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# COMMITTEE REPORT

## SENATE

FURTHER: None

3/6/81

Date: May 13, 1981

Mr. President:

The Committee on JUDICIARY has had SB 90

privacy and public information; changing Rule 65 of the Alaska Supreme Court Rules of Civil Procedure

under consideration and (a majority of the committee) (the committee) reports it back with the following recommendations:

- do pass INDIVIDUAL RECOMMENDATIONS  do not pass
- do pass with attached amendments(s)
- replace with CS for (JUD)  same title  new title
- and recommends \_\_\_\_\_
- AND attaches a "Letter of Intent"  New Fiscal Note
- reports it back without recommendation
- referred to the \_\_\_\_\_ Committee

MEMBERS SIGNING  
DO PASS

[Signature]  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

MEMBERS HAVING  
OTHER RECOMMENDATIONS:

[Signature]  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

CHAIRMAN



Official Business

# Alaska State Legislature

Senate

Judiciary Committee

Pouch V  
State Capitol  
Juneau, Alaska 99811

April 24, 1981

Alaska State Troopers  
Department of Public Safety  
1979 Peger Road  
Fairbanks, Alaska 99701

Attention: Those personnel on attached list

Dear Sir or Madam:

Thank you for your comments on SB 90, an act relating to freedom of information.

I agree that certain portions of a public employee's personnel file should be confidential, specifically those sections which deal with employee performance evaluations.

As a co-sponsor, I intend to see that we get the best freedom of information bill possible. For your information and review, I have attached a copy of a committee substitute work draft paper. I have highlighted the portions of the bill which we propose to change, and would appreciate any comments you care to make.

Sincerely,

A handwritten signature in cursive script that reads "Pat".

Senator Patrick M. Rodey  
Chairman

PMR/ods  
Enclosure

ALASKA STATE TROOPERS PERSONNEL

John E. Daugherty  
Kristine L. Waggoner  
John F. Adams  
Arlon W. Schrank  
Mattie Flanagan  
Ronald P. Dalby  
Howard S. Burger  
Scott L. Waggoner  
James M. McCann  
Geoffrey T. Engleman  
Kristine E. Kairis  
Michael J. Corkill  
Ellis W. Armstrong  
Melanie Norris  
Vern L. Long  
James V. Grimes  
Tim Litera  
Betty Zabek  
David M. Drvenkar  
Robert L. Barnes, Jr.  
Rose M. Bastien  
Karen M. Standstrom  
John W. Malone  
Patricia E. Harmening  
Carol Dunlap  
Donald Marx, Sr.  
John R. Murphy  
Deanna M. Jossis  
Gary Nabielski

George Sepelak  
Bobby L. Swint  
Terry C. Jordan  
Rita Greenway  
Marsha Penker  
Kristi Birmingham  
Robert A. Sanders  
Lawrence G. Fleetwood  
Dennis J. Ponder  
Donald Wilson  
Margaret A. Swisher  
Roland E. Chevalier  
Judith A. Carpenter  
Lynn Behan  
Kenneth Woldstad  
Helen McGhan  
John P. Addis  
Ted L. Ruddell  
Thomas R. Bowman  
Bundance L. Turner  
Charlotte Lasage  
Paul E. Bartlett  
Charles Lamica  
Richard A. Hemmen  
Roderick Harvey  
William Peterson  
Susan K. Thomas  
Charles E. Lovejoy

4/24/81

LA21 1697 11.42 JA01 0004 11.42 04/22/81

TO JUNG INFO FOM

*Roddy, Bennett, Hohmann, Parr, Ray*

*Brown, Clocksin, Anderson, Chuchuck, Miller, O'Connell, Phillips*

TO ALL MEMBERS OF THE SENATE JUDICIARY COMMITTEE (SB 90) & MEMBERS OF THE HOUSE JUDICIARY COMMITTEE (HB 7)....

"WE STRONGLY PROTEST HOUSE BILL 7 AND SENATE BILL 90. THE UNITED STATES CONSTITUTION GRANTS EACH INDIVIDUAL THE RIGHT TO PRIVACY. OUR PERSONEL FILES ARE NOT WRITTEN FOR THE PUBLIC. PLEASE DON'T TAKE AWAY OUR CONSTITUTIONAL RIGHTS. QUASH HOUSE BILL 7 AND SENATE BILL 90."

JOHN E. GAUGHERTY  
KRISTINE L. WAGGONER  
JOHN F. ADAMS  
ARLON W. SCHRAMK  
NATJIE FLANAGAN  
RONALD P. DALBY  
HOWARD S. BURGER  
SCOTT L. WAGGONER  
JAMES M. MCCANN  
GEOFFREY T. ENGLEMAN  
KRISTINE F. KAIRIS  
MICHAEL J. CORKILL  
ELLIS W. ARMSTRONG  
MELANIE MORRIS  
VERRI L. LORG

GEORGE SEPELAK  
BOBBY L. SWINT  
TERRY C. JORDAN  
RITA GREENWAY  
MARSHA PERKER  
KRISTI BIRMINGHAM  
ROBERT A. SANDERS  
LAWRENCE S. FLEETWOOD  
DERRIS J. PORDER  
DONALD WILSON  
MARGARET A. SWISHER  
ROLAND E. CHEVALIER  
JUDITH A. CARPENTER  
LYNN BEHAN  
KERRETH WOLDSTAD

JAMES V. GRIMES  
TIM LITTEA  
BETTY ZAPK  
DAVID M. DRVENKAR  
ROBERT C. BARNES JR.  
ROSE M. BASTIER  
KAREN E. STANDSTROM  
JOHN W. MALONE  
PATRICIA E. HARMENING  
LAKOL DURLAP  
DONALD MARK SR.  
JOHN R. MURPHY  
DEANNA M. JOSSIS  
GARY KAPITLSKI

HELEN MCGHAN  
JOHN P. ADAMS  
TED L. RUDDELL  
THOMAS R. BOWMAN  
BURDARCE L. TURNER  
CHARLOTTE LASAGE  
PAUL E. BARTLETT  
CHARLES LAMICA  
RICHARD A. HEMMER  
RODERICK HARVEY  
WILLIAM PETERSON  
SUSAN K. THOMAS  
CHARLES E. LOVEJOY

*Public Safety  
AK State Department*

ALL OF THE PERSONNEL LISTED ON PAGE 1 AND 2 CAN BE VERIFIED THROUGH MAILING ADDRESS OF 1979 PEGER ROAD FAIRBANKS, AK 99701

SP25/ELR  
(IF THERE IS ANY PROBLEM WITH ANY OF THIS PLEASE LET ME KNOW)

FBX/LTO/MW



# Alaska State Legislature

## Senate

### Judiciary Committee

Official Business

Pouch V  
State Capitol  
Juneau, Alaska 99811

May 11, 1981

Mr. Mike McMahon  
2301 Peger Road  
Fairbanks, Alaska 99707

Dear Mr. McMahon:

I have received your petition and understand the concern you have expressed with Senate Bill 90.

The Judiciary Committee has spent a considerable amount of time reviewing this legislation in an attempt to pass the best freedom of information bill possible. The result of that effort is a committee substitute to SB 90, which I expect to pass out of the committee soon.

The committee substitute does provide confidentiality for certain portions of a public employee's personnel file, specifically those sections which deal with employee performance evaluations.

Thank you for expressing your views on this proposed legislation.

Sincerely,

Senator Patrick M. Rodey  
Chairman

PMR/ods

*Sample - individual letters mailed  
to all those on attached list.*

TO ALL MEMBERS OF THE SENATE JUDICIARY COMMITTEE (SB 90) & MEMBERS OF THE HOUSE JUDICIARY COMMITTEE (HB 7)...

"WE STRONGLY PROTEST HOUSE BILL 7 AND SENATE BILL 90. THE UNITED STATES CONSTITUTION GRANTS EACH INDIVIDUAL THE RIGHT TO PRIVACY. OUR PERSONNEL FILES ARE NOT WRITTEN FOR THE PUBLIC. PLEASE DON'T TAKE AWAY OUR CONSTITUTIONAL RIGHTS. QUASH HOUSE BILL 7 AND SENATE BILL 90."

NAME	ADDRESS
RAY BROOKS <i>Ray Brooks</i>	2301 Peger Road, Fairbanks, Alaska
TERPY GATCHELL <i>Terpy Gatchell</i>	2301 Peger Road, " "
WILLIAM M. DELONG <i>William M. DeLong</i>	2301 PEGGER RD " "
GLENN O'NEAL <i>G. O'Neal</i>	2301 Peger Rd " "
JAMES E. TOMPKINS <i>James E. Tompkins</i>	2301 " " " "
JACK J. ECKERT <i>Jack J. Eckert</i>	2301 Peger Rd, " "
DAVID L. LAMBERT <i>David Lambert</i>	2301 Peger Rd Fairbanks Ak.
ARTHUR W. CLARK <i>Arthur W. Clark</i>	2301 Peger Rd. Fairbanks Ak.
CHARLES TVERBERG <i>Charles Tverberg</i>	2301 Peger Rd. Fairbanks Ak.
TERRY COCHRANE <i>Terry Cochrane</i>	2301 Peger Rd Fairbanks Ak
ROBIN RUSHING <i>Robin Rushing</i>	2301 Peger Rd. Fairbanks Ak
WILLIAM BOVEE <i>William C. Bovee</i>	4921 DARTMOUTH #8 FAIRBANKS, AK.
SHERRY LEIGHTON <i>Sherry Leighton</i>	2301 Peger Road Fairbanks, AK
MICHAEL L. ROBINSON <i>Michael L. Robinson</i>	2301 Peger Road Fairbanks Ak.
MICHAEL T. SULLIVAN <i>Michael T. Sullivan</i>	2301 Peger Road Fairbanks AK.
WILLIAM R. COLVIN <i>William R. Colvin</i>	2301 Peger Rd Fairbanks AK
CLYDE NIEMI <i>Clyde Niemi</i>	2301 Peger Rd. Fairbanks Ak.
BEN STEWART <i>Ben Stewart</i>	2301 Peger Rd Fairbanks, AK 99707
JACK PHIPPS <i>Jack Phipps</i>	2301 Peger Rd Fairbanks, AK 99707
MICHAEL A. ISAACSON <i>Michael A. Isaacson</i>	2301 Peger Rd. Fairbanks AK 99707
NORMAN S. MILLER <i>Norman S. Miller</i>	2301 Peger Rd Fairbanks Ak
F. A. CHACE <i>F. A. Chace</i>	2301 Peger Rd Fairbanks Ak
DONALD A. KOLLER <i>Donald A. Koller</i>	2301 Peger Rd Fairbanks AK
DAVID D. ENSLEY <i>David D. Ensley</i>	" " " "
LEA L. LEHMAN <i>Lea L. Lehman</i>	2301 Peger Rd. Fairbanks, Ak. 99701
SAYOKO NIVER <i>Sayoko Niver</i>	" " " "
MICHAEL M. BLANNING <i>Michael M. Blanning</i>	2301 Peger Rd. Fairbanks AK 99701

NAME

ADDRESS

RICHARD RIBEIRO

*Richard Ribeiro*

EVOLYN MELVILLE

*Evolyn Melville*

STEVE C. BURLISON

*Steve C. Burlison*

DONALD K. SPARKS

*Donald K. Sparks*

RUSSELL TALVI

*Russell Talvi*

JUDITH A. BRASHIER

*Judith A. Brashier*

ANSGAR E. CLAUSEN

*Ansgar E. Clausen*

LOREN LINDSOE

*Loren Lindsoe*

LAWRENCE E. BUCK

*Lawrence E. Buck*

BENEDICT JONES

*Benedict Jones*

ALFRED E. SYNOGROUND

*Alfred E. Synoground*

JOHNNY WRIGHT

*Johnny Wright*

RICHARD A. ISAACSON

*Richard A. Isaacson*

GARY D. BRAKEFIELD

*Gary D. Brakefield*

DENNIS J. MOEN

*Dennis J. Moen*

R. N. SHOUP

*R. N. Shoup*

DANIEL R. SWORDS

*Daniel R. Swords*

STEVEN D. CLARKSON

*Steven D. Clarkson*

RUDY L. TERREY

*Rudy L. Terrey*

JAMES ELIFF

*James Eliff*

WILLIAM VESPER

*William Vesper*

JOAN D. TREGILGAS

*Joan D. Tregilgas*

JAMES R. LYLE

*James R. Lyle*

CAROL S. PEDERSON

*Carol S. Pederson*

MICHAEL McQUARY

*Michael McQuary*

THOMAS A. JOHNSON

*Thomas A. Johnson*

ART JOSEPH

*Art Joseph*

2301 Peger RD FBKRS AK.

*2301 Peger Rd, Hls*

2301 PEGER Rdo FBKS

2301 PEGER Rd. FBKS AK.

2301 PEGER Rd. FBKS AK.

*2301 Peger Rd Jba ak*

2301 Peger Rd. Jba Ak.

2301 Peger Rd FBKS AK,

S.R. Box 51065 FBKS, AK.

2301 Peger Road FBKS AK. 99701

2301 Peger Road FBKS AK. 9917d

2301 Peger Rd FBKS. AK.

*325 Aditak FBKS AK.*

2301 Peger Rd FBKS AK

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2301 PEGER RD FBKS AK.

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2301 Peger Rd FBKS, AK.

2301 PEGER Rd F.B.K.S AK.

2301 Peger Road FBKS, AK.

2301 Peger Road FBKS AK

2301 Peger Rd FBKS. AK 99701

2301 Peger Road FBKS AK 99701

2301 Peger Rd FBKS AK

2301 Peger Rd FBKS AK

2301 Peger Rd FBKS AK

2301 Peger Rd. FBK's AK

NAME

ADDRESS

JAN L. LINDH

LLOYD J. WEBB

THOMAS A. VICTORINO

DWIGHT STULLER

ROLAND FLANIGAN

DAVID M. HERNDON

RONALD C. DANE

JAMES A. MANN

LOUIS STOCKWELL

WILLIAM H. SANDERSON

VERN NELSON

GERALD R. LOWE

RICHARD BERNHARDT

MIKE McMAHON

2301 Peger Rd. Fbx

2301 Peger Rd Fbks AK.

2301 Peger Rd Fbks ab

2301 Peger Rd. Fbks AK.

2301 Peger Rd. Fairbanks Ak.

2301 Peger Rd. Fbks ab.

2301 Peger Rd Fbks ab

2301 Peger Rd. Fairbanks Ak.

2301 PEGER RD. FBKS AK

P.O. Box 55935 N. Pole AK.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

413 [REDACTED] AK.

2301 Peger Rd Fbks ab.

2301 Peger Rd Fairbanks Ak.

2301 " " " "



Official Business

# Alaska State Legislature

Senate

Judiciary Committee

Pouch V  
State Capitol  
Juneau, Alaska 99811

April 22, 1981

Mr. Dean M. Gottehrer, Chairman  
Alaska Freedom of Information Task  
Force  
Society of Professional Journalists  
Farthest North Chapter  
Box 74573  
Fairbanks Alaska 99707

Dear Mr. Gottehrer:

Thank you for your extensive comments on CSSB 90.

I am committed to a workable freedom of information bill this year and believe it can be attained.

I am glad to see that you recognize the importance of the constitutional right to privacy in Alaska. Any additional exemptions included in the bill will be directly related to this right.

The committee will be holding hearings on this bill on April 27th at 1:30 p.m. in the Butrovich Room. I hope you can attend. In the meantime, I will include your letter in each committee member's file for their information.

Thank you for expressing your concerns in this matter.

Sincerely,

A handwritten signature in cursive script, appearing to read "Pat".

Patrick M. Rodey  
Chairman

PMR/ods

---

# Society of Professional Journalists

Furthest North Chapter  
Box 74573  
Fairbanks, AK. 99707

Sigma Delta Chi

April 8, 1981

RECEIVED

APR 15 1981

Sen. Pat Rodey  
Senate Judiciary Committee  
Alaska State Legislature  
Pouch V  
Juneau, Alaska 99811

Dear Mr. Chairman:

Thank you for the invitation to provide testimony on CSSB 90. Unfortunately I am unable to personally be in attendance at the committee hearing and would like to take the opportunity to present written comments.

The Alaska Freedom of Information Task Force, which I chair, originally came into existence to seek the passage of Freedom of Information legislation that would be an improvement over the current public records statute. Tom Snapp of the All-Alaska Weekly and reporters and editors at other newspapers experienced difficulties obtaining what had previously been open public records from the State Troopers. Snapp and Joe LaRocca worked closely with Charlie Parr, then a Fairbanks representative, to develop such legislation. The original version of SB 90 is the embodiment of their efforts.

The Task Force drafted its own version of a Model Bill and that with minor modifications was introduced by Rep. Brian Rogers this year in the House as HB 7. With a few important exceptions which I will speak to in a moment, CSSB 90 is a giant step backward--both from the years of work that culminated in SB 90 and from the current statute. The Task Force is strongly and adamantly opposed to CSSB 90 and firmly committed to seek its defeat if that is the version that emerges.

The central dilemma of the Alaskan public records situation is that any legislation to regulate access to public records must take into account the Alaskan constitutional provision protecting the right of privacy. The U.S. Constitution, the federal Freedom of Information Statutes and our current state law on public records place public access to government records above personal privacy interests in all but a few, well-defined, important instances.

SB 90, HB 7 and the Task Force's Model Bill all have the virtue of specifically defining the instances when privacy surmounts access, thus limiting administrative and judicial discretion to the minimum. CSSB 90, on the other hand, eliminates all the work that developed these specific exemptions, many of them modelled on the federal statute, and replaces them with a vague, undefined exception that would exempt records the disclosure of which would constitute an unjustifiable invasion of personal privacy.

Any exception to placing the right of public access to governmental records above privacy interests must specifically and clearly defined. Governmental units must not be allowed great discretion in determining what records are open and what are closed because the result is that a great many more records would be closed than is now the case.

Our recommendation is to return to work to refine the original version of SB 90. The effect of the inclusion of most sections of the Department of Law's proposed substitute into CSSB 90 was to delay access to public records, provide for the potential supremacy of personal privacy interests above public interest in access, perhaps remove autopsy records from public disclosure, probably provide for the notification of all persons named in any records before the records are disclosed, eliminate the name of a crime victim as a public record until the matter reaches court, and generally remove many records that are now public from disclosure or access by the public. Current statutes are far better than CSSB 90 in all those respects.

A number of sections in CSSB 90 are worthy of inclusion in SB 90 and would improve it. Sections 40.25.040 on access to records by record subject and 40.25.060 on correction and amendment of records improve the legislation and should be included. Section 40.25.015 (d) on fees, waivers and copies without charge is also an improvement we endorse. On page 7, we endorse the new definition of what would be open in personnel records of public employees found in lines 23-28. We oppose the language on applications for public employment because it only pertains to finalists. All applications should be open because the public cannot judge how the selection process is working if it does not know the entire pool of applicants. We recommend for your consideration the process developed by the University of Alaska. All job announcements and advertisements carry a notice that applications are subject to possible disclosure. When a request for disclosure is made, applicants are notified and given 10 days to withdraw their applications. At the end of that period, all who have not withdrawn are disclosed.

There are a number of other improvements we would also like to see in SB 90. The most important is a definition of privacy. I strongly believe this is a legislative and not a judicial responsibility. A number of legislators have shrugged off the responsibility by saying that a good definition is hard to find and let the Supreme Court do it. We have suggested the definition from Restatement of Torts which we find acceptable and are willing to respond to other definitions that might be suggested. But we strongly believe that it is better for 60 members of the Legislature to devise the definition rather than far fewer members of the Supreme Court--perhaps as few as one who might tip the balance either way.

Other changes we recommend in the original SB 90 include: striking 40.25.015(e)(8) which is too general a exclusion and leaves too much discretionary power in an agency, eliminating 40.25.015(13) where original entry police records are included and striking subsection (C) of that section which speaks of an unjustifiable intrusion into a person's right of privacy, placing the burden of proof in a suit for disclosure on the governmental unit to prove it was required not to release requested information, requiring each governmental unit to keep a file of letters of denial of information requests that itself should be public, include information stored in a computer system and independent contractors paid with public money in whole or in part and under the supervision of a governmental unit in areas covered by the law.

Finally, I wish to urge you to resist efforts to add more exemptions or exclusions and to continue to cover all parts of government in the state, including the municipalities.

Sen. Pat Rodey

-3-

April 8, 1981

I want to thank you and the committee for early expedient consideration of the bill. We strongly endorse and our more than 40 newspapers, magazines, broadcast stations and media organizations favor free and easy access to government records. The public's business is done best when conducted in the open and legislation that facilitates that access is needed. Bills such as CSSB 90 which close more than is open now, delay the access, and prevent the people from knowing what actions are being taken should be defeated.

We will be watching the results of what emerges from the committee and stand ready at any time to help in any way possible to assist. Please don't hesitate to call me at 479-7761 if I can be of any further assistance.

Sincerely yours,

A handwritten signature in cursive script, reading "Dean M. Gottehrer". The signature is written in dark ink and is positioned above the typed name.

Dean M. Gottehrer  
Chairman  
Alaska Freedom of Information Task Force



# Alaska State Legislature

## Senate

### Judiciary Committee

Pouch V  
State Capitol  
Juneau, Alaska 99811

Official Business

April 29, 1981

Mr. Charles H. Gallagher  
General Delivery  
Ester, Alaska 99725

Dear Charlie:

Thank you for your letter on SB 90. The bill is currently in the Senate Judiciary Committee, and we have heard extensive testimony.

I agree that certain portions of a public employee's personnel file should be confidential, specifically those sections which deal with employee performance evaluations.

As a co-sponsor, I intend to see that we get the best freedom of information bill possible. I have offered an amendment to protect the privacy due public servants. A copy of that proposed amendment is enclosed for your information and review.

Your comments are appreciated and will be provided to each committee member for his review of this legislation.

Sincerely,

*Pat*

Senator Patrick M. Rodey  
Chairman

PMR/ods  
Enclosure

*How have you been?  
Hope to see you when  
I'm in Fairbanks this  
Summer!*

2 other information-gathering purposes if

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

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

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

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

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

29 Sec. 40.25.040. ACCESS TO RECORDS BY RECORD SUBJECT. (a) Except

RECEIVED

APR 27 1981

Charles H. Gallagher  
General Delivery  
Ester, Alaska 99725  
April 22, 1981

*Dear Pat, I would like you to look this over  
as apparently this bill is coming before your  
committee. Thanks Charlie.*

Dear Representative Rogers and Senator Parr:

Thank you for recent letters regarding my objection to House Bill 7 and Senate Bill 90.

It appears that the purpose of your bills is to submit a freedom of information action regarding what is and what is not public information. Your concerns are genuine and well respected in my opinion.

In regards to the exposing of Public Employess evaluations:

While you are elected individuals and naturally, fully open to the criticisms of "public life", I am not. I am a public servant and I am responsible to those who are my supervisors, the laws that I am required in my job to follow, and to the people who I serve. In such a capacity I am frequently the point of criticisms, investigation, and charges due to the determinations that I make regarding individuals eligibility for Unemployment Benefits. Often an individual believes decisions are bias in favor of their employer, often they believe the determinations to be a personal opinion, and frequently one thinks that they are a victim of injustice. All determinations are based upon available evidence at the time the determination is required to be made. Unfortunately, the ins and outs of Law, Regulation and Bureaucracy are not known and bitter feelings develope.

The result of these feelings is that a complaint is often filed of a personal nature. I have even been verbally attacked on the streets. I regard the right of complaint as sacrosanct, and I regard complaints as being positive as well as a part of any job. The system as developed offers an annual review of an employee by an agency as occurs in most organizations. This look-see each year is made by ones supervisor with attention going to various positive and negative attributes of that employee. This is in one's personnel file.

It appears you are proposing to leave myself and all other employess of the State open to the type of public scruntiny, which I am afraid would be abused. There are agency's set up for that purpose, such as the Omsbudman. We only know him too well.

While I realize that it is not your intentions to embarrass public employess, a recent publication of the salaries of State employees salaries over \$50,000.00 was a perfect example of abuse as some of those salaries came from professional grants. This is a minor example of how these bills can go awry. It is best to go without than possibly abridge the rights of any citizen (public or private) with well intentioned, but somewhat constitutionally questionable, "rights to know" Law.

I feel it is a privilege to be a State employee, and sometimes the Laws that you gentlemen write are not regarded by your constituents in the most favorable

light. I and my fellow employees frequently take personal blame for that and your bills would a vehicle of abuse.

Your attention is appreciated,

Sincerely, yours,

Charles H. Gallagher

cc: Senator Rodey  
cc: Representative Brown

**STATE OF ALASKA  
PERFORMANCE EVALUATION REPORT**

NAME	SOCIAL SECURITY NO.	DEPARTMENT	DIVISION
Charles H. Gallagher	002 34 0832	Labor	Employment Security

PCN	JOB CLASSIFICATION & TITLE	REPORT COVERAGE					
		FROM	TO	FROM	TO		
075764	Employment Sec. Spec. IB	10	16	79	10	15	80

REASON FOR REPORT

ANNUAL     RESIGNATION     COMPLETION OF PROBATION

OTHER (SPECIFY) \_\_\_\_\_

POSITION DESCRIPTION REVIEWED BY RATER

YES  NO  If no, explain: \_\_\_\_\_

**NARRATIVE SECTION**

Overall Effectiveness of the Job

U    Acceptable    O

(Overall Effectiveness MUST be explained. Other performance consideration, such as strong points and areas needing improvement, should be included.)

Mr. Gallagher has been working as a Non Monetary Adjudicator since 5/16/77. He attended and successfully completed a week of training in Juneau from 9/8/80 to 9/12/80 dealing with the new law changes effective October 1, 1980. These changes coupled with a system already in a continual change mode, due to the single-by-pass system that came into effect 4/21/80 and the Automated Benefit Payment system effective 10/1/80 created a few problems in the overall operation of the unit. Mr. Gallagher was instrumental in dealing with these problems and initiating solutions quickly and accurately.

Mr. Gallaghers duties include interviewing, both for non mon issues, and the new Eligibility Review Program, formal decision making, inputting issues and resolutions into the computer, taking pre-appeal statements and appeal requests and attending appeal hearings on behalf of the department. He also attends union call and prepares Reports of Union Validation, form 1202. His accuracy rate remains a 97%, a high in his unit. He is issuing 80% of his determinations in a timely manner, which is in keeping with the expectations of the unit. Mr. Gallaghers standards of work continue

Rater's Recommended Action: Recommended for Step Increase.

(See Instructions - over)

Rating was discussed with employee     Yes     No    If no, explain: \_\_\_\_\_

Signature of Rater: [Signature] Title: Non Mon Supv Date: 11/10/80

Employee:  Concur with Rating     Disagree (Employee comments on back)

Signature: Charles H. Gallagher Date: 11/7/80

REVIEWED AND APPROVED BY: [Signature] Date: 11/7/80

Division: For Director: [Signature] L. Fleeks Title: Regional Manager Date: 11/17/80

Department: [Signature] Title: Personnel Asst Date: 11-19-80

EMPLOYING DIVISION

**SPECIFIC RATING AREAS**

PERFORMANCE    U    A    O

(As shown by: quantity, quality, accuracy, and completeness of work; knowledge of job fundamentals; judgment shown on the job; willingness and ability to carry out new assignments; independence of performance; attitude towards job.)

WORK HABITS           

(As shown by: attendance; punctuality; appearance and grooming; safety.)

INTERPERSONAL RELATIONSHIPS           

(As shown by: consideration of public and co-workers; acceptance of supervision.)

SUPERVISORY (for Supervisory Employees Only)           

(As shown by: training and directing subordinates; evaluating subordinates; planning and organizing work, including delegation; problem solving and decision-making ability; affirmative action achievement; cost effectiveness; and, Labor Contract Administration).

\* U = Unacceptable,    A = Acceptable

O = Outstanding

NOV 25 1980

STATE OF ALASKA  
PERFORMANCE EVALUATION REPORT

Charles H. Gallagher SSA #002-34-0832

to be highly professional. He has a congenial personality and gets along well with his co-workers as well as the general public. He accepts assignments cheerfully and completes them with a minimum of supervision. He is a valuable asset to the department.

Mr. Gallagher has used a total of 83 hours sick leave since his last evaluation and has always given proper notice. This is considered average usage and shows no signs of abuse.

Mr. Gallagher is highly recommended for step increase.

BY Charles Hayden Gallagher Nov 7, 1980  
Employee Date

BY: Margaret [Signature] 11/7/80  
Rater Date



Official Business

# Alaska State Legislature

Senate

Judiciary Committee

Pouch V  
State Capitol  
Juneau, Alaska 99811

May 7, 1981

Mr. Lew M. Williams, Jr.  
Publisher  
Pioneer Printing Company  
Box 7900  
Ketchikan, Alaska 99901

Dear Lew:

Thank you for your letter of April 21 and your comments on SB 90.

I agree with you that some time limitations are needed in the bill, and I have directed my staff to prepare the necessary amendments.

A problem exists with using the restatement of torts definition of privacy invasion. The restatement addresses the common law definition, while Alaskans have a constitutional right to privacy, a higher standard.

Apart from this, your suggestions are well taken, and I will attempt to incorporate them into the bill.

I appreciate your continued efforts on this legislation.

Sincerely,

A handwritten signature in cursive script that reads "Pat".

Senator Patrick M. Rodey  
Chairman

PMR/ods



# Pioneer Printing Co.

BOX 7900

KETCHIKAN, ALASKA 99901

TELEPHONE 225-3157

21 April 1981

RECEIVED

APR 27 1981

Senator Pat Rodey  
Senate Judiciary Committee  
Alaska Legislature  
Pouch V  
Juneau, Alaska 99981

Dear Pat:

We have a copy of CSSB 90 which is before your committee. It is a revision of legislation we commented on to Sen. Vic Fischer and his State Affairs Committee in February. Some of the changes we recommended then have been made. Some new features in the legislation present problems. Generally, our concern is that the bill is too vague in some parts.

On page 3, lines 11-14, it requires that the government unit notify of a denial of records in writing but it doesn't say how soon. To avoid misunderstanding and vagueness, we suggest that you add after "denial" in line 13: "within two working days." Or make it three or five working days, whatever you find reasonable, but make it something.

On line 29 of page 3, we recommend that after the word "fails" you add "within seven working days" or some reasonable length of time. If more time is needed, this section already allows for an extension. The idea is to set a deadline so people know where they stand and so it's known when an extension is needed.

On page 5, lines 7 and 8, we suggest this complete rewording: "(5) trade secrets and commercial, financial, geological or geophysical data furnished to the government unit with the understanding it will be treated confidentially." This limits the word "confidential" to just those situations wherein there is a commitment. Otherwise, there is no basis for judgment as to what makes any of the data confidential. More vagueness.

We are concerned about the term "original entry records" in line 12 on page 5. Does this mean that the police can withhold the arrest docket so that no one can

see who has been arrested? Can't we just leave it with "investigatory and intelligence records?" I imagine in some cases that police officials could classify "original entry records" as "investigatory." It would encourage police departments to keep highly sensitive data out of original entry records. We want to at least be able to see a record that someone was arrested, that an incident occurred. This paragraph seems vague enough to conflict with section (g) page 8 which does say arrest records are public.

On line 15, page 5, what's an "enforcement proceedings;"? Do law enforcement officers or the general public know? It's not in definitions and I don't know.

On the next line down, you can strike the words "a right to." The right to a fair trial always exists. Whether a person gets one or not, he always has the right.

Maybe you can reword line 16 to read: "(B) Destroy an accused person's presumption of innocence."

We hate to see lines 18 and 19 on page 5 written as they are with no backup with a definition in the bill as to what constitutes a right of privacy, or an invasion of privacy. There is an invasion of privacy definition in the restatement of torts, with which you are more familiar than I. Without a definition of the right of privacy, CSSB 90 is vague in several areas.

On page 6, lines 7-9, it appears that no attorney work product will be available for practical purposes. Everything except litigation strategy or opinions of the attorney becomes a court record and public. We suggest using the wording in this section that was in SB90 or starting in line 7 strike: "that does not involve litigation strategy, or mental impressions or opinions of any attorney, or a person working under the attorney's direction."

On page 6, lines 20-24, we have something so vague that public officials, and their legal advisors will take the easy way out and deny everything.

This is supposed to be legislation to assure public records are public.

This section defeats that purpose because, again, a right of privacy is not defined in the bill. And the bill leaves it up to a political body to judge public interest vs. private interest. Is being a judge so easy that any public official can be one?

We suggest that everything in this paragraph after "unjustifiable invasion of personal privacy;" be dropped. And that somewhere in the bill a definition of right of privacy be inserted.

If a right of privacy is defined, section (b) beginning on line 25 of page 6 is unnecessary.

On page 7, line 29, we suggest that after "public employment" you add the words "for positions not covered by collective bargaining agreements." This indicates that the public interest is in the top administrative jobs—the policy setters and administrators. It's doubtful that anyone wants to examine applications for clerk typists, garbage collectors, etc.

Any reference to finalists should be eliminated. Arbitrarily decreeing that a public agency release the names of the final three applicants or the top ten percent of those who applied is against the practices of some local governments. It is against the best interests of the public.

Our school board gave us the list of 51 applicants for the position of school superintendent (see attached). You can imagine the interest among the 130 teachers in the system, the other employees and the parents of youngsters when they saw the list. Some have friends on that list who they want to be among the finalists. They want to tell the school board.

How else can the public be sure that women, minorities and Alaskans are considered in hiring for top administrative positions?

We agree that applicants for such positions should be told that their names are public information when they apply for a public office. Therefore we suggest that starting at line 28 the sentence covering applications for public employment read like this: "Applications for public employment for supervisor positions (as defined by state labor law, if you wish) are open to public inspection but applicants for these positions shall be notified that such applications are public record when the positions are advertised."

No one is helped by keeping all but the finalists confidential. The purpose of affirmative action is defeated.

Only one person is helped by keeping the names of all applicants except the finalist confidential—the job jumper. There are people who apply for every position they see on speculation. Making all of the applications public discourages that. The public gets qualified, serious applicants for the top jobs.

We hope your committee gives the section covering applications for employment serious thought. In the past few years there have been too many instances where an unqualified applicant might have been placed in a top position if the public hadn't access to the names under consideration. We are all serving the public, trying to promote local hire, minority and women hire. Let's have a law that encourages it, not discourages it.

We want to emphasize that some definition of a right of privacy should be included in the legislation. It will avoid years of costly litigation while the courts devise a definition.

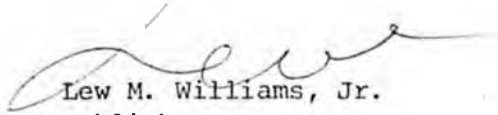
That is what happened in Washington State. The supreme court there finally defined an invasion of privacy by taking it from the restatement of torts.

I'm far from being a legislative or legal expert but I'll hazard an attempt at defining a right of privacy. You people can take it from there.

Right of privacy: A person is entitled to have records concerning him or her protected from public disclosure if such disclosure is of no legitimate concern to the public and if such disclosure would subject the person to criticism or ridicule. (Both situations must exist.)

Have fun,

Sincerely yours,

A handwritten signature in cursive script, appearing to read "Lew", is written over the typed name.

Lew M. Williams, Jr.  
Publisher

cag

Enclosures



Official Business

# Alaska State Legislature

## Senate

### Judiciary Committee

Pouch V  
State Capitol  
Juneau, Alaska 99811

#### MEMORANDUM

TO: Senator Bennett  
Senator Hohman  
Senator Parr  
Senator Ray

FROM: Senator Rodey *PMR*

DATE: May 7, 1981

SUBJECT: SB 90 "An Act relating to privacy and public information; changing Rule 65 of the Alaska Supreme Court Rules of Civil Procedure; and providing for an effective date."

Please find attached a committee substitute draft of SB 90.

The draft incorporates the ideas discussed at the committee meetings and those submitted by you upon the circulation of the first draft.

I would like to move this bill out if the committee is satisfied with its form.

PMR/ods  
Attachment



Official Business

# Alaska State Legislature

Senate

Judiciary Committee

Pouch V  
State Capitol  
Juneau, Alaska 99811

May 11, 1981

Mr. Grant Callow  
Alaska Court System  
303 K Street  
Anchorage, Alaska 99503

Dear Grant:

Enclosed please find a draft of SB 90 for your information and comments.

Sincerely,

Kevin K. Bruce  
Committee Aide

KKB/ods  
Enclosure



Official Business

# Alaska State Legislature

Senate

Judiciary Committee

Pouch V  
State Capitol  
Juneau, Alaska 99811

May 7, 1981

Mr. Al M. Camosso  
Administrator  
Providence Hospital  
3200 Providence Drive  
Pouch 6604  
Anchorage, Alaska 99502

Dear Mr. <sup>Al</sup> Camosso:

Thank you for your letter regarding CSSB 90.

I agree with your concern for the privacy of medical records, and have included the following language in the section which exempts records disclosure:

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

I appreciate your taking the time to inform me of your concerns.

Sincerely,

A handwritten signature in cursive script that reads "Pat".

Senator Patrick M. Rodey  
Chairman

PMK/ods

PROVIDENCE  
HOSPITAL

3200 PROVIDENCE DRIVE - POUCH 6604  
ANCHORAGE, ALASKA 99502  
PHONE: (907) 276-4511



MAY 06 1981

April 30, 1981

Honorable Patrick M. Rodey  
Pouch V  
Juneau, Alaska 99811

Position Paper: CS SB 90 - "An act relating to privacy and public information; changing Rule 65 of the Alaska Supreme Court Rules of Civil Procedure; and providing for an effective date."

Dear Senator Rodey:

We have reviewed the Committee Substitute to SB 90 relating to privacy and public information and would appreciate your consideration of our comments.

1. According to Section 40.25.090. DEFINITIONS (3) it reads, in part, that a governmental unit includes "any organization supported in whole or in part by public money or authorized to spend public money."

a) If we receive revenue-sharing money would we be considered a governmental unit?

b) There are hospitals in Alaska which are owned by municipalities or boroughs. Are these hospitals considered "governmental units?" Would the medical records in these hospitals be subject to inspection?

According to the Federal Privacy Act of 1974 (PL 93-579) and the Privacy Commission's Report of 1977, medical records are and should be kept confidential and should not be included in freedom of information laws.

Therefore, we recommend that a section be included in CS SB 90 which would specifically exempt a patient's medical record from this change in Rule 65 of the Alaska Supreme Court rules of Civil Procedure.

Honorable Patrick M. Rodey  
Page 2  
April 30, 1981

2. Additionally, I would like to point out that if Section 40.25.015. on pages 1 and 2 regarding records to be open to inspection is passed, it would certainly add to the already high cost of health care. Hospitals would probably have to add personnel to their staff just to research files, copy them and answer requests. These additional labor costs, whether justified or not, would be passed on to patients.

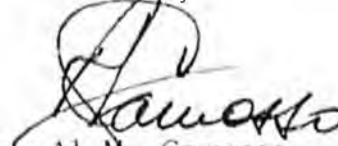
Also, offering 20 pages of a record copied free of charge would be another unnecessary expense adding to the high cost of health care.

Part (c) of that section refers to the fact that people can make a request for a record by phone or in writing. It would seem appropriate that some safeguard be built-in that would require some identification of the person, especially someone who might want access to a business office bill or record of a person who is not the requester. In fact, why should anyone have access to someone else's bill?

3. It is our recommendation that hospitals should be exempt from this law, with the possible exception of those hospitals (operating, capital expenses and balance sheet statistics only) owned and operated by municipal, state or federal governments.

Thank you for your consideration of our comments. We look forward to your reply.

Sincerely,



Al M. Camosso  
Administrator

cc: Dennis DeWitt  
William Dann  
William Faulkner, O.D.  
Ron Hammett  
Donald DeMers  
Don Brennan  
Alaska Hospital Administrators  
Advisory Board



# Alaska State Legislature

## Senate

### Judiciary Committee

Official Business

Pouch V  
State Capitol  
Juneau, Alaska 99811

April 8, 1981

Ms. Kim Francisco  
Box 7812  
Ketchikan, Alaska 99901

Dear Ms. Francisco:

Thank you for your letter concerning SB 90. I will be certain to include a copy of your correspondence in each member's file for consideration of this proposed legislation.

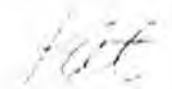
I agree that certain portions of a public employee's personnel file should be confidential, specifically those sections which deal with employee performance evaluations.

As a co-sponsor, I intend to see that we get the best freedom of information bill possible, and will offer an amendment to protect the privacy due public servants.

For your information, the Judiciary Committee will be conducting further hearings on SB 90 on Friday, April 10, at 1:30 p.m. in the Butrovich Committee Room. Please feel free to contact my staff should you wish to testify.

Again, I appreciate your comments on this very important legislation.

Sincerely,

  
Patrick M. Rodey  
Chairman

PMR/ods

Thank you for your time,  
Tom Amundson

I'm writing to request that the  
Judiciary Committee look very closely  
at S.B. #90. I believe that the bill  
infringes on state employer's right to  
privacy. I also believe that the bill  
will undermine and destroy the job  
evaluation system now in use by the  
state. Constructive criticism taken out  
of context would cause supervisors  
to no longer make criticisms. The  
public should have access to salary  
information but personnel records should  
not be available except by court  
order or through some formal procedure  
that protects the employe from misuse  
of the information.

Dear Mr. Chairman

Juneau Alaska 99811 4/4/81

Senators Patrick Rodey  
Chairman Senate Judiciary Committee  
Pouch U  
RECEIVED  
APR 07 1981

# CHARLIE PARR

ALASKA LEGISLATURE

S.R. Box 50599  
Fairbanks, Alaska 99701  
(907) 456-5029

Pouch V  
Fairbanks, Alaska 99811  
907 455-4907  
RECEIVED

MAR 19 1981

March 18, 1981

## MEMORANDUM

TO: Senator Pat Rodey, Chairman  
Senate Judiciary Committee

FROM: Senator Charles H. Parr *CHP*

SUBJECT: CSSB 90 (Privacy and Public Information)

This bill, in one form or another, has been in the Legislature since the end of the 1976 Session and has been subjected to a great deal of scrutiny. I thought it might be helpful to the Judiciary Committee to know which matters in the past have been almost universally agreed to, and which ones have been the subject of continuing controversy.

There has been little or no opposition to any of the following:

- 1 - The bill delineates those items which the State agencies may hold confidential and says that everything else is open.
- 2 - Items may be made confidential to comply with the Alaska Constitution's guarantee of privacy (legislative and judicial determination) and where there is an overriding public interest (by legislative determination only).
- 3 - Only the legislature by statute can approve confidentiality -- executive agencies may not do this by regulation.
- 4 - A person wanting access to information in the hands of a governmental agency should have easy, free access to the courts if the information is not released.
- 5 - A file or document which contains both confidential and open information is to have the confidential information deleted and the remainder released.
- 6 - Records maintained on an individual must be open to inspection by that individual.

The following subjects have been controversial:

- 1 - Whether court system records should be included. The bill now contains a compromise which says that they shall be released under rules established by the Supreme Court.
- 2 - Whether municipalities should be included. They are included in this bill and testimony this session was strongly in favor of such inclusion.
- 3 - Whether information must be produced immediately upon request. News agency representatives have pushed for this, but State agencies have pointed out that immediate release may not always be practicable. The bill presently strikes a balance between immediate production and the delays permitted Federal agencies in responding to FOI requests.
- 4 - State agencies are not willing to release any "attorney work product". The opposing view is that failure to make such materials open could result in a lockup of large amounts of information. The bill presently makes attorney work product open after any litigation it pertains to has been settled.
- 5 - Personnel records of public employees (to include teachers) is a thorny question. No one has objected to the release of salary information, and no one has proposed releasing personal information (such as family matters). Between these two extremes there has been much discussion as to what should be open in view of the fact that the public pays the employee's salary, and at the same time the employee has certain rights of privacy. It is my view that at least the information concerning the employee's qualifications for the job should be open.
- 6 - The bill takes away the right of a municipal agency to have executive sessions by authority of an ordinance. Unfortunately, school boards and city councils view this as an infringement on their rights.

CHP:vc



Official Business

# Alaska State Legislature

Senate

Judiciary Committee

Pouch V  
State Capitol  
Juneau, Alaska 99811

March 30, 1981

The Judiciary Committee will be holding public hearings on CSSB 90 on April 10, 1981, at 1:30 p.m. in the Butrovich Room.

You have expressed an interest in the original bill (SB 90) and the committee would appreciate receiving any comments on the State Affairs substitute that you care to provide.

Thank you for your continued interest.

Sincerely,

Kevin K. Bruce  
Committee Aide

KKB/ods

From Kodiak: Jon Newstrom  
KMXT Radio  
P. O. Box 484  
Kodiak 99615

Deborah Nelson  
Kodiak Daily Mirror  
P. O. Box 1307  
Kodiak 99615

From Homer: Annabel Lund  
Managing Editor  
Homer News  
Box 254  
Homer 99603

From Fairbanks: Scott Sterling  
224 Nerland  
Fairbanks 99701

Jamie Bryson  
860B Yak Estates  
Fairbanks 99701

From Sitka: Ray Medlin  
Box 1339  
Sitka 99835

From Skagway: Lucinda Hites  
Box Three  
Skagway 99840

From Soldotna: Steve Rinehart  
The Peninsula Clarion  
Box 1341  
Kenai, Alaska 99611

From Anchorage: Bob Lohr  
Rural Cap  
327 Eagle St.  
Anchorage

From Palmer/Wasila: Mark Harris

From Haines: Leo Land  
Box 122  
Haines 99827

From Nome: Stanley Summers  
KICY AM/FM  
Box 820  
Nome, Alaska 99762

Feb. 5, 1981

Page 3

From Fairbanks: Kent Sturgis  
Box 710  
Fairbanks 99701

From Anchorage: Kay Fanning  
Alaska Newspaper Assoc. & Daily News  
Pouch 6616  
Anchorage 99502

Ted Berns, Attorney  
Mun. of Anchorage  
Pouch 6-650  
Anchorage 99501

From Fairbanks: Tom Knapp  
Box 970  
Fairbanks 99701

Bruce Wannack  
913 Noble St.  
Fairbanks 99701

From Anchorage: Matt Zencey  
AKPIRG  
Box 1093  
Anchorage 99510

Mark Beltz  
343 W. 12th Ave.  
Anchorage 99502

From Ketchikan: Christine M  
KINB Radio  
Ketchikan 99901

From Fairbanks: Dean Gottehrer, Task Force for  
Professional Journalists  
Box 74573  
Fairbanks 99701

Susan Fischer  
Society of Professional Journalists  
Box 710  
Fairbanks 99701

From Anchorage: Howard Weaver  
Daily News  
Pouch 6616  
Anchorage 99502

From Ketchikan: Lew Williams, Editor  
Ketchikan Daily News  
501 Dock Street  
Ketchikan 99901

KAY M. BAKER, City Clerk  
CITY OF KODIAK  
P.O. Box 1397  
KODIAK, AK 99615

486-3224

JOAN BENNETT SCHRADE  
THE JUDITH GROUP, INC  
P.O. Box 2334  
SOLDOTNA, AK 99669

IVAN WISDOM  
CITY MANAGER  
CITY OF NOME  
P.O. Box 281  
NOME, AK 99762

443-5242

CHARIE SHELLY  
A.P.E.A.  
340 NORTH FRANKLIN ST.  
JUNEAU, AK 99801

586-2334

BRUCE HOROWITZ  
ALASKA LEONE SERVICES  
419 6TH STREET #322  
JUNEAU, AK 99801

ROLAND SITANKS  
419 6TH STREET #321  
JUNEAU, AK 99801

BOB ROBERT MANNERS  
NEA - ALASKA  
147 SOUTH FRANKLIN #207  
JUNEAU, AK 99801

LEAGUE OF WOMEN  
VOTERS  
ELIZABETH CUORA  
9151 SKYWOOD LANE  
JUNEAU, ALASKA 99801

JANE HARRISON  
3961 EASTWOOD LOOP  
ANCHORAGE, AK 99504

BERNARD SHARP  
CITY ATTORNEY  
CITY AND BOROUGH OF JUNEAU  
155 SOUTH SENACD ST.  
JUNEAU, ALASKA 99801

586-3300

ANPIRG      MATTHEW ZEWCEY  
P.O. Box 1093  
ANCHORAGE, AK 99510

278-3661

OMBUDSMAN'S OFFICE      FRANK FLAVIN  
840 K ST. Rm 203  
ANCHORAGE, AK 99501

276-4011

CITY OF ~~SELDONIA~~ SELDONIA      CARL HILLE  
P.O. DRAWER B  
SELDONIA, AK 99663

234-7643

PAYNOLONA MEDICAL  
Box 1339  
SITKA, AK 99835

HAINES BOROUGH  
P.O. Box H  
HAINES, ALASKA 99827

R.E. HENDERSON

766-2711

~~CITY OF ANCHORAGE~~  
~~POUCH 6-650~~  
~~ANCHORAGE, AK 99507~~

~~TEA BERNIS~~

264-4545

ANTHROPOLOGICAL ASSOCIATION  
ARCHAEOLOGY  
3310 E. 41ST, ANCHORAGE, AK.

JOAN LOBOELL

RONALD PAVELLAS  
THE ALASKA HOSPITAL AND MEDICAL CENTER  
2801 DEBATE RD  
POUCH 8-AH  
ANCHORAGE, AK 99508

276-1131



# Alaska State Legislature

## Senate

### Judiciary Committee

Pouch V  
State Capitol  
Juneau, Alaska 99811

Official Business

April 20, 1981

Ms. Jolanda Cook  
1919 Lathrop St.  
Drawer 40  
Fairbanks, Alaska 99701

Dear Ms. Cook:

Thank you for your comments concerning SB 90.

I agree that certain portions of a public employee's file should be exempted from disclosure and have amended SB 90 to reflect that.

I appreciate your thoughts on this matter.

Sincerely,

A handwritten signature in cursive script, appearing to read "Pat".

Patrick M. Rodey  
Chairman

PMR/ods

19  
RECEIVED

APR 20 1981

MSG 81-00012989 PRTY 1 04/17/81 16:40:15 ORIG: LF00 IN= 0005 OUT= 0029  
FROM: TAMMY TO: JUNEAU INFO  
TARGET: LJH2 SUBJ: POM

PAGE 0004

TO: SEN. BENNETT, FAHRENKAMP, PARR, RODEY, HOHMAN, RAY  
REP. BETTISWORTH, BROWN, FANNING, RANDOLPH, ROBERT SMITH  
REP. CLOCKSIN, CHUCKWUK, MILLER, ANDERSON, O'CONNELL, PHILLIPS  
FR: JOLANDA COOK, 1919 LATHROP ST, DRAWER 40, 99701 PH 452-1844  
REP. DIV. OF ADULT AND AGING SER.

RE: HB 7, SB 90  
HAVING HAD MY LIFE AND PERSONAL SAFETY (AS WELL AS MY CHILDS) THREATENED  
ON SEVERAL OCCASIONS DURING THE PERFORMANCE OF MY DUTIES AS A SOCIAL  
WORKER, I VEHEMENTLY OPPOSE DISCLOSURE OF MY PERSONNEL FILES TO  
THE PUBLIC. I AM REQUIRED BY LAW TO PROTECT THE CONFIDENTIALITY OF MY  
CLIENTS. I ALSO SHOULD BE AFFORDED BY PRIVACY AND ANONYMITY.



Official Business

# Alaska State Legislature

Senate

Judiciary Committee

Pouch V  
State Capitol  
Juneau, Alaska 99811

April 20, 1981

Mr. C. Keith Campbell  
Administrator  
Seward General Hospital  
P. O. Box 365  
Seward, Alaska 99664

Dear Mr. Campbell:

Thank you for your comments on SB 90.

I agree with your request, and plan to offer an amendment which will exclude medical records from disclosure.

I appreciate your thoughts on this matter.

Sincerely,

A handwritten signature in cursive script that reads "Pat".

Senator Patrick M. Rodey  
Chairman

PMR/ods

# Seward General Hospital

P.O. BOX 365  
SEWARD, ALASKA 99664  
(907) 224-5205

April 15, 1981

Senator Patrick M. Rodey  
Alaska State Senate  
Pouch V  
Juneau, Alaska 99801

Dear Senator Rodey:

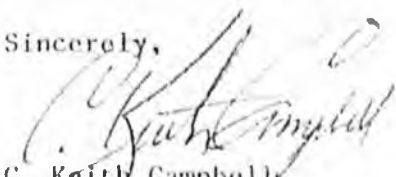
I respectfully request that Medical Records be excluded as a part of S.B. 90.

The existing State Statutes adequately protect the public interest in regard to information contained in a patient's medical records.

This new statute would unnecessarily complicate the administration and increase the cost of this department at Seward General Hospital.

Thank you for your consideration to this matter.

Sincerely,



G. Keith Campbell  
Administrator

CKC:ecb

cc: Alaska State Hospital Association



Official Business

# Alaska State Legislature

## Senate

### Judiciary Committee

Pouch V  
State Capitol  
Juneau, Alaska 99811

#### MEMORANDUM

TO: Senator Parr, Chairman  
Committee on Health, Education, and Social Services

FROM: Senator Rodey *PMR*

DATE: April 21, 1981

SUBJECT: SB 399, "An Act relating to adoption; and providing for an effective date."

SB 399, which amends current adoption law, has been referred to your committee. I would appreciate your scheduling this measure for testimony before the committee at your earliest convenience. Thank you.

PMR/ods



# Alaska State Legislature

Senate

Official Business

Judiciary Committee

Pouch V  
State Capitol  
Juneau, Alaska 99811

April 14, 1981

Mr. Monte Jordan  
73 Rangeview Drive  
Fairbanks, Alaska 99701

Dear Mr. Jordan.

Thank you for your comments on SB 90.

I agree that certain portions of a public employee's personnel file should be confidential, specifically those sections which deal with employee performance evaluations.

As a co-sponsor, I intend to see that we get the best freedom of information bill possible, and will offer an amendment to protect the privacy due public servants.

Your comments are deeply appreciated.

Sincerely,

A handwritten signature in cursive script, appearing to read "Pat".

Patrick M. Rodey  
Chairman

PMR/ods



# Alaska State Legislature

Senate

Judiciary Committee

Pouch V  
State Capitol  
Juneau, Alaska 99817

Official Business

April 14, 1981

Ms. Betty Rhymes  
SR 40494  
Fairbanks, Alaska 99701

Dear Ms. Rhymes:

Thank you for your comments on SB 90.

I agree that certain portions of a public employee's personnel file should be confidential, specifically those sections which deal with employee performance evaluations.

As a co-sponsor, I intend to see that we get the best freedom of information bill possible, and will offer an amendment to protect the privacy due public servants.

Your comments are deeply appreciated.

Sincerely,

A handwritten signature in cursive script that reads "Pat".

Patrick M. Rodey  
Chairman

PMR/oda



# Alaska State Legislature

## Senate

### Judiciary Committee

Official Business

Pouch V  
State Capitol  
Juneau, Alaska 99811

April 14, 1981

Mr. George Hotrum  
212 Bridget Avenue  
Fairbanks, Alaska 99701

Dear Mr. Hotrum:

Thank you for your comments on SB 90.

I agree that certain portions of a public employee's personnel file should be confidential, specifically those sections which deal with employee performance evaluations.

As a co-sponsor, I intend to see that we get the best freedom of information bill possible, and will offer an amendment to protect the privacy due public servants.

Your comments are deeply appreciated.

Sincerely,

A handwritten signature in cursive script that reads "Pat".

Patrick M. Rodey  
Chairman

PMR/ods



# Alaska State Legislature

## Senate

### Judiciary Committee

Official Business

Pouch V  
State Capitol  
Juneau, Alaska 99811

April 14, 1981

Mr. K. R. Kollodge  
433 Fairbanks Street  
Fairbanks, Alaska 99701

Dear Mr. Kollodge:

Thank you for your comments on SB 90.

I agree that certain portions of a public employee's personnel file should be confidential, specifically those sections which deal with employee performance evaluations.

As a co-sponsor, I intend to see that we get the best freedom of information bill possible, and will offer an amendment to protect the privacy due public servants.

Your comments are deeply appreciated.

Sincerely,

A handwritten signature in cursive script that reads "Pat".

Patrick M. Rodey  
Chairman

PMR/ods



Official Business

# Alaska State Legislature

Senate

Judiciary Committee

Pouch V  
State Capitol  
Juneau, Alaska 99811

April 14, 1981

Ms. Mona Rector  
1409 Bluebell Street  
Fairbanks, Alaska 99701

Dear Ms. Rector:

Thank you for your comments on SB 90.

I agree that certain portions of a public employee's personnel file should be confidential, specifically those sections which deal with employee performance evaluations.

As a co-sponsor, I intend to see that we get the best freedom of information bill possible, and will offer an amendment to protect the privacy due public servants.

Your comments are deeply appreciated.

Sincerely,

A handwritten signature in cursive script that reads "Pat".

Patrick M. Rodey  
Chairman

PMR/ods



# Alaska State Legislature

Senate

Judiciary Committee

Official Business

Pouch V  
State Capitol  
Juneau, Alaska 99811

April 14, 1981

Ms. Lucille Odom  
Box 1914  
Fairbanks, Alaska 99707

Dear Ms. Odom:

Thank you for your comments on SB 90.

I agree that certain portions of a public employee's personnel file should be confidential, specifically those sections which deal with employee performance evaluations.

As a co-sponsor, I intend to see that we get the best freedom of information bill possible, and will offer an amendment to protect the privacy due public servants.

Your comments are deeply appreciated.

Sincerely,

A handwritten signature in cursive script that reads "Pat".

Patrick M. Rodey  
Chairman

PMR/ods



# Alaska State Legislature

Senate

Judiciary Committee

Official Business

Pouch V  
State Capitol  
Juneau, Alaska 99811

April 14, 1981

Ms. Sylvia Hodges  
Box 1094  
Fairbanks, Alaska 99707

Dear Ms. Hodges:

Thank you for your comments on SB 90.

I agree that certain portions of a public employee's personnel file should be confidential, specifically those sections which deal with employee performance evaluations.

As a co-sponsor, I intend to see that we get the best freedom of information bill possible, and will offer an amendment to protect the privacy due public servants.

Your comments are deeply appreciated.

Sincerely,

A handwritten signature in cursive script that reads "Pat".

Patrick M. Rodey  
Chairman

PMR/ods



# Alaska State Legislature

## Senate

### Judiciary Committee

Official Business

Pouch V  
State Capitol  
Juneau, Alaska 99811

April 14, 1981

Ms. Adele Bacon  
Box 397  
Fairbanks, Alaska 99707

Dear Ms. Bacon:

Thank you for your comments on SB 90.

I agree that certain portions of a public employee's personnel file should be confidential, specifically those sections which deal with employee performance evaluations.

As a co-sponsor, I intend to see that we get the best freedom of information bill possible, and will offer an amendment to protect the privacy due public servants.

