

Original sponsors: Parr, Brown
Buchholdt, et al

Offered: 4/26/79
Referred: Judiciary

1 IN THE HOUSE

BY THE STATE AFFAIRS COMMITTEE

2 SENATE CS FOR 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; and
8 providing for an effective date."

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

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

11 CHAPTER 25. PRIVACY AND PUBLIC INFORMATION.

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

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

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

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

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

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

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

27 Sec. 40.25.015. 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, unless the
2 inspection infringes on a person's right to privacy. The custodian of
3 the records shall take all necessary precautions for their preservation
4 and safekeeping.

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

16 (c) Copies of records may be requested by telephone, electronic
17 communication, or by mail. These requests shall be treated in accor-
18 dance with the provisions of (a) and (b) of this section.

19 (d) The commissioner of administration shall prescribe a uniform
20 schedule of fees charged by state agencies to be limited to reasonable
21 standard charges for documents search and duplication, providing for
22 recovery of only the direct cost of the search and duplication. The
23 commissioner may provide by regulation for the furnishing of documents
24 without charge or at a reduced charge.

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

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

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

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

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

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

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

16 (6) personal information in medical, psychological, and
17 sociological files maintained on individual persons, exclusive of autop-
18 sy reports, except that access may not be denied to the person who is
19 the subject of the record, or his designee, or to the parent or guardian
20 of a minor who is the subject of the record except where this access
21 would violate the physician-patient privilege;

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

25 (8) personal information similar to personal information in
26 files under (3) - (7) of this subsection, 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 (9) archival materials donated by natural persons to the

1 extent of any written limitations placed on them as a condition of the
2 contribution; however, all archival materials become public information
3 after not more than 50 years and any statement of limitations must be
4 produced upon denial of access;

5 (10) circulation records maintained by public libraries,
6 public school libraries, and University of Alaska libraries showing
7 personal transactions by those borrowing from them;

8 (11) trade secrets, privileged information and confidential
9 commercial, financial, geological or geophysical data which is developed
10 by a state agency or voluntarily furnished to a state agency in com-
11 pliance with state law or regulation, or in compliance with a municipal
12 ordinance;

13 (12) test materials, questions and answers to be used in
14 future license, employment or academic examination;

15 (13) intelligence, investigatory and original entry records,
16 maintained by state or municipal law enforcement agencies, or any other
17 governmental unit, but only to the extent that the production of the
18 records would

19 (A) interfere with enforcement proceedings;

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

22 (C) constitute an unjustifiable intrusion into a per-
23 son's right of privacy;

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

28 (E) disclose investigative techniques and procedures;

29 (F) endanger the life, property, or physical safety of a

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29

person;

(G) identify a victim of a criminal sexual assault;

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

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

(15) attorney work product in the possession of a governmental unit;

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

(17) trade secrets and commercial or financial information loaned to the University of Alaska to conduct research;

(18) personal and confidential records of the governor and lieutenant governor;

(19) records required to be kept confidential by a federal law or regulation.

(f) Unless specifically exempted from disclosure by statute outside this chapter, all records become public after they are 50 years old.

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

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

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

4 (h) The exceptions provided under this chapter do not preclude the
5 release or production of subpoenaed records or information to a state or
6 municipal agency during the course of an investigation;

7 (i) All personnel records showing salary or compensation shall be
8 open for public inspection. This public access is not an infringement
9 of a person's right to privacy.

10 (j) Unless otherwise protected from disclosure under (e)(13) of
11 this section the fact that a crime has been committed, the name of the
12 crime, the time of commission and location, the name of any victim
13 (unless the victim of a criminal sexual assault), and the name of any
14 person who is officially charged with the crime is a matter of public
15 information and record, except as provided in AS 47.10.090.

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

18 (1) determine, within 10 days (excepting Saturdays, Sundays,
19 and legal public holidays) after the receipt of the request, whether to
20 comply with it and immediately notify the person making the request of
21 the determination and the reasons for the determination, of the esti-
22 mated costs of any search and duplication, and of the right to appeal to
23 the head of the governmental unit any adverse determination; and

24 (2) make a determination with respect to any appeal within 20
25 days (excepting Saturdays, Sundays, and legal public holidays) after the
26 receipt of the appeal; if on appeal the denial of the request for re-
27 cords is in whole or in part upheld, the governmental agency shall
28 notify the person making the request of the provisions for judicial re-
29 view of that determination under AS 40.25.025.

1 (b) In unusual circumstances the time limits prescribed in either
2 (a)(1) or (2) of this section may be extended by written notice to the
3 person making the request setting out the reasons for the extension and
4 the date on which a determination is expected to be dispatched. A
5 notice may not specify a date that would result in an extension for more
6 than 10 working days. As used in this subsection, "unusual circum-
7 stances" means, but only to the extent reasonably necessary to the pro-
8 per processing of the particular request,

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

12 (2) the need to search for, collect, and appropriately exa-
13 mine a voluminous amount of separate and distinct records which are
14 demanded in a single request; or

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

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

1 (d) When the lawful custodian of a record determines that portions
2 of a record render it exempt under the provisions of AS 40.25.015, he
3 shall delete the exempt provisions from the record before release, and
4 shall in writing inform the person requesting the record of his deter-
5 mination of the specific statutory basis for the deletion and of the
6 procedures for appeal under (a) of this section.

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

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

17 (b) No security may be required by the court from an applicant
18 seeking an injunction under this section.

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 de-
27 termine the matter de novo, and may examine the contents of any records
28 in camera to determine whether the records or any portion of them may be
29 withheld under any of the exceptions set out in AS 40.25.015, and the

1 burden is on the agency to sustain its action.

2 Sec. 40.25.030. DEFINITIONS. In this chapter, unless the context
3 otherwise requires,

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

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

9 (3) "governmental unit" means an administrative body, board,
10 commission, committee, subcommittee, authority, council, department,
11 division, bureau, agency, or other organization within the executive
12 branch, and includes units of state government such as the University of
13 Alaska and the Alaska State Housing Authority;

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

17 (5) "record" means any document, paper, memoranda, book,
18 letter, drawing, map, plat, photo, photographic file, motion picture,
19 film, microfilm, microphotograph, exhibit, magnetic or paper tape,
20 punched card, or other document of any other material, regardless of
21 physical form or characteristic, developed or received under law or in
22 connection with the transaction of official business by a governmental
23 unit and preserved or appropriate for preservation by a governmental
24 unit as evidence of the organization, function, policies, decisions,
25 procedures, operations or other activities of the state or because of
26 the informational value in them; it also includes staff manuals and
27 instructions to staff that directly or indirectly affect the public.

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

29 (g) Nothing in this section may be construed to prevent the hold-

1 ing of conferences between two or more public bodies, or their repre-
2 sentatives, but these conferences are subject to the same regulations
3 for holding executive or closed sessions as are applicable to any other
4 public body.

5 * Sec. 3. In sec. 1 of this Act, AS 40.25.025(b) has the effect of
6 changing Rule 65 of the Civil Rules of Court relating to security deposits
7 required in civil actions.

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

10 * Sec. 5. This Act takes effect 180 days after the effective date of ch.
11 166 SLA 1978.

12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29