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1 IN THE SENATE

BY THE JUDICIARY COMMITTEE

2 CS FOR SENATE BILL NO. 90 (Judiciary)

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 provided by AS 40.25.030, all records are open to inspection
29 and copying by any person during the regular office hours of the lawful

1 custodian of the records or the custodian's designee. 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 the custo-
8 dian's office to be reproduced in any reasonable manner. In addition,
9 a custodian shall furnish proper and reasonably accessible facilities
10 for inspection of records, subject to reasonable restrictions as are
11 necessary 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 and the actual postage costs if the documents are
23 mailed. The commissioner may reduce or waive the payment of fees if a
24 reduction or waiver would be in the public interest or if the requester
25 is indigent.

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 working days after receipt of the request,
6 when the 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. In addi-
15 tion, the governmental unit shall inform the requester that review of
16 the denial may be sought from the head of the governmental unit and
17 that a request for review must be filed within 30 days after notifica-
18 tion of the denial. The head of the governmental unit shall decide
19 within five working days after a request for review is filed whether to
20 uphold the denial of access. If the decision is to disclose, the
21 governmental unit shall immediately notify the requester and make the
22 record available. If the denial of access is upheld, in whole or in
23 part, the head of the governmental unit shall notify the requester in
24 writing of the decision, the specific reasons for the decision, and of
25 the right to bring a judicial action under AS 40.25.070.

26 (c) When the governmental unit determines that contents of a
27 record exempt it under the provisions of AS 40.25.030, it shall also
28 determine whether a deletion of the exempt parts of the record will
29 make the record suitable for release, and, if so, the deletion shall be

1 made and the record released, with the notation that exempt material
2 has been removed. If the governmental unit determines that the record
3 or a portion of the record is not open to inspection, it shall provide
4 written notification to the person requesting the record of its deter-
5 mination, of the statutory basis for this determination, and that under
6 AS 40.25.070 a suit may be brought to compel production of records that
7 are improperly withheld. If at the time of the determination the
8 requester is present in the office of the custodian, the notification
9 required by this subsection shall be provided by the custodian directly
10 to the requester; if the requester is not present in the office of the
11 custodian, the notice required by this subsection shall be by certified
12 mail.

13 (d) Making a request to a governmental unit for a record under
14 AS 40.25.015 is considered to exhaust a person's administrative remedies
15 with respect to the request if the governmental unit denies the request
16 or fails to comply with (a)(1) - (3) of this section. If the govern-
17 mental unit can show that unusual circumstances, as defined in (e) of
18 this section, continue to exist and that it is exercising due diligence
19 in responding to the request, the court under AS 40.25.070 may retain
20 jurisdiction and allow the governmental unit additional time to complete
21 its review of the record. Upon a determination by a governmental unit
22 to comply with a request for a record, the record shall be made promptly
23 available to the person making the request.

24 (e) As used in this section, "unusual circumstances" means

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

28 (2) the need to search for, collect, and appropriately
29 examine a voluminous amount or variety of separate and distinct records

1 which are demanded in a single request;

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

5 (4) the need to notify a person and afford the person an
6 opportunity to be heard under AS 40.25.030(b).

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

9 (1) records exempted from disclosure by state statute, court
10 rule, or federal law or regulation;

11 (2) any tax or information return, or record or report re-
12 lating to that return, which is required to be filed in accordance with
13 the provisions of AS 43 or municipal ordinance;

14 (3) archival materials donated by individuals to the extent
15 of any written limitations placed on them as a condition of the contri-
16 bution; however, all archival materials become public information after
17 not more than 50 years and any statement of limitations must be pro-
18 duced upon denial of access;

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

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

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

27 (7) investigatory, intelligence, and original entry records,
28 compiled for law enforcement purposes, but only to the extent that
29 production of the records would