Your comments are deeply appreciated.

Sincerely,

A handwritten signature in cursive script that reads "Pat".

Patrick M. Rodey  
Chairman

PMR/ods



# Alaska State Legislature

Senate

Judiciary Committee

Official Business

Pouch V  
State Capitol  
Juneau, Alaska 99811

April 14, 1981

Mr. Stephen Birdsall  
Box 55506  
North Pole, Alaska 99705

Dear Mr. Birdsall:

Thank you for your comments on SB 90.

I agree that certain portions of a public employee's personnel file should be confidential, specifically those sections which deal with employee performance evaluations

As a co-sponsor, I intend to see that we get the best freedom of information bill possible, and will offer an amendment to protect the privacy due public servants.

Your comments are deeply appreciated.

Sincerely,

A handwritten signature in cursive script that reads "Pat".

Patrick M. Rodey  
Chairman

PMR/ods



# Alaska State Legislature

## Senate

### Judiciary Committee

Official Business

Pouch V  
State Capitol  
Juneau, Alaska 99811

April 14, 1981

Mr. J. Randy Carr  
SR 70799F  
Fairbanks, Alaska 99701

Dear Mr. Carr:

Thank you for your comments on SB 90.

I agree that certain portions of a public employee's personnel file should be confidential, specifically those sections which deal with employee performance evaluations.

As a co-sponsor, I intend to see that we get the best freedom of information bill possible, and will offer an amendment to protect the privacy due public servants.

Your comments are deeply appreciated.

Sincerely,

A handwritten signature in cursive script, appearing to read "Pat".

Patrick M. Rodey  
Chairman

PMR/ods



Official Business

# Alaska State Legislature

Senate

Judiciary Committee

Pouch V  
State Capitol  
Juneau, Alaska 99811

April 14, 1981

Mr. W. C. McEvoy  
Box 2455  
Fairbanks, Alaska 99707

Dear Mr. McEvoy:

Thank you for your comments on SB 90.

I agree that certain portions of a public employee's personnel file should be confidential, specifically those sections which deal with employee performance evaluations.

As a co-sponsor, I intend to see that we get the best freedom of information bill possible, and will offer an amendment to protect the privacy due public servants.

Your comments are deeply appreciated.

Sincerely,

A handwritten signature in cursive script, appearing to read "Pat".

Patrick M. Rodey  
Chairman

PMR/ods

ILLEGAL ADDRESS. PLEASE TRY AGAIN. 4

L021 1218 16.03 JA01 0055 16.03 04/13/81

#####

TO JUNEAU INFO FR TAMMY IN FBX

POW

TO: SER. RODDY, BERRETT, HOBMAN, FARR, KAY  
FR: FOLLOWING LIST

RE: SB 90

THE UNDERSIGNED OPPOSE SB 90. EVALUATIONS GUIDE AND MEASURE PERFORMANCE OFTEN CONTAIN INFORMATION OF A SENSITIVE NATURE. LACK OF CONFIDENTIALITY WOULD CONCLUSIVELY PLACE THE EVALUATOR OR GARD DUE TO PUBLIC ACCESS, DEFEATING THE VALUE OF THE RATING. WE CONSIDER THIS AN INVASION OF PRIVACY. INFORMATION COULD BE MISUSED.

- MONTI JORDAN, 73 RANGEVIEW DR., 99701
- BETTY RHYMES, SR 40494, 99701
- GEORGE HOTRUP, 212 BRIDGET AVE., 99701
- S.R. KOLLIDGE, 433 FAIRBANKS ST., 99701
- MORA RECTOR, 1409 BLUEBELL ST, 99701
- LUCILLE ODOM, BOX 1914, 99702
- SYLVIA HODGES, BOX 1094, 99702
- ADELE MACOR, BOX 397, 99707
- STEPHEN BIRDSALL, BOX 55506, N.P. 99705
- J. RANDY GARR, SR 70702F, 99701
- R.C. MCEVOY, BOX 2455, 99707

FBX/110/TEM A

STANDARD

REPLY

RECEIVED

APR 14 1981



# Alaska State Legislature

## Senate

### Judiciary Committee

Official Business

Pouch V  
State Capitol  
Juneau, Alaska 99811

April 15, 1981

Mr. Marty Biggs  
Box 74284  
Fairbanks, Alaska 99707

Dear Mr. Biggs:

Thank you for your comments on SB 90, currently being heard by the Senate Judiciary Committee.

I agree that certain portions of a public employee's personnel file should be confidential, specifically those sections which deal with employee performance evaluations. SB 90 permits only certain information to be made public, such as salary, job description, education, training, and work experience.

As a co-sponsor, I intend to see that we get the best freedom of information bill possible, and will offer an amendment to protect the privacy due public servants. Please be assured that the committee will not allow disclosure of the type of information addressed in your correspondence.

Your comments are deeply appreciated.

Sincerely,

A handwritten signature in cursive script that reads "Pat".

Senator Patrick M. Rodey  
Chairman

PMR/ods





Official Business

# Alaska State Legislature

## Senate

### Committee on Judiciary

Pouch V  
State Capitol  
Juneau, Alaska 99811

February 10, 1981

Mr. Defiance Gregg  
3619 Gardner Street  
Anchorage, Alaska 99504

Dear Mr. Gregg:

Thank you for your recent correspondence regarding S.B. 90. For your information and files, I am enclosing a copy of that Bill.

S.B. 90 is currently being reviewed by the Senate State Affairs Committee, and I suggest that you contact its Chairman, Senator Vic Fischer, regarding the status of this Bill before his Committee.

I will consider S.B. 90 a priority item when it reaches the Senate Judiciary Committee. I urge your continued concern, and would encourage your testimony before the Judiciary Committee if possible. Dates and times of the hearing will be made available to you for your participation.

Sincerely,

A handwritten signature in cursive script, appearing to read "Pat".

Patrick M. Rodey  
Chairman

PMR/ods  
Enclosure

cc: Senator Vic Fischer

3619 Gardner St.  
Anchorage Alaska  
99504

Senator Rodey  
Alaskan Senate  
Juneau Alaska

RECEIVED  
FEB 09 1981

Dear Senator Rodey:

I am interersted in the Bill 90 Privacy and Public Information Sec 4 AS 11.56.820 and Section 6 AS 09.25.110-120-125 as it is written.

I am without transportation to the Legislative Office downtown..and spend most of my time studying here on Campus.

I am very interested in 40.25.015 Open Records so that I may see into more areas concerning people like myself, senior citizens who are now on campus as Students..without access to any information concerning hiring practices..and opportunities for senior students.

Can you open a door? I am a writer on both College Newspapers..in different columns..but one of them apply to a group that I am forming for the betterment of conditions on campus and the opening of doors to employment...as well as social commentary.

Awaiting your response,

Sincerely,

Defiance Gregg

# City of Seldovia

P.O. DRAWER B

TELEPHONE 234-7643

SELDOVIA, ALASKA 99663

February 17, 1981

Senator Patrick M. Rodey  
Capitol, Room 125 - Pouch V  
Juneau, Alaska 99811

RECEIVED

~~FEB 19 1981~~

FEB 20 1981

Dear Senator Rodey,

The Council of the City of Seldovia has strong feelings of opposition to Senate Bills 90 and 44; and have requested their concern be conveyed to you.

In the case of SB90, the feeling is that there are valid reasons for executive sessions without abusing the intent of a session.

In the case of SB44, it seems ridiculous that a municipality should have to pay defense fees for a law breaker regardless of financial ability. We need more support for the law and less undermining of it.

We would be most appreciative if you would vote "NO" on both bills.

Thank you for your consideration.

On Behalf of the Council  
of the City of Seldovia,

*Carl L. Hille*

Carl L. Hille  
City Manager

CLH/ck



Official Business

# Alaska State Legislature

Senate

Committee on Judiciary

Pouch V  
State Capitol  
Juneau, Alaska 99811

February 12, 1981

Cheri C. Jacobus, Esq.  
Office of the Federal Inspector  
Alaska Natural Gas Transportation  
System  
Pouch 6619  
Anchorage, Alaska 99502

Dear Ms. <sup>CHERI</sup>Jacobus:

Thank you for your comments on S.B. 90.

I agree that an amendment exempting material required to be kept confidential by Federal law or regulation is in order.

The free flow of information between the State and Federal Government is indeed important and I am sure none of the co-sponsors wish to impede that flow.

Your comments are appreciated.

Sincerely,

*Pat*  
Patrick M. Rodey  
Chairman

PMR/ods

cc: Senator Vic Fischer

*I hope you'll have a chance to visit Juneau this year. It would be great to sit down and chat with you.*

4 FEB 1981

RECEIVED

FEB 09 981

The Honorable Vic Fischer  
Alaska State Senate  
Pouch V  
Juneau, Alaska 99811

Dear Senator Fischer:

The State Affairs Committee is holding public hearings on Senate Bill No. 90 introduced by you, Senators Parr, Stinson and Rodey. The Office of the Federal Inspector, Alaska Natural Gas Transportation System (ANGTS) has reviewed the bill and urges the State Affairs Committee to consider its comments. AS 09.25.120, one of the statutes which would be repealed by SB 90, sets out various exceptions to public disclosure. One category of documents exempt from disclosure by AS 09.25.120 is "documents required to be kept confidential by a federal law or regulation..." This exception should be included in any legislation addressing freedom of information in this State.

This exemption is important both to the current Alaska natural gas pipeline construction project and to other relations with the federal government. The State Pipeline Coordinator's Office and the Federal Inspector's Office enjoy a free flow of information between them which helps both agencies to adequately monitor construction of the gasline. The State and the Federal Inspector's Office are negotiating a joint agreement which in part addresses the confidentiality of documents exchanged between them, and the agreement depends on the existence of a State statute exempting such documents from public disclosure. Any change will jeopardize this interchange of documents between the Federal Inspector and the State Pipeline Coordinator.

With these concerns in mind, the Federal Inspector's Office recommends that the legislature clearly include this exemption in SB 90 by changing the proposed Sec. 40.25.015(e)(1) to read as follows:

(1) Those exempted from disclosure by State statute or required to be kept confidential by federal law or regulation;

Thank you for the opportunity comment on SB 90.

Sincerely,

Cheri C. Jacobus  
Attorney

Cjacobus:rlw:2/2/01

cc: Jeff Lowenfels, State Attorney General's Office  
Hon Green, State Attorney General's Office, SPCO  
✓ Senator Patrick Royley



# Alaska State Legislature

Senate

Judiciary Committee

Official Business

Pouch V  
State Capitol  
Juneau, Alaska 99811

April 5, 1981

Ms. Betty Viersen  
Box 22  
Glennallen, Alaska 99588

Dear Ms. Viersen:

Thank you for your letter on SB 90.

I agree that certain portions of a public employee's personnel file should be confidential, specifically those sections which deal with employee performance evaluations.

As a co-sponsor, I intend to see that we get the best freedom of information bill possible, and will offer an amendment to protect the privacy due public servants.

Your comments are deeply appreciated.

Sincerely,

Patrick M. Rodey  
Chairman

PMR/ods

RECEIVED

MAR 31 1981

Box 22  
Glennallen, AK 99588  
March 25, 1981

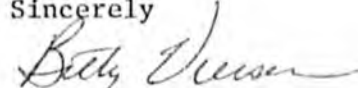
Senator Pat Rodey  
Pouch V  
Juneau, AK 99811

Dear Senator Rodey

As a teacher in Alaska for eleven years, I would like to encourage you to oppose SB 90 exposing teachers' files to the public. I feel that a superintendent's job is to discriminate pertinent information to the appropriate individuals.

Please oppose SB 90.

Sincerely

  
Betty Viersen



Official Business

# Alaska State Legislature

Senate

Judiciary Committee

Pouch V  
State Capitol  
Juneau, Alaska 99811

March 31, 1981

Mr. Andrew Zajac  
Box 208  
Copper Center, Alaska 99573

Dear Mr. Zajac:

Thank you for your letter on SB 90.

I agree that certain portions of a public employee's personal file should be confidential, specifically those sections which deal with employee performance evaluations.

As a co-sponsor, I intend to see that we get the best freedom of information bill possible, and will offer an amendment to protect the privacy due public servants.

Your comments are deeply appreciated.

Sincerely,

A handwritten signature in cursive script, appearing to read "Pat".

Patrick M. Rodey  
Chairman

PMR/ods

Box 208  
Copper Center, Alaska  
99573  
3/22/81

RECEIVED

MAR 30 1981

Senator Pat Rodey  
Pouch V  
Juneau, Alaska 99811

Dear Senator Rodey,

I am opposed to S.B. 90 because I don't feel that teachers' private files should be exposed to public scrutiny. I feel that teachers are already under the public's spotlight and are adequately controlled by school boards through their administrators. I am also concerned because these files may contain derogatory comments originating from hearsay or innuendo. Please vote against S.B. 90. Thank you.

Sincerely,

*Andrew Zajac*  
Andrew Zajac



# Alaska State Legislature

Senate

Judiciary Committee

Official Business

Pouch V  
State Capitol  
Juneau, Alaska 99811

April 5, 1981

Ms. Jean Allen  
1849 Esquire  
Fairbanks, Alaska 99701

Dear Ms. Allen:

Thank you for your comments concerning SB 90.

I agree that certain portions of a public employee's personnel file should be confidential, specifically those sections which deal with employee performance evaluations.

As a co-sponsor, I intend to see that we get the best freedom of information bill possible, and will offer an amendment to protect the privacy due public servants.

Your comments are deeply appreciated.

Sincerely,

A handwritten signature in cursive script, appearing to read "Pat".

Patrick M. Rodey  
Chairman

PMR/ods

TELEGRAM

RECEIVED

ALISCOM, INC.  
PHONE: 886-8942  
JUNEAU, AK 99802

APR 01 1981

12039 POM FAIRBANKS ALASKA 15 03-31 315P AST

PMS SEN PAT BODEY

JUN

AS A STATE EMPLOYEE I DO OPPOSE SPOC AND HR7

JEAN ALLEN

1849 ESQUIRE FAIRBANKS ALASKA 99701

APR 01 1981 7 52



Official Business

# Alaska State Legislature

Senate

Judiciary Committee

Pouch V  
State Capitol  
Juneau, Alaska 99811

March 31, 1981

Ms. Sue Zajac  
Box 208  
Copper Center, Alaska 99573

Dear Ms. Zajac:

Thank you for your letter on SB 90.

I agree that certain portions of a public employee's personal file should be confidential, specifically those sections which deal with employee performance evaluations.

As a co-sponsor, I intend to see that we get the best freedom of information bill possible, and will offer an amendment to protect the privacy due public servants.

Your comments are deeply appreciated.

Sincerely,

A handwritten signature in cursive script that reads "Pat".

Patrick M. Rodey  
Chairman

PMR/ods

Box 208  
Copper Center, Alaska  
99573  
3/22/81

RECEIVED

MAR 30 1981

Senator Pat Rhody  
Senate Judiciary Committee  
Pouch V  
Juneau, Alaska 99811

Dear Senator Rhody,

Please oppose Senate Bill 90 on Public Information.

Releasing, to the public, private records on individuals employed in this state is certainly an unforgivable breach of privacy. Dismissal of an employee should not be aided by public opinion, nor be based on one's life history.

Thank you.

Sincerely,

*Sue Zajac*  
Sue Zajac



Official Business

# Alaska State Legislature

Senate

Committee on Judiciary

Pouch V  
State Capitol  
Juneau, Alaska 99811

March 12, 1981

Ms. Lucinda Hites  
Box 3  
Skagway, Alaska 99840

Dear Ms. Hites:

Enclosed is the material you requested.

The House and Senate Judiciary Committees will hold a joint teleconference hearing on Saturday, March 14, at 2:00 p.m., with Fairbanks.

The Senate Judiciary Committee will hold hearings on CSSB 90 on March 30 at 1:30 p.m. in the Butrovich Committee Room.

Please do not hesitate to contact me should you require additional information.

Sincerely,

Kevin K. Bruce  
Committee Aide

KKB/ods  
Enclosure



Official Business

# Alaska State Legislature

Senate

Judiciary Committee

Pouch V  
State Capitol  
Juneau, Alaska 99811

April 5, 1981

Ms. Ginny Chitwood  
Executive Director  
Alaska Municipal League  
204 N. Franklin Street  
Juneau, Alaska 99801

Dear Ms. Chitwood:

Thank you for your letter concerning SB 90. I will be certain to include a copy of your correspondence in each member's file for their consideration of this proposed legislation.

I agree that certain portions of a public employee's personnel file should be confidential, specifically those sections which deal with employee performance evaluations.

As a co-sponsor, I intend to see that we get the best freedom of information bill possible, and will offer an amendment to protect the privacy due public servants.

For your information, the Judiciary Committee will be conducting further hearings on SB 90 on Friday, April 10, at 1:30 p.m. in the Butrovich Committee Room. Please feel free to contact my staff should you wish to testify.

Again, I appreciate your comments on this very important legislation.

Sincerely,

A handwritten signature in cursive script, appearing to read "Pat".

Patrick M. Rodey  
Chairman

PMR/ods

# Alaska MUNICIPAL League

TELEPHONES  
(907) 586-1325  
586-6526

204 N. FRANKLIN ST.  
JUNEAU, ALASKA 99801

April 1, 1981

To: Senate Judiciary Committee  
Senator Pat Rodey, Chairman  
All Member, of the Committee

From: Ginny Chitwood, Executive Director  
Alaska Municipal League

Re: SB 90 - Privacy and Information Act

Municipalities realize the need for the public to have reasonable access to municipal records. However, the provisions in SB 90 go further than what the Alaska Municipal League considers reasonable. We can foresee many unfair burdens being placed on municipalities if this bill passes in its present form. Some are as follows:

Records produced "immediately" - This would place the request for a public document as first priority over all other conduct of the government's business. A more reasonable approach would be to allow ten days as provided by the federal government. This, at least, would allow determination as to whether or not the document being requested would fall under the list of exemptions and therefore not be required to be produced or whether or not it was in the public's interest to be produced. If illegal releasing of information is done by a municipal employee, the municipality would be open to a fine which means the municipal attorney would have to review all requests.

"Direct Cost" - Some documents are readily available. However, it is possible and likely that to produce other documents would involve a great deal of time; searching thru archives, records of years past in storage, etc. Most of our communities do not have sophisticated retrieval systems and the amount of time needed to locate said document could take up a good portion of the employees time. The League feels the word "direct" should be deleted from page 2, line 21, or at least defined to include labor involved by the municipal employee in the search for the document that has been requested.

Subjects for executive session - The League feels the municipality is the best judge of what should be considered confidential and objects to the deletion of the right to establish these subjects by charter or ordinance (page 9, lines 28 and 29.) Procedures for charter ratification and ordinance adoption afford adequate safeguards ensuring that local actions reflect local opinion.

(over)



Official Business

# Alaska State Legislature

## Senate

### Committee on Judiciary

Pouch V  
State Capitol  
Juneau, Alaska 99811

March 17, 1981

Ronald A. Pavellas  
Administrator  
The Alaska Hospital and  
Medical Center, Inc.  
2801 DeBarr Road  
Pouch 8-AH  
Anchorage, Alaska 99508

Dear Mr. Pavellas: *Ron*

Thank you for your letter regarding SB 90.

The Judiciary Committee will be holding hearings on the State Affairs Committee substitute bill on March 30, 1981, at 1:30 p.m. in the Butrovich Room.

I will include your letter in each committee member's file for their information.

Thank you again for expressing your concerns.

Sincerely,

*Pat*  
Patrick M. Rodey, Chairman

PMR/ods

THE ALASKA HOSPITAL AND MEDICAL CENTER, INC.

March 12, 1981

Trustees

Ray L. Smith  
President

Jack Beatley  
Vice President

William H. Ivy, M.D.  
Secretary

Vernon Cates, M.D.

Emmit Wilson

Ronald A. Pavellas  
Administrator

RECEIVED

MAR 15 1981

The Honorable Patrick M. Rodey  
Alaska State Senate  
Pouch V, State Capitol  
Juneau, AK 99811

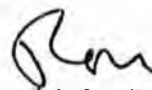
Dear Senator Rodey:

In reviewing Senate Bill 90, I have developed one concern, namely that the medical records of patients of public hospitals not be considered public information.

Therefore, I suggest that the bill be amended in some fashion to assure that medical records are specifically exempted in the bill.

Thank you very much.

Sincerely,

  
Ronald A. Pavellas  
Administrator

RAP:jb

cc: Anita Parrish  
Dennis DeWitt, Executive Director  
Alaska State Hospital Association

2801 DeBarr Road  
Pouch B-111  
Anchorage, Alaska 99508  
(907) 276-1131

A Community Owned Hospital



Official Business

# Alaska State Legislature

## Senate

### Committee on Judiciary

Pouch V  
State Capitol  
Juneau, Alaska 99811

March 17, 1981

Mrs. Jane Harrison  
3961 Eastwood Loop  
Anchorage, Alaska 99504

Dear Mrs. Harrison:

I am in receipt of your letter to Senator Vic Fischer with respect to Senate Bill 90.

I will provide a copy of your letter to each Judiciary Committee member for consideration when SB 90 is heard.

Thank you for expressing your views on this proposed legislation.

Sincerely,

  
Patrick M. Rodey, Chairman

PMR/ods

*very good  
Comments!*

Dear Mr Fischer,

As a state employee and a resident of Alaska, I wish to express my concerns about Senate Bill No 90 which relates, in part, to privacy and public information. I feel that public inspection of salaries and verification that employees meet the minimum qualifications required for the positions they hold are valid for public inspection.

I oppose public inspection of performance evaluations and reprimands. I feel these infringe on a person's right to privacy. Also I feel that this would be expensive for the state to process these requests and probably require hiring additional employees. The threat of public criticism, media coverage, the fear of personal grudge retribution, and the fear of legal complications would make it extremely difficult for supervisors to continue to write honest employee performance evaluations.

I urge you to protect the rights of these individuals and to oppose Senate Bill 90.

Sincerely,

Jane Harrison

3961 Eastwood Loop  
Anchorage, Alaska  
99504

GREATER ANCHORAGE AREA BOROUGH  
PROPERTY MANAGEMENT

Tom & Jane Harrison  
3961 Eastwood Loop  
Anchorage, AK 99504

Not marked  
3-9-81



# Alaska State Legislature

Senator Vic Fischer • Pouch V • Juneau, Alaska 99811 • (907) 465-4954

March 13, 1981

RECEIVED

MAR 13 1981

Jane Harrison  
3961 Eastwood Loop  
Anchorage, Ak. 99504

Dear Jane:

Thank you for your letter of last week concerning Senate Bill 90. The Senate State Affairs Committee passed the bill out and on to the next committee of referral, Senate Judiciary, chaired by Senator Pat Rodey.

I have taken the liberty of forwarding your letter to Senator Rodey for consideration by the Judiciary Committee. Thank you for expressing your views on this issue.

Best regards,

Sen. Vic Fischer

/lf

cc: Senator Pat Rodey, Chair  
Senate Judiciary Committee

---

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# PROFESSIONAL ACCOUNTANCY COORDINATORS

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TELEPHONE: 741-1403 AREA CODE 305

P.O. BOX 16780 PLANTATION BRANCH  
FT. LAUDERDALE, FLORIDA 33318

RECEIVED

MAR 17 1981

March 11, 1981

Senator Pat Rodey  
Chairman of Senate Judiciary Committee  
The Senate  
Pouch "V"  
Juneau, Alaska 99811

Dear Senator Rodey:


It was a pleasure speaking to you by telephone today and we are certain that the educational organizations would appreciate and need the enclosed amendment to CS-S90. We must have this amendment immediately put into the bill in your Committee. Various other materials are enclosed. The furtherance of education is of course in the public interest. We thank you for agreeing to our amendment.

As I mentioned I probably possess the largest quantity of personal privacy files of every state in the USA and am considered an expert in the field, and our files are available to you and your Committee.

The most amazing part of CS-S90 is page 6 lines 21 to 24 which should be eliminated. Item (12) should read "records, the disclosure of which would constitute an unjustifiable invasion of personal privacy;" and the rest of the sentence should be eliminated because it is silly to have a governmental unit "shall determine" because the governmental unit makes the determination and if a requestor disagrees he can always resort to the courts. However the way the bill now reads the court cannot reverse the governmental unit's position because the governmental unit does the determination and the court therefore could never reverse it per this statute. It is like a fox guarding the chicken coop. You should be passing a good bill that the public and your children can live by fairly and not be under the determination of a minor governmental employee in his sole discretion. If your Committee wants to pass an excellent bill, the best bill is the enclosed New Jersey personal privacy bill which has passed the New Jersey Senate and that Committee investigated carefully all other states' bills for many years and finally came up with this workable fair bill.

Assuring you of our interest and cooperation at all times, I remain

Very truly yours,



Stanford I. Grayson

PROFESSIONAL AND OCCUPATIONAL FREEDOM OF INFORMATION ACT

Section 1. Title

This act shall be known as the "Professional and Occupational Freedom of Information Act".

Sec. 2. Findings; purpose

The legislature finds that:

1. State privacy acts enacted to protect individuals from having personal information contained in their applications for licenses released for public consumption has barred such applicants from receiving valuable information from bona fide professional and occupational services and educational organizations which are on occasion necessary for the applicant or licensee to meet state requirements for initial qualifications, renewal of license or continuing education required or encouraged by statutes or rules and regulations. This result is unintended and is not in the public interest.

2. The purpose of this act is, in furtherance of the public interest, to make available to professional and occupational services and educational organizations lists of applicants and licensees of related professions and occupations to aid in the receipt of informational materials relating to available current professional or occupational educational materials or courses for compliance with licensing requirements and for continuing education.

Sec. 3. Definitions

1. "Information" means any recorded data maintained by an occupational licensing agency regardless of its form relating to a person's name, title, current address, whether a person is an applicant or licensee.

2. "Maintain" means hold, possess, preserve, retain, store or exercise administrative control over.

3. "Occupational licensing agency" means any unit of government of this state or political subdivision of this state with the authority to grant, deny, suspend or revoke a license or other authorization to practice any profession or occupation in this state.

4. "Professional or occupational service or educational organization" means any person, business, group or institution, public or private, organized to provide formal or informal educational materials or courses to persons seeking initial qualification, licensure, license renewal or continuing education for any profession or occupation.

Sec. 4. Access to information

Notwithstanding any other provision of the law of this state, an occupational licensing agency shall provide access to information maintained by such agency for purposes of inspection or copying to any professional or occupational service or educational organization which request such information for the sole purpose of such organization providing applicants for licenses or licensees with informational materials relating to available current professional or occupational educational materials or courses.

CPA candidates rely upon our professional and graduate levels of instruction. The CPA Examinations are so extremely difficult today \*\*\* that only 15% to 25% pass of those who do not attend a CPA review school. Most CPA candidates sit for CPA Examinations approximately three years after leaving college and in most cases our instruction is extremely necessary for them, due to the difficulty of the examinations. There is no other effective reasonable means of reaching these CPA candidates of our course offerings, other than through use of the list below. In our profession there is a desperate need for more CPA's, not less.

It is so important to permit the copying of CPA registrants' names and addresses because it is considered to be in the public interest to such an extent that it is specifically mentioned in various states' accountancy statutes. For example, note attached Illinois and Florida statutes which state that it is in the public interest and not an invasion of privacy that the names and addresses of registrants for CPA Examinations are public records and should be revealed as public information. Even of more significance is the rest of the paragraph in these Acts, which shows the desire of these CPA Boards and their Legislatures to keep all the other information about an applicant confidential, but they have particularly gone out of the way to state and recognize into law this one very important exception. What better proof is there than the fact that CPA Boards feel that candidates' names and addresses are a public record which can be revealed and should be revealed in the public interest for accounting education purposes. Why would they specifically and purposefully insert this into the Law? Why didn't these statutes just state all information about a candidate should be secretive? These statutes contain this important exception because they favor education similar to practically all the other states, and decided that candidates' names and addresses should be available to all educational organizations.

49 States have agreed and are presently furnishing us with similar inspections. Therefore it is clear that the overwhelming majority of the states agree with our request, and it has been proven to be in the public interest for many reasons. The major obvious reasons are:

- 1) Professional education is in the public interest and these persons should possess the highest technical proficiency attainable. Their high competence is necessary because the state licenses them to serve the general public. The exemption is not for a specific profession but rather for the entire general professional field. This long standing practice of continuing education is needed for all professions and should be continued similar to past years. Other states' Committees have also recognized this fact and have included similar exemptions in their Freedom of Information bills.
- 2) The furtherance and availability of accountancy and other professional education.
- 3) It is the easiest method for CPA and other professional registrants to know of the availability of all of these educational courses to choose from with the least effort.
- 4) Serves as an informative circular to remind them of the detailed contents and starting dates, etc. of these courses.
- 5) Reduces the cost of these courses to the candidates because the mail offerings are the most practical for the course management; these specialized courses cannot be advertised in any mass media because accounting candidates are a tiny percentage of the general population, and we cannot advertise for example in our professional magazine effectively (although we have tried this but it hardly reaches these candidates) because

these registrants are not members of the professional societies and therefore do not receive a professional magazine. Solicitations in colleges are ineffective because most CPA candidates sit for the Examinations a few years after graduating from college.

In making this information available to educational organizations, it is not an invasion of a person's privacy by merely mailing him our course offerings. These educational course offering circulars describe us, not the recipient. It is inconceivable the mere receiving of an educational course offering in the mail that is printed (no personal letter to the recipient included) be an unwarranted invasion of privacy and against the public interest. On balance, greater weight should be given to the furtherance of professional accountancy education rather than secrecy of these records. It is unreasonable to conclude that recipients (and especially knowledgeable professionals who are intelligent sufficiently and can distinguish between various offerings) are so supersensitive that their privacy is ruined by the mere receipt of an informative educational circular. The purpose of the present Bill is for greater dissemination of information and against secrecy, and for the protection of a person's confidential background. We are not interested in the personal detailed data concerning a registrant's background and history, but only the impersonal names and addresses of all professional licensee registrants. Surely the mere copying of names and addresses for professional educational purposes only, should be allowed because it is not against the public interest. We certainly need more and better educated professional candidates.

\*\*\*All CPA review schools raise passing percentages from 25% to 70% on the average, because of their intensive review courses.

DONNA J. CARLSON  
447 WEST HILLVIEW CIRCLE  
MESA, ARIZONA 85201  
CAPITOL: 255-4062

DISTRICT 22



Arizona House of Representatives  
Phoenix, Arizona 85007

THIRTY-FOURTH LEGISLATURE  
1979-1980

COMMITTEES:  
COUNTIES & MUNICIPALITIES  
CHAIRMAN  
COMMERCE  
HUMAN RESOURCES  
JUDICIARY  
NATIONAL CHAIRMAN  
AMERICAN LEGISLATIVE  
EXCHANGE COUNCIL

December 28, 1979

Dear Colleague:

Re: "Professional and Occupational Freedom of Information Act"

Soon you will be receiving the "Source Book for State Legislators" (formerly entitled Suggested State Legislation) published by the American Legislative Exchange Council (ALEC). The 1980 edition compiled by a geographically selected committee, contains many fine innovative legislative proposals.

Hearings were held in Washington, D. C. in June and the committee selected 20 bills, some are updates from earlier editions and some are new concepts. As usual, we had more good bills than time and space would allow us to handle. We also received several excellent bills after the hearings were held. One such bill is the reason I am writing you.

The bill, which is enclosed, is called the "Professional and Occupational Freedom of Information Act", and at the request of a majority of the ALEC Suggested State Legislation Committee, I am submitting the bill for your consideration in hopes that you will review it's applicability to your particular state.

If you are interested in introducing the legislation, a complete file of research information will be available through my office.

Sincerely,

A handwritten signature in cursive script that reads "Donna Carlson".

DONNA J. CARLSON  
Chairman ALEC

DJC:md  
Enclosures

PROFESSIONAL AND OCCUPATIONAL FREEDOM OF INFORMATION ACT

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2. The purpose of this act is, in furtherance of the public interest, to make available to professional and occupational services and educational organizations lists of applicants and licensees of related professions and occupations to aid in the receipt of informational materials relating to available current professional or occupational educational materials or courses for compliance with licensing requirements and for continuing education..

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## SUMMARY SHEET

Numerous states have adopted, considered or will consider "privacy acts" barring public access to governmental information regarding private citizens, including applications for licenses and licensee records maintained by State and local professional and occupational licensing agencies. Some have recognized the need to continue the flow of educational materials to applicants for licenses and licensees by commercial and non-profit organizations, and have accordingly provided a statutory exemption for this purpose, e.g., California, Florida, Massachusetts, Montana, Virginia and Washington.\* While 23 Attorneys General opinions and the courts of Colorado, Connecticut, Georgia, Indiana, Massachusetts, New Jersey, Pennsylvania, Tennessee and Utah have determined that the release of the names and addresses of applicants and licensees for educational purposes "is in the public interest", enactment of a privacy act without a statutory exemption could forbid access where the interest is valid and proper. (Attorneys General opinions have been issued in Arkansas, California, Delaware, District of Columbia, Florida, Georgia, Idaho, Kansas, Kentucky, Louisiana, Massachusetts, Minnesota, Missouri, Nebraska, New Hampshire, Ohio, Oklahoma, Pennsylvania, Puerto Rico, South Dakota, Texas, Virginia and Washington.)

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\* Additionally, two states (Illinois and Michigan) have limited exemptions.

re: attached New Jersey bill

Newark Star-Ledger 2-20-81

# Regulations advance on citizen privacy

By ROBERT SCHWANEBERG

A "model" privacy bill regulating the collection and storage of information on individual citizens by state agencies passed the Senate yesterday, 23-9.

The bill (S-880), sponsored by Sen. Matthew Feldman (D-Bergen), now goes to the Assembly for consideration.

The measure limits the type of information about an individual that may be disclosed to the public or other agencies, requires information to be purged when it no longer is needed and allows an individual to challenge inaccurate information in government files.

"If this bill is enacted into law, I believe our state, New Jersey will have the best law balancing freedom of information and personal privacy in the nation," Feldman said.

"As government becomes more involved in people's lives, it amasses detailed information on each of us, and the advent of the computer now make it possible to build master files about each of us that no one ever intended to exist," Feldman continued. He added the state already has "dozens of high-powered computers," and safeguards should be placed on how information stored in them can be used before abuses occur.

Opposition to the bill came primarily from Republican senators. Sen. Wayne Dumont (R-Warren) questioned Feldman's assertion that the bill would cost the state nothing, while Sen. James Wallwork (R-Essex) said he feared the bill "is going to create a blizzard of paperwork."

Feldman denied the additional reporting requirements placed on state agencies would be "onerous," adding that in most cases an agency simply would have to clip a cover letter to the front of each form it uses explaining how the information is used and why it is needed.

But he added that if the law forces certain agencies to take an "inventory" of the information they collect and review how much is really needed, it would have served a good purpose.

Feldman explained the bill would continue many provisions of existing law guaranteeing the public access to public

information.

But "for the first time," he said, "individuals may see files which are kept on them and challenge inaccurate and incomplete information."

The bill also requires each agency to develop safeguards to insure the confidentiality of personal information and to purge information that is no longer needed. An agency would have to prove it has a continuing need for information more than five years old.

Other sections of the bill would:

- Require state agencies to attempt to notify an individual before releasing private information about that person in response to a subpoena. No notification would be required, however, if the information is sought by a grand jury.
- Ban state agencies from selling mailing lists, except for lists of persons applying for professional licenses, which could be sold to professional training schools.
- Require state agencies to respond to most requests for information within 15 days, charging only reasonable fees for duplicating records.
- Allow persons whose privacy rights are violated to sue for damages of not less than \$1,000, plus lawyers' fees.

Feldman noted the bill applies only to state agencies, not to local government bodies or private industry.

He added that a state privacy commission he chaired has drafted a package of companion bills to govern the information-collection practices of private businesses. When those are adopted, he said, "New Jersey will be the model for all other states with regard to protection of privacy and access to public information."

Feldman said the bill passed yesterday is the result of six years of work, during which his privacy commission and a Senate Judiciary subcommittee attempted to take the best from other state laws and the national privacy commission's recommendations.

But Sen. Thomas Gagliano (R-Monmouth) said the bill is still "somewhat confusing" and needs more work.

H/P all

SENATE COMMITTEE SUBSTITUTE FOR  
SENATE, No. 880

STATE OF NEW JERSEY

ADOPTED FEBRUARY 2, 1981

H/P 14/ our record

AN ACT concerning information management, information privacy, and freedom of information, amending section 2 of P. L. 1963, c. 73 and supplementing Title 47 of the Revised Statutes.

1 BE IT ENACTED by the Senate and General Assembly of the State  
2 of New Jersey:

1 1. (New section) Title.

2 Sections 1 through 16 inclusive of this act shall be known and  
3 may be cited as the "Information Management, Information Pri-  
4 vacy, and Freedom of Information Act."

1 2. (New section) Legislative findings.

2 The Legislature finds and declares that:

3 a. Rational and efficient information management, the indi-  
4 vidual's rights to informational privacy, and the right of access  
5 to information concerning the government's conduct of public  
6 business are related matters which should not be treated separately;

7 b. The rights, privileges, and opportunities of an individual are  
8 directly affected by the use of personal information about him by  
9 the agencies of government;

10 c. The use of computers and sophisticated information tech-  
11 nology, while essential to the efficient operation of government, has  
12 greatly magnified the potential damage to individual privacy from  
13 the maintenance of personal information by agencies of govern-  
14 ment;

15 d. The policy of this State is to protect the individual's right of  
16 informational privacy and guarantees that personal information  
17 maintained by State Government will be maintained in a rational  
18 and equitable manner consistent with due process;

19 e. Rational and efficient information management requires gov-  
20 ernment to maintain only that personal information which is  
21 necessary and relevant to the lawful purposes of government;

22 f. The public policy of free speech and to petition for redress  
23 of grievances and the fundamental principle that government is the  
24 servant of the governed require the government to make prompt  
25 and full disclosure of all information requested by persons, except

**EXPLANATION**—Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

26 in those specific, limited areas where public policy dictates that the  
 27 individual right of informational privacy or the sensitivity of the  
 28 governmental function involved compels different treatment; and  
 29 g. To manage personal information held by the government in  
 30 a rational and efficient manner, to protect the individual's right  
 31 of informational privacy, and to guarantee the person right of  
 32 access of public information, it is necessary and proper for this  
 33 Legislature to regulate the maintenance of personal and other  
 34 information by the agencies of government.

1 3. (New section) Definitions.

2 As used in this act:

3 a. "Agency" means any office, department, division, bureau,  
 4 board, commission, agency, authority, institution, or like govern-  
 5 mental entity of the State, except the Division of Taxation, includ-  
 6 ing any entity, whether public or private, with which any of the  
 7 foregoing has entered into a contractual relationship for the opera-  
 8 tion of a system of personal information to accomplish an agency  
 9 function. For the purposes of this act, any officer or employee of  
 10 such agency contractor shall be deemed an agency officer or em-  
 11 ployee. The term "agency" does not include any office, depart-  
 12 ment, division, bureau, board, commission, agency, authority,  
 13 institution, or like governmental entity within the legislative or  
 14 judicial branches of government;

15 b. "Arrest information" means (1) the name, age, and address  
 16 of the arrested individual; (2) the nature of the charge against  
 17 him; (3) the time and place of the arrest; (4) the identity of the  
 18 arresting agency; and (5) information as to whether the individual  
 19 is or was incarcerated and the place of the incarceration;

20 c. "Criminal justice agency" means a government agency, in-  
 21 cluding the Department of Corrections, which performs a criminal  
 22 justice function pursuant to a statute or executive order, and which  
 23 allocates a substantial part of its annual budget to the administra-  
 24 tion of criminal justice;

25 d. "Data subject" means an individual about whom personal  
 26 information is maintained, indexed or may be located under his  
 27 name, identifying number, or other identifiable particulars, in a  
 28 personal information system;

29 e. "Individual" means a natural person;

30 f. "Maintain" means maintain, collect, use, or disclose;

31 g. "Personal information system" means the total components  
 32 and operations, whether automated or manual, by which personal  
 33 information, including, but not limited to, name, number, symbol,  
 34 or other identifying particular, is maintained by an agency;

35 h. "Responsible authority" means the officer designated by an  
36 agency to be responsible for the operation of the personal infor-  
37 mation systems of the agency in accordance with the provisions of  
38 this act;

39 i. "Routine use" means a use or disclosure of personal informa-  
40 tion, maintained in a personal information system, which is recur-  
41 ring in nature and compatible with the responsibilities of the using  
42 agency; and,

43 j. "Summary information" means statistical information and  
44 reports derived from personal information in which no data sub-  
45 ject is identified, and from which neither the identity of a data  
46 subject nor any other characteristic that could uniquely identify  
47 him is ascertainable.

1 4. (New section) Classification of information.

2 a. "General information" includes all information and records  
3 which are required by law to be maintained by an agency or which  
4 would facilitate a full and accurate knowledge of its activities; rules  
5 and regulations promulgated by an agency; forms issued or used  
6 by an agency; statements of general policy or interpretations of  
7 general applicability adopted by an agency; final opinions, includ-  
8 ing concurring and dissenting opinions, as well as orders, made in  
9 the adjudication of cases unless specifically impounded by the court  
10 rendering the decision; administrative staff manuals and instruc-  
11 tions to staff that affect any member of the public; and each amend-  
12 ment, revision, or repeal of the foregoing, except information or  
13 records classified as confidential by applicable Federal law, State  
14 law, or rule or regulation pursuant to Federal law, or State law or  
15 classification under section 5 of this act;

16 b. "Personal information" means any information maintained by  
17 an agency that describes, indexes, locates, identifies, or could  
18 reasonably be used to identify an individual and any characteristics  
19 of an individual, or which indicates actions done by or to an indi-  
20 vidual. Personal information may be classified as either public,  
21 private, or confidential, but all personal information is public  
22 unless otherwise classified by classification issued under section 5  
23 of this act or by applicable Federal law, State law, or rule or regula-  
24 tion pursuant to Federal law or State law.

25 c. "Confidential information" means personal information which  
26 is made inaccessible to both the public and the data subject by  
27 applicable statute, Federal law, or classification under section 5  
28 of this act. Confidential information also includes general informa-  
29 tion made inaccessible to the public by applicable statute, Federal  
30 law or classification under section 5 of this act. The following shall  
31 be specifically considered confidential information:

32 (1) Materials and investigative files developed by a criminal  
33 justice agency in connection with any investigations of candidates  
34 for public positions or appointments;

35 (2) Materials and investigative files developed by any agency in  
36 connection with a civil investigation or action;

37 (3) Investigatory information compiled for the purpose of deter-  
38 mining the data subject's suitability, eligibility, or qualifications for  
39 designation as an agency contractor;

40 (4) Testing or examination information used solely to determine  
41 the data subject's qualifications for appointment or promotion in  
42 agency service. This classification is, however, only applicable to  
43 the extent that disclosure of such information would compromise  
44 the objectivity or fairness of the testing or examination process;

45 (5) Any information, records, rules and regulations, forms,  
46 policy statements, administrative staff manuals and instructions to  
47 staff and each amendment, revision, or repeal of the foregoing  
48 which pertain to the internal affairs of a State custodial, penal or  
49 correctional institution or program.

50 (6) Any information which is otherwise privileged under State  
51 or Federal law, and provided to a public agency with the under-  
52 standing that such confidentiality will be maintained.

53 d. "Private information" means personal information which is  
54 made inaccessible to the public but not to the data subject by  
55 applicable statute, Federal law, or classification under section 5 of  
56 this act. Criminal history information, including all material con-  
57 cerning an individual's prior arrests, convictions and incarcerations,  
58 is private information.

59 e. "Public information" means information which is accessible  
60 to the public and shall include general information not classified as  
61 confidential and all personal information not classified as either  
62 private or confidential.

1 5 (New section) Classification by agency.

2 a. An agency may, in the absence of applicable law, classify any  
3 information it maintains for its own use and for use of other  
4 agencies consistent with standards set forth below and with the  
5 definitions set forth in section 4. The classifications of types of in-  
6 formation maintained by an agency shall be published in the New  
7 Jersey Register on the effective date of this act and annually  
8 thereafter.

9 b. An agency may classify personal information as confidential  
10 if disclosure to the data subject would cause undue inconvenience  
11 or interruption in ongoing agency programs or could represent a  
12 danger to the physical safety of the person who is the source of  
13 such information.

14 c. An agency may classify personal information as private if  
15 public access to the information would result in substantial harm,  
16 embarrassment, inconvenience or unfairness to the data subject  
17 which is not outweighed by the public interest in open disclosure.

18 d. An agency may classify general information as confidential  
19 if public access to the information would result in a substantial  
20 impediment to the agency's ability to perform its functions and  
21 public access would be adverse to the agency's responsibilities.

22 e. On appeal from the classification of a type of information the  
23 agency shall establish that no statute currently exists which forbids  
24 the classification assigned the information by the agency and that  
25 the classification comports with standards established above.

1 6. (New section) Agency responsibilities.

2 Each agency shall:

3 a. Designate a responsible authority who shall have the power  
4 and responsibility to administer the agency's responsibilities under  
5 this act; however, in the case of an agency consisting of more than  
6 one office, bureau or division, one responsible authority shall be  
7 designated;

8 b. Identify all the personal information systems it operates, and,  
9 on the effective date of this act and annually thereafter, give public  
10 notice of, make available for distribution upon request of any  
11 person, a notice of the existence and character of each personal  
12 information system it operates or uses. An agency shall publish  
13 such notice in the New Jersey Register. This notice shall include  
14 a description of the nature and routine uses of personal information  
15 in the system. An agency shall not construe the term "personal  
16 information system" in a manner which could prevent any complete  
17 or independent subsystem comprising part of a personal informa-  
18 tion system from being individually identified;

19 c. Develop procedures for review and challenge of the accuracy  
20 and completeness of its personal information systems by the data  
21 subjects about whom the information has been collected.

22 d. File with the Office of Legislative Services, the Department  
23 of Law and Public Safety and the Department of the Public Ad-  
24 vocate an annual report which is to be public and which shall con-  
25 tain the following:

26 (1) A description of the agency's personal information systems  
27 including any proposals to modify or alter the personal informa-  
28 tion systems maintained;

29 (2) Any classification, by category, of general information as  
30 confidential or of personal information as private or confidential  
31 under section 5 of this act;

32 (3) Copies of the printed forms utilized for the collection, main-  
33 tenance and challenge of information;

34 (4) A statement of the cost to the agency of compliance with the  
35 requirements of this act, the agency's litigation costs and sums paid  
36 by it as a result of litigation under this act, and the disciplinary  
37 actions taken by the agency against officers or employees who  
38 violated the provisions of this act;

39 (5) Recommendations for improvement of the act or its admin-  
40 istration;

41 (6) All rules, regulations and procedures established to carry  
42 out the provisions of this act, including all rules of conduct and  
43 penalties for noncompliance in the form of negligent, reckless or  
44 intentional misconduct by persons involved in the design, develop-  
45 ment, operation, or maintenance of any personal information  
46 system, or in the maintenance of personal information, and pro-  
47 cedures established to notify and instruct each person of the  
48 requirements of this act, the rules and regulations adopted there-  
49 under, and the penalties for noncompliance; and,

50 (7) A certification that administrative, technical, and physical  
51 safeguards have been established to insure the security and confi-  
52 dentiality of private and confidential information, and to protect  
53 all information held by the agency against threats or hazards to  
54 its security or integrity which could result in substantial harm,  
55 embarrassment, inconvenience, or unfairness to any data subject,  
56 or the interruption or inconvenience of ongoing agency programs;

57 e. Establish and enforce procedures to assure the prompt elimi-  
58 nation or amendment of personal information which does not meet  
59 the requirements of section 7 of this act;

60 f. Establish administrative, technical and physical safeguards  
61 to insure the security and confidentiality of private and confiden-  
62 tial information, and to protect all information held by the agency  
63 against threats or hazards to its security which could result in  
64 substantial harm, embarrassment, inconvenience or unfairness to  
65 any data subject or the interruption or inconvenience of ongoing  
66 agency programs; and

67 g. Take all other necessary and appropriate action to comply  
68 with the provisions of this act.

1 7. (New section) Information maintenance.

2 Each agency shall maintain only that personal information which  
3 is sufficiently accurate, complete, and timely to assure fairness to  
4 the data subject in any agency determinations about him, and which  
5 is relevant to the agency's administrative functions or likely to  
6 be necessary within a reasonable time. For purposes of this act,

7 procedures to assure prompt elimination of personal information  
 8 shall require elimination of information after 5 calendar years  
 9 from the year of entry unless the particular information has con-  
 10 tinuing relevancy. Nothing herein shall be construed as requiring  
 11 an agency to review all information maintained on the effective  
 12 date of this act.

1 8. (New section) Information gathering.

2 a. Each agency shall collect personal information to the greatest  
 3 extent practicable directly from the data subject when the infor-  
 4 mation may result in adverse determinations about the data sub-  
 5 ject's rights, benefits, and privileges under Federal or State pro-  
 6 grams.

7 b. Each agency shall inform in writing each individual whom it  
 8 asks to supply personal information except when the request is  
 9 pursuant to subsection 9 d, as soon as reasonably practicable of:

10 (1) The legal authority for the agency's solicitation of the in-  
 11 formation;

12 (2) The principal purposes for which the information is col-  
 13 lected;

13A (3) A general statement of uses which may be made of the in-  
 13B formation; and,

14 (4) Whether disclosure of such information by the individual  
 15 is mandatory or voluntary, and the consequences, if any, of not  
 16 providing all or any part of the requested information.

1 9. (New section) Authorized disclosures of confidential infor-  
 2 mation.

3 No agency shall disclose, by any means of communication, con-  
 4 fidential information except if the disclosure is:

5 a. Pursuant to the order of a court of competent jurisdiction;

6 b. Pursuant to a show of compelling circumstances affecting the  
 7 health or safety of a data subject, if upon such disclosure notifica-  
 8 tion is transmitted to the last known address of the data subject;

9 c. Pursuant to a determination by the agency's responsible au-  
 10 thority that only summary information will be disclosed and that  
 11 the recipient has provided adequate written assurance, in advance,  
 12 that the information will be used solely for statistical research or  
 13 reporting purposes and provided that the information disclosed  
 14 does not include the name of the data subject;

15 d. To another State agency or an agency of another governmen-  
 16 tal jurisdiction, including a foreign jurisdiction, in connection with  
 17 a criminal justice activity or a civil investigation or action;

18 e. Pursuant to a resolution by either House of the Legislature  
19 or either House of Congress to either House of the Legislature;  
20 to either House of the Congress or, to the extent of matter within  
21 its jurisdiction, to any committee, subcommittee, joint committee  
22 of the Legislature or the Congress, for a constitutional legislative  
23 purpose;

24 f. To the Comptroller General of the United States or his au-  
25 thorized representatives, upon a written request, or pursuant to  
26 a resolution of the Legislative Services Commission, to the Office  
27 of Legislative Services of the Legislature for audit or examination  
28 purposes; or,

29 g. Within the agency maintaining the information for purposes  
30 consistent with the functions of the agency.

31 In addition to those disclosures authorized in subsections a.  
32 through g., "private information" may be disclosed to a data sub-  
33 ject pursuant to the data subject's written request in accordance  
34 with the provision of section 11.

1 10. (New section) General requirements for disclosures of pri-  
2 vate or confidential information.

3 a. No agency shall disclose private or confidential information  
4 to another agency unless the requesting agency certifies before  
5 disclosure that the information sought is necessary to official per-  
6 formance of the duties of the requestor. Willful or persistent failure  
7 by the requestor to meet the requirements of this act in the past, or  
8 information indicating a substantial likelihood that the requestor  
9 may fail to meet the requirements of this act or fail to use the  
10 information requested for the purposes stated in its request, may  
11 constitute sufficient grounds for agency denial.

12 b. Each agency shall record with respect to all disclosures, by  
13 any means of communication, of private or confidential informa-  
14 tion, the date, nature, and purpose of the disclosure, and the name  
15 and address of the recipient of the information. A record of each  
16 such disclosure shall be kept by the agency making the disclosure  
17 for either 5 years after each disclosure is made, or for the period  
18 during which the disclosing agency maintains the information,  
19 whichever is longer. A data subject may not obtain access to, or a  
20 copy of, that portion of a disclosure record of private or confidential  
21 information pertaining to him which records any disclosure of  
22 information made pursuant to subsection 9 d. until the agency to  
23 whom the disclosure was made has completed its activity with  
24 regard to that data subject.

25 c. Each agency shall make a reasonable effort to notify the data  
26 subject of the name of the requestor and the information sought

27 when private information about him is sought by compulsory legal  
28 process, when such process becomes a matter of public record and  
29 the address of the data subject is known to the agency. However,  
30 information sought by compulsory legal process shall not include  
31 grand jury process. In matters involving the grand jury process,  
32 notification shall not be required until after an indictment is  
33 returned, the grand jury has "so billed" the matter, or the investi-  
34 gation into the matter has been otherwise concluded.

1 11. (New section) Requests for information response require-  
2 ments.

3 a. Upon a request for public information which (1) describes the  
4 information with reasonable specificity, and (2) is in accordance  
5 with procedures established governing such requests, the agency  
6 shall, within 15 days of its receipt of the request, excluding  
7 Saturdays, Sundays, and legal public holidays, make the requested  
8 information fully available to the requestor during reasonable office  
9 hours and shall not charge any fee for the search of the information.

10 b. (1) Upon the request of an individual to be informed of the  
11 existence of private information about that individual maintained  
12 by the agency which (a) describes the information with reasonable  
13 specificity, and (b) is in accordance with published rules and regu-  
14 lations governing such requests, the agency shall, within 15 days  
15 of its receipt of the request, excluding Saturdays, Sundays, and  
16 legal public holidays, inform the individual of the existence of  
17 private information pertaining to that individual maintained by  
18 the agency. The agency shall not charge any fee for so informing  
19 the individual. For the purposes of this act criminal history record  
20 information is private information.

21 (2) Upon the request of a data subject to have access to private  
22 information pertaining to him maintained by the agency, or to the  
23 record of disclosure of such information kept pursuant to sub-  
24 section 10. b. which (a) describes such information or record with  
25 reasonable specificity, and (b) is in accordance with procedures  
26 established governing such requests, the agency shall, within a  
27 reasonable time of its receipt of the request, make the requested  
28 information or disclosure record fully available to the data subject,  
29 except as is otherwise provided in this act. The agency shall, if the  
30 data subject desires, explain the content and meaning of the  
31 information or record requested. The agency shall make such  
32 disclosure and explanation during reasonable office hours. The  
33 agency shall charge no fee for performing its obligation under this  
34 subsection, unless (a) the data subject has been shown the informa-

35 tion or disclosure register within the previous 6 months and  
36 informed of its meaning, (b) no dispute or action about the infor-  
37 mation, pursuant to subsection h. of this section or section 13 of  
38 this act is pending, and (c) no additional information about the data  
39 subject has been maintained by the agency. The agency shall not  
40 inform the data subject of disclosure of information to a law en-  
41 forcement agency, absent the consent of the criminal justice agency  
42 unless pursuant to court order. Insofar as personal records main-  
43 tained by an agency other than the Department of Civil Service are  
44 concerned, prospective or present classified civil service employees  
45 are entitled to access, but nonclassified or unclassified prospective  
46 or present employees, are not.

47 c. Any data subject who obtains access to private information  
48 about himself, or to the disclosure record of such information  
49 pursuant to subsection b. (2), may be accompanied by a person  
50 chosen by him. An agency may require the data subject to furnish  
51 a written statement authorizing discussion of the information or  
52 the record in such person's presence.

53 d. A requestor of public or private information granted access  
54 under subsections a. or b. (1) of this section or a data subject  
55 granted access under subsection b. (2) may, if he desires, obtain  
56 copies of the information or disclosure record requested from an  
57 agency. An agency may charge the fee established by section 2 of  
58 P. L. 1963, c. 73 (C. 47:1A-2) for copies. The agency shall comply  
59 with any request under this subsection within 15 days of its receipt  
60 of the request, excluding Saturdays, Sundays, and legal public  
61 holidays. The agency may require proper identification from a data  
62 subject who requests, a copy of private information pertaining to  
63 him or of the disclosure record of such information.

64 e. Inability by the agency to comply with a request within 15 days  
65 as required by subsections 11 a., b., c. and d. shall be excusable  
66 upon written notice to the requestor within the 15 day period that  
67 administrative impediments to compliance exist. Just cause shall  
68 be based on loss of the information or upon a demonstrable un-  
69 certainty as to classification.

70 f. An agency may, by written notice to a requestor of public  
71 information under subsections a. or d. or to a data subject seeking  
72 private information under subsections b. (2) or d., extend the  
73 deadline for compliance with a request up to 45 days, excluding  
74 Saturdays, Sundays, and legal public holidays, if

75 (1) The agency must search for and collect the requested infor-  
76 mation from field facilities or other establishments that are sepa-  
77 rate from the office processing the request;

78 (2) The agency must search for, collect, and examine a volumi-  
79 nous amount of information demanded in a single request;

80 (3) The agency must consult with another agency, or with two  
81 or more of its own components, which have substantial interests  
82 in the information requested; or

83 (4) The agency is in the process of updating or supplementing  
84 the information requested and reply within 15 days of the request  
85 would result in the furnishing of information which would be out-  
86 dated or inaccurate in the near future.

87 An agency may not, absent extraordinary circumstances, extend  
88 the period for compliance beyond 60 days in meeting a request.

89 g. In complying with requests for private information under sub-  
90 sections b. (2) and d. an agency shall make reasonable efforts to  
91 identify and withhold from disclosure to the requesting data subject  
92 all private or confidential information about individuals other than  
93 the requesting data subject, unless the requestor is a parent or  
94 guardian acting for a minor or an incompetent and the information  
95 pertains to that minor or incompetent.

96 h. A data subject may notify an agency that he desires to chal-  
97 lenge or explain personal information, other than confidential  
98 information, which the agency maintains about him. The data  
99 subject shall submit to the agency, in writing, a reasonably specific  
100 description of the disputed information and a concise statement  
101 of his challenge or explanation of the disputed information.

102 (1) Within a reasonable time of its receipt of such challenge or  
103 explanation, the agency shall:

104 (a) Acknowledge receipt of such challenge or explanation;

105 (b) Investigate and determine the accuracy, completeness,  
106 timeliness, relevance, and necessity of the personal information  
107 involved; and,

108 (c) Either (i) correct or eliminate any information it finds is not  
109 complete, accurate, timely, relevant, or necessary, and inform the  
110 data subject of his rights under paragraphs (2) and (5) of this  
111 subsection, or (ii) inform the data subject of its refusal to amend  
112 the information in accordance with his request, the reason for its  
113 refusal, and of his remedies under paragraph (2).

