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ALASKA PUBLIC EMPLOYEES ASSOCIATION

 State Headquarters: 340 North Franklin Street, Juneau, Alaska 99801 • Tel: (907) 586-2334

MEMORANDUM

To: Nancy Groszek, A.A.
 State Affairs Committee

From: Cherie Shelley
 Executive Director

Subject: SB 90

Date: April 3, 1981

You have asked me to review the provision in this bill providing for disclosure of personnel records of public employees and applications for public employment.

Initially it should be noted that some of the matters enumerated for disclosure are already made available, e.g., salary and job descriptions. However, background information provided in an application for employment or otherwise is submitted with a reasonable expectation of privacy. This legislation would defeat that expectation of current employees who accepted their positions with this understanding, express or implied, in mind.

It should be noted that the Alaska Constitution, Article I, Section 22 guarantees all persons in this State the right to privacy that "shall not be infringed." The Alaska Supreme Court has provided some guidance in determining what is "private" information in Falcon v. Alaska Public Offices Commission, 570 P.2d 469 (AK 1977). If it is information "which a person desires to keep private and which, if disseminated, would tend to cause substantial concern, anxiety or embarrassment to a reasonable person," then it is protected by this provision. This becomes especially important when one considers the provisions providing for disclosure of disciplinary action and performance evaluations.

Of course, once some information is protected by this right of privacy, it is not automatically barred from disclosure. What must then be done is compare the invasion of privacy, its nature and extent, with the strength of the state interest in disclosure-Falcon, p. 476. In the circumstances now under consideration, it seems the state's interests are not served by disclosure.

The obvious opportunities for interference in the state's efforts to encourage and assist its employees in improving performance will hinder honest efforts to reach this goal. A reviewing supervisor will be less likely to be free and frank in the evaluation process knowing his or her comments may one day appear in the newspaper. On the other hand, a person may be subjected to ridicule and embarrassment in the community if those comments are less than complimentary, whether true or not.

The mere fact that a person accepts employment with the state should not operate to deprive that person of treatment in a dignified, respectful manner. No one disputes the public interest in seeing that the state's business is handled in an efficient manner, but this provision will operate against that interest.

"Public officials must recognize their official capacities often expose their private lives to public scrutiny. However, we see a great difference between 'unavoidable exposure' and 'compelled disclosure.'" Advisory Opinion on Constitutionality of 1975 PA 227, 242 N.W. 2d 3, 19 (Mich. 1976), cited at 570 P. 2d 474.

The point where freedom of information is no longer beneficial to the effective conduct of state business has been passed in this bill. The need for privacy in matters as sensitive as these should not be overlooked. "Some aspects of the lives of even the most public man fall outside the area of matters of general or public concern." Rosenbloom v. Metromedia, Inc., 403 U.S. 48 (1971).

Finally, it should be noted that the question of whether employment applications are "public information" is currently being reviewed by the State Supreme Court. City of Kenai v. Kenai Peninsula Newspapers, Inc., S. Ct. no. 4954. This decision will undoubtedly shed further light in this area.

CHARLIE PARR

ALASKA LEGISLATURE

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

Pouch V
Juneau, Alaska 99811
465-4908

January '29, 1981

MEMORANDUM

TO: Senator Vic Fischer, Chairman
Senate State Affairs Committee

FROM: Senator Charles H. Parr *CHP*

SUBJECT: Senate Bill No. 90

The following is a brief summary of the key points in SB 90 relating to privacy and public information.

Section 010 gives the State policy of openness, and is also found in existing statutes dealing with the open meeting clause.

Section 015 provides that all records are open to inspection and copying, and provides that fees must be limited to reasonable costs of duplication.

Beginning with (e) at page 2, line 23, there is a list of items which are exempted from disclosure. These may be grouped as protecting the right of privacy guaranteed in the Alaska Constitution, or as matters of public policy where the Legislature has found the greater benefit to be withholding information.

Section 020, beginning on page 6, provides that a record which can be made open by deleting certain confidential parts will be released after the deletions are made. It also says that refusal to release records must be made in writing.

Section 025 establishes a mechanism for obtaining a court order to require the government agency to release the information. A court may examine the records in camera to determine whether they should or should not be released.

Section 035 gives a civil cause of action against a person wrongfully withholding records, and protects the person who is withholding them in good faith.

Section 040 is the definition section.

Sections 2 and 3 of the bill, beginning on page 9, line 22, deal with the State open-meeting law and remove the authority of a municipality to hold executive sessions other than in accordance with State law.

CHP:vc



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

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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 addressed. A woman in Kodiak recently told me she was charged 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 Force
Kodiak Daily Mirror
KFSK Radio, Peterburg



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

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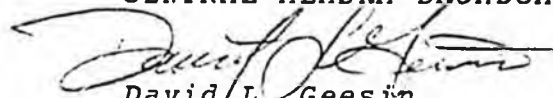
Senator Vic Fischer
February 9, 1981
Page Two

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

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

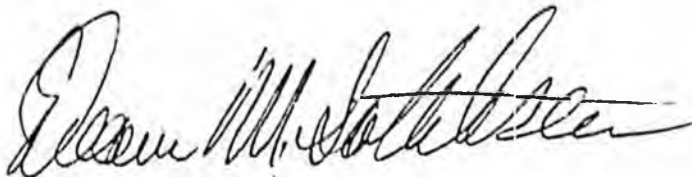
Dear Sen. Fischer:

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)(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 11.55.820.

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

Vic - your role is to thank the witnesses and to ask questions. Debra will control the flow.

1) Open the meeting. ^{VP CHAIR - ST. AFFRS} Mention that this is a State Affairs Committee all-sites teleconference on SB 90. ^{"FREEDOM OF INFORMATION BILL"} Introduce yourself and the members absent and present.

2) Summary of the bill ^{OTHER MEM SEN. BRADLEY, COLLETTA, ELIASON, STIMPSON}

^{SEN. PARR - AUTHOR} " SB 90, entitled "an Act relating to privacy and public information; and changing Rule 65 of the Alaska Supreme Court Rules of Civil Procedure" is a bill dealing with the disclosure of documents in the possession of the Alaska State government. ~~if enacted, it would be our state's Freedom of Information Act.~~ The intent of SB 90 is that all documents in the possession of governmental units belong to the public. This bill ~~does~~ provides for exclusions when disclosure would infringe on the right to privacy of the individual. The right of privacy is guaranteed in our Alaska Constitution. This bill outlines the procedures for speedy access to inspect and duplicate documents and to delete confidential information.

[It establishes a mechanism for obtaining a court order to require the government to release the information and provides for a civil cause of action against a person wrongfully withholding records.] This bill covers all branches of state government including municipal and borough governments..

A bill of this same subject was first introduced in 1972 and has gone through numerous revisions. Last week, our committee heard testimony from Juneau. Basically, all people spoke in favor of the concept of the bill, but numerous amendments were proposed. Our committee is scheduling a mark-up session, Tuesday evening February 17, at 7:00 PM in Juneau. If you do not have the opportunity to ^{fully} present your views today, you may sent written comments to my office. Your Legislative Information Office has my address and phone number.

3) ^{At this point} ~~turn the mike over to Debra so that she can poll the number of people who want to testify.~~

4) Limit the amount of time for each person to testify. ^{LIMITED AMOUNT OF TIME - 3 PM.}

NOTE: Listen for Lucinda Hites from Sitka. She has the tendency to ramble.

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 CSHB 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 598, 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 in SB 90 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 their 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 a newspaper reporter doing a story on the "average" state employee, while the compilation should be exempt from release to an advertising agency intending to use the list for 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 recipients 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 outweigh 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. 40.25.030(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 (2) 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 (3) 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 may seek counselling for 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. 40.25.040.

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. 40.25.080. Civil Action For Obstruction Of Access
To Records

No change from SB .

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.

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."

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 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.

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 unwarrantably 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 innaccurate 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 H. Parr
Alaska State Senate

Wilson L. Condon
Attorney General

Jerry Reinwand
Executive Assistant to Governor

Keith Specking
Legislative Assistant

Art Peterson
Assistant Attorney General

STATE OF ALASKA

JAY S. HAMMOND, Governor

ALASKA PUBLIC UTILITIES COMMISSION

DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT

1100 MacKay Building
338 Denali Street
Anchorage, Alaska 99501

Phone (907) 276-6222

May 27, 1981

Honorable Pat Rodey, Majority Leader
Chairman, Senate Judiciary Committee
Alaska State Legislature
Pouch V -- State Capitol
Juneau, Alaska 99811

Re: CSSB 90 (Judiciary) - Privacy/Public Information
(Public Records Act)

Dear Pat:

It has been called to our attention that Committee Substitute for Senate Bill 90(Judiciary), a revision of the State's public records laws, as it emerged from the Senate Judiciary Committee and presently is pending before Senate Rules Committee, presents a problem with regard to the way our commissions work. APOC Commissioner Stuart C. Hall spoke with a member of your staff Friday afternoon, May 22, concerning this matter.

On page 6, lines 26-29, inclusive, of the Committee Substitute, proposed AS 40.20.020(a)(10) would exempt "notes, memoranda, draft decisions, opinions, or other similar documents prepared by a justice or a judge, or a person "working under the supervision of either," in the process of deciding a legal issue." Our concern is whether the Judiciary Committee considered the inclusion of members of the quasi-judicial regulatory bodies within the ambit of this exemption. We believe they should be included.

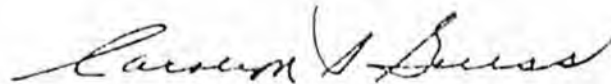
AS 44.62.310(d)(1) makes the State's "Open Meeting Law" inapplicable to "judicial or quasi-judicial bodies when holding a meeting solely to make a decision in an adjudicatory proceeding". Although CSSB 90(Jud) would exempt the work product of justices, judges and their law clerks, etc., that emanate from such meetings within the court system, it would not exempt similar work products that emanate from comparable deliberative sessions of the principal quasi-judicial regulatory agencies that act in a court-like manner under the delegated powers of the legislature. Thus, as currently drafted, CSSB 90(Jud) would produce a result in the new Public Records Act inconsistent with that achieved under the Open Meeting Law.

While the Commissions support the protection of personal privacy, and at the same time want to ensure full public access to information, as contemplated under CSSB 90(Jud), the legislation as presently written would inhibit, if not stifle, the deliberative process, particularly the free exchange of ideas so essential to a decision in the public interest. Because the regulatory commissioners, at this stage, act in a manner very much like judges their deliberations, and the subsequent written work product -- draft orders, decisions, etc. -- should be as fully protected as those of justices and judges. Full public access to these drafts, notes, memoranda, etc. prior to issuance of an order or decision seriously would impede, if not prejudice, the deliberative process in a manner probably not intended under the legislation.

There is yet another incongruity that results from the omission of an exemption for the members of the quasi-judicial regulatory bodies: proposed AS 40.020.030(a)(9) would exempt the work products of agency attorneys leading up to the determination of legal issues. What would occur is that our staff counsel, whether assisting the staff in the preparation of its case, or working with the Commissioners in the preparation of an order, would be exempt vis a vis their written memoranda, notes, drafts, etc., but the work product of the Commissioners by and for whom they are employed would not be. Again, we are confident this is an unintended result.

Accordingly, we would request the adoption of a corrective amendment -- one that would limit the application of the exemption we propose to members of the principal quasi-judicial regulatory agencies: The Alaska Public Utilities Commission, the Alaska Pipeline Commission, and the Alaska Transportation Commission. We enclose our proposed amendment and request its early, favorable consideration. If you have any questions relative to our concerns or to our proposed amendment, please contact either Commissioner Stuart C. Hall of the APUC or Commissioner Jan Williams of the APC.

Cordially yours,



Carolyn S. Guess, Chairman
Alaska Public Utilities Commission



Alaska State Legislature

Senate Committee on State Affairs

Vic Fischer, Chairman • Pouch V • Juneau, Alaska 99811 • (907) 465-4954
Interim office: 511 West 4th Ave., Suite 5,
Anchorage, Alaska 99501 phone: 278-3654

Official Business

M E M O R A N D U M

TO: Anchorage area senators
FROM: Sen. Vic Fischer *Vic*
DATE: November 20, 1981
SUBJECT: Jails and corrections

I had a singularly valuable afternoon yesterday: I spent it visiting the Eagle River Correctional Center. I urge each of my colleagues who have not already done so to spend some time at this facility as well as the 3rd and 6th Avenue jails.

It is clear that the issue of providing adequate incarceration capacity will be with us next session and in the years to come. In this context, the Eagle River Correctional Center provides an example of the potentials of an effective program and the dangers of substandard facilities.

The new women's facility is great. The men's program facility is an indication of what can be done in corrections, even though it is understaffed and will have its common spaces quite overextended once the two additional housing units are completed.

The most serious problem evident is in the special treatment unit, where 52 men are housed in a facility designed for 20: one man cells are being used for two people and "temporary" double-decker bunks have been constructed in the corridors. All this accompanied by minimum available guards. (The men's facility actually has fewer staff now than when it was initially opened.)

Aside from all this creating a potentially explosive situation, the sad aspect is that people are being warehoused and prevent the facility functioning as a correctional center, especially if adequate staff were available.

Anchorage area legislators
November 20, 1981
page two

If you manage to visit Eagle River, be sure to talk to the superintendents of the men's and women's facilities and also to some of the other senior staff. I did it and gained alot of insights into the extent to which presumptive sentencing is causing an increasing load and potentially creates some extremely serious problems. People are staying in the system much longer, and the probation load is also increasing. Uncertainty of length of incarceration meantime causes people to be brought into the correctional center who are not on a correctional track.

I also came to the conclusion that further attention must be given to the location of the correctional system within the executive branch of state government. Potentials for an effective and constructive system are there, but they will be realized only with appropriate management, staffing, and inter-relationship with related function.

Finally, the correctional system provides an excellent example of the interrelationship between capital construction and state personnel requirements. As facilities are expanded and more people are incarcerated, there simply will have to be more staff to serve as guards, provide counseling and other rehabilitation services, and generally make the system work.

These are just a few impressions gained from a visit to Eagle River. I strongly urge you to visit the correction center if you have not recently done so.

Very best regards.

*INCREASE
SENTENCE
LENGTHS
HAVE
Decreased*



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).

State Affairs Committee
Report on CSSB 90
Page Two

- 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.

State Affairs Committee
Report on CSSB 90
Page Four

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. FISCHER, CHAIR

SEN. BRADLEY

SEN. COLLETTA

SEN. ELIASON

SEN. STIMSON

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.



Alaska State Legislature

Senate

Committee on State Affairs

Pouch V
State Capitol
Juneau, Alaska 99811

Official Business

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 Gottreaver, 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 Reinhart
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

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From Fairbanks: Kent Sturgis
Box 710
Fairbanks 99701

From Anchorage: Kay Fanning
Alaska Newspaper Assoc. & Daily News
Pouch 6616
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Ted Berns, Attorney
Mun. of Anchorage
Pouch 6650
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

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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.

M E M O R A N D U M

To: Senator Fischer

From: Nan Groszek

Date: 1/28/81

Re: Overview of Senate Bill 90, "An Act relating to privacy and public information; and changing Rule 65 of the Alaska Supreme Court Rules of Civil Procedure."

AS 40.25.010

Sec. 40.25.010 states the policy of the Act. The intention is that all documents in the possession of governmental units belong to the public. A person's right to privacy pursuant to constitutional mandate is specifically stated in subsection AS 40.25.010 (5).

AS 40.25.015

Sec. 40.25.015^(a) states that all records of governmental units except those exempted by law are open to any person for inspection and copying during regular business hours. The section would exempt those records that infringe on a person's right to privacy. The custodian of the records is also held responsible for the preservation and the safekeeping of these records.

(b) This section states that the custodian of the records has a duty to make the records available for inspection and reproduction. It allows the custodian to charge a fee for furnishing a copy of the record. The custodian would also have the duty to provide facilities for the inspection so that the

records are protected, and to prevent interference with the day to day work activities of the office. It further states that if a certified copy of the record is requested that the copy furnished by the custodian would in all cases be evidence of the original.

(c) This section states that copies of the records may be requested by telephone, electronic communication, and by mail. It further states that these requests shall be treated in the same way as requests made in person.

(d) This section states that the commissioner of the Department of Administration shall prescribe a uniform schedule of fees. The payment of fees shall be limited to the reasonable standard charge for document duplication, and only the direct cost of duplication will be charged. (There is no charge for searching for the documents.)

