

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

1 IN THE HOUSE BY THE FINANCE COMMITTEE
2 CS FOR HOUSE BILL NO. 405 (Finance) am
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 requests for information by
7 public agencies; relating to public access to and
8 changes to the information of public agencies; and
9 relating to the copyrighting of software produced by
10 or for public agencies."

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

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

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

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

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

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

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

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

1 state, the delivery of public services and the availability of information
2 throughout the state would be enhanced;

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

7 (b) Except for personal information, if a provision in this Act is
8 determined to be ambiguous as to whether a record is subject to disclosure
9 to the public, the ambiguity shall be construed in favor of disclosure.

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

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

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

20 (b) Except as otherwise provided in this section, the fee for
21 copying public records may not exceed the standard unit cost of dupli-
22 cation established by the public agency.

23 (c) If the production of records for one requester in a calendar
24 month exceeds five 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. The requester shall
29 pay the fee before the records are disclosed, and the public agency

1 may require payment in advance of the search.

2 (d) A public agency may reduce or waive a fee when the public
3 agency determines that the reduction or waiver is in the public
4 interest. Fee reductions and waivers shall be uniformly applied among
5 persons who are similarly situated. A public agency may waive a fee
6 of \$5 or less if the fee is less than the cost to the public agency to
7 arrange for payment.

8 (e) Notwithstanding other provisions of this section to the
9 contrary, the judicial branch, the Bureau of Vital Statistics, the
10 library archives in the Department of Education, and the division of
11 banking, securities, and corporations in the Department of Commerce
12 and Economic Development may continue to charge the same fees that
13 they are charging on the effective date of this Act for performing
14 record searches.

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

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

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

26 (b) A public agency shall establish a fee for electronic ser-
27 vices and products based on recovery of the actual incremental costs
28 of providing the electronic services and products, and a reasonable
29 portion of the costs associated with building and maintaining the

1 information system of the public agency. The fee may be reduced or
2 waived by the public agency if the electronic services and products
3 are to be used for a public purpose, including public agency program
4 support, nonprofit activities, journalism, and academic research. Fee
5 reductions and waivers shall be uniformly applied among persons who
6 are similarly situated.

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

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

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

15 (2) limit the liability of the public agency providing the
16 services and products.

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

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

26 (g) Each public agency shall establish the fees for the elec-
27 tronic services and products provided under this section. The Tele-
28 communications Information Council may cancel the fees established by
29 a public agency in the executive branch, including the Alaska State

1 Housing Authority, the University of Alaska, and the Alaska Railroad
2 Corporation, if the council determines that the fees are not reason-
3 able.

4 (h) A public agency may not make electronic services and prod-
5 ucts available to one member of the public and withhold them from
6 other members of the public.

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

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

13 Sec. 09.25.120. INSPECTION AND COPYING OF PUBLIC RECORDS. Every
14 person has a right to inspect a public [WRITING OR] record in the
15 state, including public [WRITINGS AND] records in recorders' offices
16 except (1) records of vital statistics and adoption proceedings which
17 shall be treated in the manner required by AS 18.50; (2) records
18 pertaining to juveniles; (3) medical and related public health re-
19 cords; (4) records required to be kept confidential by a federal law
20 or regulation or by state law; (5) records or information compiled for
21 law enforcement purposes, but only to the extent that the production
22 of the law enforcement records or information (A) could reasonably be
23 expected to interfere with enforcement proceedings, (B) would deprive
24 a person of a right to a fair trial or an impartial adjudication, (C)
25 could reasonably be expected to constitute an unwarranted invasion of
26 personal privacy, (D) could reasonably be expected to disclose the
27 identity of a confidential source, (E) would disclose techniques and
28 procedures for law enforcement investigations or prosecutions, (F)
29 would disclose guidelines for law enforcement investigations or