114 (2) If the agency refuses or fails to amend information in  
115 accordance with the request of a data subject, the data subject  
116 may request that the responsible authority within the agency review  
117 such refusal or failure. The responsible authority shall complete  
118 such review and make a final determination of the dispute within  
119 45 days of receipt of the data subject's request for review. If the

120 responsible authority refuses to amend the disputed information  
121 in accordance with the request, he shall send the data subject a  
122 written statement of his reasons, and advise the data subject of  
123 his rights to file with the agency, for attachment to the disputed  
124 information, a concise statement of his challenge or explanation  
125 of the information, obtain dissemination of such statement under  
126 paragraph (5) of this subsection, and judicial review of the re-  
127 sponsible authority's determination under subsection 13 a.

128 (3) The data subject may not seek judicial review under sub-  
129 section 13 a. of a determination against him, unless he has ex-  
130 hausted his remedies under paragraph (2) of this subsection.

131 (4) In any subsequent disclosure or use of information about  
132 which the data subject had filed a statement of challenge or explana-  
133 tion under paragraph (2), the agency shall clearly report the  
134 challenge or explanation and provide a copy of the data subject's  
135 statement.

136 (5) At the request of a data subject, following the correction or  
137 elimination of information challenged by him, the agency shall  
138 notify reasonably identifiable past recipients and users of the  
139 information of the correction or elimination.

140 i. An agency may not destroy any information which is the  
141 subject of an outstanding request under subsections a. or b. of  
142 this section, a challenge under subsection b. of this section, or  
143 judicial proceedings under section 13.

1 12. (New section) Attorney General's annual report.

2 For the purposes of this act, with regard to criminal justice in-  
3 formation accumulated at the State level, the Attorney General  
4 shall publish an annual report which includes;

5 (1) Types of information maintained;

6 (2) Standards relative to the collection, use and maintenance of  
7 such information; and,

8 (3) Procedures established to assure the security and privacy of  
9 the information.

1 13. (New section) Causes of action.

2 a. If an agency fails to grant access to, or produce copies of, in-  
3 formation properly classified as public or private or a disclosure  
4 record, improperly classifies information, or fails to amend in-  
5 formation as requested pursuant to subsection 11 h. of this act, an  
6 aggrieved party may bring action in the Law Division of Superior  
7 Court to enforce this act.

8 (1) In actions brought pursuant to this subsection, the court shall  
9 determine the matter de novo. The burden of proof shall be on the  
10 agency to demonstrate the legality of its conduct.

11 (2) Where information is alleged by any party to such an action  
12 to be private or confidential, the court may review the information  
13 in camera or in closed session or impose such other limitations on  
14 access to the information as it deems appropriate to protect the  
15 privacy or confidentiality of the information during the pende  
16 of the action or thereafter.

17 (3) The court may order that the information or record be  
18 amended, that it be reclassified, that it be made available to the  
19 plaintiff in whole or in part, or that copies of it be made available,  
20 or may grant such other additional relief as will vindicate plaintiff's  
21 rights. The court shall assess against the agency reasonable  
22 attorney fees or other litigation costs reasonably incurred in any  
23 case in which the plaintiff substantially prevails.

24 (4) The court shall assess against the agency any actual damages  
25 suffered by the plaintiff as a result of the agency's action or failure  
26 to act, but in no case shall a person proving actual damages receive  
27 less than \$1,000.00.

28 (5) If the court makes a written finding that agency officers or  
29 employees acted, or may have acted, arbitrarily or capriciously, or  
30 intentionally injured the plaintiff it shall submit such finding im-  
31 mediately to the agency. The agency shall promptly initiate pro-  
32 ceedings to determine whether disciplinary action is warranted  
33 against the officers or employees and shall submit its findings and  
34 recommendations to the responsible authority of the agency in-  
35 volved.

36 b. If an agency violates any other provision of this act, an  
37 aggrieved person may bring an action in the Law Division of  
38 Superior Court to enforce this act. The court shall grant relief in  
39 such actions in accordance with subsection a. of this section.

40 c. Whenever it appears that an agency, or its employees or  
41 officers, has engaged in, is engaging in, or is about to engage in  
42 activity which violates a requirement of this act, any citizen may  
43 seek and obtain pursuant to rules of court an injunction prohibiting  
44 such agency, employees, or officers from engaging in such activity.

45 d. Actions under this section shall be brought within 2 years  
46 from the date on which the cause of action arises, except that  
47 where an agency has materially and willfully misrepresented its  
48 position with regard to an action or its performance of a responsi-  
49 bility required by this act and such misrepresentation is material  
50 to establishment of the liability of the agency to the person, the  
51 action may be brought at any time within 2 years after discovery  
52 by the person of the misrepresentation.

53 e. For the purposes of this section, the parent of any minor or  
 54 the legal guardian of any incompetent may act on behalf of the  
 55 minor or incompetent.

56 f. The State consents to be sued under this section without  
 57 limitation on the amount in controversy, notwithstanding the pro-  
 58 vision of any other law to the contrary.

1 14. (New section) Office of Legislative Services oversight.

2 a. Within 3 years of the effective date of this act, the Office of  
 3 Legislative Services shall audit, and submit a report to the Legisla-  
 4 ture on, agency compliance with the provisions of this act. The  
 5 Office of Legislative Services may also recommend such changes  
 6 in the act or its administration as it deems necessary.

7 b. After completing its first audit under subsection a., the Office  
 8 of Legislative Services shall regularly perform such audit every 5  
 9 years.

1 15. (New section) Mailing lists prohibited.

2 An individual's name and address may not, in compilation form,  
 3 be sold or rented by an agency unless such action is specifically au-  
 4 thorized by law. This provision shall not be construed to require  
 5 the withholding of names and addresses, not in compilation form  
 6 otherwise permitted to be made public. However, the names and  
 7 addresses only of persons applying for or possessing licenses to  
 8 engage in professional occupations, in compilation form, shall be  
 9 released to private, business and public organizations for the sole  
 10 purpose of providing such persons with informational materials  
 11 relating to available current professional educational materials or  
 12 courses. Any person violating this section shall be subject to a fine  
 13 of up to \$1,000.00 which shall be collected in a summary manner  
 14 pursuant to the provisions of "the penalty enforcement law,"  
 15 N. J. S. 2A:58-1 et seq.

1 16. (New section) Severability.

2 If any provision of this act or the application thereof to any  
 3 person or circumstance is held invalid, such invalidity shall not  
 4 affect any other provision or application of the act, which can be  
 5 given effect without such invalid provision or application, and to  
 6 this end, the provisions of this act are declared to be severable.

1 17. Section 2 of P. L. 1963, c. 7 (C. 47:1A-2) is amended to read  
 2 as follows:

3 2. Except as otherwise provided in this act or by any other  
 4 statute, [resolution of either or both houses of the Legislature,  
 5 executive order of the Governor, rule of court,] any Federal law,  
 6 regulation or order, or by any regulation promulgated under the  
 7 authority of any statute [or executive order of the Governor], all

8 records which are required by law to be made, maintained or kept  
 9 on file by any [board, body, agency, department, commission or  
 10 official of the State or of any] political subdivision *of the State*  
 11 [thereof] or by any public board, body, commission or authority  
 12 created [pursuant to law by the State or any of its] *by any of the*  
 13 *State's* political subdivisions, or by any official acting for or on  
 14 behalf thereof (each of which is hereinafter referred to as the  
 15 "custodian" thereof) shall, for the purposes of this act, be deemed  
 16 to be public records. Every citizen of this State, during the regular  
 17 business hours maintained by the custodian of any such records,  
 18 shall have the right to inspect such records. Every citizen of this  
 19 State shall also have the right, during such regular business hours  
 20 and under the supervision of a representative of the custodian, to  
 21 copy such records by hand and shall also have the right to purchase  
 22 copies of such records. Copies of records shall be made available  
 23 upon the payment of such price as shall be established by law. If a  
 24 price has not been established by law for copies of any records, the  
 25 custodian of such records shall make and supply copies of such  
 26 records upon the payment of the following fees which shall be based  
 27 upon the total number of pages or parts thereof to be purchased  
 28 without regard to the number of records being copied:

29	First page to tenth page	\$0.50 per page,
30	Eleventh page to twentieth page	0.25 per page,
31	All pages over 20	0.10 per page,

32 If the custodian of any such records shall find that there is no risk  
 33 of damage or mutilation of such records and that it would not be  
 34 incompatible with the economic and efficient operation of the office  
 35 and the transaction of public business therein, he may permit any  
 36 citizen who is seeking to copy more than 100 pages of records to use  
 37 his own photographic process, approved by the custodian, upon the  
 38 payment of a reasonable fee, considering the equipment and the  
 39 time involved, to be fixed by the custodian of not less than \$5.00 or  
 40 more than \$25.00 per day.

1 18. This act shall take effect on the first day of the thirteenth  
 2 month following enactment.

## 1981 SENATE BILL 79

February 12, 1981 - Introduced by Senators BERGER, HANAWAY, BRAUN and CULLEN; cosponsored by Representatives BROYDRICK, ROGERS and KIRBY. Referred to Committee on State and Local Affairs and Taxation.

*see page 10*

- 1 AN ACT to renumber subchapter IV of chapter 19; and to create subchapter  
2 IV of chapter 19 and 73.03 (23) of the statutes, relating to  
3 governmental practices regarding personal information.

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Analysis by the Legislative Reference Bureau

This proposal regulates the collection, maintenance and dissemination of personal data (data which can be related to identifiable individuals), other than educational records, by public authorities such as the state, local governments, governmental corporations and quasi-governmental organizations.

An authority may not collect personal data unless the data is relevant and necessary to the administration of the authority or an authorized function of the authority. Unless there is a compelling public need or collection is required by law, an authority may not collect data relating to the manner in which individuals exercise contributory rights or information which is privileged from disclosure in court, without consent of the subject.

No authority may require the disclosure of a social security number unless disclosure is required by federal or state law, by federal regulation or by state administrative rule in effect prior to January 1, 1975. However, the department of revenue is permitted to obtain such numbers in its administration of tax laws. The provisions are similar but not identical to a federal law on the same subject which currently applies to the state and local governments.

Methods and practices employed in the collection of personal data must be reasonable, taking into consideration specific standards enumerated in the proposal. Authorities asking individuals to furnish personal data must provide information on request concerning the legal authority under which the request is made, whether disclosure is mandatory or voluntary, the consequences of refusing to furnish the data, the names of government agencies to which the data will be sent and the period for which the data will be retained.

Any adult individual or the parent or guardian of a minor or incompetent individual may require an authority to disclose whether or not the individual is a data subject in any data system maintained by the

authority and to provide whatever personal data the authority maintains concerning the individual. The requirement does not apply to certain law enforcement information, information obtained under an implied pledge of confidentiality before the proposal takes effect and other information for which disclosure is prohibited by law.

An individual may challenge the accuracy, completeness, timeliness and relevance of data relating to himself or herself, and the authority maintaining the data must correct the data if it agrees with the challenge. If the authority disagrees with the challenge, the challenger may appeal.

Whenever personal data is released pursuant to a subpoena, the authority having custody of the data must notify the data subject in time to seek to have the subpoena voided.

With certain exceptions, authorities are prohibited from selling or renting personal data.

The bill does not apply to consumer reporting agencies acting in accordance with the federal fair credit reporting act.

No specific penalties are provided for violations of the provisions; however, they may be enforced by order upon petition to a court.

For further information, see the state and local fiscal estimate which will be printed as an appendix to this bill.

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The people of the state of Wisconsin, represented in senate and assembly,  
do enact as follows:

1 SECTION 1. Subchapter IV of chapter 19 of the statutes is renumbered  
2 subchapter V of chapter 19.

3 SECTION 2. Subchapter IV of chapter 19 of the statutes is created to  
4 read:

5 CHAPTER 19

6 SUBCHAPTER IV

7 GOVERNMENTAL TREATMENT OF PERSONAL DATA

8 19.62 DEFINITIONS. (1) "Authority" means any state or local office,  
9 state or local elected official, agency, board, commission, committee,  
10 council, department or public body corporate and politic created by  
11 constitution, law, ordinance, rule or order; a governmental or quasi-  
12 governmental corporation; any court of law; the legislature; a nonprofit  
13 corporation which receives more than 50% of its funds from a municipality,  
14 or defined in s. 59.001 (3), and which provides services related to public

1 health or safety to the municipality; or a formally constituted subunit of  
2 any of the foregoing.

3 (2) "Consumer reporting agency" means any authority or other person  
4 who, for monetary fees, dues, or on a cooperative nonprofit basis,  
5 regularly engages in whole or in part in the practice of assembling or  
6 evaluating consumer credit information or other information on consumers  
7 for the purpose of furnishing consumer reports to 3rd parties, and who  
8 uses any means or facility of interstate commerce for the purpose of  
9 preparing or furnishing consumer reports.

10 (3) "Data subject" means an individual about whom personal data in a  
11 data system is kept so as to be retrievable by use of the individual's  
12 name, identifying number, photograph, fingerprint, voiceprint or other  
13 identifying symbol.

14 (4) "Data system" means a collection of records so arranged, indexed  
15 or automated that personal data can be retrieved by use of an individual's  
16 name, identifying number, photograph, fingerprint, voiceprint or other  
17 identifying symbol.

18 (5) (a) "Education records" means those records which:

- 19 1. Contain information directly related to a student; and  
20 2. Are maintained by a public school, vocational, technical and  
21 adult education school or the university of Wisconsin system or by a  
22 person acting for the school or system.

23 (b) "Education records" do not include:

- 24 1. Records of instructional, supervisory and administrative  
25 personnel and educational personnel ancillary thereto which are in the  
26 sole possession of the maker thereof and which are not accessible or  
27 revealed to any other person except a substitute;

1           2. If the personnel of a law enforcement agency do not have access  
2 to records described in par. (a) under federal law, the records of that  
3 law enforcement agency which are kept apart from records described in par.  
4 (a), are maintained solely for law enforcement purposes and are not made  
5 available to persons other than law enforcement officials of the same  
6 jurisdiction;

7           3. In the case of a person who is employed by a public school,  
8 vocational, technical and adult education school or the university of  
9 Wisconsin system but who is not in attendance at the school or an  
10 institution within the system, records made and maintained in the normal  
11 course of business which relate exclusively to that person in his or her  
12 capacity as an employe and are not available for use for any other  
13 purpose; or

14           4. Records relating to a student who is 18 years of age or older, or  
15 is attending an institution of post-secondary education, which are made or  
16 maintained by a physician, psychiatrist, psychologist or other recognized  
17 professional or paraprofessional acting in his or her professional or  
18 paraprofessional capacity, or assisting in that capacity, and which are  
19 made, maintained or used only in connection with the provision of  
20 treatment to the student, and are not available to anyone other than  
21 persons providing such treatment or a physician or other recognized  
22 professional of the student's choice.

23           (6) "Maintains" means any of the following types of relationships  
24 that an authority has to personal data:

25           (a) The authority has legal custody of the data;

26           (b) The data is in the legal custody of a person who performs or has  
27 performed services under contract to the authority and the data has been

1 collected, stored, disseminated or used in connection with the performance  
2 of the services; or

3 (c) The data is in the legal custody of the state archives or  
4 university of Wisconsin system archives and has been deposited therein by  
5 the authority.

6 (7) "Personal data" means any information which can be related to an  
7 identifiable individual, but does not include education records.

8 (8) "Record" means any physical object in which, or on which,  
9 communications, information or data is reflected, recorded or contained,  
10 regardless of physical form or characteristics, including, but not limited  
11 to, handwritten, typed or printed pages, maps, charts, photographs, films,  
12 recordings, tapes, including computer tapes, computer programs and  
13 computer printouts, which have been created or are being maintained by an  
14 authority. "Record" does not include drafts, notes, preliminary  
15 computations and like writings prepared for the author's personal use if  
16 such writings have been substantially incorporated in a record which is in  
17 final form or will be so incorporated within a reasonable period of time  
18 specified by the authority having custody of them. "Record" does not  
19 include writings which are purely the personal property of the custodian,  
20 having no relation to his or her office. A "record" includes, but is not  
21 limited to:

22 (a) Final opinions, including concurring and dissenting opinions, as  
23 well as orders, made in the adjudication of cases.

24 (b) Those statements of policy and interpretations of policy, law,  
25 and the constitution which have been adopted by an authority.

26 (c) Administrative staff manuals and instructions to staff that  
27 affect a member of the public.

1 (d) Planning policies and goals, and interim and final planning  
2 decisions.

3 (e) Factual staff reports and studies, factual consultants' reports  
4 and studies, scientific reports and studies, and any other factual  
5 information derived from tests, studies, reports or surveys, whether  
6 conducted by public employes or others.

7 (f) Correspondence, and materials referred to therein, by and with an  
8 authority relating to any regulatory, supervisory or enforcement  
9 responsibility of the authority, whereby the authority determines, or is  
10 asked to determine the rights of the state, the public, a subdivision of  
11 government or of any private party.

12 (g) Information in any account, voucher or contract concerning the  
13 receipt or expenditure of public or other funds by an authority.

14 (h) Minutes of meetings and records of votes taken at meetings of a  
15 governmental body as defined in s. 19.82 (1).

16 (9) "Requester" means any person who requests to inspect or copy a  
17 record.

18 19.64 TYPES OF PERSONAL DATA WHICH MAY BE COLLECTED. (1) An  
19 authority may not collect or enter any data into a data system in which it  
20 maintains any personal data unless the data is relevant and necessary to  
21 the administration of the authority or a function of the authority which  
22 is authorized by law.

23 (2) Unless a compelling public need exists for the data, or its  
24 collection is expressly required by law, an authority may not collect, or  
25 enter into a data system which it maintains, any personal data:

26 (a) Describing the manner in which the data subject exercises  
27 constitutionally protected rights; or

1 (b) Which is protected by an evidentiary privilege under ch. 905,  
2 unless consent is given by the holder of the privilege.

3 (3) Any form used by an agency, as defined in s. 227.01 (1), to  
4 collect or store personal data shall be treated as an administrative rule  
5 for purposes of s. 13.56.

6 (4) No authority may require an individual to disclose his or her  
7 social security account number unless the agency informs that individual:

8 (a) Whether the disclosure is mandatory or voluntary; and

9 (b) By what statutory or other authority the number is solicited.

10 (5) No disclosure of a social security account number is mandatory  
11 under sub. (4) (b) unless its disclosure is specifically required by:

12 (a) Federal or state statute; or

13 (b) Federal regulation or state administrative rule adopted before  
14 January 1, 1975, which is in effect at the time the request is made.

15 19.65 METHODS OF DATA COLLECTION. (1) (a) The methods and  
16 practices employed by an authority in the collection of personal data  
17 shall be reasonable in light of:

18 1. The importance of the governmental interest to be served and the  
19 relationship of the personal data to that interest;

20 2. The reliability of the method or practice in the production of  
21 accurate personal data; and

22 3. The existence of practical alternative methods and practices for  
23 collection of the personal data.

24 (b) Methods and practices specifically authorized by statute are  
25 considered reasonable for purposes of this subsection.

26 (2) An authority requesting an individual to furnish personal data  
27 concerning himself or herself shall, upon request of the individual, make  
28 the following disclosures:

1 (a) The legal authority by which the authority is authorized to  
2 request the data.

3 (b) Whether disclosure is mandatory or voluntary, and any  
4 consequence known to the authority arising from refusal to supply the  
5 requested data or any part of the data.

6 (c) The name of any federal, state or local agency to which the data  
7 will be disseminated without request.

8 (d) The period for which the data will be retained.

9 (3) The disclosures required under sub. (2) shall, if the individual  
10 so requests, be made by means of a written disclosure statement which the  
11 individual may retain if he or she so elects.

12 (4) Subsections (2) and (3) do not apply to:

13 (a) Requests for data in the course of investigating or prosecuting  
14 possible violations of law;

15 (b) Requests for data relating to persons in custody or under  
16 supervision within a correctional system; or

17 (c) Work assignments or test instruments designed to measure  
18 academic aptitude or achievement or qualification for public employment or  
19 occupational licensure administered by an authority.

20 19.05 ACCESS BY DATA SUBJECT. (1) Unless the disclosure is  
21 prohibited by law, any adult individual or the parent or legal guardian of  
22 any child or incompetent individual shall, upon request to an authority  
23 and upon the furnishing of proper identification, be informed whether he  
24 or she is a data subject within any personal data system maintained by  
25 that authority and receive a copy or transcription of the data pertaining  
26 to the individual, if any.

1 (2) The rights afforded a data subject under this section do not  
2 apply to any record compiled in the course of a civil or criminal  
3 investigation relating to enforcement of state law or a local ordinance.

4 (3) An authority may refuse to disclose the source of personal data  
5 as to which no express pledge of confidentiality has been given if the  
6 information was obtained from the source prior to the effective date of  
7 this section (1981) and under circumstances which implied that the  
8 identity of the source would not be disclosed to the data subject.

9 19.67 CHALLENGE BY DATA SUBJECT. (1) Any competent adult data  
10 subject, or the parent or legal guardian of any minor or incompetent data  
11 subject, may, after having gained access to personal data under s. 19.66,  
12 challenge the accuracy, completeness, timeliness or relevance of the data  
13 by notifying the authority having custody of the data in writing of the  
14 nature of his or her challenge.

15 (2) Within 30 days after receiving notice under sub. (1), the  
16 authority shall either:

17 (a) Correct the data if it is found to be inaccurate, incomplete,  
18 irrelevant or not timely, and, if the data subject so requests, notify  
19 known past recipients of inaccurate or incomplete data of the correction;  
20 or

21 (b) Notify the requester that the challenge has been refused, of the  
22 reasons for the refusal and of the requester's right to such  
23 administrative and judicial review as is provided by law.

24 (3) Personal data in dispute under this section may not be disclosed  
25 by the authority to any person unless the data subject's statement of  
26 challenge is included with the disclosed data.

27 (4) Any authority maintaining a data system, upon receiving a  
28 correction notice under sub. (2) (a) pertaining to personal data within

1 another data system, shall promptly correct the data within its system  
2 accordingly.

3 19.68 DISSEMINATION OF PERSONAL DATA. (1) If an authority proposes  
4 to release personal data from a data system which it maintains to any  
5 person who is authorized by subpoena to receive the personal data, the  
6 authority shall make reasonable efforts to notify the data subject of the  
7 subpoena in time for the subject to seek to have it quashed.

8 (2) Unless specifically authorized by statute, an authority may not  
9 sell or rent to any person any list of names, addresses or other personal  
10 data derived from a data system which the authority maintains. This  
11 subsection does not apply to the furnishing of names and addresses of  
12 applicants for or holders of professional licenses to publishers of  
13 professional educational materials, or sponsors of educational courses  
14 licensed or approved by a governmental or accreditation agency.

15 19.69 CONSUMER REPORTING AGENCIES; EXEMPTION. If an authority or  
16 other person provides services as a consumer reporting agency, this  
17 subchapter does not apply to records maintained by that authority or other  
18 person which are regulated by the federal fair credit reporting act, 15  
19 USC 1681-1681t, in effect on the effective date of this section (1981), if  
20 the authority or other person fully complies with the act in regard to the  
21 data collected, stored, disseminated or used in connection with the  
22 performance of its services.

23 SECTION 3. 73.03 (23) of the statutes is created to read:

24 73.03 (23) To require any person to supply that person's social  
25 security account number to the department in its administration of s.  
26 66.054 or chs. 70 to 79, 139 or 176.

1 SECTION 4. CROSS-REFERENCE CHANGES. In the sections of the  
2 statutes listed in Column A, the cross-references shown in Column B are  
3 changed to the cross-references shown in Column C:

4	<u>A</u>	<u>B</u>	<u>C</u>
5	Statute Sections	Old Cross-References	New Cross-References
6	15.251 (intro.)	subch. IV of ch. 19	subch. V of ch. 19
7	19.47 (1)	subch. IV	subch. V
8	36.07 (6)	subch. IV of ch. 19	subch. V of ch. 19
9	62.60 (3)	subch. IV of ch. 19	subch. V of ch. 19
10	66.433 (6)	subch. IV of ch. 19	subch. V of ch. 19
11	120.48 (1)	subch. IV of ch. 19	subch. V of ch. 19

12 SECTION 5. EFFECTIVE DATE. This act takes effect on January 1,  
13 1983.

14 (End)

# ALASKA ANTHROPOLOGICAL ASSOCIATION

PRESIDENT  
KAREN W. WORKMAN  
3110 E. 41st Ave., Anchorage, Alaska 99504

BOARD OF DIRECTORS  
DOUGLAS REGER ALASKA DIVISION OF PARKS  
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WILLIAM WORKMAN-UA ANCHORAGE

February 26, 1981

RECEIVED

MAR 02 1981

Senator Pat Rodey, Chairman  
Standing Committee on Judiciary  
Pouch V, State Capitol  
Juneau, AK 99811

Dear Senator Rodey:

The purpose of this communication is to comment on Senate Bill 90. Freedom of information in state government is crucial to encourage public input and insure that operations are conducted in a forthright manner.

It is realized that the release of all information is neither useful nor in the best interests of all citizens, thus your bill calls for several useful exclusions. One category that is not protected in the bill is archaeological sites. I ask that access to information on locations of these endangered properties be somewhat restricted.

Presently the Office of History and Archaeology serves both research and preservation functions. The Alaska Heritage Resources Survey provide the ongoing inventory of known sites. The state employed archaeologists readily offer locational information to responsible persons engaged in land planning, development, or academic reports. Recently the Division of Parks sanctioned the Office of History and Archaeology to withhold specific site location information to a very few unscrupulous individuals whose intent, based upon their past actions, was to damage archaeological sites in the process of gaining artifacts for sale in a thriving but illegal antiquities market. Senate Bill 90 might once again permit and even condone this abuse unless protective exclusions for site locational data are maintained.

A visit to a site that has suffered from these unprincipled despoilers is a saddening experience. Huge random holes, much like bomb craters scar the surface. Desecrated human burials are evident from scattered bones. Simple or common artifacts are discarded in favor of a few choice pieces of ivory to be shipped

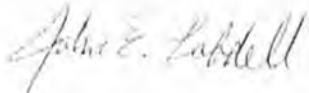
Senator Pat Rodey  
Page 2  
February 26, 1981

out of state and sold at obscene profits. Ancient environmental data is ruined. Scientific information, once out of natural context, becomes worthless.

Archaeologists, in scientifically excavating a site, engage in limited and controlled excavations. The goal is to reconstruct past lifeways through careful study of all ecofacts and artifacts. Most importantly, after careful study the collections are placed in museums so that all Alaskans can view and enjoy the ancient remains.

I applaud the general intentions of this bill and its authors are to be commended. I would, however, respectfully recommend that the bill be modified to exclude specific cultural resource site locational information. Many ancient sites have unfortunately succumbed to natural erosion. These losses could be greatly compounded by the few persons who would wantonly rob us of a delicate record of human heritage. Continued protection by the State of Alaska can only be viewed as sound management of scarce resources and certainly in the best interests of all Alaskans.

Very respectfully,



John E. Lobdell, Ph.D.  
Chairman, Archaeology Advocacy Committee  
Alaska Anthropological Association

/lke



# Kodiak Public Broadcasting Corporation

P. O. Box 484, Kodiak, Alaska 99615 (907) 486-3181

February 12, 1981

Senate Affairs and Judiciary Committee  
Pouch V (MS 3100)  
Juneau, Alaska 99811

Honorable Chairperson:

I would like to submit this as written testimony in addition to the oral testimony I presented during the teleconference on Senate Bill 90.

Overall, I am in favor of the bill. I am the News Director at KMXT radio, and former News Director at KFSK radio in Petersburg. Both KMXT and KFSK are members of the Freedom of Information Task Force.

On page four of the bill (40.25.015 (e) 13 (a,b,c)) I am concerned about who is going to determine what will "interfer with enforcement proceedings;", as well as the other conditions listed. Many of the requests for information in this area will be made to the Police Chief. If he/she is the final word on the meaning of these conditions, this could lead to abuse. A system for appeal should be given in the bill. The appeal process would probably end in the courts.

40.25.015 17 I and J, on page 6, may clear up the above concerns. Both of these sections are very good!

On pages 7 and 8 (40.25.025) the section offers a Superior Court injunction as enforcement. In Anchorage, Fairbanks, and Juneau this would work well. However, in smaller communities this is difficult. Kodiak does have a Superior Court, but the judge also covers the Dillingham area, which means he is out of town frequently. In Petersburg the Superior Court judge comes to town once a month for two days.

This section of the bill would require a Petersburg resident to travel to Juneau, or to hire an attorney. I would recommend a procedure that would allow the Magistrates office to do the initial paperwork. The burden would then be on the court system to contact the Superior Court. This does, unfortunately, place the extra work on an already overworked court system.

An alternative would be to make violations of the bill a misdemeanor offense. A complaint could be sworn at the District Court level and the normal justice system would take over. The question of an injunction is not addressed in this plan, however.

My major concern with this section is that small town citizens have the same opportunity for enforcement as do their city counterparts.



# Kodiak Public Broadcasting Corporation

P. O. Box 484, Kodiak, Alaska 99615 (907) 486-3181

On pages 9 and 10 I think section 3 44.62.310 (c) (3) is a very good change to the current statute. This would still allow executive sessions but eliminate the chance for easy abuse. This would reduce the number of unnecessary executive sessions.

Throughout the bill I would recommend the pronouns "he", "him" and "his" be changed to "he/she", "him/her" and "his/hers". Often it is a City Clerk who is the custodian of records. Traditionally women are in this position.

The area of "administrative fees" needs to be adressed. A women in Kodiak recently told me she was charge a \$20 "administrative fee". She explained that she copied the information she needed by hand, but was still charged. this was justified by the agency as payment for the time of the employee who watched her. This is, I hope, a violation of the spirit of this bill.

I would also like to recommend a poster be prepared that would simply outline: 1) How to request information/copies. 2) Costs per page. 3) The public's right to know. 4) And what to do for enforcement.

This poster could be up in all state offices that have records, City and Borough Clerks offices, and courts. This would be an easy way to inform the public of its rights.

In conclusion I will quote from the bill and AS 44.62.312 (5) "THE PEOPLES RIGHT TO REMAIN INFORMED SHALL BE PROTECTED SO THAT THEY MAY RETAIN CONTROL OVER THE INSTRUMENTS THEY HAVE CREATED."

Thank You.

Sincerely,

  
Jon Newstrom  
News Director

cc: Freedom of Information Task Forse  
Kodiak Daily Mirror  
KFSK Radio, Peterburg

# *League of Women Voters of Alaska*

8926 Birch Lane  
Juneau, Alaska 99801  
April 7, 1981

Patrick M. Rodey, Chairman  
Senate Judiciary Committee  
Pouch V, State Capitol  
Juneau, Alaska 99811

Re: CS for SB 90 (State Affairs): Privacy and  
Public Information

Dear Senator Rodey and Members of the Committee:

The League of Women Voters of Alaska supports enactment of CS for SB 90 (State Affairs). We indicated our support for SB 90 when it was before the Senate State Affairs Committee, and the bill has improved even more since amendment by that Committee.

Our support for the bill is based upon a fundamental principle of the League of Women Voters of the United States (to which we adhere) that "governmental bodies protect the citizen's right to know by giving adequate notice of proposed actions, holding open meetings and making public records accessible." Implementation of this principle is important not only for the effective functioning of a democratic society, but also for the protection of individual citizens' rights.

Our support for this principle applies to all levels of government. This means that we believe municipalities should be subject to the same requirements as State agencies, and therefore we support adoption of the bill in its present form and urge you not to succumb to any arguments to make the bill's requirements inapplicable to municipalities.

We appreciate your consideration of our comments.

Sincerely,

Margaret E. Holland  
Action Chair  
League of Women Voters  
of Alaska



## THE CITY AND BOROUGH OF JUNEAU

CAPITAL OF ALASKA

155 SOUTH SEWARD ST. JUNEAU, ALASKA 99801

LAW DEPARTMENT (907) 586-3300

April 9, 1981

Senate Judiciary Committee  
Alaska State Legislative Building  
Pouch K  
Juneau, Alaska 99811

File: Legislature - 1981 - Senate Bill 90

Subject: CSSB 90

Gentlemen:

The City and Borough of Juneau supports the concept that with certain necessary exceptions, the records of state and local governments should be readily available for public inspection. However, we believe at the municipal level it is the local elected assembly and council members who are best able to determine which records kept by the municipality should be protected. It is, after all, the municipality which creates the records or which requires others to provide information to it which become municipal records. It is also the municipality which is best able to determine whether the harm of disclosure of its records would outweigh the benefit of disclosure. Just as I am sure that you feel the operation of Alaska's lands, fisheries, resources, and other government activities are best determined by the State of Alaska and not the federal government, we believe that, local elected officials are in the best position to make decisions about local matters, including local records. For that reason, we urge you to delete municipalities from the coverage of the bill.

As an alternative to removing municipalities from the coverage of the bill, we urge you to adopt a new exemption under proposed section AS 40.25.030(a) which would read as follows:

(13) records of a municipality which are specifically exempted by ordinance.

This approach would ensure that all records of a municipality not exempted by state law would remain public records unless an assembly or council takes affirmative action to specifically exempt a record. The action would have to be taken by ordinance which requires public notice prior to a public hearing and adoption. As this is a legislative act, it is subject to amendment or repeal by initiative or referendum. Municipalities

Senate Judiciary Committee  
Page Two  
April 9, 1981

may, and do, establish programs which do not have a state counterpart and which may generate records that deserve some degree of protection to ensure the effectiveness of the program. We do not expect the legislature to be familiar or even aware of many of these programs. Therefore, it is not reasonable to expect that municipalities will find in State law any statutes to protect records which are peculiar to various municipal programs. When the legislature establishes a state program it also provides for the protection of records which will be generated by that program. The statutes contain numerous examples of this. On the other hand, I believe one will search in vain for a statute which gives protection to any specific municipal record. The amendment proposed above would provide a reasonable solution to the problems which would be created by bringing municipalities under the bill.

We urge you to delete section 3 on page 12. Section 3 would amend the present open meetings statute to take from municipalities the authority to declare, by ordinance or charter, additional subjects which may be discussed in executive session. Unless someone can produce an ordinance or charter provision which demonstrates that at least one municipality in the State has abused this authority, there would be no reason for removing that authority. This authority has been on the books for many years and its repeal now, in the absence of any abuse or threatened abuse would appear to be supported only by a feeling that local elected officials and local voters cannot be trusted. If the authority has not been abused, it should not be removed.

There are several features of the bill which deserve further attention. The first appears on page 2 at lines 13 and 14. Although the sentence beginning on line 13 tracks with current law, I believe that it is totally out of touch with reality. The record which a custodian may have is often a copy of the original. Many times that copy will have handwritten notes upon it or upon the copy from which the copy was made. It is unrealistic to provide that if a certified copy of the record is requested the certified copy is evidence of the original. At best, the certified copy is evidence only of that which was copied, and not necessarily the original.

Dropping down to subsection (d) which begins at line 19 on page 2 we find several areas which require attention. First, if the bill is to apply to municipalities, we believe that the commissioner of administration should not be prescribing the schedule of fees for the copying of municipal records. This should be left to the municipality.

Senate Judiciary Committee  
Page Three  
April 9, 1981

Second, and in any event, the schedule of fees should permit the recovery of all costs of producing the record. This would include not only the direct cost of copying the record but also the cost of search and retrieval. The state and municipalities should be able to recover search costs even if the person requesting the record does not request a copy. The cost to the taxpayers of searching for a single sheet of paper which has been sent to dead storage can be substantial. We seriously question the philosophy of this section which seems to be that all the taxpayers should bear the burden of one individual's request for the production of a record. The individual making the request is generally seeking the record for his own personal benefit or for the benefit of a political or other cause supported by the individual. It is a difficult enough situation that a request for a record creates a work priority for public servants which make conflict with other priority duties of these servants, but establishing a scheme whereby the public agency may not recover all of the cost of search, production and copying makes a questionable situation even worse. Not only does the general public lose the services of the custodian of the record while he or she is searching for and reproducing a record, but the general taxpaying public which has lost those services must pay for them as well. We have no argument with the concept that public records should be made available to members of the public when requested. We believe, however, that the burden of such production should be borne by those who request the records and not by the general taxpaying public. Therefore, the fees should be permitted to cover all costs of search, production, and reproduction.

In the same section, the provision in the last sentence that a person may obtain 20 copies per day without charge may be an appropriate policy for a library or some other agency which exists primarily for the purpose of accumulating information and making it available to the public; however, it is not an appropriate policy for general application or for application to municipalities. Under this bill, a 200 page report can be obtained free of charge merely by telephoning the custodian each day and requesting an additional 20 pages over a period of two weeks. Public employees have much more productive things to do with their time than to stand at a copy machine making free copies of documents which are for the benefit of one individual. If this section becomes law, I could, by calling the various state agencies which have copies of the Alaska Statutes and requesting different 20-page segments, soon have, free of charge, a complete set of the Alaska Statutes. All this would be at the expense of the general taxpayer, but solely for my benefit. We urge you not to permit

Senate Judiciary Committee  
Page Four  
April 9, 1981

such a scheme to become law. The last sentence of the subject subparagraph (d) should be deleted.

Turning next to page 3, lines 18 through 20, we find a section which will probably create an unreasonable burden in many instances and will undoubtedly be fruitful of litigation. For example, what is meant by "deletion of exempt parts"? Is the custodian required to blank out individual names, words, and figures or is he or she authorized to remove an entire sheet of paper if that sheet of paper contains any protected information. If it is the former then the custodian, in order to protect his or her "original," must first make a copy of the record. Then he or she must sit down and read through the entire document to determine what must be deleted. Having made this determination the custodian must then white out or otherwise obliterate the protected information. Depending on how the protected information is deleted, the custodian may have to make a copy of the "sanitized" copy for inspection in order to ensure that the person inspecting the record does not gain access to the protected information by removing obliterating tape or holding the record up to a light or by some other means gain access to the deleted information. We suggest that the "deletion if possible" approach to public records will create an unreasonable burden on governmental units. This is particular so in light of the fact that the time spent in sanitizing protected records will not be reimbursed to the governmental unit by the person requesting the record but will be a tax burden for the general taxpayer. Lines 15 through 25 on page 3 should be deleted to eliminate this problem.

I believe that the reference to AS 40.25.030(c) in line 21 on page 4 is incorrect. Perhaps the reference was meant to be to AS 40.25.030(b).


An interesting and far reaching change to SB 90 is made in the definition of "governmental unit" in CSSB 90(SA). On page 12 in line 6, the phrase "or any organization" has been inserted in the definition. As now drafted, any organization supported in whole or in part by public money would come under the bill. You may want to consider whether groups which receive grants from the state or municipalities should be under the bill. These include such organizations as the Chamber of Commerce, day care centers, clubs, organizations and businesses which seek public assistance in their volunteer efforts to improve the community etc. Although the word "supported" as used in this definition would probably be limited to grants, a good argument can be made that any organization which receives public monies, whether

Senate Judiciary Committee  
Page Five  
April 9, 1981

through a contract for services or a direct grant, is an organization supported in whole or in part by public money. Grants, after all, generally take the form of a grant agreement or contract. There is not a great deal to distinguish a grant agreement from a professional services agreement. Both involve the transfer of public monies to a person or organization which will provide some service or product. If it is the intent of the legislature to open the records of private organizations, the scope of that coverage should be more clearly defined.

In summary, we urge you to leave local problems to solutions by local, elected officials. If you find a compelling need to dictate how municipalities will deal with local records, we urge you to permit municipalities to provide additional exemptions by ordinance and to recover from the person requesting a record the total reasonable costs of producing the record rather than making that cost a burden on the general taxpayer. We believe the concerns expressed above are shared generally by other municipalities and urge you to give serious consideration to these matters.

Sincerely,



Gerald L. Sharp  
City-Borough Attorney

GLS: jr

cc: Ginny Chitwood, AML

Assembly Legislative Committee

Carlton W. Laird  
City-Borough Manager

# Alaska MUNICIPAL League

TELEPHONES  
(907) 586-1325  
586-6525

204 N. FRANKLIN ST.  
JUNEAU, ALASKA 99801

April 1, 1981

To: Senate Judiciary Committee  
Senator Pat Rodley, Chairman  
All Members of the Committee

From: Ginny Chitwood, Executive Director  
Alaska Municipal League

Re: SB 90 - Privacy and Information Act

Municipalities realize the need for the public to have reasonable access to municipal records. However, the provisions in SB 90 go further than what the Alaska Municipal League considers reasonable. We can foresee many unfair burdens being placed on municipalities if this bill passes in its present form. Some are as follows:

Records produced "immediately" - This would place the request for a public document as first priority over all other conduct of the government's business. A more reasonable approach would be to allow ten days as provided by the federal government. This, at least, would allow determination as to whether or not the document being requested would fall under the list of exemptions and therefore not be required to be produced or whether or not it was in the public's interest to be produced. If illegal releasing of information is done by a municipal employee, the municipality would be open to a fine which means the municipal attorney would have to review all requests.

"Direct Cost" - Some documents are readily available. However, it is possible and likely that to produce other documents would involve a great deal of time; searching thru archives, records of years past in storage, etc. Most of our communities do not have sophisticated retrieval systems and the amount of time needed to locate said document could take up a good portion of the employees time. The League feels the word "direct" should be deleted from page 2, line 21, or at least defined to include labor involved by the municipal employee in the search for the document that has been requested.

Subjects for executive session - The League feels the municipality is the best judge of what should be considered confidential and objects to the deletion of the right to establish these subjects by charter or ordinance (page 9, lines 28 and 29.) Procedures for charter ratification and ordinance adoption afford adequate safeguards ensuring that local actions reflect local opinion.

(over)

Personnel files open to the public - This should be a determination of the municipality. Doesn't this infringe upon the rights to privacy of the individual?

Because of these and other considerations the League respectfully requests that municipalities be excluded from the provisions of this bill as was done by the Senate and the Senate State Affairs Committee last year. Local records are a local problem to be dealt with at the local level. The municipality is in the best position to determine which records should be protected and which should be made public.

If an exclusion for municipalities is not adopted for SB 90, the Alaska Municipal League requests that an "opt out" provision be included which would allow a municipality, after having adopted a comparable ordinance, to be taken out from under these provisions.

A suitable exception could be provided in the bill by adding the following paragraph after line 18, page 5:

Sec. 40.25.015 (e)(18). Records of a local government unit where the council or assembly has adopted a comprehensive ordinance dealing with its public records.

alaska  
state  
hospital  
association

319 Seward St., Juneau, Alaska 99801 (907) 586-1790

REPRESENTING ACUTE, LONG TERM AND OUTPATIENT FACILITIES

President  
Sister Barbara Haase  
Ketchikan General Hospital  
Ketchikan

March 26, 1981

President-Elect  
Tom Mingen  
Fairbanks Memorial Hospital  
Fairbanks

Secretary/Treasurer  
Ron Pavellas  
Alaska Hospital & Medical  
Center  
Anchorage

Immediate Past President  
Al Camosso  
Providence Hospital  
Anchorage

Executive Director  
Dennis L. DeWitt  
Juneau

The Honorable Patrick M. Rodey  
Alaska State Senate  
Pouch V  
Juneau, Alaska 99811

Dear Senator Rodey:

The Alaska State Hospital Association has reviewed Committee Substitute for Senate Bill 90 and must express our deep concern that medical records are not exempted from the provisions of Section 40.25.015.

Medical records whether held by public or private health facilities should be held in the utmost confidence. The fact that a person seeks and receives care in a public institution ought not be grounds for lessening what ought to be an absolute right to privacy. Unfortunately, CCSB90 would make medical records held by the state or political subdivisions disclosable only so long as it is not "an unjustifiable invasion of personal privacy". This is a much lower standard for disclosure than is offered trade secrets or examinations in Section 40.25.030(5) and (6). We believe that on the contrary, medical records are of a much more private nature than trade secrets and much more deserving of protection.

While we acknowledge that the right of privacy is recognized in Article I, Section 22 of the State Constitution, we also note that there is a directive that the legislature shall implement Section 22. As we review court cases which are cited we do not feel that there is an explicit notion that medical records should not be considered public records which could be released pursuant to Section 40.25.030(11) of CSSB90. We believe that the legislature can include or exclude medical records from that section.

The Honorable Patrick M. Rodey  
March 26, 1981  
Page two


As a result of our judgment that medical records are a private matter and that they could be released under the current version of CSSB90, we request that CSSB90 be amended to specifically declare that medical records are not public records and are not disclosable under AS 40.25.015. We would suggest that the amendment be as follows:

On Page 1 after Line 26, insert:

- (7) for purposes of this chapter, medical records are private information and do not constitute a public record.

Thank you for your consideration in this matter.

Sincerely,



Dennis L. DeWitt,  
Executive Director

DLD/sam

cc: Members of Senate Judiciary Committee  
Senator Charles H. Parr

THE ALASKA HOSPITAL AND MEDICAL CENTER, INC.

April 3, 1981

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President

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Vernon Cates, M.D.

Emmitt Wilson

Ronald A. Pavellas  
Administrator

Mr. Kevin K. Bruce  
Committee Aide  
Alaska State Legislature  
Senate Judiciary Committee  
Pouch V  
State Capitol  
Juneau, Alaska 99811

Dear Mr. Bruce:

Thank you for your invitation to testify on CSSB 90  
on April 10.

Unfortunately, I will be unable to attend on that date.  
However, Mr. Dennis DeWitt, Executive Director of the Alaska  
State Hospital Association, will be able to attend and make  
comment upon the proposed legislation.

His testimony will include any comments I would make.

Sincerely,

*Ronald A. Pavellas*  
Ronald A. Pavellas  
Administrator

RAP:jb  
cc: Dennis DeWitt

2801 DeBor Road  
Pouch B-11  
Anchorage, Alaska 99501  
(907) 275-4111



# NEA - ALASKA

AFFILIATED WITH THE NATIONAL EDUCATION ASSOCIATION

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**Mary Ann Elninger**  
Deputy Executive Secretary  
Fairbanks Office

March 27, 1981

TO: Senator Pat Rodey, Chair  
Senate Judiciary Committee

FROM: NEA-Alaska

MEMORANDUM: RE: CSSB 90 (SA)

NEA-Alaska respectfully requests and urges that the bill be amended to provide that any records pertaining to assessment, evaluation and performance of job responsibilities in all regards; formal, informal, and casual, including but not limited to solicited and unsolicited statements from persons outside the scope of normal responsibility for evaluation of a certificated teachers performance of duties be specifically included under Section 40.25.030 EXEMPTIONS (a), rather than in the current paragraph (f) which makes same open for public inspection.

As CSSB 90 (SA) is currently constructed, general public access provided in the manner referenced above seems to be in direct conflict with the intent of this bill as stated in Section 40.25.010, (5) and (6) especially in application of the Constitution of the State of Alaska, Article 1, Sections 7, 14, 15, and 22.

The process of evaluation and assessment of performance and the general accumulation of records attendant to same has been one of confidentiality as evidenced by 4AAC 19.010 - .060, contract language between school districts and recognized certificated teacher bargaining agents, and by tradition. To open these records and make them generally accessible will only serve to diminish and make far less effective the process of evaluation of performance.

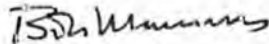
The dangers inherent in such access may focus on problems attendant to:

- a) Conclusion drawing by inference from such things as leave records, grievance records, transfer requests where the person requesting such records may not be knowledgeable about background attendant to same.
- b) Reluctance for candor on the part of evaluators both in making recommendations for improvements and for making statements which might lead to non-retention or dismissal.

- c) Possible compromise to an author of a communication when the person assumed that the communication would be confidential.
- d) Circumstances when entries into a personnel record may not even be known by the employee to whom they pertain.
- e) College placement records which as a condition of availability are required to be treated confidentially.

Thank you for your consideration of this request.

Respectfully submitted:



Robert Manners  
Executive Secretary

RM:jw

W. Powell  
Alaska

TESTIMONY BEFORE THE TELECONFERENCE OF THE HOUSE AND SENATE JUDICIARY COMMITTEES ON  
HB 7 and SB 90

Committee Chairmen and Members: On behalf of the Alaska Freedom of Information Task Force, an organization of more than 40 newspapers, radio and television stations, magazines and other media organizations, I want to thank you for scheduling this joint teleconference and expediting action on this very important bill. Our organization is dedicated to bringing government out of the shade where the people's business is being hidden and keep it in the sunshine where that is presently the case.

I have urged our members to judge any proposed legislation against the current law. Both HB 7, which is based in great measure on a Model Bill we developed, and SB 90 are improvements over the present law. If they were the only versions of this legislation under consideration, we would be pleased and certain that our goals would be accomplished. Unfortunately, two other versions have also been presented for the Legislature's consideration - the Senate Affairs committee substitute for SB 90 and a proposed substitute prepared by the Department of Law. Both of these versions are unacceptable to the task force and I believe to the state's media.

Perhaps the central dilemma of the Alaskan situation is any legislation to regulate access to public records must take into account the Alaskan constitutional provision protecting the right of privacy. I believe our Model Bill, HB 7 and SB 90 all do that in ways much preferable to CSSB 90 (SA) and the Department of Law's proposed substitute. I believe the U.S. Constitution, the Federal Freedom of Information Statutes and our current state law on public records places public access to government records above personal privacy interests in all but a few, well-defined instances. The Model Bill, HB 7 and SB 90 for the most part specifically define the exceptions. The other two versions establish a vague, undefined exception that could exempt records the disclosure of which would constitute an unjustifiable invasion of personal privacy. Exceptions must be specifically defined and governmental units must not be allowed great discretion in determining what records are open and what records are

closed because such action would result in a great many more records being closed than is now the case.

I don't wish to leave the impression that HB 7 and SB 90 are perfect. I will be submitting additional written testimony outlining specific changes we favor, but let me note a few of the more important changes. Both Bills would benefit by including a definition of the right of privacy. The Constitutional privacy provision mandates that the legislature protect that right and we believe that part of protecting it is defining it. We suggest the definition from the restatement of torts: Privacy is that right of an individual to be protected against publicity of a matter concerning that individual's private life when the matter publicized is of a kind that (a) would be highly offensive to a reasonable person and (b) is not of legitimate concern to the public.

Both bills would benefit from a section waiving fees when it is in the public interest or when the requestor is indigent and also providing for 20 pages of free copies in any 74-hour period.

In HB 7 we are concerned that a requestor be able to file a suit under the act in that individual's home jurisdiction, rather than be forced to travel to the jurisdiction where the record is located.

In SB 90, we would like to see original entry police records--those documents completed when an individual is taken into custody--eliminated from the exceptions. The Press has historically monitored police to see that no individual is held unjustly and removing original entry records makes police abuse a much greater burden. Also § 7 C of subsection 13 dealing with police records speaks of an unjustifiable intrusion into a person's right of privacy. If such language is to remain here and in other sections of the bill, we need a definition of a justifiable intrusion. Either that or delete the section. It is important here, as in other sections, that no one be left with the impression that anything unflattering is private when that simply isn't the case.

We would also like to see SB 90 place the burden of proof in a suit for disclosure on the governmental unit to prove that it was required not to release requested records.

TO: Rep.  
Brown, Chair  
House Judiciary  
and

TO: Sen. Rodey  
Chair, Senate  
Judiciary

FROM: Allan  
Lesche

FROM: Allan  
Lesche

Phone 6-610  
Anchorage 99501

Page 3 of 4

information. The courts should be instructed to presume in favor of disclosure.

Governmental units should be required to keep a public file of letters of denial of information requests, which would allow easy monitoring to determine whether the governmental units are complying with the law.

Finally, the bill should include computer maintained records and should also cover independent contractors paid with public money in whole or in part and under the supervision of a governmental unit. Increasingly the public's business is being conducted through private contractors and these actions must be subject to public scrutiny.

Your task is not an enviable one. You will undoubtedly be urged to exclude various branches of government or one or another of a multitude of types of records. Please recall that the public has a right to know what is being done by its government and in its name. It also has a right to know what is being done with the public moneys that support governmental units. I urge you to have the courage to keep the government in the sunshine. Remember that it is the people who benefit--not the media. 75 percent or more of all requests under the Federal Freedom of Information laws come from non-media sources and only 25 percent or less come from the media.

FROM: Allan  
Teschke

Page 4 of 4

6 CONCEPTS

1. FEDERAL WFO SOURCE - REVIEW  
FROM HBT

2. WFO & INVESTIGATOR REPORT  
DISTURBANCE  
IN US SOURCE PRINCE

3. PB-HBT-LOS OR  
UNIDENTIFIED

4. P9-6117-DEB CONTAIN  
10 CLUES WFO. CONTACT  
RCS. CAN IN CONTACT  
PUBLIC WORK

5. HBT REPORTS 4 MONTHS  
WITH PUB RELS. 5890 COST  
1 N.

76, 77, 79

NOT A FRESH M. OTHERS  
PUB



# NEA - ALASKA

AFFILIATED WITH THE NATIONAL EDUCATION ASSOCIATION

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Deputy Executive Secretary  
Fairbanks Office

March 12, 1981

Senator Pat Rodey  
Alaska State Senate  
Pouch V  
Juneau, Alaska 99811

ATTENTION: Kevin Bruce      RE: CS SB 90

Dear Pat:

NEA-Alaska has serious problems with certain sections of CS SB 90. While agreeing in principle with the basic intent of the bill, it seems apparent that Section 40.25.030(f) is in serious conflict with the policy statement, especially Section 40.25.010 (5) and (6).

Section 40.25.030(f) is so broad and all encompassing that it renders the teachers record of performance totally vulnerable to public scrutiny with virtually no consideration for the fact that such a record may not be accurate in any way. It appears to be in serious conflict with 4AAC 19.010-060 as well.

The evaluation of teaching performance is highly subjective and in many cases the product of personality relationships with administration. Further, student, parent, and community sensitivities may cause materials to become a part of a teacher's file and work record completely absent the knowledge of the teacher.

At the time of entry into the "record" it may not be known that such materials would subsequently become a part of litigation. The knowledge of same could easily deprive a teacher of fair and equitable treatment before an administrative agency such as a school board or in a community generally.

Each year we are faced with an increasing number of actions against teachers as employees which are all too frequently based on data which is not completely accurate and, in many cases, nothing more than the opinion of another person. To make this kind of information generally available appears to be a most serious intrusion into basic constitutional protections as well as a teachers right to reasonable academic and individual freedom.

I believe the potential exists for major problems as a result of the enactment of this kind of legislation and would strongly recommend that Section 40.25.030(f) (at least lines 23 - 28) be included as part of Section 40.25.030(a) EXEMPTIONS.

Further, Section 40.25.090 (5), in the definition of "records" does nothing more than compound the problem from our perspective in that it appears to make just about anything and everything relating to job performance available as a matter of record.

Perhaps 40.25.030(a) (12) could be broadened sufficiently to accommodate our concerns and still accomplish the general intent of this bill. There still remains, however, the potential for conflict between this bill and the content of negotiated agreements on matters pertaining to personnel files.

Finally, in looking at two other sections of the bill; in 40.25.015(d), there seems to exist a potential for extremely high cost of administration to the State and/or other governmental agency or sub-division, especially when considered in light of Section 40.25.015(c) which seems to make the process of access far too casual. Recently we have witnessed the extremely effective results of extremist and single issue oriented activity by various groups around the country who are well organized but whose success is sometimes dependent upon distortion and/or misinformation. This bill gives far too much latitude to those who do not always serve the public interest.

On behalf of NEA-Alaska, teachers throughout the State, and, I am sure, many other public employees, I respectfully request your attention to these concerns.

Sincerely,



Robert Manners  
Executive Secretary

RM:jw

C: Senator Parr  
Senator Fischer  
Senator Stimson

CITY AND BOROUGH OF JUNEAU SCHOOL DISTRICT  
P.O. BOX 808 • DOUGLAS, ALASKA 99824

April 10, 1981

The Honorable Patrick M. Rodey  
Chairman of Senate Judiciary Committee  
Pouch V  
State Office Building  
Juneau, AK 99811

Dear Senator Rodey:

I have been asked by the Alaska Association of School Administrators to prepare a position statement and submit it to your committee on Committee Substitute for Senate Bill 90 that is in your committee. The administrators in the state have some serious concerns about this particular bill and I will try to express them as concisely as possible. On the second page, line 15, copies of records and the ability to request them by telephone still causes all of us concern. We feel we should have full knowledge of whoever we are required to give the information to, which means something in writing signed by the person or them signing a log in the office as they request the information. On line 24 on the same page we have a concern about the section that says 20 pages of records copied without charge within any 24 hour period...we would suggest if this has to be, it should be within either one or two working days, as opposed to a 24 hour period. In addition to that, the school districts could be forced into having to hire extra help to cover cost of copying 20 pages if the requests become excessive.

Page 7 beginning on line 23 is request for information about personnel files that should remain confidential to protect the rights of the individuals. In addition, this would destroy the evaluation process which is designed to encourage supervisors to provide constructive criticism as well as areas their employees are performing satisfactory so they can improve. With this information going public, the threat of litigation will suppress candid and honest evaluation. Information such as job description, education, or training, past experience are part of the application forms and can be made public now.

CITY AND BOROUGH OF JUNEAU SCHOOL DISTRICT  
P.O. BOX 808 • DOUGLAS, ALASKA 99824

Page 2


The Honorable Patrick M. Rodey

On page 8 line 3, we feel the finalists should be limited to upper management level positions for inspection as opposed to every job application in the school district. We do not feel that the benefits for making all job positions open in such a manner, would serve the best interest of the public or school, but would rather place a large undue burden on the backs of school districts.

One of the major concerns expressed by administrators is the fact this particular bill will place an undue burden on them to determine whether they will or will not release their records. Most of the smaller school districts do not have immediate access to a lawyer, so it places that decision on the back of the school administrator, and many are concerned about this additional responsibility placed on them. The school administrators do not want this interpreted as a desire on their part not to make information available to the public; however, we feel this bill under the current draft is going to add additional burdens and cost to the districts.

We thank you for this opportunity to present our concerns.

Sincerely,

  
Donald L. MacKinnon  
Superintendent of Schools

DLM/el  
cc: Darroll Hargraves

ANALYSIS OF HB 7, SB 90, CSSB 90(SA), Department of Law Proposed Substitute and Model Bill

By Dean M. Gottehrer, Univ. of Alaska, Journalism Dept.  
Chairman Fairbanks, Alaska 479-7761  
Alaska Freedom of Information Task Force

Five versions of a bill to create a new chapter in the state statutes on Privacy and Public Information have been created for the consideration of the Legislature. For purposes of analysis and comparison, it is difficult to hold one bill up as the standard and compare the others against it. A number of items have been suggested that could easily be incorporated into the Model Bill and strengthen it. Many more suggestions have been made that weaken access to information. So comparisons will have to be made across the different bills.

