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STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

LEGISLATIVE REFERENCE LIBRARY

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99801
907-465-3800

May, 1986

Copies of minutes listed below were originally included in this file. The minutes are available on the STAIRS date base CM 14. In order to save space copies of minutes have not been left in the files.

Jeanie Henry

House Judiciary 2/18/85 1 pm

COMMITTEE REPORT
HOUSE

2/3
Revised

(7)

FURTHER:

2/3/85

Date: 2-11-85

Mr. Speaker:

The Committee on JUDICIARY has had HB 180

"an Act relating to the confidentiality of certain library records."

under consideration and reports it back as follows:

- do pass do not pass
- do pass with attached amendments(s)
- replace with CS for HB 180 (sub) same title
- new title
- and recommends CS HB 180 DO PASS
- AND attaches a "Letter of Intent" New Fiscal Note
- reports it back without recommendation Zero Fiscal Note Attached
- referred to the _____ Committee

MEMBERS SIGNING
DO PASS

MEMBERS HAVING
OTHER RECOMMENDATIONS:

MILLER [Signature]

GADENBERRY [Signature]

WILSON [Signature]

LEITCH [Signature]

TAYLOR [Signature]

[Signature]
CHAIRMAN

COOK

Original sponsors: Clocksin and M.M.Miller

IN THE HOUSE

BY THE JUDICIARY COMMITTEE

CS FOR HOUSE BILL NO. 180 (Judiciary)
IN THE LEGISLATURE OF THE STATE OF ALASKA
FOURTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to the confidentiality of certain library records."

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

* Section 1. AS 09.25 is amended by adding a new section to read:

Sec. 09.25.140. CONFIDENTIALITY OF LIBRARY RECORDS. The names, addresses, or other personal identifying information of people who have used materials made available to the public by a library shall be kept confidential, except upon court order, and are not subject to inspection under AS 09.25.110 or 09.25.120. This section applies to libraries operated by the state, a municipality, or a public school, including the University of Alaska.

The Washington Post

AN INDEPENDENT NEWSPAPER

The Rise in Oil Imports

OIL IMPORTS into the United States hit a peak in 1977, when they were nearly half of all the oil that the country consumed. The following year they started to fall as the Alaskan oil pipeline went into full operation. Then came the Iranian revolution, a huge jump in prices and two recessions. Oil consumption and imports fell for five-and-a-half years. But late last summer the pattern reversed itself. The country's dependence on foreign oil is now climbing again.

For the present, there is no great danger. Oil markets are slack and—unless the war between Iran and Iraq suddenly spreads—there is no immediate prospect of shortage or rising prices. But the oil is expensive and adds to a trade deficit already a drag on economic expansion. For the longer future, a rising trend means only trouble.

Oil imports are now up quite sharply, because oil use is up. In January 1983, Americans were burning oil at a rate of 14.8 million barrels a day. Last month the rate was over 17 million barrels a day. The reasons aren't very surprising. It's been very cold, and almost half of that increase was fuel oil. The economic recovery is well under way, and people are driving more. Industrial production is up, which means that industrial fuel needs are also up—although not much. The industrial engineers are the champions among energy conservationists.

It's important to recognize the extraordinary gains in conservation since oil prices started to rise in 1973. American energy consumption is significantly lower now than it was then—although the gross national product has risen almost one-fourth, the population is up by 23 million people and there are some 20 million more cars on the road. But the impact of rapid growth falls most heavily on oil imports, and letting them run up will generate—as Americans have had ample opportunity to see since 1973—its own kind of disaster.

It's time to improve the incentives for conservation. The most conspicuous opportunities, as usual, lie in the use of gasoline. The price of gasoline has been falling for three years now and, adjusted for inflation, is not much higher than it was in 1974. People seem to be moving back to big cars. That swing, if it continues, will create havoc in an automobile industry that has been pushed hard by public policy to build mostly small cars.

How about seizing this moment of declining gas prices to impose a slowly but steadily rising tax on gasoline? Each nickel per gallon added to the gas tax would not only help hold down oil imports but would bring in \$5 billion a year. That's a serious contribution to reducing the deficit—if anybody over at the White House is seriously interested in reducing the deficit.

