

Introduced: 1/24/79
Referred: Judiciary

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1 IN THE HOUSE

2 HOUSE BILL NO. 75

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 ELEVENTH 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. 40.25.015. 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 em-
13 ployees. If a certified copy is requested, that copy is in all cases
14 evidence of 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 duplication,
20 and provide for recovery of only the direct cost of the duplication.

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

- 23 (1) those exempted from disclosure by state statute;
24 (2) any tax or information return, or record or report re-
25 lating to that return, which is required to be filed in accordance with
26 the provisions of AS 43 or municipal ordinance, except that access may
27 not be denied to the person who is the subject of the records, or that
28 person's designee;

- 29 (3) subject to (1) of this section personal information in

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

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

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

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

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

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

22 (9) archival materials donated by natural persons to the
23 extent of any written limitations placed on them as a condition of the
24 contribution; however, all archival materials become public information
25 after not more than 50 years and any statement of limitations must be
26 produced upon denial of access;

27 (10) circulation records maintained by public libraries,
28 public school libraries, and University of Alaska libraries showing
29 personal transactions by those borrowing from them;

1 (11) trade secrets, privileged information and confidential
2 commercial, financial, geological or geophysical data furnished in com-
3 pliance with state law or regulation, or in compliance with a municipal
4 ordinance;

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

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

14 (A) interfere with enforcement proceedings;

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

17 (C) constitute an unwarranted invasion of personal
18 privacy;

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

23 (E) disclose investigative techniques and procedures;

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

25 (G) identify any rape victim or victim of any other
26 criminal sexual assault;

27 (H) disclose any information otherwise exempt under this
28 chapter or state statute;

29 (14) records of security systems and procedures established

1 for the purpose of the protection of persons or property, or securing a
2 penal institution or place of detention of persons accused or convicted
3 of a crime or persons under the jurisdiction of the court under AS
4 47.10, but only to the extent that disclosure would compromise the
5 effectiveness of the system;

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

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

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

17 (f) Unless specifically exempted from disclosure by statute, all
18 records become public after they are 20 years old.

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

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

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

27 (h) The exceptions provided under this chapter do not preclude the
28 release or production of subpoenaed records or information to a state or
29 municipal law enforcement agency during the course of an investigation;

1 (i) All personnel records showing salary or compensation or that
2 concern the employee's performance or ability to perform the duties and
3 responsibilities of his job shall be open for public inspection. This
4 public access is not an infringement of a person's right to privacy.

5 (j) The fact that a crime has been committed, the name of the
6 crime, the time of commission and location, the name of any victim
7 (unless the victim of a rape or other criminal sexual assault) and the
8 name of any person accused of committing the crime is a matter of public
9 information and record.

10 Sec. 40.25.020. REQUESTS FOR RECORDS. (a) Each governmental
11 unit, upon any request for records made under this section, shall

12 (1) produce the record immediately if possible; or

13 (2) if the record is in active use or storage and not avail-
14 able at the time a request to examine it is made, the custodian shall at
15 that time state this fact in writing to the applicant and set a date and
16 hour as soon as practicable at which the record may be examined.

17 (b) A person making a request to a governmental unit for records
18 under this section shall be considered to have exhausted his administra-
19 tive remedies with respect to the request if the governmental unit fails
20 to comply with the applicable time limit provisions of this section. If
21 the governmental unit can show exceptional circumstances exist and that
22 it is exercising due diligence in responding to the request, the court
23 may retain jurisdiction and allow the governmental unit additional time
24 to complete its review of the records. Upon a determination by a
25 governmental unit to comply with a request for records, the records
26 shall be made promptly available to the person making the request.

27 (c) When the lawful custodian of a record determines that contents
28 of a record render it exempt under the provisions of this section, he
29 shall also determine whether a deletion of the exempt parts of the

1 record will make it suitable for release, and, if so, the deletion shall
2 be made and the record released, with the notation that exempt material
3 has been removed. If the custodian determines that the record, or a
4 portion of the record, is not open to inspection, he shall, in a certi-
5 fied writing, inform the person requesting the records of his determi-
6 nation, of the statutory basis for this decision, and that under AS
7 40.25.025 a suit may be brought to compel production of records that are
8 improperly withheld.