ANALYSIS OF HB 7: Of the three bills currently before one or another committees of the Legislature, this bill most approximates the Model Bill drafted by the Task Force. It has been rewritten from the Model Bill and many of the changes are insignificant and will not be noted here. Following are suggestions for improvement or questions raised by the rewriting: On page 2, line 17: Provision should be made for in person requests. Page 2, line 22: The section on charges, waivers and 20 pages free each 24 hours in CSSB 90 would improve the section on fees. On page 3, line 9: "that person's designee" is somewhat ambiguous and could be more specific as "the designees of any of these persons;" On page 3, lines 17 and 18 add physician-patient privilege to the Model Bill's language. All medical, psychological and sociological records should be available to the subjects of those records without exception. On page 4, beginning on line 1 the following language was added "privileged information and confidential commercial, financial" and should be removed. Page 4, line 21: Why was criminal removed? On page 5, line 7 change "the notes" to "all notes" so there is no possible ambiguity. Page 6, line 3: insert "date and" between "the" and "time" in the early part of the line. On page 7 in the section on denial of requests, what is a record of denials of requests for records? Is this a file of all copies of denials of requests and if so shouldn't that be said? Also on line 10, shouldn't it say "public" inspection? In 40.25.025(a) the question of jurisdiction was removed. The language in the Model Bill was intended to allow an individual to bring suit in that person's home jurisdiction, rather than forcing that person to travel to Anchorage, Juneau or Fairbanks, for example, to file suit. Page 9, line 13 adds "cities" to the list and should be included. HB 7 does not include a definition of privacy and we believe it should. Page 9, line 26 "information stored in a computer storage system" was added to the definition of record which improves the definition.

ANALYSIS OF SB 90: A detailed analysis of SB 90 has been done elsewhere, so here I will just restate some specific conclusions. SB 90 rates high with the Task Force. It includes all branches of government, provides speedy access to government documents and generally sides with free and open government. Most exclusions are justified. Needed changes include: A definition of the right of privacy, striking 0.25.015 (e)(8) which is too general an exclusion, eliminating from 40.25.015 (13) original entry police records and striking subsection (C) of that section which speaks of an unjustifiable intrusion into a person's right of privacy, placing the burden of proof in a suit for disclosure on the governmental unit to prove it was required not to release requested information, requiring each governmental unit to keep a file of letters of denial of information requests that should itself be public, include information stored in a computer system and independent contractors paid with public money in whole or in part and under the supervision of a governmental unit" in areas covered by the law.

ANALYSIS OF CSSB 90 (SA): Four changes to SB 90 found in CSSB 90(SA) improve the bill and should be incorporated into the Model Bill and HB 7. Page 2 subsection (d) on the fee schedule, waiver of fees and number of pages copied without charge in a 24-hour period improve the bill. 40.25.040 on Access to records by record subject and 40.25.06... Correction and amendment of records improve the bill and should be added. They provide that the subject of a record should have access to those records and that a process should be provided for correcting and amending records and where that is not done providing a method for the record subject to indicate differences with the records. On page 7, subsection (f) on personnel file information is a mixed blessing. The section on what is open in a file is an improvement over previous language. However, the part on applications limits the open record to finalists. While that is better than nothing, every applicant should be open to the public. Finally, this version also includes computer tape or information stored in a computer system, which is a plus. Unfortunately the committee decided to adopt a great deal of language from the Department of Law's proposed substitute that has the effect of delaying access, providing for the potential supremacy of personal privacy over the public interest in disclosure (section (12) on page 6 is particularly noxious here), perhaps removing autopsy records from public disclosure, probably providing for the notification of all persons named in records before the records are disclosed, eliminating the name of a crime victim as a public record and thus generally removing many records that are now public from disclosure or access by the public. Current legislation is preferable to CSSB 90(SA).

ANALYSIS OF DEPARTMENT OF LAW'S PROPOSED COMMITTEE SUBSTITUTE FOR SB 90: A number of the changes noted above to SB 90 originated in this version of the bill. Notable are the language on fees, waivers and free copies, access to records by the subject, correction and amendment of records and some of the language on employee records that would be open. A number of changes are neutral, but the overwhelming number of changes make this the most atrocious version of the bill yet presented. Any version of the bill is to be preferred to this one and certainly the present law is much better than this. The bill provides for much extended delays in denying records and for appeals of denials before an individual could go to court. (See page 3.) The bill establishes the "unusual circumstances" concept that will only act to delay access to public records. (See page 4, (d) (1-4) for the specifics.) The bill establishes the balancing of privacy against the public interest for disclosure and then lists a number of dubious factors for the governmental unit to consider before disclosing--including possible adverse effects on the individual of possible disclosure. (See pp. 6-8, subsections (b) and (c).) It also requires the governmental unit to make reasonable efforts, which are never defined, to notify a person subject of a record when there is a substantial probability that the person would object. The bill also distinguishes accessible records and defines them in such a way as to practically guarantee that individuals who wish to see records about themselves or amend or correct them will have a difficult time doing so. (See (1) on page 12.) Finally, the effective date is July 1, 1982 and there is no reason that justifies such an extended delay. The bill also drops sections found in SB 90, CSSB 90(SA), HB 7 and the Model Bill pertaining to attorney work product and judicial documents. It also eliminates the name of the victim of a crime and the definition of personal information. It fails to define privacy and an unwarranted invasion of personal privacy.

MODEL BILL: As noted above, some additional sections found in various version could easily be incorporated in the Model Bill--specifically the sections on fees, waivers and free copies, and the sections on access to records by their subjects and corrections and amendments to records.

TO: Rep. Brown, Chair. House Judiciary and Sen. Rodey, Chair. Senate Judiciary

FROM: Dean M. Gottehrer, Chairman, Alaska Freedom of Information Task Force

Univ. of Alaska, Journalism Dept. Fairbanks, Alaska 479-7761

APR 23 1980

TO: The Honorable W. R. Hudson  
 Commissioner  
 Department of Administration

DATE: February 21, 1980

FILE NO: J-66-209-80

TELEPHONE NO.

FROM: AVRUM M. GROSS  
 ATTORNEY GENERAL

SUBJECT: Disclosure of names  
 & addresses of long-  
 gevity bonus recip-  
 ients

By: *Thomas M. Jahnke*  
 Thomas M. Jahnke  
 Assistant Attorney General  
 Department of Law

By memorandum dated October 4, 1979 you requested our opinion on whether disclosure of the names and addresses of longevity bonus recipients to legislators violates their right to privacy. We believe that it does not.

The question presented is controlled by AS 09.25.-110 which provides that all agency records, papers, and files are open to public inspection unless specifically provided otherwise. We are aware of no statute or regulation which is to the contrary.

We do not believe that Alaska Const., art. I, § 22 dictates a different result. It states:

The right of the people to privacy is recognized and shall not be infringed.

The scope of this right has been barely defined in decisions by the courts.

In Falcon v. Alaska Public Offices Commission, 570 P.2d 469 (Alaska (1977)) the court noted the potential for unconstitutional invasion of privacy in the operation of a statute requiring a doctor/candidate to disclose the names of patients to the commission. Information which might be deemed protected by one's right to privacy was said to include

that which a person desires to keep private and which, if disseminated, would tend to cause substantial concern, anxiety, or embarrassment to a reasonable person.

570 P.2d at 479. (Emphasis added.) We do not believe that reasonable persons could suffer substantial anxiety or embarrassment by reason of any disclosure to legislators that

The Honorable W.R. Hudson  
February 21, 1980  
Page #2

they are long-time domiciliaries of Alaska and over age 65.


We note that there are specific statutory prohibitions against disclosure by the Department of Health and Social Services of the names of recipients of public assistance. AS 47.05.020 -- 47.05.030. That restriction has no force in the Department of Administration, Division of Pioneer Benefits. Additionally, AS 47.45.170 makes it absolutely clear that longevity bonus is a reward or incentive, not a form of public assistance. The absence of a comparable non-disclosure provision in AS 47.45 militates in favor of disclosure.

We do not address the question whether such disclosures may be made to parties other than legislators.

TMJ:md

TO: Non. Lee McAnerney, Commissioner      DATE: April 17, 1979  
 Department of Community & Regional Affairs  
 ATTN: Palmer McCarter, Director      FILE NO: J-66-642-79  
 Local Government Assistance      TELEPHONE NO:

FROM: AVRUM M. GROSS      SUBJECT: Availability of  
 ATTORNEY GENERAL      mailing lists

By:   
 Rodger W. Pegues  
 Assistant Attorney General

You have asked whether mailing lists or names of persons who apply for tax exemptions as senior citizens or as owners of farm land are privileged.

The answer to your question will depend on the circumstances of each case. The right to privacy under the Alaska Constitution is not absolute. Falcon v. A.P.O.C., 570 P.2d 469, 476 (Alaska 1977). However, it may not be infringed upon without "sufficient justification." Id. The result is that, prior to making a disclosure, there must be a weighing and balancing of the interests to be served by making the disclosure against the interests to be invaded or infringed upon.

If, for example, a legislator requires information in order to aid him in the performance of his duties as a legislator, the interest to be served by disclosing the information to him is an important governmental interest. A correspondingly important interest in privacy would be required to deny the request.

On the other hand, the public interest, if any, in making mailing lists available to vendors, interest groups, pollsters, and the like is slight indeed; and the individual's interest in being left alone and in not having the government facilitate an invasion of his privacy appears, on its face, to be more important.

There is a difference, however, in furnishing a copy of a mailing list to someone, on the one hand, and allowing that same person to look at and copy information on file, on the other. If a person wishes to take the time and make the effort to gather names and addresses which are on file -- and that information does not in itself reveal matters which a reasonable person of ordinary prudence would wish to keep private -- the files are open for inspection and copying.

Palmer McCarter  
April 17, 1979  
Page #2

We do not believe that a person who applies for a tax exemption for farm land can reasonably expect that information to be kept private. There is nothing embarrassing about having a farm, and assessment records are public records at any event. On the other hand, he can reasonably expect the state not to sell (or give) the mailing list on which he appears to a farm supplier or what have you.

A person who applies for a senior-citizen tax exemption may well wish that information to be kept private. Many people, still vigorous and capable, are rejected for one thing or another because they are "too old." While attitudes on aging may be improving, for the present, many people prefer that their having reached 65 years of age not be made a matter of public knowledge. That appears to be a reasonable proposition. However, their right to privacy is not absolute, and to the extent that there is a public need to know which -- as opposed to how many -- persons have the exemption, the information could be disclosed on a case-by-case basis. So far, we have not been advised of any need to know the names of persons with this exemption. Accordingly, neither a mailing list nor the files should, as a general rule, be available on senior-citizen tax exemptions. Of course, information on file which does not reveal names or addresses is public.

There are few easy answers in these matters. You are under a duty to make your files available for public inspection and copying. AS 09.25.110, 120. Records made confidential by state law, however, may not be disclosed. AS 09.25.120. The right to privacy guaranteed by the constitution is, of course, one of those laws. Alaska Const., art. I, § 22. You must obey those commands, and in doing so, reconcile them so as to avoid conflicts between them. For example, by excising names and addresses you can, in most instances, give the inquirer the information he needs while still protecting the privacy of the individuals. When in doubt, it is best to err on the side of non-disclosure. A court or higher administrative authority can always correct an erroneous refusal to disclose. No one can correct an erroneous disclosure.

For now and with respect to the problem as stated, we can give you the following rules:

1. As a general rule, the government may not

Palmer McCarter  
April 17, 1979  
Page #3

furnish mailing lists of individuals to vendors, interest groups, and the like:

2. As a general rule, the names and addresses of applicants for the senior-citizen tax exemption are confidential.

3. As a general rule, the names and addresses of applicants for the farm-use tax exemption may be disclosed.

RWP/pjg

# STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

## DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

PO BOX 8 - STATE CAPITOL  
JUNEAU 99811

July 31, 1978

Mr. Francis M. Flavin, Ombudsman  
840 'K' Street, Suite 203  
Anchorage, Alaska 99501

Re: Ombudsman Complaint  
#A78-0655 (license  
plate information)  
Our File: J-66-787-78

Dear Mr. Flavin:

Your letter to the Attorney General on this matter has been referred to me for reply. The issue presented is whether the adoption of the Privacy Amendment to the Alaska Constitution, art. I, § 22, impliedly amended AS 09.25.110. \*/

Often called the Alaska Freedom of Information Act, AS 09.25.110 \*\*/ provides generally that, absent a "specific" dictate to the contrary, all public records are open to public inspection and copying. Nothing in the section requires (or

\*/ A threshold question is whether AS 44.23.020 allows the Attorney General to provide the Ombudsman with legal advice. We believe that, as an agency of the legislature, AS 24.55.110, the Office of Ombudsman is entitled to a written legal opinion under AS 44.33.020(b)(4). Even in the absence of that statute, the Attorney General's common law powers would appear to authorize the opinion. *Public Defender Agency v. Super. Ct., 1st Jud. Dist., 534 P.2d 947 (Alaska 1975)*.

\*\*/ The section reads as follows:

Sec. 09.25.110. INSPECTION AND COPIES OF PUBLIC RECORDS. Unless specifically provided otherwise the books, records, papers, files, accounts, writings, and transactions of all agencies and departments are public records and are open to inspection by the public under reasonable rules during regular office hours. The public officer having the custody of public records shall give on request and payment of costs a certified copy of the public record.

Francis M. Flavin, Ombudsman  
Anchorage, Alaska

July 31, 1978  
- 2 -

even authorizes) the keeper of the records to inquire into the bona fides of the request for a record or other information. Nothing in the section allows the keeper of the records to reject a request simply because he doubts that it is legitimate or even if he is convinced on the basis of the information available to him that the request is illegitimate. The statute is Kantian in its dictate. If a rapist asks for a girl's name and address, under the statute's plain language, the keeper of the records must reveal them.

This office has, however, consistently rejected the Kantian formulation and taken the position that the constitutional right of privacy takes precedence over the Freedom of Information Act. When the two come in conflict, the keeper of the records (the state) can facilitate or cause a person's privacy to be invaded only to the extent that a legitimate public interest requires it. Falcon v. A.P.O.C., 570 P.2d 469 (Alaska 1977). Hence, if a public release of information would result in a disclosure which would stigmatize one or subject one to opprobrium or otherwise disclose matters which an ordinary, reasonable person would prefer remain private, then there must be a legitimate public interest in releasing the information sufficient to justify the invasion of privacy before the information can be released. Falcon v. A.P.O.C., supra; cf., Ravin v. State, 537 P.2d 494 (Alaska 1975) (balancing of interests).

With respect to motor vehicle registration, as a general rule, the release of the information is in itself harmless. The probability of serious misuse does not appear to be great. The likelihood of potentially obnoxious use (e.g., an unsolicited offer to purchase) does not appear much greater. As a general rule, persons requesting the information will have an interest sufficient to justify the information's release, i.e., hit-and-run victims, seekers of witnesses to accidents, junkyard dealers, auto towers, and creditors. Even a would-be, albeit unsolicited, purchaser has a legitimate interest. \*/ No one has suggested that there is any pattern of misuse of

\*/ We cannot agree with your assumption that the only legitimate use of registration information is to further its major purpose, i.e., revenue and law enforcement. It is, for instance, used to establish ownership. AS 28.10.560; State Farm Mut. Auto Ins. Co. v. Clark, 397 F.Supp. 745 (D. Alaska 1975).

Francis M. Flavin, Ombudsman  
Anchorage, Alaska

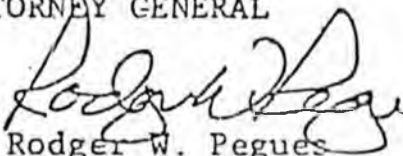
July 31, 1978  
- 3 -

information or any serious or persistent problem in the misuse of information which would support an imposition of administrative restrictions on the release of information under AS 09.25.100 and 110. If such a pattern or problem existed, then the protections of the Privacy Amendment could be invoked. But absent both, the statute controls. ]

It would certainly be possible, if it chooses to do so, for the legislature to amend title 28 to provide for the administrators to devise regulations or forms for protecting motor vehicle registrants (and others) from constitutionally permissible but nevertheless unwanted intrusions into their privacy. We do not believe that, absent a change in the law or the existence of an actual and serious problem involving someone's privacy, the administrators have the authority to carve out their own exceptions from the statutory dictates of AS 09.25.110. That would be a real abuse of discretion, an abuse which you would, undoubtedly, soon be called upon to examine.

Sincerely yours,

AVRUM M. GROSS  
ATTORNEY GENERAL

By:   
Rodger W. Pegues  
Assistant Attorney General

RWP:md

# MEMORANDUM

State of Alaska

The Honorable Andrew S. Warwick  
Commissioner  
Department of Administration

DATE: July 22, 1976

FILE NO:

TELEPHONE NO:

Richard A. Bradley  
Assistant Attorney General  
Department of Law

SUBJECT: Access to employees'  
home address by members  
of the public

A request by a union for the names and addresses of state employees has caused us to review the questions that the releases of such information may raise. Authority for such a release was offered by the union and was said to include AS 09.25.120; AS 40.21.060(1); and AS 29.40.070.

As I understand the situation, you have no objection to the release of the names of state employees or to the release of the identity of their employing agency. The address at which the employee receives personal mail presents a greater difficulty; it is not the policy of the State to deliver through the State's mail system what is personal mail of an employee.

AS 09.25.120 (and its sister section, §110) generally provides for the release of information to the public unless the information is required to be maintained confidential. I consider that it is clear that the addresses of state employees are not required to be kept confidential by any affirmative law or regulation; it is apparently the practice of the Division of Personnel not to view employee addresses as part of the employee's "personal history"; and it is therefore not confidential under Personnel Rule 14 07.0.

AS 40.21.061(1) obliges the chief executive officer of each agency to maintain the records of his agency; it bears at best obliquely on the question presented.

AS 29.40.070 simply states the policy of the collective bargaining act to promote the harmonious and cooperative relations between government and its employees and affirmatively recognizes the right of public employees to organize for the purposes of collective bargaining. While its policy cannot be denied, it does not deal with the question of access to employees' addresses.

While the policy of AS 09.25.120 is generally to provide access to records maintained by public agencies, its listing of what may be considered confidential cannot be

12-04-4.1

The Honorable Andrew S. Warwick  
Department of Administration

July 22, 1976

- 2 -

considered exhaustive in view of Art. I, 522 of the Alaska Constitution: "The right of the people to privacy is recognized and shall not be infringed."

The name and place of employment of a state employee may be considered public information as is certain other information not relevant here. The home address of an employee is, generally speaking, not the kind of information that the public has any rights in nor is there any clear public purpose in making the information available to members of the public. 1/ It represents the kind of information that quite properly can and should be viewed by the State government as protected under the constitutional right of privacy. In this sense, the request of the union under AS 09.25.120 is well placed; it has stated no special reasons for disclosure of employee addresses to it that other public groups or members of the public could not articulate.

On the other hand, I agree that it could be appropriate for the Labor Relations Agency to order the release of this information. The Excelsior Underwear, Inc. case, 156 NLRB 126, 61 LRRM 1217 (1966) and NLRB v. Eymann-Gordon Co., 394 U.S. 759 (1969) both recognize that the NLRB, as a labor relations agency may order the release of the names and addresses of employees eligible to vote in an election when necessary to insure the fairness of an election; in the Excelsior Underwear case, the order provided that the employer would provide the regional director of the NLRB with the list of employees and their addresses within seven days after an election has been called.

Accordingly, in summary, we are prepared to defend a determination by you that a list of public employees would not be available to a member of the public if it contained residence or calling addresses; we would have defended this refusal on the ground of the constitutional right of privacy. As we say this, we suggest that you may wish to review the policies of your Department on the present access of the public to the information.

1/ Mike McMullin, Chief of Recruitment and Examining in the Division of Personnel, advised that he would allow access to a personnel file with confidential material removed but with the residence address remaining, to a member of the press who requested it. Mr. McMullin advised that he would deny access to a wholesale request for employee addresses.

The Honorable Andrew S. Warwick  
Department of Administration

July 22, 1976

- 3 -

We believe that a proper request to the Labor Relations Agency would possibly generate a list of employees qualified to vote in a given election. We acknowledge, moreover, that a bargaining unit may possibly have a contractual right to the same information.

RAB:md

Rep BROWN - INTRODUCTION OF HEARING

Rep. RODGERS - Revere Sponsor

015 EXCEPTION

NO CRIMINAL PENALTIES IN SB90.  
030

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SEN. PACE - "STRIKES A BALANCE" "NOT A FREEDOM OF PRESS BILL"  
"UNLESS IT IS DEEMED CONFIDENTIAL IT IS PUBLIC"  
"PRIVACY TO BE DETERMINED BY COURT"

Points of Contention:

- APPLIES TO MUNICIPALITIES
- SHOULD INCLUDE COURT RECORDS
- ATTORNEY WORK PRODUCT
- EMPLOYEE PERFORMANCE
- IMMEDIACY OF REQUEST
- CONTRACTOR RECORDS

HOWARD COXAVES - PRES. SOCIETY OF PROFESSIONAL JOURNALISTS

PUBLIC'S RIGHT TO KNOW  
PRESS IS SURROGATES OF PUBLIC

PRIVACY PRESODICE

DEAN GOTTHEBERG - FREEDOM OF INFORMATION TASK FORCE

CSB90 - UNACCEPTABLE

VAGUE - UNDEFINED EXCEPTIONS

RIGHT OF PRIVACY - DEFINE (RESTATEMENT OF TORT)

BURDEN OF GOVERNMENT - COURTS TO CONTRIBUTE  
LITERALLY

QUESTIONS - CONTRACTOR

DEPARTMENT OF LAW  
FEE WARRIOR

7 23-28

APPLICATION

DELAYING OF ACCESS SEC 1276

SUSAN FISHER - FOX NEWS WINNERS

STRONGLY SUPPORT INCLUSION OF MUNICIPALITIES  
DEFINE RIGHT OF PRIVACY  
DON'T LIKE

WENDY AUBREY

ARCHAEOLOGICAL ASS.

ARCHAEOLOGY SITES EXEMPTED

KENT STURGIS

MANAGING EDITOR - FOX NEWS WINNER

TOM SWAPP - PUBLISHER ALASKA WEEKLY

ALAN TESCHER - MUNICIPALITY OF ANCHORAGE

CSSB90 - BEST COMPROMISE

MUNICIPAL NEGOTIATIONS WITH EMPLOYEE UNIONS  
MAY 10 1990

EMERGENCY WORK PRODUCE  
LIMITATION RESTRICTION

WRITTEN REQUEST

FAIRBANKS

SEN. PARR

HOWARD GARY GRAMES

DEAN ~~GEORGE~~ GOTTEHRER

SUSAN FISHER

Kent Stuirgis

Tom Sharp.

<sup>ALLEN</sup>  
~~ARTHUR~~ TESCHIE

Wendy McEwen

3/30/81

Robert Gisell  
2909 Arctic Blvd.  
Anchorage, Ak.  
99503

Regarding HB 7 and SB 90 , Mr. Gisell feels the bills should contain a provision for appeal to a third party, if an agency refuses to turn over information. These bills deal with freedom of information.... Also, he believes, a time limit on response to appeal should be provided for, so that a citizen would not have to wait forever to get an answer.....



Official Business

# Alaska State Legislature

Senate

Judiciary Committee

Pouch V  
State Capitol  
Juneau, Alaska 99811

## MEMORANDUM

TO: Senator Bennett  
Senator Hohman  
Senator Parr  
Senator Ray

FROM: Senator Rodey *PMR*

DATE: May 7, 1981

SUBJECT: SE 90 "An Act relating to privacy and public information; changing Rule 65 of the Alaska Supreme Court Rules of Civil Procedure; and providing for an effective date."

Please find attached a committee substitute draft of SB 90.

The draft incorporates the ideas discussed at the committee meetings and those submitted by you upon the circulation of the first draft.

I would like to move this bill out if the committee is satisfied with its form.

PMR/ods  
Attachment



# JUNEAU EMPIRE

WILLIAM S. MORRIS III  
PRESIDENT and PUBLISHER

JEFFREY A. WILSON  
GENERAL MANAGER

CARL SAMPSON FRED HOWARD TOM BLUMENSHINE  
Managing Editor Circulation Manager Production Manager

## Speak for yourself

Whether they were based on his experiences or on some other wisdom, we believe Juneau City-Borough Attorney Lee Sharp's testimony on a state freedom of information bill was an affront to the city-borough assembly and the people of this municipality.

According to Mr. Sharp's opinion, city officials and no one else should determine which information is open to the public. For the purposes of freedom of information, municipalities are not a part of the state of Alaska, says Mr. Sharp. Rather, they are independent feifdoms in which local assembly members can open and close local records at will. This feudal concept of freedom of information position has consistently been rejected by state courts. Nevertheless, Mr. Sharp continues to insist it is a viable modus operandi for local governments.

We couldn't disagree more. Local governments receive a major portion of their funding from the state. In fact, local governments are created by the state. In every area we can think of, local governments must comply with state law. According to Mr. Sharp's position, however, local governments should be free to close all of their records, if they so desire.

That simply isn't a proper way to run a government. The city-borough government, as well as the state and federal governments, are governments of the people. To argue a group of elected or appointed government officials can combine to hide information from the rest of the people is a concept we and all Alaskans must reject outright, with very few exceptions.

As Mr. Sharp fully knows, according to current state law, "The people, in delegating authority, do not give their public servants the right to decide what is good for them to know and what is not good for them to know." It is the law which includes that statement which Mr. Sharp seeks to

# Get

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The man inside t him. "No, J.B., I h I talked to the brot we can swing it. . . to say on TV that Grandma Bonny C thought about duri the hostage says it, Clyde's Hamberge: sales meeting. . . any hostage to cho helper. . . Will th

People were bar been there long

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# Far

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GRAND DESER NEA



repeat on the local level.

Generally speaking, the local city-borough assembly has been relatively responsive to freedom of information requests — especially after they were taken to court and lost. Last summer, the Juneau Empire was forced to seek a preliminary injunction against the city-borough to obtain public information, the names and qualifications of applicants for city-borough manager, police chief and fire chief. At the urging of Mr. Sharp, the assembly and city-borough manager had refused our requests.

As occurred in the three previous statewide cases and one since, the preliminary injunction ordering the city-borough to hand over the applicants was granted over the protests of Mr. Sharp.

Now we find Mr. Sharp advocating that municipalities be given the right to exempt themselves from any state freedom of information law. And, shockingly, some members of the city-borough assembly — Mr. Sharp's bosses — were unaware of his anti-freedom of information lobbying efforts. At least one city-borough assembly member told us the assembly at no time has discussed or laid out a position on the subject.

"I didn't agree with what he said, and it (Sharp's testimony) doesn't represent my position ... I would hope it does not represent the assembly's position," said Assembly member Diane Bergstrom.

According to City Manager Carl Laird, "It hasn't been brought up at an assembly meeting ... the assembly (members) are the policy-makers. I'm not going to get involved in a policy decision."

Therefore, we can only assume that Mr. Sharp's comments are either his personal opinions or the official position of the assembly. If they are his personal opinions, he has no right spending city-borough time—and money—by offering them. If they are not the assembly's official position why are they being offered as such?

As far as we have been able to determine, the assembly has not adopted an official policy on freedom of information.

Until the assembly publicly discusses and adopts a position on the freedom of information bill, we have some respectful advice for Mr. Sharp: speak for yourself.

CHECKLIST  
1. Knock a  
WOOD.

# Black

*A black child still lack and contribute in America*

So asserts the Children's advocacy group, in a new Black and White Children's findings:

- Millions of black children lack health care. As a result, the handicaps that could have
- Blacks are twice as likely to die a year of life, twice as likely to be unemployed.
- One out of every two black children has never seen a dentist and one out of five are not immunized against

This pathology is compounded by the assumption that the gap between black and white America was closed during the 1960s.

"Millions of black children were born in the 1960s and are still poor," says Marian Wright Edelman, director of the Children's Defense Fund. "Unless immediate action is taken to meet black children's needs, the gap will widen."

# Presi of re

By DONALD  
AP Photo

WASHINGTON (AP) — Ronald Reagan's inauguration was a rush of visual and verbal images.

There was the new president's Cabinet, welcoming the freed president's first news conference. At the same time, he was firming the nation's military posture.

The opening scenes were dramatic. Now, though, comes the first test of the credibility of the president's problems — and how he is fighting the good fight against them.

Reagan began his term with a flourish on Inauguration Day. For a week he used the White House ceremony as a stage for a "swift and effective retribution."

At his first news conference he was plagued by the president's "trigger happy" remarks.

Now that the hostages are being held, Reagan was the voice of revenge for their long ordeal. "I don't think revenge is a restrained word toward Iran. It

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# State editors query government 'right to privacy'

4/3/81  
By Empire Staff

The public — and especially members of the press — got a chance Thursday to tell Alaska lawmakers what they think of a proposed freedom of information bill that has been in the works for over five years.

The general consensus? Government should have little or no right to privacy.

The Senate State Affairs Committee headed up by Sen. Vic Fischer, R-Anchorage, held a statewide teleconference on the bill (SB90), which would standardize state policy on privacy and public access. The bill attempts to walk the fine line between the public's right to review government records and the protection of a person's right to privacy.

The bill is sponsored by Sen. Charlie Parr, D-Fairbanks.

Susan Fisher, a reporter at the Fairbanks Daily News-Miner, told lawmakers the rights of citizens, not government agencies, are at stake. She said privacy laws are designed to protect citizens, and "the government has no right to privacy."

In recent months, four Alaska newspapers have brought suit



## ALASKA NEWS

against local governments to gain information — usually about candidates for top-level public jobs.

Kay Fanning, publisher of the Anchorage Daily News, which has a freedom of information suit pending, said it is too expensive to go to court every time an agency decides not to release requested information.

In the 10-page bill, there are 17 categories of public records'

which would be excluded from public review, including tax or information returns, personal information on public employees, medical records, student records, trade secrets and notes or memoranda prepared by a justice or judge.

The way the bill reads, if a government agency refuses to release a record, the burden of proof on showing the record is a public document rests on the individual or firm seeking the record.

Dean Gottehrer, assistant professor at the University of Alaska, Fairbanks, and head of the Alaska Freedom of Information Task Force, said the burden of proof for not releasing information should be on the agencies themselves. Individuals should not be required to show that the information should be provided, he said.

Juneau City-Borough Attorney Lee Sharp has argued the bill fails to recognize federal law requires certain state records be kept secret. He said the bill as it is now written presents a conflict with federal requirements of confidentiality in certain government matters.

Sharp argued before lawmakers last week that municipalities

should have the right to keep certain matters private — especially those relating to applications of candidates for municipal jobs. Sharp maintained a number of applicants for city manager this summer were forced to withdraw their applications because the media wanted to make them available for public inspection.

The Empire eventually took the city to court over the matter and Superior Court Judge Thomas Stewart ruled the city had to make the applications public.

Other agencies that would be affected by the legislation have complained that the cost of meeting requests for information will be too high and have asked that copying fees include an additional charge for finding the information.

As the bill now reads, fees would be set by the commissioner of the Department of Administration and would include only the direct cost of duplication.

An Anchorage municipal attorney said a sufficient charge is needed to "deal with flagrant abuse" of access to public records. He said some lawyers may use more liberal access laws as a "discovery tool" at taxpayer's expense.

# Speak for yourself

2/5/81

Whether they were based on his experiences or on some other wisdom, we believe Juneau City-Borough Attorney Lee Sharp's testimony on a state freedom of information bill was an affront to the city-borough assembly and the people of this municipality.

According to Mr. Sharp's opinion, city officials and no one else should determine which information is open to the public. For the purposes of freedom of information, municipalities are not a part of the state of Alaska, says Mr. Sharp. Rather, they are independent fiefdoms in which local assembly members can open and close local records at will. This feudal concept of freedom of information position has consistently been rejected by state courts. Nevertheless, Mr. Sharp continues to insist it is a viable modus operandi for local governments.

We couldn't disagree more. Local governments receive a major portion of their funding from the state. In fact, local governments are created by the state. In every area we can think of, local governments must comply with state law. According to Mr. Sharp's position, however, local governments should be free to close all of their records, if they so desire.

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Now we find Mr. Sharp advocating that municipalities be given the right to exempt themselves from any state freedom of information law. And, shockingly, some members of the city-borough assembly — Mr. Sharp's bosses — were unaware of his anti-freedom of information lobbying efforts. At least one city-borough assembly member told us the assembly at no time has discussed or laid out a position on the subject.

"I didn't agree with what he said, and it (Sharp's testimony) doesn't represent my position ... I would hope it does not represent the assembly's position," said Assembly member Diane Bergstrom.

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Therefore, we can only assume that Mr. Sharp's comments are either his personal opinions or the official position of the assembly. If they are his personal opinions, he has no right spending city-borough time—and money—by offering them. If they are not the assembly's official position why are they being offered as such?

As far as we have been able to determine, the assembly has not adopted an official policy on freedom of information.

# Information free under Senate plan

Associated Press

2/19/81

90

Judeau — Members of a Senate committee decided Tuesday that there should be no charge for up to 20 pages per day of records disclosed under proposed state freedom of information laws.

The original bill (SB90) introduced by Sen. Charlie Parr, D-Fairbanks, called for the commissioner of the Department of Administration to set fees to cover duplication costs. However, people testifying before the Senate State Affairs Committee said some people cannot afford even minimum charges.

During a Tuesday night committee session to rework the bill, several changes were made by Parr and Committee Chairman Vic Fischer, D-Anchorage, but the changes still must be approved by the full committee.

Responding to recent suits brought by newspapers against local governments, the committee members tentatively approved changes to the bill to open the records of finalists applying for all public positions. No definition for finalists was given, however.

A suggestion by the Department of Law to provide 30 days for administrators to review the denial of a request for records was rejected by the committee.

Parr said he preferred court review of denials because "after they go to the courts a few times they'll stop dragging their feet."

However, Assistant Attorney General Barry Stern said going to court would probably take longer than having an administrator review the denial.

The committee adopted a suggestion that agencies be allowed up to five days to decide whether to release records in some cases. Stern said more time is needed to be sure that a person's privacy is not violated or when there is a lot of information requested.

The original bill required immediate release of information.

Stern said the extra time is needed because "once you have exposed the information, there is no remedy."

The committee initially has adopted a Department of Law recommendation that names of all crime victims — instead of simply victims of sex crimes — be protected from disclosure.

Computer-stored information was added to materials subject to disclosure.

# Legislators hear information law debate

Associated Press

2/6/81

Juneau — Changes in state freedom of information laws are needed because government agencies often thwart citizen efforts to get information, a Sitka woman told lawmakers Thursday.

Lucinda Hite said "the public is definitely at a disadvantage" in seeking information, and is frequently forced to deal with "four or five different" bureaucrats to get one piece of information.

Hite was among several people, primarily members of the media, who testified before a Senate committee in favor of a bill (SB90) which would standardize state policy on privacy and public access. The bill is sponsored by Sen. Charlie Parr, D-Fairbanks.

Susan Fisher, reporter at the Fairbanks Daily News-Miner, told

lawmakers the rights of citizens, not government agencies, are at stake. Privacy laws are designed to protect citizens, and "the government has no right to privacy," she said.

Fisher said that while Parr's bill, and a similar House bill backed by Rep. Brian Rogers, D-Fairbanks, may be seen as special interest bills for the media, they are not. Fisher said the legislation would benefit the public.

Lew Williams, publisher of the Ketchikan Daily News, said he is pleased the bill covers local government agencies, as well as state agencies. In recent months, four Alaska newspapers have brought suit against local governments to gain information.

Kay Fanning, publisher of the Anchorage Daily News, which has a freedom of information suit pending,

said it is too expensive to go to court every time an agency decides not to release requested information.

There are provisions in the bill for agencies to refuse to release information. Dean Gottehrer, assistant professor at the University of Alaska-Fairbanks and head of the Alaska Freedom of Information Task Force, said the burden of proof for not releasing information should be on agencies. Individuals should not be asked to show that the information should be provided, he said.

Some agencies affected by the

legislation have complained that the cost of meeting requests for information will be high, and have asked that copying fees include the expense of collecting information.

Under the bill, fees would be set by the commissioner of the Department of Administration and would include only the direct cost of duplication.

An Anchorage municipal attorney said a sufficient charge is needed to "deal with flagrant abuse" of access to public records.

# Union sues for access to names

By The Associated Press

The state's largest public employee union filed suit Wednesday against the University of Alaska for refusing the names, job titles and locations of classified university employees.

Cherie Shelley, executive director of the Alaska Public Employees Association, said the university has refused to

turn over the information in an attempt to block employees from unionizing.

However, Sherman Carter, UA executive vice president, said it would be a violation of employees' privacy to release the information. He said the union has asked for the addresses of employees, but Ms. Shelley said addresses are not sought.

Other state agencies routinely

release the names, job titles, locations and salaries of state employees.

Whatever the request, Assistant Attorney General Rodger Pegues said state law does not protect employees' addresses, and that it would be "unusual" for the court to rule in favor of not releasing the addresses. The suit was filed in Fairbanks Superior Court.

"You can hardly say releasing addresses is an invasion of privacy when people pay to have them published" in telephone directories, Pegues said. "It sounds to me like a spurious attempt (by the UA) to prevent the (employees) from unionizing."

Carter said the university does not have a computer print-out listing only employees' job

titles and locations, and "we do not feel obligated to make a fresh computer run for any private association for commercial purpose."

He said the information the APEA wants is already available in public documents, including campus directories. But Ms. Shelley said much of the information is not up-to-date.

## Information bill moves

By The Associated Press

The Senate State Affairs Committee made split recommendations on a bill which would standardize state policy access and privacy.

Under the bill (CSSB90) introduced by Sen. Charlie Parr, D-Fairbanks, state and local agencies would be required to release requested information immediately, unless it harms an individual's privacy or is protected by existing state law.

In response to recent suits brought by newspapers against local governments, the bill would require public access to records of finalists applying for all public positions. The bill defines finalists as the top three individuals or 10 percent of the applicants, whichever is greater.

Dean Gottehrer, assistant

professor at the University of Alaska-Fairbanks and head of the Alaska Freedom of Information Task Force, said all names of applicants should be subject to release.

The committee did not adopt suggestions that names of crime victims be protected.

The bill would apply to all state and local agencies, including government units, committees, boards, legislative bodies and school boards.

# Panel splits on information freedom bill

Associated Press

Juneau — The Senate State Affairs Committee made split recommendations on a bill that would standardize state policy on public access and privacy.

Under the bill (CSSB90) introduced by Sen. Charlie Parr, D-Fairbanks, state and local agencies would be required to release requested information immediately, unless it harms an individual's privacy or is protected by existing state laws.

Also, there would be no charge for up to 20 pages per day of information, and additional fees could be waived if it is in the public interest or if the requester is indigent.

In response to recent suits brought by newspapers against local governments, the bill would require public access to records of finalists applying for all public positions. The bill defines finalists as the top three individuals or 10 percent of the applicants, whichever is greater.

Dean Gottehrer, assistant professor at the University of Alaska, Fairbanks, and head of the Alaska Freedom of Information Task Force, said all names of applicants should be subject to release.

The committee did not adopt suggestions that names of crime victims be protected from public access, which Gottehrer said would have been "one of the most horrendous things" that could have happened to the bill.

The bill would apply to all state and local agencies, including government units, committees, boards, legislative bodies and school boards.

The measure now goes to the Judiciary Committee for consideration.

# Shedding light

Much has been said — and threatened — as a reaction to the manner in which this newspaper handles its business, the gathering and dissemination of accounts of events of general public interest. While ample heat has been shed upon the subject, relatively little light has been added.

It has been charged by some that as a result of its reportage this newspaper has demonstrated a policy of bias against women. In fact, no such policy exists, and, we believe, neither does such a bias. This newspaper has only one, overriding policy: to report newsworthy events fairly and accurately under pressure of a daily deadline.

To charge that any excesses or shortcomings in news coverage is the result of a conspiratorial consistency for or against any group, individual or thing is erroneous.

An example cited by critics is a recent incident involving a woman who was attacked. After she escaped from her assailant she was taken to the local women's shelter operated by AWARE (Aiding Women from Abuse and Rape Emergencies). We reported that, as it was relayed to us by police spokesmen.

Then the roof caved in. We were accused of endangering the lives of the women at the shelter by indicating where the victim had been taken. It was feared the suspect could more easily track her through the newspaper article.

That's the version of the story most people heard. Several important facts, however, are missing from that recollection of the chain of events.

First, when we learned where the victim was taken, there was no caveat included. Before the story appeared, none of the sources we spoke to flagged us down to inform us that many times assailants — let alone this suspect — trail victims to shelters, possibly endangering shelter occupants. The fact another assailant had been seen outside the shelter earlier that week no doubt added to the potential problems for the shelter's occupants and the police. As an aside, the suspect has never appeared at the shelter, and the victim has left town.

Second, it was assumed — wrongly — that the location of the shelter was confidential. That the woman was taken to AWARE, it seemed, would not particularly endanger anyone if the location is secret. The location was formerly confidential, but its operators found that in a city Juneau's size maintaining that confidentiality is impossible.

Third, we viewed the fact the woman was taken to AWARE as we would view a traffic accident victim being taken to Bartlett Memorial Hospital. Both are public agencies which perform specialized public services. As such, publishing that AWARE was involved would not only reaffirm the public's faith that the agency was doing its job but inform other potential domestic violence victims that such services are available.

With this in mind, we printed that the woman and her children were taken to the AWARE shelter.

Unfortunately, we learned of the other relevant circumstances only after the article was published. The following morning a member of the Juneau Police Department informed us of them. At that point, we and the AWARE people should have sat down to talk. We didn't, though, and that's where misconceptions began to flourish.

In fact, representatives from AWARE and the Empire never talked face-to-face until yesterday, when the accusations and assumptions were laid to rest. The reasons for the delay in that meeting are at this point unimportant but have nothing to do with unwillingness on the part of either side to discuss the matter.

What followed from that meeting, which actually involved more of an exchange of information than anything, is more of an understanding on the part of this newspaper of how AWARE operates and on the part of AWARE of how newspapers operate. There were no accusations. Neither were there disagreements.

Just as AWARE plays an important role in the community by aiding victims of violence, so does this newspaper by presenting the news. Each, however, is more restricted by the resources available to it than by any "policies" for or against individuals or groups.

This newspaper intends to maintain an open line of communication with AWARE — and any other groups involved in issues and events of general public interest. To do that, however, requires communication and consultation, not threats and accusations.

By CAREN ROBINSON  
Executive Director, AWARE

We at AWARE (Aiding Women from Abuse and Rape Emergencies) are concerned by the Empire's insensitivity in printing information in news articles which increases the danger to victims of violent crimes.

The most recent example of this was the March 4th front page story of a woman who escaped from her allegedly assaultive ex-husband and the subsequent police rescue of her children. The police did not capture her assailant, whom they described as armed and dangerous. In the same article it was stated that the woman and her children were taken to the AWARE shelter.

On the day that story was printed, our shelter housed four women and eight children. By printing the information that they had been taken to AWARE, the Empire endangered not only the 12 women and children staying at the shelter but also the AWARE staff and assorted visitors. The Empire could have conveyed the same information, without endangering the victims, by stating, "Police took the woman and children to an undisclosed location."

It is important that Empire readers be informed when violent crimes occur in our community. But it is imperative that the news be written in a manner which is sensitive to the very real danger that threatens the victims and that the reporting does not increase

the victim's danger.

Another area that needs re-examination is the Empire's handling of sexual assaults in the Police Blotter. State law prohibits newspapers from publishing the victim's name for her protection and to give her anonymity. The Empire's policy of publishing exact times and places of sexual assaults often makes a name unnecessary. Mere acquaintances have told rape victims that they read about the rape in the Police Blotter and knew it was them from the age and location. Again, rather than printing that a sexual assault was reported from a "Tr. Street address in the Highlands, the Empire could print that "a sexual assault was reported in town".

Craig Medred has argued that the public needs to know the exact location, time, age of victim, etc. in order to better defend themselves. Because a rape occurs on Gastineau Avenue does not mean that residents of Glacier Avenue are safe. If the Empire is concerned about the public's safety why don't they print a description of the assailant rather than the victim? It would also be beneficial for the Empire to print, at regular intervals, descriptions of the various methods employed by local rapists, especially those who are still at large. It is also important that follow-up reports include the types of sentencing that rapists receive from the courts.

There is a clear difference between information which benefits the public, as the investigative reporting in the Ellsberg and Watergate cases, and detail which are not necessary to an understanding of the news, as the location of an assault victim when her assailant is armed and at large. We are not talking about censorship, i.e. the suppression of information, but the sensitivity, intelligence and style with which the information is conveyed.

Freedom of the press is guaranteed by the Bill of Rights. But we ask the Empire, does "freedom of the press" give newspapers the license to endanger people's safety? Is it possible that "freedom of the press" involves more than the simple equation "the public's right to know"? We at AWARE believe that along with the press's freedom comes the basic responsibility to report news without increasing the danger to victims of violent crimes.

We would like to thank the individuals and businesses in the Juneau community who supported us in these views.

We are asking the Empire for a change of public policy when it comes to victims of domestic violence and sexual assault. With a sexual assault rate 335% higher than cities with similar populations, Juneau residents need to be concerned about how news reports affect victims of violent crimes if only because we are all potential victims.

COMPARATIVE ANALYSIS

FREEDOM OF INFORMATION LAW  
(OR EQUIVALENT)

AS IT RELATES TO  
STATE LEGISLATURES

SEPTEMBER 16, 1980

Prepared by:

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Presented to:

NCSL ANNUAL TRAINING SEMINAR  
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SECRETARIES - ASLC&S MEETING  
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## ACKNOWLEDGEMENTS

An attempt to compare just 1 law between 50 states may at first seem easy. But when consideration is given to the distances separating the states, to the fact that the recipient of the request may or may not be "in session" (a factor as to when an answer can be anticipated), and to the extent of the request (the time required to compile all the requested material), the task becomes a difficult one for all concerned. Therefore, it is with deep appreciation that acknowledgement is made of the fine cooperation extended by the Chief Clerks and Secretaries of the 50 State Legislatures and their staffs. Without the 100% response, there would not have been a complete report.

Thank you.

An acknowledgement would not be complete without giving credit to the individuals who did all the "work". In my case, my Administrative Assistant, Marjorie Quinn, and my Deputy Records Access Officer, Sharon Galarnec. My sincerest appreciation is extended to both for their patience and their diligence.

Thanks for your help.

JOSEPH MARTORANA  
Deputy Clerk and  
Records Access Officer  
New York State Assembly

Public Information Office  
State Capitol - Room 148  
Albany, New York 12248

## INTRODUCTION

On September 1, 1974, an "open records law", short titled the "Freedom of Information Law", took effect in the State of New York which declared basically that the public should have access to the records of government. In the section on definitions, "agency" was all-inclusive--there were no exceptions, therefore, the State Legislature was included and was required to comply with the requirements of the act in the same manner as other state and municipal agencies.

On January 1, 1978, an amended version of the New York State law took effect which excluded the Judiciary and the State Legislature from the definition of "agency". However, in the new law a new section was created entitled "access to state legislative records" as distinguished from a section entitled "access to agency records". A principal difference of these two sections is that under "access to agency records" all records are public (made available for public inspection and copying) except those specifically exempted; whereas under "access to legislative records" only those records are public which are listed, therefore, all others are not public.

The difference in the access standards to public records noted above has created some demand for the return to the former law. There are those who claim that "state legislative records" are no different from "agency records" and, therefore, all records should come under the same access standards. Equally strong in opinion are those who claim there is a difference and that access to state legislative records should remain by separate statute and, therefore, under different access standards.

In order to help respond to this basic question, it was felt that a study should be made which would compare New York State's approach to "open records" to that of other states. Thus this comparative study was undertaken posed with the question:

"Are records of State Legislatures made available to the public by separate rule or statute or do they come under the same access standards as the remainder of government, i.e. state agencies and local governments?"

In the pursuit of answers to this question, other related and relevant observations were made. If this study serves some good in responding to New York's question, it is felt that its findings and conclusions, limited as they may be, should be shared with the other states.

## FINDINGS

On April 8, 1980, and subsequently, a letter (Appendix I) was sent to all Chief Clerks and Secretaries of the 50 State Legislatures requesting various materials and information to respond to the question:

"Are records of State Legislatures made available to the public by separate rule or statute or do they come under the same access standards as the remainder of government, i.e. state agencies and local governments?"

All 50 states responded in various degrees, some forwarded copies of their "open record laws" or equivalent but most forwarded excerpts from their Constitutions or statutes or legislative rules and offered commentaries on the subject matter. (Appendix II)

A review and analysis of the material received reveals the following:

1. Only five states (California, Nevada, New York, Oklahoma and Pennsylvania) have a separate or specific statute governing legislative records to be made available to the public.
2. The remaining forty-five states make their legislative records available to the public either by:
  - a. inclusion as an agency or public body in the statute governing access to agency or public body records;  
or
  - b. constitutional provision; or
  - c. rules of the legislature (House and/or Senate Rules); or
  - d. tradition, custom and/or policy.
3. All the states except Mississippi have enacted a Freedom of Information Law or equivalent. (Appendix III)
4. Few of the states list in their statutes specific legislative records which are required to be made available to the public. Most state legislatures list in their Rules records which are accessible to the public.

5. Where records to be made available to the public are not specifically listed, the extent of which records are included is determined by the definition of "public records". Some states define "public records" to mean "all documents made or received"; others define "public records" to mean "all records maintained in public offices"; and others define "public records" to mean "all records required by law to be made, maintained or kept."
6. The extent of which records are to be made available to the public is also determined by the limitations or exemptions provided in the law. Some states prohibit disclosure of records which could constitute an "unwarranted invasion of personal privacy"; others exempt "records involved in legislative investigations" or "records pertaining to pending litigation to which the Legislature is a party"; and others exempt from disclosure "memoranda, correspondence and working papers of individual members or their immediate staffs."
7. Where "legislative records" are to be made available to the public because the "state legislature" is included as an "agency", the definition of "public records" is not descriptive of the usual records of a state legislative body, i.e. "public records" mean any written or printed report, book or paper, map or plan of the State vs. "state legislative records" mean bills and amendments thereto, fiscal notes, introducers' bill memoranda, resolutions, journal and index records, messages received from the governor, etc.
8. A description of "state legislative records" required to be made available to the public was best contained in individual "Rules of the House" or "Rules of the Senate" which were more specific. Constitutional requirements were also well described as well as Journal entries.
9. Although there is some uniformity in the language of the "legislative intent" or "declaration" and "definitions" sections of the "open records laws" of the various states, there is a lack of uniformity in the overall laws between the states.
10. Notwithstanding the fact that most state legislatures are included in "open records laws" as an "agency", there was doubt expressed by some states as to whether or not they are in fact "included". Some indicated the Legislature is both "included" and "exempted"(?); others indicated it was difficult to figure out how to comply with the law. Many states indicated that they voluntarily comply with the intent of Freedom of Information.

## CONCLUSIONS

1. This study undeniably reveals that records of State Legislatures are made available to the public more often than not under the same access standards as the remainder of government, i.e. state agencies and local governments. Most State Legislatures are included in the definition of "agency" or "public body" and, therefore, are required to comply with "open records laws" in the same manner as agencies generally.

2. However, this study also reveals a gross lack of uniformity in the various "open records laws" of the states as they apply to State Legislatures. Also, the lack of specific clarity in the statutes of the meaning of "legislative records" as opposed to the well-defined descriptions contained in House and Senate Rules, creates doubt as to the desirability of including State Legislatures as "agencies" in "open records laws".

3. It appears that if "open records laws" which include State Legislatures as "agencies" have operated successfully in the past, such accomplishment can be traced not to the appropriateness of the laws but rather to the willingness of the State Legislatures to comply with the intent of Freedom of Information.

4. Insofar as responding to the objection raised to New York's present Freedom of Information Law, it would appear from the observations and conclusions noted above that it is a more specific, effective and manageable law as it is presently constituted than it would be if it were broadened to include the State Legislature as an agency--notwithstanding that currently it provides more restrictive rights of access to legislative records than agencies generally. Including state legislatures within the same standards as the remainder of government might appear to be more open, fair and equitable, but it might also create a chaotic condition detrimental to the operation of good government.

5. Finally, although there was a 100% response to this study by all the 50 states, it should not be considered a totally complete and final report. First, not all the states forwarded entire copies of their "open records" laws and all the material requested, thereby preventing a complete comparative analysis. Second, the time required to read and analyze the material received was not available--some of the responses from the states were received just a few days before the making of this report. And third, before continuing or extending this type of a study to a final report, some thought should be given to first having some serious discussions on the subject. An open forum will not only reveal the pitfalls of an operation but could also invite some good ideas.

APPENDIX I



THE ASSEMBLY  
STATE OF NEW YORK  
ALBANY

(518) 455-4219

JOSEPH MARTORANA  
Public Information Officer  
Deputy Clerk of the Assembly  
Records Access Officer

X6X8 X72X6X30  
X6X8 X72X7X28

Public Information Office  
State Capitol — Room 148  
Albany, New York 12248

SHARON GALARNEAU  
Deputy Records Access Officer

April 8, 1980

Dear

I have been asked by my Speaker to make a comparative analysis of the Freedom of Information Law of all the states. The main purpose of this study will be to determine whether records of State Legislatures are made available to the public by separate rule or statute or if they come under the same access standards as the remainder of government, i.e., state agencies and local governments.

In view of the above, kindly send me at your earliest convenience a copy of your state's Freedom of Information Law or regulation governing records to be made available to the public. (NYS copies enclosed for your information)

Also advise whether your Legislature is included in such law and, if not, is it required by separate statute to comply with the Freedom of Information Law. Also, specific legislative records which are required to be made available to the public. (NYS Assembly copy enclosed FYI)

In connection with this request, please be advised that upon my completion of this study I also anticipate making a report on my findings to the American Society of Legislative Clerks and Secretaries. In turn, a copy will be made available to you for your purposes.

Many thanks for your cooperation.

Sincerely,

A handwritten signature in cursive script that reads "Joseph Martorana".

JOSEPH MARTORANA  
Deputy Clerk of the Assembly

JM/mq  
Encs.

APPENDIX II

FREEDOM OF INFORMATION LAW  
(or equivalent)

COMPARATIVE ANALYSIS

SUMMARIES AND/OR EXTRACTS FROM LAWS

ALABAMA: No distinction between public records and records of the Legislature.

Chapter 13. Public Records

§41-13-1. Public records defined.

"As used in this article, the term "public records" shall include all written, typed or printed books, paper, letters, documents and maps made or received in pursuance of law by the public officers of the state, counties, municipalities and other subdivisions of government in the transactions of public business "

Title 41 Right to Inspect Records.  
Every citizen entitled to inspect and copy public records.

§145. (2695)

"Every citizen has a right to inspect and take a copy of any public writing of this state..."

ALASKA: Open Records Law

§ 09.25.110. Inspection and copies of public records.

"Unless specifically provided otherwise the books, records, papers, files, accounts, writings, and transactions of all agencies and departments are public records and are open to inspection by the public under reasonable rules during regular office hours."

§09.25.120. Inspection and copying of public records.

"Every person has a right to inspect a public writing or record in the state, including public writings and records in recorders' offices except..."

NOTE: Underscore not part of law, for emphasis purposes only.

ARIZONA: Chapter 1. - Public Records

§39-121. Inspection of public records.

"Public records and other matters in the office of any officer at all times during office hours shall be open to inspection by any person."

§39-121.01. Copies, printouts or photographs of public records.

" "Officer" means any person elected or appointed to hold any elective or appointive office of any public body."

ARKANSAS: Arkansas does not have a specific list of legislative records required to be made public under the Freedom of Information Act.

Freedom of Information Act.

§12-2803. Definitions

"Public records" are writings, recorded sounds, films, tapes, or data compilations in any form (a) required by law to be kept,...". All records maintained in public offices or by public employees within the scope of their employment shall be presumed to be public records."

§12-2804. Examination and copying of public records.

"...all public records shall be open to inspection and copying by any citizen of the State of Arkansas during the regular business hours of the custodian of the records. It is the specific intent of this Section that...unpublished memoranda, working papers, and correspondence of the Governor, Legislators, Supreme Court Justices and the Attorney General...shall not be deemed to be made open to the public under the provisions of this Act."

CALIFORNIA: Records of the California State Legislature are made available to the public by the State Constitution and by separate Statute.

Constitution, Article IV, Section 7

(c) "The proceedings of each house and the committees thereof shall be public except as provided by statute or by concurrent resolution..."

California Public Records Act

§6252 Definitions

"(a) "State agency" means every state office, officer, department, division, bureau, board, and commission or

other state agency, except those agencies provided for in Article IV of the California Constitution."

Legislative Open Records Act

§9072. Definitions

"(b) "Legislature" includes any Member of the Legislature, any legislative officer, any standing, joint or select committee or subcommittee of the Senate and Assembly, and any other agency or employee of the Legislature."

"(c) "Legislative records" means any writing prepared on or after December 2, 1974 which contains information relating to the conduct of the public's business prepared, owned, used, or retained by the Legislature.

§9073. Inspection...

"Legislative records are open to inspection at all times during the normal office hours of the Legislature and any person has a right to inspect any legislative record, except as hereafter provided." (§9075 lists certain records not to be disclosed.)

COLORADO: Public Records

§24-72-202. Definitions

"(6) "Public records" means and includes all writings made, maintained or kept by the state or any agency, institution or political subdivision thereof for use in the exercise of functions required or authorized by law or administrative rule or involving the receipt or expenditure of public funds."

§24-72-203. Public records open to inspection.

"(1) All public records shall be open for inspection by any person at reasonable times, except as provided in this part 2 or as otherwise provided by law..."

CONNECTICUTT: Connecticut Legislature included in the Freedom of Information Act.

Freedom of Information Act. Public Records and Meetings.

§1-18a. Definitions.

"(a) "Public agency" or "agency" means any executive, administrative or legislative office of the state or any political subdivision of the state and any state or town agency, ..."

§1-19. Access to public records. Exempt records.

"(a) Except as otherwise provided by any federal law or state statute, all records maintained or kept on file by any public agency, whether or not such records are required by any law or by any rule or regulation, shall be public records and every person shall have the right to inspect or copy such records at such reasonable time as may be determined by the custodian thereof."

DELAWARE: Freedom of Information Act

§10002. Definitions

"(a) "Public body" means any regulatory, administrative, advisory, executive or legislative body of the State or any political subdivision of the State..."

"(d) "Public record" is written or recorded information made or received by a public body relating to public business."

§10003. Examination and copying of public records.

"(a) All public records shall be open to inspection and copying by any citizen of the State during regular business hours by the custodian of the records for the appropriate public body."

FLORIDA: Chapter 119 Public Records

§119.01 General state policy on public records.

"It is the policy of this state that all state, county, and municipal records shall at all times be open for a personal inspection by any person."

§119.011. Definitions

"(1) "Public records" means all documents, papers, letters, ...made or received... in connection with the transaction of official business by any agency."

"(2) "Agency" means any state, county district, authority, or municipal officer... or other separate unit of government created or established by law..."

§119.07 Inspection and examination of records; exemptions

"(1) (a) Every person who has custody of public records shall permit the records to be inspected and examined by any person desiring to do so, at reasonable times, under reasonable conditions, and under supervision by the custodian of the records or his designee."

