

Original sponsors: Parr, Fischer,
Stimson and Rodey

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1 IN THE SENATE

BY THE STATE AFFAIRS COMMITTEE

2 CS FOR SENATE BILL NO. 90 (State Affairs)

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 changing Rule 65 of the Alaska Supreme Court Rules of
8 Civil Procedure; and 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
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. (a) Except as
28 otherwise specifically provided by statute, all records are open to
29 inspection and copying by any person during the regular office hours of

1 the lawful custodian of the records or the custodian's designee. The
2 custodian of the records shall take all necessary precautions for their
3 preservation 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 the custodian's
8 office to be reproduced in any reasonable manner. In addition, a
9 custodian shall furnish proper and reasonably accessible facilities for
10 inspection of records, subject to reasonable restrictions as are neces-
11 sary for the protection of the writings and records and to prevent
12 interference with the regular discharge of the duties of the custodian
13 and the employees of the custodian. If a certified copy is requested,
14 that copy is in all cases evidence of the original.

15 (c) Copies of records may be requested orally or in writing, in
16 person or by telephone, electronic communication, or by mail. These
17 requests shall be treated in accordance with the provisions of (a) and
18 (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. The commissioner may reduce or waive the payment of
23 fees if a reduction or waiver would be in the public interest or if the
24 requester is indigent. A person can obtain 20 pages of a record copied
25 without charge within any 24-hour period.

26 Sec. 40.25.020. DUTIES OF GOVERNMENTAL UNIT. (a) Immediately
27 after receiving a request for a public record, the custodian of the
28 record shall

29 (1) make the record available;

1 (2) inform the requester that unusual circumstances, as
2 defined in (e) of this section, have delayed or impaired the handling
3 of the request or that the record is in active use or storage and not
4 immediately available and specify in writing the earliest time and
5 date, not later than five days after receipt of the request, when the
6 record will be available;

7 (3) inform the requester that the governmental unit does not
8 maintain the record, and provide, if known, the name and location of
9 the governmental unit maintaining the record; or

10 (4) deny the request.

11 (b) If a request for access to a public record is denied, in
12 whole or part, the governmental unit shall in writing notify the re-
13 quester of the specific reasons for the denial, and identify by name
14 and position or title the person responsible for the denial.

15 (c) When the governmental unit determines that contents of a
16 record exempt it under the provisions of AS 40.25.030, it shall also
17 determine whether a deletion of the exempt parts of the record will
18 make the record suitable for release, and, if so, the deletion shall be
19 made and the record released, with the notation that exempt material
20 has been removed. If the governmental unit determines that the record,
21 or a portion of the record, is not open to inspection, it shall, in a
22 certified writing, inform the person requesting the record of its
23 determination, of the statutory basis for this decision, and that under
24 AS 40.25.070 a suit may be brought to compel production of records that
25 are improperly withheld.

26 (d) Making a request to a governmental unit for a record under
27 AS 40.25.015 is considered to exhaust a person's administrative
28 remedies with respect to the request if the governmental unit denies
29 the request or fails to comply with (a)(1) - (3) of this section. If

1 the governmental unit can show that unusual circumstances, as defined
2 in (e) of this section, continue to exist and that it is exercising due
3 diligence in responding to the request, the court under AS 40.25.070
4 may retain jurisdiction and allow the governmental unit additional time
5 to complete its review of the record. Upon a determination by a govern-
6 mental unit to comply with a request for a record, the record shall be
7 made promptly available to the person making the request.

8 (e) As used in this section, "unusual circumstances" means, but
9 only to the extent reasonably necessary to the proper processing of the
10 particular request,

11 (1) the need to search for and collect a requested record
12 from a field facility or other establishment that is separate from the
13 office processing the request;

14 (2) the need to search for, collect, and appropriately
15 examine a voluminous amount or variety of separate and distinct records
16 which are demanded in a single request;

17 (3) the need for consultation, which shall be conducted with
18 all practicable speed, with another governmental unit having a substan-
19 tial interest in the determination of the request; or

20 (4) the need to notify a person and afford the person an
21 opportunity to be heard under AS 40.25.030(c).