- 1 (A) interfere with enforcement proceedings;
- 2 (B) deprive a person of a right to a fair trial or an
- 3 impartial adjudication;
- 4 (C) constitute an unwarranted invasion of personal
- 5 privacy;
- 6 (D) disclose the identity of a confidential source and,
- 7 in case of a record compiled by a criminal law enforcement author-
- 8 ity in the course of a criminal investigation, confidential infor-
- 9 mation furnished only by the confidential source;
- 10 (E) disclose investigative techniques and procedures;
- 11 or
- 12 (F) endanger the life, physical safety, or property of
- 13 a person;

14 (8) records of security systems and procedures established

15 for the purpose of the protection of persons or property, or securing a

16 penal institution or place of detention of persons accused or convicted

17 of a crime or persons under the jurisdiction of the court under AS 47.-

18 10, but only to the extent that disclosure would compromise the effec-

19 tiveness of the system;

20 (9) attorney work product in the possession of a governmen-

21 tal unit; however, once the legal issue has been decided, or the liti-

22 gation has been terminated, attorney work product that does not involve

23 litigation strategy, mental impressions, or professional opinions of an

24 attorney, or a person working under the attorney's direction become

25 public records;

26 (10) any notes, memoranda, draft decisions, opinions, or

27 other similar documents prepared by a justice or a judge, or a person

28 working under the supervision of a justice or a judge, in the process

29 of deciding a legal issue;

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

4 (12) personal information in medical, psychological, and
5 sociological files maintained on individual persons, exclusive of
6 autopsy reports, except that access may not be denied to the person who
7 is the subject of the record, or his designee;

8 (13) records the disclosure of which would constitute an
9 intrusion into the collective bargaining process between public
10 employers and employees, including but not limited to grievance files
11 and materials used in contract negotiations; and

12 (14) records the disclosure of which would constitute an
13 unjustifiable invasion of personal privacy; in applying this exemption,
14 the governmental unit shall determine whether the public interest in
15 disclosure outweighs the privacy interest of the person to whom the
16 record pertains.

17 (b) If a governmental unit initially decides to disclose a record
18 to which the exemptions specified in (a)(7)(C) or (a)(14) of this
19 section may apply, and to the extent that it concludes that there is a
20 substantial probability that a person to whom the record pertains would
21 object to disclosure, it shall, in conformity with the time limitations
22 specified in AS 40.25.020, make diligent efforts to notify that person
23 and provide that person with an opportunity to argue against disclo-
24 sure. An affidavit of inquiry shall be made if the person is not
25 located. If the governmental unit decides to grant disclosure over
26 objection, it shall notify the objector by certified mail of its
27 decision. If the governmental unit decides not to grant disclosure,
28 and an action is subsequently brought under AS 40.25.070 to compel
29 disclosure, it shall make diligent efforts to inform the objector of

1 the suit.

2 Sec. 40.25.035. PROVISIONAL RELEASE OF INFORMATION.

3 (a) Unless specifically exempted from disclosure by state sta-
4 tute, all records become public after they are 50 years old.

5 (b) Information contained in records exempted from disclosure
6 under AS 40.25.030(a) may be released for valid statistical or other
7 information-gathering purposes if

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

10 (2) disclosure is made in a manner which would not com-
11 promise or defeat the purposes of a state statute designed to maintain
12 the confidentiality of the information.

13 (c) The exemptions from public disclosure provided in AS 40.25.-
14 030 or by other state law pertaining to the confidentiality of records,
15 do not preclude the release or production of subpoenaed records or
16 information to a state or municipal agency during the course of an
17 investigation.

18 (d) All information in personnel records of public employees
19 showing salary or compensation, job description, education and training
20 background, and previous work experience shall be open for public
21 inspection. Applications for public employment submitted by finalists
22 for employment are also open to public inspection, but potential
23 finalists shall be notified of this fact and of their right to withdraw
24 their application before public inspection. As used in this subsection,
25 "finalists" means the final three applicants under consideration for
26 employment or those applicants who remain under consideration for
27 employment after 90 percent of the original applicants have been elimi-
28 nated from consideration by the governmental unit, whichever is
29 greater.