9 (d) A notification of denial of a request for records under this
10 section shall set out the names and titles or positions of each person
11 responsible for the denial of the request.

12 Sec. 40.25.025. ENFORCEMENT: INJUNCTIVE RELIEF. (a) A person
13 having custody or control of a record who obstructs or attempts to
14 obstruct, or a person not having custody or control who aids or abets
15 another person in obstructing or attempting to obstruct, the inspection
16 of a record subject to inspection under AS 40.25.015 may be enjoined by
17 the superior court from obstructing, or attempting to obstruct, the
18 inspection of records subject to inspection under AS 40.25.015.

19 (b) The court may charge no filing fee, and the Department of
20 Public Safety may charge no fee for service of process, from an appli-
21 cant seeking an injunction under this section. No security may be
22 required by the court from an applicant seeking an injunction under this
23 section. If the applicant is granted the injunction, he shall be en-
24 titled to recover costs and reasonable attorney fees from the agency,
25 political subdivision or other body subject to the open meeting provi-
26 sion of AS 44.62.310.

27 (c) The superior court shall make available to an applicant, free
28 of charge, a simplified form for proceeding without counsel under this
29 section. The form shall require only identification of the applicant

1 and the name of the custodian alleged to be improperly withholding
2 records, and a simple explanation of the records sought.

3 (d) In a suit brought under this section the court may enjoin
4 withholding of the records and order the production to the complainant
5 of records improperly withheld. In such a case the court shall de-
6 termine the matter de novo, and may examine the contents of any records
7 in camera to determine whether the records or any portion of them may be
8 withheld under any of the exceptions set out in AS 40.25.015, and the
9 burden is on the agency to sustain its action.

10 Sec. 40.25.030. MISHANDLING OF RECORDS. A person who has the
11 legal custody of and who unlawfully and intentionally destroys, con-
12 ceals, or mutilates a record, book, paper, or writing, or a person who
13 unlawfully and intentionally destroys, conceals, or mutilates a record,
14 book, paper or writing, or wrongfully takes a public record, book,
15 paper, or writing from the person having legal custody of it, or who has
16 obtained possession wrongfully and refuses or neglects to return or
17 produce it when lawfully required or demanded so to do, upon conviction,
18 is punishable by a fine of not more than \$500, or by imprisonment for
19 not more than one year, or by both.

20 Sec. 40.25.035. OBSTRUCTION OF ACCESS TO RECORDS. (a) A custo-
21 dian of a record subject to inspection under this chapter who inten-
22 tionally obstructs or attempts to obstruct, or a person not having
23 custody or control who intentionally aids or abets the custodian in
24 obstructing or attempting to obstruct, the inspection of the record, in
25 violation of this chapter, is guilty of a misdemeanor and, upon convic-
26 tion, is punishable by a fine of not more than \$500. Upon a subsequent
27 conviction that person is guilty of a misdemeanor and is punishable by a
28 fine of not more than \$1,000 or by imprisonment for not more than six
29 months, or by both.

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

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

8 Sec. 40.25.040. DEFINITIONS. In this chapter, unless the context
9 otherwise requires,

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

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

15 (3) "governmental unit" means an agency, political subdivi-
16 sion or other body subject to the open meeting provision of AS 44.-
17 62.310;

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

21 (5) "record" means any document, paper, book, letter, draw-
22 ing, map, plat, photo, photographic file, motion picture, film, micro-
23 film, microphotograph, exhibit, magnetic or paper tape, punched card, or
24 other document of any other material, regardless of physical form or
25 characteristic, developed or received under law or in connection with
26 the transaction of official business and preserved or appropriate for
27 preservation by an agency, political subdivision or other body subject
28 to the open meeting provision of AS 44.62.310, as evidence of the organ-
29 ization, function, policies, decisions, procedures, operations or other

1 activities of the state or political subdivision or because of the
2 informational value in them; it also includes staff manuals and instruc-
3 tions to staff that affect the public.

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

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

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

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

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

18 * Sec. 4. In sec. 1 of this Act, AS 40.25.025(b) has the effect of
19 changing Rule 65 of the Civil Rules of Court relating to security deposits
20 required in civil actions.

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

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