(e) Provides seventeen specific exemptions for not disclosing public documents. *These are self-explanatory*

(f) States that all records become public documents after they are twenty years old unless they are specifically exempted from disclosure by statute.

(g) States that information contained in records exempted from disclosure under the seventeen exemptions may be released for valid statistical or other information-gathering purposes if: (1.) any of the information which would tend to identify the person would be deleted and (2.) disclosure would be made in a manner which would not compromise or defeat the purposes of any statute designed to maintain the confidentiality of the

information.

(h) This part allows exempted information to be subpoenaed during the course of an investigation of a state or municipal agency.

(i) This part allows all personnel records including salaries and information regarding job performance and abilities to carry out the duties and responsibilities of the job to be made available for inspection. It specifically states that this accessibility to the public is not an infringement of a person's right to privacy.

(j) This part outlines what information is public with regard to the commission of a crime. It specifically exempts the release of the victim's name in a criminal sexual assault case *or the release of the name of a minor charged with a crime.*

AS 40.25.020

(a) This part states that upon request each governmental unit shall produce the records immediately or, if the record is currently being used or is in storage and not available at the time of the request, the custodian shall notify the applicant in writing and the applicant may then set a date and an hour at which time the record can be inspected.

(b) This part covers the area of exhaustion of administrative remedies. This means that if a governmental unit fails to comply with a person's request for documents, that person is considered to have exhausted his or her administrative remedies and can then go directly to court to force the governmental unit to comply. When the court action is filed, if the governmental unit can show that exceptional circumstances exist, the court can grant the governmental unit additional time to find or review the record.

(c) This part deals with the procedures the custodian of the record must follow when he determines that the contents of the record are exempt under the seventeen provisions. It states that if the custodian finds exempt provisions, the custodian must delete these provisions and release the record with a note stating that exempt material has been removed. It also states that if the custodian determines that the record or a portion of it is not open to inspection, he shall inform the person making the request in certified writing of this determination and of that part of the exempt provisions that he

is relying on. The custodian, in the certified writing, must also state that a lawsuit may be brought to compel production of records which are improperly withheld.

(d) In the certified writing of the denial of request under the previous section the names and titles of positions of each person responsible for the denial of the request must be noted.

AS 40.25.025

(a) This part states that a custodian of the record or an accomplice may be enjoined by the Superior Court from obstructing or attempting to obstruct the lawful inspection of records.

(b) This part states that the court may not charge a filing fee or the Department of Public Safety may not charge for service of process for an applicant seeking injunctive relief under this section. This section also states that the court may not require a security bond, which is usually required in a suit for injunctive relief. If the applicant is granted injunctive relief he shall be entitled to recover costs and reasonable attorney's fees, as stated in Rule 82 of the Civil Rules of Procedure, from the governmental unit.

(c) States that the Superior Court shall provide forms which allow for an applicant to file for injunctive relief without a lawyer. These forms are simplified to include only the identification of the applicant, the name of the custodian

who is allegedly improperly withholding the record, and a simple explanation of the record sought. This is done to do away with needing an attorney to file the suit.

(d) This part states that the court may compel the reproduction of records improperly withheld. It also allows the court to examine withheld documents en camera (which means the judge may do this in his chambers) to determine whether or not the record or portions of the record have been improperly withheld. The burden is put on the agency to prove its reason for withholding the requested document.

AS 40.25.035 Civil Action for Obstruction of Access to Records.

(a) This part allows a person who has been wrongfully denied access to records to file a civil action in court against the person responsible for the violation. The applicant, if he prevails in the suit, is entitled to recover actual damages and reasonable attorney's fees and other reasonable costs of litigation.

(b) This part states that a good faith reliance upon the provisions in the exemption is a defense to a civil action brought under this section.

AS 40.25.040 Definitions

There are five categories of definitions which are self-explanatory. Definitions are provided for "attorney work products", "custodian", "governmental unit", "personal information", and "record".

Section 2 of the bill amends AS 44.62.310, which is entitled "Agency Meetings: Public" by adding a new section which allows

the holding of conferences between two or more public bodies or their representatives. It further states that these conferences are subject to the same regulations which are outlined in AS 44.62.310 for holding executive or closed sessions.

Section 3 amends AS 44.62.310 (c) (3) to read "Matters which by state statute LAW, MUNICIPAL CHARTER, OR ORDINANCE are required to be confidential." This section would stop any governmental unit or political subdivision from drafting their own laws with regards to confidential matters to be discussed in executive session.

Section 4 amends AS 11.56.820 entitled "Tampering with Public Records". This section adds a new clause which states that a good faith reliance upon the provisions outlined in this chapter is an affirmative defense to criminal prosecution. Tampering with public records under current statute is a Class A misdemeanor.

Section 5. This section has the effect of changing Rule 65 of the Alaska Supreme Court Rules of Civil Procedure relating to the security deposits required in civil actions.

Section 6 repeals AS 9.25.110 entitled "Inspection and Copying of Public Records". Repeals AS 9.25.120 entitled "Inspection and Copying of Public Records" and AS 9.25.125 entitled "Enforcement: Injunctive Relief".

Lrosyke

PROPOSED COMMITTEE SUBSTITUTE

SENATE BILL NO. 90

IN THE LEGISLATURE OF THE STATE OF ALASKA
TWELFTH LEGISLATURE - FIRST SESSION

A BILL

For an Act 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."

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

* Section 1. AS 40 is amended by adding a new chapter to read:

CHAPTER 25. PRIVACY AND PUBLIC INFORMATION.

Sec. 40.25.010. STATE POLICY. It is the policy of the state that

(1) all governmental units exist to aid in the conduct of the people's business;

(2) the people of this state do not yield their sovereignty to the agencies which serve them;

(3) the people, in delegating authority, do not give their public servant the right to decide what is best for the people to know and what is best for them not to know;

(4) the people's right to remain informed shall be protected so that they may retain control over the instruments they have created;

(5) the people's right to privacy as provided by the constitution is recognized and shall not be infringed;

(6) the records of governmental units shall be open for public inspection unless the inspection infringes on a person's right to privacy or is otherwise prohibited by statute.

Sec. 40.25.015. RECORDS TO BE OPEN TO INSPECTION. (a) Except as otherwise specifically provided by statute, all records are open to

inspection and copying by any person during the regular office hours of the lawful custodian of the records or his designee. The custodian of the records shall take all necessary precautions for their preservation and safekeeping.

(b) Every custodian of records shall make them available for public inspection and shall give a copy of the record on request and

duty to search - comments
 A custodian shall permit memoranda, transcripts, and copies of the public writings and records in his office to be reproduced in any reasonable manner. In addition, a custodian shall furnish proper and reasonably accessible facilities for inspection of records, subject to reasonable restrictions as are necessary for the protection of the writings and records and to prevent interference with the regular discharge of the duties of the custodian and his employees. If a certified copy is requested, that copy is in all cases evidence of the original.

(c) Copies of records may be requested *in person or verbally or in writing* by telephone, electronic communication, or by mail. These requests shall be treated in accordance with the provisions of (a) and (b) of this section.

(d) The commissioner of administration shall prescribe a uniform schedule of fees to be limited to reasonable standard charges for document duplication, and provide for recovery of only the direct costs of the duplication. The commissioner may reduce or waive the payment of fees if a reduction or waiver would be in the public interest. *in urgent* A person can obtain 20 pages of a record copied without charge within any 24-hour period.

Sec. 40.25.020. DUTIES OF GOVERNMENTAL UNIT. (a) Promptly, but no later than 10 days after receiving a request for a public record, the custodian of the record shall

(1) make the record available;

1 (2) inform the requester that unusual circumstances, as
2 defined in (d) of this section, have delayed or impaired the handling
3 of the request and specify in writing the earliest time and date, not
4 later than ~~30 days~~ after receipt of the request, when the record will
5 be available;

6 (3) inform the requester that the governmental unit does not
7 maintain the record, and provide, if known, the name and location of
8 the governmental unit maintaining the record; or

9 (4) deny the request.

10 (b) If a request for access to a public record is denied, in
11 whole or part, the governmental unit shall in writing notify the
12 requester of the specific reasons for the denial, and identify by name
13 and position or title of the person responsible for the denial. In
14 addition, the governmental unit shall inform the requester that review
15 of the denial may be sought from the head of the governmental unit and
16 that a request for review must be filed within 30 days after notification
17 of the denial. The head of the governmental unit within 30 days after
18 a request for review is filed, shall decide whether to uphold the
19 denial of access. If the decision is to disclose, the governmental
20 unit shall immediately notify the requester and make the record avail-
21 able. If the denial of access is upheld, in whole or in part, the head
22 of the governmental unit in writing shall notify the requester of the
23 decision, the specific reasons for the decision, and of the right to
24 bring a judicial action under AS 40.25.070.

50 days to give info

*Department of Administration
Administrative
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25 (c) When the governmental unit determines that contents of a
26 record exempt it under the provisions of AS 42.25.030, it shall also
27 determine whether a deletion of the exempt parts of the record will
28 make the record suitable for release, and, if so, the deletion shall be
29 made and the record released, with the notation that exempt material

1 has been removed. If the governmental unit determines that the record,
 2 or a portion of the record, is not open to inspection, it shall, in a
 3 certified writing, inform the person requesting the records of its
 4 determination, of the statutory basis for this decision, and that under
 5 AS 40.25.070 a suit may be brought to compel production of records that
 6 are improperly withheld.

7 (d) As used in (a) of this section, "unusual circumstances"
 8 means, but only to the extent reasonably necessary to the proper pro-
 9 cessing of the particular request,

10 (1) the need to search for and collect the requested records
 11 from field facilities or other establishments that are separate from
 12 the office processing the request;

13 (2) the need to search for, collect, and appropriately
 14 examine a voluminous amount ^{or variety} of separate and distinct records which are
 15 demanded in a single request;

16 *Redraft* (3) the need for consultation, which shall ^{be} *tighten up* conducted with
 17 all practicable speed, with another governmental unit or among two or
 18 more components of the governmental unit having a substantial interest
 19 in the determination of the request; or

20 (4) the need to notify a person and afford him an oppor-
 21 tunity to be heard pursuant to AS 40.25.030(c).

22 Sec. 40.25.030. EXEMPTIONS. (a) The following records are ex-
 23 cluded from the provision of AS 40.25.015 -- 40.25.020:

24 (1) records that are exempted from disclosure by state
 25 statute, ~~federal law or regulation, or court rule~~

26 (2) any tax or information return, or record or report
 27 relating to that return, which is required to be filed in accordance
 28 with the provisions of AS 43 or municipal ordinance;

29 (3) archival materials donated by individuals to the extent

1 of any written limitations placed on them as a condition of of the
2 contribution; however, all archival materials become public information
3 after not more than 50 years and any statement of limitations must be
4 produced upon denial of access;

5 (4) circulation records maintained by public libraries,
6 public school libraries, and University of Alaska libraries showing
7 personal transactions by those borrowing from them;

8 *3 who determines* (5) trade secrets and confidential commercial, financial,
9 geological, or geophysical data that is furnished to a governmental
10 unit ~~or developed by a governmental unit.~~ *?*

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

14 (7) investigatory, intelligence, and original entry records *?*
15 compiled for law enforcement purposes, but only to the extent that
16 production of the records would

17 (A) interfere with enforcement proceedings;

18 (B) deprive a person of a right to a fair trial or an
19 impartial adjudication;

20 *Identical to 2000* (C) constitute an unwarranted invasion of personal
21 privacy;

22 (D) disclose the identity of a confidential source and,
23 in case of a record compiled by a criminal law enforcement
24 authority in the course of a criminal investigation, confidential
25 information furnished only by the confidential source;

26 (E) disclose investigative techniques and procedures;
27 or

28 (F) endanger the life, property, or physical safety of
29 a person; *→*

30 (8) records of security systems and procedures established

for the purpose of the protection of persons or property, or securing a penal institution or place of detention of persons accused or convicted of a crime or persons under the jurisdiction of the court under AS 47.10, but only to the extent that disclosure would compromise the effectiveness of the system;

(9) attorney work product in the possession of a governmental unit;

(10) any notes, memoranda, draft decisions, opinions, or other similar documents prepared by a justice or a judge, or a person working under ^{their} ~~his~~ supervision, in the process of deciding any legal issue;

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

(12) records, the disclosure of which would constitute an unjustifiable ^{unjustifiable} into a person's ^{rt. of privacy} ~~rt. of privacy~~ unwarranted invasion of personal privacy. *Covers 3 thru 8*

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(b) ~~In applying the exemption specified in (a) (12) of this section,~~ the governmental unit shall determine whether the public interest in disclosure outweighs the privacy interest of the person to whom the record pertains. ~~In making this determination, the governmental unit shall consider:~~

(1) whether the record is of a personal nature, including records concerning

(A) the person's personal relationship with any person related to him by blood or marriage;

(B) the person's religious beliefs or practices;

(C) non-criminal sexual matters;

(D) the person's political affiliation or philosophy;

(E) medical, psychiatric, or psychological history,

financial info

1 diagnosis, condition, treatment or evaluation;

2 (2) whether the person could reasonably assert an option to
3 withhold information contained in the record from the public because
4 of its intimacy or its possible adverse effects upon himself or his
5 family;

6 (3) the extent to which disclosure furthers the public *? what*
7 interest in the disclosure of information concerning the conduct of
8 governmental affairs as opposed to the requester's private interests;

9 (4) whether the information in the record was voluntarily
10 provided by the person to whom the record pertains or whether he was *what*
11 compelled to provide the information;

12 (5) whether the information in the record was supplied by
13 the person in an attempt to obtain a valuable governmental benefit,
14 other than basic social services or assistance;

15 (6) whether the information in the record is readily a-
16 vailable from other than governmental sources;

17 (7) whether the person was notified or reasonably could have
18 concluded at the time he provided the information that the record would
19 be available for public inspection;

20 (8) whether the information in the record consists of
21 verified or undisputed information about a person or is rumor, con-
22 jecture, or uncorroborated hearsay; and

23 (9) whether the information in the record was collected or
24 maintained for the purpose of making information available to the
25 general public.

26 (c) If a governmental unit initially decides to disclose a
27 record to which the exemptions specified in *unwarranted invasion of privacy* (a) (7) (C) or (a) (13) of *cites*
28 this section may apply, and to the extent that it concludes that there
29 is a substantial probability that a person to whom the record pertains

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would object to disclosure, it shall make reasonable efforts to notify that person and provide him with an opportunity to argue against disclosure. If the governmental unit decides to grant disclosure over objection, it shall notify the objector of its decision. If the governmental unit decides not to grant disclosure, and an action is subsequently brought pursuant to AS 40.25.070 to compel disclosure, it shall make reasonable efforts to inform the objector of the suit.

(d) Unless specifically exempted from disclosure by state statute, ~~federal law or regulation, or court rule~~, all records become public after they are ~~75~~ ⁵⁰ years old. *medical records*

(e) Information contained in records exempted from disclosure under (a) of this section may be released for valid statistical or other information-gathering purposes if

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

disclosure is made in a manner which would not compromise or ~~at~~ the purposes of any state statute, federal law or regulation ~~court rule~~ designed to maintain the confidentiality of the information.

(f) The exemptions from public disclosure provided in this section, or by other state law pertaining to the confidentiality of records, do not preclude the release or production of subpoenaed records or information to a state or municipal agency during the course of an investigation.

(g) All information in personnel records of public employees showing salary or compensation, job description, education and training background, previous work experience, *current evaluation* and the status of any formal charges against the employee and disciplinary action taken is a matter of public information and record.

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Personnel Rule 4.07.0.

Except for examination materials, performance evaluations, personal history or other confidential materials so designated by the Dir., employee records shall be public records.

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

Sec. 40.25.040. ACCESS TO RECORDS BY RECORD SUBJECT. (a) Except as provided in (b) of this section, an individual or his duly authorized representative may examine or copy during the regular business hours of the governmental unit, any ~~accessible~~ record that pertains to him. In implementing this section, the governmental unit shall follow the procedures established in AS 40.25.015 -- 40.25.020.

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

(1) information that may be withheld pursuant to AS 40.-25.030(a)(1) -- 40.25.030(a)(11), except to the extent that the information was submitted by the requester; however, for purposes of information that may be withheld pursuant to AS 40.25.030(a)(6), under appropriate safeguards designed to protect the integrity of the examination process, an individual may examine, ~~his own~~ his own test questions and answers in any examination used for licensing or employment;

(2) information that may be withheld pursuant to AS 40.-25.030(a)(12) that does not relate directly to the requester, and which if disclosed, would constitute an unwarranted invasion of another person's personal privacy; or

(3) information collected and used solely to evaluate the character and fitness of persons, but only to the extent that disclosure would identify the source of the information.

