

Original sponsor(s): REP. BROWN, Boucher, Goll

1 IN THE HOUSE BY THE STATE AFFAIRS COMMITTEE

2 CS FOR HOUSE BILL NO. 405 (State Affairs)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to public access and changes to the
7 information of public agencies; and relating to the
8 copyrighting of software produced by or for public
9 agencies."

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

11 * Section 1. LEGISLATIVE FINDINGS AND INTENT. (a) The legislature
12 finds that

13 (1) public access to government information is a fundamental
14 right that operates to check and balance the actions of elected and ap-
15 pointed officials and to maintain citizen control of government;

16 (2) computers and electronic data bases have proliferated
17 throughout government raising issues regarding access to electronic infor-
18 mation that are not addressed in present law;

19 (3) to protect the public's right to know, public records must
20 be available at nominal cost;

21 (4) to protect an individual's right to privacy under the state
22 and federal constitutions, the state should inform individuals if personal
23 information about them will be subject to public disclosure;

24 (5) an individual should have the opportunity to change personal
25 information contained in public records if the information is inaccurate or
26 incomplete;

27 (6) if public agencies increase electronic access to the state's
28 information systems, particularly for the more isolated communities of the
29 state, the delivery of public services and the availability of information

1 throughout the state would be enhanced;

2 (7) public access to state and municipal information systems
3 will be enhanced by establishing user fees for electronic services and
4 products that are calculated to recover a reasonable portion of the costs
5 associated with building and maintaining a public information system.

6 (b) If a provision in this Act is determined to be ambiguous as to
7 whether a record is subject to disclosure to the public, the ambiguity
8 shall be construed in favor of disclosure.

9 * Sec. 2. AS 09.25.110 is amended to read:

10 Sec. 09.25.110. INSPECTION AND COPIES OF PUBLIC RECORDS. Unless
11 specifically provided otherwise, the [BOOKS, RECORDS, PAPERS, FILES,
12 ACCOUNTS, WRITINGS, AND TRANSACTIONS OF ALL AGENCIES AND DEPARTMENTS
13 ARE] public records of all public agencies [AND] are open to inspec-
14 tion by the public under reasonable rules during regular office hours.
15 The public officer having the custody of public records shall give on
16 request and payment of the fee established under this section or
17 AS 09.25.115 [COSTS] a certified copy of the public record.

18 * Sec. 3. AS 09.25.110 is amended by adding new subsections to read:

19 (b) Except as otherwise provided in this section, the fee for
20 copying public records may not exceed the standard unit cost of dupli-
21 cation established by the public agency. Except for news organiza-
22 tions, the fee must be paid before the copies are made.

23 (c) If the production of records for one requester in a calendar
24 month exceeds 10 person-hours, the public agency shall require the
25 requester to pay the personnel costs required during the month to
26 complete the search and copying tasks. The personnel costs may not
27 exceed the actual salary and benefit costs for the personnel time
28 required to perform the search and copying tasks. Except for news
29 organizations, the requester shall pay the fee before the records are

1 disclosed, and the public agency may require payment in advance of the
2 search. If requests from a news organization or its agent require
3 more than 10 person-hours in a calendar month to complete, the public
4 agency may not require the news organization to pay the personnel
5 costs for the month unless the requests are unreasonable, made in bad
6 faith, or require an extraordinary expenditure of state resources.

7 (d) A public agency may reduce or waive a fee when the public
8 agency determines that the reduction or waiver is appropriate. Fee
9 reductions and waivers shall be uniformly applied among persons who
10 are similarly situated. A public agency may waive a fee of \$5 or less
11 if the fee is less than the cost to the public agency to arrange for
12 payment.

13 (e) Electronic information that is provided in printed form
14 shall be made available without codes or symbols, unless accompanied
15 by an explanation of the codes or symbols.

16 * Sec. 4. AS 09.25 is amended by adding a new section to read:

17 Sec. 09.25.115. ELECTRONIC SERVICES AND PRODUCTS. (a) Notwith-
18 standing AS 09.25.110(b) - (d) to the contrary, upon request and
19 payment of a fee established under (b) of this section, a public
20 agency may provide electronic services and products involving public
21 records to members of the public. A public agency is encouraged to
22 make information available in usable electronic formats to the great-
23 est extent feasible.

