

HB

417

COMMITTEE REPORT

4/15/75

HOUSE

Mr. Speaker:

Date

4/23/75

The Committee on JUDICIARY has had HB 417

under consideration. A Majority of the members of the Committee

recommends it DO PASS

recommends it DO NOT PASS

recommends it DO PASS WITH ATTACHED AMENDMENT(S)

recommends it BE REPLACED WITH CS FOR _____ AND THAT

CS FOR _____ DO PASS

"and" recommends it BE REFERRED TO THE _____

COMMITTEE

reports it back WITHOUT RECOMMENDATION

"other"

Members signing the Majority report:

<u>[Signature]</u>	<u>[Signature]</u>	_____
<u>[Signature]</u>	_____	_____
<u>[Signature]</u>	_____	_____
<u>[Signature]</u>	_____	_____

Members NOT concurring in the Majority report:

<u>[Signature]</u>	recommends: <u>no rec</u>
_____	recommends:
_____	recommends:
_____	recommends:
_____	recommends:

[Signature] Chairman

Terry Gardiner

*file
HB 417*

Box 1092, Ketchikan, Alaska 99901 Pouch V, Juneau, Alaska 99811

May 19, 1976

Avrum Gross, Attorney General
Pouch K
Juneau, Alaska

Dear Av,

This letter relates to the implementation of HB 417 which has now become law. The responsibility of developing standards and regulations to implement HB 417 rests with the Governor's Commission on Criminal Justice. Hence as chairman of the Governor's Commission, I am sending you the following suggestions.

I have been contacted by Mr. Craig Cornish who works with the law firm of Wagstaff and Middleton. Evidently Mr. Cornish has had a long standing interest in the subject area of criminal intelligence information. I am enclosing a copy of an outline that he suggests might be utilized by the Governor's Commission in implementing HB 417. If the Governor's Commission finds it necessary to hire or contract with someone to do research and draw up regulations for this criminal intelligence project, Mr. Cornish might be an ideal candidate here in Alaska.

Mr. Michael Rubenstein, Executive Director of the Alaska Judicial Council has also expressed interest to me in the possibility of his office being involved in the implementation of HB 417. As a member of the Legislature I have been very pleased with some of the recent studies and efforts of the Alaska Judicial Council in the criminal justice area. If the Governor's Commission should decide that some amount of study needs to be done before regulations are drawn up concerning criminal intelligence information in Alaska the Judicial Council might be a good source to conduct such a study.

These are merely some suggestions that I wanted to pass on to you now that the legislation has passed and is turned over to the administration for implementation. I would appreciate it if you would have the staff of the Governor's Commission on Criminal Justice keep me informed as to the progress made in the next year on the implementation of HB 417.

Sincerely,

Terry Gardiner

*Wagstaff & Middleton
Lawyers*

May 4, 1976

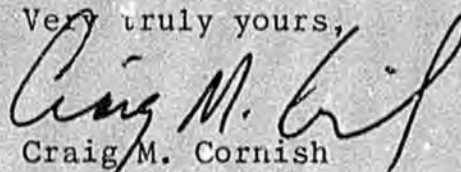
Terry Gardiner
House Judiciary Committee
Alaska Legislature
Pouch V
Juneau, Alaska 99801

Dear Terry,

Enclosed is my suggested outline for the Governor's Commission's study directed by HB 417.

It is also my suggestion that due to the seriousness of the subject matter and the divergent interests in law enforcement and privacy, that an agency or person independent of the law enforcement field conduct the study. I am very much interested in doing the study. Another possibility is the Judicial Council.

Very truly yours,


Craig M. Cornish

Enclosure

CMC/n

ISSUES

I. Choosing Methods For Analyzing Privacy Issues.

Virtually every privacy problem involves resolution of conflicting values: *the interests of the state in obtaining and using certain kinds of information about individuals versus the interests of individuals in preserving the confidentiality of such information.

