

SB

250

HOUSE COMMITTEE REPORT

4/23

(7)

Date Referred: April 17, 1989

FURTHER REFERRALS: FINANCE

Date of Committee Action: 4/20/90

The JUDICIARY Committee considered:

CSSB 250(SA)

CS FOR SENATE BILL NO. 250 (State Affairs)

[UNIV. RESEARCH CONFIDENTIAL]

"An Act relating to the confidentiality of research conducted by the University of Alaska."

RECOMMENDATIONS:

- be replaced with HCS CS SB 250 (Judiciary) the same title a new title
- have attached amendment(s)
- do pass
- do not pass
- no recommendation
- individual recommendations
- additional referral to the _____ Committee

ADOPTS: _____ letter of intent

ATTACHES NEW FISCAL NOTE(s):
(Dept)

APPROVES PREVIOUS:

(Date/Dept)

- fiscal impact _____
- zero fiscal note W of A
- zero with analysis _____

- fiscal note(s) _____
- zero fiscal note(s) _____
- zero fn/analysis _____

SIGNING DO PASS:

SIGNING:

(Check approp. column)

Do Not Pass No Rec Amend

<u>Mr. Gruenberg</u>	Gruenberg			
<u>Ellis</u>	Ellis			
<u>Miller</u>	Miller			
<u>Goll</u>	Goll			

Peter J. ...
 CO- Chairman's Signature

STATE OF ALASKA
1990 LEGISLATIVE SESSION

BILL VERSION: HCSSB250
PUBLISH DATE: _____

FISCAL NOTE

REQUEST:

Revision Date: _____	Agency Affected: <u>University of Alaska</u>
Title: <u>"An Act Relating to Records Developed or Used During Research for the University of Alaska."</u>	BRU: <u>UAF Organized Research, UAA Organized Research, UAS</u>
Sponsor: _____	Components: _____
Requestor: _____	

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY91	FY92	FY93	FY94	FY95	FY96
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL						
---------	--	--	--	--	--	--

REVENUE						
---------	--	--	--	--	--	--

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

Prepared by: Marsha Hubbard
 Division: Director, Statewide Budget
 Approved by: Vice President Brian Ragan
 Agency: University of Alaska

Phone: 474-7593
 Date: 4/23/90
 Date: 4/23/90

Distribution (by preparer):
 Legislative Finance
 Legislative Sponsor
 Requestor
 Office of Management and Budget
 Impacted Agency(ies)

Original sponsor(s): Rules/Governor

1 IN THE SENATE

BY THE JUDICIARY COMMITTEE

2 HOUSE CS FOR CS FOR SENATE BILL NO. 250 (Judiciary)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the confidentiality of research
7 conducted by the University of Alaska."

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

9 * Section 1. AS 14.40 is amended by adding a new section to read:

10 Sec. 14.40.453. CONFIDENTIALITY OF RESEARCH. The public records
11 inspection requirements of AS 09.25.110 - 09.25.121 do not apply to
12 writings or records that consist of intellectual property or proprie-
13 tary information received, generated, learned, or discovered during
14 research conducted by the University of Alaska or its agents or em-
15 ployees until publically released, copyrighted, or patented, or until
16 the research is terminated, except that the university shall make
17 available the title and a description of all research projects, the
18 name of the researcher, and the amount and source of funding provided
19 for each project.

FISCAL NOTE

REQUEST:

Revision Date: _____	Agency Affected: <u>University of Alaska</u>
Title: <u>"An Act Relating to Records Developed or Used During Research for the University of Alaska."</u>	BRU: <u>UAF Organized Research, UAA Organized Research, UAS</u>
Sponsor: _____	Components: _____
Requestor: _____	

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY91	FY92	FY93	FY94	FY95	FY96
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL						
REVENUE						

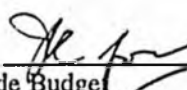
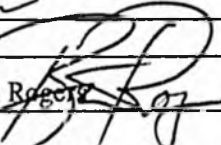
FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

Prepared by: Marsha Hubbard 
 Division: Director, Statewide Budget
 Approved by VP Finance: Vice President Brian Rogers 
 Agency: University of Alaska

Phone: 474-7593
 Date: 4/23/90
 Date: 4/23/90

Distribution (by preparer):
 Legislative Finance
 Legislative Sponsor
 Requestor
 Office of Management and Budget
 Impacted Agency(ies)

FISCAL NOTE

REQUEST:

Revision Date: _____
 Title: "An Act Relating to Records
 Developed or Used During Research for
 the University of Alaska."
 Sponsor: Rules Committee
 Requester: Governor

Agency Affected: University of Alaska
 BRU: UAF Organized Research,
 UAA organized Research, UAS
 Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE	-0-	-0-	-0-	-0-	-0-	-0-

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)

Prepared by: Marsha Hubbard *Marsha Hubbard* Phone: 474-7593
 Division: Director, Statewide Budget Date: 2/21/89 4/20/90
 Approved by Commissioner: Vice President Brian Peters Date: 2/21/89
 Agency: University of Alaska

- Distribution (by preparer):**
- Legislative Finance
 - Legislative Sponsor
 - Requestor
 - Office of Management and Budget
 - Impacted Agency(ies)

*Changes in the State Affairs
 CS have no fiscal effect
 This fiscal note is
 appropriate.
 SS 4-1089*

STEVE COWPER
GOVERNOR



STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

March 31, 1989

The Honorable Tim Kelly
President of the Senate
Alaska State Legislature
P.O. Box V
Juneau, AK 99811

Dear Mr. President:

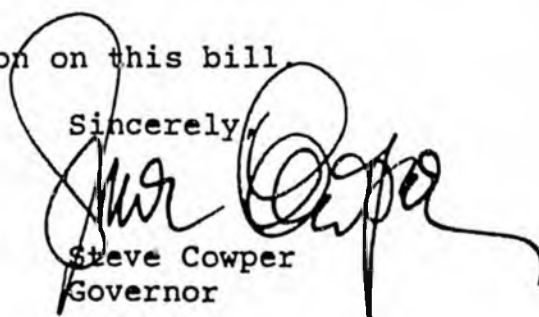
Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill relating to the confidentiality of research conducted by the University of Alaska. This bill would prevent valuable processes or procedures used in research from being taken from their inventors or the state.

Persons who engage in research often develop procedures or techniques that have substantial commercial value. This information usually is set out in written form that qualifies as a public record. A researcher might use the procedure or technique as a tool in performing a research project. However, some qualified researchers might not actively seek research grants from the university because they fear that the information used during the research by the researcher will be disclosed to competitors through a public records request and disclosure.

Under this bill, research in progress is exempted from the open records law (AS 09.25.110 -- 09.25.125) and the open meetings law (AS 44.62.310). Under this provision, information owned by a researcher could be protected by being made confidential while a research project is underway. The university may also protect other valuable information developed through university-sponsored research pending the perfection of a federal copyright or patent. The purpose of this bill is to provide formality to existing practices of the university. It is felt that this formality will protect the university and its faculty while at the same time providing the environment to encourage research in the state university system.

I urge your favorable action on this bill.

Sincerely,



Steve Cowper
Governor

TO: House Judiciary Committee
FROM: Wendy Redman, University of Alaska *wredm*
DATE: May 4, 1989
RE: SB 250 - Confidentiality of University Research

Attached here for your information is a summary of the key questions that have been raised regarding SB 250. Also attached is a sampling of relevant open records statutes from other states. Although I have not done a 50 state review, discussions with the University of Alaska Vice Chancellor for Research and with his counterparts in nine western states, I am told that Alaska is unique in providing no protection from public disclosure for research in progress. The issue has become important as research itself becomes more competitive, and as the potential for the University of Alaska to engage in federally sponsored research increases dramatically. There is great concern that our ability to remain attractive to research faculty and to funding agencies will hamper our ability to be competitive.

In summary, the attached statutes involve the following disclosure protections:

CALIFORNIA: Preliminary information is not public. The interpretation (per the Attorney General) has been that research information is "preliminary" until it is published.

COLORADO: Excludes "...specific details of bona fide research projects being conducted by a state institution.

FLORIDA: Excludes "...information received, generated, ascertained, or discovered during the course of research conducted within the state universities..."

MINNESOTA: Defines "trade secret information" as non-public; defines "trade secret information" in a way that excludes research in progress.

OREGON: Excludes all unpublished notes and findings of research faculty.

WASHINGTON: Excludes "valuable formulae, designs, drawings, and research data obtained by any agency within five years of the request for disclosure when disclosure would produce private gain and public loss."

MASSACHUSETTS: Excludes preliminary agency information. The interpretation (per the Attorney General) is that research information is "preliminary" until published.

I have had discussions with university research administrators in Nevada, Arizona, Montana, and Utah. In each case, the state interpretation of their open record statutes included an exclusion of research information that has not been published or for which a patent or copyright has not been sought.