24 (b) A public agency shall establish a fee for electronic ser-
25 vices and products based on recovery of the actual incremental costs
26 of providing the electronic services and products, and a reasonable
27 portion of the costs associated with building and maintaining the
28 information system of the public agency. The fee may be reduced or
29 waived by the public agency if the electronic services and products

1 are to be used for a public purpose, including public agency program
2 support, nonprofit activities, journalism, and academic research. Fee
3 reductions and waivers shall be uniformly applied among persons who
4 are similarly situated.

5 (c) Notwithstanding (b) of this section, the fee for duplicating
6 a public record in the electronic form kept by a public agency may not
7 exceed the actual incremental costs of the public agency.

8 (d) Public agencies shall include in a contract for electronic
9 services and products provisions that

10 (1) protect the security and integrity of the information
11 system of the public agency and of information systems that are shared
12 by public agencies; and

13 (2) limit the liability of the public agency providing the
14 services and products.

15 (e) Each public agency shall notify the state library distribu-
16 tion and data access center established under AS 14.56.090 of the
17 electronic services and products offered by the public agency to the
18 public under this section. The notification must include a summary of
19 the available format options and the fees charged.

20 (f) When offering on-line access to an electronic file or data
21 base, a public agency also shall provide without charge on-line access
22 to the electronic file or data base through one or more public ter-
23 minals.

24 (g) Except as otherwise provided in (h) of this section, the
25 Telecommunications Information Council shall supervise and adopt
26 regulations under AS 44.62 (Administrative Procedure Act) for the
27 implementation and operation of the provisions of this section by
28 public agencies other than municipalities.

29 (h) Each public agency shall establish the fees for the

1 electronic services and products provided under this section. The
2 Telecommunications Information Council may cancel the fees established
3 by a public agency other than a municipality if the council determines
4 that the fees are not reasonable.

5 (i) A public agency other than a municipality shall separately
6 account for the fees received by the agency under this section and
7 deposited in the general fund. The annual estimated balance in the
8 account may be used by the legislature to make appropriations to the
9 agency to carry out the activities of the agency.

10 * Sec. 5. AS 09.25.120 is amended to read:

11 Sec. 09.25.120. INSPECTION AND COPYING OF PUBLIC RECORDS. Every
12 person has a right to inspect a public [WRITING OR] record in the
13 state, including public [WRITINGS AND] records in recorders' offices
14 except (1) records of vital statistics and adoption proceedings which
15 shall be treated in the manner required by AS 18.50; (2) records
16 pertaining to juveniles; (3) medical and related public health re-
17 cords; (4) records required to be kept confidential by a federal law
18 or regulation or by state law. Every public officer having the custo-
19 dy of records not included in the exceptions shall permit the inspec-
20 tion, and give on demand and on payment of the [LEGAL] fees under
21 AS 09.25.110 - 09.25.115 [THEREFOR] a certified copy of the [WRITING
22 OR] record, and the copy shall in all cases be evidence of the origi-
23 nal. Recorders shall permit memoranda, transcripts, and copies of the
24 public [WRITINGS AND] records in their offices to be made by photo-
25 graphy or otherwise for the purpose of examining titles to real estate
26 described in the public [WRITINGS AND] records, making abstracts of
27 title or guaranteeing or insuring the titles of the real estate, or
28 building and maintaining title and abstract plants; and shall furnish
29 proper and reasonable facilities to persons having lawful occasion for

1 access to the public [WRITINGS AND] records for those purposes, sub-
2 ject to reasonable rules and regulations, in conformity to the direc-
3 tion of the court, as are necessary for the protection of the [WRIT-
4 INGS AND] records and to prevent interference with the regular dis-
5 charge of the duties of the recorders and their employees.