1 prosecutions if the disclosure could reasonably be expected to risk
2 circumvention of the law, or (G) could reasonably be expected to
3 endanger the life or physical safety of an individual. Except as
4 provided in AS 09.25.215, every [. EVERY] public officer having the
5 custody of records not included in the exceptions shall permit the
6 inspection, and give on demand and on payment of the [LEGAL] fees
7 under AS 09.25.110 - 09.25.115 [THEREFOR] a certified copy of the
8 [WRITING OR] record, and the copy shall in all cases be evidence of
9 the original. Recorders shall permit memoranda, transcripts, and
10 copies of the public [WRITINGS AND] records in their offices to be
11 made by photography or otherwise for the purpose of examining titles
12 to real estate described in the public [WRITINGS AND] records, making
13 abstracts of title or guaranteeing or insuring the titles of the real
14 estate, or building and maintaining title and abstract plants; and
15 shall furnish proper and reasonable facilities to persons having
16 lawful occasion for access to the public [WRITINGS AND] records for
17 those purposes, subject to reasonable rules and regulations, in con-
18 formity to the direction of the court, as are necessary for the pro-
19 tection of the [WRITINGS AND] records and to prevent interference with
20 the regular discharge of the duties of the recorders and their employ-
21 ees.

22 * Sec. 6. AS 09.25 is amended by adding new sections to read:

23 Sec. 09.25.123. SUPERVISION AND REGULATION. (a) The Telecommu-
24 nications Information Council shall supervise and adopt regulations
25 for the operation and implementation of AS 09.25.110 - 09.25.140 by
26 public agencies in the executive branch, including the Alaska State
27 Housing Authority, the University of Alaska, and the Alaska Railroad
28 Corporation.

29 (b) The legislative council shall supervise and adopt procedures

1 for the operation and implementation of AS 09.25.110 - 09.25.140 by
2 public agencies in the legislative branch.

3 (c) The administrative director of courts shall supervise and
4 adopt procedures for the operation and implementation of AS 09.25.-
5 110 - 09.25.140 by public agencies in the judicial branch.

6 (d) The regulations and procedures adopted under this section
7 must include the establishment of procedures for appealing public
8 agency action that is taken under AS 09.25.110 - 09.25.140.

9 (e) In this section,

10 (1) "action" includes the calculation of a fee, the denial
11 of a fee reduction or waiver and the denial of a request to inspect or
12 copy a public record;

13 (2) "public agency" does not include a municipality.

14 Sec. 09.25.124. APPEALS. A person may appeal to the superior
15 court the final administrative order made by a public agency under
16 AS 09.25.110 - 09.25.140.

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

18 Sec. 09.25.125. ENFORCEMENT: INJUNCTIVE RELIEF. A person having
19 custody or control of a public record who obstructs or attempts to
20 obstruct, or a person not having custody or control who aids or abets
21 another person in obstructing or attempting to obstruct, the inspec-
22 tion of a public record subject to inspection under AS 09.25.110 or
23 09.25.120 may be enjoined by the superior court from obstructing, or
24 attempting to obstruct, the inspection of public records subject to
25 inspection under AS 09.25.110 or 09.25.120. A person may seek injunc-
26 tive relief under this section without exhausting the person's admin-
27 istrative remedies under AS 09.25.123 - 09.25.124.

28 * Sec. 8. AS 09.25 is amended by adding a new section to read:

29 Sec. 09.25.215. INTENT REGARDING AMBIGUITY. If the application

1 of AS 09.25.100 - 09.25.220 to personal information is ambiguous as to
2 whether the application violates art. I, sec. 22, Constitution of the
3 State of Alaska, the ambiguity shall be construed in favor of the
4 right of privacy. In this section, "personal information" has the
5 meaning given in AS 44.99.040.

6 * Sec. 9. AS 09.25.220 is amended to read:

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

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

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

14 (B) duplicating public records in alternative formats
15 not used by a public agency, or providing periodic updates of an
16 electronic file or data base;

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

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

21 (E) providing functional electronic access to the
22 information system of the public agency; in this subparagraph,
23 "functional access" includes the capability for alphanumeric
24 query and printing, graphic query and plotting, nongraphic data
25 input and analysis, and graphic data input and analysis;

26 (F) providing software developed by a public agency or
27 developed by a private contractor for a public agency;

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

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(2) "news organization" means

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

(i) publishing a newspaper or other periodical that reports news events, is issued at regular intervals and has a general circulation;

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

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

(B) a press association or other association of individuals, partnerships, corporations, or other associations described in (A)(i), (ii), or (iii) of this paragraph engaged in gathering news and disseminating it to its members for publication;

(3) [(2)] "privilege" means the conditional privilege granted to public officials and reporters to refuse to testify as to a source of information;