Florida Senate - Rules and Manual

§2.3 - Committee reports prior to session, availability of records and reports.

"The records and reports of standing committees and the subcommittees thereof shall be available in the same manner as the reports and records of state agencies. Provided, however, that this rule shall not affect legislative records specifically protected by law, ..."

GEORGIA: The Georgia General Assembly is included in the Public Records Act.

Inspection of Public Records

§40-2701. Right of public to inspect records.

"All State, county and municipal records, except those, which by order of a court of this State or by law, are prohibited from being open to inspection by the general public, shall be open for a personal inspection of any citizen of Georgia at a reasonable time and place, and those in charge of such records shall not refuse this privilege to any citizen."

HAWAII: Although the Hawaii Legislature is explicitly exempt from the Administrative Procedure statute, it is not excluded from the Public Agency Meetings and Records statute.

Title 8. Public Proceedings and Records

Chapter 92, Part V, Public Records

§92-50 Definition.

"As used in this part, "public record" means any written or printed report, book or paper, map or plan of the State or of a county and their respective subdivisions and boards..."

§92-51 Public records; available for inspection.

"All public records shall be available for inspection by any person during established office hours unless public inspection of such records is in violation of any other state or federal law..."

IDAHO: Idaho does not have a Freedom of Information Law as such, however, it does have an Open Meetings Law and provisions in its General Laws for making records available to the public.

General Laws Annotated.

§59-1009. Official records open to inspection.

"The public records and other matters in the office of any officer are, at all times during office hours, open to the inspection of any citizen of this state."

§9-301. Public writings - Right to inspect and take copy -

"Every citizen has a right to inspect and take a copy of any public writing of this state, except as otherwise expressly provided by statute."

ILLINOIS: The Freedom of Information Act

Requires all public bodies (except the courts) to make their records available to the public for inspection and copying. Provides that certain documents are exempt from inspection and copying.

§2. Definitions (EB1472)

"(a) "Public body" means every State office, agency, department, division, bureau, board and body; every legislative board, commission, committee, and every officer thereof; and any officer or employee of any of the above. For purposes of the Act, "public body" does not include the courts."

INDIANA: Indiana does not have a specific statute which deals with access to state legislative records. However, its Constitution requires the Senate and the House to publish Journals of their respective proceedings which are made available to the public. Indiana's "Fair Information Practices Law" deals with the classification and availability of information kept by agencies of the Executive branch of state government. Statute does not refer to legislative records, however, Indiana's "Open Door Law" includes the Legislature and its committees in the definition of a public agency.

"Chapter 1.5 The Indiana Open Door Law

§5-14-1.5-2. Definitions

"(a) "Public Agency" means: (1) any board, commission, department, agency or authority...exercising a portion of the executive, administrative, or legislative power of the state."

IOWA: Iowa Code Chapter 68A appears to apply to the Legislature.

Chapter 68A. Examination of Public Records

68A.1 Public records defined.

Wherever used in this chapter, "public records" includes all records and documents of or belonging to this state... or any branch, department, board, bureau, commission, council, or committee of any of the foregoing."

68A.2 Citizen's right to examine.

"Every citizen of Iowa shall have the right to examine all public records and to copy such records, and the news media may publish such records, unless some other provision of the Code expressly limits such right or requires such records to be kept secret or confidential."

KANSAS: Kansas statute relative to "Records Open to Public" applies to all state agencies including the Legislature.

Article 2. - Records Open to Public

"45-201 (a) All official public records of the state, counties, municipalities, townships, school districts, commissions, agencies and legislative bodies, which records by law are required to be kept and maintained, ...shall at all times be open for a personal inspection by any citizen, ..."

NOTE: A comprehensive "Open Records Act" (S.B. 877) was considered by the 1980 Kansas Legislature, however, it was not enacted into law.

KENTUCKY: Records of the Kentucky State Legislature are made available to the public by the Kentucky Open Records Law. (KRS61.870 to 61.884)

Open Records

61.870 Definitions.

"(1) Public agency" means every state or local officer, state or local officer, state department, division, bureau, board, commission and authority; every legislative board, commission, committee and officer;..."

61.872 Right to inspection - Limitation.

"(1) All public records shall be open for inspection by any person,..."

NOTE: The Kentucky Legislative Research Commission is required by statute to keep confidential drafts of legislative proposals which it has been requested to help prepare or revise.

LOUISIANA: The Legislature is subject to the Public Records Act with the exception of certain records pertaining to legislative investigations.

Title 44 Public Records and Recorders

§1. General definitions

"A. (1) As used in this Chapter, the phrase "public body" means any branch, department, office, agency, ... or any other instrumentality of state, parish, or municipal government..."

§2. Records involved in legislative investigations.

"Subject to the proviso set forth in Sub-section B of R.S. 44:3, the provisions of this Chapter shall not apply to any records, writings, accounts, letters, letter books, photographs or copies thereof, in the custody or control of any attorney or counsel whose duties or functions are performed by or under the authority of the legislature and which concern or hold relation to any case, cause, charge or investigation being conducted by or through the legislature, until after the case, cause, charge or investigation has been finally disposed of.

"After final disposition, the records, writings, accounts, letters, letter books, photographs or copies thereof, are public records and subject to the provisions of this Chapter."

MAINE:

The Legislature is included in the Maine Freedom of Access Law with certain exceptions. There is no listing of specific legislative records which are required to be made available to the public.

Freedom of Access Law

§402. Definitions.

"2. Public proceedings. The term "public proceedings" as used in this subchapter shall mean the transactions of any functions affecting any or all citizens of the State by any of the following:

A. The Legislature of Maine and its committees and subcommittees; ..."

"3. Public records. The term "public records" shall mean any written, printed or graphic matter or ... that is in the possession or custody of an agency or public official of this state or ...

C. Records, working papers and interoffice and intraoffice memoranda used or maintained by any Legislator, legislative agency or legislative employee to prepare proposed Senate

or House papers or reports for consideration by the Legislature or any of its committees during the biennium in which the proposal or report is prepared;"

§408. Public records available for public inspection.

"Except as otherwise provided by statute, every person shall have the right to inspect and copy any public record during the regular business hours of the custodian or location of such record; ..."

MARYLAND: The Maryland Public Information Act is applicable to the General Assembly, as well as to State Agencies.

Article 76A Public Information

§1. Definitions.

"(b) "Public records" when not otherwise specified shall include any paper, correspondence, form, book ... or other written document ... that have been made by any branch of the State government, including the legislative, judicial, and executive branches, ..."

§2. Inspection of public records generally.

"(a) All public records shall be open for inspection by any person at reasonable times, except as provided in this article or as otherwise provided by law."

MASSACHUSETTS: Records of the General Court (Legislature) are not subject to the Public Records statute.

Public Records

Chapter 4 §7. Definitions of statutory terms.

"26. "Public records" shall mean all books, papers, maps, ... or other documentary materials ... made or received by any officer or employee of any agency, executive office, department ... of the commonwealth, or ..."

Chapter 66 §18. Application of chapter.

"This chapter shall not apply to the records of the general court, ..."

In decision of the Supreme Judicial Court in the case of Westinghouse Broadcasting Company, Inc. v. Sergeant-at-Arms of the General Court of Massachusetts (Mass., 375 N.E. 2nd 1205), the court held that the records of the General Court (Legislature) were not subject to the Public Record statute.

MICHIGAN: Legislature has provided requested information freely in accordance with the terms of the Freedom of Information Act, although not specifically required to.

Freedom of Information Act.

15.232 Definitions

"(b) "Public body" means:

(i.) An agency, board, commission, or council in the legislative branch of the state government."

"(c) "Public record" means a writing prepared, owned, used, in the possession of, or retained by a public body in the performance of an official function, from the time it is created. This act separates public records into 2 classes: (i) those which are exempt from disclosure under section 13, and (ii) all others, which shall be subject to disclosure under this act."

15.233 Public records; right to inspect, copy or receive...

"§3. (1) Upon an oral or written request which describes the public record sufficiently to enable the public body to find the public record, a person has a right to inspect, copy or receive copies of a public record of a public body, except as otherwise expressly provided by section 13."

MINNESOTA: Chapter 15, Data Privacy Laws

15.17 Official Records

"Subdivision 1. Must be kept. All officers and agencies of the state, and all officers and agencies of the counties, cities and towns, shall make and keep all records necessary to a full and accurate knowledge of their official activities.

"Subd. 4. Accessible to public. Every custodian of public records shall keep them in such arrangement and condition as to make them easily accessible for convenient use...Except as otherwise expressly provided by law, he shall permit all public records in his custody to be inspected, examined, abstracted, or copied at reasonable times and under his supervision and regulation by any person;..."

The Minnesota Government Data Practices Act.

15.1621 Access to Government Data

"Subdivision 1. Public Data. All government data, collected, created, received, maintained or disseminated by a state agency, political subdivision, or statewide system shall be public unless classified...as not public."

Minnesota Constitution

Article IV, Legislative Department

"15 Officers, journals...Both houses shall keep journals of their proceedings, and from time to time publish the same..."

Permanent Rules of The House 1980

"7.3 Duties of Chief Clerk. The Chief Clerk...shall keep records showing the situation and progress of all bills, memorials and resolutions."

"7.8 Index. The Index Clerk, under the supervision of the Chief Clerk, shall prepare an index in which bills may be indexed by topic, number, author, subject, section of the code amended, committees, and any other subject that will make it a complete and comprehensive index. The Index shall be open for public inspection at all times during the session and shall be printed in the permanent Journal of the House."

MISSISSIPPI: Does not have a Freedom of Information Act, however, a bill passed the Senate this year but failed to be approved by the House of Representatives. The House, however, has always maintained a policy that all records, with the exception of the House Ethics Committee records which are confidential by rule, be made available to the public. A Mississippi Administrative Procedure Act which deals with agency rules and regulations and their availability to the public does not include the Legislature.

MISSOURI: Revised Statutes - Public and Business Records

109.180 Public records open to inspection.

"Except as otherwise provided by law, all state, county and municipal records kept pursuant to statute or ordinance shall at all reasonable times be open for a personal inspection by any citizen of Missouri, and those in charge of the records shall not refuse the privilege to any citizen."

MONTANA: Constitution of Montana

Section 10. Right to Know.

"No person shall be deprived of the right to examine documents or to observe the deliberations of all public bodies or agencies of state government and its subdivisions, except in cases in which the demand of individual privacy clearly exceeds the merits of public disclosure."

Montana Statute

93-1001.4 (10542) Every citizen entitled to inspect and copy public writings.

"Every citizen has a right to inspect and take a copy of any public writings of this state, except as otherwise expressly provided by statute."

NEBRASKA: Article 12 Records Management Act

84-1202. Terms, defined.

"(1) Agency shall mean any department, division, office, commission, court, board, or any other unit or body, however designated, of the state government or of the government of any local political subdivision;"

"(10) Legislative record shall mean a record created or maintained by the Legislature pursuant to the Constitution or statutes of the State of Nebraska;"

Revised Statutes

84-712 Public records; free examination; memorandum and abstracts.

"Except as otherwise expressly provided by statute, all citizens of this state, and all other persons interested in the examination of the public records, are hereby fully empowered and authorized to examine the same, and to make memoranda and abstracts there from, all free of charge, during the hours the respective office may be kept open for the ordinary transaction of business."

NEVADA:

Does not have a Freedom of Information Act, however, it does have a Public Records Law (Chapter 239 of the Nevada Revised Statutes).

239.010 Public books, records open to inspection.

"1. All public books and public records of state, county, city, ... shall be open at all times during office hours to inspection by any person, ..."

There is a separate law involving legislative records. Also, there is a law which specifically excludes from disclosure work done for legislators by the legislative staff. This would include bill drafting materials, research documents and fiscal work done specifically for a legislator. Such materials may not be released to any other persons without the consent of the legislator who requested the work.

Also, the Constitution requires that both houses of the legislature keep a journal. In addition, the rules of both houses require that committees keep minutes of their proceedings and that committee records are to be open to the public.

NEW HAMPSHIRE: The "Access to Public Records" statute applies to the New Hampshire legislature.

Chapter 91-A Access to Public Records

91-A: 1-a Definition of Public Proceedings.

"The term "public proceedings" as used in this chapter means the transaction of any functions affecting any or all citizens of the state by any of the following:

- I. The general court including executive sessions of committees;
- II. The governor's council;
- III. Any board or commission of any state agency or authority;
- IV. Any board, commission, agency or authority, of any county, town, municipal corporation, school district, or other political subdivision, or any committee, subcommittee or subordinate body thereof, or advisory committee thereto.

91-A: 4 Minutes and Records Available for Public Inspection

"Every citizen during the regular or business hours of all such bodies or agencies, and on the regular business premises of such bodies or agencies, has the right to inspect all public records, including minutes of meetings of the bodies or agencies, and to make memoranda abstracts, photographic or photostatic copies. of the records or minutes so inspected, except as otherwise prohibited by statute or RSA 91-A:5."

NEW JERSEY: "Right to Know" Law Chapter 1A. Examination and Copies of Public Records

47:1A-2. Public records; right of inspection; copies; fees.

"Except as otherwise provided in this act...all records which are required by law to be made, maintained or kept on file by any board, body, agency, department, commission or official of the State...shall...be deemed to be public records. Every citizen of this State...shall have the right to inspect such records...shall have the right to copy such records..."

There is a bill pending in the Legislature (Assembly No.889) which would repeal the above cited law (C. 47:1A-1 etsq.) and replace it with a "Public Information Act."

NEW MEXICO: Does not have a Freedom of Information Law, per se, but the state legislature does come under the same access standards as regular state agencies and local governments.

All government records are a matter of public record, except those legally specified and exempted.

New Mexico Statutes Annotated

71-5-1. Right to inspect public records--Exceptions.

"Every citizen of this state has a right to inspect any public records of this state except:

- A. records pertaining to physical or mental examinations and medical treatment of persons confined to any institutions;
- B. letters of reference concerning employment, licensing or permits;
- C. letters or memorandums which are matters of opinion in personnel files or students' cumulative files; and
- D. as otherwise provided by law."

2-3-13. Legislative council service, confidential nature.

"Neither the director nor any employee of the council service shall reveal to any person outside of the service the contents or nature of any request or statement for service, except with the consent of the person making such request or statement. They shall not urge or oppose any legislation, nor give any member of the legislature advice concerning the economic or social effect of any bill or proposed bill except upon the request of such member.

NEW YORK: Although the State Legislature is included in the same act creating a Freedom of Information Law, public access to legislative records is by a separate part of the statute.

Article 6 - Freedom of Information Law

§86. Definitions.

"3. "Agency" means any state or municipal department, board, bureau, division, commission, committee, public

authority, public corporation, council, office or other governmental entity performing a governmental or proprietary function for the state or any one or more municipalities thereof, except the judiciary or the state legislature."

§87. Access to agency records.

"2. Each agency shall, in accordance with its published rules, make available for public inspection and copying all records, except that such agency may deny access to records or portions thereof that:" (exemptions list)

§88. Access to state legislative records.

"2. The state legislature shall, in accordance with its published rules, make available for public inspection and copying:"  
(specific list)

NORTH CAROLINA: Chapter 132 Public Records

§132-1. "Public records" defined. -

"Public record" or "public records" shall mean all documents, papers, letters, maps, books, photographs, films, sound recordings, magnetic or other tapes, electronic data-processing records, artifacts, or other documentary material, regardless of physical form or characteristics, made or received pursuant to law or ordinance in connection with the transaction of public business by any agency of North Carolina government or its subdivisions. Agency of North Carolina government or its subdivision shall mean and include every public office, public officer or official (State or local, elected or appointed), institution, board, commission, bureau, council, department, authority or other unit of government of the State or of any county, unit, special district or other political subdivision of government."

NORTH DAKOTA: Has no Freedom of Information Law as such, however, Article 103 of the Amendments of the Constitution provides for open governmental records.

Constitution of North Dakota - Amendments

Article 103

"Unless otherwise provided by law, all records of public or governmental bodies, boards, bureaus, commissions, or agencies of the state or any political subdivision of the state, or organizations or agencies supported in whole or in part by public funds, or expending public funds, shall

be public records, open and accessible for inspection during reasonable office hours."

In addition, the North Dakota Century Code statutorily provides for access to records of governmental bodies.

North Dakota Century Code

44-04-18. Access to public records.

"1. Except as otherwise specifically provided by law, all records of public or governmental bodies, boards, bureaus, commissions or agencies of the state or any political subdivision of the state, or organizations or agencies supported in whole or in part by public funds, or expending public funds, shall be public records, open and accessible for inspection during reasonable office hours."

OHIO:

Does not have a Freedom of Information Law as such, however, Ohio does have several statutes which relate to the release of information to the public.

Chapter 149: Documents, Reports, and Records

§149.43 Availability of public records.

"(1) "Public record" means any record that is required to be kept by any governmental unit, including, but not limited to, state, county, city, village, township, and school district units, except medical records, records pertaining to adoption, probation and parole proceedings, trial preparation records, confidential law enforcement investigatory records, and records the release of which is prohibited by state or federal law."

"(B) All public records shall be promptly prepared and made available to any member of the general public at all reasonable times for inspection. Upon request, a person responsible for public records shall make copies available at cost, within a reasonable period of time."

OKLAHOMA: Has no comprehensive Freedom of Information or Public Records statutes, however, Oklahoma has a general statute relating to all governmental entities and a specific statute relating to legislative records.

§24. Records open for public inspection.

"It is hereby made the duty of every public official of the State of Oklahoma, and of its subdivisions, who are required by law to keep public records pertaining to their said offices,

to keep the same open for public inspection for proper purposes, at proper times and in proper manner, to the citizens and taxpayers of this State, and its sub-divisions, during all business hours of the day; provided, however, the provisions of this act shall not apply to Income Tax Returns filed with the Oklahoma Tax Commission, or other records required by law to be kept secret."

§73. Records and journals - Public inspection - Confidentiality.

"A. The records and journals of each House of the Legislature required by the Constitution of Oklahoma to be kept and preserved reflecting the yea or nay vote of each member entered in all votes taken by the Legislature or the disclosure of any personal or private interest in any measure or bill pending before the Legislature shall be available, at all reasonable times, to inspection by the public.

B. The records and files of the Legislature, not otherwise provided by law to be open to public inspection, shall be confidential and privileged and may be released for public consumption only upon approval by the Presiding Officer of each House respectively."

OREGON: Oregon Revised Statutes

Inspection of Public Records

192.410 Definitions for ORS 192.410 to 192.500. As used in ORS 192.410 to 192.500:

"(1) "Public body" includes every state officer, agency, department, division, bureau, board and commission; every county and city governing body, school district, special district, municipal corporation, and any board, department, commission, council, or agency thereof; and any other public agency of this state.

(2) "State agency" includes every state officer, agency, department, division, bureau, board and commission.

(4) "Public record" includes any writing containing information relating to the conduct of the public's business, prepared, owned, used or retained by a public body regardless of physical form or characteristics."

192.420 Right to inspect public records.

"Every person has a right to inspect any public record of a public body in this state, except as otherwise expressly provided by ORS 192.500"

The Senate Rules define the Senate records that shall be made available to the public.

### Rules of the Senate

#### 14.03 Senate Records

"As used in this rule, "Senate record" means a measure or amendment thereto, a document, book, paper, photograph, sound recording or other material exclusive of personal correspondence, regardless of physical form or characteristics, made by the Senate, a Senate committee or Senate personnel thereof, in connection with the exercise of legislative or investigatory functions, but does not include the record of an official act of the Legislative Assembly kept by the Secretary of State under Section 2, Article VI of the Oregon Constitution.

(2) Subject to the needs therefor required by Senate members and Senate personnel in the performance of their official duties, Senate records in the possession of the Senate shall be made available for public inspection, subject to such requirements to insure their safety as may be imposed by the President."

PENNSYLVANIA: The Pennsylvania "Right-to-Know" Law does not generally include the General Assembly. However, the Public Agency Open Meeting Law requires the minutes of proceedings of the General Assembly be made available for public inspection and copying in accordance with the "Right-to-Know" Law.

### Right-to-Know Law

#### Inspection and Copying of Records

##### §66.1 Definitions

"(1) "Agency." Any department, board or commission of the executive branch of the Commonwealth, any political subdivision of the Commonwealth, ..."

##### §66.2 Examination and inspection

"Every public record of an agency shall, at reasonable times, be open for examination and inspection by any citizen of the Commonwealth of Pennsylvania."

### Open Meeting Law

##### §261. Definitions

" "Agency" means any branch, department, board, authority or commission of the Commonwealth of Pennsylvania, ... the term "agency" shall include the General Assembly or any state department, ..."

264. Minutes of meetings, recollection; records public

"The minutes of a public meeting of an agency shall be taken and promptly recorded and shall be a public record under and subject to the Act of June 21, 1957. "(Right-to-Know Law.)"

The Rules of the Senate and House of Representatives provide for public access to certain records.

RHODE ISLAND: The Legislature is included in Rhode Island's "Open Records" Law.

Title 38 Public Records

Chapter 38-2 Access to Public Records

38-2-2. Definitions.

"(a) 'Public body' means any executive, legislative, judicial, regulatory, administrative body of the state or any political subdivision thereof;..."

"(d) 'Public record' is written or recorded information made or received by a public body relating to public business."

38-2-3 Records of Public Bodies.

"...all records maintained or kept on file by any public body, whether or not such records are required by any law or by any rule or regulation, shall be public records and every person shall have the right to inspect and/or copy such records at such reasonable time as may be determined by the custodian thereof."

SOUTH CAROLINA: The General Assembly is a "public body" as defined in § 30-4-20(a) of the Freedom of Information Act and is thus covered by this Act.

Public Records  
Freedom of Information Act

§ 30-4-20. Definitions. "(a) "Public body" means any department of the State, any state board, commission, agency and authority, any public or governmental body or political subdivision of the State..."

§ 30-4-30. Right to inspect or copy public records. "(a) Any person has a right to inspect or copy any public record of a public body, except as otherwise provided by § 30-4-40. (Matters exempt from disclosure.)

During the 1980 Session an amendment was enacted to the Freedom of Information Act which provides for certain documents of the General Assembly to be exempt from the provisions of the Act.

§ 30-4-40. Matters exempt from disclosure. "(a) The following matters may be exempt from disclosure under the provisions of this chapter: "(8) Memoranda, correspondence and working papers in the possession of individual members of the General Assembly or their immediate staffs,..."

SOUTH DAKOTA: All public records of the three branches of government are open to the public under South Dakota's public information laws.

Chapter 1-27 Public Records and Files

1-27-1. Records open to inspection. "In every case where the keeping of a record, or the preservation of a document or other instrument is required of an officer or public servant under any statute of this state, such record, document, or other instrument shall be kept available and open to inspection by any person during the business hours of the office or place where the same is kept."

1-27-3. Records declared confidential or secret. "Section 1-27-1 shall not apply to such records as are specifically enjoined to be held confidential or secret by the laws requiring them to be so kept."

1-27-9. Records management programs - Definition of terms. - "(1) "State agency" or "agency" or "agencies" includes all state officers, boards, commissions, departments, institutions

and agencies of state government.

(3) "State record" means:

- (a) A record of a department, office, commission, board or other agency, however designated, of the state government.
- (b) A record of the state Legislature.
- (c) A record of any court of record, whether of state-wide or local jurisdiction.
- (d) Any other record designated or treated as a state record under state law."

1-27-17. Legislative and judicial records management programs.-

"Upon request, the commissioner of administration shall assist and advise in the establishment programs in the legislative and judicial branches of state government and may, as required by them, provide program services similar to those available to the executive branch of state government pursuant to the provisions of §§ 1-27-9 to 1-27-16, inclusive."

TENNESSEE:

Tennessee Code Annotated

15-304. Records open to public inspection. "All state, county and municipal records shall at all times, during business hours, be open for personal inspection by any citizen of Tennessee, and those in charge of such records shall not refuse such right of inspection to any such citizen, unless otherwise provided by law or regulations made pursuant thereto. (Acts 1957, ch.285, §1.)

15-401. Definitions.

"2. "Public record" or "public records" shall mean all documents, papers, letters, maps, books, photographs, microforms, electronic data processing output, films, sound recordings, or other material regardless of physical form or characteristics made or received pursuant to law or ordinance or in connection with the transaction of official business by any governmental agency.

6. "Agency" shall mean any department, division, board, bureau, commission, or other separate unit of government created or established by the constitution, by law or pursuant to law."

TEXAS:

The Legislature is included in the Texas Freedom of Information statute. Under the provisions of the law and because of various Attorney Generals' opinions, all records of the Legislature, including personnel records and expenditures are included. In the House of Representatives the Rules of the House are more specific concerning public access to legislative information.

Art. 6252-17a. Access by public to information in custody of governmental agencies and bodies.

"Sec.2. In this Act:

(1) 'Governmental body' means:

(A) any board, commission, department, committee, institution, agency, or office within the executive or legislative branch of the state government, or which is created by either the executive or legislative branch of the state government, and which is under the direction of one or more elected or appointed members;

(2) 'Public records' means the portion of all documents, writings, letters, memoranda, or other written, printed, typed, copied, or developed materials which contains public information."

"Sec.3. (a) All information collected, assembled, or maintained by governmental bodies pursuant to law or ordinance or in connection with the transaction of official business is public information and available to the public during normal business hours of any governmental body, with the following exceptions only:..."

UTAH:

Archives and Records Service and Information Practices Act

63-2-61. Definitions

"(1) 'Public records' mean all written or printed books, papers, letters, documents, maps, plans, photographs, sound recordings, and other records made or received in pursuance of state law or in connection with the transaction of public business by the public offices, agencies, and institutions of the state and its counties, municipalities, and other subdivisions of government."

"(7) 'State publication' or 'publication' mean any document, compilation, journal, law, resolution, blue-book, statute, code, register, pamphlet, book, report, hearing, legislative bill, leaflet, order, regulation, directory, periodical, or magazine issued in print by the state, any officer of the state, the legislature, or any state agency."

63-2-66. Archives and records service - Access - Certified copies.

"The archivist shall keep the public archives in his custody in such arrangement and condition as to make them accessible for convenient use and shall permit them to be inspected, examined, abstracted, or copied at reasonable times under his supervision by any person."

VERMONT:      Subchapter 3. Access to Public Records

316. Access to public records and documents.

"(a) Any person may inspect or copy any public record or document of a public agency,..."

317. Definitions; public agency; public records and documents.

"(a) As used in this subchapter, 'public agency' or 'agency' means any agency, board, department, commission, committee, or authority of the state."

"(b) As used in this subchapter, 'public record' or 'public document' means all papers, staff reports, individual salaries, salary schedules or any other written or recorded matters produced or acquired in the course of agency business except:..."

318. Procedure.

"(a) Upon request the custodian of a public record shall promptly produce the record for inspection, except that:..."

VIRGINIA: The Virginia Freedom of Information Act

2.1-341. Definitions.

"(b) 'Official records' means all written or printed books, papers, letters, documents, maps and tapes, photographs, films, sound recordings, reports or other material, regardless of physical form or characteristics, prepared, owned, or in the possession of a public body in the transaction of public business."

"(e) 'Public body' shall mean any of the groups, agencies or organizations enumerated in subsection (a) of this section." (Legislative bodies of the state are included.)

2.1-342. Official records to be open to inspection.

"(a) Except as otherwise specifically provided by law, all official records shall be open to inspection and copying by any citizens of this State during the regular office hours of the custodian of such records."

WASHINGTON: Although Washington has a Public Disclosure Act which deals with public records and requires same to be made available for public inspection and copying, House of Representatives attorneys have concluded that the law does not apply to the Legislature.

Public Records

42.17.260 Documents and indexes to be made public.

"(1) Each agency, in accordance with published rules, shall make available for public inspection and copying all public records."

Notwithstanding exclusion of the Legislature, the House customarily makes almost all of its records available for public inspection except for items of a confidential nature. It has not, however, adopted any formal rules in this area.

WEST VIRGINIA: Freedom of Information

Article 1. Public Records

§29B-1-2. Definitions.

"(3) "Public body" means every state officer, agency, department, including the executive, legislative and judicial departments, division, bureau, board and commission; ..."

"(4) "Public record" includes any writing containing information relating to the conduct of the public's business, prepared, owned and retained by a public body."

§29B-1-3. Inspection and copying.

"(1) Every person has a right to inspect or copy any public record of a public body in this State, except as otherwise expressly provided by section four of this article."

In addition to the Freedom of Information Law, the House of Delegates and the Senate are governed by their own rules relating to committee meetings and records. In addition, the Journals of the respective Houses are public records.

WISCONSIN: Subchapter II Custody of Official Property

19.21 Custody and delivery of official property and records.

"(1) Each and every officer of the state, or of any county, town, city, village, school district, or other municipality or district, is the legal custodian of and shall keep and preserve all property and things received from his predecessor or other persons and required by law to be filed, deposited, or kept in his office, or which are in the lawful possession or control of himself or his deputies, or to the possession or control of which he or they may be lawfully entitled, as such officers."

"(2) Except as expressly provided otherwise, any person may with proper care, during office hours and subject to such orders or regulations as the custodian thereof prescribes, examine or copy any of the property or things mentioned in sub. (1)."

19.55 Public inspection of records.

"(1) Except as provided in sub. (2), all records in the possession of the board are open to public inspection at all reasonable times.

WYOMING: The Wyoming Legislature has traditionally kept its proceedings open to the public and no problems have been encountered with regard to access to legislative records.

Chapter 9 Public Records

§9-9-101. Definitions.

"(i) "Public records" when not otherwise specified shall include any paper, correspondence, form, book, ... or other document...that have been made by the state of Wyoming...and by any agencies of the state...except those privileged or confidential by law;"

§9-9-102. Inspection; generally.

"(a) All public records shall be open for inspection by any person at reasonable times, except as provided in this act or as otherwise provided by law,..."

APPENDIX III

FREEDOM OF INFORMATION LAW  
(or equivalent)

<u>STATE</u>	<u>LAW</u>
ALABAMA	Public Records Law
ALASKA	Open Records Law
ARIZONA	Public Records Law
ARKANSAS	Freedom of Information Act
CALIFORNIA	Public Records Act
COLORADO	Public Records Law
CONNECTICUT	Freedom of Information Law
DELAWARE	Freedom of Information Act
FLORIDA	Public Records Law
GEORGIA	Public Records Act
HAWAII	Public Agency Meetings and Records Law
IDAHO	Records Law
ILLINOIS	Freedom of Information Act
INDIANA	Open Door Law
IOWA	Public Records Law
KANSAS	Records Open To Public Law
KENTUCKY	Open Records Law
LOUISIANA	Public Records Act
MAINE	Freedom of Access Law
MARYLAND	Public Information Act
MASSACHUSETTS	Public Records Law
MICHIGAN	Freedom of Information Act
MINNESOTA	Government Data Practices' Act
MISSISSIPPI	None

STATELAW

MISSOURI	Public and Business Records Law
MONTANA	Right-To-Know Law
NEBRASKA	Records Management Act
NEVADA	Public Records Law
NEW HAMPSHIRE	Access to Public Records Law
NEW JERSEY	Right-To-Know Law
NEW MEXICO	Public Records Law
NEW YORK	Freedom of Information Law
NORTH CAROLINA	Public Records Law
NORTH DAKOTA	Access to Public Records Law
OHIO	Public Records Law
OKLAHOMA	Open Public Records Law
OREGON	Public Records Law
PENNSYLVANIA	Right-To-Know Law
RHODE ISLAND	Open Records Law
SOUTH CAROLINA	Freedom of Information Act
SOUTH DAKOTA	Public Information Law
TENNESSEE	Public Records Law
TEXAS	Freedom of Information Act
UTAH	Information Services Act
VERMONT	Access to Public Records Law
VIRGINIA	Freedom of Information Act
WASHINGTON	Public Disclosure Act
WEST VIRGINIA	Freedom of Information Law
WISCONSIN	Custody of Official Property Law
WYOMING	Public Records Law

SENATE JUDICIARY COMMITTEE  
Sectional Summary - CSSB 90 (Jud)

\*Sec. 1

40.25.010 State Policy

Specifies the findings of the Legislature and the purpose of the legislation.

40.25.015 Records to be Open to Inspection

Provides that all records are open to inspection and available for duplication. Sets out the request procedure and provides for a uniform schedule of fees for duplication and postage costs.

40.25.020 Duties of Governmental Unit

Establishes the duties and procedures governmental units follow when a request for documents is made, including administrative review of any denial of disclosure.

40.25.030 Exemptions

Specifies the records exempted from disclosure, and provides for notification of individuals to whom the record pertains.

40.25.035 Provisional Release of Information

Provides for release of exempted records upon the realization of certain conditions.

40.25.040 Access to Records by Record Subject

Allows individuals to have access to records that pertain to them or have been submitted by them.

40.25.060 Correction and Amendment of Records

Provides a procedure where individuals may compel governmental units to correct or amend inaccurate information pertaining to them.

40.25.070 Enforcement: Injunctive Relief

Establishes court procedures to require governmental unit to disclose information. Provides that the burden is on the agency to sustain its action. Changes Civil Rule 65 relating to security deposits required in civil actions.

40.25.080 Civil Action for Obstruction of Access to Records

Gives a civil cause for action against a person wrongfully withholding records.

40.25.090 Definitions

Definitions section.

\*Sec. 2 and 3. Amends existing law AS 44.62.310 entitled "Agency meetings public" to remove the authority of a municipality to hold executive sessions other than in accordance with state law and adds a new subsection dealing with the State open-meeting law.

\*Sec. 4. Notification of the change in Rule 65 of the Alaska Supreme Court Rules.

\*Sec. 5. Repeals the existing "open records" statutes.

\*Sec. 6. Provides for the effective date of July 1, 1981.

have to the money, instrument, or property, or he waives it. If the objection is to the amount of money, the terms of the instrument, or the amount or kind of property, he shall specify the amount, terms, or kind which he requires, or is precluded from objecting later. This section shall not be construed to modify or change in any manner corresponding provisions of the Uniform Commercial Code (AS 45.05). (§ 3.20 ch 101 SLA 1962)

It is not necessary to tender cash. constitute a proper tender. Ward v. Ward v. Miller, 13 Alaska 752 (1952). Miller, 13 Alaska 752 (1952).  
And a check, unobjected to, would

**Sec. 09.25.100. Disposition of tax information.** Information in the possession of the department of revenue which discloses the particulars of the business or affairs of a taxpayer or other person is not a matter of public record, except for purposes of investigation and law enforcement. The information shall be kept confidential, except when its production is required in an official investigation or court proceeding. These restrictions do not prohibit the publication of statistics presented in a manner that prevents the identification of particular reports and items, or prohibit the publication of tax lists showing the names of taxpayers who are delinquent and relevant information which may assist in the collection of delinquent taxes. (§ 3.21 ch 101 SLA 1962)

**Sec. 09.25.110. Inspection and copies of public records.** Unless specifically provided otherwise the books, records, papers, files, accounts, writings, and transactions of all agencies and departments are public records and are open to inspection by the public under reasonable rules during regular office hours. The public officer having the custody of public records shall give on request and payment of costs a certified copy of the public record. (§ 3.22 ch 101 SLA 1962)

Cross references.—Sec Civ. R. 44-(b)(4). As to management and preservation of public records, see AS 40.21.

It is "specifically provided otherwise" by AS 12.45.050.—With respect to the right of inspection and copying records under this section, it is "specifically provided otherwise," so far as police records are concerned, by the terms of AS 12.45.050, thus meeting the express exception to this section. Howard v. Jackson, 7 Alas. L.J. No. 3, p. 431 (March 12, 1969).

Stated in State v. Coon, 2 Alas. L.J. No. 1, p. 3 (Jan. 1964).

ALR and C.J.S. references.—Finding of draft board as evidence of physical condition of one registered, 16 ALR 247.

Admissibility of report of public officer or employee on cause of or responsibility for injury to person or damage to property, 153 ALR 163.

32 C.J.S. Evidence §§ 649 to 675.

**Sec. 09.25.120. Inspection and copying of public records.** Every person has a right to inspect a public writing or record in the state, including public writings and records in recorders' offices except (1) records of vital statistics and adoption proceedings which shall be treated in the manner required by AS 18.50.010—

18.50.380; (2) records pertaining to juveniles; (3) medical and related public health records; (4) records required to be kept confidential by a federal law or regulation or by state law. Every public officer having the custody of records not included in the exceptions shall permit the inspection, and give on demand and on payment of the legal fees therefor a certified copy of the writing or record, and the copy shall in all cases be evidence of the original. Recorders shall permit memoranda, transcripts, and copies of the public writings and records in their offices to be made by photography or otherwise for the purpose of examining titles to real estate described in the public writings and records, making abstracts of title or guaranteeing or insuring the titles of the real estate, or building and maintaining title and abstract plants; and shall furnish proper and reasonable facilities to persons having lawful occasion for access to the public writings and records for those purposes, subject to reasonable rules and regulations, in conformity to the direction of the court, as are necessary for the protection of the writings and records and to prevent interference with the regular discharge of the duties of the recorders and their employees. (§ 3.23 ch 101 SLA 1962)

Cross references.—See Civ. R. 44-40.21. preservation of public records, see AS (b)(4). As to management and pres-

Sec. 09.25.130. Effect of private seals and scrolls. Private seals and scrolls as a substitute for seals are abolished. They are not required to an instrument, but when used their effect remains unchanged. (§ 3.10 ch 101 SLA 1962)

Sec. 09.25.150. Claiming of privilege by public official or reporter. Except as provided in §§ 150—220 of this chapter, no public official or reporter may be compelled to disclose the source of information procured or obtained by him while acting in the course of his duties as a public official or reporter. (§ 1 ch 115 SLA 1967)

Editor's note.—Section 2, ch. 115, SLA 1967, provides: "This bill changes Rule 43(h) of the Supreme Court Rules [of Civil Procedure] by adding to the privileges there listed, the conditional privilege for public officers and reporters as to sources of information."

Sec. 09.25.160. Challenge of privilege. (a) When a public official or reporter claims the privilege in a cause being heard before the supreme court or a superior court of this state, a person who has the right to question him in that proceeding, or the court on its own motion, may challenge the claim of privilege. The court shall make or cause to be made whatever inquiry the court thinks necessary to a determination of the issue. The inquiry may be made instanter by way of questions put to the witness claiming the privilege and a decision then rendered, or the court may require the presence of other witnesses or documentary showing or may

Title 7  
Barracks

Title 8  
Business and Professions

Title 9  
Code of Civil Procedure

Title 10  
Government

requirement of Civ. R. 8(c) that such a defense be specially pleaded. Rollins v. Leibold, Sup. Ct. Op. No. 910 (File No. 1646), 512 P.2d 937 (1973).

Or be waived. — Civil R. 8(c) requires a party to plead affirmatively fraud as a defense, and failure to so plead results in a waiver of the defense. Rollins v. Leibold, Sup. Ct. Op. No. 910 (File No. 1646), 512 P.2d 937 (1973).

Party not prejudiced by raising issue of fraud at trial. — Where a party was on notice that the defense that the sale was ineffective due to the lack of delivery and change of possession of the property would be raised at trial, since these are the factual bases for the statutory presumption of fraud, it does not appear that he was prejudiced by the raising of the

issue and the resulting instruction of the court, even though the defense was not affirmatively pleaded. Rollins v. Leibold, Sup. Ct. Op. No. 910 (File No. 1646), 512 P.2d 937 (1973).

Review where issue of fraud not raised in pleadings. — Even if the issue of fraud has not been raised in the pleadings of the parties, a party is still entitled to review of the issue on appeal if the issue was tried by the express or implied consent of the parties, under Civ. R. 15(b). Rollins v. Leibold, Sup. Ct. Op. No. 910 (File No. 1646), 512 P.2d 937 (1973).

Quoted in First Nat. Bank v. Enzler, Sup. Ct. Op. No. 1170 (File No. 2181), 537 P.2d 517 (1975).

**Sec. 09.25.125. Enforcement: Injunctive relief.** A person having custody or control of a public record who obstructs or attempts to obstruct, or a person not having custody or control who aids or abets another person in obstructing or attempting to obstruct, the inspection of a public record subject to inspection under AS 09.25.110 or 09.25.120 may be enjoined by the superior court from obstructing, or attempting to obstruct, the inspection of public records subject to inspection under AS 09.25.110 or 09.25.120. (§ 1 ch 74 SLA 1975)

**Sec. 09.25.160. Challenge of privilege.**

Cited in Allred v. State, Sup. Ct. Op. No. 1304 (File No. 2343), 554 P.2d 411 (1976).

### Chapter 30. Judgments.

#### Article:

4. Satisfaction of judgments (§§ 09.30.300 — 09.30.310)

#### Article 1. Judgments.

#### Section

55. Offers of judgment

70. Interest on judgments

**Sec. 09.30.050. Confession of judgment.**

Quoted in C.Y. Inc. v. Brown, Sup. Ct. Op. No. 1569 (File No. 2781), 574 P.2d 1275 (1978).

**Sec. 09.30.055. Offers of judgment.** On or before the 60th day following the filing of an answer in a civil action, and on the fifth day following the day discovery closes as ordered by the court, either the

Title 7  
Banks and Financial Institutions

Title 9  
Banks and Financial Institutions

Title 6  
Banks and Financial Institutions



# Alaska State Legislature

## Senate

Official Business

Pouch V  
State Capitol  
Juneau, Alaska 99811

Jan. 29, 1981

Behrends Bldg.

1:30 p.m.

First Floor

---

### MEMBERS PRESENT

SENATOR FISCHER, CHAIRMAN  
SENATOR BRADLEY  
SENATOR COLLETTA

### MEMBERS ABSENT

SENATOR ELIASON  
SENATOR STIMSON

---

AGENDA: Senate Bill 90 "An Act relating to privacy and public information and changing Rule 65 of the Alaska Supreme Court Rules of Civil Procedure."

Chairman Fischer called the meeting to order and then requested testimony on Senate Bill 90. Eight persons testified on the bill (see attached sign-in sheet).

Senator Parr, prime sponsor of the legislation, outlined the provisions of the bill, from the opening general statement of policy on information to a detailed analysis of the exemptions described. With regard to the exemptions, Senator Parr suggested that there were two ways of grouping them for consideration: 1.) Alaska constitutional right to privacy, and 2.) public policy securing confidentiality for the general public benefit. The exemptions and definitions outlined in SB 90 were carefully covered by Senator Parr prior to more substantive discussion of the legislation. He cited the passage into law of the Federal legislation addressing freedom of information more than thirteen years ago as an example Alaska might follow. Senator Parr also stressed the importance of correctly balancing the people's right to privacy and the people's right to know. Although the legislation has been introduced four times since May of 1975, it has never passed, and the existing statutes remain vague, marked by insufficient definition. Sen. Parr responded to various questions about the language and intent of specific sections.

Bruce Horowitz, supervising attorney of Alaska Legal Services, provided a written proposal for amendment of SB 90. He presented the proposed amendments individually and expressed general support of the legislation.

Exhibit A

Barry Stern, representing the Dept. of Law, emphasized in his testimony that existing statutes addressing freedom of information are inadequate. He further remarked that the constitutional provision for a right to privacy frequently conflicts with the public's right to know. The concept of the right to privacy is left up to the agency to decide. Mr. Stern stressed the need for guidelines in determining the scope of a person's right to privacy. He also maintained that the exemptions section of the legislation is too specific, and agreed to transmit to the committee written suggested language to amend this section.

Elizabeth Cuadra, of the League of Women Voters of Alaska, gave brief testimony expressing support for SB 90 and for accessibility of records.

Patty Moriarty, of the Ombudsman's office, provided testimony from two perspectives: that of the Ombudsman's office, and that of the complainant seeking assistance from the Ombudsman's office. She read from the Ombudsman's report of Hawaii which bore the premise that information should be shared between the people and their elected representatives for decision-making purposes. Ms. Moriarty proposed language changes for specific sections of SB 90.

Earl Deater, of the Operating Engineers Union-302, testified in favor of SB 90, pointing out passage of such a measure would assist people in many professions in obtaining information.

Lee Sharp, attorney for the City and Borough of Juneau, provided testimony on the bill regarding the effect it would have on municipalities. Mr. Sharp maintained that local government should make decisions on how local records should be made available. He pointed out that additional costs would be created by the passage of SB 90 in terms of "search costs" and duplication costs. Mr. Sharp concluded his testimony with the statement that he agreed that public records should be made public, but that some things must rest at the local level.

Roland Shanks, of the Alaska Environmental Lobby, provided brief testimony in support of the bill and the intent behind it, noting that "public corporations" were not included in the list of people and agencies covered by the bill.

Chairman Fischer adjourned the meeting in light of the fact that scheduled time had expired.





Official Business

# Alaska State Legislature

## Senate

### Committee on State Affairs

Pouch V  
State Capitol  
Juneau, Alaska 99811

Feb. 5, 1981

Capitol Building

1:30 p.m.

Room 118

---

MEMBERS PRESENT

SENATOR FISCHER, CHAIRMAN  
SENATOR BRADLEY  
SENATOR COLLETTA

MEMBERS ABSENT

SENATOR ELIASON  
SENATOR STIMSON

---

AGENDA All-sites teleconference on SB90 "An Act relating to privacy and public information; and changing Rule 65 of the Alaska Supreme Court Rules of Civil Procedure."

Chairman Fischer opened the meeting and introduced SB90. He also called for those testifying and any others to send in written comments by the end of next week.

Testimony was received from the following:

From Fairbanks: Dean Gottearar, Task Force for  
Professional Journalists  
Box 74573  
Fairbanks 99701

Susan Fischer  
Society of Professional Journalists  
Box 710  
Fairbanks 99701

From Anchorage: Howard Weaver  
Daily News  
Pouch 6616  
Anchorage 99502

From Ketchikan: Lew Williams, Editor  
Ketchikan Daily News  
501 Dock Street  
Ketchikan 99901

Exhibit B

From Kodiak: Jon Newstrom  
KMXT Radio  
P. O. Box 484  
Kodiak 99615

Deborah Nelson  
Kodiak Daily Mirror  
P. O. Box 1307  
Kodiak 99615

From Homer: Annabel Lund  
Managing Editor  
Homer News  
Box 254  
Homer 99603

From Fairbanks: Scott Sterling  
224 Nerland  
Fairbanks 99701

Jamie Bryson  
860B Yak Estates  
Fairbanks 99701

From Sitka: Ray Medlin  
Box 1339  
Sitka 99835

From Skagway: Lucinda Hites  
Box Three  
Skagway 99840

From Soldotna: Steve Rinehart  
The Peninsula Clarion  
Box 1341  
Kenai, Alaska 99611

From Anchorage: Job Lohr  
Rural Cap  
327 Eagle St.  
Anchorage

From Palmer/Wasila: Mark Harris

From Haines: Leo Land  
Box 122  
Haines 99827

From Nome: Stanley Summers  
KICY AM/FM  
Box 82C  
Nome, Alaska 99762

Feb. 5, 1981

Page 3

From Fairbanks: Kent Sturgis  
Box 710  
Fairbanks 99701

From Anchorage: Kay Fanning  
Alaska Newspaper Assoc. & Daily News  
Pouch 6616  
Anchorage 99502

Ted Berns, Attorney  
Mun. of Anchorage  
Pouch 6-650  
Anchorage 99501

From Fairbanks: Tom Knapp  
Box 970  
Fairbanks 99701

Bruce Wammack  
913 Noble St.  
Fairbanks 99701

From Anchorage: Matt Zencey  
AKPIRG  
Box 1093  
Anchorage 99510

Mark Beltz  
343 W. 12th Ave.  
Anchorage 99512

From Ketchikan: Christine M  
KINB Radio  
Ketchikan 99901

Their comments are summarized as follows:

All testimony was in favor of the bill and strongly endorsed its passage. The majority felt that a definition of "right of privacy" needed to be established, that the question of fees for documents be looked at (it should not be a barrier), and that local municipalities and boroughs should not be able to opt out. Other testimony addressed the problem of tampering with public records and the problems that would occur if

Feb. 5, 1981

Page 4

if original entry police records were exempt from disclosure. Further testimony touched on difficulties with "sexist pronouns" in the language of the bill and the inclusion of state employees' performance records as public documents.

Chairman Fischer concluded the teleconference thanking participants for their constructive comments and requested written testimony be sent to the Senate State Affairs Committee by the end of next week.

2/17/81 Work Draft

COMMENTS ON SB 90 entitled "An Act relating to privacy and public information; and changing Rule 65 of the Alaska Supreme Court Rules of Civil Procedure."

→ Kevin -  
This is a brief  
overview of  
testimony & written  
comments to SB 90  
Nan

Page 1 - No suggested changes

Page 2

line 16 - add the words "in person" (2 comments)

line 17 - add "The request can be made verbally or in writing."

beginning line 19 through 22 - a fee should be charged for searching for the records

bill should permit municipalities to establish a charge for documents which does not exceed the actual cost of producing and duplicating the documents.

establish a uniform fee schedule similar to the regs proposed by the governor. - 20 pages free within a 24 hour period

Less than 100 copies free - Commissioner of Administration shall by regulation provide a method by which indigent persons may secure information without payment of fees.

Fee should be waived in the public interest.

Fees should not be used to discourage the public

Fees currently charged are prohibitive.

line 25 - add federal law or regulation

add "or required to be kept confidential by federal law or regulation."

Page 3

lines 19 through 21 - Include "applicants" ; expand social services to include public benefits

lines 22 through 25 - exemption too broad; should be deleted (2 comments)

Page 4

lines 5 through 8 - Who decides what are trade secrets, etc?

lines 9 through 10 - Current driver's manual contains sample questions which are in some cases, actual questions on drivers license test.

line 11 - "intelligence" needs to be defined.

Excludes those records prepared by a police officer at the time the original action is taken.

Excludes original entry police records - doesn't allow the press to be a watchdog to see that police do not violate civil rights.

Do not alter section; must be read in tandem with page 6, line 8 through 12.

Page 5

lines 1 through 6 - Who makes the decision?

line 29 - rewrite subsection (h) to read:

(h) The exceptions provided under this section do not preclude

(1) production and release of subpoenaed records or information to a state or municipal agency during the course of an investigation;

(2) production and release of records to the ombudsman when requested during the course of an investigation by him; records released to the ombudsman shall be kept confidential by him while the records are in his custody, except the ombudsman may, upon prior notice to the agency, release the records to the court for in camera review pursuant to AS 40.25.025(d).

Page 6

lines 3 through 7 - Oppose access to an employee's record of current performance on the job. (3 comments).

Each municipality should make the decision on personnel records.

beginning line 27 - ....the records shall be made [promptly] available to the person making the request within 10 days of the receipt of the request.

.....as soon as practicable but no more than 10 days.

Must allow for 10 days because it places the request over all other government business. (2 comments)

Page 7

lines 1 through 11 - the use of the word "suitable" is too vague. Should use Federal FOIA "reasonable segregability".

Any governmental unit that is applying an exemption should be required to include a packet of instructions, including the form drawn up by the Superior Court, on how to proceed in court without counsel to challenge the exemption.

lines 15 through 29 - smaller communities don't have Superior Court Judge full time. Suggestion that the magistrate's office do initial paperwork.

line 26 - change to "actual" attorney fees.

Page 8

line 25 through 29 - Who is the "head" of a governmental unit? What is an a "agency? If an agency is a department, the commissioner would be the "head"; if agency means the division, the director would be the "head". Who is the "head" of for example, the Human Rights Commission - the Executive Director or the Chair?

Would you need a "designee" in each office location - for example, an employee in Fairbanks Natural Resources office need to contact a designated custodian in Anchorage before releasing a record?

Page 8 con't

line 7 - case should be heard as a priority matter. 10 - 30 days maximum to hear trial.

line 16 - change reasonable to actual attorney fees and other actual litigation costs.

line 27 - definition of "governmental unit" should include "governmental instrumentality", "public corporation", "REAA" and "independent contractors paid with government funds but limited only to those activities related to the government contracts."

Page 9

line 11 - include "computer maintained records and information stored in a computer system"

line 24 - What is a "public body?" Would, for example, this section apply in a meeting between several state agencies and the U.S. Army?

beginning at line 28 - delete entire section - Repeals present authority of state or local government body to go into executive session to discuss matters which are required or authorized by federal law to be discussed in executive session. Would also repeal the present authority of municipalities to establish by charter or ordinance additional subjects which may be discussed in executive session.  
( Above supported by Juneau, Kodiak, Nome and Municipal League)

OTHER COMMENTS

Exempt municipalities (Kodiak, Juneau, Municipal League)

Don't exempt municipalities (8 comments)

Allow municipalities to opt out after adopting similar ordinance.

Include an Administrative Appeal process.

Define "right to privacy" and "unjustifiable intrusion into a person's right of privacy."

Someone who would be adversely affected by disclosure of an arguably exempt record should be allowed to intervene in a case involving the application of an exemption.

Change pronouns to read he/she, him/her

Witnesses will not be protected if names, addresses & other personal info can be given to the public.

Recommend preparing poster to be hung in each office - 1) how to request info; 2) cost per page; 3) public's right to know; 4) what to do for enforcement.

Each governmental unit should be required to keep a file of letters of denial that should itself be made public.

Burden of proof should rest with the governmental unit. Presumption in favor of disclosure

Comment SB 90

Page 4

Preliminary labor negotiations should be private.

Public is not even aware of what is available.

Public will be paying additional "thousands of dollars" to staff a government unit to produce these records.

Page 10, Section 4 - good faith defense should be clearly limited as applying only to impairing the availability of a public record.



Official Business

# Alaska State Legislature

Senate

Committee on State Affairs

Pouch V  
State Capitol  
Juneau, Alaska 99811

March 3, 1981

SENATE STATE AFFAIRS

COMMITTEE REPORT

ON

CSSB 90 ENTITLED "AN ACT RELATING TO PRIVACY AND PUBLIC INFORMATION; CHANGING RULE 65 OF THE ALASKA SUPREME COURT RULES OF CIVIL PROCEDURE; AND PROVIDING FOR AN EFFECTIVE DATE."

## Committee Substitute Bill Summary

The committee substitute makes a number of substantive and technical changes to the original SB 90. The following changes should be noted:

- 1) The committee substitute permits a reduction or waiver of copying fees in the public interest or if the requester is indigent. Sec. 40.25.015(d).
- 2) The committee substitute allows a person to obtain 20 pages of a record copied without charge within any 24-hour period. Sec. 40.25.015(d).
- 3) The committee substitute specifies four "unusual circumstances" which allow the governmental unit additional time to produce the records. Sec. 40.25.020(e).
- 4) The committee substitute reduces the number of exemptions from the duty to make disclosure from 17 to 12. Sec. 40.25.030(a).
- 5) The committee substitute states that all records become public after they are 50 years old unless specifically exempted from disclosure by state statute. Sec. 40.25.030(c).
- 6) The committee substitute provides a mechanism to allow a person whose privacy interests may be invaded unwarrantedly by disclosure of a public record to present arguments against disclosure to the governmental unit. Sec. 40.25.030(b).

- 7) The committee substitute provides a mechanism whereby individuals can compel government to correct or amend incomplete or inaccurate information in records pertaining to them.  
Sec. 40.25.060.

### Background

The current statutes AS 09.25.110 and AS 09.25.120 addressing access to public records were adopted in 1962. AS 09.25.125 concerning enforcement and injunctive relief was added in 1975.

A bill relating to privacy and public information was first introduced in the 9th Legislature, 1st Session by the then Representative Parr. From first introduction in 1975 and throughout each subsequent legislative session, the proposed legislation received exhaustive study by standing committees of each house and Free-Conference committees.

SB 90 was introduced on January 15, 1981, and referred to the State Affairs and Judiciary Committees. A Senate State Affairs Committee hearing was held on January 29, 1981 (see attached minutes - Exhibit A) and an all-sites teleconference on February 5, 1981 (see attached minutes - Exhibit B). A mark-up session was held on Tuesday evening, February 17, 1981. Consistent with public testimony and the committee input, CSSB 90 was drafted.

It is the Committee's intent that CSSB 90, or a form thereof, be enacted by this legislative session.

### Purpose of Committee Substitute SB 90

It is the intention that this legislation be interpreted and implemented in light of the policy that all records of governmental units are open to the public unless specifically exempted by provisions of this bill. The provisions exempting records should be interpreted in the narrowest possible sense, so that in cases of any doubt, the information should be made open to public inspection. The exclusions listed in the bill balance the sometimes conflicting rights of freedom of information and the right to privacy of the individual.

The committee substitute retains those sections of SB 90 that received virtually unanimous support during public testimony, including: (1) the prohibition against charging the public for

the costs of document searches; (2) the inclusion of municipalities within the coverage of the bill; and (3) the simplified injunctive relief provisions.

Major substantive changes to the original SB 90 include: (1) a reduction or waiver of copying fees in the public interest or if the requester is indigent; (2) allows a person to obtain 20 pages of a record copied without charge within any 24-hour period; (3) specifies four "unusual circumstances" which allow the governmental unit additional time to produce the records; (4) reduces the number of exemptions from the duty to make disclosure from 17 to 12 with the twelfth exemption exempting records from disclosure which would constitute an unjustifiable invasion of privacy; (6) all records become public after they are 50 years old unless specifically exempted from disclosure by state statute; (7) provides a mechanism to allow a person whose privacy interests may be invaded unwarrantedly by disclosure of a public record to present arguments against disclosure to the governmental unit; and (8) provides a mechanism whereby individuals can compel governmental units to correct or amend incomplete or inaccurate information in records pertaining to them.

It is the committee's desire that the Judiciary Committee consider the following when analyzing CSSB 90: whether medical records should be specifically exempted in light of the provision that all records become public after they are 50 years old and whether independent contractors paid with government funds should be included in the definition of governmental unit. Other concerns were the inclusion of original police entry records in the exemption section and whether there was a need to include a definition of "the right to privacy".

### Section Analysis

Sec. 1.

Sec. 40.25.010. Specifies the Findings and Purpose.

Sec. 40.25.015. Provides that all records are open to inspection and copying, and provides for a uniform fee schedule which may be varied in the public interest or if the requester is indigent.

Sec. 40.25.020. Establishes the duties and procedures of a governmental unit to follow when a request for documents is made.

Sec. 40.25.030. Specifies the exemptions.

Sec. 40.25.040. Allows individuals to have access to records that pertain to them.

Sec. 40.25.060. Provides a mechanism whereby individuals can compel governmental units to correct or amend incomplete or inaccurate information in records pertaining to them.

Sec. 40.25.070. Establishes court procedures to require the governmental unit to release the records.

Sec. 40.25.080. Gives a civil cause of action against a person wrongfully withholding records.

Sec. 40.25.090. Definitions section.

Sec. 2 and 3. Amends existing law AS 44.62.310 entitled "Agency meetings public" to remove the authority of a municipality to hold executive sessions other than in accordance with state law and adds a new subsection dealing with the State open-meeting law.

Sec. 4. Changes Rule 65 of the Alaska Supreme Court Rules.