Who Read That Book?

IF YOU GO to the public library and take out a book on how to deal with head lice, improve your sex life or form a new political party, do you want the whole world to know about it? Shouldn't you be allowed to check out a racy novel or the biography of Karl Marx without having to explain your motives to anyone? The American Library Association thinks so and has taken a strong stand against releasing book circulation records. Twenty-two states, including Maryland and Virginia, have adopted legislation specifically protecting these records, and while there is no such statute in the District, it is the policy of city libraries not to release such records.

Did you ever think this was a problem? Well, it is. The executive director of the Moral Majority in the state of Washington asked for the circulation records on a sex education film. Persons claiming to be investigators have sought to obtain information on the reading habits of suspected individuals. And, it should be noted, writers and reporters occasionally find items of interest on these lists. In fact, the ALA says that the only people who consistently op-

pose library privacy legislation in the states are journalists. It isn't right. In a legitimate criminal investigation—did John Smith, whose wife expired shortly after a beef roganoff feast, take out that book on poisonous mushrooms?—circulation lists can be obtained with a subpoena. In all other cases, they ought to be considered private.

It will be noted that circulation lists are public records and that they ought to be made available to any interested member of the public. Not so. They are only public in the sense that medical records kept by the city hospital are public because they are created and kept by a public institution. While most data about the operation of a publicly funded service should be available—information about administration, operations and budget, for example—other files, such as health records or income tax returns, are personal and should be protected. An individual's choice of reading material falls into this category. Librarians and state legislatures that have adopted protective policies and laws have correctly drawn the fine line between the public's right to public information and the individual's right to read in peace.

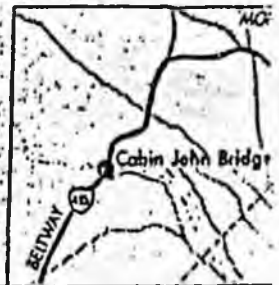
LETTERS

Terror:

It is ironic that the last article in The Post's series "The Terror Factor" (Frank page, Feb. 12) could find no "significant information of Soviet involvement in terrorist activities," since an earlier article in the same series noted that in June 1980, two of Abu Nidal's terrorists were released from detention in Bulgaria and their weapons returned to them after intervention by the Bulgarian Embassy in Baghdad. Bulgaria is one of the most submissive satellites of the Soviet Union, and its intervention to release the terrorists might reasonably be taken to indicate Soviet support for terrorism, especially in light of the continuing allegations of a Soviet-Bulgarian role in the attempted assassination of Pope John Paul II in 1981.

Although the last article in the six-part series quoted former CIA director

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Traveling the Beltway

This is in reply to The Post's front-page article Feb. 14 on trucks causing accidents on the Beltway. I am alive to write this because of the skill and courage of a truck driver who avoided running over me after I was forced to brake sharply on the leftway.

It happened on the infamous stretch leading to the Cabin John Bridge. The car ahead of me suddenly slowed and turned, without warning, traffic was heavy in all lanes. I avoided hitting him, but behind me was another car and a moving van. With split-second reaction, the trucker, a woman, pulled left onto the snow-covered, steeply sloping median and managed to stop the rig. Without her strength, speed and skill, I think both drivers behind me and I would be dead. The only person injured was the truck driver, who saved us all. She got the only citation issued by the police, and the cause of the accident—the driver making the U-turn—got away.

Not all accidents are the fault of truck drivers.

MARY S. THORNE

Bethesda

The Beltway relieved by:

- 1) not allow vehicles to unblock traffic;
- 2) letting properly marked, block only lanes until after mid the low trucks;
- 3) encourage restrictively restrict allow motorist live routes, to rection.

If official "move the truck" "remove the truck" (some of whom emergencies) many hours many thousands of gasoline.

These records offered not as anyone or any as the observ. mileage user since its inception

Glenn Dale

Under Malawi Law

In her article "Malawi Upholds Execution of Hyattsville Nurse's Parents" (Feb. 9), Caryle Murphy claims, among other things, that "the lower traditional court that tried the Chirwas does not meet international legal standards of the Geneva-based International Commission of Jurists."

