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Referred: State Affairs and
Judiciary

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1 IN THE SENATE

2 SENATE BILL NO. 90

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 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
26 to privacy or is otherwise prohibited by statute.

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

28 (a) Except as otherwise specifically provided by statute, all records
29 are open to inspection and copying by any person during the regular

1 office hours of the lawful custodian of the records or his designee,
2 unless the inspection infringes on a person's right to privacy. The
3 custodian of the records shall take all necessary precautions for their
4 preservation 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 to be limited to reasonable standard charges for docu-
21 ment duplication, and provide for recovery of only the direct cost of
22 the duplication.

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

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

1 person's designee;

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

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

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

13 (6) personal information in medical, psychological, and
14 sociological files maintained on individual persons, exclusive of
15 autopsy reports, except that access may not be denied to the person who
16 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 where this
18 access would violate the physician-patient privilege;

19 (7) personal information in files maintained on recipients
20 of social services, except that access may not be denied to the person
21 who 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 written limitations placed on them as a condition of the
28 contribution; however, all archival materials become public information
29 after not more than 50 years and any statement of limitations must be

1 produced upon denial of access;

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

5 (11) trade secrets, privileged information and confidential
6 commercial, financial, geological or geophysical data furnished in com-
7 pliance with state statute or regulation, or in compliance with a
8 municipal ordinance;

9 (12) test questions and answers to be used in a future li-
10 cense, employment or academic examination;

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

15 (A) interfere with enforcement proceedings;

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

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

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

24 (E) disclose investigative techniques and procedures;

25 (F) endanger the life, property, or physical safety of
26 a person;

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

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

1 (14) records of security systems and procedures established
2 for the purpose of the protection of persons or property, or securing a
3 penal institution or place of detention of persons accused or convicted
4 of a crime or persons under the jurisdiction of the court under AS 47.-
5 10, but only to the extent that disclosure would compromise the effec-
6 tiveness of the system;

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

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

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 specifically exempted from disclosure by statute, all
20 records become public after they are 20 years old.

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

24 (1) any information which would tend to identify the person
25 to whom 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 statute designed to maintain the confi-
28 dentiality of the information.

29 (h) The exceptions provided in this section do not preclude the

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

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

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

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

15 (1) produce the record immediately; or

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

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

1 (c) When the lawful custodian of a record determines that contents
2 of a record exempt it under the provisions of AS 42.05.015, he shall
3 also determine whether a deletion of the exempt parts of the record
4 will make the record suitable for release, and, if so, the deletion
5 shall be made and the record released, with the notation that exempt
6 material has been removed. If the custodian determines that the record,
7 or a portion of the record, is not open to inspection, he shall, in a
8 certified writing, inform the person requesting the records of his
9 determination, of the statutory basis for this decision, and that under
10 AS 40.25.025 a suit may be brought to compel production of records that
11 are improperly withheld.

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

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

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

29 (c) The superior court shall make available to an applicant, free

1 of charge, a simplified form for proceeding without counsel under this
2 section. The form shall require only identification of the applicant
3 and the name of the custodian alleged to be improperly withholding
4 records, and a simple explanation of the records sought.

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

12 Sec. 40.25.035. CIVIL ACTION FOR OBSTRUCTION OF ACCESS TO RECORDS.

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

17 (b) 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 civil action brought under this section.

20 Sec. 40.25.040. 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, legislative body, board of regents, or an administrative body,
29 board, commission, committee, subcommittee, authority, council, agency,

1 or other organization, including subordinate units of the above groups,
2 of the state or any of its political subdivisions, including but not
3 limited to municipalities, boroughs, school boards, and all other
4 boards, agencies, assemblies, councils, departments, divisions, bureaus,
5 commissions or organizations, advisory or otherwise, of the state or
6 local government supported in whole or in part by public money or
7 authorized to spend public money;

8 (4) "personal information" means information about an indi-
9 vidual person, the disclosure of which would constitute an unjustifiable
10 intrusion into a person's right of privacy;

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

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

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

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

29 (3) matters which by state statute [LAW, MUNICIPAL CHARTER,

1 OR ORDINANCE] are required to be confidential.

2 * Sec. 4. AS 11.56.820 is amended by adding a new subsection to read:

3 (c) It is an affirmative defense to a prosecution under this
4 section that the defendant relied in good faith upon the provisions of
5 AS 40.25 or of other law governing the confidentiality of public
6 records.

7 * Sec. 5. In sec. 1 of this Act, AS 40.25.025(b) has the effect of
8 changing Rule 65 of the Alaska Supreme Court Rules of Civil Procedure re-
9 lating to security deposits required in civil actions.

10 * Sec. 6. AS 09.25.110, 09.25.120, and 09.25.125 are repealed.
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