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1 IN THE HOUSE

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2 HOUSE BILL NO. 7

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 TWELFTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to privacy and public information;  
7 and changing Rule 65 of the Alaska Supreme Court Rules  
8 of Civil Procedure."

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  
14 the people's business;

15 (2) the people of this state do not yield their sovereignty  
16 to the governmental units 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 governmental units they have  
22 created;

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

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

28 Sec. 40.25.015. RECORDS TO BE OPEN TO INSPECTION; EXCEPTIONS.

29 (a) Except as otherwise specifically provided by statute, all records

1 are open to inspection and copying by any person during the regular  
2 office hours of the custodian of the records, unless the inspection  
3 infringes on a person's right to privacy. The custodian of records  
4 shall take all necessary precautions for the preservation and safekeep-  
5 ing of the records.

6 (b) Every custodian of records shall make the records available  
7 for public inspection under this section. If a person may inspect a  
8 record under this section or under a statute, the custodian shall make  
9 a copy of the record on request and payment of any required fee. A  
10 custodian shall permit a record in his office to be reproduced in any  
11 reasonable manner. A custodian shall furnish proper and reasonably  
12 accessible facilities for inspection of records, subject to reasonable  
13 restrictions necessary for the protection of the records and necessary  
14 to prevent interference with the regular duties of the custodian and  
15 his employees. If a certified copy of a record is requested, that copy  
16 is evidence of the original.

17 (c) A copy of a record may be requested by telephone, electronic  
18 communication, or by mail.

19 (d) The commissioner of administration shall prescribe a uniform  
20 schedule of fees limited to reasonable standard charges for document  
21 duplication. The fees may provide for recovery of only the direct cost  
22 of the duplication.

23 (e) The following records are not open to inspection under this  
24 section:

- 25 (1) those exempted from disclosure by statute;
- 26 (2) a tax or information return, including a record or  
27 report relating to that return, which is required to be filed in accor-  
28 dance with AS 43 or in accordance with a municipal ordinance, except  
29 that inspection may not be denied to the person who is the subject of

1 the record or that person's designee;

2 (3) personal information in files maintained on public em-  
3 ployees, except that inspection may not be denied to the person who is  
4 the subject of the records or that person's designee and except that  
5 the information described in (1) of this section may be inspected;

6 (4) personal information in files maintained on students in  
7 public schools, except that inspection may not be denied to the student,  
8 a parent or guardian of the student, a person responsible for supervis-  
9 ing the student or that person's designee;

10 (5) personal information in files maintained on students at  
11 the University of Alaska, except that inspection may not be denied to  
12 the student or the student's designee;

13 (6) personal information in medical, psychological, and  
14 sociological files maintained on individual persons, exclusive of  
15 autopsy reports, except that inspection may not be denied to the person  
16 who is the subject of the record or his designee, or to the parent or  
17 guardian of a minor who is the subject of the record except when the  
18 inspection would violate the physician-patient privilege;

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

22 (8) archival materials donated by natural persons to the  
23 extent of written limitations placed on them as a condition of the  
24 contribution; however, any statement of limitations must be produced by  
25 the custodian upon denial of inspection and all archival materials are  
26 open to inspection after 50 years;

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

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

5 (11) test questions and answers to be used in a future  
6 license, employment, or academic examination;

7 (12) intelligence and investigatory records, maintained by a  
8 state or municipal law enforcement agency, or other governmental unit,  
9 but only to the extent that the inspection would

10 (A) interfere with enforcement proceedings;

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

13 (C) disclose the identity of a confidential source and,  
14 in the case of a record compiled by a state or municipal criminal  
15 law enforcement agency or other governmental unit in the course of  
16 a criminal investigation, confidential information furnished only  
17 by the confidential source;

18 (D) disclose investigative techniques and procedures;

19 (E) endanger the life, property, or physical safety of  
20 a person;

21 (F) identify a victim of a sexual assault;

22 (G) disclose information otherwise exempt under this  
23 chapter or state statute;