Sec. 5. Repeals the existing "open records" statutes.

Sec. 6. Provides for the effective date of July 1, 1981.



SEN. VIC FISCHER, CHAIR




SEN. BRADLEY



SEN. COLLETTA



SEN. ELIASON



SEN. STIMSON



# Alaska State Legislature

## Senate

### Committee on State Affairs

Pouch V  
State Capitol  
Juneau, Alaska 99811

Official Business

Jan. 29, 1981

Behrends Bldg.

1:30 p.m.

First Floor

---

#### MEMBERS PRESENT

SENATOR FISCHER, CHAIRMAN  
SENATOR BRADLEY  
SENATOR COLIETTA

#### MEMBERS ABSENT

SENATOR ELIASON  
SENATOR STIMSON

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AGENDA: Senate Bill 90 "An Act relating to privacy and public information and changing Rule 65 of the Alaska Supreme Court Rules of Civil Procedure."

Chairman Fischer called the meeting to order and then requested testimony on Senate Bill 90. Eight persons testified on the bill (see attached sign-in sheet).

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Bruce Horowitz, supervising attorney of Alaska Legal Services, provided a written proposal for amendment of SB 90. He presented the proposed amendments individually and expressed general support of the legislation.

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Barry Stern, representing the Dept. of Law, emphasized in his testimony that existing statutes addressing freedom of information are inadequate. He further remarked that the constitutional provision for a right to privacy frequently conflicts with the public's right to know. The concept of the right to privacy is left up to the agency to decide. Mr. Stern stressed the need for guidelines in determining the scope of a person's right to privacy. He also maintained that the exemptions section of the legislation is too specific, and agreed to transmit to the committee written suggested language to amend this section.

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Chairman Fischer adjourned the meeting in light of the fact that scheduled time had expired.





Official Business

# Alaska State Legislature

## Senate

### Committee on State Affairs

Pouch V  
State Capitol  
Juneau, Alaska 99811

Feb. 5, 1981

Capitol Building

1:30 p.m.

Room 118

---

#### MEMBERS PRESENT

SENATOR FISCHER, CHAIRMAN  
SENATOR BRADLEY  
SENATOR COLLETTA

#### MEMBERS ABSENT

SENATOR ELIASON  
SENATOR STIMSON

---

AGENDA All-sites teleconference on SB90 "An Act relating to privacy and public information; and changing Rule 65 of the Alaska Supreme Court Rules of Civil Procedure."

Chairman Fischer opened the meeting and introduced SB90. He also called for those testifying and any others to send in written comments by the end of next week.

Testimony was received from the following:

From Fairbanks:

Dean Gottearer, Task Force for  
Professional Journalists  
Box 74573  
Fairbanks 99701

Susan Fischer  
Society of Professional Journalists  
Box 710  
Fairbanks 99701

From Anchorage:

Howard Weaver  
Daily News  
Pouch 6616  
Anchorage 99502

From Ketchikan:

Lew Williams, Editor  
Ketchikan Daily News  
501 Dock Street  
Ketchikan 99901

Exhibit B

Feb. 5, 1981

Page 2

From Kodiak: Jon Newstrom  
KMXT Radio  
P. O. Box 484  
Kodiak 99615

Deborah Nelson  
Kodiak Daily Mirror  
P. O. Box 1307  
Kodiak 99615

From Homer: Annabel Lund  
Managing Editor  
Homer News  
Box 254  
Homer 99603

From Fairbanks: Scott Sterling  
224 Nerland  
Fairbanks 99701

Jamie Bryson  
860B Yak Estates  
Fairbanks 99701

From Sitka: Ray Medlin  
Box 1339  
Sitka 99835

From Skagway: Lucinda Hites  
Box Three  
Skagway 99840

From Soldotna: Steve Rinehart  
The Peninsula Clarion  
Box 1341  
Kenai, Alaska 99611

From Anchorage: Bob Lohr  
Rural Cap  
327 Eagle St.  
Anchorage

From Palmer/Wasilla: Mark Harris

From Haines: Leo Land  
Box 122  
Haines 99827

From Nome: Stanley Summers  
KICY AM/FM  
Box 820  
Nome, Alaska 99762

Feb. 5, 1981

Page 3

From Fairbanks: Kent Sturgis  
Box 710  
Fairbanks 99701

From Anchorage: Kay Fanning  
Alaska Newspaper Assoc. & Daily News  
Pouch 6616  
Anchorage 99502

Ted Berns, Attorney  
Mun. of Anchorage  
Pouch 6-650  
Anchorage 99501

From Fairbanks: Tom Knapp  
Box 970  
Fairbanks 99701

Bruce Wammack  
913 Noble St.  
Fairbanks 99701

From Anchorage: Matt Zencey  
AKPIRG  
Box 1093  
Anchorage 99510

Mark Beltz  
343 W. 12th Ave.  
Anchorage 99502

From Ketchikan: Christine M  
KINB Radio  
Ketchikan 99901

Their comments are summarized as follows:

All testimony was in favor of the bill and strongly endorsed its passage. The majority felt that a definition of "right of privacy" needed to be established, that the question of fees for documents be looked at (it should not be a barrier), and that local municipalities and boroughs should not be able to opt out. Other testimony addressed the problem of tampering with public records and the problems that would occur if

Feb. 5, 1981

Page 4

if original entry police records were exempt from disclosure. Further testimony touched on difficulties with "sexist pronouns" in the language of the bill and the inclusion of state employees' performance records as public documents.

Chairman Fischer concluded the teleconference thanking participants for their constructive comments and requested written testimony be sent to the Senate State Affairs Committee by the end of next week.



Official Business

# Alaska State Legislature

Senate

Judiciary Committee

Pouch ✓  
State Capitol  
Juneau, Alaska 99811

TO: File  
FROM: Oleta Simmons  
DATE: April 5, 1981  
SUBJECT: SB 90

I talked with Shemie Shelly of APEA (586-2334) regarding the Friday, April 10 hearing of SB 90. She indicated that the following individual would like to be asked to testify before the committee:

Fred Muller, ext. 2200  
Deputy Commissioner of Personnel  
Department of Administration

/ods



Official Business

# Alaska State Legislature

## Senate

Pouch V  
State Capitol  
Juneau, Alaska 99811

### M E M O R A N D U M

TO: SEN. PAT RODEY, CHAIR  
JUDICIARY COMMITTEE

FROM: SEN. VIC FISCHER VF

DATE: MARCH 5, 1981

RE: SB 90, "Freedom of Information" Bill

Attached are a number of communications on this legislation received after Senate State Affairs Committee Mark-up and re-draft of the bill. Many of the issues raised were considered by our committee, but you may wish to give them some further attention.

# Municipality of Anchorage



POUCH 6-650  
ANCHORAGE, ALASKA 99502  
(907) 264-4545

GEORGE M. SULLIVAN,  
MAYOR

OFFICE OF THE MUNICIPAL ATTORNEY

February 24, 1981

Senator Vic Fischer  
Pouch V  
Juneau, Alaska 99811

Re: Senate Bill No. 90 - Public  
Information Statute

Dear Senator Fischer:

I apologize for the delay in responding to your request for information concerning the Municipality's position on the above referenced bill. Enclosed please find a copy of Chapter 3.90 of the Anchorage Municipal Code dealing with access to public records within the Municipality. As you can see, this ordinance is quite comprehensive in attempting to set standards and procedures for complying with requests for municipal information. With respect to Senate Bill No. 90, I am pleased, as I indicated during my teleconference testimony, that the proposed act seems much improved over earlier versions of this legislation submitted in previous years. Although I expect to conduct a more detailed analysis of the proposed bill and to provide input on the proposed legislation as it moves through the legislative process, I would like to offer the following preliminary observations at this time.

1. In the interests of protecting personal rights to privacy, I strongly support provisions in the proposed bill allowing state and local government personnel to protect personal information maintained in files on public employees and in other files in situations in which the release of such information would be an unwarranted invasion of privacy.
2. On page 4 of SB 90, proposed exemption no. 11 refers to trade secrets and other privileged information furnished in compliance with state statutes or municipal ordinances. This exemption appears somewhat narrower than the one found at AMC 3.90 which is intended to protect the rights of private business by preventing disclosure of any private business information which, if disclosed publicly, would create a competitive advantage to others in the marketplace. Specifically, I call your attention to Sec. 3.90 .040(F).

3. I also note that SB 90 does not appear to deal with at least two categories of information that I strongly feel should be in most cases given no disclosure or at least limited disclosure. One item is any type of preliminary costing or other analyses or documents prepared during the course of labor negotiations. I strongly suggest that members of your committee and other legislators consult with representatives of organized labor and seek other input concerning the affect which unlimited disclosure of this type of information would have on the chances for successful collective bargaining by state and local governments. I also do not see any reference to any type of confidentiality allowed for names and addresses of complaining witnesses in building code or health code violation cases. The Municipality presently allows such information to be received in confidence at the preliminary stage before the existence of any violation has been determined. Of course, if a violation is found and enforcement proceedings are commenced, the names of complaining witnesses are available for disclosure. The reason for this proposed exemption is to encourage persons to report problems that they believe to exist.

4. On page 6 of SB 90, the proposed AS 40.25.020 appears to require "immediate" production of any records in response to "any request" including, presumably, requests received over the telephone or in some other nonwritten form. I am concerned that the "immediate" standard is frankly unrealistic, especially in light of some rather serious penalty provisions provided elsewhere in the bill which presumably could be applied for failure to meet the "immediate" production requirement.

5. With respect to proposed section 40.25.025, it is not totally clear whether the court in following the expedited procedures set forth will be required to notify the municipality or the state to give government officials an opportunity to present their side of a disputed case. It seems that basic fairness would require that such notice be given so that government officials could, in legitimate circumstances, explain their reasons for attempting to protect particular categories of records or information.

6. On page 9 of the bill, proposed section 44.62.310 would appear to alter the present open meeting statute to provide that any staff conference or other administrative meeting would need to be open to the press or any other onlooker unless such a meeting followed the formal procedures prescribed for executive sessions of legislative bodies. Again, I question whether this type of standard is realistic and whether the authors of the proposed legislation have seriously considered how this provision might be abused.

7. Also on page 9 of the proposed bill, the legislation would delete the ability of municipalities to prescribe by ordinance matters which could be discussed in executive session. The

Senator Vic Fischer  
February 24, 1981  
Page 3

rationale behind this proposed deletion appears to be that somehow the state legislature is the only body capable of making the difficult policy decision as to when it might be necessary, in the best interests of the public, for a local legislative body to discuss certain matters in executive session. Since the procedures for calling an executive session are quite stringent and since (I would argue) local legislative bodies are susceptible to pressures from the media if they abuse their power to hold executive sessions, I question the wisdom of the proposed amendment.

I would like to thank you for the opportunity to testify at the teleconference hearing on SB 90, and I look forward to having continued input on the legislation as it progresses during the present session. As I indicated during my testimony, I would like to congratulate you and all of the sponsors of SB 90 for what I believe is an improved approach to this serious problem over previous attempts. If you have any questions concerning the above, please do not hesitate to contact me.

Very truly yours,

DEPARTMENT OF LAW



Theodore D. Berns  
Municipal Attorney

TDB:gml  
Enclosure  
cc: Mitch Gravo

## Chapter 3.90

### ACCESS TO PUBLIC RECORDS

#### Sections:

- 3.90.010 Policy of the municipality.
- 3.90.020 Definitions.
- 3.90.030 Information available to the public.
- 3.90.040 Exemptions for particular records.
- 3.90.050 Departmental regulation of time, place and manner of inspection of public records.
- 3.90.060 Response to requests for public records.
- 3.90.070 Ombudsman and community councils.

#### 3.90.010    Policy of the municipality.

It is the policy of the municipality to provide the fullest and most rapid public access to municipal records and information, so that the right of the people to remain informed is protected. In enacting this measure, the Assembly recognizes the competing interests of personal privacy and the right of the public to have access to information concerning the conduct of the people's business. This chapter shall therefore be liberally construed to require full disclosure of all public records in the possession or control of the municipality, except those specifically exempted under Section 3.90.040 of this chapter. (AO 77-50A).

#### 3.90.020    Definitions.

For purposes of this chapter:

- A. "Document" means any method of storing information, including but not limited to spoken words, handwriting, typewriting, printing, photostating, photographing and any other form of communication or reproduction, upon any medium, including but not limited to paper, magnetic or paper tape, photographic film or prints, magnetic or punched cards, discs, drums and phonograph records.

- B. "Municipal agency" means any department, division, board, commission or private contractor which has custody of public records as defined in this chapter.
- C. "Records" means any document containing information relating to the conduct of the people's business which is prepared, owned, used or retained by a municipal agency, regardless of the physical form or characteristic of the document. (AO 77-50A).

3.90.030 Information available to the public.

Except as provided by Section 3.90.040 of this chapter, or by other provisions of municipal, state or federal law, all public records shall be open to inspection by any person subject to guidelines regulating the time, place and manner of inspection which may be adopted by the manager pursuant to Section 3.90.050 of this chapter. The types of records and information open to public inspection pursuant to this chapter shall include but shall not be limited to the following:

- A. Financial and operational cost information, including information as to revenues, expenditures, indebtedness, departmental budget requests and formal departmental recommendations in regard to project priority.
- B. Information relating to contracts to which the municipality is a party, including payment provisions, information relating to bids and requests for proposals received or solicited by the municipality, and information relating to the status of goods or services furnished pursuant to contract.
- C. Regulatory, financial, assessment and tax information concerning real property located within the municipality.
- D. Salary levels and fringe benefits accorded municipal officers and employees by law, including information in regard to the pay range and step grade of an employee or officer, and statistical analyses or compilations relating to municipal practices and policies concerning compensation for various occupational groups, departments and divisions.
- E. Statistical information and analyses concerning case loads, numbers and categories of persons for whom services were performed or treatment provided, results achieved and per patient and per unit cost.

- F. Feasibility, management, cost effectiveness and similar reports prepared by the municipality with municipal moneys.

The foregoing enumeration of information available for public inspection is not designed to limit the categories of records and information that shall be made available to the public pursuant to this chapter. The policy of providing public access to public information shall be broadly and liberally construed. (AO 77-50A).

3.90.040 Exemptions for particular records.

This chapter shall not be construed to require disclosure of:

- A. Communications between any agency and the municipal attorney's office which contain legal questions concerning pending or actual litigation. This subsection does not protect from disclosure documents which were public records prior to the commencement of the litigation, and public records which are otherwise subject to disclosure may not be protected from disclosure by mere submission to the attorney.
- B. Personnel, payroll or medical files, Equal Rights Commission files or other files which reveal the financial or medical status of any specific individual, the release of which would constitute an unwarranted invasion of privacy.
- C. Police investigation files compiled by any agency as a part of an investigation of criminal activity, except that such records may be released to other governmental agencies if necessary to the proper administration of justice. Police information practices in regard to criminal justice information shall be governed by the provisions of AS 12.62.010 et seq. and the regulations promulgated thereunder.
- D. The name, address, telephone number or other identifying information about complainants in actions to enforce building, zoning, environmental or other municipal ordinances or regulations.
  - 1. This subsection does not prohibit disclosure of the contents of the complaint, so long as the complainant is not identifiable.

2. This subsection does not prohibit disclosure of the name of the complainant when such disclosure becomes necessary to fair and just disposition of the charge or complaint in enforcement proceedings.
- E Records held by the Port of Anchorage or any public utility pertaining to any client, customer or subscriber, the release of which would constitute an unwarranted invasion of the privacy of that customer.
- F Records or engineering or other technical data, which, if released would provide a competitive advantage to any other person or corporation engaged in similar or related activities.
- G Proprietary information which a manufacturer, consultant or provider reasonably requires to be kept privileged or confidential to protect the property interests of persons providing the information or data.
- H Information which municipal governments engaged in collective bargaining regularly consider to be privileged or confidential for purposes of successful collective bargaining.
- I Information obtained by and in the custody of insurance carriers insuring the municipality and their attorneys and agents regarding possible and pending claims against the municipality.
- J Health, mental health, medical, juvenile and personality problem information obtained or prepared by the municipality with respect to any person for whom treatment or services were provided.
- K Personal information other than name and address given to the municipality with the legitimate expectation of privacy in conjunction with licenses, permits or other municipal services. (AO 77-50A).

3.90.050     Departmental regulation of time, place and manner of inspection of public records.

The mayor shall, pursuant to Chapter 3.20, adopt municipal regulations for each municipal department as to the time, place and manner of inspection of public records held by the municipality. Such regulations may also provide:

- A. That a fee may be required. The fee shall not exceed the actual cost to the agency. No fee shall be charged when a person simply requests access to the information. In the event the person is unable to pay any requested fee, and signs an affidavit to the effect he or she is indigent, there will be no cost to the above-described person.
- B. The form in which the specified documents shall be made available. Documents need not be reproduced in the exact form or medium in which they are stored. However, any alteration of the form or medium of public records shall not change the substantive content of the information contained in the public record. When the actual content is changed, the nature of the change and why it was necessary shall be communicated to the requester.

Regulations adopted pursuant to this section shall be posted in a conspicuous manner at the place designated for inspection of each department or agency's documents. (AO 77-50A, am AO 79-27).

3.90.060      Response to requests for public records.

All municipal officers and employees shall, consistent with the orderly conduct of municipal business, make a good faith and diligent effort to provide a rapid and intelligible response to requests for inspection of records made pursuant to this chapter. To effect this policy, the following guidelines are adopted.

- A. Information pursuant to this chapter shall be furnished promptly to the requesting party unless the information requested is declared privileged or confidential pursuant to applicable federal, state or municipal law. If the officer or employee considers the information to be privileged, he shall prepare a slip setting forth the date, the item of information requested, the specific provision of applicable state, federal or municipal law exempting the requested information from disclosure, and the title and signature of the person withholding the information. A copy of this slip shall be provided to the party requesting the information. If an officer or employee of the municipality called upon to furnish information pursuant to this chapter is uncertain as to whether or not the material sought is privileged or otherwise exempt from disclosure, he or she shall

indicate this on the slip, and shall further identify his or her supervisor so that the request for inspection of documents may be submitted to the officer or employee authorized to make a decision on the matter. A copy of this slip shall be given to the requesting party.

- B. Any denial of a request for information or inspection of public records shall be automatically appealed to the mayor, and a written reply will be given within seven working days either granting or denying the appeal.

Any appeal from the clerk's office or ombudsman's office shall go to the Assembly. Any appeal from the school district shall go to the School Board.

- C. All requests for records and information made pursuant to this chapter shall be responded to within a reasonable time period. If the records and information cannot be located in time to make a response within two working days of the request, the requesting party shall be promptly advised, and, if the requesting party still desires the information or records, a reasonable and diligent search shall be made for it. (AO 77-50A).

3.90.070      Ombudsman and community councils.

Nothing in this chapter shall be construed to increase or diminish the rights, powers and responsibilities accorded to the municipal ombudsman, or the various community councils pursuant to separate ordinance. (AO 77-50A).

# ALASKA ANTHROPOLOGICAL ASSOCIATION

N

PRESIDENT  
KATHERINE WORKMAN  
3310 E. 41st Ave., Anchorage, Alaska 99504

BOARD OF DIRECTORS  
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ROBERT SHAW USFWS  
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DOUGLAS VOLTRE ACC  
WILLIAM WORKMAN UA ANCHORAGE

February 26, 1981

Senator Vic Fischer, Chairman  
Standing Committee on State Affairs  
Pouch V, State Capitol  
Juneau, AK 99811

Dear Senator Fischer:

The purpose of this communication is to comment on Senate Bill 90. Freedom of information in state government is crucial to encourage public input and insure that operations are conducted in a forthright manner.

It is realized that the release of all information is neither useful nor in the best interests of all citizens, thus your bill calls for several useful exclusions. One category that is not protected in the bill is archaeological sites. I ask that access to information on locations of these endangered properties be somewhat restricted.

Presently the Office of History and Archaeology serves both research and preservation functions. The Alaska Heritage Resources Survey provide the ongoing inventory of known sites. The state employed archaeologists readily offer locational information to responsible persons engaged in land planning, development, or academic reports. Recently the Division of Parks sanctioned the Office of History and Archaeology to withhold specific site location information to a very few unscrupulous individuals whose intent, based upon their past actions, was to damage archaeological sites in the process of gaining artifacts for sale in a thriving but illegal antiquities market. Senate Bill 90 might once again permit and even condone this abuse unless protective exclusions for site locational data are maintained.

A visit to a site that has suffered from these unprincipled despoilers is a saddening experience. Huge random holes, much like bomb craters scar the surface. Desecrated human burials are evident from scattered bones. Simple or common artifacts are discarded in favor of a few choice pieces of ivory to be shipped

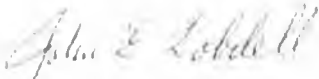
Senator Vic Fischer  
Page 2  
February 26, 1981

out of state and sold at obscene profits. Ancient environmental data is ruined. Scientific information, once out of natural context, becomes worthless.

Archaeologists, in scientifically excavating a site, engage in limited and controlled excavations. The goal is to reconstruct past lifeways through careful study of all ecofacts and artifacts. Most importantly, after careful study the collections are placed in museums so that all Alaskans can view and enjoy the ancient remains.

I applaud the general intentions of this bill and its authors are to be commended. I would, however, respectfully recommend that the bill be modified to exclude specific cultural resource site locational information. Many ancient sites have unfortunately succumbed to natural erosion. These losses could be greatly compounded by the few persons who would wantonly rob us of a delicate record of human heritage. Continued protection by the State of Alaska can only be viewed as sound management of scarce resources and certainly in the best interests of all Alaskans.

Very respectfully,



John E. Lodbell, Ph.D.  
Chairman, Archaeology Advocacy Committee  
Alaska Anthropological Association

/lke

# STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

## DEPARTMENT OF LAW

CRIMINAL DIVISION

POUCH KC - STATE CAPITOL  
JUNEAU, ALASKA 99811

February 6, 1981

The Honorable Vic Fischer  
Chairman, Senate State Affairs Committee  
Alaska State Senate  
Pouch V  
Juneau, Alaska 99811

Re: SB 90

Dear Senator Fischer:

At the January 29, 1981 meeting of the Senate State Affairs Committee you requested that I provide the Committee with proposed amendments to SB 90, An Act relating to privacy and public information. Additionally, you requested that I incorporate as many suggestions for amendments that were raised during public testimony that would be consistent with the administration's proposed procedural regulations on public records and the general approach to the subject adopted by the Department of Law after consulting with other state agencies.

To this end, I have drafted and enclosed for your Committee's consideration a proposed committee substitute for SB 90. Additionally, I have prepared a draft of commentary to accompany the legislation. The commentary should naturally be expanded and revised to provide evidence of legislative intent as the bill itself is revised. The draft commentary highlights the differences between the proposed committee substitute and SB 90.

While the proposed committee substitute makes a number of substantive and technical changes to SB 90, the following changes should be noted:

1. The proposed committee substitute permits a reduction or waiver of copying fees in the public interest, consistent with public testimony and the administration's proposed regulations on the subject. Sec. 40.25.015(d).
2. The proposed committee substitute allows a person to obtain 20 pages of a record copied without charge within any 24-hour period, consistent with public testimony and the administration's proposed regulations on the subject. Sec. 40.25.015(d).

3. The proposed committee substitute specifies a reasonable time frame to permit a governmental unit to search for and locate a requested record and to determine whether an exemption to disclosure applies. This approach is consistent with the administration's proposed regulations on the subject, prior versions of the bill, and the federal act. Sec. 40.25.020.
4. The proposed committee substitute reduces the number of exemptions from the duty to make disclosure from 17 to 12. This approach is consistent with general public testimony on the bill. Sec. 40.25.030(a).
5. The proposed committee substitute specifies guidelines that are to be used by government in determining whether disclosure of a particular record would constitute an unwarranted invasion of privacy. Though not specifically defining the "right to privacy", the guidelines are consistent with public testimony that has requested clarification on this issue. Sec. 40.25.030(b).
6. The proposed committee substitute provides a mechanism to allow a person whose privacy interests may be invaded unwarrantedly by disclosure of a public record to present arguments against disclosure to the governmental unit. Sec. 40.25.030(c).
7. The proposed committee substitute provides a mechanism whereby individuals can compel government to correct or amend incomplete or inaccurate information in records pertaining to them. Sec. 40.25.060.

It also should be noted that the proposed committee substitute retains those sections of SB 90 that received virtually unanimous support during public testimony, including: (1) the prohibition against charging the public for the costs of document searches; (2) the inclusion of municipalities within the coverage of the bill; and (3) the simplified injunctive relief provisions.

There is likely to be some disagreement as to several of the changes made by the proposed committee substitute. Most notably, employee personnel evaluations and the names of crime victims are exempt from public disclosure under the proposed committee substitute. However, these relatively minor areas of disagreement should not detract from the general consensus that has developed on the need for legislation on the subject and the significant areas of agreement among all proposals.

I will, of course, be available to discuss this matter further with you at your convenience and to answer any questions that the proposed committee substitute may raise. In the meantime, I look forward to working with the committee during mark-up of SB 90. I have taken the liberty of copying Senator Parr with this letter, the proposed committee substitute and the draft commentary, as I know that as the bill's primary sponsor he will take particular interest in reviewing the changes made to SB 90 by the proposed committee substitute.

Very truly yours,

WILSON L. CONDON  
ATTORNEY GENERAL

DANIEL W. HICKEY  
CHIEF PROSECUTOR

By: 

Barry Jeffrey Stern  
Assistant Attorney General

BJS:dm

cc: The Honorable Charles M. Parr  
Alaska State Senate

Wilson L. Condon  
Attorney General

Jerry Reinwand  
Executive Assistant to Governor

Keith Specking  
Legislative Assistant

Art Peterson  
Assistant Attorney General



OFFICE OF THE FEDERAL INSPECTOR  
ALASKA NATURAL GAS TRANSPORTATION SYSTEM  
POUCH 6619, ANCHORAGE, ALASKA 99502  
907-271-3668

4 FEB 1981

The Honorable Vic Fischer  
Alaska State Senate  
Pouch V  
Juneau, Alaska 99811

Dear Senator Fischer:

The State Affairs Committee is holding public hearings on Senate Bill No. 90 introduced by you, Senators Parr, Stimson and Rodey. The Office of the Federal Inspector, Alaska Natural Gas Transportation System (ANGTS) has reviewed the bill and urges the State Affairs Committee to consider its comments. AS 09.25.120, one of the statutes which would be repealed by SB 90, sets out various exceptions to public disclosure. One category of documents excepted from public disclosure by AS 09.25.120 is "documents required to be kept confidential by a federal law or regulation..." This exception should be included in any legislation addressing freedom of information in this State.

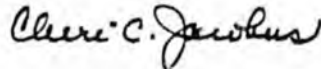
This exemption is important both to the current Alaska natural gas pipeline construction project and to other relations with the federal government. The State Pipeline Coordinator's Office and the Federal Inspector's Office enjoy a free flow of information between them which helps both agencies to adequately monitor construction of the gasline. The State and the Federal Inspector's Office are negotiating a joint agreement which in part addresses the confidentiality of documents exchanged between them, and the agreement depends on the existence of a State statute exempting such documents from public disclosure. Any change will jeopardize this interchange of documents between the Federal Inspector and the State Pipeline Coordinator.

With these concerns in mind, the Federal Inspector's Office recommends that the legislature clearly include this exemption in SB 90 by changing the proposed Sec. 40.25.015(e)(1) to read as follows:

(1) Those exempted from disclosure by State statute or required to be kept confidential by federal law or regulation;

Thank you for the opportunity comment on SB 90.

Sincerely,



Cheri C. Jacobus  
Attorney

RECEIVED

~~FEB 19 1981~~

February 19, 1981

FEB 2 1981

Mr. Stanford J. Grayson  
Professional Accountancy Coordinators  
P. O. Box 16780, Plantation Branch  
Fort Lauderdale, Florida 33318

Dear Mr. Grayson:

Thank you for sending the materials concerning SB 90.

The bill is under consideration by the Senate State Affairs Committee and I am forwarding the materials you sent to the Chairman of that Committee for his possible use. Also, I will see that the material goes to the Chairman of the Judiciary Committee.

Sincerely,

Charles H. Parr

CHP:vc

cc: Senator Vic Fischer  
Chairman  
State Affairs Committee

Senator Pat Rodey ✓  
Chairman  
Judiciary Committee

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## PROFESSIONAL ACCOUNTANCY COORDINATORS

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TELEPHONE: 741-1403 AREA CODE 305

P.O. BOX 16780 PLANTATION BRANCH  
FT. LAUDERDALE, FLORIDA 33318

February 11, 1981

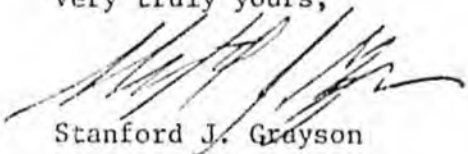
Senator Parr  
The Senate  
Pouch "V"  
Juneau, Alaska 99811

Dear Senator Parr:

It was pleasant speaking to you by telephone today and we are certain that the educational organizations would appreciate and need the enclosed amendment to S90. Various other materials are enclosed. The furtherance of education is of course in the public interest.

Assuring you of our interest and cooperation at all times, I remain

Very truly yours,



Stanford J. Grayson

SJG:ng

*Amendment to S90*

Nothing in this act shall prohibit the release of only names and addresses of persons applying for or possessing licenses to engage in professional occupations, for the purpose of providing such persons with informational materials relating to available professional educational materials and courses.

DONNA J. CARLSON  
447 WEST HILLVIEW CIRCLE  
MESA, ARIZONA 85201  
CAPITOL: 255-4002

DISTRICT 28



Arizona House of Representatives  
Phoenix, Arizona 85007

THIRTY-FOURTH LEGISLATURE  
1979-1980

COMMITTEES:  
COUNTIES & MUNICIPALITIES  
CHAIRMAN  
COMMERCE  
HUMAN RESOURCES  
JUDICIARY  
NATIONAL CHAIRMAN  
AMERICAN LEGISLATIVE  
EXCHANGE COUNCIL

December 28, 1979

Dear Colleague:

Re: "Professional and Occupational Freedom of Information Act"

Soon you will be receiving the "Source Book for State Legislators" (formerly entitled Suggested State Legislation) published by the American Legislative Exchange Council (ALEC). The 1980 edition compiled by a geographically selected committee, contains many fine innovative legislative proposals.

Hearings were held in Washington, D. C. in June and the committee selected 20 bills, some are updates from earlier editions and some are new concepts. As usual, we had more good bills than time and space would allow us to handle. We also received several excellent bills after the hearings were held. One such bill is the reason I am writing you.

The bill, which is enclosed, is called the "Professional and Occupational Freedom of Information Act", and at the request of a majority of the ALEC Suggested State Legislation Committee, I am submitting the bill for your consideration in hopes that you will review it's applicability to your particular state.

If you are interested in introducing the legislation, a complete file of research information will be available through my office.

Sincerely,

A handwritten signature in cursive script that reads "Donna Carlson".

DONNA J. CARLSON  
Chairman ALEC

DJC:md  
Enclosures

PROFESSIONAL AND OCCUPATIONAL FREEDOM OF INFORMATION ACT

Section 1. Title

This act shall be known as the "Professional and Occupational Freedom of Information Act".

Sec. 2. Findings; purpose

The legislature finds that:

1. State privacy acts enacted to protect individuals from having personal information contained in their applications for licenses released for public consumption has barred such applicants from receiving valuable information from bona fide professional and occupational services and educational organizations which are on occasion necessary for the applicant or licensee to meet state requirements for initial qualifications, renewal of license or continuing education required or encouraged by statutes or rules and regulations. This result is unintended and is not in the public interest.

2. The purpose of this act is, in furtherance of the public interest, to make available to professional and occupational services and educational organizations lists of applicants and licensees of related professions and occupations to aid in the receipt of informational materials relating to available current professional or occupational educational materials or courses for compliance with licensing requirements and for continuing education..

Sec. 3. Definitions

1. "Information" means any recorded data maintained by an occupational licensing agency regardless of its form relating to a person's name, title, current address, whether a person is an applicant or licensee.

2. "Maintain" means hold, possess, preserve, retain, store or exercise administrative control over.

3. "Occupational licensing agency" means any unit of government of this state or political subdivision of this state with the authority to grant, deny, suspend or revoke a license or other authorization to practice any profession or occupation in this state.

4. "Professional or occupational service or educational organization" means any person, business, group or institution, public or private, organized to provide formal or informal educational materials or courses to persons seeking initial qualification, licensure, license renewal or continuing education for any profession or occupation.

Sec. 4. Access to information

Notwithstanding any other provision of the law of this state, an occupational licensing agency shall provide access to information maintained by such agency for purposes of inspection or copying to any professional or occupational service or educational organization which request such information for the sole purpose of such organization providing applicants for licenses or licensees with informational materials relating to available current professional or occupational educational materials or courses.

Sec. 5. Exemptions

1. Nothing in this Act shall be construed to require disclosure of the following:

(a) Investigative information compiled for law enforcement purposes if disclosure would:

(i) Interfere with an ongoing investigation or law enforcement proceeding.

(ii) Disclose the identity of a confidential source.

(iii) Disclose confidential investigative techniques and procedures not known to the general public.

(iv) Endanger the life or physical safety of any individual.

(b) Testing or examination material used solely to determine individual skills or qualifications, if disclosure would compromise the objectivity or fairness of the testing or examination process.

2. If a person requests information containing material that is exempt under this section, the agency shall delete the exempt portions of the record and provide any reasonably segregable portion of the remainder of the record to the person requesting it.

Sec. 6. Judicial review; penalty

1. Any professional or occupational service or educational organization whose request for access to information has been denied may bring an action to compel the production of records alleged to have been improperly withheld. The court in the district in which the information is maintained has jurisdiction over an action under this section. The burden of proof is on the agency to sustain a claim of exemption.

2. If the complainant prevails in any action brought under this section, the court shall assess against the occupational licensing agency reasonable attorneys' fees and reasonably incurred litigation costs.

## SUMMARY SHEET

Numerous states have adopted, considered or will consider "privacy acts" barring public access to governmental information regarding private citizens, including applications for licenses and licensee records maintained by State and local professional and occupational licensing agencies. Some have recognized the need to continue the flow of educational materials to applicants for licenses and licensees by commercial and non-profit organizations, and have accordingly provided a statutory exemption for this purpose, e.g., California, Florida, Massachusetts, Montana, Virginia and Washington.\* While 23 Attorneys General opinions and the courts of Colorado, Connecticut, Georgia, Indiana, Massachusetts, New Jersey, Pennsylvania, Tennessee and Utah have determined that the release of the names and addresses of applicants and licensees for educational purposes "is in the public interest", enactment of a privacy act without a statutory exemption could forbid access where the interest is valid and proper. (Attorneys General opinions have been issued in Arkansas, California, Delaware, District of Columbia, Florida, Georgia, Idaho, Kansas, Kentucky, Louisiana, Massachusetts, Minnesota, Missouri, Nebraska, New Hampshire, Ohio, Oklahoma, Pennsylvania, Puerto Rico, South Dakota, Texas, Virginia and Washington.)

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\* Additionally, two states (Illinois and Michigan) have limited exemptions.

CPA candidates rely upon our professional and graduate levels of instruction. The CPA Examinations are so extremely difficult today \*\*\* that only 15% to 25% pass of those who do not attend a CPA review school. Most CPA candidates sit for CPA Examinations approximately three years after leaving college and in most cases our instruction is extremely necessary for them, due to the difficulty of the examinations. There is no other effective reasonable means of reaching these CPA candidates of our course offerings, other than through use of the list below. In our profession there is a desperate need for more CPA's, not less.

It is so important to permit the copying of CPA registrants' names and addresses because it is considered to be in the public interest to such an extent that it is specifically mentioned in various states' accountancy statutes. For example, note attached Illinois and Florida statutes which state that it is in the public interest and not an invasion of privacy that the names and addresses of registrants for CPA Examinations are public records and should be revealed as public information. Even of more significance is the rest of the paragraph in these Acts, which shows the desire of these CPA Boards and their Legislatures to keep all the other information about an applicant confidential, but they have particularly gone out of the way to state and recognize into law this one very important exception. What better proof is there than the fact that CPA Boards feel that candidates' names and addresses are a public record which can be revealed and should be revealed in the public interest for accounting education purposes. Why would they specifically and purposefully insert this into the Law? Why didn't these statutes just state all information about a candidate should be secretive? These statutes contain this important exception because they favor education similar to practically all the other states, and decided that candidates' names and addresses should be available to all educational organizations.

49 States have agreed and are presently furnishing us with similar inspections. Therefore it is clear that the overwhelming majority of the states agree with our request, and it has been proven to be in the public interest for many reasons. The major obvious reasons are:

- 1) Professional education is in the public interest and these persons should possess the highest technical proficiency attainable. Their high competence is necessary because the state licenses them to serve the general public. The exemption is not for a specific profession but rather for the entire general professional field. This long standing practice of continuing education is needed for all professions and should be continued similar to past years. Other states' Committees have also recognized this fact and have included similar exemptions in their Freedom of Information bills.
- 2) The furtherance and availability of accountancy and other professional education.
- 3) It is the easiest method for CPA and other professional registrants to know of the availability of all of these educational courses to choose from with the least effort.
- 4) Serves as an informative circular to remind them of the detailed contents and starting dates, etc. of these courses.
- 5) Reduces the cost of these courses to the candidates because the mail offerings are the most practical for the course management; these specialized courses cannot be advertised in any mass media because accounting candidates are a tiny percentage of the general population, and we cannot advertise for example in our professional magazine effectively (although we have tried this but it hardly reaches these candidates) because

these registrants are not members of the professional societies and therefore do not receive a professional magazine. Solicitations in colleges are ineffective because most CPA candidates sit for the Examinations a few years after graduating from college.

In making this information available to educational organizations, it is not an invasion of a person's privacy by merely mailing him our course offerings. These educational course offering circulars describe us, not the recipient. It is inconceivable the mere receiving of an educational course offering in the mail that is printed (no personal letter to the recipient included) be an unwarranted invasion of privacy and against the public interest. On balance, greater weight should be given to the furtherance of professional accountancy education rather than secrecy of these records. It is unreasonable to conclude that recipients (and especially knowledgeable professionals who are intelligent sufficiently and can distinguish between various offerings) are so supersensitive that their privacy is ruined by the mere receipt of an informative educational circular. The purpose of the present Bill is for greater dissemination of information and against secrecy, and for the protection of a person's confidential background. We are not interested in the personal detailed data concerning a registrant's background and history, but only the impersonal names and addresses of all professional licensee registrants. Surely the mere copying of names and addresses for professional educational purposes only, should be allowed because it is not against the public interest. We certainly need more and better educated professional candidates.

\*\*\*All CPA review schools raise passing percentages from 25% to 70% on the average, because of their intensive review courses.

THE FOLLOWING DOCUMENT(S) MAY NOT FILM  
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ORIGINAL.

TO: Nancy Groszek, Staff Member, Senate State Affairs Committee

FROM: Dean H. Gottehrer, Alaska Freedom of Information Task Force  
P. O. Box 74573, Fairbanks 99707

# Society of Professional Journalists

Farthest North Chapter  
Box 74573  
Fairbanks, Ak. 99707

Sigma Delta Chi

January 26, 1981

## Members

Senate State Affairs Committee  
Alaska State Legislature  
Juneau, Alaska

Dear Committee Members:

On behalf of the Alaska Freedom of Information Task Force, I thank you for the opportunity to submit written testimony on Senate Bill 90. The FOI Task Force was organized by the Farthest North Chapter of the Society of Professional Journalists and numbers nearly 40 members, among them most of the state's daily newspapers, many weekly papers, broadcast stations, magazines and other media organizations. The Task Force is dedicated to seeking the passage of a Freedom of Information bill that will bring government out of the shade where the people's business is being hidden and keep it in the sunshine where that is presently the case.

I have urged our members to judge any proposed legislation against the current law. On that standard I believe SB 90 rates high. It includes all branches of state government, covers municipal and borough governments and provides for speedy access to inspect government documents. Generally, it sides with free and open government so that the people may know what is being done in their name. For the most part the exclusions listed in the bill are rational and legitimate and balance the sometimes conflicting rights of freedom of information and the right to privacy of the individual.

There are, however, some areas of the bill we would like to see changed. Presently the bill contains no definition of the right of privacy. We believe the Legislature, following the constitutional mandate should define that right. We suggest the following definition from the Restatement of Torts: Privacy is that right of an individual to be protected against publicity of a matter concerning that individual's private life when the matter publicizes his of a kind that (a) would be highly offensive to a reasonable person and (b) is not of legitimate concern to the public.

We believe the exclusion listed in Sec. 40.25.015 (e)(8) should be stricken from the bill. It is of such a general nature that many records the Legislature would probably want public could be withheld under that exclusion. Sec. 40.25.015 (13) concerns us for two reasons. First, it potentially excludes original entry police records--those documents completed when a suspect is taken into custody. One of the roles of the press historically has been to see that no individual is held by the police unjustly and closing original entry records makes that a much greater potential hazard. Second, (C) of (13) speaks of an unjustifiable intrusion into a person's right of privacy. If that language is to remain here and in other sections of the bill we believe a definition is needed of what is a justifiable intrusion. Since that seems almost impossible, we would prefer to see

Dedicated to Professionalism in Journalism

January 26, 1981

that language removed. We don't want to see the police or other governmental unit employees left with the impression that anything unflattering is private.

In a suit for disclosure, the burden of proof should rest with the governmental unit to prove it was required not to release requested information. The courts should be instructed to presume in favor of disclosure.

Each governmental unit should be required to keep a file of letters of denial of information requests that should itself be public. This would allow easy monitoring of governmental units to determine whether they are complying with the law.

The bill does not clearly include computer maintained records as it should. The section defining records should be amended to include "information stored in a computer system." Independent contractors paid with government funds should also be included in the bill's coverage. The definition of governmental unit should include "independent contractor paid with public money in whole or in part and under the supervision of any of the above groups or units."

Whether the state should charge for document copies and how much is a question that has plagued us for some time. Some members believe the media should not be charged since they are doing the public's business when requesting documents while researching a story. Others are willing to pay. No one, however, believes a governmental unit should charge more than the actual copying cost. The method contained in the Governor's proposed regulations is a good compromise. Each requestor receives 20 pages free of charge in any 24 hour period. Above that the charge is 10 cents per page. Currently a great variety of charges exists among agencies. It would help all if the Legislature standardized these charges.

Finally, one last concern. Sec. 4 of the bill on page 10 makes a good faith reliance on AS 40.25 or other law governing confidentiality of public records a defense against the crime of tampering with public records. This defense should be clearly limited as applying only to impairing the availability of a public record and not to any of the other actions listed in AS 11.56.020.

The task you have before you is not an enviable one. You will be urged to exclude this or that branch of government, this or that agency, one or another of a multitude of types of records from coverage under the bill. As you address each of these requests, I ask that you recall that all of these governmental units exist because they are supported with public monies. The public has a right to know what is being done with these funds. Government in the sunshine is best for all people. Keeping government open primarily benefits the people--not the media. Remember that 75 percent of all requests under the federal freedom of information laws come from non-media sources and only 25 percent from the media.

Sincerely yours,



Dean M. Gustabrer  
Chairman

Alaska Freedom of Information Task Force

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LEGIBLY BECAUSE OF POOR QUALITY OF THE  
ORIGINAL.

# Alaska Newspaper Association

c/o Box 710, Fairbanks, AK 99707

## FOUNDING MEMBERS

Incorporated Dec 6, 1980

ROBERT B. ATWOOD

*The Anchorage Times*

KATHERINE FANNING

*Anchorage Daily News*

LOREN STEWART

*Cheechako News, Kenai*

MAX SWEARINGEN

*Peninsula Clanon, Kenai*

GLEN COBB

*The Frontiersman, Palmer*

TOM GIBBONEY

*Homer News*

JIM C. MARTIN

*Alaska Journal of Commerce*

G. KENT STURGIS

*Fairbanks Daily News Miner*

LEW WILLIAMS

*Keetchikan Daily News*

CARL SAMPSON

*Juneau Empire*

TOM SNAPP

*The Alaska Weekly*

January 27, 1980

Sen. Vic Fischer, chairman  
State Affairs Committee  
Alaska State Senate  
Pouch V  
Juneau, AK 99811

Re: Senate Bill 90

Dear Sen. Fischer:

I'm unable to attend your committee's hearing Thursday on SB90, the FOI and privacy bill, but wanted you to know our organization will be following this legislation closely and look forward to helping improve it.

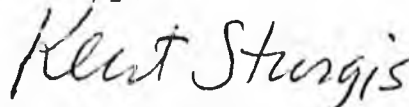
Also, we appreciate the fact you have demonstrated the importance of the FOI-privacy issue by scheduling a hearing so early in the session.

The Alaska Newspaper Association has not taken a position on SB90 but is encouraging its members to study the measure and offer comments and suggestions on an individual basis. In the meantime, we endorse the suggestions made by Prof. Dean Gottehrer of the Alaska Freedom of Information Task Force, of which the ANA is a member.

Generally speaking, it's our belief SB90 is a step in the right direction.

Thank you again.

Sincerely,



Kent Sturgis, chairman  
ANA Legislative Committee

cc: Kay Fanning, Anchorage  
Dean Gottehrer, Fairbanks

February 13, 1981

To: Senate State Affairs Committee  
Senator Vic Fischer, Chairman  
All Members of the Committee

From: Ginny Chitwood, Executive Director  
Alaska Municipal League

Re: SB 90 - Privacy and Information Act

Municipalities realize the need for the public to have reasonable access to municipal records. However, the provisions in SB 90 go further than what the Alaska Municipal League considers reasonable. We can foresee many unfair burdens placed on municipalities if this bill passes in its present form. Some are as follows:

Records produced "immediately" - This would place the request for a public document as first priority over all other conduct of the government's business. A more reasonable approach would be to allow ten days as provided by the federal government. This, at least would allow determination as to whether or not the document being requested would fall under the list of exemptions and therefore not be required to be produced or whether or not it was in the public's interest to be produced. If illegal releasing of information is done by a municipal employee, the municipality would be open to a fine which means the municipal attorney would have to review all requests.

"Direct cost" - Some documents are readily available. However, it is possible and likely that to produce other documents would involve a great deal of time; searching thru archives, records of years past in storage, etc. Most of our communities do not have sophisticated retrieval systems and the amount of time needed to locate said document could take up a good portion of the employees time. The League feels the word "direct" should be deleted from page 2, line 21, or at least defined to include labor involved by the municipal employee in the search for the document that has been requested.

Subjects for executive session - The League feels the municipality is the best judge of what should be considered confidential and objects to the deletion of the right to establish these subjects by charter or ordinance (page 9, lines 28 and 29.) Procedures for charter ratification and ordinance adoption afford adequate safeguards ensuring that local actions reflect local opinion.

Secs. 140 and 150 establish the requirements of financial disclosure. Note that financial disclosure is by "category" rather than by dollar amount. Sec. 150(a).

Sec. 160 details prohibitions on activity considered a conflict of interest. Special conflict of interest provisions for legislators appear at Sec. 170. Government contracting is regulated as Sec. 180. Conflicts of interest in employment are covered in Sec. 190. A state official or state employee other than legislator who has a personal situation that presents ethical problems is directed to a course of conduct under Sec. 210.

Sec. 220 deals with similar problems for a legislator.

Disclosure of confidential information is regulated under Sec. 240.

Sec. 250 regulates the conduct of former state officials or state employees for two years after termination of state service. Penalties are established in Sec. 260. Commission remedies for violations are established under Sec. 270, including civil penalties. Direct citizen action is authorized under Sec. 280.

The definitions section, Sec. 400 is a mix of the familiar and the new. Essentially no change was made in the list of public officials for whom financial disclosure is required. The term "candidate" is defined.

The term "gift" excludes campaign contributions reported under AS 15.13.

Secs. 3 - 19 of the bill respond to the implications of the repeal of AS 39.50 and portions of AS 15.13 and 24.45.

The Act takes effect July 1, 1981.

RAB:ljb



February 11, 1981

State Affairs Committee  
Pouch V (MS 3100)  
Juneau, AK 99811

The City of Kodiak would like to voice our strong objection to both the passage of SB 90 - Privacy and Public Information Act, and also to consider including municipalities under this act.

Of first concern would be the requirement to immediately produce records, specifically the personnel records. Most employees with municipal government have assigned responsibilities for eight hours, and occasionally ten or 12 hours a day. If this standard were approved there would be an immediate requirement for additional help to retrieve and produce records. Plus, the direct cost would be unrealistic due to the need for additional employees; an additional tax burden to the taxpayer.

Next would be to take away the Councils right to executive session. This would leave every municipal government wide open for a law suit, or prevent them from transacting business. Executive sessions were established for the protection of an individuals character, their tax dollars or legal matters. The general public, and most importantly the press, should be knowledgeable of why executive sessions are held. The failure to transact business because a municipality could be held liable for a "defamation of character" or "misappropriation of funds" law suit would be ever present.

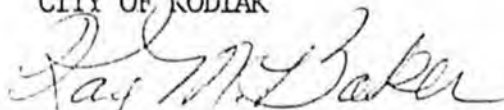
Another very important item would be the disclosure of an applicants resume for municipal positions. We strive to employ the highest caliber of personnel, but just to reveal their names could prevent a well qualified individual from applying due to reprisal with a present employer. If the legislature allows this bill to become law they will deny an individual his or her right to privacy. When reviewing personnel records "that" individual should be the one to approve such action.

State Affairs Committee  
SB 90  
Page 2

Historically the City Clerk's office has been open to the public, supplying all information with the exception of documents that would injure an individuals character, harm the municipality financially, or matters that are pending litigation. We see no valid justification for this procedure to change.

Sincerely,

CITY OF KODIAK

A handwritten signature in cursive script, appearing to read "Kay M. Baker".

Kay M. Baker  
City Clerk

KMB/d

cc: Alaska Municipal League



# THE JUDITH GROUP INC.

P. O. Box 2334

Soldotna, AK 99669

PHONE: 283-4359

February 8, 1981

Senator V. Fischer  
Chairman  
Senate State Affairs Committee  
Pouch V  
Juneau, Ak. 99811

Dear Mr. Chairman,

In listening to the testimony on SB 90, February 5, 1981 via Teleconference, we were struck by the similarity of frustration levels to our own experience. Enclosed are copies of correspondence with:

Department of Health & Social Services.....A. Holmburg, Director March 12/79

At the time of the letter to Mr. Holmburg the Judith Group was involved with the Alaskan Family Violence Project, Grant #78-DF-AX-0107 from Law Enforcement Assistance Association awarded to the Alaska Department of Health & Social Services/Ak. Family Violence Program/Judith Group. Portion of the Grant Objectives as they involved the Judith Group included.

Mr. Holmburgs reply.....April 3/79

Response to Mr. Tom Janadlo telephone request (this request stressed need for immediate response on agency knowledge of incest. Not to include Judith Groups stats) We as yet have to have a response from anyone at Division of Social Services on our letter.....April 4/79

Individual testimony of my own to the White House Conference on Families, Ak. From it is apparent that until the Legislative Auditor, Mr. Wilkinson published there was no way the Judith Group was able to secure any information, stats, whatever. The HSS Statistical report is not comprehensive enough.

All of the questions addressed to Mr. Holmburg should have been answered. According to our understanding the answers were mandated by law; Federal or State. This information should have been available. Unfortunately, Mr. Wilkersons report are mandated only every 3rd. year. The question of due process are very interesting.

Thank you,

*Jean Bennett Schrader*  
Jean Bennett Schrader, Secretary  
The Judith Group, Inc.

cc: Sen. C. Parr Sponsor  
B. Bradley  
R. Eliason  
T. Stimson  
M. Colletta

LOCALE

OBJECTIVES

DATA COLLECTED

MEASURES OF SUCCESS

Kenai/  
Women's Resource  
Center

- number and case histories of post-crisis assistance
- number of victims transported to Anchorage AWAIC
- follow up evaluation of victims who remain in Kenai

Kenai/  
Judith Group

To provide intra-family violence victim assistance, public information, and education.

To research, analyze and document the incidence of incest in one Alaskan community and to collect, develop, and distribute information and materials on incest throughout the state.

- number of volunteer hours
- report on incidence of incest in Kenai Peninsula including:
  - number reported to police
  - number reported to hospitals
  - number reported to social service agencies
  - number which come to attention of Women's Resource Center
  - comparison to available national statistics
  - actions taken in response to reports
  - profiles of victims and offenders
- random surveys of public opinion to measure awareness, concerns, and attitudes regarding incest
- process for collecting and analyzing data concerning repeat rates of known offenders, relation to other crimes, and relation to alcohol will be developed

- documentation that incest is a problem which may be used in program planning
- an increase in public awareness of incest, consequences, and services available for victims and offender

March 12, 1979  
Box 2334  
Soldotna, Alaska 99669

Mr. Arthur C. Holmburg, Director  
Department of Health and Social Services  
Pouch H O 5  
Juneau, Alaska 99811

Dear Mr. Holmburg,

On the 7th of March The Judith Group spoke with Ms. Faye Guthrie, Regional Office Manager, Department of Health and Social Services, in her Anchorage Office. As a result of that meeting we realize that there are many needs we, as a group have.

The most crucial need is to know what is the disposition of those children who are the victims of incest. When we report a case to your office (thru our local workers) it is as if these children no longer exist for us. Now, we understand the need for confidential records, but, there must be some method of finding out what care is taken of these children.

Are there case plans for these children, whether they remain in their homes or are placed out of their homes?

Is there regular follow-up?

Are there preventative services available to the family on a monitored basis?

What reviews are mandated; how regular?

Can the Judith Group expect to gain the following information from your data system?

Date of birth, sex, age, race and religion.

Family structure, including nuclear and extended family.....and here we view it as critical to know the length of time a step-parent or guardian relationship has existed.

Any handicapped condition, physical, emotional, educational, has the child been evaluated and what free, special services have been provided.

Has the child entered care (court order or voluntary placement) and the nature of the custody agreement. Was the victim of incest or sexual abuse provided with a attorney to ensure compliance with their right to the same interest the child in a divorce case would have. The nature of the custody agreement. Is there monitoring, on a continual basis, of the offender, if the offender remains in the home with the child.

Geographic locations upon entry into care.

How placement is funded. Where placement (in the child's home area)

Reason for placement (here we would need to know--if incest or sexual abuse has occurred, what "acting out" the child has done.

Date and type of initial placement

Services provided to child and family prior to placement.

*during* Services provided to child and family (whether foster family, guardian, etc) ~~prior to~~ placement. Here we want to be able to pick up on the incidence of incest as it is defined in the Alaska Revised Criminal Code Commentarty, Section 11.41.450 INCEST and also Section 11.41.430, subsection (a) (1). Section 11.41.410 Subsection (a) (4).

Placement status of sibling.

Dispositional goal for the child and time by which the goal should be attained.

Other agencies providing to or having responsibility for the child and the family....what monitoring is done on these agencies; ex: if the therapy of the child and the offender is carried on by a Freudian analyst.

Do the records of case transactions include:

dates and changes in legal status.

date, type and location of subsequent placements. Reason for change.

dates of case reviews.

dates and description of outcomes of dispositional reviews.

dates and description of services provided to the child and family by the responsible agency and other agencies with which the child and family has contact. In this area include foster or guardian.

dates of visits between agency and child, agency and natural parents, (and here it would be helpful to know if the natural parents are seperated (living apart) is the other parent informed of the issue and the childs placement) agency and foster parents, and child and natural parents, extended family in the case of no natural parents available.

date and termination of parental rights.

barriers to adoption when parental rights are terminated (here again did the child have a attorney to protect his/her rights.....property-wise as well as otherwise).

date of discharge, and discharge status (e.g. with natural parents or relatives, adoptive placement, transferred to another agency; has reached majority, death, marriage, other (here: what is other)

whether child was adopted with the assistance of a subsidy and by whom (foster parents, relatives, others, were relatives informed of the adoption prior if foster parents are the party who does adopt).

dates child enters placement thru any agency.

when the offender is involved with the court system as a offender.

what avenues of complaints does the child have? The family have?

We are attempting to work up a reporting sheet for police, physician, crisis workers, etc. and we must have some idea of what your data will reveal to mesh these reporting sheets with your records.

Was the offender thru the court system or involved only in therapy, <sup>what</sup> monitoring?  
and What monitoring is done on out-of-state placement or adoption.

Thank you very much for your time and effort on this matter. It is important to The Judith Group that we have this information. There was a meeting of the various law enforcement agencies in Juneau in February and we have requested copies of that meeting. They have not arrived as yet but we will wait patiently, I guess. What else is new.

Anyway, thank you in advance. Hopefully everything we have asked you about is already either in your data system or is being programmed in.

Next, how do we go about receiving this data?

Sincerely,

*Jean Bennett Schrader*  
Joan Bennett Schrader, Sec.  
The Judith Group

cc; Faye Guthrie  
Dr. McGinnis  
Kenai-Soldotna WRC  
Kenai Social Service Office  
Alaska Family Violence Program; S. Lederman  
URSA  
All Advocates  
Richard C. Hacker  
Commissioner H. Beirne

# STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

## DEPT. OF HEALTH AND SOCIAL SERVICES

DIVISION OF SOCIAL SERVICES

Pouch H-05  
Juneau, Alaska 99811

April 3, 1979

Ms. Joan Bennett Schrader  
Secretary  
The Judith Group  
Box 2334  
Soldotna, Alaska 99669

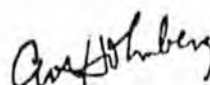
Dear Ms. Schrader:

We appreciate your concern for victims of incest who are referred to the Division of Social Services. The primary concern of all social service workers within the Division is to protect any child who is in danger of harm in his living situation. Therefore, when referral is received the social service worker investigates as is needed to assess the immediate danger to the child. If a child is found to be in need of removal from his home, he will be placed in a foster family. The worker develops a specific case plan, given the facts of the situation, which is based at efforts to rehabilitate and reunite the family. Workers provide services to children in foster care as well as to the families of the children.

In cases where removal of a child from his home is not required but there is need for protective intervention, the worker's efforts will be focused at working with the family to improve the situation which brought them to the agency's attention. Case reviews occur every three months to insure that all needed services are being brought to bear to remediate the situation.

For reasons of confidentiality, we cannot provide specific details on cases handled by our workers. Information can only be shared on an aggregate basis, as through the Monthly Statistical Report produced by the Division of Social Services. As requested, we are enclosing a copy of the latest Monthly Statistical Report and will be happy to add you to the mailing list for future copies.

Sincerely,



Art Holmberg  
Director

Enclosure

rec'd 4/18/79  
jhs

March 18, 1980 Soldotna Hearing on the  
White House Conference on Families.

I am Joan Bennett Schrader and I am testifying on my own behalf.

As a member of this community I have grave concern over the follow-thru on the care our youngsters in the Corrections Institutions and Foster Homes receive.