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

(5) "public agency" means a department, institution, board, commission, division, authority, public corporation, committee, or other administrative entity of the executive, judicial, or legislative branch of state government, or of a municipality; "public agency" includes the University of Alaska, the Alaska State Housing Authority, and the Alaska Railroad Corporation;

1 (6) "public records" means books, papers, files, accounts,
2 writings, including drafts and memorializations of conversations, and
3 other items, regardless of format or physical characteristics, that
4 are developed or received by a public agency, or by a private contrac-
5 tor for a public agency, and that are preserved for their information-
6 al value or as evidence of the organization or operation of the public
7 agency; "public records" does not include proprietary software pro-
8 grams;

9 (7) [(4)] "reporter" means a person regularly engaged in the
10 business of collecting or writing news for publication, or presenta-
11 tion to the public, through a news organization; it includes persons
12 who were reporters at the time of the communication, though not at the
13 time of the claim of privilege;

14 (8) "Telecommunications Information Council" means the
15 Telecommunications Information Council established under AS 44.19.502.

16 * Sec. 10. AS 12.62 is amended by adding a new section to read:

17 Sec. 12.62.031. ACCESS TO CRIME INFORMATION INVOLVING A CANDI-
18 DATE FOR PUBLIC OFFICE. A member of the public may request from the
19 Department of Public Safety a record from this state listing each
20 criminal conviction involving an individual who has filed for public
21 office in the state. The Department of Public Safety shall provide a
22 copy of the conviction record to the member of the public and shall
23 also provide a copy of the conviction record to the person who is the
24 subject of the request. The Department of Public Safety may establish
25 by regulation reasonable fees to cover the costs of researching and
26 reproducing the conviction record.

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

28 (b) Each state agency shall notify the center of the creation of
29 all data published or compiled by or for it at public expense,

1 including automated data bases, and provide for its accessibility
2 through the center [,] unless the data is protected by the constitu-
3 tional right to privacy or is of a type stated by law to be confiden-
4 tial or the agency is otherwise prohibited by law from doing so.

5 * Sec. 12. AS 16.05.815 is amended by adding a new subsection to read:

6 (d) Except as otherwise provided in this section, the department
7 shall keep confidential (1) personal information contained in fish
8 and wildlife harvest and usage data; and (2) when the knowledge may be
9 detrimental to the fish or wildlife population, the records of the
10 department that concern telemetry radio frequencies of monitored
11 species, denning sites, nest locations of raptors that require special
12 attention, and the location of fish and wildlife species. The depart-
13 ment may release records and information that are kept confidential
14 under this subsection if the release is necessary to comply with a
15 court order or if the requestor is a state or federal agency. After
16 25 years, the records and information that are kept confidential under
17 this subsection become public records subject to inspection and copy-
18 ing under AS 09.25.110 - 09.25.140 unless the department determines
19 that the release of the records or information may be detrimental to
20 the fish or wildlife population. In this subsection, "personal infor-
21 mation" has the meaning given in AS 44.99.040.

22 * Sec. 13. AS 18.50.310(f) is amended to read:

23 (f) Notwithstanding the provisions of AS 09.25.120, when 100
24 years have elapsed after the date of a birth, or 50 years have elapsed
25 after the date of a death, marriage, divorce, dissolution of marriage,
26 or annulment, the records of these events in the custody of the state
27 registrar become public records subject to inspection and copying as
28 provided in AS 09.25.110 - 09.25.140 [AS 09.25.110 AND AS 09.25.121 -
29 09.25.125].

1 * Sec. 14. AS 24.08 is amended by adding a new section to read:

2 Sec. 24.08.105. RECORD OF VOTES. The voting record for each
3 legislator shall be made available to any person on request. The
4 Legislative Affairs Agency shall keep voting records compiled annually
5 under this section on the agency data system and shall distribute
6 copies to all legislative information offices for a fee established
7 under AS 09.25.115.

8 * Sec. 15. AS 29.71 is amended by adding a new section to read:

9 Sec. 29.71.060. COPYRIGHTS. A municipality may hold the copy-
10 right for software created by the municipality or developed by a
11 contractor for the municipality, and may enforce its rights to protect
12 the copyright.