6 * Sec. 6. AS 09.25 is amended by adding a new section to read:

7 Sec. 09.25.123. APPEALS OF DENIALS OF REQUESTS. The Telecommu-
8 nications Information Council shall adopt under AS 44.62 (Administra-
9 tive Procedure Act) regulations that establish the procedure for a
10 person to appeal the denial by a public agency of a request by a
11 person to inspect or copy a public record under AS 09.25.110 - 09.25.-
12 140. A person may appeal to the superior court the final administra-
13 tive order made by a public agency under the regulations. A person
14 who appeals a final administrative order to the superior court may not
15 be required to post a bond for costs on appeal in order to proceed
16 with the appeal in the superior court. In this section, "public
17 agency" does not include a municipality.

18 * Sec. 7. AS 09.25.125 is amended to read:

19 Sec. 09.25.125. ENFORCEMENT: INJUNCTIVE RELIEF. A person having
20 custody or control of a public record who obstructs or attempts to
21 obstruct, or a person not having custody or control who aids or abets
22 another person in obstructing or attempting to obstruct, the inspec-
23 tion of a public record subject to inspection under AS 09.25.110 or
24 09.25.120 may be enjoined by the superior court from obstructing, or
25 attempting to obstruct, the inspection of public records subject to
26 inspection under AS 09.25.110 or 09.25.120. A person may seek injunc-
27 tive relief under this section without exhausting the person's admin-
28 istrative remedies under AS 09.25.123. A person who seeks injunctive
29 relief under this section may not be required to post a bond in order

1 to begin an action for injunctive relief.

2 * Sec. 8. AS 09.25.220 is amended to read:

3 Sec. 09.25.220. DEFINITIONS. In AS 09.25.100 - 09.25.220
4 [AS 09.25.150 - 09.25.220], unless the context otherwise requires,

5 (1) "electronic services and products" means computer-
6 related services and products provided by a public agency, including

7 (A) electronic manipulation of the data contained in
8 public records in order to tailor the data to the person's re-
9 quest or to develop a product that meets the person's request;

10 (B) duplicating or providing periodic updates of an
11 electronic file or data base;

12 (C) providing on-line access to an electronic file or
13 data base;

14 (D) providing information that cannot be retrieved or
15 generated by the existing computer programs of the public agency;

16 (E) providing functional electronic access to the
17 information system of the public agency; in this subparagraph,
18 "functional access" includes the capability for alphanumeric
19 query and printing, graphic query and plotting, nongraphic data
20 input and analysis, and graphic data input and analysis;

21 (F) providing software developed by a public agency or
22 developed by a private contractor for a public agency;

23 (G) providing maps or other standard or customized
24 products from an electronic geographic information system;

25 (2) "news organization" means

26 (A) an individual, partnership, corporation or other
27 association regularly engaged in the business of

28 (i) publishing a newspaper or other periodical
29 that reports news events, is issued at regular intervals and

1 has a general circulation;

2 (ii) providing newsreels or other motion picture
3 news for public showing; or

4 (iii) broadcasting news to the public by wire,
5 radio, television or facsimile;

6 (B) a press association or other association of indi-
7 viduals, partnerships, corporations, or other associations de-
8 scribed in (A)(i), (ii), or (iii) of this paragraph engaged in
9 gathering news and disseminating it to its members for publica-
10 tion;

11 (3) [(2)] "privilege" means the conditional privilege gran-
12 ted to public officials and reporters to refuse to testify as to a
13 source of information;

14 (4) [(3)] "public official" means a person elected to a
15 public office created by the Constitution or laws of this state,
16 whether executive, legislative, or judicial, and who was holding that
17 office at the time of the communication for which privilege is
18 claimed;

19 (5) "public agency" means a department, institution, board,
20 commission, division, authority, public corporation, committee, or
21 other administrative entity of the executive, judicial, or legislative
22 branch of state government, or of a municipality; "public agency" in-
23 cludes the University of Alaska, the Alaska State Housing Authority,
24 and the Alaska Railroad Corporation;

25 (6) "public records" means books, papers, files, accounts,
26 writings, including drafts and memorializations of conversations, and
27 other items, regardless of format or physical characteristics, that
28 are developed or received by a public agency, or by a private contrac-
29 tor for a public agency, and that are preserved for their

1 informational value or as evidence of the organization or operation of
2 the public agency; "public records" does not include proprietary
3 software programs;

4 (7) [(4)] "reporter" means a person regularly engaged in the
5 business of collecting or writing news for publication, or presenta-
6 tion to the public, through a news organization; it includes persons
7 who were reporters at the time of the communication, though not at the
8 time of the claim of privilege;

9 (8) "Telecommunications Information Council" means the
10 Telecommunications Information Council established under AS 44.19.502.