- A. Balancing Test: Weigh competing interests.
- B. Fundamental Rights: Some privacy interests are fundamental and should require a substantial law enforcement interest to override the citizens' interest in retaining control over information about themselves.
- C. Other Tests:

II. Issues Facing The Commission

- A. What Kinds of Intelligence Information Should Law Enforcement Agencies Gather? This focuses upon genre of information. In order to answer the question, research in the following matters should be presented to the Commission:
 - 1. What kinds of information are law enforcement agencies in Alaska now gathering and will be gathering in the foreseeable future?
 - 2. Case and statutory law on kinds of intelligence information law enforcement agencies are permitted to

* But the legislature has an unqualified constitutional duty to implement privacy protections, see Article I, Sec. 22 of Alaska Constitution.

gather. What is the present generic scope on the federal level? In other states?

3. What does the public believe to be the proper kind of information which may be gathered by Alaskan law enforcement agencies? (To be achieved through a public opinion poll of Alaska residents*)
4. Recommendation.
5. Implementation.
 - a) Regulation
 - b) Statute

B. For What Purposes Should Law Enforcement Agencies Be Allowed To Collect Intelligence Information? This issue focuses upon the reasons underlying intelligence gathering.

1. Why are Alaskan law enforcement agencies currently collecting intelligence information?
2. What case and statutory law presently exist on the legitimate purpose of law enforcement collection of intelligence?
3. For what purposes is the public willing to permit the collection of law enforcement intelligence?

* I have received an estimate from an opinion research group on the cost of conducting a public opinion poll on the question relative to this study. For \$7,500.00 we would receive a 60 - 70 question survey of 300 - 350 households encompassing 20 communities which would be accurate with a 3% margin of error.

4. Recommendation.
5. Implementation.
 - a) Legislation.
 - b) Regulation.

C. What Methods May Law Enforcement Agencies Properly

Use To Collect Intelligence Information? Wiretapping, aerial surveillance, etc.

1. What methods are currently used by Alaskan law enforcement agencies to collect intelligence information?
2. What case and statutory law presently exist on the permissible methods which law enforcement agencies may use to collect intelligence?
3. What methods for collection of law enforcement intelligence are supported by Alaskan public opinion.
4. Recommendation.
5. Implementation.
 - a) Legislation.
 - b) Regulation.

D. How Should Intelligence Information Be Properly Safeguarded?

This involves structural checks to insure compliance with the regulations governing the flow of intelligence data.

1. What are current procedures Alaskan law enforcement agencies use to safeguard intelligence information?

2. What standard of care should be imposed on law enforcement agencies in the safeguarding of intelligence information?
3. Recommendation.
4. Implementation.
 - a) Legislation.
 - b) Regulation.

E. Who Should Have Access to Law Enforcement Intelligence Information? This focuses upon both the right of the citizen to have access to information about himself, and, to whom it may be disseminated.

1. What rights do citizens presently have to inspect their own intelligence files.
2. To whom is intelligence data presently disseminated?
3. What case and statutory law presently exist to govern both citizen access to their own files and to whom such information may be released?
4. What kind of access to law enforcement intelligence does the public desire?
5. Recommendation.
6. Implementation.
 - a) Legislation.
 - b) Regulation.

F. How Should Law Enforcement Intelligence Information Be Kept Accurate? This focuses upon ensuring the accuracy of the information maintained, as opposed to guarding against leaks as in subsection D above.

1. What current methods are used by Alaskan law enforcement agencies to keep law enforcement intelligence accurate?
2. What present case and statutory law exist on the duty of law enforcement to maintain accurate intelligence data?
3. What methods for maintaining accuracy of law enforcement intelligence does the Alaskan public support?
4. Recommendation.
5. Implementation.
 - a) Legislation.
 - b) Regulation.

Introduced: 4/15/75
Referred: Judiciary

1 IN THE HOUSE

BY GARDINER

2 HOUSE BILL NO. 417

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 NINTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to law enforcement intelligence
7 information."

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

9 * Section 1. AS 12.62.010 is amended by adding a new subsection to read:

10 (b) In addition to regulations adopted under (a) of this section,
11 the commission shall, after appropriate consultation with representatives
12 of state and local law enforcement agencies, adopt regulations and pro-
13 cedures governing the gathering of intelligence information and the
14 storage, security, and privacy of the intelligence information collected
15 and maintained by law enforcement agencies in the state. The notice and
16 hearing requirements of the Administrative Procedure Act (AS 44.62),
17 relating to the adoption of regulations, apply to regulations adopted
18 under this subsection. In adopting these regulations, the commission
19 shall take into account both the interest of law enforcement agencies in
20 maintaining the ability to conduct intelligence operations and each
21 individual's right to privacy.