There are certain facts The Post

the United Law differ some state- for instance states use tion, other: There are a disturbing s within the

STATE OF ALASKA 1985 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: _____

REQUEST

Bill/Resolution No.: HB-180
 Title: ...confidentiality of...
 Library records
 Sponsor: Clocks in
 Requestor: House Judiciary
 Date of Request: 2/13/85

FISCAL DETAIL

Agency Affected: Education
 Program Category Affected: _____
 BRU, Program or Subprogram(s) Affected: Alaska State Libraries

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

CAPITAL						
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REVENUE						
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FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: Attach a separate page if necessary

This bill has no fiscal impact on the Department.

Prepared By: Steve Hole Phone: 465-2800
 Division: Commissioner's Office Date: 2/14/85
 Approved by Commissioner: *Howe* Date: 2/14/85
 Agency: Department of Education

Distribution (by Agency preparing fiscal note):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

7/1/84

Daily News KS
2-9-85

Library, election bills introduced

By ROBB FULCHER
United Press International

JUNEAU — Spurred on by a dispute over a high school library book dealing with homosexuality, lawmakers introduced legislation Friday that would make public library records confidential and make it more difficult to recall elected officials.

House Minority Leader Don Clocksin, of Anchorage, introduced House Bill 180, designed to protect the privacy of Alaskans who check out books and other materials from public libraries.

House Bill 177, introduced by Rep. David Thompson, R-Kodiak, would provide for a judicial review of petitions to recall elected officials.

The bills stemmed from incidents in Fairbanks and North Pole, where a book, "A Way of Love, A Way of Life," on high school library shelves brought criticism from parents and attempts to recall Fairbanks school board members.

Clocksin's bill was requested by the Alaska Library Association, and also reflects Clocksin's concern over a nationwide increase in the number of requests made to libraries for lists of people who had checked out certain materials.

"Alaska's Freedom of Information Act was designed to inform the public and ensure the accountability of government, and not to be used as a tool to violate the privacy of individual Alaskans," Clocksin said.

A July, 1984 opinion from the state Attorney General's office said that no state law protects library circulation records, but the constitutional right of privacy reflects a policy that they should not be disclosed, Clocksin said.

"By filing this bill, I hope to implement that policy. I don't feel we should rely on a court to rule favorably. Confidentiality of these records should be explicitly protected in the statutes."

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Request for mining

Continued from Page C-1



REPRESENTATIVE DON CLOCKSIN

Alaska House of Representatives

MAJORITY LEADER

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ANCHORAGE ALASKA 99501
(907) 274-4031

WHILE IN JUNEAU:
PCUCH V
JUNEAU, ALASKA 99811
(907) 465-3704

FOR IMMEDIATE RELEASE

February 8, 1985

For more information, contact: Johnny Ellis 465-3718

House Majority Leader Don Clocksin, D-Anchorage, today introduced House Bill 180, which would protect the privacy of citizens when they check out materials from Alaska's public libraries. Currently, twenty-three other states have passed similar legislation. The American Library Association and the Alaska Library Association strongly support confidentiality of library records to protect individual privacy.

According to Representative Clocksin, the impetus for his legislation was the increasing number of requests nationwide being made of libraries for lists of the people who had checked out certain library materials. The American Library Association has documented cases in which information was requested for purposes other than legitimate police investigations.

Clocksin pointed out that the Alaska Constitution explicitly guarantees an individual's right to privacy. "Alaska's Freedom of Information Act was designed to inform the public and ensure the accountability of government, and not to be used as a tool to violate the privacy of individual Alaskans." Circulation records kept by public libraries are

not public records in the general sense but are similar to medical records kept by public hospitals. "These records are strictly between the institution and the individual," Clocksin said.

A July 1984 Attorney General's opinion said no state law protects library circulation records, although the constitutional right of privacy reflects a policy that they should not be disclosed.

"By filing this bill, I hope to implement that policy," Clocksin stated. "I don't feel we should rely on a court to rule favorably. Confidentiality of these records should be explicitly protected in the statutes."