1 (e) The fact that a crime has been committed, the name of the
2 crime, the time of commission and location, and the name of any person
3 who is charged with a crime is a matter of public information and
4 record, except as provided in AS 47.10.090.

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

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

13 (1) information exempt from disclosure under AS 40.25.-
14 030(a)(1) - (13), except to the extent that the information was sub-
15 mitted by the requester; however, for purposes of information that may
16 be exempt under AS 40.25.030(a)(6), under appropriate safeguards de-
17 signed to protect the integrity of the examination process, an indivi-
18 dual may examine that individual's test questions and answers in an
19 examination used for licensing or employment;

20 (2) information exempt from disclosure under AS 40.25.030-
21 (a)(14) that does not relate directly to the requester and which if
22 disclosed would constitute an unjustifiable invasion of another
23 person's personal privacy; or

24 (3) information that is subject to regulation under AS 12.-
25 62; access to this information is governed by the provisions of
26 AS 12.62.

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

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

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

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

12 (1) make the requested correction or amendment and inform
13 the individual of the action;

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

17 (3) inform the individual in writing of its refusal to
18 correct or amend the record as requested and the reason for the refusal;
19 if the governmental unit refuses to correct or amend the record, it
20 shall

21 (A) permit the individual to file with the record a
22 concise statement of that individual's reasons for the requested
23 correction or amendment and that individual's reasons for dis-
24 agreement with the refusal by the governmental unit; and

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

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

1 (1) clearly identify the disputed portion of the informa-
2 tion;

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

4 (3) furnish a concise statement of the governmental unit's
5 current position with respect to the request for correction or amend-
6 ment and transmit a copy of this statement to the last known address of
7 the individual whose record is disclosed.

8 Sec. 40.25.070. ENFORCEMENT: INJUNCTIVE RELIEF. (a) A person
9 having custody or control of a record, or a person not having custody
10 or control who aids or abets a person having custody may be enjoined in
11 superior court from

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

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

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

22 (c) The superior court shall make available to an applicant, free
23 of charge, a simplified form for proceeding without counsel under this
24 section. The form shall require only identification of the applicant
25 and the name of the custodian alleged to be acting improperly, and a
26 simple explanation of the records sought or the correction or amendment
27 requested.

28 (d) In a suit brought under this section the court may enjoin
29 withholding of the records and order the production to the complainant

1 of records improperly withheld or order that the correction or amend-
2 ment be made. The court shall determine the matter de novo, and may
3 examine the contents of any records in camera to determine whether the
4 records or any portion of them may be withheld under any of the exemp-
5 tions specified in AS 40.25.030 or not corrected or amended under
6 AS 40.25.060. The burden is on the agency to sustain its action.

7 Sec. 40.25.080. CIVIL ACTION FOR OBSTRUCTION OF ACCESS TO RECORDS.

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

12 (b) A good faith reliance upon the provisions of this chapter or
13 of applicable law governing the confidentiality of public records is a
14 defense to a civil action brought under this section.

15 Sec. 40.25.090. DEFINITIONS. In this chapter, unless the context
16 otherwise requires,

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

20 (2) "custodian" means the head of any governmental unit or
21 the designee of the head of a governmental unit;

22 (3) "governmental unit" means an agency, political subdivi-
23 sion, legislative body, board of regents, or an administrative body,
24 board, commission, committee, subcommittee, authority, council, agency,
25 or other organization, including subordinate units of these groups, of
26 the state, or any of its political subdivisions, including but not
27 limited to municipalities, boroughs, school boards, and all other
28 boards, agencies, assemblies, councils, departments, divisions, bureaus,
29 commissions or organizations, advisory or otherwise, of the state or

1 local government, or any organization supported in whole or in part by
2 public money or authorized to spend public money;

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

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

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

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

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

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

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

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

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