE HOUSE

BY THE JUDICIARY COMMITTEE

2 CS FOR HOUSE BILL NO. 131 (Judiciary)

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 privacy and public information; and
7 changing Rule 65 of the Civil Rules of Court."

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

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

10 CHAPTER 25. PRIVACY AND PUBLIC INFORMATION.

11 Sec. 40.25.010. STATE POLICY. It is the policy of the state that

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

14 (2) the people of this state do not yield their sovereignty
15 to the agencies which serve them;

16 (3) the people, in delegating authority, do not give their
17 public servants the right to decide what is best for the people to know
18 and what is best for them not to know;

19 (4) the people's right to remain informed shall be protected
20 so that they may retain control over the instruments they have created;

21 (5) the people's right to privacy as provided by the consti-
22 tution is recognized and shall not be infringed;

23 (6) the records of governmental units shall be open for
24 public inspection unless the inspection infringes on a person's right to
25 privacy or is otherwise prohibited by statute.

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 lawful custodian of the records or his designee, unless the

1 inspection infringes on a person's right to privacy. The custodian of
2 the records shall take all necessary precautions for their preservation
3 and safekeeping.

4 (b) Every custodian of records shall make them available for
5 public inspection and shall give a copy of the record on request and
6 payment of fees, if any. A custodian shall permit memoranda, trans-
7 cripts, and copies of the public writings and records in his office to
8 be reproduced in any reasonable manner. In addition, a custodian shall
9 furnish proper and reasonably accessible facilities for inspection of
10 records, subject to reasonable restrictions, as are necessary for the
11 protection of the writings and records and to prevent interference with
12 the regular discharge of the duties of the recorders and their employees.
13 If a certified copy is requested, that copy is in all cases evidence of
14 the original.

15 (c) Copies of records may be requested by mail. These requests
16 shall be treated in accordance with the provisions of (a) and (b) of
17 this section.

18 (d) Each governmental unit may specify a uniform schedule of fees
19 to be limited to reasonable standard charges for document search and
20 duplication, and provide for recovery of only the direct cost of the
21 search and duplication. Documents shall be furnished without charge or
22 at a reduced charge when the governmental unit determines that waiver or
23 a reduction of the fee is in the public interest because furnishing the
24 information can be considered as primarily benefiting the general public.

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

27 (1) those exempted from disclosure by state statute or by
28 supreme court rule;

29 (2) any tax or information return, or record or report

1 relating to that return, which is required to be filed in accordance
2 with the provisions of AS 43 or municipal ordinance, except that access
3 may not be denied to the person who is the subject of the records, or
4 that person's designee;

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

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

12 (5) personal information in files maintained on students at
13 the University of Alaska, except that access may not be denied to the
14 student or his designee;

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

19 (7) personal information in files maintained on recipients of
20 social services, except that access may not be denied to the person who
21 is the subject of the records, or his designee;

22 (8) personal information similar to personal information in
23 files under (3) - (7) of this subsection, except that access may not be
24 denied to the person who is the subject of the records, or that person's
25 designee;

26 (9) archival materials donated by natural persons to the
27 extent of any limitations placed on them as a condition of the contribu-
28 tion; however, these limitations must be in writing and the statement of
29 limitations must be produced upon denial of access;

1 (10) circulation records maintained by public libraries,
2 public school libraries, and University of Alaska libraries showing
3 personal transactions by those borrowing from them;

4 (11) trade secrets and commercial or financial information
5 obtained from a person or developed by a governmental unit and privileged
6 or confidential;

7 (12) test questions, scoring keys and other examination data
8 pertaining to administration of a licensing examination, for employment,
9 or academic examination; except that the scores or results of them shall
10 be available for inspection, but not copying or reproduction, after the
11 conducting or grading of the examination;

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

16 (A) interfere with enforcement proceedings;

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

19 (C) constitute an unwarranted invasion of personal
20 privacy;

21 (D) disclose the identity of a confidential source and,
22 in case of a record compiled by a criminal law enforcement author-
23 ity in the course of a criminal investigation, confidential infor-
24 mation furnished only by the confidential source;

25 (E) disclose investigative techniques and procedures;

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

27 (G) identify any rape victim or victim of any other
28 criminal sexual assault;

29 (H) disclose any information otherwise exempt under this

1 chapter or state statute;

2 (14) records of security systems and procedures established
3 for the purpose of the protection of persons or property, or securing a
4 penal institution or place of detention of persons accused or convicted
5 of a crime or persons under the jurisdiction of the court under AS
6 47.10, but only to the extent that disclosure would compromise the
7 effectiveness of the system;

8 (15) attorney work product in the possession of a governmental
9 unit, until the matter occasioning the preparation of the work product
10 is closed;

11 (16) any notes, memoranda, draft decisions, opinions, or other
12 similar documents prepared by a justice or a judge, or a person working
13 under his supervision, in the process of deciding any legal issue;
14 however, once the legal issue has been decided all notes, memoranda,
15 draft decisions, opinions, or similar documents become public records;

16 (17) records related solely to the internal practices of a
17 governmental unit where the effect of disclosure would be to enable law
18 violators to escape detection.

19 (f) Unless exempted from disclosure by statute outside this chap-
20 ter, all records become public after they are 50 years old.

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

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

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

29 (h) The exceptions provided under this chapter do not preclude the

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

3 Sec. 40.25.025. REQUESTS FOR RECORDS. (a) Each governmental
4 unit, upon any request for records made under this section, shall

5 (1) determine, within 10 days (excepting Saturdays, Sundays,
6 and legal public holidays) after the receipt of the request, whether to
7 comply with it and immediately notify the person making the request of
8 the determination and the reasons for the determination, and of the
9 right to appeal to the head of the governmental unit any adverse deter-
10 mination; and

11 (2) make a determination with respect to any appeal within 20
12 days (excepting Saturdays, Sundays, and legal public holidays) after the
13 receipt of the appeal; if on appeal the denial of the request for re-
14 cords is in the whole or in part upheld, the governmental agency shall
15 notify the person making the request of the provisions for judicial re-
16 view of that determination under sec. 30 of this chapter.