#

Attachments (3)

Anchorage Daily News



Winner, 1976 Pulitzer Prize Gold Medal for Public Service

Gerald E. Grilly
Publisher

Howard Weaver
Managing Editor

Steve Lindbeck
Editorial Page Editor

Katherine Fanning, Editor and Publisher 1971 to 1983

Lawrence Fanning, Editor and Publisher 1967 to 1971

Alaska's Only Morning Newspaper • Founded in 1946 by Norman C. Brown

Keep confidential our library records

The right to be left alone seems natural and inalienable to most Americans but sometimes it needs protection. That's why House Majority Leader Don Clocksin of Anchorage's proposal to guard the privacy of library records is a good one.

Under terms of House Bill 180, which Clocksin introduced last week, public library records would become confidential information closed to nosy neighbors who like to monitor the reading habits of their community. No state law currently protects library circulation records. During recent years, there has been a nationwide increase in individual and group requests to libraries for lists of people who checked out books and other materials. Usually these requests involve controversial books addressing moral issues — the kind of books that simply were banned years ago when narrow-minded individuals or groups could control library holdings.

Rep. Clocksin's proposal may seem at first glance like a call to secrecy but as he explained in offering the bill, the Alaska Freedom of Information Act was established as a tool to ensure government accountability, not a device to violate Alaskans' privacy. Alaskans should have the opportunity to visit their public libraries in peace — and know their reading preferences are strictly private.

Libraries always should invite the public to read. There should be no deterrents to exploration in Alaska's libraries — and open library records are a deterrent that should be eliminated.

MEMORANDUM

State of Alaska

TO: Harold Reynolds, Jr.
Commissioner
Department of Education

DATE: July 13, 1984

FILE NO: 166-255-84 20

TELEPHONE NO: 276-3550

FROM: Norman C. Gorsuch
Attorney General

SUBJECT: Confidentiality of
Library Use Records

By: *Jan Hart DeYoung*
Jan Hart DeYoung
Assistant Attorney General

You inquired whether the State of Alaska has any laws addressing the confidentiality of state library records. You also asked whether any state law would prohibit the use of the following statement on the patron application form used by Library Services for the Blind and Physically Handicapped:

Records relating to recipients of Library of Congress reading material are confidential.

A review of the regulations and statutes disclosed no law specifically addressing this subject. However, AS 09.25.110-.120, Alaska's Freedom of Information Act, may require disclosure of the information you seek to protect.

By enacting AS 09.25.110, Alaska has adopted a policy of open access to state records. AS 09.25.110 provides:

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.

Exceptions to this right of access are few and must be expressed specifically in the law. For example, AS 09.25.120 states, in part:

Every person has a right to inspect a public writing or record in the state, including public writings and records in recorders' offices except (1) records of vital statistics and adoption proceedings which shall be treated in the manner required by AS 18.50; (2) records pertaining to juveniles; (3) medical and related public health

records; (4) records required to be kept confidential by a federal law or regulation or by state law. Every public officer having the custody of records not included in the exceptions shall permit the inspection, and give on demand and payment of the legal fees therefore a certified copy of the writing or record

The only exception which may apply here is (4), "records required to be kept confidential by a federal law or regulation or by state law." The Library of Congress apparently endorses a rule of confidentiality for users of Library of Congress materials but leaves the issue of confidentiality to the states to resolve under state law. If federal regulation provided that library use records be kept confidential, those records would be protected under AS 09.25.120(4).

As previously stated, no state statute addresses the confidentiality of library records. The only state law which might allow the Department to protect these records from release to the public is the constitutional right to privacy in the Alaska Constitution, which states: "The right of the people to privacy is recognized and shall not be infringed." Alaska Const. Art. I, § 22. The constitutional right to privacy is not absolute. When confronted with a question whether information is protected under the right to privacy, courts engage in a balancing process, weighing the sensitivity of the information sought to be disclosed against the interest of public disclosure. See City of Kenai v. Kenai Peninsula Newspapers, Inc., 642 P.2d 1316, 1323 (1982).