To secure any information on what happens to them is extremely difficult. The reports made available by the DOC are not as comprehensive as I should like to see.

My first recommendation is to have

Easily accessible information on the placement of these young people. I am not advocating identifiable information but, rather the knowledge communities should have on ~~should~~ the placement be in foster-care, that a worker has formatted a caseplan, that the worker is in contact on a monthly basis with the young person. Further-more, that monthly personal reports, where possible, be made to the family of the young person by the same worker or in the case where one worker cannot handle this that the DOC workers are able to assure the family of some worker in the DOC has seen and spoken with the young person. That the worker be identified by name, and a phone number or address be made available to the family.

In the Performance Review of the Department of Health & Social Services, Juvenile Confinement Programs, dated September 28, 1980 and signed by Gerald Wilkerson, CPA. ~~written~~ on behalf of the Legislative Auditor, Division of Legislative Audit, page 10, listed under

#### D. Juvenile Treatment Plan

"60% of the Department and child care facilities juvenile files ~~did not~~ did not contain a detailed treatment plan for the juveniles.

In order to assure that juvenile needs are met while in institutional care, a thorough evaluation of needs and a method of meeting these needs should be prepared by either the Departments caseworker or the institutions staff. If the plan is ~~developed~~ developed by the institution, it should be subject to review by the Departments caseworker."

#### Page 11

"Although DOC has a formal decision process for placing juveniles in child care facilities, 57% of the DOC files tested did not indicate how the placement decision was reached. AT DSS 54% of the tested files did not indicate the basis for the placement decision.

Although consideration of all alternative placements is necessary to assure the best possible care by the juveniles. The alternatives considered and the reasons for the final selection should be documented to ensure juveniles receive due process."

F. Caseworker contact with the juvenile

~~67%~~  
"67% of the Department and child care facility files tested indicated the Department's caseworker had very limited, if any, contact with juveniles after placement. Also, DOC practice precludes probation officer involvement with juveniles placed at McLaughlin Youth Center."

G. Evaluation of the juveniles' progress

"Half of the DOC and 30% of the DSS files tested did not contain any institutional evaluation of the juvenile. Additionally, 75% and 37% of the DOC and DSS files, respectively, did not contain an evaluation of the juvenile by the Department's caseworker. Testing of the institutions files indicated 18% of the juveniles had not been evaluated. Another 44% ~~remained~~ of the files contained evaluations which did not address the progress of the juvenile. Most of those only addressed the juvenile's status without relating the status to any identifiable problems."

Page 12

"Our testing found that 76% of the cases reviewed did not indicate regular progress reports were sent to parents. The Department should forward copies of all evaluations to the juveniles' parents including any necessary explanations or comments."

The above are only some of the problems with DSS and DOC. I believe that communities should be informed on what the DOC and DSS are doing with children and young people.

*end of quotes  
from evaluation*

We do have a right to information from them and it should not take a copy of the auditors report to finally enable us to put our finger on what is happening to these children.

Last year a request was placed before the DSS, Juneau, for information on what happens to children who are within the child care system.

They were asked.....

Are there case plans for these children, whether they remain in their homes or are placed out of their homes?

Is there regular follow-up?

Are there preventative services available to the family on a monitored basis? (This is the case of child abuse/neglect)

What reviews are mandated? How regular?

Can the following information be gained from your ~~firm~~ data system.....

Date of birth, sex, age, race religion.

~~Family structure and including~~ Family structure, including nuclear and extended family; length of time a step-parent or guardianship relation has existed?

Any handicapped condition, physical, emotional, educational.

Has the child been evaluated and what free, special services have been provided?

Has the child enter Care (court order or voluntary placement) and the nature of the custody agreement. Was the victim of incest or sexual abuse provided with a attorney to insure compliance with their right to the same interest the child in a divorce case would have? The nature of the custody agreement. Is there monitoring? On a continual basis? Of the offender if the offender remains within the home with the child?

How placement is funded. Where placement (foster care) in the childs home area.

Reason for placement of child. If incest or sexual abuse has occ what acting out the child has done.

Date and type of initial placement.

Services provided to the child and family prior to the placement

Services provided to the child and family (whether foster family, guardian, etc.) during placement. Placement status of siblings.

Dispositional goal of child and date by which the goal should be attained.

Other agencies provided to or having responsibility for the child and family, what monitoring is done on these agencies?

Do the records of case transactions include:

dates and changes in legal status.

date, type and location of subsequent placements. Reason for the change.

Dates of case reviews.

Dates and ~~XXXXXXXXXXXX~~ description of outcomes of disposition reviews.

Dates of visits between child and agency, natural parents and agency. Here it would be helpful to know if the natural parents are separated, (living apart) is the other parent informed of the issue and the childs placement? Visits between foster parent and agency. Between child and natural parents, child and extended family in the case no natural parents are available.

Date of termination of parental rights.

Barriers to adoption when parental rights are terminated, did an attorney protect the childs rights, property-wise as well as other-wise?

Page four

Date of discharge and discharge status. With whom? Natural parents, foster parents, relatives, adoption placement, transferred to another agency, reached majority, death, marriage, other, what is other?

Whether child was adopted with assistance of subsidy? By whom? (foster, relatives, others?) Were relatives informed of the adoption prior if foster parents or others are the party who don adopt.

Dates child enters placement thru any agency.

Is the offender in cases of child abuse, sexual abuse, involved with the court? As an offender? How?

What avenues of complaint does the child have? The family have?

If the offender is involved in the court system is it by therapy, monitoring done....what and by whom?

What monitoring is done in out of state placement?

These were questions placed before the DSS a year ago and for reasons of confidentiality they were not answered. I believe we have a right to this information. On a ~~agency~~ basis only, not on individual cases. Everything asked should have been available to any person. It was not then, and after reading the Auditors report, I can understand why.

In order for community members to support a reasonable and useful program for aid to children and families, records must be kept.

My recommendation would be for the DSS and DCC to be directed to keep them and to make their data system have spaces for the questions they were asked.

Thank you for listening.

Respectfully submitted,

*Jaon Bennett Schrader*  
Jaon Bennett Schrader  
P.O. Box 1264  
Kenai, Alaska 99611

The Judith Group, Inc.  
Box 2334  
Soldotna, Alaska 99609  
April 4, 1979

Division of Social Service  
400 Gambell  
Anchorage, Alaska 99501

Attention: Tom Janidlo.

Dear Mr. Janidlo,

The following are the population resolutions from the Kenai Peninsula Borough for this area of the Borough.

The City of Kenai	4374
The City of Soldotna	2368
Sterling	1374
Ninilchik	470

Because of the scarcity of time statistics for the Homer and Seward areas, with one exception, are not included. The term Minor used here includes all up to 18 yrs.

From the Soldotna Police	(1977-78)	No involvement of Minors in any crime of a sexual nature. (as victim)
Alaska State Police (Kenai-Soldotna area)	(1978)	No involvement of a Minor in any crime of a sexual nature. (as victim)
Kenai City Police	(1977-78)	Four (4) to six (6) separate incidents during 1977 - 78. There are no figures for how many children were involved in each incident. To secure more stats on this would necessitate a "hard search" of over eight (8) thousand cases. The Kenai Police do not have the staff needed for such a process. The 4-6 cases were Child Molestation.
Seward City Police	(1978)	One (1) case of incest (Female) that resulted in Court Action, not on the incest related area, but on a "Contributing To The Delinquency of a Minor" by others. This matter was reported as required by Law, to the Social Service.

District Attorney Office (Kenai)	1977-78 to end of March	Cases reaching formal stage Lewd & Lascivious Three (3) Statutory Rape Two (2) Rape (possible Minor Invol no way to tell from Four (4) Contrib. Del. of a Minor Three (3) Felony (Defi: Ten (10) Misdemeanor (no way to know if th were sex involvement Office Contacts Two (2) sexual involv (alleged
Social Service Kenai Office	1977-78	Seventeen (17) alleged incest cases, Female One (1) sent Prosecutors Office.

Tom, you will appreciate the hurry that this involved and that had we more time we (The Judith Group) would have had all of these reports much more comprehensive.

Hope this will assist you and let us know what happens.

Sincerely,

Joan Bennett Schrader, Sec.  
The Judith Group

cc; Juv. Intake Officer (Kenai)	Alaska State Police (Soldotna)
Social Service (Kenai)	Soldotna Police
Seward Police	Division of Corrections (Kenai)
Kenai Police	Central Peninsula Mental Health
Kenai Care Center	Kenai Peninsula School District (B. Taeschner)
District Attorney (Kenai)	Alaska Court System (Kenai)

alaska  
state  
hospital  
association

319 Seward St., Juneau, Alaska 99801 (907) 586-1790

REPRESENTING ACUTE LONG TERM AND OUTPATIENT FACILITIES

President  
Sister Barbara Haase  
Ketchikan General Hospital  
Ketchikan

February 17, 1981

President Elect  
Tom Minger  
Fairbanks Memorial Hospital  
Fairbanks

Secretary/Treasurer  
Ron Pavellas  
Alaska Hospital's Medical  
Center  
Anchorage

The Honorable Charlie Parr  
Alaska State Senate  
Pouch V, State Capitol Building  
Juneau, Alaska 99811

Immediate Past President  
- J. Camoson  
Providence Hospital  
Anchorage

Dear Senator Parr:

Executive Director  
Dennis L. DeWitt  
Juneau

The Alaska State Hospital Association has reviewed Senate Bill 90 and recommends that the following amendments be adopted.

1. Page 3 Lines 13-18

The exemption found in Subsection (6) should include patient financial information and the reference to autopsy reports ought to be moved from this section to a separate section.

Rational: a) Patient financial data while not part of a medical record, remains personal data about a patient, not the facility and as such should be protected.

b) Autopsy reports should be accessible when a court has determined the need for an inquest pursuant to AS 12.65.020. A requirement that autopsy reports should be public records simply because the person had not recently seen a physician, seems to serve no apparent public good.

2. Page 5 Lines 19-20

Subsection (f) should include an exemption for medical records and read as follows:

(f) Unless specifically exempted from disclosure by statute, all records except those specified under (c) of this section, become public after they are 20 years old.

February 17, 1981  
The Honorable Charlie Parr  
Page two

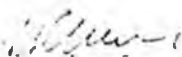
Rational: Patient medical records are private and ought to be disclosed only at the direction of the person subject to the record.

3. Page 6 Lines 3-7  
Subsection (i) ought to be rewritten to include only managerial positions where the person has discretionary power over the operation of the entity and the reference to job performance and ability to perform the job ought to be struck.

Rational: Governmental employees ought not be treated differently than non-governmental employees unless there is a specific public good to be served. We can see no good and potential exposure to harassment by the disclosure of the compensation of a cook, janitor, clerk, nurse or other non-management personnel. The references to job review and ability to perform is a type of information exempted under (3)-(8) of Section .015 and as such ought to be protected for public employees as well.

Thank you for your consideration of these items. We will be happy to respond to any questions you may have.

Sincerely,

  
Dennis L. DeWitt  
Executive Director

DLD/b

cc: Senator Vic Fischer

MEMORANDUM

TO: Sen. Vic Fischer, Chairman  
Senate State Affairs Committee

FROM: Joe La Rocca

SUBJECT: Written Testimony on SB 90 (Relating to privacy and public information).

This is primarily to note my strong disagreement with what was the virtually unanimous opposition among my fellow journalists to Section 1, sub-section 13 (Page 4, line 11) dealing with intelligence, investigatory and original entry records. Firstly, the section is lifted almost verbatim from the federal Freedom of Information Act of 1966, as amended and has, in general, withstood the tests of time and experience in that context. Secondly, I believe that opponents of this section either have not read it in tandem with, or fail to apprehend its connection with sub-section (j) (Page 5, line 2). Thirdly, it's incomprehensible to me that anyone, even news journalists, could object to the withholding of information which, if disclosed, would (1) interfere with enforcement proceedings; (2) deprive a person of a right to a fair trial or an impartial adjudication; (3) constitute an unjustifiable intrusion into a person's right of privacy (here I prefer the federal act's language "an unwarranted invasion of the right to privacy" largely because it's a term of art for which juridical standards have already been established in case law); (4) disclose the identity of a confidential source (Mark how journalists themselves squeal when ordered to disclose the identity of a confidential source); (5) disclose investigative techniques and procedures (On-the-job training for budding investigative journalists?); endanger the life, property or physical safety of a person (Let it be the life, property or physical safety of a news journalist, and watch the opposition shrivel), or identify a victim of a criminal sexual assault. (If it were their wife, sister or mother, would they be so anxious to run it into print?): particularly when these highly sensitive withholdings are subject to prompt and costless judicial review. I hope the committee will resist pressures to remove or substantially alter sub-section 13.

  
Joe La Rocca

February 19, 1981

Mr. Stanlord J. Grayson  
Professional Accountancy Coordinators  
P. O. Box 16780, Plantation Branch  
Fort Lauderdale, Florida 33318

Dear Mr. Grayson:

Thank you for sending the materials concerning SB 90.

The bill is under consideration by the Senate State Affairs Committee and I am forwarding the materials you sent to the Chairman of that Committee for his possible use. Also, I will see that the material goes to the Chairman of the Judiciary Committee.

Sincerely,

Charles H. Parr

CHP:vc

cc: Senator Vic Fischer ✓  
Chairman  
State Affairs Committee

Senator Pat Rodey  
Chairman  
Judiciary Committee

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## PROFESSIONAL ACCOUNTANCY COORDINATORS

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TELEPHONE: 741-1403 AREA CODE 305

P.O. BOX 16780 PLANTATION BRANCH  
FT. LAUDERDALE, FLORIDA 33318

February 11, 1981

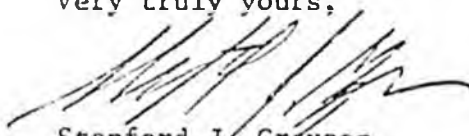
Senator Parr  
The Senate  
Pouch "V"  
Juneau, Alaska 99811

Dear Senator Parr:

It was pleasant speaking to you by telephone today and we are certain that the educational organizations would appreciate and need the enclosed amendment to S90. Various other materials are enclosed. The furtherance of education is of course in the public interest.

Assuring you of our interest and cooperation at all times, I remain

Very truly yours,



Stanford J. Grayson

SJG:ng

*Amendment to S90*

Nothing in this act shall prohibit the release of only names and addresses of persons applying for or possessing licenses to engage in professional occupations, for the purpose of providing such persons with informational materials relating to available professional educational materials and courses.

DONNA J. CARLSON  
447 WEST HILLYVIEW CIRCLE  
MESA, ARIZONA 85201  
CAPITOL: 253-4002

DISTRICT 29



Arizona House of Representatives  
Phoenix, Arizona 85007

THIRTY-FOURTH LEGISLATURE  
1979-1980

COMMITTEES:

COUNTIES & MUNICIPALITIES  
CHAIRMAN  
COMMERCE  
HUMAN RESOURCES  
JUDICIARY

NATIONAL CHAIRMAN  
AMERICAN LEGISLATIVE  
EXCHANGE COUNCIL

December 28, 1979

Dear Colleague:

Re: "Professional and Occupational Freedom of Information Act"

Soon you will be receiving the "Source Book for State Legislators" (formerly entitled Suggested State Legislation) published by the American Legislative Exchange Council (ALEC). The 1980 edition compiled by a geographically selected committee, contains many fine innovative legislative proposals.

Hearings were held in Washington, D. C. in June and the committee selected 20 bills, some are updates from earlier editions and some are new concepts. As usual, we had more good bills than time and space would allow us to handle. We also received several excellent bills after the hearings were held. One such bill is the reason I am writing you.

The bill, which is enclosed, is called the "Professional and Occupational Freedom of Information Act", and at the request of a majority of the ALEC Suggested State Legislation Committee, I am submitting the bill for your consideration in hopes that you will review it's applicability to your particular state.

If you are interested in introducing the legislation, a complete file of research information will be available through my office.

Sincerely,

A handwritten signature in cursive script that reads "Donna Carlson".

DONNA J. CARLSON  
Chairman ALEC

DJC:md  
Enclosures

PROFESSIONAL AND OCCUPATIONAL FREEDOM OF INFORMATION ACT

Section 1. Title

This act shall be known as the "Professional and Occupational Freedom of Information Act".

Sec. 2. Findings; purpose

The legislature finds that:

1. State privacy acts enacted to protect individuals from having personal information contained in their applications for licenses released for public consumption has barred such applicants from receiving valuable information from bona fide professional and occupational services and educational organizations which are on occasion necessary for the applicant or licensee to meet state requirements for initial qualifications, renewal of license or continuing education required or encouraged by statutes or rules and regulations. This result is unintended and is not in the public interest.

2. The purpose of this act is, in furtherance of the public interest, to make available to professional and occupational services and educational organizations lists of applicants and licensees of related professions and occupations to aid in the receipt of informational materials relating to available current professional or occupational educational materials or courses for compliance with licensing requirements and for continuing education..

Sec. 3. Definitions

1. "Information" means any recorded data maintained by an occupational licensing agency regardless of its form relating to a person's name, title, current address, whether a person is an applicant or licensee.

2. "Maintain" means hold, possess, preserve, retain, store or exercise administrative control over.

3. "Occupational licensing agency" means any unit of government of this state or political subdivision of this state with the authority to grant, deny, suspend or revoke a license or other authorization to practice any profession or occupation in this state.

4. "Professional or occupational service or educational organization" means any person, business, group or institution, public or private, organized to provide formal or informal educational materials or courses to persons seeking initial qualification, licensure, license renewal or continuing education for any profession or occupation.

Sec. 4. Access to information

Notwithstanding any other provision of the law of this state, an occupational licensing agency shall provide access to information maintained by such agency for purposes of inspection or copying to any professional or occupational service or educational organization which request such information for the sole purpose of such organization providing applicants for licenses or licensees with informational materials relating to available current professional or occupational educational materials or courses.

Sec. 5. Exemptions

1. Nothing in this Act shall be construed to require disclosure of the following:

(a) Investigative information compiled for law enforcement purposes if disclosure would:

(i) Interfere with an ongoing investigation or law enforcement proceeding.

(ii) Disclose the identity of a confidential source.

(iii) Disclose confidential investigative techniques and procedures not known to the general public.

(iv) Endanger the life or physical safety of any individual.

(b) Testing or examination material used solely to determine individual skills or qualifications, if disclosure would compromise the objectivity or fairness of the testing or examination process.

2. If a person requests information containing material that is exempt under this section, the agency shall delete the exempt portions of the record and provide any reasonably segregable portion of the remainder of the record to the person requesting it.

Sec. 6. Judicial review; penalty

1. Any professional or occupational service or educational organization whose request for access to information has been denied may bring an action to compel the production of records alleged to have been improperly withheld. The court in the district in which the information is maintained has jurisdiction over an action under this section. The burden of proof is on the agency to sustain a claim of exemption.

2. If the complainant prevails in any action brought under this section, the court shall assess against the occupational licensing agency reasonable attorneys' fees and reasonably incurred litigation costs.

## SUMMARY SHEET

Numerous states have adopted, considered or will consider "privacy acts" barring public access to governmental information regarding private citizens, including applications for licenses and licensee records maintained by State and local professional and occupational licensing agencies. Some have recognized the need to continue the flow of educational materials to applicants for licenses and licensees by commercial and non-profit organizations, and have accordingly provided a statutory exemption for this purpose, e.g., California, Florida, Massachusetts, Montana, Virginia and Washington.\* While 23 Attorneys General opinions and the courts of Colorado, Connecticut, Georgia, Indiana, Massachusetts, New Jersey, Pennsylvania, Tennessee and Utah have determined that the release of the names and addresses of applicants and licensees for educational purposes "is in the public interest", enactment of a privacy act without a statutory exemption could forbid access where the interest is valid and proper. (Attorneys General opinions have been issued in Arkansas, California, Delaware, District of Columbia, Florida, Georgia, Idaho, Kansas, Kentucky, Louisiana, Massachusetts, Minnesota, Missouri, Nebraska, New Hampshire, Ohio, Oklahoma, Pennsylvania, Puerto Rico, South Dakota, Texas, Virginia and Washington.)

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\* Additionally, two states (Illinois and Michigan) have limited exemptions.

CPA candidates rely upon our professional and graduate levels of instruction. The CPA Examinations are so extremely difficult today \*\*\* that only 15% to 25% pass of those who do not attend a CPA review school. Most CPA candidates sit for CPA Examinations approximately three years after leaving college and in most cases our instruction is extremely necessary for them, due to the difficulty of the examinations. There is no other effective reasonable means of reaching these CPA candidates of our course offerings, other than through use of the list below. In our profession there is a desperate need for more CPA's, not less.

It is so important to permit the copying of CPA registrants' names and addresses because it is considered to be in the public interest to such an extent that it is specifically mentioned in various states' accountancy statutes. For example, note attached Illinois and Florida statutes which state that it is in the public interest and not an invasion of privacy that the names and addresses of registrants for CPA Examinations are public records and should be revealed as public information. Even of more significance is the rest of the paragraph in these Acts, which shows the desire of these CPA Boards and their Legislatures to keep all the other information about an applicant confidential, but they have particularly gone out of the way to state and recognize into law this one very important exception. What better proof is there than the fact that CPA Boards feel that candidates' names and addresses are a public record which can be revealed and should be revealed in the public interest for accounting education purposes. Why would they specifically and purposefully insert this into the Law? Why didn't these statutes just state all information about a candidate should be secretive? These statutes contain this important exception because they favor education similar to practically all the other states, and decided that candidates' names and addresses should be available to all educational organizations.

49 States have agreed and are presently furnishing us with similar inspections. Therefore it is clear that the overwhelming majority of the states agree with our request, and it has been proven to be in the public interest for many reasons. The major obvious reasons are:

- 1) Professional education is in the public interest and these persons should possess the highest technical proficiency attainable. Their high competence is necessary because the state licenses them to serve the general public. The exemption is not for a specific profession but rather for the entire general professional field. This long standing practice of continuing education is needed for all professions and should be continued similar to past years. Other states' Committees have also recognized this fact and have included similar exemptions in their Freedom of Information bills.
- 2) The furtherance and availability of accountancy and other professional education.
- 3) It is the easiest method for CPA and other professional registrants to know of the availability of all of these educational courses to choose from with the least effort.
- 4) Serves as an informative circular to remind them of the detailed contents and starting dates, etc. of these courses.
- 5) Reduces the cost of these courses to the candidates because the mail offerings are the most practical for the course management; these specialized courses cannot be advertised in any mass media because accounting candidates are a tiny percentage of the general population, and we cannot advertise for example in our professional magazine effectively (although we have tried this but it hardly reaches these candidates) because

these registrants are not members of the professional societies and therefore do not receive a professional magazine. Solicitations in colleges are ineffective because most CPA candidates sit for the Examinations a few years after graduating from college.

In making this information available to educational organizations, it is not an invasion of a person's privacy by merely mailing him our course offerings. These educational course offering circulars describe us, not the recipient. It is inconceivable the mere receiving of an educational course offering in the mail that is printed (no personal letter to the recipient included) be an unwarranted invasion of privacy and against the public interest. On balance, greater weight should be given to the furtherance of professional accountancy education rather than secrecy of these records. It is unreasonable to conclude that recipients (and especially knowledgeable professionals who are intelligent sufficiently and can distinguish between various offerings) are so supersensitive that their privacy is ruined by the mere receipt of an informative educational circular. The purpose of the present Bill is for greater dissemination of information and against secrecy, and for the protection of a person's confidential background. We are not interested in the personal detailed data concerning a registrant's background and history, but only the impersonal names and addresses of all professional licensee registrants. Surely the mere copying of names and addresses for professional educational purposes only, should be allowed because it is not against the public interest. We certainly need more and better educated professional candidates.

\*\*\*All CPA review schools raise passing percentages from 25% to 70% on the average, because of their intensive review courses.

## ARTICLE 0 - FREEDOM OF INFORMATION LAW (NEW)

Sec.

84. Legislative declaration.  
 85. Short title.  
 86. Definitions.  
 87. Access to agency records.  
 88. Access to state legislative records.  
 89. General provisions relating to access to records; certain cases.  
 90. Severability.

Former Art. 6. Renumbered 7.

## § 84. Legislative declaration

The legislature hereby finds that a free society is maintained when government is responsive and responsible to the public, and when the public is aware of governmental actions. The more open a government is with its citizenry, the greater the understanding and participation of the public in government.

As state and local government services increase and public problems become more sophisticated and complex and therefore harder to solve, and with the resultant increase in revenues and expenditures, it is incumbent upon the state and its localities to extend public accountability wherever and wherever feasible.

The people's right to know the process of governmental decision-making and to review the documents and statistics leading to determinations is basic to our society. Access to such information should not be thwarted by shrouding it with the cloak of secrecy or confidentiality.

The legislature therefore declares that government is the public's business and that the public, individually and collectively and represented by a free press, should have access to the records of government in accordance with the provisions of this article.

Added L.1977, c. 933, § 1.

Derivation. Former section 85, added L.1974, c. 578, § 2; amended L.1974, c. 579, § 1; repealed by L.1977, c. 933, § 1.

Effective Date. Section effective Jan. 1, 1978, pursuant to L.1977, c. 933, § 8.

## § 85. Short title

This article shall be known and may be cited as the "Freedom of Information Law."

Added L.1977, c. 933, § 1.

Derivation. Former section 80, added L.1974, c. 578, § 2; repealed by L.1977, c. 933, § 1.

Effective Date. Section effective Jan. 1, 1978, pursuant to L.1977, c. 933, § 8.

## § 86. Definitions

As used in this article, unless the context requires otherwise:

- "Judiciary" means the courts of the state, including any municipal or district court, whether or not of record.
- "State legislature" means the legislature of the state of New York, including any committee, subcommittee, joint committee, select committee, or commission thereof.

## Library References

Records 214.

C.J.S. Records § 35 et seq.

## Law Review Commentaries

The New York Freedom of Information Law, 43 Fordham L.Rev. 83 (1974).

Former Section 85. Section, which related to legislative intent, was added L.1974, c. 578, § 2; amended L.1974, c. 579, § 1; repealed by L.1977, c. 933, § 1; and is now covered by section 84, § 1.

3. "Agency" means any state or municipal department, board, bureau, division, commission, committee, public authority, public corporation, council, office or other governmental entity performing a governmental or proprietary function for the state or any one or more municipalities thereof, except the judiciary or the state legislature.

4. "Record" means any information kept, held, filed, produced or reproduced by, with or for an agency or the state legislature, in any physical form whatsoever including, but not limited to, reports, statements, examinations, memoranda, opinions, folders, files, books, manuals, pamphlets, forms, papers, designs, drawings, maps, photos, letters, microfilm, computer tapes, or discs, rules, regulations or codes.  
 Added L.1977, c. 933, § 1.

Derivation. Former section 87, added L.1974, c. 578, § 2, and repealed by L.1977, c. 933, § 1.

Effective Date. Section effective Jan. 1, 1978, pursuant to L.1977, c. 933, § 8.

Former Section 86. Section, which related to short title, was added L.1974, c. 578, § 2; repealed by L.1977, c. 933, § 1; and is now covered by section 87.

Effective Date. L.1974, c. 578, § 2, provided that this section shall take effect Sept. 1, 1974.

## 1. Agency

Under the definition of "agency," the Division of the Budget came within application of this article. *Dunlea v. Goldmark*, 1976, 85 Misc.2d 198, 380 N.Y.S.2d 400, modified on other grounds 64 A.D. 140, 380 N.Y.S.2d 423.

## § 87. Access to agency records

1. (a) Within sixty days after the effective date of this article, the governing body of each public corporation shall promulgate uniform rules and regulations for all agencies in such public corporation pursuant to such general rules and regulations as may be promulgated by the committee on public access to records in conformity with the provisions of this article, pertaining to the administration of this article.

(b) Each agency shall promulgate rules and regulations in conformity with this article and applicable rules and regulations promulgated pursuant to the provisions of paragraph (a) of this subdivision, and pursuant to such general rules and regulations as may be promulgated by the committee on public access to records in conformity with the provisions of this article, pertaining to the availability of records and procedures to be followed, including, but not limited to:

- the times and places such records are available;
- the persons from whom such records may be obtained, and
- the fees for copies of records which shall not exceed twenty-five cents per photocopy not in excess of nine inches by fourteen inches, or the actual cost of reproducing another record, except when a different fee is otherwise prescribed by law.

2. Each agency shall, in accordance with its published rules, make available for public inspection and copying all records, except that such agency may deny access to records or portions thereof that:

- are specifically exempted from disclosure by state or federal statute;
- if disclosed would constitute an unwarranted invasion of personal privacy under the provisions of subdivision two of section eighty-nine of this article;
- if disclosed would impair present or imminent contract awards or collective bargaining negotiations;
- are trade secrets or are maintained for the regulation of commercial enterprise which if disclosed would cause substantial injury to the competitive position of the subject enterprise;
- are compiled for law enforcement purposes and which, if disclosed, would:
  - interfere with law enforcement investigations or judicial proceedings;

- ii. deprive a person of a right to a fair trial or impartial adjudication;
  - iii. identify a confidential source or disclose confidential information relating to a criminal investigation; or
  - iv. reveal criminal investigative techniques or procedures, except routine techniques and procedures;
- (f) if disclosed would endanger the life or safety of any person;
  - (g) are inter-agency or intra-agency materials which are not:
    - i. statistical or factual tabulations or data;
    - ii. instructions to staff that affect the public; or
    - iii. final agency policy or determinations; or
  - (h) are examination questions or answers which are requested prior to the final administration of such questions.

3. Each agency shall maintain:

- (a) a record of the final vote of each member in every agency proceeding in which the member votes;
- (b) a record setting forth the name, public office address, title and salary of every officer or employee of the agency; and
- (c) a reasonably detailed current list by subject matter, of all records in the possession of the agency, whether or not available under this article.

Added L.1977, c. 933, § 1.

Derivation. Former section 88, in part, added L.1974, c. 578, § 2; amended L.1974, c. 570, §§ 2 to 4; L. 1974, c. 580, § 1; repealed by L.1977, c. 933, § 1.

Effective Date. Section effective Jan. 1, 1978, pursuant to L.1977, c. 933, § 8.

Former Section 87. Section, which related to definitions, was added L. 1974, c. 578, § 2; repealed by L.1977, c. 933, § 1; and is now covered by section 80.

### § 88. Access to state legislative records

1. The temporary president of the senate and the speaker of the assembly shall promulgate rules and regulations for their respective houses in conformity with the provisions of this article, pertaining to the availability, location and nature of records, including, but not limited to:
- (a) the times and places such records are available;
  - (b) the persons from whom such records may be obtained;
  - (c) the fees for copies of such records, which shall not exceed twenty-five cents per photocopy not in excess of nine inches by fourteen inches, or the actual cost of reproducing any other record, except when a different fee is otherwise prescribed by law.
2. The state legislature shall, in accordance with its published rules, make available for public inspection and copying:
- (a) bills and amendments thereto, fiscal notes, introducers' bill memoranda, resolutions and amendments thereto, and index records;
  - (b) messages received from the governor or the other house of the legislature, and home rule messages;
  - (c) legislative notification of the proposed adoption of rules by an agency;
  - (d) members' code of ethics statements;
  - (e) transcripts or minutes, if prepared, and journal records of public sessions including meetings of committees and subcommittees and public hearings, with the records of attendance of members thereat and records of any votes taken;
  - (f) internal or external audits and statistical or factual tabulations of, or with respect to, material otherwise available for public inspection and copying pursuant to this section or any other applicable provision of law;
  - (g) administrative staff manuals and instructions to staff that affect members of the public;
  - (h) final reports and formal opinions submitted to the legislature;

- (i) final reports or recommendations and minority or dissenting reports and opinions of members of committees, subcommittees, or commissions of the legislature;
- (j) any other files, records, papers or documents required by law to be made available for public inspection and copying.

3. Each house shall maintain and make available for public inspection and copying: (a) a record of votes of each member in every session and every committee and subcommittee meeting in which the member votes;

- (b) a record setting forth the name, public office address, title, and salary of every officer or employee; and

- (c) a current list, reasonably detailed, by subject matter of any records required to be made available for public inspection and copying pursuant to this section.

Added L.1977, c. 933, § 1.

Derivation. Former section 88, in part. For history, see note under section 87.

Effective Date. Section effective Jan. 1, 1978, pursuant to L.1977, c. 933, § 8.

### § 89. General provisions relating to access to records: certain cases

The provisions of this section apply to access to all records, except as hereinafter specified:

1. (a) The committee on public access to records is continued and shall consist of the lieutenant governor or the delegate of such officer, the secretary of state or the delegate of such officer, whose office shall act as secretariat for the committee, the commissioner of the office of general services or the delegate of such officer, the director of the budget or the delegate of such officer, and six other persons, none of whom shall hold any other state or local public office, to be appointed as follows: four by the governor, at least two of whom are or have been representatives of the news media, one by the temporary president of the senate, and one by the speaker of the assembly. The persons appointed by the temporary president of the senate and the speaker of the assembly shall be appointed to serve, respectively, until the expiration of the terms of office of the temporary president and the speaker to which the temporary president and speaker were elected. The four persons presently serving by appointment of the governor for fixed terms shall continue to serve until the expiration of their respective terms. Thereafter, their respective successors shall be appointed for terms of four years. The committee shall hold no less than four meetings annually. The members of the committee shall be entitled to reimbursement for actual expenses incurred in the discharge of their duties.

(b) The committee shall:

- i. furnish to any agency advisory guidelines, opinions or other appropriate information regarding this article;
- ii. furnish to any person advisory opinions or other appropriate information regarding this article;
- iii. promulgate rules and regulations with respect to the implementation of subdivision one and paragraph (c) of subdivision three of section eighty-seven of this article;
- iv. request from any agency such assistance, services and information as will enable the committee to effectively carry out its powers and duties; and
- v. report on its activities and findings, including recommendations for changes in the law, to the governor and the legislature annually, on or before December fifteenth.

2. (a) The committee on public access to records may promulgate guidelines regarding deletion of identifying details or withholding of records otherwise available under this article to prevent unwarranted invasions of personal privacy. In the absence of such guidelines, an agency may delete identifying details when it makes records available.

(b) An unwarranted invasion of personal privacy includes, but shall not be limited to:

- i. disclosure of employment, medical or credit histories or personal references of applicants for employment;
- ii. disclosure of items involving the medical or personal records of a client or patient in a medical facility;
- iii. sale or release of lists of names and addresses if such lists would be used for commercial or fund-raising purposes;
- iv. disclosure of information of a personal nature when disclosure would result in economic or personal hardship to the subject party and such information is not relevant to the work of the agency requesting or maintaining it; or
- v. disclosure of information of a personal nature reported in confidence to an agency and not relevant to the ordinary work of such agency.

(c) Unless otherwise provided by this article, disclosure shall not be construed to constitute an unwarranted invasion of personal privacy pursuant to paragraphs (a) and (b) of this subdivision:

- i. when identifying details are deleted;
- ii. when the person to whom a record pertains consents in writing to disclosure;
- iii. when upon presenting reasonable proof of identity, a person seeks access to records pertaining to him.

3. Each entity subject to the provisions of this article, within five business days of the receipt of a written request for a record reasonably described, shall make such record available to the person requesting it, deny such request in writing or furnish a written acknowledgement of the receipt of such request and a statement of the approximate date when such request will be granted or denied. Upon payment of, or offer to pay, the fee prescribed therefor, the entity shall provide a copy of such record and certify to the correctness of such copy if so requested, or as the case may be, shall certify that it does not have possession of such record or that such record cannot be found after diligent search. Nothing in this article shall be construed to require any entity to prepare any record not possessed or maintained by such entity except the records specified in subdivision three of section eighty-seven and subdivision three of section eighty-eight.

4. (a) Any person denied access to a record may within thirty days appeal in writing such denial to the head, chief executive or governing body of the entity, or the person therefor designated by such head, chief executive, or governing body, who shall within seven business days of the receipt of such appeal fully explain in writing to the person requesting the record the reasons for further denial, or provide access to the record sought. In addition, each agency shall immediately forward to the committee on public access to records a copy of such appeal and the determination thereon.

(b) Any person denied access to a record in an appeal determination under the provisions of paragraph (a) of this subdivision may bring a proceeding for review of such denial pursuant to article seventy-eight of the civil practice law and rules. In the event that access to any record is denied pursuant to the provisions of subdivision two of section eighty-seven of this article, the agency involved shall have the burden of proving that such record falls within the provisions of such subdivision two.

5. Nothing in this article shall be construed to limit or abridge any otherwise available right of access at law or in equity of any party to records.

Added L.1977, c. 933, § 1.

**Derivation.** Former section 88, in part. For history, see note under section 87.

**Effective Date.** Section effective Jan. 1, 1978, pursuant to L.1977, c. 933, § 8.

**Former Section 89.** Section, which related to severability, was added L. 1974, c. 578, § 2; repealed by L.1977, c. 933, § 1, and is now covered by section 100.

### § 90. Severability

If any provision of this article or the application thereof to any person or circumstance is adjudged invalid by a court of competent jurisdiction, such judgment shall not affect or impair the validity of the other provisions of the article or the application thereof to other persons and circumstances.

Added L.1977, c. 933, § 1.

**Derivation.** Former section 89, added L.1974, c. 578, § 2, and repealed by L.1977, c. 933, § 1.

**Effective Date.** Section effective Jan. 1, 1978, pursuant to L.1977, c. 933, § 8.

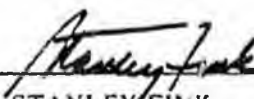


# NEW YORK STATE ASSEMBLY

## RULES AND REGULATIONS RELATING TO PUBLIC ACCESS TO RECORDS PUBLIC INSPECTION AND/OR COPYING OF ASSEMBLY RECORDS

(Pursuant to Public Officers Law, Article 6 — Freedom of Information Law)

1. **APPLICABILITY.** The provisions of these Rules and Regulations shall be applicable to all records of the New York State Assembly available for public inspection and/or copying.
2. **LIST OF AVAILABLE RECORDS.** A current list, by subject matter, of records required to be made available for public inspection and/or copying shall be posted in the Assembly Public Information Office.
3. **LOCATION OF RECORDS.** All available records shall be located or made available for public inspection and/or copying at the ASSEMBLY PUBLIC INFORMATION OFFICE ROOM 148, STATE CAPITOL, ALBANY, NEW YORK.
4. **HOURS OF INSPECTION.** Available records may be inspected and/or copied during normal working hours, Monday through Friday.
5. **TO WHOM AND WHERE REQUEST MADE.** A request for a particular record shall be made to the \*Assembly Records Access Officer at the Assembly Public Information Office.
6. **FORM OF REQUEST.** Anyone wishing to inspect and/or copy an available record shall submit a fully completed and signed request on a form to be provided by the Assembly Records Access Officer.
7. **DESCRIPTION OF RECORD REQUESTED.** A request for a record shall adequately specify or describe the record sought to be inspected and/or copied.
8. **NUMBER OF RECORDS PERMITTED.** The Records Access Officer shall have the discretion to limit the number of records of any type or types an applicant may request at any one time.
9. **TREATMENT OF RECORDS.** No marks of any kind shall be made on any record provided for inspection and/or copying.
10. **AREA RESTRICTION.** Inspection and/or hand copying of records shall be permitted only in the area designated by the Records Access Officer for such purpose.
11. **LIMITATION OF EXAMINATION TIME.** The Records Access Officer may fix limitations on the time any applicant may have to examine any record.
12. **TEMPORARY UNAVAILABILITY OF RECORDS.** Where a record is in use, or, filing or intake procedures relating thereto have not been concluded, the filling of a request for such a record may be reasonably delayed until such a use or the procedures are completed.
13. **RETURN OF RECORD FOR ASSEMBLY BUSINESS.** Whenever a record made available for public inspection and/or copying is required for the business of the Assembly, the Records Access Officer may require the return of the record from the user upon demand.
14. **PROVISION OF PHOTOCOPIES.** Photocopies of available records may be obtained from the Records Access Officer at a fee of 10 cents per page except that the fee for photocopying records in excess of 8-1/2 inches by 14 inches in size shall be the actual cost of reproducing such records. Orders for photocopies may be made in person or by mail provided the required request forms are fully completed and the required fees accompany the requests.
15. **DENIAL OF ACCESS.** In the event a request for a record is denied, the person denied access to a record may appeal such denial to the \*\*Assembly Records Appeals Officer.

  
STANLEY FINK  
Speaker of the Assembly

January 9, 1980

\*ASSEMBLY RECORDS ACCESS OFFICER: Joseph Martorana (518) 455-4218  
\*\*ASSEMBLY RECORDS APPEALS OFFICER: William Alexander (518) 455-3801



THE ASSEMBLY  
STATE OF NEW YORK  
ALBANY

JOSEPH MARTORANA  
Records Access Officer

SHARON GALARNEAU  
Deputy Records Access Officer

(518) 455-4218  
(518) 455-4219

Public Information Office  
State Capitol - Room 148  
Albany, New York 12248

January 9, 1980

In compliance with the Freedom of Information Law, below is a Current List of Assembly records required to be made available for public inspection and/or copying:

**BILLS, BILL DATA AND RESOLUTIONS**

1. Bills and Amendments
2. Resolutions (Assembly, Joint and Concurrent) and Amendments
3. Introducers' Bill Memoranda
4. Fiscal Notes

**COMMITTEE RECORDS**

1. Agendas
2. Attendance Records
3. Roll Call Votes
4. Annual Reports
5. Final Reports or Recommendations and Minority or Dissenting Reports and Opinions of Members of Committees, Subcommittees and Commissions of the Legislature

**COMMUNICATIONS FROM THE GOVERNOR**

1. Messages from the Governor
  - a. General Messages
  - b. Special Messages
  - c. Veto Messages
  - d. Emergency Messages (of Necessity)
2. Memoranda on Bills before the Governor for Executive Action
  - a. Listing of Chapter Number and Title of All Bills Approved
  - b. Approval Memoranda on Signing of Bills
  - c. Disapproval Memoranda on Vetoing of Bills

**DEBATE AND PUBLIC HEARING RECORDS**

1. Transcripts of Daily Floor Debates
2. Transcripts of Committee and Subcommittee Meetings (if prepared)
3. Transcripts of Public Hearings Minutes (if prepared)
4. Public Hearing Calendar

**FLOOR OR CHAMBER RECORDS**

1. Daily Attendance Records
2. Roll Call Votes on Bills and Resolutions
3. Index Records
4. Journal Records

**MESSAGES — OTHER**

1. Messages from the Senate
2. Messages from Local Governments (Home Rule Messages)

**PERSONNEL RECORDS**

1. Payrolls — Annual and Session (Name, Public Office Address, Title, and Salary of every Officer or Employee)
2. Code of Ethics Statements

**MISCELLANEOUS**

1. Formal Opinions by the Attorney General on Proposed Constitutional Amendments
2. Other Formal Opinions and Final Reports submitted to the Legislature
3. Legislative Notification of Proposed Adoption of Rules by Agencies
4. Administrative Staff Manuals and instructions to Staff that affect Members of the Public

  
JOSEPH MARTORANA  
Records Access Officer

D R A F T

COMMENTARY TO PROPOSED  
COMMITTEE SUBSTITUTE FOR  
SB 90

February 6, 1981

D R A F T

COMMENTARY TO PROPOSED  
COMMITTEE SUBSTITUTE FOR  
SB 90

Sec. 40.25.010. State Policy.

No change from SB 90.

Sec. 40.25.015. Records To Be Open To Inspection.

The reference to "exceptions" in the title has been eliminated since a separate exemption section now appears in sec. 40.25.030. The reference to inspections that infringe on a person's right to privacy has been deleted from subsection (a) since a separate exemption on this subject appears in sec. 40.25.030. Subsection (d) has been amended to allow a person to receive 20 pages of a record copied without charge during any 24-hour period and to permit the waiver of fees in the public interest.

Sec. 40.25.020. Duties Of Governmental Unit.

This new section takes the place of Sec. 40.25.020, Requests For Records, in SB 90. It provides a reasonable time frame for an agency to search for, locate and determine whether a record is subject to disclosure. It also allows sufficient time for the agency to determine whether a specific exemption to disclosure applies and, in particular, whether disclosure would constitute an unwarranted invasion of personal privacy. The time frame specified is consistent with the administration's recently proposed procedural regulations on public information as well as CSIB 131

(Judiciary, 1977) and SCS CSHB 75 (1980). It does, however, add a fourth circumstance justifying extension of the ordinary 10-day period in which to respond to a public request: the need to notify a person and provide him with an opportunity to be heard when his privacy interests may be invaded through disclosure of the record. See sec. 40.25.030(c).

Sec. 40.25.030. Exemptions.

This section lists 12 exemptions from the duty to make records public.

Exemption (1) now includes records exempt from disclosure by federal law and regulation (which are currently exempt from disclosure under existing law) as well as records exempt from disclosure by court rule.

Exemption (2) (tax returns) remains identical to former exemption (2), but the clause pertaining to subject access has been deleted as the issue of subject access is covered generally under sec. 41.25.040.

Former exemptions (3)-(8) are now covered under the general privacy exemption in exemption (12) and are discussed under the commentary pertaining to that exemption.

Former exemption (9) (archival records) now appears without change as exemption (3).

Former exemption (10) (library records) now appears without change as exemption (4).

Former exemption (11) (trade secrets) now appears as exemption (5). The exemption has been redrafted to conform more closely with the companion federal provision

and to protect trade secrets and other confidential business information developed by government. The term "trade secrets" is intended to include any formula, pattern, device or compilation of information which is used in a commercial setting which gives the owner an opportunity to obtain an advantage over competitors who do not know or use it.

The definition of the term confidential has been clarified by several major cases arising under the federal exemption, and those cases should serve as persuasive authority in interpreting the Alaska provision. Material has been held to be confidential if: (1) it would not customarily be released to the public by the person from whom it was obtained, Sterling Drug, Inc. v. FTC, 450 F.2d 698, 709 (D.C. Cir. 1971); (2) disclosure would impair an agency's ability to obtain similar information in the future, National Parks & Conservation Association v. Morton, 498 F.2d 765, 770 (D.C. Cir. 1974); or (3) disclosure would cause substantial harm to the competitive position of the person from whom the information was obtained, National Parks & Conservation Association v. Klepoe, 547 F.2d 673, 679 (D.C. Cir. 1976).

Former exemption (12) (test questions) now appears as exemption (6) and has been narrowed to provide that the exemption only applies if disclosure would compromise the objectivity of the examination process.

Former exemption (13) (law enforcement files) now appears as exemption (7). The introductory section has been modified slightly to more closely parallel the corresponding

section in the federal act with the general reference to "other governmental unit" eliminated. Former subsection (H) has been deleted as unnecessary as the exemption is already covered by exemption (1).

Paragraph (G) of former exemption (13) (crime victims) has been deleted as it implies that the names of victims of crimes other than sexual assault are subject to public disclosure. In the proposed committee substitute the names of all crime victims would be protected from disclosure under both exemption (12) and subsection (h) of this section, until open court proceedings were initiated where the victim was identified. The right of the public to know other basic information about a crime (original entry records) is emphasized in subsection (h) of this section, and reference is made to the commentary accompanying that subsection.

The attorney work product exemption (former exemption (15)) now appears as exemption (9). The limitation requiring disclosure of attorney work product after the litigation has ended has been eliminated. Materials prepared by an attorney in preparation of possible litigation have been exempt from discovery since the landmark decision in Hickman v. Taylor, 329 U.S. 495 (1947). In that opinion the court noted the general policy against invading the privacy of an attorney's preparation of a case is essential to the orderly working of our legal system. Additionally, the attorney work product exemption has been held to apply to discovery of attorney work product in cases that have already been terminated, In Re Murphy, 560 F.2d 326 (8th Cir. 1977).

Consequently, in permitting discovery of attorney work product once the litigation has ended, SB 90 may be in contradiction to the Alaska Court Rules of Civil Procedure.

Former exemption (16) (judge's opinions) now appears as exemption (10), but the prior limitation in the exemption (once the case has been decided, prior draft opinions become public) has been eliminated for the same reasons as discussed under the attorney work product exemption above.

Former exemption (17) (internal security procedures) appears without change as exemption (11).

Exemption (12) exempts from disclosure records that would constitute an unwarranted invasion of personal privacy. This exemption is broad enough to take the place of the general "infringes on a person's right to privacy" exemption specified in sec. 40.25.015(a) of SB 90, and the specific exemptions in former subsections (a)(3)-(8). In using the term "unwarranted invasion of privacy" the proposed committee substitute emphasizes that even in instances where disclosure would constitute an invasion of privacy, disclosure is required if the public interest in disclosure outweighs the privacy interest.

The deletion of the specific exemptions previously found sec. 40.25.015(a)(3)-(8) of SB 90 does not make any substantive change in the bill. While SB 90 appears to provide that all information referred to in exemptions (3)-(8) are exempt from disclosure, each exemption requires that the information constitute "personal information" for it to be exempt from disclosure. That term was defined in former

sec. 40.25.040(4) as "information about an individual person, the disclosure of which would constitute an unjustifiable invasion into a person's right to privacy". Consequently, rather than blanketly exempt from disclosure the categories of records listed in exemptions (3)-(8), SB 90 requires the agency to first balance the two competing interests involved (the public's right to access to information concerning the conduct of governmental affairs and a person's privacy interests) in making a determination whether to disclose a particular record. The specific exemptions in (3)-(8) are therefore unnecessary under both SB 90, which exempts from disclosure in sec. 40.25.015(a) records that would infringe on a person's right to privacy and, under exemption (12) of the proposed committee substitute, which exempts from disclosure records that would constitute an unwarranted invasion of privacy.

Subsection (b) is new to SB 90. It is intended to: (1) state the general test to be used by a governmental unit in determining whether disclosure would constitute an unwarranted invasion of privacy; and (2) provide guidelines to be used in applying that test. Subsection (b) does not, however, define the right to privacy. Because of the wide ranging circumstances where the right to privacy can be asserted, and the competing public interests involved, the term is not susceptible to a single and uniform definition. However, in the context of disclosure of public records, specified guidelines can be provided to governmental units, and ultimately the courts, as an aid in determining whether

disclosure of a particular record would constitute an unwarranted invasion of personal privacy. The proposed committee substitute adopts this approach.

The guidelines listed in paragraphs (1)-(9) are not necessarily listed in order of importance nor are they to be viewed as having equal weight in arriving at a decision regarding disclosure. For example, if the information was of a personal nature under paragraph (1), but the individual was notified, or reasonably could have concluded, that the information would be subject to public review at the time he provided the information, the guideline in paragraph (7) would clearly take precedence and require disclosure.

The factors listed in guideline (1) are taken from AS 39.26.010, which prohibits the government from inquiring into certain personal matters concerning state employees except as directly related to the performance of his official duties. Subparagraph (E) is based on former sec. 40.25.015(e)(6).

The most important consideration in guideline (2) is whether the person could reasonably assert an option to withhold embarrassing information from the public. A critical factor in arriving at the determination would be the relationship between the information and the person's ability to perform in the governmental capacity he may hold. In such a case, the information, though embarrassing, could not be withheld. Again, as with the other guidelines, each must be considered in relationship to other considerations. For example, embarrassing information about an individual that was merely rumor or conjecture would result in a much more substantial

privacy claim pursuant to guideline (8).

As is apparent from guideline (3), in many instances it is relevant to consider the standing of the person who has requested the information. It will sometimes be impossible to determine if a given disclosure will produce an unwarranted invasion of privacy without considering what the requesting party intends to do with the information. For example, a compilation of the home addresses of all state employees listing their salaries would not be exempt from researchers attempting to do a survey on the average income of state employees, while the compilation should be exempt from release for the purposes of commercial solicitation.

Guideline (4) is largely self-explanatory. The fact that the information was voluntarily furnished by an individual reduces his privacy claim while the fact that he may have been compelled to furnish the information increases his privacy claim.

The guideline in paragraph (5) is intended to emphasize that personal information supplied by applicants or receipts of basic social service programs, such as public assistance, are entitled to substantial privacy protection as the information was submitted in order to obtain minimum social benefits, and the individual had little choice but to submit the required information. This compares, however, with the privacy claim of individuals who supply information to government in an effort to obtain substantial government benefits or subsidies. Their privacy claim is significantly reduced since the decision to apply and supply the information

was a voluntary one on the part of the individual. Additionally, there is a significant public interest in monitoring governmental programs that distribute substantial amounts of state wealth to relatively few individuals.

The fact that the information requested was readily available from non-governmental sources reduces an individual's privacy claim pursuant to guideline (6), as does notification to the person at the time he supplies the information that the record will be subject to public disclosure pursuant to guideline (7).

An individual's privacy claim will be substantially greater under guideline (8) when the requested personal information consists of unverified information or rumor. The substantial damage that uncorroborated information about an individual can do to personal reputation weighs heavily against disclosure.

Guideline (9) is self-explanatory.

Subsection (c) is also new to SB 90. It establishes notice procedures to protect individual privacy interests. The duty under subsection (c) arises whenever the governmental unit has decided to disclose material that may come within exemption (a)(7)(C) or (a)(12) and there is a substantial probability that the person identified in the record will object to disclosure. The "substantial probability" language emphasizes that the notice requirement does not apply every time there is a possibility that a privacy exemption may be applicable. If the governmental unit applies the guidelines specified in subsection (b), notification should only be

required in a small minority of cases. However, in cases, for example, where there is significant disagreement in the governmental unit itself as to whether the public interests in disclosure outweighs any applicable privacy interests, the agency should be fully apprised of all considerations favoring non-disclosure before declining to assert an applicable exemption.

Subsection (d) (all records became public after 20 years) is identical to Sec. 40.25.015(f) in SB 90.

Subsection (e) (research) is identical to Sec. 40.25.015(g) in SB 90 but in paragraph (2), reference has been made to federal law or regulation, and court rule, consistent with exemption (1).

Subsection (f) (subpoenaed records) is similar to sec. 40.25.015(b) in SB 90 but emphasizes that other state laws pertaining to the confidentiality of public records cannot be raised to prevent disclosure once a subpoena has been issued.

Subsection (g), pertaining to employee personnel records, is based on sec. 40.25.015(i) but more clearly defines the types of employment personnel records subject to disclosure and exempts from disclosure personnel performance evaluations. While there is substantial disagreement on this issue, the proposed committee substitute reflects the view that the disclosure of such information constitutes an unwarranted invasion of the employee's right to privacy and unnecessarily hampers the ability of government to use the performance evaluation as an effective supervisory tool to

insure adequate job performance.

Subsection (h), pertaining to crime information, is identical to sec. 40.25.015(j), but does not provide that the name of the victim of a crime is a matter of public information. The proposed committee substitute adopts the approach that until open court proceedings commence where the victim is identified, the release of the victim's name would constitute an unwarranted invasion of privacy.

Sec. 40.25.040. Access To Records By Record Subject.

This section, which is new to SB 90, gives the individual or his duly authorized representative the right of access to any accessible record pertaining to him. "Accessible record" is defined in sec. 40.25.090(1) as a record that refers to a particular individual that can be retrieved as a result: (1) of the governmental unit's use of a retrieval scheme or index based on the identity of the individual; or (2) of the requester providing sufficiently detailed information to enable the governmental unit to locate the record without an unreasonable expenditure of time, effort, money, or other resources. The compliance timetable and procedures of secs. 40.25.015--40.25.020 are incorporated by reference. Consequently, the same procedures apply if the individual is requesting access to any record whether or not his own.

Subsection (b) imposes limits on the individual's right of access to his personal records. Paragraph (1) incorporates the relevant freedom of information exemptions

of secs. 40.25.03C(a)(1)---40.25.030(a)(11). Additionally, paragraph (1) allows disclosure of information that would otherwise be exempt under AS 40.25.030(a)(1)--40.25.030(a)(11) if the information was originally submitted to the governmental unit by the requester.

Paragraph (3) limits an individual's access to his personal records to the extent necessary to prevent an unwarranted invasion of another individual's personal privacy. The agency should, of course, balance the public interest in disclosure against the privacy interest of the individual to whom the records pertains See sec. 40.25.030(b).

Paragraph (2) protects the anonymity of individuals who write letters of recommendation or provide character and fitness evaluations. A record requester is entitled to access, however, provided that the identity of the source of the evaluation is not revealed. This section also confirms that an individual shall have access to his own test questions and answers in any examination used for licensing or public employment. This applies to examinations that the individual must take and pass in order to practice a trade or profession such as bar and real estate examinations. This right is limited to access and does not include copying. This limitation enables government agencies to protect the integrity of test questions that may be used for future examinations.

Subsection (c) is intended to be consistent with protections existing for the confidentiality of records of minors who seek treatment or counselling or treatment of conditions such as venereal disease, pregnancy, or alcohol

or other drug abuse. The purpose of these provisions is to remove the fear of parental discovery and thus encourage minors to seek appropriate aid. This provision prevents parents and guardians from circumventing these statutes by asserting, in a representative legal capacity, the access rights of their children.

Subsection (d) is similar in intent to sec. 40.25.020(c).

Sec. 40.25.060. Correction and Amendment of Records.

This section, which is new to SB 90, provides an individual with the right to correct or amend any incomplete or inaccurate information contained in a record accessible to him under sec. 40.25.540.

Subsection (b) specifies that a request to correct or amend must be in writing and requires a governmental unit to respond within twenty days after receipt of the request. If the governmental unit makes the correction or amendment or does not maintain the record, the matter comes to an end. If the agency refuses to correct or amend as requested, it must inform the individual in writing of its decision and state the reasons.

If the governmental unit refuses to order the correction or amendment, subparagraphs (b) (3) (A)-(B) permit the individual to file a statement of disagreement with his record and requires the governmental unit to notify the individual of his right to bring a judicial action pursuant to sec. 40.25.070. Whenever a governmental unit discloses

disputed information to a third party, subsection (c) compels it to: (1) identify the disputed information; (2) provide a copy of the individual's statement of disagreement or pending request for amendment or correction; and (3) provide a statement of the agency's current position concerning the requested amendment or correction, including final action if any has been taken. The agency must also transmit a copy of the statement of its current position to the last known address of the individual whose record is released.

Sec. 40.25.070. Enforcement: Injunctive Relief.

This section remains largely unchanged from sec. 40.25.025 in SB 90, but reflects the ability of an individual to require a governmental unit to correct or amend incomplete or inaccurate information pertaining to him.

Sec. 40.25.070. Civil Action For Obstruction Of Access To Records.

No change from SB 90.

Sec. 40.25.090. Definitions.

A definition of "accessible records" appears in paragraph (1). That term is used in sec. 40.25.040 and is discussed in the commentary under that section.

The definition of "governmental unit" remains identical to the definition in SB 90 and specifically includes municipalities.

The definition of "personal information" has been eliminated as that term is not used in the proposed committee substitute.

A new definition of "individual" is provided. That term is used in the section on individual access to records concerning themselves, and is intended to exclude organizations, such as corporations and partnerships.

Sections 2 - 5.