17 (b) In unusual circumstances the time limits prescribed in either
18 (a)(1) or (2) of this section may be extended by written notice to the
19 person making the request setting out the reasons for the extension and
20 the date on which a determination is expected to be dispatched. No
21 notice shall specify a date that would result in an extension for more
22 than 10 working days. As used in this subsection, "unusual circum-
23 stances" means, but only to the extent reasonably necessary to the pro-
24 per processing of the particular request,

25 (1) the need to search for and collect the requested records
26 from field facilities or other establishments that are separate from the
27 office processing the request;

28 (2) the need to search for, collect, and appropriately exa-
29 mine a voluminous amount of separate and distinct records which are

1 demanded in a single request; or

2 (3) the need for consultation, which shall be conducted with
3 all practicable speed, with another governmental unit having a sub-
4 stantial interest in the determination of the request or among two or
5 more components of the governmental unit having a substantial subject-
6 matter interest.

7 (c) Any person making a request to a governmental unit for records
8 under this section shall be considered to have exhausted his administra-
9 tive remedies with respect to the request if the governmental unit fails
10 to comply with the applicable time limit provisions of this section. If
11 the governmental unit can show exceptional circumstances exist and that
12 it is exercising due diligence in responding to the request, the court
13 may retain jurisdiction and allow the governmental unit additional time
14 to complete its review of the records. Upon a determination by a govern-
15 mental unit to comply with a request for records, the records shall be
16 made promptly available to the person making the request.

17 (d) When the lawful custodian of a record determines that portions
18 of a record render it exempt under the provisions of sec. 20 of this
19 chapter, he shall delete the exempt provisions from the record before
20 release, and shall in writing inform the person requesting the record of
21 his determination of the specific statutory basis for the deletion and
22 of the procedures for appeal under (a) of this section.

23 (e) Any notification or denial of a request for records under this
24 section shall set out the names and titles or positions of each person
25 responsible for the denial of the request.

26 Sec. 40.25.030. ENFORCEMENT: INJUNCTIVE RELIEF. (a) A person
27 having custody or control of a record who obstructs or attempts to
28 obstruct, or a person not having custody or control who aids or abets
29 another person in obstructing or attempting to obstruct, the inspection

1 of a record subject to inspection under sec. 20 of this chapter may be
2 enjoined by the superior court from obstructing, or attempting to ob-
3 struct, the inspection of records subject to inspection under sec. 20 of
4 this chapter.

5 (b) No security will be required by the court from an applicant
6 seeking an injunction under this section.

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

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

19 (e) The court may award reasonable attorney fees and costs to any
20 person or governmental unit substantially prevailing in a suit brought
21 under this section.

22 Sec. 40.25.040. MISHANDLING OF RECORDS. A person who has the
23 legal custody of and who unlawfully and intentionally destroys, con-
24 ceals, or mutilates a record, book, paper, or writing, or a person who
25 unlawfully and intentionally destroys, conceals, or mutilates a record,
26 book, paper or writing, or wrongfully takes a public record, book,
27 paper, or writing from the person having legal custody of it, or who has
28 obtained possession wrongfully and refuses or neglects to return or
29 produce it when lawfully required or demanded so to do, upon conviction,

1 is punishable by a fine of not more than \$500, or by imprisonment for
2 not more than one year, or by both.

3 Sec. 40.25.050. OBSTRUCTION OF ACCESS TO RECORDS. (a) A
4 custodian of a record subject to inspection under this chapter who
5 intentionally obstructs or attempts to obstruct, or a person not having
6 custody or control who intentionally aids or abets the custodian in
7 obstructing or attempting to obstruct, the inspection of the record, in
8 violation of this chapter, is guilty of a misdemeanor and, upon convic-
9 tion, is punishable by a fine of not more than \$500. Upon a subsequent
10 conviction that person is guilty of a misdemeanor and is punishable by
11 a fine of not more than \$1,000 or by imprisonment for not more than six
12 months, or by both.

13 (b) A person who has been wrongfully denied access to a record
14 under this chapter has a civil cause of action against the person re-
15 sponsible for the violation and is entitled to recover actual damages
16 and reasonable attorney fees and other reasonable litigation costs.

17 (c) A good faith reliance upon the provisions of this chapter or
18 of applicable law governing the confidentiality of public records is a
19 defense to a criminal or civil action brought under this section.

20 Sec. 40.25.060. DEFINITIONS. In this chapter, unless the context
21 otherwise requires,

22 (1) "attorney work product" means documents and tangible
23 things prepared by or for a governmental unit in anticipation of or
24 during litigation;

25 (2) "custodian" means the head of any governmental unit or
26 his designee;

27 (3) "governmental unit" means an agency, political subdivi-
28 sion or other body subject to the open meeting provision of AS 44.-
29 62.310;

1 (4) "personal information" means information about an indivi-
2 dual person, the disclosure of which would constitute an unwarranted
3 invasion of personal privacy;

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

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(c)(3) is amended to read:

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

1 * Sec. 4. In sec. 1 of this Act, AS 40.25.030(b) has the effect of
2 changing Rule 65 of the Civil Rules relating to security deposits required in
3 civil actions.

4 * Sec. 5. AS 09.25.110, 09.25.120, 09.25.125, AS 11.30.240 and 11.30.245
5 are repealed.

6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29

#