(c) This section does not abridge any state statute, ~~federal law or regulation, or court rule~~ that authorizes an agency to withhold information from the parent or legal guardian of a child.

1 (d) If an individual requests an ~~accessible~~ record containing
2 information the governmental unit is not required to disclose under (b)
3 or (c) of this section, the agency shall provide any reasonably segre-
4 gable portion of the record to the requester after deleting the un-
5 disclosable material.

6 Sec. 40.25.060. CORRECTION AND AMENDMENT OF RECORDS. (a) An
7 individual may request a governmental unit to correct or amend any
8 incomplete or inaccurate information pertaining to him if it is con-
9 tained in a record available under AS 40.25.050.

10 (b) Not later than twenty days after receiving a request from an
11 individual to correct or amend an accessible record pertaining to him,
12 the governmental unit shall

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

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

18 (3) inform the individual in writing of its refusal to
19 correct or amend the record as requested and the reason for the re-
20 fusals. If the governmental unit refuses to correct or amend the
21 record, it shall

22 (A) permit the individual to file with the record a
23 concise statement of his reasons for the requested correction or
24 amendment and his reasons for disagreement with the refusal by the
25 governmental unit; and

26 (B) notify the individual of his right to bring an
27 action pursuant to AS 40.25.070.

28 (c) Whenever a governmental unit discloses information to a third
29 party about which an individual has filed a statement pursuant to

1 (b) (3) (A) of this section, the governmental unit shall

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

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

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

15 (2) failing to correct or amend a record pursuant to AS 40.-
16 25.060.

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

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

(d) In a suit brought under this section, the court may enjoin withholding of the records and order the production to the complainant of records improperly withheld or order that the correction or amendment be made. The court shall determine the matter de novo, and may examine the contents of any records in camera to determine whether the records or any portion of them may be withheld under any of the exemption specified in AS 40.25.030 or not corrected or amended under AS 40.25.060. The burden is on the agency to sustain its action.

Sec. 40.25.080. CIVIL ACTION FOR OBSTRUCTION OF ACCESS TO RECORDS. (a) A person who has been wrongfully denied access to a record under this chapter has a civil cause of action against the person responsible for the violation and is entitled to recover actual damages and ~~reasonable~~ ^{punitive} attorney fees and other ~~reasonable~~ ^{actual} litigation costs.

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

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

(1) "accessible record" means any item or collection of information in a record that refers to a particular individual that is

(A) maintained according to an established retrieval scheme or indexing structure on the basis of the identity of, or so as to identify, individuals; or

(B) otherwise retrievable because a governmental unit is able to locate the record through the use of information provided by a requester without an unreasonable expenditure of time, effort, money, or other resources;

(2) "attorney work product" means documents and tangible

*see Barry
Public
Contract*

things prepared by or for a governmental unit in anticipation of or during litigation;

(3) "custodian" means the head of any governmental unit or his designee;

(4) "governmental unit" means an agency, political subdivision, legislative body, board of regents, or an administrative body, board, commission, committee, subcommittee, authority, council, agency, or other organization, including subordinate units of the above groups, of the state or any of its political subdivisions, including but not limited to municipalities, boroughs, school boards, and all other boards, agencies, assemblies, councils, departments, divisions, bureaus, commissions or organizations, advisory or otherwise, of the state or local government supported in whole or in part by public money or authorized to spend public money;

if creatures of the state

*See
Charter*

*REDA
public corp. CFA's contract
pg. 9 where used*

(5) "individual" means a natural person;

(6) "record" means any document, paper, memoranda, book, letter, drawing, map, plat, photo, photographic file, motion picture, film, microfilm, microphotograph, exhibit, magnetic or paper tape, punched card, ^{under FOIA} or other document of any other material, regardless of physical form or characteristic, developed or received under law or in connection with the transaction of official business and preserved or appropriate for preservation by a governmental unit as evidence of the organization, function, policies, decisions, procedures, operations or other activities of the state or political subdivision or because of the informational value in them; it also includes staff manuals and instructions to staff that directly or indirectly affect the public.

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

(g) Nothing in this section may be construed to prevent the holding of conferences between two or more public bodies, or their

1 representatives, but these conferences are subject to the same regu-
2 lations for holding executive or closed sessions as are applicable to
3 any other public body.

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

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

7 * Sec. 4. In sec. 1 of this Act, AS 40.25.025(b) has the effect of
8 changing Rule 65 of the Alaska Supreme Court Rules of Civil Procedure re-
9 lating to security deposits required in civil actions.

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

11 * Sec. 6. This Act takes effect July 1, 1987.

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13 *Good faith defense*
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PROPOSED COMMITTEE SUBSTITUTE

SENATE BILL NO. 90

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWELFTH LEGISLATURE - FIRST SESSION

A BILL

For an Act 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."

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

* Section 1. AS 40 is amended by adding a new chapter to read:

CHAPTER 25. PRIVACY AND PUBLIC INFORMATION.

Sec. 40.25.010. STATE POLICY. It is the policy of the state that

- (1) all governmental units exist to aid in the conduct of the people's business;
- (2) the people of this state do not yield their sovereignty to the agencies which serve them;
- (3) the people, in delegating authority, do not give their public servants the right to decide what is best for the people to know and what is best for them not to know;
- (4) the people's right to remain informed shall be protected so that they may retain control over the instruments they have created;
- (5) the people's right to privacy as provided by the constitution is recognized and shall not be infringed;
- (6) the records of governmental units shall be open for public inspection unless the inspection infringes on a person's right to privacy or is otherwise prohibited by statute.

Sec. 40.25.015. RECORDS TO BE OPEN TO INSPECTION. (a) Except as otherwise specifically provided by statute, all records are open to

inspection and copying by any person during the regular office hours of the lawful custodian of the records or his designee. The custodian of the records shall take all necessary precautions for their preservation and safekeeping.

(b) Every custodian of records shall make them available for public inspection and shall give a copy of the record on request and payment of fees, if any. A custodian shall permit memoranda, transcripts, and copies of the public writings and records in his office to be reproduced in any reasonable manner. In addition, a custodian shall furnish proper and reasonably accessible facilities for inspection of records, subject to reasonable restrictions as are necessary for the protection of the writings and records and to prevent interference with the regular discharge of the duties of the custodian and his employees. If a certified copy is requested, that copy is in all cases evidence of the original.

(c) Copies of records may be requested by telephone, electronic communication, or by mail. These requests shall be treated in accordance with the provisions of (a) and (b) of this section.

(d) The commissioner of administration shall prescribe a uniform schedule of fees to be limited to reasonable standard charges for document duplication, and provide for recovery of only the direct costs of the duplication. The commissioner may reduce or waive the payment of fees if a reduction or waiver would be in the public interest. A person can obtain 20 pages of a record copied without charge within any 24-hour period.

Sec. 40.25.020. DUTIES OF GOVERNMENTAL UNIT. (a) Promptly, but no later than 10 days after receiving a request for a public record, the custodian of the record shall

- (1) make the record available;

1 (2) inform the requester that unusual circumstances, as
2 defined in (d) of this section, have delayed or impaired the handling
3 of the request and specify in writing the earliest time and date, not
4 later than 20 days after receipt of the request, when the record will
5 be available;

6 (3) inform the requester that the governmental unit does not
7 maintain the record, and provide, if known, the name and location of
8 the governmental unit maintaining the record; or

9 (4) deny the request.

10 (b) If a request for access to a public record is denied, in
11 whole or part, the governmental unit shall in writing notify the
12 requester of the specific reasons for the denial, and identify by name
13 and position or title of the person responsible for the denial. In
14 addition, the governmental unit shall inform the requester that review
15 of the denial may be sought from the head of the governmental unit and
16 that a request for review must be filed within 30 days after notification
17 of the denial. The head of the governmental unit within 30 days after
18 a request for review is filed, shall decide whether to uphold the
19 denial of access. If the decision is to disclose, the governmental
20 unit shall immediately notify the requester and make the record avail-
21 able. If the denial of access is upheld, in whole or in part, the head
22 of the governmental unit in writing shall notify the requester of the
23 decision, the specific reasons for the decision, and of the right to
24 bring a judicial action under AS 40.25.070.

25 (c) When the governmental unit determines that contents of a
26 record exempt it under the provisions of AS 42.25.030, it shall also
27 determine whether a deletion of the exempt parts of the record will
28 make the record suitable for release, and, if so, the deletion shall be
29 made and the record released, with the notation that exempt material

1 has been removed. If the governmental unit determines that the record,
 2 or a portion of the record, is not open to inspection, it shall, in a
 3 certified writing, inform the person requesting the records of its
 4 determination, of the statutory basis for this decision, and that under
 5 AS 40.25.070 a suit may be brought to compel production of records that
 6 are improperly withheld.

7 (d) As used in (a) of this section, "unusual circumstances"
 8 means, but only to the extent reasonably necessary to the proper pro-
 9 cessing of the particular request,

10 (1) the need to search for and collect the requested records
 11 from field facilities or other establishments that are separate from
 12 the office processing the request;

13 (2) the need to search for, collect, and appropriately
 14 examine a voluminous amount ^{or variety} of separate and distinct records which are
 15 demanded in a single request;

16 (3) the need for consultation, which shall be conducted with
 17 all practicable speed, with another governmental unit or among two or
 18 more components of the governmental unit having a substantial interest
 19 in the determination of the request; or

20 (4) the need to notify a person and afford him an oppor-
 21 tunity to be heard pursuant to AS 40.25.030(c).

22 Sec. 40.25.030. EXEMPTIONS. (a) The following records are ex-
 23 cluded from the provision of AS 40.25.015 -- 40.25.020:

24 (1) records that are exempted from disclosure by state
 25 statute, federal law or regulation, or court rule;

26 (2) any tax or information return, or record or report
 27 relating to that return, which is required to be filed in accordance
 28 with the provisions of AS 43 or municipal ordinance;

29 (3) archival materials donated by individuals to the extent

1 of any written limitations placed on them as a condition of of the
 2 contribution; however, all archival materials become public information
 3 after not more than 50 years and any statement of limitations must be
 4 produced upon denial of access;

5 (4) circulation records maintained by public libraries,
 6 public school libraries, and University of Alaska libraries showing
 7 personal transactions by those borrowing from them;

8 (5) trade secrets and confidential commercial, financial,
 9 geological, or geophysical data that is furnished to a governmental
 10 unit^{or} developed by a governmental unit;] *delete*

11 *up* (6) materials used to administer a licensing, employment, or
 12 academic examination if disclosure would compromise the fairness or
 13 objectivity of the examination process;

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

17 (A) interfere with enforcement proceedings;

18 (B) deprive a person of a right to a fair trial or an
 19 impartial adjudication;

20 (C) constitute an unwarranted invasion of personal
 21 privacy;

22 (D) disclose the identity of a confidential source and,
 23 in case of a record compiled by a criminal law enforcement
 24 authority in the course of a criminal investigation, confidential
 25 information furnished only by the confidential source;

26 (E) disclose investigative techniques and procedures;

27 or

28 (F) endanger the life, property, or physical safety of
 29 a person;

30 (8) records of security systems and procedures established

1 for the purpose of the protection of persons or property, or securing
2 a penal institution or place of detention of persons accused or con-
3 victed of a crime or persons under the jurisdiction of the court under
4 AS 47.10, but only to the extent that disclosure would compromise the
5 effectiveness of the system;

6 (9) attorney work product in the possession of a govern-
7 mental unit;

8 (10) any notes, memoranda, draft decisions, opinions, or
9 other similar documents prepared by a justice or a judge, or a person
10 working under his supervision, in the process of deciding any legal
11 issue;

12 (11) records related solely to the internal practices of a
13 governmental unit where the effect of disclosure would be to enable law
14 violators to escape detection; and

15 (12) records, the disclosure of which would constitute an
16 unwarranted invasion of personal privacy.

17 (b) In applying the exemption specified in (a)(12) of this
18 section, the governmental unit shall determine whether the public
19 interest in disclosure outweighs the privacy interest of the person to
20 whom the record pertains. ~~In~~ ^{Delete} making this determination, the govern-
21 mental unit shall consider: S.F. Finds these raise more questions
22 than it resolves

23 (1) whether the record is of a personal nature, including
24 records concerning

25 (A) the person's personal relationship with any person
26 related to him by blood or marriage;

27 (B) the person's religious beliefs or practices;

28 (C) non-criminal sexual matters;

29 (D) the person's political affiliation or philosophy;

30 (E) medical, psychiatric, or psychological history,

*This goes
p. 2 l. 1-25*

1 diagnosis, condition, treatment or evaluation.

2 (2) whether the person could reasonably assert an option to
3 withhold information contained in the record from the public because
4 of its intimacy or its possible adverse effects upon himself or his
5 family;

6 (3) the extent to which disclosure furthers the public
7 interest in the disclosure of information concerning the conduct of
8 governmental affairs as opposed to the requester's private interests;

9 (4) whether the information in the record was voluntarily
10 provided by the person to whom the record pertains or whether he was
11 compelled to provide the information;

12 (5) whether the information in the record was supplied by
13 the person in an attempt to obtain a valuable governmental benefit,
14 other than basic social services or assistance;

15 (6) whether the information in the record is readily a-
16 vailable from other than governmental sources;

17 (7) whether the person was notified or reasonably could have
18 concluded at the time he provided the information that the record would
19 be available for public inspection;

20 (8) whether the information in the record consists of
21 verified or undisputed information about a person or is rumor, con-
22 jecture, or uncorroborated hearsay; and

23 (9) whether the information in the record was collected or
24 maintained for the purpose of making information available to the
25 general public.

26 (c) If a governmental unit initially decides to disclose a
27 record to which the exemptions specified in (a)(7)(C) or (a)(13) of
28 this section may apply, and to the extent that it concludes that there
29 is a substantial probability that a person to whom the record pertains

would object to disclosure, it shall make reasonable efforts to notify that person and provide him with an opportunity to argue against disclosure. If the governmental unit decides to grant disclosure over objection, it shall notify the objector of its decision. If the governmental unit decides not to grant disclosure, and an action is subsequently brought pursuant to AS 40.25.070 to compel disclosure, it shall make reasonable efforts to inform the objector of the suit.

(d) Unless specifically exempted from disclosure by state statute, ~~federal law or regulation, or court rule~~, all records become public after they are ⁵⁰ 20 years old. (Medical records, etc. may be exempted by other statute)

(e) Information contained in records exempted from disclosure under (a) of this section may be released for valid statistical or other information-gathering purposes if

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

(2) disclosure is made in a manner which would not compromise or defeat the purposes of any state statute, federal law or regulation, or court rule designed to maintain the confidentiality of the information.

(f) The exemptions from public disclosure provided in this section, or by other state law pertaining to the confidentiality of records, do not preclude the release or production of subpoenaed records or information to a state or municipal agency during the course of an investigation.

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Pg 13
(g) All information in personnel records of public employees showing salary or compensation, job description, education and training background, previous work experience, ^{current performance evaluation} and the status of any formal charges against the employee and disciplinary action taken is a matter of public information and record.

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

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

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

13 (1) information that may be withheld pursuant to AS 40.-
14 25.030(a)(1) -- 40.25.030(a)(1), except to the extent that the in-
15 formation was submitted by the requester; however, for purposes of
16 information that may be withheld pursuant to AS 40.25.030(a)(6),
17 under appropriate safeguards designed to protect the integrity of the
18 examination process, an individual may examine ~~but not copy~~ his own
19 test questions and answers in any examination used for licensing or
20 employment;

21 (2) information that may be withheld pursuant to AS 40.-
22 25.030(a)(12) that does not relate directly to the requester, and
23 which if disclosed, would constitute an unwarranted invasion of
24 another person's personal privacy; or

25 ~~(3) information collected and used solely to evaluate the~~
26 ~~character and fitness of persons, but only to the extent that dis-~~
27 ~~closure would identify the source of the information.~~

28 (c) This section does not abridge any state statute, federal law
29 or regulation, or court rule that authorizes an agency to withhold infor-
mation from the parent or legal guardian of a child. ? About
Fed. Statute

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

6 Sec. 40.25.060. CORRECTION AND AMENDMENT OF RECORDS. (a) An
7 individual may request a governmental unit to correct or amend any
8 incomplete or inaccurate information pertaining to him if it is con-
9 tained in a record available under AS 40.25.050.