13 * Sec. 16. AS 40.21.030(a) is amended to read:

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

16 (1) negotiate for, acquire, and receive public records of
17 permanent value including public records of the state and political
18 subdivisions of the state and of defunct public agencies;

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

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

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

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

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

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

9 (8) if negotiations under (7) of this subsection are unsuc-
10 cessful or if the person in possession of the public records is un-
11 willing to enter into those negotiations, arrange with the person in
12 possession for the microfilming of the records;

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

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

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

21 * Sec. 17. AS 44.99 is amended by adding new sections to read:

22 ARTICLE 1A. PERSONAL INFORMATION IN PUBLIC RECORDS.

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

24 When a state agency requests personal information directly from the
25 person who is the subject of the information, the agency shall give
26 the person an oral or written notice at the time of the request that
27 states

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

29 (2) the citation of the statute or regulation that

1 authorizes the agency to request the information;

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

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

6 (5) a statement of the agency's anticipated uses of the
7 information, including the agency's internal uses of the information
8 and disclosure of the information to other state agencies;

9 (6) the fact that the information may be subject to in-
10 spection and copying under AS 09.25.110 - 09.25.120; and

11 (7) a statement summarizing how a person may challenge
12 under AS 44.99.030 the accuracy or completeness of personal informa-
13 tion maintained by a state agency.

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

16 (1) placing the notice on the form used to request the
17 information from the person;

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

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

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

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

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

- 1 (2) the person is the agency's employee;
2 (3) the information is related to litigation; or
3 (4) the information is being collected by a public agency
4 when investigating a possible violation of law.

5 Sec. 44.99.030. INFORMATION ACCURACY AND COMPLETENESS. (a) A
6 person who is the subject of personal information that is maintained
7 by a state agency and subject to public disclosure under AS 09.25.-
8 110 - 09.25.140 may challenge the accuracy or completeness of the
9 personal information.

10 (b) To challenge the accuracy or completeness of personal infor-
11 mation under (a) of this section, the person must file with the state
12 agency a written request that the personal information be changed.
13 The request must provide

- 14 (1) a description of the challenged personal information;
15 (2) the changes necessary to make the personal information
16 accurate or complete; and
17 (3) the person's name and the address where the department
18 may contact the person.

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

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

- 25 (1) change the personal information according to the re-
26 quest and notify the person in writing of the change; or
27 (2) deny the request and notify the person in writing of
28 the reasons for the decision and the name, title, and business address
29 of the person who denied the request.

1 (e) If a request is denied under (d) of this section, the person
2 may provide to the state agency a concise written statement that
3 states the person's reasons for disagreeing with the decision. The
4 state agency shall maintain in its records the request made under (b)
5 of this section and the statement provided by the person under this
6 subsection. On all of the state agency's records that contain the
7 disputed information, the state agency shall clearly note which por-
8 tions of the records are disputed. If the record is in electronic
9 form, the state agency may note the dispute in one field of the elec-
10 tronic form and maintain the other information about the dispute in
11 paper form.

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

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

17 (1) "person" means an individual;

18 (2) "personal information" means information that can be
19 used to identify a person and from which judgments can be made about a
20 person's character, habits, avocations, finances, occupation, general
21 reputation, credit, health, or other personal characteristics, but
22 does not include a person's name, address, or telephone number, if the
23 number is published in a current telephone directory, or information
24 describing a public job held by a person;

25 (3) "state agency" means a department, institution, board,
26 commission, division, authority, public corporation, committee, or
27 other administrative unit of the executive, judicial, or legislative
28 branch of state government, including the University of Alaska, the
29 Alaska State Housing Authority, and the Alaska Railroad Corporation.

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ARTICLE 1B. COPYRIGHTS BY STATE AGENCIES.

Sec. 44.99.050. COPYRIGHTS. A state agency may hold the copyright for software created by the agency or developed by a private contractor for an agency, and may enforce its rights to protect the copyright. In this section, "state agency" means a department, institution, board, commission, division, authority, public corporation, committee, or other administrative unit of the executive, judicial, or legislative branch of state government, including the University of Alaska, the Alaska State Housing Authority, and the Alaska Railroad Corporation.

* Sec. 18. AS 44.99.020, as enacted by sec. 17 of this Act, applies to requests for personal information made by a state agency on or after the effective date of this Act.