24 (13) records of security systems, procedures established for  
25 the protection of persons or property, and systems or procedures secur-  
26 ing a penal institution or place of detention for persons accused or  
27 convicted of a crime or for persons under the jurisdiction of the court  
28 under AS 47.10, but only to the extent that disclosure would compromise  
29 the effectiveness of the systems or procedures;

1 (14) attorney work product in the possession of a governmen-  
2 tal unit until the matter occasioning the preparation of the work  
3 product is closed;

4 (15) notes, memoranda, draft decisions, opinions, or other  
5 similar documents prepared by a justice or a judge or a person working  
6 under his supervision in the process of deciding a legal issue; however,  
7 after the legal issue has been decided, the notes, memoranda, draft  
8 decisions, opinions, or similar documents are public records and are  
9 available for inspection under rules established by the supreme court;

10 (16) records related solely to the internal practices of a  
11 governmental unit if the inspection of the record would enable a law  
12 violator to escape detection.

13 (f) Unless specifically exempted from disclosure by statute, all  
14 records are open to inspection after they are 20 years old.

15 (g) Information contained in records not open to inspection under  
16 (e) of this section may be used in statistical or other information-  
17 gathering activities if

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

20 (2) use of the information is made in a manner which does  
21 not compromise or defeat the purposes of any statute designed to main-  
22 tain the confidentiality of the information.

23 (h) The exceptions in this section do not preclude the release of  
24 subpoenaed records to a state or municipal agency during the course of  
25 an investigation.

26 (i) A personnel record that shows salary or other compensation or  
27 that concerns an employee's current performance or ability to perform  
28 the responsibilities of his employment is open for public inspection.  
29 This public access is not an infringement of a person's right to pri-

1 vacy.

2 (j) The fact that a crime has been committed, the nature of the  
3 crime, the time of commission and location of the crime, the name of  
4 any victim (unless the crime is a sexual assault), and the name of any  
5 person who is charged with the crime are matters of public information  
6 and record except as provided in AS 47.10.090.

7 Sec. 40.25.020. REQUESTS FOR RECORDS. (a) A governmental unit,  
8 upon a request for a record made under this section, shall

9 (1) produce the record immediately; or

10 (2) if the record is in active use or in storage and not  
11 available at the time the request is made, at that time state this fact  
12 in writing to the requestor and the requestor may set a date and hour  
13 at which the record may be examined.

14 (b) A person making a request to a governmental unit for a record  
15 under this section is considered to have exhausted his administrative  
16 remedies with respect to the request if the governmental unit fails to  
17 comply with this section. If the governmental unit can show that  
18 exceptional circumstances exist and that it is exercising due diligence  
19 in responding to the request, the court may retain jurisdiction and  
20 allow the governmental unit additional time to comply with this section.  
21 Upon a determination by a governmental unit to comply with a request  
22 for a record, the record shall be made promptly available to the person  
23 making the request.

24 (c) When a custodian determines that the contents of a record  
25 exempt it under the provisions of AS 40.25.015, he shall also determine  
26 whether a deletion of the exempt parts of the record will make the  
27 record suitable for release, and, if so, the deletion shall be made and  
28 the record released, with the notation that exempt material has been  
29 removed. If the custodian determines that the record or a portion of

1 the record is not open to inspection, he shall, in a certified writing,  
2 inform the person requesting the record of his determination, of a  
3 description of the contents of the record withheld, of the statutory  
4 basis for his determination, and that under AS 40.25.025 a suit may be  
5 brought to compel production of a record that is improperly withheld.

6 (d) The written denial of a request for a record under this  
7 section shall set out the names and positions of each person responsible  
8 for the denial of the request. Each governmental unit shall maintain a  
9 record of denials of requests for records. The record maintained is  
10 available for inspection.

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

18 (b) The court may not charge a filing fee and the Department of  
19 Public Safety may not charge a fee for service of process from an  
20 applicant seeking an injunction under this section. Security may not  
21 be required by the court from an applicant seeking an injunction under  
22 this section. If the applicant is granted the injunction, he is en-  
23 titled to recover costs and reasonable attorney fees from the govern-  
24 mental unit.

25 (c) The superior court shall make available to an applicant, free  
26 of charge, a simplified form for proceeding without counsel under this  
27 section. The form shall require only identification of the applicant,  
28 the name of the custodian alleged to be improperly withholding a record,  
29 and a simple explanation of the record sought.