10 (b) Not later than twenty days after receiving a request from an
11 individual to correct or amend an accessible record pertaining to him,
12 the governmental unit shall

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

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

18 (3) inform the individual in writing of its refusal to
19 correct or amend the record as requested and the reason for the re-
20 fusals. If the governmental unit refuses to correct or amend the
21 record, it shall

22 (A) permit the individual to file with the record a
23 concise statement of his reasons for the requested correction or
24 amendment and his reasons for disagreement with the refusal by the
25 governmental unit; and

26 (B) notify the individual of his right to bring an
27 action pursuant to AS 40.25.070.

28 (c) Whenever a governmental unit discloses information to a third
29 party about which an individual has filed a statement pursuant to

1 (b) (3) (A) of this section, the governmental unit shall

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

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

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

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

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

15 (2) failing to correct or amend a record pursuant to AS 40.-
16 25.060.

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

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

(d) In a suit brought under this section, the court may enjoin withholding of the records and order the production to the complainant of records improperly withheld or order that the correction or amendment be made. The court shall determine the matter de novo, and may examine the contents of any records in camera to determine whether the records or any portion of them may be withheld under any of the exemption specified in AS 40.25.030 or not corrected or amended under AS 40.25.060. The burden is on the agency to sustain its action.

Sec. 40.25.080. CIVIL ACTION FOR OBSTRUCTION OF ACCESS TO RECORDS. (a) A person who has been wrongfully denied access to a record under this chapter has a civil cause of action against the person responsible for the violation and is entitled to recover actual damages and reasonable attorney fees and other reasonable litigation costs.

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

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

(1) "accessible record" means any item or collection of information in a record that refers to a particular individual that is

(A) maintained according to an established retrieval scheme or indexing structure on the basis of the identity of, or so as to identify, individuals; or

(B) otherwise retrievable because a governmental unit is able to locate the record through the use of information provided by a requester without an unreasonable expenditure of time, effort, money, or other resources;

(2) "attorney work product" means documents and tangible

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things prepared by or for a governmental unit in anticipation of or during litigation;

(3) "custodian" means the head of any governmental unit or his designee;

(4) "governmental unit" means an agency, political subdivision, legislative body, board of regents, or an administrative body, board, commission, committee, subcommittee, authority, council, agency, or other organization, including subordinate units of the above groups, of the state or any of its political subdivisions, including but not limited to municipalities, boroughs, school boards, and all other boards, agencies, assemblies, councils, departments, divisions, bureau, commissions or organizations, advisory or otherwise, of the state or local government supported in whole or in part by public money or authorized to spend public money;

*ask State
donor to
submit
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(5) "individual" means a natural person;

(6) "record" means any document, paper, memoranda, book, letter, drawing, map, plat, photo, photographic file, motion picture, film, microfilm, microphotograph, exhibit, magnetic or paper tape, punched card, or other document of any other material, regardless of physical form or characteristic, developed or received under law or in connection with the transaction of official business and preserved or appropriate for preservation by a governmental unit as evidence of the organization, function, policies, decisions, procedures, operations or other activities of the state or political subdivision or because of the informational value in them; it also includes staff manuals and instructions to staff that directly or indirectly affect the public.

computer tape, print out computer maintained records or computer stored info

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

(g) Nothing in this section may be construed to prevent the holding of conferences between two or more public bodies, or their

1 representatives, but these conferences are subject to the same regu-
2 lations for holding executive or closed sessions as are applicable to
3 any other public body.

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

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

7 * Sec. 4. In sec. 1 of this Act, AS 40.25.025(b) has the effect of
8 changing Rule 65 of the Alaska Supreme Court Rules of Civil Procedure re-
9 lating to security deposits required in civil actions.

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

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

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13 *Not 1982*
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PROPOSED COMMITTEE SUBSTITUTE

SENATE BILL NO. 90

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWELFTH LEGISLATURE - FIRST SESSION

A BILL

For an Act 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."

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

* Section 1. AS 40 is amended by adding a new chapter to read:

CHAPTER 25. PRIVACY AND PUBLIC INFORMATION.

Sec. 40.25.010. STATE POLICY. It is the policy of the state that

- (1) all governmental units exist to aid in the conduct of the people's business;
- (2) the people of this state do not yield their sovereignty to the agencies which serve them;
- (3) the people, in delegating authority, do not give their public servants the right to decide what is best for the people to know and what is best for them not to know;
- (4) the people's right to remain informed shall be protected so that they may retain control over the instruments they have created;
- (5) the people's right to privacy as provided by the constitution is recognized and shall not be infringed;
- (6) the records of governmental units shall be open for public inspection unless the inspection infringes on a person's right to privacy or is otherwise prohibited by statute.

Sec. 40.25.015. RECORDS TO BE OPEN TO INSPECTION. (a) Except as otherwise specifically provided by statute, all records are open to

inspection and copying by any person during the regular office hours of the lawful custodian of the records or his designee. The custodian of the records shall take all necessary precautions for their preservation and safekeeping.

(b) Every custodian of records shall make them available for public inspection and shall give a copy of the record on request and payment of fees, if any. A custodian shall permit memoranda, transcripts, and copies of the public writings and records in his office to be reproduced in any reasonable manner. In addition, a custodian shall furnish proper and reasonably accessible facilities for inspection of records, subject to reasonable restrictions as are necessary for the protection of the writings and records and to prevent interference with the regular discharge of the duties of the custodian and his employees. If a certified copy is requested, that copy is in all cases evidence of the original.

(c) Copies of records may be requested by telephone, electronic communication, or by mail. These requests shall be treated in accordance with the provisions of (a) and (b) of this section.

(d) The commissioner of administration shall prescribe a uniform schedule of fees to be limited to reasonable standard charges for document duplication, and provide for recovery of only the direct costs of the duplication. The commissioner may reduce or waive the payment of fees if a reduction or waiver would be in the public interest. A person can obtain 20 pages of a record copied without charge within any 24-hour period.

Sec. 40.25.020. DUTIES OF GOVERNMENTAL UNIT. ~~promptly, but~~

(a) Immediately ~~within 10 days~~ after receiving a request for a public record, the custodian of the record shall

(1) make the record available;

immediately available

(2) inform the requester that unusual circumstances, as defined in (a) of this section, have delayed or impaired the handling of the request and specify in writing the earliest time and date, not later than ⁵ ~~30~~ days after receipt of the request, when the record will be available;

(3) inform the requester that the governmental unit does not maintain the record, and provide, if known, the name and location of the governmental unit maintaining the record; or

~~(4) deny the request.~~

(b) If a request for access to a public record is denied, in whole or part, the governmental unit shall in writing notify the requester of the specific reasons for the denial, and identify by name and position or title of the person responsible for the denial. In

~~addition, the governmental unit shall inform the requester that review of the denial may be sought from the head of the governmental unit and that a request for review must be filed within 30 days after notification of the denial. The head of the governmental unit within 30 days after a request for review is filed, shall decide whether to uphold the denial of access. If the decision is to disclose, the governmental unit shall immediately notify the requester and make the record available. If the denial of access is upheld, in whole or in part, the head of the governmental unit in writing shall notify the requester of the decision, the specific reasons for the decision, and of the right to bring a judicial action under AS 40.25.070.~~

(c) When the governmental unit determines that contents of a record exempt it under the provisions of AS 42.25.030, it shall also determine whether a deletion of the exempt parts of the record will make the record suitable for release, and, if so, the deletion shall be made and the record released, with the notation that exempt material

1 has been removed. If the governmental unit determines that the record
2 or a portion of the record, is not open to inspection, it shall, in a
3 certified writing, inform the person requesting the records of its
4 determination, of the statutory basis for this decision, and that under
5 AS 40.25.070 a suit may be brought to compel production of records that
6 are improperly withheld.

7 ~~As used in (b) of this section, "unusual circumstances"~~ ^{add subsection (d)}
8 means, but only to the extent reasonably necessary to the proper pro-
9 cessing of the particular request,

10 (1) the need to search for and collect the requested records
11 from field facilities or other establishments that are separate from
12 the office processing the request;

13 (2) the need to search for, collect, and appropriately
14 examine a voluminous amount of separate and distinct records which are
15 demanded in a single request; ^{or variety}

16 (3) the need for consultation, which shall be conducted with
17 all practicable speed, with another governmental unit ~~or among two or~~
18 ~~more components of the governmental unit~~ having a substantial interest
19 in the determination of the request; or,
20 ^{(4) the need to notify a person and afford him an opportunity to be heard pursuant to AS 40.25.030(c).}
21 ~~the need to notify a person and afford him an opportunity to be heard pursuant to AS 40.25.030(c).~~

22 Sec. 40.25.030. EXEMPTIONS. (a) The following records are ex-
23 cluded from the provision of AS 40.25.015 -- ~~40.25.020~~

24 (1) records that are exempted from disclosure by state
25 statute; ~~federal law or regulation, or court rule;~~

26 (2) any tax or information return, or record or report
27 relating to that return, which is required to be filed in accordance
28 with the provisions of AS 43 or municipal ordinance;

29 (3) archival materials donated by individuals to the extent

→ denies the request or fails to
comply with (a)(1)-(3) of
this section

(e) A person making a request to a governmental unit
for records under ~~MS 40.25.015~~ ~~40.25.020~~ is considered to have
exhausted his administrative remedies with respect to the request if
the governmental unit fails to

→ continue to

comply with this section. If the governmental unit can show that
~~unusual~~ exceptional circumstances exist and that it is exercising due diligence
in responding to the request, ~~the~~ ^{the} court may retain jurisdiction and
allow the governmental unit additional time to complete its review of
the records. Upon a determination by a governmental unit to comply
with a request for records, the records shall be made promptly available
to the person making the request.

→ as defined in (c) of this section

→ under MS 40.25.070

1 of any written limitations placed on them as a condition of of the
2 contribution; however, all archival materials become public information
3 after not more than 50 years and any statement of limitations must be
4 produced upon denial of access;

5 (4) circulation records maintained by public libraries,
6 public school libraries, and University of Alaska libraries showing
7 personal transactions by those borrowing from them;

8 (5) trade secrets and confidential commercial, financial,
9 geological, or geophysical data that is furnished to a governmental
10 unit, ~~or developed by a governmental unit;~~

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

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

17 (A) interfere with enforcement proceedings;

18 (B) deprive a person of a right to a fair trial or an
19 impartial adjudication;

20 (C) constitute an unwarranted invasion of personal
21 privacy;

22 (D) disclose the identity of a confidential source and,
23 in case of a record compiled by a criminal law enforcement
24 authority in the course of a criminal investigation, confidential
25 information furnished only by the confidential source;

26 (E) disclose investigative techniques and procedures;

27 or

28 (F) endanger the life, property, or physical safety of
29 a person; LUF

30 (8) records of security systems and procedures established

→ however, once the legal issue has been decided, all ~~notes~~ notes, memoranda, draft decisions, opinions, or similar documents become public records under rules established by the supreme court

for the purpose of the protection of persons or property, or securing a penal institution or place of detention of persons accused or convicted of a crime or persons under the jurisdiction of the court under AS 47.10, but only to the extent that disclosure would compromise the effectiveness of the system;

~~(9)~~ (9) attorney work product in the possession of a governmental unit; *however, since the litigation has been terminated, attorney work product that does not include litigation strategy, mental impressions, or opinions of an attorney, or a person working under his direction, are open to public*

(10) any notes, memoranda, draft decisions, *opinions, or other similar documents prepared by a justice or a judge, or a person working under their supervision, in the process of deciding any legal issue;* *become public records;* ~~go back to chapter~~

Attorneys (11) records related solely to the internal practices of a governmental unit where the effect of disclosure would be to enable law violators to escape detection; and *in applying this exemption, the governmental unit shall determine whether the public interest in disclosure outweighs the privacy interest of the person to whom the record pertains.*

(12) records, the disclosure of which would constitute an *unjustifiable* ~~unwarranted~~ invasion of personal privacy. *the privacy interest of the person to whom the record pertains*

~~(b) In applying the exemption specified in (a)(12) of this section, the governmental unit shall determine whether the public interest in disclosure outweighs the privacy interest of the person to whom the record pertains. In making this determination, the governmental unit shall consider:~~

- (1) whether the record is of a personal nature, including records concerning
 - (A) the person's personal relationship with any person related to him by blood or marriage;
 - (B) the person's religious beliefs or practices;
 - (C) non-criminal sexual matters;
 - (D) the person's political affiliation or philosophy;
 - (E) medical, psychiatric, or psychological history;

diagnosis, condition, treatment or evaluation;

(2) whether the person could reasonably assert an option to withhold information contained in the record from the public because of its intimacy or its possible adverse effects upon himself or his family;

(3) the extent to which disclosure furthers the public interest in the disclosure of information concerning the conduct of governmental affairs as opposed to the requester's private interests;

(4) whether the information in the record was voluntarily provided by the person to whom the record pertains or whether he was compelled to provide the information;

(5) whether the information in the record was supplied by the person in an attempt to obtain a valuable governmental benefit, other than basic social services or assistance;

(6) whether the information in the record is readily available from other than governmental sources;

(7) whether the person was notified or reasonably could have concluded at the time he provided the information that the record would be available for public inspection;

(8) whether the information in the record consists of verified or undisputed information about a person or is rumor, conjecture, or uncorroborated hearsay; and

(9) whether the information in the record was collected or maintained for the purpose of making information available to the general public.

(c) If a governmental unit initially decides to disclose a record to which the exemptions specified in (a) (7) (C) or (a) (12) of this section may apply, and to the extent that it concludes that there is a substantial probability that a person to whom the record pertains

employees current

The duties and responsibilities of ~~the~~ their job, shall be open ~~to~~ for public inspection. Applications ~~sent~~ for public employment submitted by ~~the~~ finalists for employment are also open to public inspection, ~~provided~~ but ~~the~~ finalists shall be notified of this fact and of their right to ^{potential} withdraw their application prior to public inspection. As

~~used in this section, "finalist" means the final three percent of the original applications originally submitted to the governmental unit that remains under consideration after~~

~~of applicants~~
~~whose applications~~
~~for employment are~~
~~remain in the~~

under consideration for employment or those applicants

~~used in this section, "finalist" means ~~the final three percent of applicants for employment who remain under consideration for employment after ninety percent of the applicants have been~~ eliminated from~~

Original

consideration by the governmental unit, whatever is ~~greater~~

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

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

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

13 (1) information that ~~may be withheld pursuant to AS 40.-~~
14 25.030(a)(1) -- 40.25.030(a)(11), except to the extent that the in-
15 formation was submitted by the requester; however, for purposes of
16 information that may be withheld pursuant to AS 40.25.030(a)(6),
17 under appropriate safeguards designed to protect the integrity of the
18 examination process, an individual may examine, ~~but not copy~~, his own
19 test questions and answers in any examination used for licensing or
20 employment; ~~for~~

21 (2) information that may be withheld pursuant to AS 40.-
22 25.030(a)(12) that does not relate directly to the requester, and
23 which if disclosed, would constitute an ~~unwarranted~~ ^{unjustifiable} invasion of
24 another person's personal privacy; ~~or~~ ^{or} ~~of~~

25 (3) ~~information collected and used solely to evaluate the~~
26 character and fitness of persons, but only to the extent that dis-
27 closure would identify the source of the information.

28 (c) This section does not abridge any state statute, ~~federal law~~
29 ~~or regulation, or court rule~~ that authorizes an agency to withhold infor-
30 mation from the parent or legal guardian of a child.

Access to this information is governed by the law

1 (d) If an individual requests ^a ~~an accessible~~ record containing
2 information the governmental unit is not required to disclose under (b)
3 or (c) of this section, the agency shall provide any reasonably segre-
4 gable portion of the record to the requester after deleting the un-
5 disclosable material.

6 Sec. 40.25.060. CORRECTION AND AMENDMENT OF RECORDS. (a) An
7 individual may request a governmental unit to correct or amend any
8 incomplete or inaccurate information pertaining to him if it is con-
9 tained in a record available under AS ~~40.25.050~~.

10 (b) Not later than twenty days after receiving a request from an
11 individual to correct or amend an ~~accessible~~ record pertaining to him,
12 the governmental unit shall

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

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

18 (3) inform the individual in writing of its refusal to
19 correct or amend the record as requested and the reason for the re-
20 fusals. If the governmental unit refuses to correct or amend the
21 record, it shall

22 (A) permit the individual to file with the record a
23 concise statement of his reasons for the requested correction or
24 amendment and his reasons for disagreement with the refusal by the
25 governmental unit; and

26 (B) notify the individual of his right to bring an
27 action pursuant to AS 40.25.070.