22 * Sec. 2. AS 12.62 is amended by adding new sections to read:

23 Sec. 12.62.015. COLLECTION AND SECURITY OF INTELLIGENCE INFORMA-
24 TION. (a) Regulations of the commission, adopted under sec. 10(b) of
25 this chapter, shall include requirements and guidelines concerning the
26 categories of intelligence information which may be gathered by law
27 enforcement agencies in the state, the purposes for which intelligence
28 information may be collected, and the methods and procedures which may
29 be used in collecting intelligence information.

1 (b) The commission's regulations adopted under sec. 10(b) of this
2 chapter shall establish standards for the confidentiality and security
3 of intelligence information and provide for controls, access to and
4 dissemination of intelligence information, and methods for updating,
5 correcting and purging intelligence information while maintaining the
6 security and confidentiality of the information.

7 Sec. 12.62.017. ANNUAL REPORT TO COMMISSION. The chief officer
8 of each ^{State or Municipal} law enforcement agency shall submit an annual report to the
9 commission, in the form required by the commission, certifying compliance
10 by the agency with the regulations adopted by the commission under
11 sec. 10(b) of this chapter.

12 * Sec. 3. AS 12.62.060 is amended to read:

13 Sec. 12.62.060. CIVIL AND CRIMINAL REMEDIES. (a) A person with
14 respect to whom criminal justice information has been wilfully main-
15 tained, disseminated, or used, or intelligence information has been
16 collected, obtained or used, in violation of this chapter has a civil
17 cause of action against the person responsible for the violation and
18 shall be entitled to recover actual damages and reasonable attorney fees
19 and other reasonable litigation costs.

20 (b) A person who wilfully disseminates or uses criminal justice
21 information knowing such dissemination or use to be in violation of
22 this chapter, or who knowingly collects, obtains or uses intelligence
23 information in violation of this chapter, upon conviction, is punishable
24 by a fine of not more than \$1,000 or by imprisonment for not more than
25 one year, or by both.

26 (c) A good faith reliance upon the provisions of this chapter or
27 of applicable law governing maintenance, dissemination, or use of
28 criminal justice information, or upon rules, regulations, or procedures
29 prescribed under this chapter is a ~~complete~~ defense to a civil or

1 criminal action brought under this chapter.

2 * Sec. 4. AS 12.62.070 is amended by adding a new paragraph to read:

3 (7) "intelligence information" means information concerning
4 the background, activities or associations of an individual or group
5 collected or obtained by a law enforcement agency for preventive,
6 precautionary or general investigative purposes not directly connected
7 with the investigation of a specific crime which has been committed ~~or~~ *not with*
8 the apprehension of a specific person in connection with the commission
9 of a particular crime.

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HB 417 extends the authority of the Governor's Commission on the Administration of Justice to make regulations for "intelligence activities" by law enforcement personnel, similar to what was already done with the AJIS System. The proposed bill would regulate local law enforcement agencies as well as state agencies.

Standards do exist for the Commission to work with. An LEAA funded project, "the National Commission on Standards and Goals" has developed standards for all phases of the criminal justice system, including police work. In their publication, POLICE, exist several standards relating to intelligence. In addition, various regulations adopted by the Governor's Commission for the AJIS system will be applicable to the new regulations for intelligence activities.

The proposed bill sets up a useable definition of intelligence activities. It sets out specific goals for the Commission to accomplish. To regulate and establish:

1. categories of intelligence information which may be gathered by law enforcement agencies in the state;
2. those purposes for which intelligence information may be collected;
3. the methods and procedures which may be used in collecting intelligence information;
4. standards for the confidentiality and security of intelligence information;
5. standards for controls; access to and dissemination of intelligence information;
6. methods for updating, correcting and purging intelligence information.