1 (d) In a suit brought under this section the court may enjoin  
2 withholding of a record and order the production to the complainant of  
3 the record improperly withheld. The court shall determine the matter  
4 de novo and may examine the contents of the record in camera to deter-  
5 mine whether the record or any portion of it may be withheld under an  
6 exception set out in AS 40.25.015. The burden is on the governmental  
7 unit to sustain its determination.

8 Sec. 40.25.030. MISHANDLING OF RECORDS. A person who has the  
9 legal custody of and who unlawfully and intentionally destroys, con-  
10 ceals, alters, erases, or mutilates a record or a person who unlawfully  
11 and intentionally destroys, conceals, alters, erases, or mutilates a  
12 record, or wrongfully takes a record from the person having legal  
13 custody of it, or who has obtained possession wrongfully and refuses or  
14 neglects to return or produce the record when lawfully required or  
15 demanded to do so is guilty of a class A misdemeanor.

16 Sec. 40.25.035. OBSTRUCTION OF ACCESS TO RECORDS. (a) A custo-  
17 dian of a record subject to inspection under this chapter who inten-  
18 tionally obstructs or attempts to obstruct, or a person not having  
19 custody or control who intentionally aids or abets the custodian in  
20 obstructing or attempting to obstruct, the inspection of the record in  
21 violation of this chapter is guilty of a class B misdemeanor. Upon a  
22 subsequent conviction that person is guilty of a class A misdemeanor.

23 (b) A person who has been wrongfully denied access to a record  
24 under this chapter has a civil cause of action against the person re-  
25 sponsible for the violation and may recover actual damages and reason-  
26 able attorney fees and other reasonable litigation costs.

27 (c) A good faith reliance upon the provisions of this chapter or  
28 upon a statute governing the confidentiality of public records is a  
29 defense to a criminal or civil action brought under this section.

1           Sec. 40.25.040. DEFINITIONS. In this chapter, unless the context  
2 otherwise requires,

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

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

8           (3) "governmental unit" means an agency, political subdivi-  
9 sion, legislative body, board of regents, or an administrative body,  
10 board, commission, committee, subcommittee, authority, council, agency,  
11 or other organization, including subordinate units of the above groups,  
12 of the state or any of its political subdivisions, including but not  
13 limited to municipalities, cities, boroughs, school boards, and all  
14 other boards, agencies, assemblies, councils, departments, divisions,  
15 bureaus, commissions or organizations, advisory or otherwise, of the  
16 state or local government supported in whole or in part by public money  
17 or authorized to spend public money and any independent contractor paid  
18 with public money and under the supervision of a listed governmental  
19 unit;

20           (4) "personal information" means information about an indi-  
21 vidual person, the disclosure of which would constitute an unjustifi-  
22 able intrusion into a person's right of privacy;

23           (5) "record" means a document, paper, memorandum, book,  
24 letter, drawing, map, plat, photo, photographic file, motion picture,  
25 film, microfilm, microphotograph, exhibit, magnetic or paper tape,  
26 punched card, information stored in a computer storage system, or any  
27 other material, regardless of physical form or characteristic, developed  
28 or received under law or in connection with the transaction of official  
29 business and preserved or appropriate for preservation by a governmental

1 unit as evidence of the organization, function, policies, decisions,  
2 procedures, operations or other activities of the state or political  
3 subdivision or because of the informational value in them; it also  
4 includes staff manuals and instructions to staff that directly or  
5 indirectly affect the public.

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

7 (g) This section does not prevent the holding of conferences  
8 between two or more public bodies, or their representatives, but these  
9 conferences are subject to the same regulations for holding executive  
10 or closed sessions as apply to any other public body.

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

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

14 \* Sec. 4. AS 09.25.110, 09.25.120, 09.25.125, and AS 11.56.820 are re-  
15 pealed.

16 \* Sec. 5. In sec. 1 of this Act, AS 40.25.025(b) has the effect of  
17 changing Rule 65 of the Alaska Supreme Court Rules of Civil Procedure relat-  
18 ing to security deposits required in civil actions.