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Referred: Rules

1 IN THE HOUSE

BY THE JUDICIARY COMMITTEE

2 CS FOR 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 custodian and his 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 telephone, electronic
16 communication, or by mail. These requests shall be treated in accor-
17 dance with the provisions of (a) and (b) of this section.

18 (d) The commissioner of administration shall prescribe a uniform
19 schedule of fees to be limited to reasonable standard charges for docu-
20 ment duplication, and provide for recovery of only the direct cost of
21 the duplication.

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

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

1 (3) subject to (1) of this section personal information in
2 files maintained on public employees, except that access may not be
3 denied to the person who is the subject of the records, or that person's
4 designee;

5 (4) personal information in files maintained on 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 on 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 on 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, or to the parent or
16 guardian of a minor who is the subject of the record except where this
17 access would violate the physician-patient privilege;

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

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

25 (9) archival materials donated by natural persons to the
26 extent of any written limitations placed on them as a condition of the
27 contribution; however, all archival materials become public information
28 after not more than 50 years and any statement of limitations must be
29 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, privileged information and confidential
5 commercial, financial, geological or geophysical data furnished in com-
6 pliance with state law or regulation, or in compliance with a municipal
7 ordinance;

8 (12) test questions and answers to be used in future license,
9 employment or academic examination;

10 (13) intelligence, investigatory and original entry records,
11 maintained by state or municipal law enforcement agencies, or any other
12 governmental unit, but only to the extent that the production of the
13 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 unjustifiable intrusion into a per-
18 son's right of 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, property, or physical safety of a
25 person;

26 (G) identify a victim of a 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 under rules established by the supreme court;

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

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

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

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

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

28 (h) The exceptions provided under this chapter do not preclude the
29 release or production of subpoenaed records or information to a state or

1 municipal agency during the course of an investigation;

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

7 (j) The fact that a crime has been committed, the name of the
8 crime, the time of commission and location, the name of any victim
9 (unless the victim of a criminal sexual assault) and the name of any
10 person who is charged with the crime is a matter of public information
11 and record, except as provided in AS 47.10.090.

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

14 (1) produce the record immediately; or

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

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

29 (c) When the lawful custodian of a record determines that contents

1 of a record render it exempt under the provisions of this section, he
2 shall also determine whether a deletion of the exempt parts of the
3 record will make it suitable for release, and, if so, the deletion shall
4 be made and the record released, with the notation that exempt material
5 has been removed. If the custodian determines that the record, or a
6 portion of the record, is not open to inspection, he shall, in a certi-
7 fied writing, inform the person requesting the records of his determi-
8 nation, of the statutory basis for this decision, and that under AS
9 40.25.025 a suit may be brought to compel production of records that are
10 improperly withheld.

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

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

21 (b) The court may charge no filing fee, and the Department of
22 Public Safety may charge no fee for service of process, from an appli-
23 cant seeking an injunction under this section. No security may be
24 required by the court from an applicant seeking an injunction under this
25 section. If the applicant is granted the injunction, he shall be en-
26 titled to recover costs and reasonable attorney fees from the govern-
27 mental unit.

28 (c) The superior court shall make available to an applicant, free
29 of charge, a simplified form for proceeding without counsel under this

1 section. The form shall require only identification of the applicant
2 and the name of the custodian alleged to be improperly withholding
3 records, and a simple explanation of the records sought.

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

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

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

1 months, or by both.

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

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

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

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

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

16 (3) "governmental unit" means an agency, political subdivi-
17 sion, legislative body, board of regents, or an administrative body,
18 board, commission, committee, subcommittee, authority, council, agency,
19 or other organization, including subordinate units of the above groups,
20 of the state or any of its political subdivisions, including but not
21 limited to municipalities, boroughs, school boards, and all other
22 boards, agencies, assemblies, councils, departments, divisions, bureaus,
23 commissions or organizations, advisory or otherwise, of the state or
24 local government supported in whole or in part by public money or
25 authorized to spend public money;

26 (4) "personal information" means information about an indivi-
27 dual person, the disclosure of which would constitute an unjustifiable
28 intrusion into a person's right of privacy;

29 (5) "record" means any document, paper, memoranda, book,

1 letter, drawing, map, plat, photo, photographic file, motion picture,
2 film, microfilm, microphotograph, exhibit, magnetic or paper tape,
3 punched card, or other document of any other material, regardless of
4 physical form or characteristic, developed or received under law or in
5 connection with the transaction of official business and preserved or
6 appropriate for preservation by a governmental unit as evidence of the
7 organization, function, policies, decisions, procedures, operations or
8 other activities of the state or political subdivision or because of the
9 informational value in them; it also includes staff manuals and instruc-
10 tions to staff that directly or indirectly affect the public.

11 * Sec. 2. AS 44.62.310 is amended by adding a new subsection to read:

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

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

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

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

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

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