The Governor's Commission is a good, well-balanced body to accomplish this task. Among its members are: the Attorney General, the Chief Justice of the Supreme Court, the Commissioner of Public Safety, two legislators, and other members of the criminal justice system. The legislature will have an opportunity to review any regulations that the Commission comes up with; and in addition, public hearings will be held. The law specifically states that the interests of law enforcement agencies in maintaining the ability to conduct intelligence operations will be taken into account.

The law is needed in order to define limits to this type of activity, to establish clear guidelines for the activities of law enforcement authorities, and to raise the standards of law enforcement efforts statewide.

(1) The collection of intelligence information by law enforcement agencies has been an ongoing activity for many years. This activity does not specifically relate to any information gained through the investigation of specific crimes, but is general background activity or association information of groups or individuals collected for the general information of the law enforcement agencies. This general information is used to keep law enforcement agencies informed on alleged potential criminal activities by these individuals or groups. Unfortunately, this information is not ever reviewed by the other agency except the law enforcement agency collecting the information. It is subject to abuse.

(2) In this day and age of computer retrieval of information, the efficiency with which this information can now be collected and retained through the use of modern computerized storage and retrieval methods makes it more easily subject to unlawful or unauthorized use by individuals through the dissemination of this readily retrievable information to individuals outside the law enforcement community.

(3) The voters of this State adopted a Right to Privacy amendment. This indicates a strong belief on the part of the people of this State that their right to privacy be protected and not infringed through activities, however well meaning, that may tend to reduce the level of privacy enjoyed by the citizens of this State. HB 417 is another step in the process of the legislative implementation of this amendment.

The bill itself designates the Governor's Commission on the Administration of Justice as the agency to promulgate the regulations and procedures governing the gathering storage, security and privacy of the intelligence information collected. The Governor's

Commission is a broadly based representative group of all agencies involved in law enforcement such as the police, prosecution, judiciary, defense attorneys, corrections and rehabilitative personnel and members of the public at large. Such a broadly based group has already successfully implemented the regulations governing the collection and dissemination of justice information for use by all of the criminal justice agencies. They already have experience in balancing the various interests involved in

such an undertaking. Such a broadly based group is imminently qualified to promulgate regulations which would duly reflect the concern for security by the law enforcement agencies collecting this information and the protection of the rights of the individuals not specifically being investigated for the commission of crimes, but for one reason or another may be considered subject to the collection of intelligence information on their background activities or associations.

Governor's Commission on Administration
of Justice

1. Av Gross - AG
2. Dick Burton - P. S.
3. Francis L. Williamson - HESS
4. Jay Rabinowitz - S. C.
5. Herb Soll - D. A.
6. Glenn Hackney - 2 Legis. 1
7. John Rader
8. Capt Charles Anderson - Police Officer
9. Nora Guinn - citizen

House Judiciary Committee
April 24, 1975

HB 384 Evaluation of Judges

This bill was being held one legislative day for further consideration on the floor. Mr. Brown prepared amendments and submitted them to the committee in the form of a CS. It was agreed that the amendments would be submitted on the floor as by the Judiciary Committee.

SB 290 Rent Control

The committee reviewed the prepared CS and approved it.

HB 416 Abuse of Power

Pat Wellington of Public Safety testified that the Department was in favor of the concept but that the bill was open to possible abuse in that the officers and police departments might be subject to harassment. He suggested adding the language that if a false report is knowingly made, there is a penalty. The committee mentioned that CS SB 167, also in Judiciary, would cover this problem. Mr. Wellington agreed and said that CS SB 167 was approved by the Department.

Mr. Brown moved on line 20: after duties add: other than giving sworn testimony or evidence in a legal proceeding. The amendment passed.

Mr. Hanley of the Attorney General's Office testified that they supported HB 416.

HB 417 Intelligence Information

Mr. Wellington stated that it has been a historical function of the police to gather intelligence information. It is disseminated on a need to know basis. He knows of no abuse of this in Alaska. He felt that the bill would give the commission an almost impossible task in drawing up the regs. He agreed that there was a need to protect the public and that perhaps the Department should be required to provide further justification before gathering information on a person. He felt that in general the bill would hinder the police. There is a legitimate need to keep files on some people to protect the public in general.