11 * Sec. 9. AS 14.56.120(b) is amended to read:

12 (b) Each state agency shall notify the center of the creation of
13 all data published or compiled by or for it at public expense, includ-
14 ing automated data bases, and provide for its accessibility through
15 the center [,] unless the data is protected by the constitutional
16 right to privacy or is of a type stated by law to be confidential or
17 the agency is otherwise prohibited by law from doing so.

18 * Sec. 10. AS 18.50.310(f) is amended to read:

19 (f) Notwithstanding the provisions of AS 09.25.120, when 100
20 years have elapsed after the date of a birth, or 50 years have elapsed
21 after the date of a death, marriage, divorce, dissolution of marriage,
22 or annulment, the records of these events in the custody of the state
23 registrar become public records subject to inspection and copying as
24 provided in AS 09.25.110 - 09.25.140 [AS 09.25.110 AND AS 09.25.121 -
25 09.25.125].

26 * Sec. 11. AS 29.71 is amended by adding a new section to read:

27 Sec. 29.71.060. COPYRIGHTS. A municipality may hold the copy-
28 right for software created by the municipality or developed by a
29 contractor for the municipality, and may enforce its rights to protect

1 the copyright.

2 * Sec. 12. AS 40.21.030(a) is amended to read:

3 (a) In order to carry out the archival program, the state archi-
4 vist shall:

5 (1) negotiate for, acquire, and receive public records of
6 permanent value including public records of the state and political
7 subdivisions of the state and of defunct public agencies;

8 (2) establish and operate a state archival depository that
9 [WHICH] shall provide for the preservation, arrangement, repair,
10 rehabilitation, duplication, reproduction, description, and exhibition
11 of permanent public records or other documentary material transferred
12 to, or acquired by the state archivist;

13 (3) review and approve all agency records retention sched-
14 ules to identify and to ensure the preservation of those records
15 having permanent value;

16 (4) make permanent records under the supervision of the
17 archivist, other than those required by AS 09.25.120 to be kept confi-
18 dential, available for public use at reasonable times;

19 (5) for a fee established under AS 09.25.110 - 09.25.115,
20 make available to any person [FOR A REASONABLE FEE] copies of archival
21 material under AS 09.25.120;

22 (6) adopt a seal for official use and for certification of
23 record copies which copies shall have the same force and effect as if
24 made by the original custodian of the records;

25 (7) negotiate payment for the acquisition of public records
26 with the possessor of them;

27 (8) if negotiations under (7) of this subsection are unsuc-
28 cessful or if the person in possession of the public records is un-
29 willing to enter into those negotiations, arrange with the person in

1 possession for the microfilming of the records;

2 (9) accept gifts, bequests, and endowments for purposes
3 consistent with the objectives of this chapter;

4 (10) prepare inventories, indexes, catalogs, and other
5 finding aids or guides to facilitate the use of the archives;

6 (11) accept documents, including motion picture film, still
7 pictures, and sound recordings, that are appropriate for preservation
8 by the state as evidence of its organization, functions, policies,
9 decisions, procedures, and transactions.

10 * Sec. 13. AS 44.99 is amended by adding new sections to read:

11 ARTICLE 1A. PERSONAL INFORMATION IN PUBLIC RECORDS.

12 Sec. 44.99.020. NOTICE REGARDING PERSONAL INFORMATION. (a)

13 When a state agency requests personal information directly from the
14 person who is the subject of the information and the information
15 requested will be subject to inspection and copying under AS 09.25.-
16 110 - 09.25.120, the agency shall give the person an oral or written
17 notice at the time of the request that states

18 (1) the name and address of the agency;

19 (2) the citation of the statute or regulation that author-
20 izes the agency to request the information;

21 (3) a statement indicating whether the person is required
22 to supply the information;

23 (4) the consequences to the person, if any, of not provid-
24 ing all or part of the requested information;

25 (5) a statement of the agency's anticipated uses of the
26 information, including the agency's internal uses of the information
27 and disclosure of the information to other state agencies; and

28 (6) the fact that the information will be subject to in-
29 spection and copying under AS 09.25.110 - 09.25.120.