The amendments in sections 2-5 of SB 90 appear without modification in the committee substitute with the exception of former section 4, providing an affirmative defense to the crime of Tampering With Public Records. In view of the requirement in the definition in the crime that the public servant "know" that conduct is improper, the affirmative defense has been eliminated.

Section 6. Effective Date.

A delayed effective date is provided to allow sufficient time to identify and propose amendments to the Act as a result of oversights in coverage.

THE LEGISLATURE OF THE STATE OF ALASKA  
TWELFTH LEGISLATURE

FISCAL NOTE

I. REQUEST

Bill/Resolution No. SB 90  
 Title "An Act relating to privacy and public information; and changing Rule 65  
 Requested by Sen. Fischer Date \_\_\_\_\_  
of the Alaska Supreme Court Rules of Civil Procedure."

II. FISCAL DETAIL

Agency Affected Department of Law  
 Program Category Affected General Government  
 BRU, Program, or Subprogram(s) Affected Legal Services  
 (Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)  
EXPENDITURES (Thousands of Dollars)

	FY 81	FY 82	FY 83	FY 84	FY 85	FY 86
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL	0	0	0	0	0	0

FUNDING (Thousands of Dollars)

GENERAL FUND	0	0	0	0	0	0
FEDERAL FUNDS						
OTHER (Specify Fund Source)						

POSITIONS

FULL TIME	0	0	0	0	0	0
PART TIME						
TEMPORARY						

III. ANALYSIS (See Fiscal Note Preparation Instructions, Section III)

None of the Department of Law's BRU's, Legal Services, Prosecution and Consumer Protection, expect that any significant fiscal impact would result from the passage and implementation of SB 90.

IV. DATE January 21, 1981 PREPARED BY Richard I. Pegues  
 AGENCY Department of Law  
 PHONE 465-3695  
 Original: Legislative Finance  
 cc: Budget and Management  
 Prime Sponsor (First Legislator Named)

*Richard I. Pegues*



**ALASKA PUBLIC INTEREST RESEARCH GROUP**  
Post Office Box 1093/Anchorage, Alaska 99510/(907) 278-3661

February 6, 1981

Sen. Vic Fischer, Chair  
Senate State Affairs Committee  
Alaska State Legislature  
Touch V  
Juneau, AK 99811

Dear Senator Fischer:

We would like to reiterate and expand upon our comments at the teleconference hearing of February 5, 1981 on SB 90, Freedom of Information Act.

As an impressive array of witnesses has illustrated, there is a strong need for a Freedom of Information Act. SB 90, with a few relatively minor improvements, will fill that need.

Public access to information compiled by and for its government is a basic requirement of the democratic process of government. This is not special interest legislation for the press. Rather, this is legislation which ensures that the public, including the press, can hold its government accountable.

Our specific suggestions follow:

Sec. 40.25.010(d) does not contain a fee waiver for requests in the public interest by those unable to pay, such as non-profit groups or individuals. We support a change along the lines of the federal FOIA, which contains the following language: "Documents shall be furnished without charge or at reduced charge where the agency determines that waiver or reduction of the fee is in the public interest because furnishing the information can be considered as primarily benefiting the general public."

We support the goal of releasing non-exempt portions of records to which some exemption otherwise applies (Sec. 40.25.020(c)). The proposed standard (that the lawful custodian of the record determine whether deletion of the exempt part will make release "suitable") is vague and possibly too discretionary as a standard. We support a change along the lines of the federal FOIA's use of the standard of "reasonable segregability" to govern provision of records after an exemption has been determined to apply.

Letter to Sen. Fischer

SB 90

Page two

We support the existing provisions which allow requestors whose request has been denied easy and cheap access to the courts: filing and service fees are waived and the court provides a simple form which instructs complaining parties how to proceed without a lawyer. The governmental unit has the burden of proof to show the exemption applies. We suggest that any notice by the governmental unit that it is applying an exemption be required to include a packet of instructions, including the form drawn up by the superior court, on how to proceed in court without counsel to challenge the exemption. In this way we can ensure that citizens are fully aware of their rights under the law without the need to turn to legal specialists. In the interest of speedy processing of the court case, we suggest that the legislature consider requiring that the court hear the case within a specified short period (e.g. 10-30 days). Otherwise, backlogs in the court can hamper the speed with which the citizen can gain access to the information.

Another legal issue is whether someone who would be adversely affected by the disclosure of an arguably exempt record should be allowed to intervene in a case involving the application of an exemption. If this standing to intervene is not otherwise provided by the Alaska Administrative Procedures Act, it should be provided in the bill. The interests of fairness require that one who is affected by disclosure be given a voice in the process, especially since the government may not pursue the case with the same vigor as the affected party. This change should not cause delay or make access more difficult as long as the burden of proof remains solidly on those who would apply the exemption.

Sec. 40.25.115(c) should allow copies to be requested in person. When the requestor's needs are urgent enough to merit an in person request, he or she should be able to get immediate action by making the request in person.

We support several changes from previous versions of the bill:

- \*Exclusion of search costs in the charges to the requesting party (Sec. 40.25.015).
- \*Exemption for attorney work product in possession of the governmental unit only until the matter is closed (Sec. 40.25.015(e)(15)).
- \*Broad definition of governmental unit to which the Act applies. We urge the Committee to resist any change which would exclude local governmental units from coverage under the bill (Sec. 40.25.040 (3)).

The inclusion of these changes in SB 90 strengthens the bill.

Letter to Sen. Fischer  
SB 90  
Page three

We close with the strong recommendation that the Senate pass a  
Freedom of Information Act substantially similar to SB 90.

Sincerely,

ALASKA PUBLIC INTEREST RESEARCH GROUP

*Matthew Zencey*  
Matthew Zencey



# Ombudsman

Frank Flavin

January 28, 1981

Senator Victor Fischer  
and Members  
Senate State Affairs Committee  
Pouch V  
Juneau, AK. 99811

State of Alaska

Reply to:

- 840 K Street, Room 203  
Anchorage, Alaska 99501  
(907) 276-4011
- Pouch W0  
Juneau, Alaska 99811  
(907) 465-4970
- P.O. Box 74358  
Fairbanks, Alaska 99707  
(907) 452-4001

Subject: SB 90

Dear Senator Fischer:

In his Third, and again in his Sixth Annual Report to the Hawaii Legislature, Ombudsman Doi has noted increased interest and involvement of people in their government. Citizens have encountered two primary areas of difficulty in their attempts to learn about the workings of government through the inspection of records and files: 1. access to some records is denied, and 2. excessive delays occur before the records are released. The experience of the Alaska Ombudsman office has been similar.

Mr. Doi points out that "the less information is shared, the more power those that possess such information retain for themselves." He takes the position, as does the Policy section of SB 90, that "democratic institutions are founded on the premise that information should be shared among the citizenry and their representatives for decision-making purposes." In arguing for freedom of information legislation, Ombudsman Doi urges

- that governmental records and materials be open to the fullest extent possible,
- that exclusions be limited, be specifically listed and strictly defined, and be legislatively authorized,
- that strict time limits be established within which agencies either provide requested records or formally deny a request,
- that prompt and convenient appeal procedures be available,
- and that fair and uniform fees for reproduction of written documents be charged.

We agree with these guidelines and support SB 90 in its attempt to strengthen the people's right to information about their government.

Freedom of information complaints to the Alaska Ombudsman office include:

- Veterans Affairs' denial of the request of a son, with his father's general power of attorney, to inspect the father's loan payment history
- Motor Vehicles' charging of \$2 for the name and address of the registered owner of a vehicle, when the complainant didn't want a copy of any document
- Administration Personnel's denial of copies of preliminary studies leading to a position reclassification
- ASHA's refusal to give a resident a copy of an incident report concerning an altercation she had been involved in
- Division of Social Services' refusal to permit prospective foster parents viewing of personal references written about them
- DOT's refusal to provide a citizen with a copy of the tape of a public meeting for use on a radio broadcast (they would provide a transcript)

Although some of these complaints have been found to be justified, and others unsupported, they serve to exemplify the spectrum of types of information sought and the number of different agencies involved.

With regard to SB 90, the following specific suggestions and questions are offered for your consideration:

page 2 line 25

(1) those exempted from disclosure by state statute (;). federal law or regulation

This language is closer to the current AS 09.25.120 (4) and should preclude conflicts between federal and state laws.

page 4 lines 5 and 6

Who decides what are "trade secrets, privileged information, and confidential commercial, financial, geological or geophysical data?"

page 4 lines 9 and 10

The current drivers manual contains sample questions which are, in some cases, actual questions on drivers license tests.

page 8 lines 25 through 29 and page 9 lines 1 through 7

Who is the "head" of a governmental unit?" What is an "agency?" If an agency is a department, the commissioner would be the "head;" if agency means a division, the director would be its "head."

Who is the "head" of, for example, the Human Rights Commission -- the Executive Director or the Chair?

Should it be required that there be "designees" in each office location, or will, for example, an employee in the Fairbanks Natural Resources

office need to contact a designated custodian in Anchorage before releasing a record?

In the definition of "governmental unit" perhaps "governmental instrumentality," "public corporation," and "REAA" should be specifically included.

page 9 line 24

What is a "public body?" Would, for example, this section apply in a meeting between several state agencies and the U.S. Army?

More generally, you may wish to include an administrative appeal prior to filing an action in court to compel the release of records. Such an appeal would require a different decision maker and strict adherence to reasonable time frames.

Also, the legislative adoption of a uniform fee schedule similar to that proposed by the Governor might be advisable. This proposed regulation provides for the copying of 20 pages free within a 24 hour period, and a fee of 10¢ for each additional page.

Our most pressing concern, however, is the repeated use of "right to privacy" in this proposed legislation. Absent any attempt at definition or case law clarifying this Constitutional protection, we are left only with case by case interpretation. The diversity of opinion is particularly evident in responses from the Attorney General's Office on cases arising from Ombudsman complaints.

In opinions issued on April 17, 1979 (concerning release of mailing lists of those receiving senior citizen property tax exemptions to a senior citizen organization) and on February 21, 1980 (concerning the release to Legislators of the names of those receiving Longevity Bonus payments) an Assistant Attorney General advised that the former be denied, while there was no privacy issue in the latter. He argued that there would be no anxiety or embarrassment caused to Longevity Bonus recipients if their names were to be released to members of the Legislature, whereas it would violate the privacy of senior citizens claiming property tax exemptions if a list of their names and address were released. When in doubt, this opinion states, it is better to err on the side of non-disclosure. A factor in the senior citizen decision was the possible use of the list by vendors.

On a similar issue, and on the basis of the same legal advice, the Division of Retirement and Benefits has refused to release a list of TRS retirees to a retired teacher organization. The division explains that although this group might not "misuse" the list, if it were released to one organization, how could the division refuse to provide it to another which might put it to questionable use.

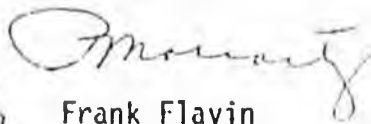
In another opinion issued July 31, 1978 on the release of the name and address of the registered owner of a motor vehicle (attached), the

January 28, 1981

same Assistant Attorney General argues that despite the absence of current statutory language allowing the keeper of a record to inquire as to its possible use, the Attorney General's office has taken the position that right of privacy takes precedence over freedom of information. "When the two come in conflict, the keeper of the records can facilitate or cause a person's privacy to be invaded only to the extent that a legitimate public interest requires it." He concludes that the release of motor vehicle registration information is generally "harmless," since "persons requesting the information will have an interest sufficient to justify the information's release..." Absent "any pattern of misuse of information or any serious or persistent problem," the opinion finds that "the statute controls" and the information is public. "We do not believe that...administrators have the authority to carve out their own exceptions from the statutory dictates of AS 09.25.110." Yet this is exactly what he has advised the Department of Community and Regional Affairs and the Division of Retirement and Benefits to do in the previously cited opinions.

We expect ultimate resolution of these differing interpretations to come through litigation, perhaps to be facilitated by the simplified civil procedures in SB 90. They are brought to your attention as a reminder of just how gray the "right to privacy" area is and, therefore, how subject to individual interpretation the sections in SB 90 which use this language will be.

Sincerely,

  
for Frank Flavin  
Ombudsman

Attachment

# STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

## DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

POUCH K - STATE CAPITOL  
JUNEAU 99511

June 1, 1978

Mr. Francis M. Flavin, Ombudsman  
640 'K' Street, Suite 203  
Anchorage, Alaska 99501

Re: Ombudsman Complaint  
#A78-0655 (license  
plate information)  
Our File: J-66-787-78

Dear Mr. Flavin:

Your letter to the Attorney General on this matter has been referred to me for reply. The issue presented is whether the adoption of the Privacy Amendment to the Alaska Constitution, art. I, § 22, impliedly amended AS 09.25.110. \*/

Often called the Alaska Freedom of Information Act, AS 09.25.110 \*\*/ provides generally that, absent a "specific" dictate to the contrary, all public records are open to public inspection and copying. Nothing in the section requires (or

\*/ A threshold question is whether AS 44.23.020 allows the Attorney General to provide the Ombudsman with legal advice. We believe that, as an agency of the legislature, AS 24.55.110, the Office of Ombudsman is entitled to a written legal opinion under AS 44.33.020(b)(4). Even in the absence of that statute, the Attorney General's common law powers would appear to authorize the opinion. *Public Defender Agency v. Super. Ct., 1st Jud. Dist., 534 P.2d 947 (Alaska 1975)*.

\*\*/ The section reads as follows:

Sec. 09.25.110. INSPECTION AND COPIES OF PUBLIC RECORDS. Unless specifically provided otherwise the books, records, papers, files, accounts, writings, and transactions of all agencies and departments are public records and are open to inspection by the public under reasonable rules during regular office hours. The public officer having the custody of public records shall give on request and payment of costs a certified copy of the public record.

Francis M. Flavin, Ombudsman  
Anchorage, Alaska

July 31, 1978

- 2 -

even authorizes) the keeper of the records to inquire into the bona fides of the request for a record or other information. Nothing in the section allows the keeper of the records to reject a request simply because he doubts that it is legitimate or even if he is convinced on the basis of the information available to him that the request is illegitimate. The statute is Kantian in its dictate. If a rapist asks for a girl's name and address, under the statute's plain language, the keeper of the records must reveal them.

This office has, however, consistently rejected the Kantian formulation and taken the position that the constitutional right of privacy takes precedence over the Freedom of Information Act. When the two come in conflict, the keeper of the records (the state) can facilitate or cause a person's privacy to be invaded only to the extent that a legitimate public interest requires it. Falcon v. A.P.O.C., 570 P.2d 469 (Alaska 1977). Hence, if a public release of information would result in a disclosure which would stigmatize one or subject one to opprobrium or otherwise disclose matters which an ordinary, reasonable person would prefer remain private, then there must be a legitimate public interest in releasing the information sufficient to justify the invasion of privacy before the information can be released. Falcon v. A.P.O.C., supra; cf., Ravin v. State, 537 P.2d 494 (Alaska 1975) (balancing of interests).

With respect to motor vehicle registration, as a general rule, the release of the information is in itself harmless. The probability of serious misuse does not appear to be great. The likelihood of potentially obnoxious use (e.g., an unsolicited offer to purchase) does not appear much greater. As a general rule, persons requesting the information will have an interest sufficient to justify the information's release, i.e., hit-and-run victims, seekers of witnesses to accidents, junkyard dealers, auto towers, and creditors. Even a would-be, albeit unsolicited, purchaser has a legitimate interest. \*/  
No one has suggested that there is any pattern of misuse of

\*/ We cannot agree with your assumption that the only legitimate use of registration information is to further its major purpose, i.e., revenue and law enforcement. It is, for instance, used to establish ownership. AS 28.10.560; State Farm Mut. Auto Ins. Co. v. Clark, 397 F.Supp. 745 (D. Alaska 1975).

Francis M. Flavin, Ombudsman  
Anchorage, Alaska

July 31, 1978

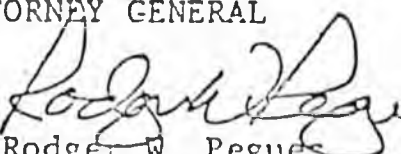
- 3 -

information or any serious or persistent problem in the misuse of information which would support an imposition of administrative restrictions on the release of information under AS 09.25.100 and 110. If such a pattern or problem existed, then the protections of the Privacy Amendment could be invoked. But absent both, the statute controls.

It would certainly be possible, if it chooses to do so, for the legislature to amend title 28 to provide for the administrators to devise regulations or forms for protecting motor vehicle registrants (and others) from constitutionally permissible but nevertheless unwanted intrusions into their privacy. We do not believe that, absent a change in the law or the existence of an actual and serious problem involving someone's privacy, the administrators have the authority to carve out their own exceptions from the statutory dictates of AS 09.25.110. That would be a real abuse of discretion, an abuse which you would, undoubtedly, soon be called upon to examine.

Sincerely yours,

AVRUM M. GROSS  
ATTORNEY GENERAL

By:   
Rodger W. Pegues  
Assistant Attorney General

RWP:md



## THE CITY AND BOROUGH OF JUNEAU

CAPITAL OF ALASKA

155 SOUTH SEWARD ST. JUNEAU, ALASKA 99801

LAW DEPARTMENT (907) 586-3300

February 3, 1981

The Honorable Victor Fischer  
Chairman, Senate State Affairs Committee  
Alaska State Legislature  
Pouch V State Capitol Building  
Juneau, Alaska 99811

FILE: Legislature--1981

SUBJECT: Senate Bill 90  
(Privacy and Public Information Act)

Dear Senator Fischer:

A bill dealing with privacy and public information has been before the Legislature for several years. Senate Bill 90 is a refinement of those prior unsuccessful attempts. The positions expressed in this letter are those which the Assembly of the City and Borough of Juneau, acting through its Legislative Committee, has adopted in the past and which the committee has not changed this year.

On page 2, beginning at line 19, charges for duplication of public records is limited to recovery of direct cost of duplication. This cost, very often, is the least of the costs involved in providing a copy of a public record. Search cost can be substantial, particularly where the requested record has been moved to an inactive file. It would seem to be questionable public policy to require the tax payers of the state or municipality to assume the burden of searching and reproducing a record when the production will not benefit the general tax paying public, but is for the benefit of the person seeking the record. While the state may have sufficient income to assume this burden, municipalities must still levy taxes to support their operations. For that reason, we request that this section of the bill be amended to permit municipalities to establish a charge for documents which does not exceed the actual cost of producing and duplicating the documents. The federal Freedom of Information Act permits the federal government to recover such costs and this appears to be the more appropriate public policy. The burden of satisfying someone's idle curiosity and of producing records which are solely or primarily for the benefit of the person requesting them should not be borne by the general tax payer but should be borne by the person making the request.

On page 6, lines 13 through 15, the bill provides that upon a request for a public record, the governmental unit must produce the record immediately. This varies considerably from the federal Freedom of Information Act which allows ten days for the agency to determine whether the record is to be produced. Requiring the immediate production of a record places the establishment of the priority of the conduct of the government's business in the hands of the individual requesting a record. If "immediately" is to have any meaning, it must mean "now" and not "as soon as I can get to it." If the custodian of a record is involved in a time-

critical project, the language of the bill would require the custodian to set aside the project in order to search for the record. Not only does record search and production take priority over all other government business, it does not allow a reasonable period of time for the custodian to seek legal advice as to whether a particular record is a public record or falls under one of the exemptions. The ten days allowed in the federal Freedom of Information Act accommodates both of these considerations. We request that the approach taken in the federal Freedom of Information Act be followed in this bill.

Section 3 of the bill (beginning at line 28 on page 9) would repeal the present authority of a state or local government public body to go into executive session to discuss matters which are required or authorized by federal law to be discussed in executive session. More importantly, this section of the bill would repeal the present authority of a municipality to establish by charter or ordinance additional subjects which may be discussed in executive session. If there is no charter provision or ordinance of any municipality in the state which appears to create an abuse of this authority, one can certainly question the need for the removal of this authority. Even if one were able to point to a charter provision which was believed to be an abuse, it should also be remembered that the charter is something which was adopted by the citizens of the municipality. If one is able to point to an ordinance which is believed to be an abuse, it should be remembered that the ordinance can be reached by a referendum. Because we are not aware of any municipality having abused this authority under the present state law and because both mechanisms for the creation of additional subjects for executive session can be reached by the electorate of that municipality, we recommend that Section 3 of the bill be deleted.

Parenthetically, I would point out that in analyzing the deletion of Section 3, one should be careful to distinguish between the authority of a municipality to establish additional subjects for executive session by charter or ordinance on the one hand and the actual use of an executive session for purposes which are not authorized either by law, charter, or ordinance. For example, the fact that a committee of the Legislature has gone into executive session for a purpose not authorized under the Open Meetings Law has no bearing on the fact that the Legislature has authority to amend the statute to provide additional subjects which may be discussed in executive session. Similarly, the fact that the city council may have gone into executive session for some unauthorized purpose, should have no bearing on the council's authority to establish, by ordinance, an additional subject which may be discussed in executive session.

The version of this bill which was adopted by the Senate last year excluded municipalities from the operation of the bill. The Senate State Affairs Committee version of the bill removed municipalities from the bill. It appeared to be the consensus of that committee that local records were a local problem to be dealt with at the local level without state intrusion. The City and Borough of Juneau supports the philosophy that the state should maximize local authority to deal with local problems, particularly for home rule municipalities. For this reason, the City and Borough of Juneau supports the approach taken by the Senate and the Senate State Affairs Committee last session. Just as, I am sure, the Legislature believes that the State of Alaska is in the best position vis-a-vis the federal government to determine which of the State's records should be protected and which should be made public, municipalities

are likewise in the best position to determine which of their records should be protected and which should be made public. It is the municipality, not the State of Alaska, which knows what types of records it generates or comes into possession of. The Legislature has, in the past, demonstrated a total indifference to the need for municipalities to protect certain of their records. One will search the Alaska statutes in vain in an attempt to find a statute dealing specifically with protected municipal records. In that search, however, one will find numerous exceptions for records kept by specific state agencies. Even though municipalities may keep identical records, the Legislature has never seen fit to provide protection for such records in the hands of a municipality. When the the Legislature establishes a program which will involve records which should be protected, it is in a position to address the public records problems at the time it creates the program. Under Senate Bill 90, a municipality would not have that option. It would have to wait to create its program until it had authority from the Legislature to protect the records the program would generate. For the foregoing reasons, we request that Senate Bill 90 be amended to eliminate its coverage of municipalities in the same manner as was done in the bill which was adopted by the Senate last year.

While we believe that the approach requested in the preceding paragraph is the better approach, we also recognize that many of the concerns expressed in that paragraph could also be met by an amendment which would provide for an additional exception at the end of the present 17 exceptions in the bill. The 18th exception would be added after line 18 on page 5 and would read substantially as follows:

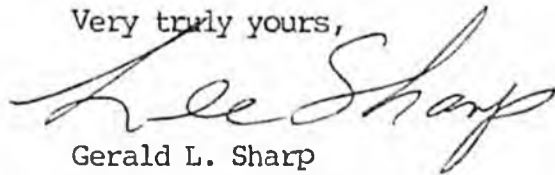
- (18) Records of a political subdivision which have been specifically declared by ordinance or charter to be protected records.

If this approach is taken, the provisions of the bill would be applicable to municipalities but the municipality would, nevertheless, retain authority to deal with those records of the municipality which the assembly or council determines should be protected. The creation of a protected class of records by the municipality would have to be accomplished through the ordinance process which involves notice, public hearings, and public input. As a minimum, municipalities should be given the opportunity to deal with their own records in this fashion. If at some time in the future the Legislature determines that municipalities in general have gone "too far" in protecting their records, it can deal with that problem at that time. In the meantime, the Legislature should refrain from encroaching on local autonomy any more than is absolutely necessary.

There are a number of problems which will exist for public servants who are charged with administering public records under this bill. The most severe is the lack of any definition or standards by which one can gauge whether or not the release of a record would constitute either an infringement upon a person's right to privacy or an unjustifiable intrusion into a person's right of privacy. The bill uses both terms but defines neither. Also, we find no clue as to why these different terms are used. Further, the use of the word "unjustifiable" to modify the phrase implies that the public official is to balance the individual's right of privacy against some other unstated consideration. Too much is at stake to place this burden upon a public employee without additional definitions, standards, or guidance. If the Legislature prescribes a balancing test to determine whether records should be disclosed or not, it, rather than the courts, should provide the standards under which the balancing will take place.

I hope you will give serious consideration to the foregoing comments. If you have any questions, please do not hesitate to call me.

Very truly yours,



Gerald L. Sharp  
City-Borough Attorney

GLS:phl

cc: Mike J. Colletta  
Brad Bradley  
✓Richard I. Eliason  
Terry Stimson  
Assembly  
Ginny Chitwood, Alaska  
Municipal League

NAN

# HAINES BOROUGH

P.O. BOX H  
HAINES, ALASKA 99827  
(907) 766-2711

February 19, 1980

- Senator Vic Fischer  
Chairman, State Affairs Committee  
Pouch V  
Juneau, Ak 99811

Dear Senator Fischer,

On its regular meeting on February 17, 1981, the Haines Borough Assembly instructed me to inform you that they do not approve of Senate Bill 90.

On studying this bill, there are many good points, but at the same time it allows too little support for the custodian of records. In other words, the bill is too liberal for the public (news media). This places a great responsibility on the custodian, who must "immediately" make a decision if a request violates any of the provisions excluded in Sec. 40.25.010 (e). Thus, a custodian and/or his administrative officer could be responsible for damages and attorney fees and other litigation costs, even when they believed they were acting in good faith. Likewise, it could work the other way, where the custodian would allow information that should be confidential because they feared court action if they refused such information.

We highly recommend you do not pass this bill until it is modified giving more support for the custodians of public records.

Sincerely,

*R. E. Henderson*  
R. E. Henderson  
Mayor

REH;kk

cc: Mike Miller  
Bill Ray  
Jim Duncan  
Alaska Municipal League

February 19, 1981

Mr. Raymond L. Medlin  
American Evolutionary Church  
Box 1339  
Sitka, Alaska 99835

Dear Mr. Medlin:

I appreciate your letter of February 17 making suggestions for changes in SB 90.

Although I am the sponsor of the bill, it is being handled by the State Affairs Committee. I will send a copy of your letter to the Committee Chairman so that he may consider what you have said.

Sincerely,

Charles H. Parr

CHP:vc

cc: Senator Vic Fischer ✓  
Chairman  
State Affairs Committee

Raymond L Medlin  
Box 1339  
Sitka Alaska 99835

17 February 1981

Senator Parr  
Pouch V  
Juneau Alaska 99811.

Re: Senate Bill No. 90  
Privacy and Public  
Information

Gentlemen:

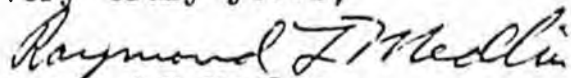
I am pleased with and in full support of the opening section, Sec. 40 25 010, as stated and would like to see it in the final bill.

In sec 40 25 015 (c), I would suggest inclusion of requests in person; sec 40 25 015 (e) (13), include "except that access may not be denied to the person who is the subject of the records but only to the extent that the production of the records would"; sec 40 25 015. (h), include "or release or production of subpoenaed records or information in a civil action".

I would like to see included somewhere in the bill specific mention and reference to making public, information by contractors and private business concerning bids and contracts on public works projects; and making available to the person who is subject of the records or designee information in hospital, doctor, unions, employers and contractors.records.

Please attach this letter with the bill for consideration.

Very truly yours,

  
Raymond L Medlin  
American Evolutionary Church

RLM/rm

*Now - Responded SVP*

*H.*

# City of Seldovia

P.O. DRAWER B      TELEPHONE 234-7643  
SELDOVIA, ALASKA 99663

February 17, 1981

Senator Vic Fischer  
Behrends, Room 205 - Pouch V  
Juneau, Alaska 99811

Dear Senator Fischer,

The Council of the City of Seldovia has strong feelings of opposition to Senate Bills 90 and 44; and have requested their concern be conveyed to you.

In the case of SB90, the feeling is that there are valid reasons for executive sessions without abusing the intent of a session.

In the case of SB44, it seems ridiculous that a municipality should have to pay defense fees for a law breaker regardless of financial ability. We need more support for the law and less undermining of it.

We would be most appreciative if you would vote "NO" on both bills.

Thank you for your consideration.

On Behalf of the Council  
of the City of Seldovia.

*Carl L. Hille*

Carl L. Hille  
City Manager

CLH/ek

---

# Society of Professional Journalists

Farthest North Chapter  
Box 74573  
Fairbanks Ak. 99707

Sigma Delta Chi

February 1, 1981

Sen. Vic Fischer  
State Legislature  
Pouch V  
Juneau, AK 99811

Dear Sen. Fischer:

I understand that my written testimony arrived via telecopier barely legible. If I knew who to blame I would get you an apology. Lacking that, I apologize that there wasn't more time to mail it down in time for the hearing. I hope this arrives in advance of the teleconference on Thursday. If not, I plan to be present in Fairbanks for the hearing and will present this testimony orally if you have not received it and any additional comments if you have.

If there is anything I or the Task Force can do to help pass this important legislation we stand ready to help. Please don't hesitate to call on us.

Again, my apologies.

Sincerely yours,



Dean M. Gottehrer  
Chairman  
Alaska Freedom of Information Task Force

---

# Society of Professional Journalists

Farthest North Chapter  
Box 74573  
Fairbanks, Ak. 99707

Sigma Delta Chi

January 26, 1981

## Members

Senate State Affairs Committee  
Alaska State Legislature  
Juneau, Alaska

Dear Committee Members:

On behalf of the Alaska Freedom of Information Task Force, I thank you for the opportunity to submit written testimony on Senate Bill 90. The FOI Task Force was organized by the Farthest North Chapter of the Society of Professional Journalists and numbers nearly 40 members, among them most of the state's daily newspapers, many weekly papers, broadcast stations, magazines and other media organizations. The Task Force is dedicated to seeking the passage of a Freedom of Information bill that will bring government out of the shade where the people's business is being hidden and keep it in the sunshine where that is presently the case.

I have urged our members to judge any proposed legislation against the current law. On that standard I believe SB 90 rates high. It includes all branches of state government, covers municipal and borough governments and provides for speedy access to inspect government documents. Generally, it sides with free and open government so that the people may know what is being done in their name. For the most part the exclusions listed in the bill are rational and legitimate and balance the sometimes conflicting rights of freedom of information and the right to privacy of the individual.

There are, however, some areas of the bill we would like to see changed. Presently the bill contains no definition of the right of privacy. We believe the Legislature, following the constitutional mandate should define that right. We suggest the following definition from the Restatement of Torts: Privacy is that right of an individual to be protected against publicity of a matter concerning that individual's private life when the matter publicized is of a kind that (a) would be highly offensive to a reasonable person and (b) is not of legitimate concern to the public.

We believe the exclusion listed in Sec. 40.25.015 (e)(3) should be stricken from the bill. It is of such a general nature that many records the Legislature would probably want public could be withheld under that exclusion. Sec. 40.25.015 (13) concerns us for two reasons. First, it potentially excludes original entry police records--those documents completed when a suspect is taken into custody. One of the roles of the press historically has been to see that no individual is held by the police unjustly and closing original entry records makes that a much greater potential hazard. Second, (C) of (13) speaks of an unjustifiable intrusion into a person's right of privacy. If that language is to remain here and in other sections of the bill we believe a definition is needed of what is a justifiable intrusion. Since that seems almost impossible, we would prefer to see

January 26, 1981

that language removed. We don't want to see the police or other governmental unit employees left with the impression that anything unflattering is private.

In a suit for disclosure, the burden of proof should rest with the governmental unit to prove it was required not to release requested information. The courts should be instructed to presume in favor of disclosure.

Each governmental unit should be required to keep a file of letters of denial of information requests that should itself be public. This would allow easy monitoring of governmental units to determine whether they are complying with the law.

The bill does not clearly include computer maintained records as it should. The section defining records should be amended to include "information stored in a computer system." Independent contractors paid with government funds should also be included in the bill's coverage. The definition of governmental unit should include "independent contractor paid with public money in whole or in part and under the supervision of any of the above groups or units."

Whether the state should charge for document copies and how much is a question that has plagued us for some time. Some members believe the media should not be charged since they are doing the public's business when requesting documents while researching a story. Others are willing to pay. No one, however, believes a governmental unit should charge more than the actual copying cost. The method contained in the Governor's proposed regulations is a good compromise. Each requestor receives 20 pages free of charge in any 24 hour period. Above that the charge is 10 cents per page. Currently a great variety of charges exists among agencies. It would help all if the Legislature standardized these charges.

Finally, one last concern. Sec. 4 of the bill on page 10 makes a good faith reliance on AS 40.25 or other law governing confidentiality of public records a defense against the crime of tampering with public records. This defense should be clearly limited as applying only to impairing the availability of a public record and not to any of the other actions listed in AS 11.55.820.

The task you have before you is not an enviable one. You will be urged to exclude this or that branch of government, this or that agency, one or another of a multitude of types of records from coverage under the bill. As you address each of these requests, I ask that you recall that all of these governmental units exist because they are supported with public monies. The public has a right to know what is being done with these funds. Government in the sunshine is best for all people. Keeping government open primarily benefits the people--not the media. Remember that 75 percent of all requests under the federal freedom of information laws come from non-media sources and only 25 percent from the media.

Sincerely yours,



Dean M. Gottehrer  
Chairman  
Alaska Freedom of Information Task Force



# CITY OF NOME

P.O. BOX 281 - NOME, ALASKA 99762  
TELEPHONE (907) 443-5242

February 11, 1981

Senator Vic Fischer, Chairman  
Senate State Affairs Committee  
State Capitol  
Pouch V  
Juneau, Alaska 99811

Dear Senator Fischer:

I am writing you about 2 bills you are currently considering. These are SB90 and SB153.

SB90 might open up government, but would be harmful in the process. Executive sessions are a must to insure that the legal & personnel aspects of governments are not endangered. This is especially true in smaller communities where it is difficult to keep anything "private".

The City's personnel records must also be closed. If they become open records, then very little will be put in them for reference purposes and the general administration of the personnel function.

While it might seem simple or easy for larger communities to produce records on request, smaller ones with only one or two employees in the clerk's office can't comply in that fashion. Many records are stored away in boxes and old files and are not easily accessible.

Regarding SB153, the City of Nome is presently in court with the Methodist, Lutheran and Catholic churches over similar issues. We have 14 churches in Nome, almost all of them in "missionary status". They have had a great deal of their land and property exempt until recently when the City said that we couldn't afford it any longer. In 1978, this exempt property was valued at \$2,300,000. That was when our total real property was \$29,000,000. If anything should be done to the statutes regarding non-profit religious property, it should be to clarify and strengthen them.

Thank you for the opportunity to comment.

Sincerely,

Ivan L. Widom  
City Manager

cc: Mayor & City Council  
Bob Hicks



# ALASKA PUBLIC EMPLOYEES ASSOCIATION

\*\*\*\*\*  
State Headquarters: 340 North Franklin Street, Juneau, Alaska 99801 • Tel: (907) 586-2334

TO: The Members of the Senate State Affairs Committee  
FROM: Cherie Shelley *CS*  
Executive Director, APEA  
CONCERNING: Aspects of Senate Bill NO. 90

SENATE BILL NO. 90

This is an act, relating, in part, to privacy and public information. Under Section 1 (i), it states that all personnel records showing salary or compensation or that which concerns the employee's current performance or ability to perform the duties and responsibilities of his job, shall be open for public inspection.

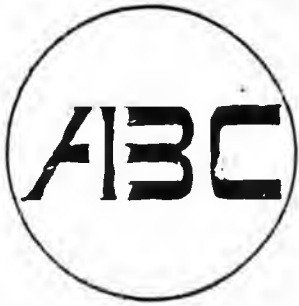
APEA readily recognizes the validity of public inspection of salaries or compensation. APEA concurs that an employee's record showing that he/she met the minimum qualifications required for the position held, should be available for public scrutiny.

However, APEA vigorously opposes public access to an employee's record of current performance or ability on the job. This aspect presents a real and threatening infringement of a person's right to privacy. Evaluations, reprimands and consubstantial records are, and should be treated as confidential reports.

To open these records to the public will be to open a flood-gate of additional paperwork for individual departments and the Division of Personnel and in all probability to necessitate the hiring of employees to process the paperwork.

Public employees will be subjected to unsubstantiated public criticism, media castigation, personal grudge retribution and an assortment of besetting conditions.

Unauthorized, hap-hazard perusal of the records will undermine the credibility and question the judgment of the supervisory employer. An employee is retained because the employer has evaluated that employee as capable, progressive and responsible.. Accessibility to a confidential evaluation for the purpose of public debate, 'watch-dogging' or reversal, will disparage and minimize the role of the employer.



CENTRAL ALASKA  
BROADCASTING, INC.

February 9, 1981

Duane L. Triplett  
President and  
General Manager

Senator Vic Fischer  
Senate State Affairs Committee  
Alaska State Legislature  
Juneau, Alaska 99811

Dear Senator Fischer,

Let me take a few moments of your time to comment on Senate Bill 90 as it was introduced on January 15, 1981.

On behalf of KIMO-TV and its President, Duane L. Triplett and its News Director, John Vallentine, I would like to express our support for SB-90 with the following exceptions:

- 1) Most "exceptions" to the act are based on the right of privacy and guarantees no unjustifiable intrusions. A clear definition of this right should be included and used as the basis for the legislated exceptions.
- 2) On page 3 at line 22, Sec. 40.25, 015(e)(8) is much too broad and should be stricken.
- 3) On page 4 at line 11, Sec. 40.25, 015(13) appears to exclude those records prepared by a police officer at the time the action is taken. This implies that only "filtered" versions, if any would be available. Our free society depends on free press having the information on the activities of our government especially our law enforcement agencies.

The Society of Professional Journalists, Sigma Delta Chi, Fairbanks Chapter, has recommended to you that independent contractors paid with government funds should be included in the definition of governmental unit. I could support that position only to the extent that those records pertinent to a government contract might need to be available but certainly those nongovernment contract related activities of independent contractors should not be included.

....continued

Studio-Operations Center  
3910 Old Seward Highway  
Anchorage, Alaska 99503  
Phone (907) 279-9437

KIMO T.V. —  
CENTRAL ALASKA  
BROADCASTING, INC.  
2700 East Tudor Road  
Anchorage, Alaska 99507

Seattle-Recording Studios  
11 S W 100th  
Seattle, Washington 98146  
Phone (206) 762-2369



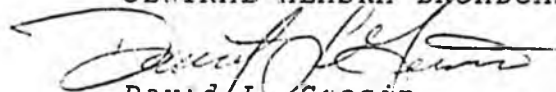
Senator Vic Fischer  
February 9, 1981  
Page Two

In conclusion, please consider that the "business of the people" (our government) is the peoples business. We, they, have a right to know. Do not confuse this issue as one only for the rights of reporters. The mass media happens only to be the most visible of petitioners.

Thank you for this opportunity for input.

Sincerely yours,

CENTRAL ALASKA BROADCASTING, INC.



David L. Geesin,  
Director of Community Affairs

DLG:bke

# CITY OF SEWARD



P. O. BOX 337  
SEWARD, ALASKA 99664  
2/11/81

CITY MANAGER	224-5214
COMPTROLLER	224-5216
INFORMATION	224-5215
CITY POLICE	224-5201

State Affairs Committee  
Pouch V  
Juneau, Ak 99811

Dear Mr. Chairman:

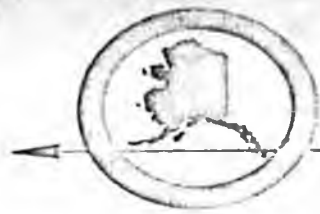
I am presenting written testimony concerning the Privacy and Public Information Act. If this bill passes, next year you will be taking more testimony on what to do about the great apathy of witnesses to crimes. Most people will not be cooperating with police if they are aware that their names, addresses, and other personal information can be given to the public. We will be unable to protect any witness that does not come under the heading of "confidential informant."

My second concern is this: Will the public be made aware that they will be paying additional thousands of dollars a year to staff a governmental unit to produce these records in each community, since they will be charged only "direct" costs such as copy fees, etc.

Who will be making the public aware of what this bill provides? Any informant of any crime will no longer have any right to privacy, except during investigations. Unlike the news media, we do not have a conflict of interest issue here, except that we would like to protect the people from testifying to police under any air of vendetta that this bill will harbor.

Sincerely,

Louis A. Bencardino, Chief  
Seward Police Department



# Ombudsman

Frank Flavin

State of Alaska

January 29, 1981

Senator Victor Fischer  
and Members  
Senate State Affairs Committee  
Pouch V  
Juneau, Ak. 99811

RE: SB 90

Dear Senator Fischer:

Since investigation is a basic function of the Ombudsman, enabling legislation typically gives him broad authority to make inquiries, obtain relevant information, and compel information and testimony.

In an investigation, the Alaska Ombudsman is empowered (in AS 24.55.160 (a) (1 - 3) ) to "make inquiries and obtain information he considers necessary; enter without notice to inspect the premises of an agency . . . and hold private hearings."

AS 24.55.170 (a) (1) authorizes the Ombudsman to "compel by subpoena . . . the appearance and sworn testimony of a person who the ombudsman reasonably believes may be able to give information relating to a matter under investigation." Subsection (2) similarly authorizes subpoenas for production of "documents, papers or objects."

In AS 24.55.100, the Ombudsman is required to investigate complaints within his jurisdiction unless specific exemptions apply. YET THERE ARE NUMEROUS COMPLAINTS, THE INVESTIGATION OF WHICH IS IMPOSSIBLE WITHOUT OMBUDSMAN ACCESS TO ALL RELEVANT DOCUMENTS, EVEN THOSE DETERMINED TO BE CONFIDENTIAL.

Examples abound:

- child in need of aid
- foster parents
- Trooper investigations
- vocational rehabilitation
- certification and licensing of nursing homes
- fish ticket information used by limited entry

Reply to:

- 840 K Street, Room 203  
Anchorage, Alaska 99501  
(907) 276-4011
- Pouch W0  
Juneau, Alaska 99811  
(907) 465-4970
- P.O. Box 74358  
Fairbanks, Alaska 99707  
(907) 452-4001

business license information  
public assistance  
juvenile corrections  
personnel files  
testing materials  
tax payments  
driving records  
unemployment insurance

Although it is sometimes possible for Ombudsman staff to gain access to required documents by obtaining the signed release of the complainant, often an investigation requires examination of more than just the complainant's file. For example, a person may allege that although similarly situated, she received different treatment than another. Investigation of such a complaint would require review of numerous files to determine if equity in administration of a program had occurred.

Access to child in need of aid files is also a continuing problem. From whom must we obtain a release to gain access -- the child, the parent, the guardian, a court, or some combination?

We believe that the Ombudsman Act currently authorizes access to confidential documents. Unfortunately some agencies disagree.

We have attempted through regulation and formal agreements with agencies to further assure (in addition to AS 24.55.160 (b) ) that the Office will afford records the same degree of confidentiality as required of the providing agency. Ad hoc arrangements with some agencies have been negotiated, but the possibility to delay or halt an investigation looms. The problem remains, as the attached Attorney General opinions demonstrate.

To remedy this situation, we urge the adoption of the following amendment:

page 5 line 29 rewrite subsection (h) to read:

(h) The exceptions provided under this section do not preclude

(1) production and release of subpoenaed records or information to a state or municipal agency during the course of an investigation;

(2) production and release of records to the ombudsman when requested during the course of an investigation by him; records released to the ombudsman shall be kept confidential by him while the records are in his custody, except the ombudsman may, upon prior notice to the agency, release the records to the court for in camera review pursuant to AS 40.25.025 (d).

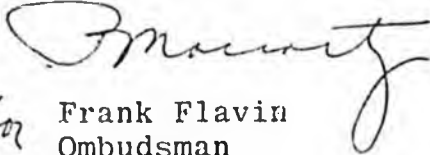
Senator Victor Fischer

-3-

January 29, 1981

We appreciate the opportunity to offer comments on this proposed legislation. If we can provide additional information, please do not hesitate to ask.

Sincerely,



*for* Frank Flavin  
Ombudsman

PM:ss

Attachments

# STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

JAY S. HAMMOND, GOVERNOR

POUCH K-STATE CAPITOL  
JUNEAU, ALASKA 99811

May 7, 1979

Duncan C. Fowler  
Regional Representative  
Ombudsman  
Pouch W0  
Juneau, Alaska 99811

Re: Confidentiality of Records  
Relating to Nursing Home  
Licensure  
Our File No. J-66-804-78

Dear Duncan:

This letter is intended to follow up on our recent conversations regarding the ability of your office to inspect records maintained by the Department of Health and Social Services which relate to the licensure of individual nursing homes.

As I have pointed out, AS 18.20.090 provides that "[t]he department may not publicly disclose information received by it in a manner identifying an individual or hospital except in a proceeding involving the question of licensing." In the licensure context, of course, the term "hospital" includes a nursing home. See, AS 18.20.130. On the basis of these provisions I have advised the Department of Health and Social Services to deny your office general access to the records it maintains in this limited area.

I understand, however, you have reviewed other records maintained by the Department of Health and Social Services and have obtained the information you desired. Those records, generated pursuant to Section 1864 of the Social Security Act, are subject to public inspection in accordance with provisions of federal law with which I assume you are now relatively familiar.

RECEIVED  
MAY 9 1979

JUNEAU  
OFFICE OF THE OMBUDSMAN

May 7, 1979

I would appreciate it if you would let me know whether you have any remaining problems in this regard. I would like, specifically, to repeat my oral invitation for you to inform the Department of Health and Social Services of any facts which might bear on the continued licensure of particular nursing homes.

Your cooperation in this matter has been greatly appreciated. I will proceed to close my file if I do not hear further from you in the next day or so.

Very truly yours,

AVRUM M. GROSS  
ATTORNEY GENERAL

By:   
Thomas H. Robertson  
Assistant Attorney General

THR:jrb

cc: Portia Kaufman  
Dept. of Health and Social Services

# MEMORANDUM

Hon. B. B. Allen  
Commissioner  
Dept. of Administration

DATE March 15, 1978

FILE NO

TELEPHONE NO

G. Thomas Koester  
Assistant Attorney General

SUBJECT

Ombudsman access to  
personnel files; our  
file J-66-359-78

Communications from Ken Kareen of your office and Michael G. Harper of the Office of the Governor have indicated a desire for information regarding the power of the Ombudsman and various state auditors to have access to employee personnel files.

It is our opinion that the Ombudsman and the legislative auditor have virtually unlimited access to state employee personnel files.

"The legislative Budget and Audit Committee has the power to: . . . (3) require all state officials and agencies of state government to give full cooperation to the committee or its staff in assembling and furnishing requested information; . . ." AS 24.22.010(a). "The legislative audit division shall . . . (5) require the assistance and cooperation of all state officials and other state employees in the inspection, examination and audit of state agency books and accounts; (6) have access at all times to the books, accounts, reports or other records, whether confidential or not, of every state agency; . . ." AS 24.22.271. These provisions appear to grant virtually blanket authority to the legislative auditor to have access to state employee personnel files.

"In an investigation, the Ombudsman may (1) make inquiries and obtain information as he considers necessary; (2) enter without notice to inspect the premises of an agency, but only when agency personnel are present; . . ." AS 24.55.160(a). Under AS 24.55.170, the Ombudsman has the power to subpoena any files which he reasonably believes may relate to a matter under investigation; this would include state employee personnel files. While the statute giving the Ombudsman power does not make it clear that the Ombudsman's authority is as broad as that afforded the legislative auditor, we believe it is virtually equivalent. AS 24.55.160 gives the Ombudsman power to inspect the premises of an agency at any time as long as agency personnel are present. We believe the power to inspect the premises of an agency includes the power to inspect a state employee's personnel files possessed by the agency. In the alternative, AS 24.55.170 gives the Ombudsman the power to compel the production

B. Allen  
15, 1973

Page 2

of that personnel file at a time and place specified by the Ombudsman.

In conclusion, we do not believe that there are any restrictions on the power of the legislative auditor or the Ombudsman to inspect state employee personnel files. Particularly when their powers of investigation are linked with AS 39.25.080 (providing that state personnel records are public records and open to public inspection), we believe there is absolutely no question that they may have access to state employee personnel files.

We hope this answers your questions.

GTK:chp

cc: Michael G. Harper, Administrative Ass't.  
Office of the Governor

Sue Greene, Special Assistant  
Office of the Governor

Carl Gonder, Deputy Commissioner  
Dept. of Community & Regional Affairs

10 [ Don Candey  
Administrative Officer  
Support Services  
Central Region  
DOT/PF

DATE February 20, 1980

FILE NO 766-281-80

TELEPHONE NO

FROM: Avrum M. Gross  
Attorney General  
BY: Martha T. Mills *MTM*  
Assistant Attorney General

SUBJECT: Ombudsman's Access to  
Personnel Records

You inquired whether the Ombudsman's Office has unlimited access to personnel records of the Department of Transportation and Public Facilities. The Ombudsman may have access only to the information in personnel files which is generally available to the public. However, if regulations are adopted whereby the Ombudsman must maintain the same confidentiality for personnel records as required by State law, then the Ombudsman may have access to confidential information in personnel files. A similar approach has been taken with respect to the legislative auditor, who has adopted confidential procedures. This memorandum supercedes a prior memorandum of advice to B. B. Allen by G. Thomas Koester dated March 5, 1978.

Employee personnel records are protected by the laws of Alaska. Article I, Section 22 of the Alaska Constitution provides:

"Right of Privacy". The right of the people to privacy is recognized and shall not be infringed. The legislature shall implement this section."

Alaska Statute 39.25.080 provides:

"Public Records". The state personnel records, except those records which the rules require to be held confidential for reasons of public policy, are public records and are open to public inspection, subject to reasonable regulations as to the time and manner of inspection."

The "rules" referred to by the statute are the personnel rules. Personnel Rule 14.07.0 entitled "Public Records", provides:

"Except for examination materials, performance evaluations, personal history, or other confidential materials so designated by the Director, employee records shall be public records. Such

FEB 22 1980

CHIEF OF POLICE

February 20, 1980

records shall be available for inspection in the presence of authorized personnel by the public during regular office hours in accordance with such procedure as the Director may establish."

On April 14, 1970, the attached memorandum on employee records policy and procedure was issued by the Director, Department of Administration, Division of Personnel. The memorandum sets out public policy pursuant to AS 39.25.080, providing that whereas information such as employee name, class title, salary, length of State employment, name of immediate supervisor, office address, office phone number, and (in some instances) home phone number, mailing address, and residence address are available to the public, all other more personal information is confidential.

As evidenced by the April 14, 1970 memorandum, most of the confidential information is available to the state employee and the people employed in the personnel office. Other information, such as background investigations, grievances, appeals, and letters and reports of personnel reference, are unavailable even to the employee. Matters such as applications, personnel actions, educational background, medical reports, performance evaluations, test scores and disciplinary letters or memoranda are confidential. Of course, the employee could waive the right to keep the information available to him or her confidential.

The Ombudsman has broad investigative powers. AS 24.55.160(a) provides:

"In an investigation, the ombudsman may (1) make inquiries and obtain information as he considers necessary; (2) enter without notice to inspect the premises of an agency, but only when agency personnel are present; . . . ."

Under AS 24.55.170, the Ombudsman has the power to subpoena any person or documents which he reasonably believes may provide information relating to the matter under investigation. The statutes relating to the Ombudsman do not specifically state that he has access to confidential personnel records, but the authority of the Ombudsman to investigate is very broad.

The only mention of confidentiality in the Ombudsman enabling statutes is in AS 24.55.160(b), which states:

"The ombudsman shall maintain confidentiality with respect to all matters and the identities of the complainants or witnesses coming before him except insofar as disclosures may be necessary to enable him to carry out his duties and to support his recommendations."

The section does not require the Ombudsman to maintain the confidentiality of personnel records and it is within his discretion to decide what disclosures may be necessary to carry out his duties and support his recommendations.

In Falcon v. Alaska Public Offices Commission, 570 P.2d 469 (Alaska 1977), the Alaska Supreme Court balanced the constitutional provision guaranteeing the right of privacy with the public disclosure of income requirements of the Alaska conflict of interest law for public officials. In physician-patient situations where disclosure of the patient's identity might reveal the nature of the treatment, the court held that:

"In these situations, at least, we find that the extent to which the governmental interest in promoting fair and honest government would be impeded, does not outweigh the individual's privacy interest in protecting sensitive personnel information from public disclosure." Id. at page 480.

The court went on to hold that regulations exempting certain classes of patients, physicians, or others from disclosure would be appropriate.

Given the Falcon decision, if the Ombudsman promulgates regulations which would assure the same confidentiality for personnel records as state law requires, then access to those records would be appropriate.

AMG/MTM/sls

cc: Ombudsman

# STATE OF ALASKA

JAY S. FLANNERY, GOVERNOR

## DEPARTMENT OF REVENUE

OFFICE OF THE COMMISSIONER

RECEIVED  
JUN 15 1979

June 12, 1979

Francis M. Flavin  
Ombudsman  
840 K Street, Room 203  
Anchorage, Alaska 99501

ANCHORAGE  
OFFICE OF THE OMBUDSMAN

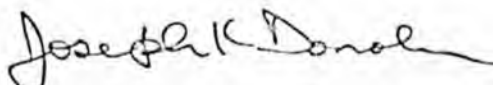
Attention: Rolfe Buzzell

Dear Mr. Flavin:

I regret to inform you that the Department of Revenue will not be able to execute the inter-agency agreement which was proposed to allow your staff investigators to review confidential Department of Revenue materials. The Department of Law's opinion on this subject is attached.

The Department of Revenue, of course, will continue its present policy of full cooperation with your office's investigations to the maximum extent permitted by law.

Sincerely,



Joseph K. Donohue  
Deputy Commissioner

Attachments

TO: Joseph K. Donohue  
Deputy Commissioner  
Department of Revenue

DATE: June 7, 1979

RE: INFORMATION

FROM: AVRUM M. GROSS  
ATTORNEY GENERAL

SUBJECT: Proposed Agreement  
of Ombudsman's Office

By:  
Teo C. Spengler  
Assistant Attorney General

You have requested that this department review the agreement proposed by the Ombudsman's Office which would permit the Department of Revenue to disclose information on tax forms which would otherwise be confidential. It is our opinion that there are serious statutory problems with the agreement:

AS 43.05.230 prohibits disclosure of tax returns and reports, except in certain circumstances. That statute provides, in pertinent part:

Except in connection with official investigations or proceedings of the department, whether judicial or administrative, involving taxes due under this title, except in connection with official investigations or proceedings of the Child Support Enforcement Agency, whether judicial or administrative, involving child-support obligations imposed or imposable under AS 25 or AS 47, and except as otherwise provided in this section, it is unlawful for an officer, employee or agent of the state to divulge the amount of income or the particulars set out or disclosed in a report or return made under this title.

In fact, AS 43.05.230(f) makes a willful violation of the provisions of that section punishable by a fine or imprisonment.

Joseph K. Bertone  
Commissioner  
Department of Revenue

June 7, 1979  
Page 2

Additionally, AS 09.25.100 requires that the particulars of the business or affairs of the taxpayer be kept confidential. That statute specifies that tax information is not a matter of public record.

The powers and duties of the Ombudsman are set out in AS 24.55.010-.340. While the Ombudsman has the authority to investigate agency action, there is nothing in the statute which specifically exempts his investigations from the disclosure prohibitions of AS 43.05.230. As AS 43.05.230 was enacted after the ombudsman statutes (2 ch 166 SLA 1976; am § 32 ch 126 SLA 1977, as compared to 1 ch 32 SLA 1975), any provisions in the latter found to conflict with the disclosure prohibition will be held impliedly repealed. See Peter v. State, 531 P.2d 1263 (Alaska 1975).

Thus, the Department of Revenue is prohibited from disclosing particulars set out in a return or report, and nothing in the Ombudsman's provisions dictates otherwise. While a case may arise where disclosure of tax information to the Ombudsman might be permissible, (i.e., disclosure of a taxpayer's forms pursuant to written permission and waiver by the particular taxpayer) it certainly would not be true in most cases. Therefore, we cannot recommend that the standardized agreement regarding disclosure be signed.

TCS/lm

Sharon Andrew, Director  
Division of Occupational Licensing  
Department of Commerce

April 6, 1977

AVRUM M. GROSS  
ATTORNEY GENERAL

Public Access to Occupational  
Licensing Investigatory  
Files

Our File: J-66-491-77

By:

*E.K.*  
G. Thomas Koester  
Assistant Attorney General

You requested an opinion regarding the requirements of AS 09.25.110, the current open records law, as it applies to open investigativa files of the Division of Occupational Licensing.

We believe your March 11, 1977 response to Mr. Frank Flavin, State Ombudsman, regarding this issue was absolutely correct. We also agree with the two basic reasons for maintaining confidentiality of investigatory files which you advanced in your response to Mr. Flavin.

As you note, the state is obligated to protect the rights of its citizens. In Title 3 of the Alaska Statutes, the Department of Commerce is charged with providing support services to the various professional licensing boards established in it. To successfully discharge its duty of ensuring that only qualified professionals serve citizens of Alaska, a certain degree of confidentiality for records generated during the course of investigations must be maintained while that investigation is still in progress. If it has not already done so, we suggest that the Department adopt regulations regarding the confidentiality of investigatory files under the authority granted it in AS 08.01.030.

We believe the second reason you state in your letter to Mr. Flavin is a much stronger reason for not disclosing records relating to an investigation in progress, and it certainly provides much stronger legal justification for not providing those records. Article I, section 22 of the Alaska Constitution established a constitutional right of privacy. While the legislature has not implemented this constitutional provision, we believe it certainly extends to

April 6, 1977

unsubstantiated allegations of professional misconduct such as those giving rise to an investigation. Until the investigation is concluded and the relevant facts are presented at a public hearing, they are no more than unsubstantiated allegations. The subject of those allegations, we believe, has a constitutional right not to have that material made public, and the state arguably would be violating the subject's constitutional right to privacy by making them public.

Under AS 09.25.125, a person seeking those records may apply to the courts for an injunction compelling their release. If Mr. Flavin or the complainant who prompted his letter brings such an injunctive action, we would seek to have the subject of the investigation made a party to that action in order to protect his own constitutional right to privacy. In the meantime, however, we believe that the release of records relating to an investigation of that individual by a board or commission arguably would constitute a violation of the individual's constitutional right to privacy, and you have no choice but to refuse to disclose such records.

We hope this answers your questions.

GK:jac

NOTE REGARDING THE FOLLOWING FRAME ON MICROFILM:

COMPLETE DOCUMENT IS AVAILABLE IN ORIGINAL FILES  
IN ALASKA STATE ARCHIVES. TITLE PAGE ONLY HAS  
BEEN FILMED.

*"THE RIGHT TO KNOW"*

*A report from the society of Pro-  
fessional Journalists, Sigma Delta Chi.*

*NEWSPAPER*