Mr. Hanley stated that the Attorney General supports the bill. He felt it would provide guidelines within which the Department could collect information. He stated that the commission is very representative and that they have already adopted the AJIS regulations.

House Judiciary Committee
April 28, 1975

The meeting was called to order at 1:25 p.m. by Chairman Gardiner. All members were present except Mr. Eliason.

SB 99 Public Records

The committee reviewed the proposed CS by the Judiciary Committee which put section 2 in title 11 and incorporated material relating to the Ombudsman. Mr. Brown moved the Judiciary CS CS SB 99 do pass. There being no objection, it was so ordered.

SB 167 False reports

Mr. Brown moved SB 167 out do pass since it had been determined that it was in the correct title.

HB 418 Conflict of Interest

The committee reviewed the proposed CS by the Judiciary Committee which cleans up the problem of "members of municipal bodies" and "special" elections.

Mr. Parr raised the question on page 1, line 26 as to whether "legislative" only applied to state level or whether it could be interpreted to include municipal level. Mr. Walker stated that it could be open to interpretation. The committee requested Mr. Walker to draw up additional language to the effect that legislative related to matters before the state government.

HB 416 Abuse of power

Since the bill was determined to be in the correct title, Mr. Brown moved HB 416 out of committee as amended. There being no objection, it was so ordered.

HB 417 Intelligence Information

Mr. Brown moved HB 417 out of committee. There being no objection, it was so ordered.

CS SCR 5 Criminal Code

Mr. Brown moved this bill out of committee as it was the same as a bill already acted on by the committee. Mr. Gardiner mentioned the possibility of getting a LEAA grant for the study to be matched by state funds.

HB 417 extends the authority of the Governor's Commission on the Administration of Justice to make regulations for "intelligence activities" by law enforcement personnel, similar to what was already done with the AJIS System. The proposed bill would regulate local law enforcement agencies as well as state agencies.

Standards do exist for the Commission to work with. An LEAA funded project, "the National Commission on Standards and Goals" has developed standards for all phases of the criminal justice system, including police work. In their publication, POLICE, exist several standards relating to intelligence. In addition, various regulations adopted by the Governor's Commission for the AJIS system will be applicable to the new regulations for intelligence activities.

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The Governor's Commission is a good, well-balanced body to accomplish this task. Among its members are: the Attorney General, the Chief Justice of the Supreme Court, the Commissioner of Public Safety, two legislators, and other members of the criminal justice system. The legislature will have an opportunity to review any regulations that the Commission comes up with; and in addition, public hearings will be held. The law specifically states that the interests of law enforcement agencies in maintaining the ability to conduct intelligence operations will be taken into account.

The law is needed in order to define limits to this type of activity, to establish clear guidelines for the activities of law enforcement authorities, and to raise the standards of law enforcement efforts statewide.

Background:

(1) The collection of intelligence information by law enforcement agencies has been an ongoing activity for many years. This activity does not specifically relate to any information gained through the investigation of specific crimes, but is general background activity or association information of groups or individuals collected for the general information of the law enforcement agencies. This general information is used to keep law enforcement agencies informed on alleged potential criminal activities by these individuals or groups. Unfortunately, this information is not ever reviewed by the other agency except the law enforcement agency collecting the information. It is subject to abuse.

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MEMORANDUM

To: Terry Gardiner

From: Jamie Love

Date: May 4, 1975

RE: HB 417; Law enforcement
intelligence information

HB 417 extends the authority of the Governor's Commission on the Administration of Justice to make regulations for "intelligence activities" by law enforcement personnel, similar to what was already done with the AJIS System. The proposed bill would regulate local law enforcement agencies as well as state agencies. ~~It would probably be the first attempt at regulation of this type in the country. To my knowledge, no other state has attempted to define and regulate activities defined as "intelligence information" in this bill. It is quite possible that Alaska will become a model for other states. It is a rather new concept; original as far as I know.~~

Standards do exist for the Commission to work with. An LEAA funded project, "the National Commission on Standards and Goals" has developed standards for all phases of the criminal justice system, including police work. In their publication, POLICE, exist several standards relating to intelligence. In addition, various regulations adopted by the Governor's Commission for the AJIS System will be applicable to the new regulations for intelligence activities.

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