22 Sec. 40.25.030. EXEMPTIONS. (a) The following records are
23 excluded from the provisions of AS 40.25.015:

24 (1) records 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;

28 (3) archival materials donated by individuals to the extent
29 of any written limitations placed on them as a condition of the contri-

1 bution; however, all archival materials become public information after
2 not more than 50 years and any statement of limitations must be produced
3 upon denial of access;

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

7 (5) trade secrets and confidential commercial, financial,
8 geological or geophysical data furnished to a governmental unit;

9 (6) materials used to administer a licensing, employment, or
10 academic examination if disclosure would compromise the fairness or
11 objectivity of the examination process;

12 (7) investigatory, intelligence, and original entry records,
13 compiled for law enforcement purposes, but only to the extent that
14 production of the 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 unwarranted invasion of personal
19 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 or

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

28 (8) records of security systems and procedures established
29 for the purpose of the protection of persons or property, or securing a

1 penal institution or place of detention of persons accused or convicted
2 of a crime or persons under the jurisdiction of the court under AS 47.-
3 10, but only to the extent that disclosure would compromise the effec-
4 tiveness of the system;

5 (9) attorney work product in the possession of a governmental
6 unit; however, once the legal issue has been decided, or the litigation
7 has been terminated, attorney work product that does not involve litiga-
8 tion strategy, or mental impressions or opinions of an attorney, or a
9 person working under the attorney's direction become public records;

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

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

20 (12) records, the disclosure of which would constitute an
21 unjustifiable invasion of personal privacy; in applying this exemption,
22 the governmental unit shall determine whether the public interest in
23 disclosure outweighs the privacy interest of the person to whom the
24 record pertains.

25 (b) If a governmental unit initially decides to disclose a record
26 to which the exemptions specified in (a)(7)(C) or (a)(12) of this
27 section may apply, and to the extent that it concludes that there is a
28 substantial probability that a person to whom the record pertains would
29 object to disclosure, it shall, in conformity with the time limitations

1 specified in AS 40.25.015, make reasonable efforts to notify that
2 person and provide that person with an opportunity to argue against
3 disclosure. If the governmental unit decides to grant disclosure over
4 objection, it shall notify the objector of its decision. If the govern-
5 mental unit decides not to grant disclosure, and an action is sub-
6 sequently brought under AS 40.25.070 to compel disclosure, it shall
7 make reasonable efforts to inform the objector of the suit.

8 (c) Unless specifically exempted from disclosure by state statute,
9 all records become public after they are 50 years old.

10 (d) Information contained in records exempted from disclosure
11 under (a) of this section may be released for valid statistical or
12 other information-gathering purposes if

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

15 (2) disclosure is made in a manner which would not compromise
16 or defeat the purposes of a state statute designed to maintain the
17 confidentiality of the information.

18 (e) The exemptions from public disclosure provided in this sec-
19 tion, or by other state law pertaining to the confidentiality of
20 records, do not preclude the release or production of subpoenaed records
21 or information to a state or municipal agency during the course of an
22 investigation;

23 (f) All information in personnel records of public employees
24 showing salary or compensation, job description, education and training
25 background, previous work experience, the status of any formal charges
26 against the employee and disciplinary action taken, or that concern the
27 employee's current performance or ability to perform job duties and
28 responsibilities shall be open for public inspection. Applications for
29 public employment submitted by finalists for employment are also open

1 to public inspection, but potential finalists shall be notified of this
2 fact and of their right to withdraw their application before public
3 inspection. As used in this section, "finalists" means the final three
4 applicants under consideration for employment or those applicants who
5 remain under consideration for employment after 90 percent of the
6 original applicants have been eliminated from consideration by the
7 governmental unit, whichever is greater.

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

12 Sec. 40.25.040. ACCESS TO RECORDS BY RECORD SUBJECT. (a) Except
13 as provided in (b) of this section, an individual or the individual's
14 authorized representative may examine or copy during the regular
15 business hours of the governmental unit, any record that pertains to
16 the individual. In implementing this section, the governmental unit
17 shall follow the procedures established in AS 40.25.015 - 40.25.020.