28 (c) Whenever a governmental unit discloses information to a third
29 party about which an individual has filed a statement pursuant to

(b) (3) (A) of this section, the governmental unit shall

- (1) clearly identify the disputed portion of the information;
- (2) furnish a copy of the individual's statement; and
- (3) furnish a concise statement of the governmental unit's current position with respect to the request for correction or amendment and transmit a copy of this statement to the last known address of the individual whose record is disclosed.

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

- (1) obstructing or attempting to obstruct the inspection of a record subject to inspection under this chapter;
- (2) failing to correct or amend a record pursuant to AS 40.25.060.

(b) The court may charge no filing fee, and the Department of Public Safety may charge no fee for service of process, from an applicant seeking an injunction under this section. No security may be required by the court from an applicant seeking an injunction under this section. If the applicant is granted the injunction, he shall be entitled to recover costs and reasonable attorney fees from the governmental unit.

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

(d) In a suit brought under this section, the court may enjoin withholding of the records and order the production to the complainant of records improperly withheld or order that the correction or amendment be made. The court shall determine the matter de novo, and may examine the contents of any records in camera to determine whether the records or any portion of them may be withheld under any of the exemption specified in AS 40.25.030 or not corrected or amended under AS 40.25.060. The burden is on the agency to sustain its action.

Sec. 40.25.080. CIVIL ACTION FOR OBSTRUCTION OF ACCESS TO RECORDS. (a) A person who has been wrongfully denied access to a record under this chapter has a civil cause of action against the person responsible for the violation and is entitled to recover actual damages and reasonable attorney fees and other reasonable litigation costs.

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

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

(1) "accessible record" means any item or collection of information in a record that refers to a particular individual that is

(A) maintained according to an established retrieval scheme or indexing structure on the basis of the identity of, or so as to identify, individuals; or

(B) otherwise retrievable because a governmental unit is able to locate the record through the use of information provided by a requester without an unreasonable expenditure of time, effort, money, or other resources;

(2) "attorney work product" ^{means documents and tangible} ~~means documents and tangible~~

things prepared by or for a governmental unit in anticipation of or during litigation. *or legal issue decided or terminated litigation*

(3) "custodian" means the head of any governmental unit or his designee;

(4) "governmental unit" means an agency, political subdivision, legislative body, board of regents, or an administrative body, board, commission, committee, subcommittee, authority, council, agency, or other organization, including subordinate units of the above groups, of the state or any of its political subdivisions, including but not limited to municipalities, *boroughs*, school boards, and all other boards, agencies, assemblies, councils, departments, divisions, bureaus, commissions or organizations, advisory or otherwise, of the state or local government supported in whole or in part by public money or authorized to spend public money;

(5) "individual" means a natural person;

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

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

(g) Nothing in this section may be construed to prevent the holding of conferences between two or more public bodies, or their

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 6

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.

Richard I. Pegues

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)

STATE OF ALASKA
THE LEGISLATURE

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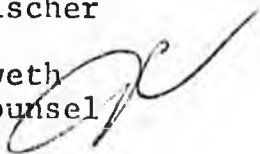
LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

February 23, 1981

SUBJECT: Definition of "Governmental Unit"
in SB 90

TO: Senator Vic Fischer

FROM: John B. Chenoweth
Legislative Counsel 

You have asked whether the definition of "governmental unit" appearing in SB 90 is sufficient to cover the records of the Commercial Fisheries and Agriculture Bank, the Capital City Development Corporation, and related entities which have in common a designation as a "public corporation" or "government instrumentality" of the state.

SB 90 defines "governmental unit" to include

"an agency, political subdivision, legislative body, board of regents, or an administrative body, board, commission, committee, subcommittee, authority, council, agency, or other organization, including subordinate units of the above groups, of the state or any of its political subdivisions, including but not limited to municipalities, boroughs, school boards, and all other boards, agencies, assemblies, councils, departments, divisions, bureaus, commissions or organizations, advisory or otherwise, of the state or local government supported in whole or in part by public money or authorized to spend public money."

The definition of "governmental unit" in SB 90 is lifted virtually verbatim from AS 44.62.310(a). The lifting appears to be deliberate.

It is a general rule of statutory interpretation that statutes relating to the same subject matter may be considered in pari materia as an aid to ascertaining the

intended effect of an ambiguous statute. D. Sands, Sutherland Statutory Construction, Sec. 51.03 (4th Ed. 1972). In the present inquiry, AS 44.62.310 and the subject matter of SB 90 both concern the manner of conducting public affairs by agencies of state and local government. There is a relationship sufficiently close to permit an interpretation applicable to AS 44.62.310 to apply also to a like term in AS 40.25, added by SB 90.

There is no definition of the the term "agency" provided in SB 90. The term is defined for purposes of AS 44.62.310(a) at AS 44.62.640(a):

In AS 44.62.010 -- 44.62.320, unless the context otherwise requires,

* * *

(4) "state agency" means a department, office, agency, or other organizational unit of the executive branch, except one expressly excluded by law, but does not include an agency in the judicial or legislative branches of the state government.

Under this interpretation, an entity which is identified as a public corporation of the state shall comply with the provisions of SB 90 if

(1) the entity is assigned to a department with the executive branch; and

(2) the entity is supported in whole or in part by public money or authorized to spend public money.

Both the bank and the capital city corporation are specifically designated "public corporations and government instrumentalities . . . [having] legal existence independent of and separate from the state." AS 44.07.010; AS 44.81.-010. This artful bit of legislative drafting leaves unanswered the question of whether each is intended to be within, or apart from, the executive branch of state government. However, as to the Capital City Development Corporation, it is certain that the entity cannot operate without the appropriation to it of "public money," for the chief source of its operating revenue is the state's capital

Senator Vic Fischer

Page 3

February 23, 1981

city revolving loan fund, AS 44.07.160. As an entity expending public money -- or at least money derived from the public purse -- the Capital City Development Corporation is an agency of the state supported in part by public money, and therefore subject to the provisions of AS 40.25 added by SB 90.

The situation with respect to the bank is little different, at least at the current time. The bank was started with the assistance of a state general fund appropriation (sec. 13, Chapter 113, SLA 1978), and several subsequent general fund appropriations have allowed the bank to continue its work (sec. 25, Chapter 80, SLA 1979; sec. 3, Chapter 33, SLA 1980). While the bank operates with "public money", it remains subject to the provisions of AS 40.25. There is provision in law for the bank to terminate operation under the charter granted by legislation and operate as a private cooperative without connection to a state department. At that point, presumably, the provisions added by SB 90 would not longer apply.

Your question concerned only the specific entitites mentioned. Other state corporations would be subject to the same analysis. In addition, SB 90 would not apply where other provisions of law specifically exempt the public corporation from disclosure of the information contained within particular kinds of documents and records.

JBC:blg

JUNEAU EMPIRE

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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 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.

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

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GRAND
DESERVING
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 on
WOOD.

Black

A black child still lacks 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 they have

— Blacks are as likely as whites to die within a year of life, twice as likely times as likely to be unemployed.

— One out of every two black children never seen a dentist and one out of five are not immunized against

This pathology is completely an assumption that the gap between America was closed during

"Millions of black children's distress began in the 1960s and says Marian Wright Edelman, Defense Fund. "Unless immediate meet black children's needs.

Presi of re

By DONALD
AP P.

WASHINGTON (AP) — Reagan's a rush of visual and verbal

There was the new president's Cabinet, welcoming the freed his first news conference. At firming the nation's military

The opening scenes were

Now, though, comes the first test of the credibility of Reagan's problems — and how he is fighting the good fight again.

Reagan began his term with a flourish when the American he inaugurated. For a week he used the White House ceremony "swift and effective retribution

At his first news conference he plagued him during the president's "trigger happy."

Now that the hostages are being held for revenge for their long ordeal

Reagan was the voice of restraint

"I don't think revenge is warranted. I'm restrained toward Iran. F

JUNEAU EMPIRE

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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
 Original: Legislative Finance PHONE 465-3695
 cc: Budget and Management
 Prime Sponsor (First Legislator Named)

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 1956, 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 8). 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 (Think 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 ⁽⁶⁾ identify a victim of a criminal sexual assault. (If it were their wife, sister or mother, would they be so anxious to see it into print?); particularly when these highly sensitive withholdings are subject to prompt and castless judicial review. I hope the committee will resist pressures to remove or substantially alter sub-section 13.


Joe La Rocca

TO: Nancy Groszek, Staff Member, Senate State Affairs Committee

FROM: Dean M. Gottferrer, Alaska Freedom of Information Task Force
P. O. Box 74573, Fairbanks 99707

Society of Professional Journalists

Farthest North Chapter
Box 74573
Fairbanks, Ak. 99707

Sign: 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 the (1) would be highly offensive to a reasonable person and (2) is not of legitimate concern to the public.

We believe the exclusion listed in Sec. 40.25.015 (c)(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 11.56.620.

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 moneys. 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. Goltebrer
Chairman
Alaska Freedom of Information Task Force



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.

SENATE STATE AFFAIRS
COMMITTEE MEETING SCHEDULE

TUESDAY

Feb. 3
1:30 p.m.

EXEC. ORDER #48

Relating to the transfer of the Alaska Council on Science and Technology from the Department of Environmental Conservation to the Department of Administration.

Hearing

SENATE BILL 54

"An Act relating to the Alaska National Guard and Naval Militia; and providing for an effective date. "

Hearing

SENATE BILL 72

"An Act relating to veterans and public records. "

Hearing

THURSDAY

Feb. 5
1:30 p.m.

SENATE BILL 90

"An Act relating to privacy and public information; and changing Rule 65 of the Alaska Supreme Court Rules of Civil Procedure. "

All-sites teleconference hearing

ALL HEARINGS WILL BE CONDUCTED IN THE SENATE STATE AFFAIRS COMMITTEE ROOM, BEHRENS BLDG., FIRST FLOOR. IF YOU HAVE ANY QUESTIONS, PLEASE CONTACT SEN. FISCHER'S OFFICE (465-4954,4955).

Vic,

I don't believe I can keep these constituents
from out of town waiting any longer. Since
we will have another shot at this
controversial bill later, I feel I must go.

Brad

1 PROPOSED AMENDMENTS TO SENATE BILL NO. 90

2 January 29, 1981

Proposed by:
Bruce Horowitz, Supervising Attorney
Alaska Legal Services Corporation
419 6th Street, Suite 322
Juneau, Alaska 99801
(907)586-6425

3
4
5
6 * § 40.25.015(d) should be amended, as follows: [p. 2]

7 (d) The commissioner of administration shall
8 prescribe a uniform schedule of fees to be limited to
9 reasonable standard charges for document duplication, and
10 provide for recovery of [ONLY] the direct cost of the
11 duplication only when more than one hundred copies per
12 request are made. The commissioner of administration shall
13 by regulation, provide a method by which indigent persons
14 may secure information with ^{out} payment of fees. ↘ ?

15
16
17 * § 40.25.015(e)(7) should be amended, as follows: [p. 3]

18 (7) personal information in files maintained
19 on applicants for, or recipients of, social services
20 or public benefits, except that access may not be
21 denied to the person who is the subject of the records,
22 or his designee;

23
24 * § 40.25.020(b) should be amended by adding to the last
25 sentence, as follows: [p. 6, beginning line 27]

26 ... Upon a determination by a governmental unit to
27 comply with a request for records, the records shall
28 be made [PROMPTLY] available to the person making the
29 request within ten days of the receipt of the request.
30
31
32

1
2 * § 40.25.020(c), should be amended, as follows: [p.7]

3 (c) When the lawful custodian of the record
4 determines that contents of a record exempt it under
5 the provisions of AS 42.05.015, he shall delete the
6 exempt contents and release the remaining contents of
7 the record [ALSO DETERMINE WHETHER A DELETION OF THE
8 EXEMPT PARTS OF THE RECORD WILL MAKE THE RECORD
9 SUITABLE FOR RELEASE, AND, IF SO, THE DELETION SHALL
10 BE MADE AND THE RECORD RELEASED], with the notation
11 that exempt material has been removed. If the cus-
12 todian determines that the record, or a portion of the
13 record, is not open to inspection, he shall, in a
14 certified writing, inform the person requesting the
15 records of his determination, of the statutory basis
16 for this decision, and that under AS ~~40.25.025~~ a suit
17 may be brought to compel production of records that are
18 improperly withheld.

19 * § 40.25.025 (b) should be amended in its last sentence,
20 as follows: [p. 7, beginning line 26]

21 ... If the applicant is granted the
22 injunction, he shall be entitled to recover costs and
23 [REASONABLE] actual attorney fees from the governmental
24 unit.

25
26 * § 40.25.025 (d) should be amended in part, as
27 follows: [p. 8, beginning line 7]

28 ... In such a case the court, as a priority
29 matter, shall determine the matter de novo, and may
30 examine the contents of any records in camera to deter-
31 mine whether any of the exceptions set out in AS 40.25.
32 015, and the burden is on the agency to sustain its action

3 * § 40.25.035(a) should be amended, as follows: [p. 8]

4 (a) A person who has been wrongfully denied access
5 to a record under this chapter has a civil cause of action
6 against the person responsible for the violation and is
7 entitled to recover actual damages and [REASONABLE]
8 attorney fees, and other reasonable litigation costs.



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 WD
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).

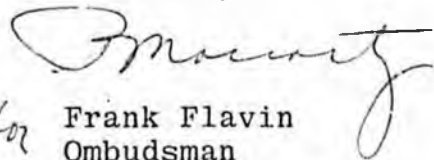
Senator Victor Fischer

-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

JAY S. HALMOND, GOVERNOR

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

POUCH K-STATE CAPITOL
JUNEAU, ALASKA 99811

May 7, 1979

Duncan C. Fowler
Regional Representative
Ombudsman
Pouch WO
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

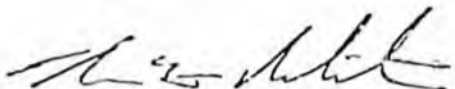
May 7, 1979

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 file possessed by the agency. In the alternative, AS 24.55.- gives the Ombudsman the power to compel the production

B. Allen
i 15, 1978

f Al se 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 39.25.030 (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. A66-281-80

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 confidentiality 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

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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:

Memo to Don Candey
Page 3
February 20, 1980

"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. HAMMOND, GOVERNOR

DEPARTMENT OF REVENUE

OFFICE OF THE COMMISSIONER

June 12, 1979

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JUN 14 1979

Francis M. Flavin
Ombudsman
840 K Street, Room 203
Anchorage, Alaska 99501

ANCHORAGE
OFFICE OF THE OMBUDSMAN

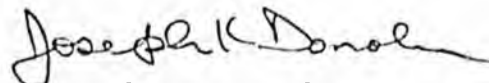
Attention: Rolfe Buzzell

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

~~CONFIDENTIAL~~

TO: Joseph K. Donohue
Deputy Commissioner
Department of Revenue

DATE: June 7, 1979

RE: TREAS.

REFERENCE NO.

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. Donohue
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 5, 1977

AVRUM M. CROSS
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 investigative 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.

GTK:jec



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?

7 | 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.

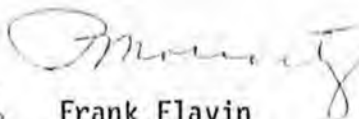
In another opinion issued July 31, 1978 on the release of the name and address of the registered owner of a motor vehicle (attached), the

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

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

POUCH K - STATE CAPITOL
JUNEAU 99511

JAY S. HAMMOND, GOVERNOR

July 31, 1978

Mr. Francis M. Flavin, Ombudsman
540 '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

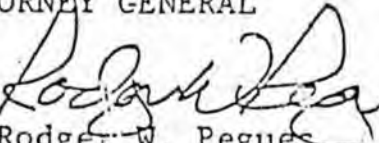
- 3 -

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

CHARLIE PARR

ALASKA LEGISLATURE

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

Pouch V
Juneau, Alaska 99811
465-4908

January 29, 1981

M E M O R A N D U M

TO: Senator Vic Fischer, Chairman
Senate State Affairs Committee

FROM: Senator Charles H. Parr *CHP*

SUBJECT: Senate Bill No. 90

The following is a brief summary of the key points in SB 90 relating to privacy and public information.

Section 010 gives the State policy of openness, and is also found in existing statutes dealing with the open meeting clause.

Section 015 provides that all records are open to inspection and copying, and provides that fees must be limited to reasonable costs of duplication.

Beginning with (e) at page 2, line 23, there is a list of items which are exempted from disclosure. These may be grouped as protecting the right of privacy guaranteed in the Alaska Constitution, or as matters of public policy where the Legislature has found the greater benefit to be withholding information.