Tension is inherent in the policy of open access to state records, on the one hand, and the right of privacy, on the other. We have previously stated that the Freedom of Information Act was designed to encourage informed participation of citizens in the process of government, to insure government's accountability, and to increase public confidence in the workings of the political system. It was not intended that the legislation be used as a tool to pry into the private lives of citizens. Thus, we concluded that "any analysis of the extent to which the public may have access to government records, therefore, must necessarily proceed from the hypothesis that the information revealed to the public will assist in accomplishing the legislature's general policy goal. Thus, mechanical application of the literal language in AS 09.25.110 to all requests for public disclosure is inappropriate." 1982 Inf. Op. Att'y Gen. 1 (Feb. 5; J66-314-82) (footnote omitted).

Because the right to privacy is not absolute, you cannot guarantee to a user that library records will remain confidential. At the same time, the Freedom of Information Act will not automatically require that such records be disclosed upon a request. Each request will have to be examined on its peculiar facts before it can be determined whether the records should be released. The following guidelines should apply.

First, it must be determined whether the information requested is of the type that should be protected by the right of privacy. In other words, is the information requested sensitive. Falcon v. Alaska Public Offices Commission, 570 P.2d 469, 479 (Alaska 1977). Certain medical information, financial records, and a person's age previously have been found sufficiently sensitive to be protected from disclosure. Id.; 1982 Inf. Op. Att'y Gen. (May 25; J66-513-82); 1982 Inf. Op. Att'y Gen. (Feb. 5). Depending upon the request, disclosure of library use records could reveal the fact that one is blind or physically handicapped and the library or reading material one has consulted. It is our opinion that both of these facts are sufficiently sensitive to be protected by the right to privacy. An individual's physical ills and disabilities are among the most sensitive of personal and psychological sensibilities. See Falcon, 570 P.2d at 478, quoting Rowe v. Ingraham, 403 F.Supp. 931, 937 (S.D.N.Y. 1975) (reviewing constitutionality of legislation requiring disclosure of patients receiving prescriptions for particular drugs). We also believe that disclosing the library materials used by a person would violate this right to privacy. Knowing what a person reads could reveal the most intimate and personal facts about that person. The privacy of one's thoughts should be basic to individual liberty. As the Alaska Supreme Court recently stated, "Article I, section 22 fosters and protects those values and characteristics typical of and necessary for a free society. Some of these are the sharing of thoughts and ideas, personal trust between individuals, free expression, and individuality." City and Borough of Juneau v. Quinto, P.2d ___, Op. no. 2841 at 6 (June 29, 1984) (criminal case). We do not believe those privacy interests can be adequately protected by advising a library patron in advance that use records are public documents. Such a notice could work a subtle form of censorship, influencing the selection of books or library materials.

Second, the public's interest in the information should be examined. Possessing information on who has used certain library materials, for example, could enable the possessor to target certain individuals for harassment. Such use of public records is a clear abuse of AS 09.25.110. It does not further the statute's purpose of opening the conduct of government

Harold Reynolds, Jr., Commissioner
Department of Education
166-255-84

July 13, 1984
Page 4

business to public scrutiny. A legitimate interest, however, would be in opening the administration of the library to public view. That interest would be served by providing the records but deleting all personal references.

In sum, absent special circumstances, we find the balance weighs against disclosure of the names of persons using the library. Disclosing use records, while deleting any references which would allow the library patron to be identified, should, in most cases, satisfy the policies underlying the Freedom of Information Act without interfering with privacy interests. There may, however, be some instances in which the release of names is necessary to accomplish an important public interest. Such requests should be reviewed on a case by case basis with advice from the Department of Law.

You stated in your letter that 21 states have statutes addressing the confidentiality of library use records. You may wish to approach the legislature and request legislation specifically addressing this issue. In the meantime, you cannot provide any absolute assurance that user records will be kept confidential. If library records are requested under AS 09.25.110-.120, I recommend that you respond by providing the records but deleting any personal references. If that response is unsatisfactory, you should refer the matter to the Department of Law to determine whether the interest in disclosure outweighs the privacy interests involved.

JHD:jg

cc: Linda Tobiska
Rick Roberts