1 (b) An agency may provide the written notice required under (a)
2 of this section by

3 (1) placing the notice on the form used to request the
4 information from the person;

5 (2) giving the person the notice on a separate sheet that
6 accompanies the form used to request the information from the person;

7 (3) giving the person a statement in a pamphlet, booklet,
8 manual, or other printed matter at the time the information on the
9 person is requested; or

10 (4) prominently posting a sign containing the notice in a
11 prominent location so that the sign can be easily observed and read by
12 the person at the time the information is requested.

13 (c) This section does not apply to a request for information on
14 a person if

15 (1) the request is made by a peace officer; in this para-
16 graph, "peace officer" has the meaning given in AS 01.10.060(7);

17 (2) the person is the agency's employee.

18 Sec. 44.99.030. INFORMATION ACCURACY AND COMPLETENESS. (a) A
19 person who is the subject of personal information that is maintained
20 by a state agency and subject to public disclosure under AS 09.25.-
21 110 - 09.25.140 may challenge the accuracy or completeness of the
22 personal information.

23 (b) To challenge the accuracy or completeness of personal infor-
24 mation under (a) of this section, the person must file with the state
25 agency a written request that the personal information be changed.

26 The request must provide

27 (1) a description of the challenged personal information;

28 (2) the changes necessary to make the personal information
29 accurate or complete; and

1 (3) the person's name and the address where the department
2 may contact the person.

3 (c) Within 30 days after receiving a written request made under
4 (b) of this section, the state agency may request verification of the
5 disputed personal information from the person who made the request.

6 (d) Within 30 days after receiving the written request under (b)
7 of this section or the verification under (c) of this section, the
8 state agency shall review the request and

9 (1) change the personal information according to the re-
10 quest and notify the person in writing of the change; or

11 (2) deny the request and notify the person in writing of
12 the reasons for the decision and the name, title, and business address
13 of the person who denied the request.

14 (e) If a request is denied under (d) of this section, the person
15 may provide to the state agency a concise written statement that
16 states the person's reasons for disagreeing with the decision. The
17 state agency shall maintain in its records the request made under (b)
18 of this section and the statement provided by the person under this
19 subsection. On all of the state agency's records that contain the
20 disputed information, the state agency shall clearly note which por-
21 tions of the records are disputed. If the record is in electronic
22 form, the state agency may note the dispute in one field of the elec-
23 tronic form and maintain the other information about the dispute in
24 paper form.

25 (f) This section does not apply to criminal intelligence or
26 criminal investigative records, state agency personnel or retirement
27 system records, records of applicants for employment with the state
28 agency, or information in documents recorded under AS 40.17.

29 Sec. 44.99.040. DEFINITIONS. In AS 44.99.020 - 44.99.040,

1 (1) "person" means an individual;

2 (2) "personal information" means information that can be
3 used to identify a person and from which judgments can be made about a
4 person's character, habits, avocations, finances, occupation, general
5 reputation, credit, health, or other personal characteristics, but
6 does not include a person's name, address, or telephone number, if the
7 number is published in a current telephone directory;

8 (3) "state agency" means a department, institution, board,
9 commission, division, authority, public corporation, committee, or
10 other administrative unit of the executive, judicial, or legislative
11 branch of state government, including the University of Alaska, the
12 Alaska State Housing Authority, and the Alaska Railroad Corporation.

13 ARTICLE 1B. COPYRIGHTS BY STATE AGENCIES.

14 Sec. 44.99.050. COPYRIGHTS. A state agency may hold the copy-
15 right for software created by the agency or developed by a private
16 contractor for an agency, and may enforce its rights to protect the
17 copyright. In this section, "state agency" means a department, insti-
18 tution, board, commission, division, authority, public corporation,
19 committee, or other administrative unit of the executive, judicial, or
20 legislative branch of state government, including the University of
21 Alaska, the Alaska State Housing Authority, and the Alaska Railroad
22 Corporation.

23