Section 020, beginning on page 6, provides that a record which can be made open by deleting certain confidential parts will be released after the deletions are made. It also says that refusal to release records must be made in writing.

Section 025 establishes a mechanism for obtaining a court order to require the government agency to release the information. A court may examine the records in camera to determine whether they should or should not be released.

Section 035 gives a civil cause of action against a person wrongfully withholding records, and protects the person who is withholding them in good faith.

Senator Fischer

-2-

January 29, 1981

Section 040 is the definition section.

Sections 2 and 3 of the bill, beginning on page 9, line 22, deal with the State open-meeting law and remove the authority of a municipality to hold executive sessions other than in accordance with State law.

CHP:vc

Alaska Newspaper Association

c/o Box 710, Fairbanks, AK 99707

FOUNDING MEMBERS

Incorporated Dec. 6, 1980

January 27, 1980

ROBERT B. ATWOOD

The Anchorage Times

KATHERINE FANNING

Anchorage Daily News

LOREN STEWART

Cheechako News, Kenai

MAX SWEARINGEN

Peninsula Citizen, 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

Wrichikan Daily News

CARL CAMPSON

Juneau Empire

TOM SNAPP

All Alaska Weekly

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.

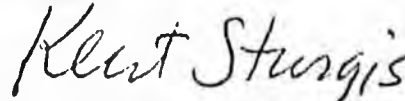
Also, we appreciate the fact you have demonstrated the importance of the FOI-privacy issue by scheduling a hearing so early in the session.

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



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.

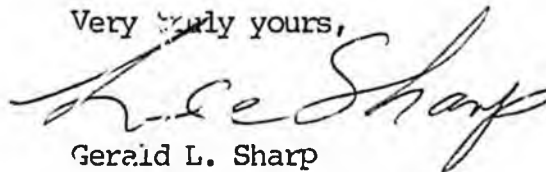
If this approach is taken, the provisions of the bill would be applicable to municipalities but the municipality would, nevertheless, retain authority to deal with those records of the municipality which the assembly or council determines should be protected. The creation of a protected class of records 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.

February 3, 1981

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:p'il

cc: Mike J. Colletta
Brad Bradley
Richard I. Eliason
Terry Stimson
Assembly
Ginny Chitwood, Alaska
Municipal League



OFFICE OF THE FEDERAL INSPECTOR
ALASKA NATURAL GAS TRANSPORTATION SYSTEM
POUCH 6619, ANCHORAGE, ALASKA 99502
907-271-3662

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 Farr, 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



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
Pouch 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.

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

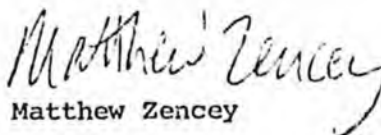
SB 90

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

alaska
state
hospital
association

319 Seward St., Juneau, Alaska 99801 (907) 586-1790
REPRESENTING ACUTE, LONG TERM AND OUTPATIENT FACILITIES

President
Sister Barbara Haare
Ketchikan General Hospital
Ketchikan

February 17, 1981

President Elect
Tom Mingen
Fairbanks Memorial Hospital
Fairbanks

Secretary/Treasurer
Ron Pavellan
Alaska Hospital & Medical
Center
Anchorage

The Honorable Charlie Parr
Alaska State Senate
Pouch V, State Capitol Building
Juneau, Alaska 99811

Immediate Past President
- Camosson
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

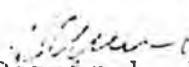
Rational: Patient medical records are private and ought to be disclosed only at the direction of the person subject to the record.

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



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 \$2,500,000. 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

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

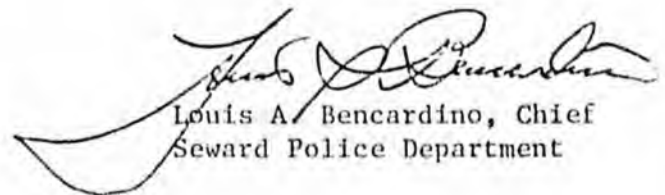
Dear Mr. Chairman:

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



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,
Joan Bennett Schrader
Joan 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 separated (living apart) is the other parent informed of the issue and the child's 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, ^{what} 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 Gutherie
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

DEPT. OF HEALTH AND SOCIAL SERVICES

DIVISION OF SOCIAL SERVICES

JAY S. HAMMOND, GOVERNOR

Pouch H-05
Juneau, Alaska 99811

April 3, 1979

Ms. Joan Bennett Schrader
Secretary
The Judith Group
Box 2334
Soldotna, Alaska 99669

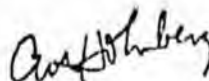
Dear Ms. Schrader:

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

100-1 1/18/79
jbs

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 ~~the~~ the placement be in foster care, that a worker has formulated a case plan, 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, ~~in~~ 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~~ tested 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% ~~contained~~ 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.

We don't 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 ~~file~~ data system.....

Date of birth, sex, age, race religion.

~~Family structure, including nuclear and extended family;~~ length of time a step-parent or guardianship relation has existed?

*end of quotes
from evaluation*

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 child's home area.

Reason for placement of child. If incest or sexual abuse has occurred 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 child's 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 child's 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 do 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 DCS 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,

Jean Bennett Schrader
Jean Bennett Schrader
P.O. Box 1264
Kenai, Alaska 99611

The Judith Group, Inc.
Box 2334
Soldotna, Alaska 99689
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 yr

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 need 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 Involvement) no way to tell from reports Four (4) Contrib. Del. of a Minor Three (3) Felony (Definite) Ten (10) Misdemeanor (no way to know if there were sex involvement) Office Contacts Two (2) sexual involvement (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) Social Service (Kenai) Seward Police Kenai Police Kenai Care Center District Attorneys (Kenai)	Alaska State Police (Soldotna) Soldotna Police Division of Corrections (Kenai) Central Peninsula Mental Health Kenai Peninsula School District (B. Taeschner) Alaska Court System (Kenai)
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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: S 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.

Senator Vic Fischer
Page 2
February 11, 1981

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.

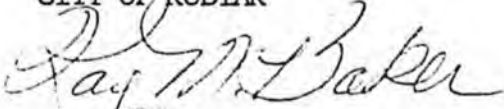
Another very important item would be the disclosure of an applicants resume for municipal positions. We strive to employ the highest caliber of personnel, but just to reveal their names could prevent a well qualified individual from applying due to reprisal with a present employer. If the legislature 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 individual's 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

Original sponsors: Parr, Fischer,
Stimson and Rodey

Offered: 5/14/81
Referred: Rules

1 IN THE SENATE

BY THE JUDICIARY COMMITTEE

2 CS FOR SENATE BILL NO. 90 (Judiciary)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 TWELFTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to privacy and public information;
7 changing Rule 65 of the Alaska Supreme Court Rules of
8 Civil Procedure; and providing for an effective date."

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

10 * Section 1. AS 40 is amended by adding a new chapter to read:

11 CHAPTER 25. PRIVACY AND PUBLIC INFORMATION.

12 Sec. 40.25.010. STATE POLICY. It is the policy of the state that

13 (1) all governmental units exist to aid in the conduct of
14 the people's business;

15 (2) the people of this state do not yield their sovereignty
16 to the agencies which serve them;

17 (3) the people, in delegating authority, do not give their
18 public servants the right to decide what is best for the people to know
19 and what is best for them not to know;

20 (4) the people's right to remain informed shall be protected
21 so that they may retain control over the instruments they have created;

22 (5) the people's right to privacy as provided by the consti-
23 tution is recognized and shall not be infringed;

24 (6) the records of governmental units shall be open for
25 public inspection unless the inspection infringes on a person's right
26 to privacy or is otherwise prohibited by statute.

27 Sec. 40.25.015. RECORDS TO BE OPEN TO INSPECTION. (a) Except as
28 otherwise provided by AS 40.25.030, all records are open to inspection
29 and copying by any person during the regular office hours of the lawful

1 custodian of the records or the custodian's designee. The custodian of
2 the records shall take all necessary precautions for their preservation
3 and safekeeping.

4 (b) Every custodian of records shall make them available for
5 public inspection and shall give a copy of the record on request and
6 payment of fees, if any. A custodian shall permit memoranda, trans-
7 cripts, and copies of the public writings and records in the custo-
8 dian's office to be reproduced in any reasonable manner. In addition,
9 a custodian shall furnish proper and reasonably accessible facilities
10 for inspection of records, subject to reasonable restrictions as are
11 necessary for the protection of the writings and records and to prevent
12 interference with the regular discharge of the duties of the custodian
13 and the employees of the custodian. If a certified copy is requested,
14 that copy is in all cases evidence of the original.

15 (c) Copies of records may be requested orally or in writing, in
16 person or by telephone, electronic communication, or by mail. These
17 requests shall be treated in accordance with the provisions of (a) and
18 (b) of this section.

19 (d) The commissioner of administration shall prescribe a uniform
20 schedule of fees to be limited to reasonable standard charges for docu-
21 ment duplication, and provide for recovery of only the direct cost of
22 the duplication and the actual postage costs if the documents are
23 mailed. The commissioner may reduce or waive the payment of fees if a
24 reduction or waiver would be in the public interest or if the requester
25 is indigent.

26 Sec. 40.25.020. DUTIES OF GOVERNMENTAL UNIT. (a) Immediately
27 after receiving a request for a public record, the custodian of the
28 record shall

29 (1) make the record available;

1 (2) inform the requester that unusual circumstances, as
2 defined in (e) of this section, have delayed or impaired the handling
3 of the request or that the record is in active use or storage and not
4 immediately available and specify in writing the earliest time and
5 date, not later than five working days after receipt of the request,
6 when the record will be available;

7 (3) inform the requester that the governmental unit does not
8 maintain the record, and provide, if known, the name and location of
9 the governmental unit maintaining the record; or

10 (4) deny the request.

11 (b) If a request for access to a public record is denied, in
12 whole or part, the governmental unit shall in writing, notify the re-
13 quester of the specific reasons for the denial, and identify by name
14 and position or title the person responsible for the denial. In addi-
15 tion, the governmental unit shall inform the requester that review of
16 the denial may be sought from the head of the governmental unit and
17 that a request for review must be filed within 30 days after notifica-
18 tion of the denial. The head of the governmental unit shall decide
19 within five working days after a request for review is filed whether to
20 uphold the denial of access. If the decision is to disclose, the
21 governmental unit shall immediately notify the requester and make the
22 record available. If the denial of access is upheld, in whole or in
23 part, the head of the governmental unit shall notify the requester in
24 writing of the decision, the specific reasons for the decision, and of
25 the right to bring a judicial action under AS 40.25.070.

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

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

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

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

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

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

1 which are demanded in a single request;

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

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

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

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

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

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

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

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

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

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

- 1 (A) interfere with enforcement proceedings;
- 2 (B) deprive a person of a right to a fair trial or an
- 3 impartial adjudication;
- 4 (C) constitute an unwarranted invasion of personal
- 5 privacy;
- 6 (D) disclose the identity of a confidential source and,
- 7 in case of a record compiled by a criminal law enforcement author-
- 8 ity in the course of a criminal investigation, confidential infor-
- 9 mation furnished only by the confidential source;
- 10 (E) disclose investigative techniques and procedures,
- 11 or
- 12 (F) endanger the life, physical safety, or property of
- 13 a person; *or property value*
- 14 (8) records of security systems and procedures established
- 15 for the purpose of the protection of persons or property, or securing a
- 16 penal institution or place of detention of persons accused or convicted
- 17 of a crime or persons under the jurisdiction of the court under AS 47.-
- 18 10, but only to the extent that disclosure would compromise the effec-
- 19 tiveness of the system;
- 20 *litigating* (9) attorney work product in the possession of a governmen-
- 21 tal unit; however, once the legal issue has been decided, or the liti-
- 22 gation has been terminated, attorney work product that does not involve
- 23 litigation strategy, mental impressions, or professional opinions of an
- 24 attorney, or a person working under the attorney's direction become
- 25 public records;
- 26 (10) any notes, memoranda, draft decisions, opinions, or
- 27 other similar documents prepared by a justice or a judge, or a person
- 28 working under the supervision of a justice or a judge, in the process
- 29 of deciding a legal issue;

value ?

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

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

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

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

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

1 the suit.

2 Sec. 40.25.035. PROVISIONAL RELEASE OF INFORMATION.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

*video
voice recording*

2-17-81
Laura

Attending Senate State Affairs
Mark-Up SB 90

REED SCHONFELD
Frank Deaton
Elaine Deaton
Lou McHenry

DHSS PUCH H-016
114 2nd St. Juneau
114 2nd St. Juneau
1220 Glacier Ave * 111 Juneau

1
Mark Up - SB 90 FOIA

Members Present Sen. Fischer

Sen. Charlie Parr, Mark Widdow

Chairman Fischer outlines material: ① SB 90, ② proposed CSSB 90,
③ Barry Stearns version (Dept. of Law amendments)
④ LW/commentary
Sec. 1

{ - page 6 lines 15+16 + Throughout page 7
Barry outlines critical nature

- SB 90 p. 2 line 19-22 fees
CSSB 90 p. 2/19-25

at Van's request - CSSB 90 p. 2, l. 16+17 add "in person" + "verbally" or in writing

- CSSB 90 p. 2 ~~the~~ subsection (b) - Duty to search will be outlined in commentary

Van - fees - Ak legal sub. rec. - Waiving fees for the indigent CSSB 90 (d) page 2, line 19-25

SF covering exemptions - will wait until later →

SB 90 40.25.020 - Requests for records, line 15 p. 6

CSSB 90 page 6, line 2 allows 10 days

Administrative Remedies - allows 50 day delay before one may go to court

Senator Parr does not think it necessary

to allow 50 days. (SB 90, VF says is indefinite)

Suggested solutions - Barry notes ^{CS} Sec. 40-25, 020 (a) (page 2 line 23-25)

Undermining thrust of bill.

Barry is afraid more time is necessary because of the sensitive nature of determinations (esp. Judicial Br.), & length of time required to decide.

Sen. Parr likes immediately because he feels a 10-day limit will create a 9 1/2 day lag.

Nan feels time limit should be established

Sen. Parr feels routing requests through Judicial will be good deterrent measure

SB 90 p. 7 l. 6,

Starr feels custodians will more quickly

CSBB p. 5 lines dealing w/ exemptions

Discussion of doubts about releasability of records emerges between Parr, Starr & Parr

Dept of Law

Danger! The citadel of sinister
secrecy is under attack!

- Dennis (Hospital records)
- Dept. of Labor

John Harthe elucidates two issues under
discussion

Sec. 40-25-020
 (a) → Time limit for turn over
 of records
 (b) → Time for admin review

Sen. Parr mentions obstacle provided
by appeal to head of G.U. - who
might not be in same town.

Sen. Parr

Sen. Fischer SB90 p. 6 line 16-19 see SB90
 + add CSSB 90
 p. 4 line 7 (d) p. 4 line 7 (d)

(SF)

SB90
 Sec 40-25-020 p. 6 line 15 as is
 allow for definition of "unusual
 circumstances", ~~add~~ in CSSB 90
 p. 4 (d) - add to line 14 - "amount
 or variety"

SB 90 MarkUp

Exemptions 40.25.030

designee in CS? How come tax records can't be accessed by subject or
Statement of Intent

clarity Exemptions section SB90 p. 2 line 25

~~legislature approves participation~~
in ~~state~~ fed. program + will
abide by fed. reqs of confidentiality in such
cases.

knocked out -
Fed law supercedes state anyway.

CS SB90 p. 5 ^{subsec} ~~5~~ (5) Δ

S. Parr

5 • subsec 5 - Governmental Unit
could abuse. "confidential"

See copy of SB 90 + CS to note
exemption changes

Note SB 90 p. 5/1: 7 - exemp. # 15
CS \rightarrow exemp. # 9

Tighter up definition of attorney
work product; still allowing access

"Right to privacy" SB 90 p. 4, (13) (c)
CS SB 90, p. 6. 1. 15 \rightarrow 21

Parr feels Barry's version (CS) leans
to much to right of privacy - No
conditions seem to outweigh right to
privacy

CS
- problem w section (d) p. 8, line 8710

What about medical records?

These can be protected by statute.

Sen. Parr p. 6/3(C) lines 3-7
Public employee personnel records

↳ SB 50 - includes performance records
CS excludes performance

↳ Some exclude applicants for public employment. Should amend to reflect applicants ~~perhaps~~ just finalists

New Category -
Bumy - performance evaluations as a management tool by supervisors.

(16)

Moderators limit witnesses to 5 min.