18 (b) A governmental unit is not required under (a) of this section
19 to disclose

20 (1) information exempt from disclosure under AS 40.25.-
21 030(a)(1) - (11), except to the extent that the information was sub-
22 mitted by the requester; however, for purposes of information that may
23 be exempt under AS 40.25.030(a)(6), under appropriate safeguards de-
24 signed to protect the integrity of the examination process, an indivi-
25 dual may examine that individual's test questions and answers in an
26 examination used for licensing or employment;

27 (2) information exempt from disclosure under AS 40.25.030-
28 (a)(12) that does not relate directly to the requester and which if
29 disclosed would constitute an unjustifiable invasion of another person's

1 personal privacy; or

2 (3) information that is subject to regulation under AS 12.62;
3 access to this information is governed by the provisions of AS 12.62.

4 (c) This section does not abridge any state statute that autho-
5 rizes an agency to withhold information from the parent or legal guar-
6 dian of a minor.

7 (d) If an individual requests a record containing information the
8 governmental unit is not required to disclose under (b) or (c) of this
9 section, the agency shall provide any reasonably segregable portion of
10 the record to the requester after deleting the undisclosable material.

11 Sec. 40.25.060. CORRECTION AND AMENDMENT OF RECORDS. (a) An
12 individual may request a governmental unit to correct or amend incom-
13 plete or inaccurate information pertaining to that individual if it is
14 contained in a record available under AS 40.25.040.

15 (b) Not later than 20 days after receiving a request from an
16 individual to correct or amend a record pertaining to that individual,
17 the governmental unit shall

18 (1) make the requested correction or amendment and inform
19 the individual of the action;

20 (2) inform the individual that the governmental unit does
21 not maintain the record and, if it knows, provide the name and location
22 of the governmental unit maintaining it; or

23 (3) inform the individual in writing of its refusal to
24 correct or amend the record as requested and the reason for the refusal;
25 if the governmental unit refuses to correct or amend the record, it
26 shall

27 (A) permit the individual to file with the record a
28 concise statement of that individual's reasons for the requested
29 correction or amendment and that individual's reasons for disagree-

1 ment with the refusal by the governmental unit; and

2 (B) notify the individual of the right to bring an
3 action under AS 40.25.070.

4 (c) Whenever a governmental unit discloses information to a third
5 party about which an individual has filed a statement under (b)(3)(A)
6 of this section, the governmental unit shall

7 (1) clearly identify the disputed portion of the information;

8 (2) furnish a copy of the individual's statement; and

9 (3) furnish a concise statement of the governmental unit's
10 current position with respect to the request for correction or amendment
11 and transmit a copy of this statement to the last known address of the
12 individual whose record is disclosed.

13 Sec. 40.25.070. ENFORCEMENT: INJUNCTIVE RELIEF. (a) A person
14 having custody or control of a record, or a person not having custody
15 or control who aids or abets a person having custody may be enjoined in
16 superior court from

17 (1) obstructing or attempting to obstruct the inspection of
18 a record subject to inspection under this chapter;

19 (2) failing to correct or amend a record under AS 40.25.060.

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

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 acting improperly, and a
2 simple explanation of the records sought or the correction or amendment
3 requested.

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 or order that the correction or amendment
7 be made. The court shall determine the matter de novo, and may examine
8 the contents of any records in camera to determine whether the records
9 or any portion of them may be withheld under any of the exemptions
10 specified in AS 40.25.030 or not corrected or amended under AS 40.25.-
11 060. The burden is on the agency to sustain its action.

12 Sec. 40.25.080. 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. 40.25.090. 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 the designee of the head of a governmental unit;

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 these groups, of
2 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, or any organization supported in whole or in part by
7 public money or authorized to spend public money;

8 (4) "individual" means a natural person;

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

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

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

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

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

1 * Sec. 4. In sec. 1 of this Act, AS 40.25.070(b) has the effect of
2 changing Rule 65 of the Alaska Supreme Court Rules of Civil Procedure re-
3 lating to security deposits required in civil actions.

4 * Sec. 5. AS 09.25.110, 09.25.120, and 09.25.125 are repealed.

5 * Sec. 6. This Act takes effect July 1, 1981.

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