Dean Carter

- Define right of privacy
- burden of proof should be on gov't unit
- not opt out

Susan Fisher - Pres Farther U.

~~Clear~~ Clear guidelines

danger that exemptions would render bill meaningless

Howard Weaver

Tom Williams - local gov'ts

John Newstrom - injunctive relief.
specific points
- separation of fees &

Ted Berns
- addit. test in writing by the end of next week
- send copy of ^{Fuel Tax I.} ~~test~~ ^{ord.}
- send comments in writing

Names & address of indiv. applic. to priv. business

Debra Nelson

Steve Reinhart - ~~we~~ provide us w/ specific recommend. w/ respect to

labor negotiations

Bob Lehr

Leo Land Haines - Ady bend - ^{paper} Association

Glen S

Kent Surges

Kay Fanning - apprec your endorsement!

INVITE WRITTEN COMMENTS & SPECIF REC.

KOTZEBUE (Camille)

MAT-SU (MARY)

MARK HARRIS - VALLEY SUW / FRONTIERSMAN

NOME (GARY)

STAN SUMMERS KICY

ANCHORAGE (MICKI)

HOWARD WEAVER - ANCH. DAILY NEWS

✓ BOB LOHR - RURAL CAP

✓ Kay Fanning [Field Pickney]

TED BERNIS

- MATT ZENTSI (SP?)

- MARK BELTZ

FAIRBANKS (TAMMY)

✓ DEAN GODDARD - AK. FREEDOM
GOTTFRIDER OF INFO. TABIC FORCE

✓ SCOTT STERLING

✓ JANIE BRYSON

✓ KENT STURGIS

✓ SUSAN FISHER

✓ TOM SNAPP

✓ BRUCE WOMACK

BARROW

5/6/90

SITKA (Charlie)
✓ RAY MEDLIN
✓ LUCINDA HITES

BETHEL (Cheryl)
NONE

YALDEZ

DILLINGHAM (Anna May)
NONE

SOLDOTNA (Shari)
✓ STEVE REINHART
X JOAN BENNET SHRADEZ COBSEKROG

HAINES
✓ LEO LAND

~~HOMER (NADINE)~~
✓ Anna BELL LUND, HOMER NEWS

~~KETCHIKAN (BONNIE)~~
~~LOU WILLIAMS, KTN DAILY NEWS~~
✓ LEW
✓ CHRISTINE METZLER

~~KODIAK (MARY)~~
✓ DEBRA NELSON, KODIAK DAILY MIA
✓ JON NEWSTROM, KMXT₂

TELECONFERENCE PROCEDURES

Participating in a teleconference is a relatively simple procedure, with only a few basic rules and protocols required for effective participation. Please note the following:

HAVE YOU SIGNED-IN? Witnesses and observers should complete sign-in sheets.

TO BEGIN A TELECONFERENCE Prior to the beginning of the telemeeting, the Primary Teleconference Moderator will poll each of the participating sites and share pertinent information. The teleconference is then turned over to the meeting/hearing Chairman, who calls the teleconference to order and proceeds with his or her agenda (which has previously been copied to each site).

ORDER OF APPEARANCE The Chairman will announce the order of witness participation, and call upon each site when appropriate.

TIME LIMITS The Chairman may request that testimony be limited to a certain length of time; it is important to participate within such constraints.

PROCEDURE When you are called upon to testify, take a chair at the nearest microphone, or, if you are already seated at the table, set the nearest mike in front of you. The Moderator will already have given instructions on the operation of the microphones.

Speak directly into the mike from a distance of about 3 inches.

Before beginning your testimony, state your name and who you are representing. Try to remember to identify yourself each time you speak.

Indicate to the Chairman when you have concluded your testimony.

There may be questions from the Chairman and/or other information exchange between sites. Pause briefly before responding to questions, to allow for lag in voice transmission. The system will not accommodate two simultaneous conversations.

TESTIMONY FROM OTHER SITES Testimony from other sites can be heard at all times from your teleconference center. Mikes are open here only when witnesses are testifying, but since some of the people attending are interested in the testimony from other sites, please don't converse while other sites are "talking".

If you find it necessary to interject comment/response that is outside the planned agenda, to avoid undue interruption it is appropriate to signal or send a note to your Moderator, indicating your desire to so participate.

WRITTEN TESTIMONY Comments on bills, back-up material or other documentation on the teleconference may be sent to the LTN Coordinator, Pouch Y, Juneau 99811. If the teleconference is a public hearing, written testimony/material may be sent to the Legislative Committee Chairman, Pouch V, Juneau 99811.

FUTURE TELECONFERENCES Teleconferences are scheduled and coordinated through the Legislative Teleconference Coordinator, Room 30, Capitol, telephone: 465-4890.

*****TELECONFERENCES ARE NOT DIFFERENT FROM FACE-TO-FACE MEETINGS WHERE IT IS IMPORTANT TO FOLLOW THE AGENDA AND THE TOPIC. IF BACK-UP MATERIAL HAS BEEN PROVIDED PRIOR TO THE CONFERENCE, BE SURE TO FAMILIARIZE YOURSELF WITH IT, SO AS TO AVOID STRAYING FROM THE SUBJECT MATTER AND THUS CAUSING DELAY OR DETRACTING FROM THE MEETING.*****

Barry Stern, Dept of Law
 Admin strongly supports
 Guidelines for courts
 to determine the
 scope of right to
 privacy

Timelines
 Notific. of persons affected
 Written statement
 Too many exemptions -
 - few, broad.

Elizabeth Cuadra
 LWW Alaska

~~EARL DETER~~

degree of in

Requ. by fed
 laws & regs
 to be kept
 confid.

Bill applies to
 municipalities.
 → H. R.

reimb muni for
 cost of copying

NO OBJECT. TO ACHIEVE

Mr Roland Shanks.

#

Introduced: 1/15/81
Referred: State Affairs and
Judiciary

BY PARR, FISCHER, STIMSON
AND RODEY

1 IN THE SENATE

2 SENATE BILL NO. 90

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 TWELFTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to privacy and public information;
7 and changing Rule 65 of the Alaska Supreme Court Rules
8 of Civil Procedure."

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

10 * Section 1. AS 40 is amended by adding a new chapter to read:

11 CHAPTER 25. PRIVACY AND PUBLIC INFORMATION.

12 Sec. 40.25.010. STATE POLICY. It is the policy of the state that

- 13 (1) all governmental units exist to aid in the conduct of
- 14 the people's business;
- 15 (2) the people of this state do not yield their sovereignty
- 16 to the agencies which serve them;
- 17 (3) the people, in delegating authority, do not give their
- 18 public servants the right to decide what is best for the people to know
- 19 and what is best for them not to know;
- 20 (4) the people's right to remain informed shall be protected
- 21 so that they may retain control over the instruments they have created,
- 22 (5) the people's right to privacy as provided by the consti-
- 23 tution is recognized and shall not be infringed;
- 24 (6) the records of governmental units shall be open for
- 25 public inspection unless the inspection infringes on a person's right
- 26 to privacy or is otherwise prohibited by statute.

27 Sec. 40.25.015. RECORDS TO BE OPEN TO INSPECTION; EXCEPTIONS.

- 28 ✓ (a) Except as otherwise specifically provided by statute, all records
- 29 are open to inspection and copying by any person during the regular

No provision
for "finding"
"locking"
records

1 office hours of the lawful custodian of the records or his designee,
2 → unless the inspection infringes on a person's right to privacy. The
3 custodian of the records shall take all necessary precautions for their
4 preservation and safekeeping.

5 → (b) Every custodian of records shall make them available for
6 public inspection and shall give a copy of the record on request and
7 payment of fees, if any. A custodian shall permit memoranda, trans-
8 cripts, and copies of the public writings and records in his office to
9 be reproduced in any reasonable manner. In addition, a custodian shall
10 furnish proper and reasonably accessible facilities for inspection of
11 records, subject to reasonable restrictions, as are necessary for the
12 protection of the writings and records and to prevent interference with
13 the regular discharge of the duties of the custodian and his employees.
14 If a certified copy is requested, that copy is in all cases evidence of
15 the original.

16 ✓ (c) Copies of records *in person or* be requested by telephone, electronic
17 communication, or by mail. These request shall be treated in accor-
18 dance with the provisions of (a) and (b) of this section.

19 (d) The commissioner of administration shall prescribe a uniform
20 schedule of fees to be limited to reasonable standard charges for docu-
21 ment duplication, and provide for recovery of only the direct cost of
22 the duplication. *Under 100 pp free - above 100, at cost w/*

23 → (e) The following records are excluded from the provisions of *if in*
24 this section: *public interest or in case of affidavits of indignity*

25 ✓ (1) those exempted from disclosure by state statute;

26 ✓ (2) any tax or information return, or record or report re-
27 lating to that return, which is required to be filed in accordance with
28 the provisions of AS 43 or municipal ordinance, except that access may
29 not be denied to the person who is the subject of the records, or that

- 1 person's designee;
- 2 (3) subject to (1) of this section personal information in
- 3 files maintained on public employees, except that access may not be
- 4 denied to the person who is the subject of the records, or that person's
- 5 designee;
- 6 (4) personal information in files maintained on students in
- 7 public schools, except that access may not be denied to the student, a
- 8 parent or guardian of the student, a person responsible for supervising
- 9 the student, or his designee;
- 10 (5) personal information in files maintained on students at
- 11 the University of Alaska, except that access may not be denied to the
- 12 student or his designee;
- 13 (6) personal information in medical, psychological, and
- 14 sociological files maintained on individual persons, exclusive of
- 15 autopsy reports, except that access may not be denied to the person who
- 16 is the subject of the record, or his designee, [or to the parent or
- 17 guardian of a minor who is the subject of the record except where this
- 18 access would violate the physician-patient privilege;]
- 19 (7) personal information in files maintained on recipients
- 20 of social services, ^{? - and public ben. file} except that access may not be denied to the person
- 21 who is the subject of the records, or his designee;
- 22 (8) personal information similar to personal information in
- 23 files under (3) - (7) of this subsection, except that access may not be
- 24 denied to the person who is the subject of the records, or that person's
- 25 designee;
- 26 (9) archival materials donated by natural persons to the
- 27 extent of any written limitations placed on them as a condition of the
- 28 contribution; however, all archival materials become public information
- 29 after not more than 50 years and any statement of limitations must be



vs. Sup. Ct. parents cannot have access to birth records and abortion records of minor w/ 09.65.180

applicants for

1 produced upon denial of access;

2 (10) circulation records maintained by public libraries,
3 public school libraries, and University of Alaska libraries showing
4 personal transactions by those borrowing from them;

5 (11) trade secrets, privileged information and confidential
6 commercial, financial, geological or geophysical data furnished in com-
7 pliance with state statute or regulation, or in compliance with a
8 municipal ordinance; ← (A)

9 (12) test questions and answers to be used in a future li-
10 cense, employment or academic examination;

11 (13) intelligence, investigatory and original entry records,
12 maintained by state or municipal law enforcement agencies, or any other
13 governmental unit, but only to the extent that the production of the
14 records would

15 (A) interfere with enforcement proceedings;

16 (B) deprive a person of a right to a fair trial or an
17 impartial adjudication;

18 (C) constitute an unjustifiable intrusion into a per-
19 son's right of privacy;

20 (D) disclose the identity of a confidential source and,
21 in case of a record compiled by a criminal law enforcement author-
22 ity in the course of a criminal investigation, confidential infor-
23 mation furnished only by the confidential source;

24 (E) disclose investigative techniques and procedures;

25 (F) endanger the life, property, or physical safety of
26 a person;

27 (G) identify a victim of a criminal sexual assault;

28 (H) disclose any information otherwise exempt under
29 this chapter or state statute;

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(14) records of security systems and procedures established for the purpose of the protection of persons or property, or securing a penal institution or place of detention of persons accused or convicted of a crime or persons under the jurisdiction of the court under AS 47.-10, but only to the extent that disclosure would compromise the effectiveness of the system;

(15) attorney work product in the possession of a governmental unit, until the matter occasioning the preparation of the work product is closed;

(16) any notes, memoranda, draft decisions, opinions, or other similar documents prepared by a justice or a judge, or a person working under his supervision, in the process of deciding any legal issue; however, once the legal issue has been decided all notes, memoranda, draft decisions, opinions, or similar documents become public records under rules established by the supreme court;

(17) records related solely to the internal practices of a governmental unit where the effect of disclosure would be to enable law violators to escape detection.

(f) Unless specifically exempted from disclosure by statute, all records become public after they are 20 years old.

(g) Information contained in records exempted from disclosure under (e) of this section may be released for valid statistical or other information-gathering purposes if

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

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

(h) The exceptions provided in this section do not preclude the

JS. Comm. Law - decisions is I

-5- SB 90 exclusions, exemptions (Court) use

~~FINALISTS~~
9 Applicants for public positions

release or production of subpoenaed records or information to a state or municipal agency during the course of an investigation;

(i) All personnel records showing salary or compensation or that concern the employee's current performance or ability to perform the duties and responsibilities of his job shall be open for public inspection. This public access is not an infringement of a person's right to privacy.

(j) The fact that a crime has been committed, the name of the crime the time of commission and location, the name of any victim (unless the victim of a criminal sexual assault) and the name of any person who is charged with the crime is a matter of public information and record, except as provided in AS 47.10.090.

Sec. 40.25.020. REQUESTS FOR RECORDS. (a) Each governmental unit, upon any request for records made under this section, shall

- (1) produce the record immediately; or
- (2) ~~if the record is in active use or storage and not available~~ ^{cannot be made} if in the case of unusual circumstances the records may be made available at the time a request to examine it is made, the custodian shall at that time state this fact in writing to the applicant and ~~the applicant may set a date and hour at which the record may be examined~~ ^{not to exceed 5 days}

(b) A person making a request to a governmental unit for records under this section is considered to have exhausted his administrative remedies with respect to the request if the governmental unit fails to comply with this section. If the governmental unit can show that exceptional circumstances exist and that it is exercising due diligence in responding to the request, the court may retain jurisdiction and allow the governmental unit additional time to complete its review of the records. Upon a determination by a governmental unit to comply with a request for records, the records shall be made promptly available to the person making the request.

as ⁻⁶⁻ promptly as possible ^{SB 90} ^{fund deadline?}

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messing

40,25,015

1 (c) When the lawful custodian of a record determines that contents
2 of a record exempt it under the provisions of AS 42.05.015, he shall
3 also determine whether a deletion of the exempt parts of the record
4 will make the record suitable for release, and, if so, the deletion
5 shall be made and the record released, with the notation that exempt
6 material has been removed. If the custodian determines that the record,
7 or a portion of the record, is not open to inspection, he shall, in a
8 certified writing, inform the person requesting the records of his
9 determination, of the statutory basis for this decision, and that under
10 AS 40.25.025 a suit may be brought to compel production of records that
11 are improperly withheld.

12 (d) A notification of denial of a request for records under this
13 section shall set out the names and titles or positions of each person
14 responsible for the denial of the request.

15 Sec. 40.25.025. ENFORCEMENT: INJUNCTIVE RELIEF. (a) A person
16 having custody or control of a record who obstructs or attempts to
17 obstruct, or a person not having custody or control who aids or abets
18 another person in obstructing or attempting to obstruct, the inspection
19 of a record subject to inspection under AS 40.25.015 may be enjoined by
20 the superior court from obstructing, or attempting to obstruct, the
21 inspection of records subject to inspection under AS 40.25.015.

22 (b) The court may charge no filing fee, and the Department of
23 Public Safety may charge no fee for service of process, from an appli-
24 cant seeking an injunction under this section. No security may be
25 required by the court from an applicant seeking an injunction under
26 this section. If the applicant is granted the injunction, he shall be
27 entitled to recover costs and ^{actual} reasonable attorney fees from the govern-
28 mental unit.

Rule 82 already allows

29 (c) The superior court shall make available to an applicant, free

1 of charge, a simplified form for proceeding without counsel under this
2 section. The form shall require only identification of the applicant
3 and the name of the custodian alleged to be improperly withholding
4 records, and a simple explanation of the records sought.

5 (d) In a suit brought under this section the court may enjoin
6 withholding of the records and order the production to the complainant
7 of records improperly withheld. In such a case the court shall de-
8 termine the matter de novo, and may examine the contents of any records
9 in camera to determine whether the records or any portion of them may
10 be withheld under any of the exceptions set out in AS 40.25.015, and
11 the burden is on the agency to sustain its action. *— should receive*

12 Sec. 40.25.035. CIVIL ACTION FOR OBSTRUCTION OF ACCESS TO RECORDS.

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

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

20 Sec. 40.25.040. DEFINITIONS. In this chapter, unless the context
21 otherwise requires,

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

25 (2) "custodian" means the head of any governmental unit or
26 his designee;

27 (3) "governmental unit" means an agency, political subdivi-
28 sion, legislative body, board of regents, or an administrative body,
29 board, commission, committee, subcommittee, authority, council, agency,

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define ① "public employment" cover
state and municipal, etc
② "social services
incl. pub assist, long-term
bonuses, etc -

1 or other organization, including subordinate units of the above groups,
2 of the state or any of its political subdivisions, including but not
3 limited to municipalities, boroughs, school boards, and all other
4 boards, agencies, assemblies, councils, departments, divisions, bureaus,
5 commissions or organizations, advisory or otherwise, of the state or
6 local government supported in whole or in part by public money or
7 authorized to spend public money;

8 (4) "personal information" means information about an indi-
9 vidual person, the disclosure of which would constitute an unjustifiable
10 intrusion into a person's right of privacy;

11 (5) "record" means any document, paper, memoranda, book,
12 letter, drawing, map, plat, photo, photographic file, motion picture,
13 film, microfilm, microphotograph, exhibit, magnetic or paper tape,
14 punched card, or other document of any other material, regardless of
15 physical form or characteristic, developed or received under law or in
16 connection with the transaction of official business and preserved or
17 appropriate for preservation by a governmental unit as evidence of the
18 organization, function, policies, decisions, procedures, operations or
19 other activities of the state or political subdivision or because of
20 the informational value in them; it also includes staff manuals and
21 instructions to staff that directly or indirectly affect the public.

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

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

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

29 (3) matters which by state statute [LAW, MUNICIPAL CHARTER,

act in
limited
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computer
papers and
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*deals w/ tampering
w/ public records*

1 OR/ORDINANCE] are required to be confidential.

2 * Sec. 4. AS 11.56.820 is amended by adding a new subsection to read:

3 (c) It is an affirmative defense to a prosecution under this
4 section that the defendant relied in good faith upon the provisions of
5 AS 40.25 or of other law governing the confidentiality of public
6 records.

7 * Sec. 5. In sec. 1 of this Act, AS 40.25.025(b) has the effect of
8 changing Rule 65 of the Alaska Supreme Court Rules of Civil Procedure re-
9 lating to security deposits required in civil actions.

10 * Sec. 6. AS 09.25.110, 09.25.120, and 09.25.125 are repealed.

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*This defense should
apply only to
impairing availability
of public records,
not tampering.*

*Leg. Aff Lib.
Act*

Groszke

*files of
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Introduced: 1/15/81
Referred: State Affairs and
Judiciary

BY PARR, FISCHER, STIMSON
AND RODEY

1 IN THE SENATE

2 SENATE BILL NO. 90

3 *but does* IN THE LEGISLATURE OF THE STATE OF ALASKA

4 TWELFTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to privacy and public information;
7 and changing Rule 65 of the Alaska Supreme Court Rules
8 of Civil Procedure."

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

10 * Section 1. AS 40 is amended by adding a new chapter to read:

11 CHAPTER 25. PRIVACY AND PUBLIC INFORMATION.

12 Sec. 40.25.010. STATE POLICY. It is the policy of the state that

13 (1) all governmental units exist to aid in the conduct of
14 the people's business;

15 (2) the people of this state do not yield their sovereignty
16 to the agencies which serve them;

17 (3) the people, in delegating authority, do not give their
18 public servants the right to decide what is best for the people to know
19 and what is best for them not to know;

20 (4) the people's right to remain informed shall be protected
21 so that they may retain control over the instruments they have created;

22 (5) the people's right to privacy as provided by the consti-
23 tution is recognized and shall not be infringed;

24 (6) the records of governmental units shall be open for
25 public inspection unless the inspection infringes on a person's right
26 to privacy or is otherwise prohibited by statute.

27 Sec. 40.25.015. RECORDS TO BE OPEN TO INSPECTION; EXCEPTIONS.

28 (a) Except as otherwise specifically provided by statute, all records
29 are open to inspection and copying by any person during the regular

Decisions

Kenai Borough v

Kenai newspapers

Anch Daily News v City Municipal of Anch

Nancy Carlson

1 office hours of the lawful custodian of the records or his designee
2 unless the inspection infringes on a person's right to privacy. The
3 custodian of the records shall take all necessary precautions for their
4 preservation and safekeeping.

Commerce
15-10-90-903

5 (b) Every custodian of records shall make them available for
6 public inspection and shall give a copy of the record on request and
7 payment of fees, if any.] A custodian shall permit memoranda, trans-
8 cripts, and copies of the public writings and records in his office to
9 be reproduced in any reasonable manner. In addition, a custodian shall
10 furnish proper and reasonably accessible facilities for inspection of
11 records, subject to reasonable restrictions, as are necessary for the
12 protection of the writings and records and to prevent interference with
13 the regular discharge of the duties of the custodian and his employees.
14 If a certified copy is requested, that copy is in all cases evidence of
15 the original. *No requirement to find records*

16 (c) Copies of records may be requested by telephone, electronic
17 communication, or by mail. *in person verbally or written* These requests shall be treated in accor-
18 dance with the provisions of (a) and (b) of this section.

19 (d) The commissioner of administration shall prescribe a uniform
20 schedule of fees to be limited to reasonable standard charges for docu-
21 ment duplication, and provide for recovery of only the direct cost of
22 the duplication. *100 % go. affidavit*

done

23 (e) The following records are excluded from the provisions of
24 this section:

- 25 (1) those exempted from disclosure by state statute
- 26 (2) any tax or information return, or record or report re-
- 27 lating to that return, which is required to be filed in accordance with
- 28 the provisions of AS 43 or municipal ordinance, except that access may
- 29 not be denied to the person who is the subject of the records, or that

*Access to records
Regulation
of records*

list specific ct. rule

1 person's designee;

2 (3) subject to (1) of this section personal information in
3 files maintained on public employees, except that access may not be
4 denied to the person who is the subject of the records, or that person's
5 designee;

6 (4) personal information in files maintained on students in
7 public schools, except that access may not be denied to the student, a
8 parent or guardian of the student, a person responsible for supervising
9 the student, or his designee;

10 (5) personal information in files maintained on students at
11 the University of Alaska, except that access may not be denied to the
12 student or his designee;

13 (6) personal information in medical, psychological, and
14 sociological files maintained on individual persons, exclusive of
15 autopsy reports, except that access may not be denied to the person who
16 is the subject of the record, or his designee. ~~or to the parent or~~
17 ~~guardian of a minor who is the subject of the record except where this~~
18 ~~access would violate the physician-patient privilege.~~ *applicant*

19 (7) personal information in files maintained on recipients
20 of social services *public benefits*, except that access may not be denied to the person
21 who is the subject of the records, or his designee;

22 (8) personal information similar to personal information in
23 files under (3) - (7) of this subsection, except that access may not be
24 denied to the person who is the subject of the records, or that person's
25 designee;

26 (9) archival materials donated by natural persons to the
27 extent of any written limitations placed on them as a condition of the
28 contribution; however, all archival materials become public information
29 after not more than 50 years and any statement of limitations must be

*inconsistent
w/ ex. statute
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9.65.108*

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cite!!!

*Studies
on other
non-expropriation
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of natural resources &
will not include info related to
safety.*

1 produced upon denial of access;

2 (10) circulation records maintained by public libraries,
3 public school libraries, and University of Alaska libraries showing
4 personal transactions by those borrowing from them;

5 (11) trade secrets, privileged information and confidential
6 commercial, financial, geological, or ^{engineering} geophysical data furnished in com-
7 pliance with state statute or regulation, or in compliance with a
8 municipal ordinance; *provided that this exemption will be*

strictly limited to information obtained from extraction or development

9 (12) test questions and answers to be used in a future li-
10 cense, employment or academic examination;

11 (13) ~~intelligence, investigatory and original entry records,~~
12 ~~maintained by state or municipal law enforcement agencies, or any other,~~
13 ~~governmental unit,~~ but only to the extent that the production of the
14 records would

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15 (A) interfere with enforcement proceedings;

16 (B) deprive a person of a right to a fair trial or an
17 impartial adjudication;

18 (C) constitute an unjustifiable intrusion into a per-
19 son's right of privacy; *remove (Prof. Journalists)*

20 (D) disclose the identity of a confidential source and,
21 in case of a record compiled by a criminal law enforcement author-
22 ity in the course of a criminal investigation, confidential infor-
23 mation furnished only by the confidential source;

24 (E) disclose investigative techniques and procedures;

25 (F) endanger the life, property, or physical safety of
26 a person;

27 ~~(G) identify a victim of a criminal sexual assault;~~

28 (H) disclose any information otherwise exempt under
29 this chapter or state statute;

*potentially
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copy police
held - 1st
taken into custody*

*clarify
pg 5 line
546*

1 (14) records of security systems and procedures established
2 for the purpose of the protection of persons or property, or securing a
3 penal institution or place of detention of persons accused or convicted
4 of a crime or persons under the jurisdiction of the court under AS 47.-
5 10, but only to the extent that disclosure would compromise the effec-
6 tiveness of the system; ~~who judges~~

7 (15) attorney work product in the possession of a governmental
8 unit, until the matter occasioning the preparation of the work product
9 is closed; ~~Network Barry~~

10 (16) any notes, memoranda, draft decisions, opinions, or
11 other similar documents prepared by a justice or a judge, or a person
12 working under his supervision, in the process of deciding any legal
13 issue; however, once the legal issue has been decided all notes, mem-
14 oranda, draft decisions, opinions, or similar documents become public
15 records under rules established by the supreme court; ~~alters common law~~

16 (17) records related solely to the internal practices of a
17 governmental unit where the effect of disclosure would be to enable law
18 violators to escape detection.

19 (f) Unless specifically exempted from disclosure by statute, all
20 records become public after they are 20 years old. ~~except medical records~~
~~excluded~~

21 (g) Information contained in records exempted from disclosure
22 under (e) of this section may be released for valid statistical or
23 other information-gathering purposes if

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

26 (2) disclosure is made in a manner which would not compromise
27 or defeat the purposes of any statute designed to maintain the confi-
28 dentiality of the information.

29 The exceptions provided in this section do not preclude the

*on subpoena
available*

exemptions

fee 100 pages free
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inability of person to pay

release or production of subpoenaed records or information to a state or municipal agency during the course of an investigation;

all employment job related information & application records for public employees

(i) All personnel records showing salary or compensation or that concern the employee's current performance or ability to perform the duties and responsibilities of his job shall be open for public inspection. This public access is not an infringement of a person's right to privacy. *but finalists*

(j) The fact that a crime has been committed, the name of the crime, the time of commission and location, the name of any victim (unless the victim of a criminal sexual assault) and the name of any person who is charged with the crime is a matter of public information and record, except as provided in AS 47.10.090.

Sec. 40.25.020. REQUESTS FOR RECORDS. (a) Each governmental unit, upon any request for records made under this section, shall

- (1) produce the record immediately; or
- (2) if the record is in active use or storage and not available at the time a request to examine it is made, the custodian shall at that time state this fact in writing to the applicant and the applicant may set a date and hour at which the record may be examined.

(b) A person making a request to a governmental unit for records under this section is considered to have exhausted his administrative remedies with respect to the request if the governmental unit fails to comply with this section. If the governmental unit can show that exceptional circumstances exist and that it is exercising due diligence in responding to the request, the court may retain jurisdiction and allow the governmental unit additional time to complete its review of the records. Upon a determination by a governmental unit to comply with a request for records, the records shall be made promptly available to the person making the request,

with provided that not exceed 10 calendar days from date of receipt of the request

application records for public employees
position of public employees

unusual circumstances

duplicate not to exceed 5 days

ded. attorney

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(c) When the lawful custodian of a record determines that contents of a record exempt it under the provisions of AS 42.05.015, he shall ~~also determine whether a deletion of the exempt parts of the record will make the record suitable for release, and, if so, the deletion shall be made and the record released, with the notation that exempt material has been removed.~~ ^{delete the exempt parts, release the remaining portions} If the custodian determines that the record, or a portion of the record, is not open to inspection, he shall, in a certified writing, inform the person requesting the records of his determination, ~~of the statutory basis for this decision, and that under AS 40.25.025 a suit may be brought to compel production of records that are improperly withheld.~~ ^{release the remaining portions}

(d) A notification of denial of a request for records under this section shall set out the names and titles or positions of each person responsible for the denial of the request.

Sec. 40.25.025. ENFORCEMENT: INJUNCTIVE RELIEF. (a) A person having custody or control of a 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 record subject to inspection under AS 40.25.015 may be enjoined by the superior court from obstructing, or attempting to obstruct, the inspection of records subject to inspection under AS 40.25.015.

(b) The court may charge no filing fee, and the Department of Public Safety may charge no fee for service of process, from an applicant seeking an injunction under this section. No security may be required by the court from an applicant seeking an injunction under this section. If the applicant is granted the injunction, he shall be entitled to recover costs and ^{actual} ~~reasonable~~ attorney fees from the governmental unit.
Rule 82

(c) The superior court shall make available to an applicant, free

1 of charge, a simplified form for proceeding without counsel under this
2 section. The form shall require only identification of the applicant
3 and the name of the custodian alleged to be improperly withholding
4 records, and a simple explanation of the records sought.

5 (d) In a suit brought under this section the court may enjoin
6 withholding of the records and order the production to the complainant
7 of records improperly withheld. In such a case the court shall de-
8 termine the matter de novo, and may examine the contents of any records
9 in camera to determine whether the records or any portion of them may
10 be withheld under any of the exceptions set out in AS 40.25.015, and
11 the burden is on the agency to sustain its action. *Priority*

12 Sec. 40.25.035. CIVIL ACTION FOR OBSTRUCTION OF ACCESS TO RECORDS.

13 (a) A person who has been wrongfully denied access to a record under
14 this chapter has a civil cause of action against the person responsible
15 for the violation and is entitled to recover actual *or punitive* damages and ~~reason-~~
16 *actual* able attorney fees and other *actual* reasonable litigation costs.

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

20 Sec. 40.25.040. DEFINITIONS. In this chapter, unless the context
21 otherwise requires,

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

25 (2) "custodian" means the head of any governmental unit or
26 his designee;

27 (3) "governmental unit" means an agency, political subdivi-
28 sion, legislative body, board of regents, or an administrative body,
29 board, commission, committee, subcommittee, authority, council, agency,

define 4
Public employment - any employees of state or any political subdivision social services not just divisions

hattered women

or other organization, including subordinate units of the above groups, of the state or any of its political subdivisions, including but not limited to municipalities, boroughs, school boards, and all other boards, agencies, assemblies, councils, departments, divisions, bureaus, commissions or organizations, advisory or otherwise, of the state or local government supported in whole or in part by public money or authorized to spend public money;

funded by state grants or contracts

(4) "personal information" means information about an individual person, the disclosure of which would constitute an unjustifiable intrusion into a person's right of privacy;

(5) "record" means any document, paper, memoranda, book, letter, drawing, map, plat, photo, photographic file, motion picture, film, microfilm, microphotograph, exhibit, magnetic or paper tape, punched card, or other document of any other material, regardless of physical form or characteristic, developed or received under law or in connection with the transaction of official business and preserved or appropriate for preservation by a governmental unit as evidence of the organization, function, policies, decisions, procedures, operations or other activities of the state or political subdivision or because of the informational value in them; it also includes staff manuals and instructions to staff that directly or indirectly affect the public.

keep computer or print out info stored in a computer system

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

(g) Nothing in this section may be construed to prevent the holding of conferences between two or more public bodies, or their representatives, but these conferences are subject to the same regulations for holding executive or closed sessions as are applicable to any other public body.

what does it mean

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

(3) matters which by state statute [LAW, MUNICIPAL CHARTER,

1 OR ORDINANCE] are required to be confidential.

2 * Sec. 4. AS 11.56.920 is amended by adding a new subsection to read:

3 (c) It is an affirmative defense to a prosecution under this
4 section that the defendant relied in good faith upon the provisions of
5 AS 40.25 or of other law governing the confidentiality of public
6 records.

*↳ defense limited in application
only to impairing the availability
of public record*

7 * Sec. 5. In sec. 1 of this Act, AS 40.25.025(b) has the effect of
8 changing Rule 65 of the Alaska Supreme Court Rules of Civil Procedure re-
9 lating to security deposits required in civil actions.

10 * Sec. 6. AS 09.25.110, 09.25.120, and 09.25.125 are repealed.