SB 250 -- **An Act relating to confidentiality of research conducted by the University of Alaska**

- * **University of Alaska Research is an industry** generating nearly \$30 million per year in additional state revenue.
- * **Academic research is a highly competitive enterprise.** There is intense competition for federal research money and faculty guard their proposals and research in progress as closely as any business would guard its new product line.
- * **Copyrights and patents depend on confidentiality.** Application for patents and copyrights cannot even be applied for if the research or information is in the "public domain".
- * **Faculty need protection for their ideas.** "Intellectual property" needs some form of protection from theft and misuse.
- * **Alaska's model "sunshine" laws did not anticipate the need for the protection of research in progress.** Our statutes cannot be interpreted, according to the Attorney General, to exclude research in progress from public scrutiny, even though no formal results or publication have been issued.
- * **Alaska appears to be unique in its lack of protection for research information.** Arizona, California, Washington, Nevada, Oregon -- they all provide specific exemptions for research, or have received legal interpretations of their existing laws that define "public information" only as that information which has been published. Oregon passed an exemption in 1987 that simply states: "Writings prepared by or under the direction of faculty of public educational institutions, in connection with research, until publicly released, copyrighted or patented [shall be exempt from public disclosure laws]".
- * **Faculty will not do research in a state or at an institution that cannot provide protection for their work.** Research faculty are highly sought after because of the extramural funding that they bring to an institution. The grant funding is tied to them as individuals, not to the institutions where they are located. If we cannot provide the necessary protections, we will lose the highly productive faculty that we have, and the money that they generate will be lost with them.

- * **Funding agencies are not interested in supporting research activities with an institution that cannot provide some assurance of confidentiality for the research in progress.**
Many basic and applied university research projects, funded by the private sector, lead to new product development, mineral discoveries, or other results that might provide a marketplace advantage to competitors.

- * **Research projects and funding sources will still be public information.**
All federal research requests for proposals are listed in public documents, including the Federal Register. The University releases regular reports detailing the proposals that are submitted by faculty as well as those that are accepted for funding.

- * **The University is not engaged in "secret" research, nor does this legislation anticipate such activity. This legislation simply protects faculty from public disclosure of information and results prior to the time of publication of the final results or the application of the relevant copyright or patent protections.**

for that offense. This section establishes the following minimum amounts for the described categories of traffic offenses:

- (1) Vehicle registration violations, \$20.
- (2) Equipment defects, \$20.
- (3) Violation of a specific speed limit imposed under law or of a posted speed limit, based on number of miles per hour in excess of speed limit as follows:
 - (a) 0 to 10 miles per hour in excess of speed limit, \$20.
 - (b) 11 to 20 miles per hour in excess of speed limit, \$50.
 - (c) Over 20 miles per hour in excess of speed limit, \$100.
- (4) Speed racing, \$300.
- (5) Passing violations, \$25.
- (6) Pedestrian violations, \$5.
- (7) Bicycle violations, \$15.
- (8) Dealer or wrecker license violations, \$300.
- (9) License plate violations, \$150.
- (10) Truck license violations and prorated violations, \$50.
- (11) Failure to obtain Public Utility Commission permit, \$50.
- (12) Violations of laws on open liquor containers in vehicles, \$50.
- (13) Violations of laws relating to yielding or stopping for school busses or worker transport busses, \$100.
- (14) Careless driving, \$100.
- (15) Violation of winter parking permit requirements, \$10.
- (16) Failure to have driver license in possession, \$5.
- (17) Operating without driver license, \$100.
- (18) Misuse, failure to surrender or false application for driver license, \$150.
- (19) False name or identification to police officer, \$150.
- (20) Reckless driving, \$300.
- (21)(a) Infraction driving with suspended or revoked driver license, \$300.
- (b) Misdemeanor driving with suspended or revoked driver license, \$500.
- (c) Felony driving with suspended or revoked driver license, \$1,000.
- (22) Failure to perform duties of driver or witness, \$300.
- (23) Driving under the influence of intoxicants, \$300.
- (24) Attempting to elude police officer, \$300.
- (25) Overload violations other than ORS 818.040 and 818.340 based on weight in excess of allowable weight as follows:
 - (a) Up to 1,000 pounds over allowable weight, \$2.
 - (b) More than 1,000 pounds but not more than 2,000 pounds over allowable weight, \$15.
 - (c) More than 2,000 pounds but not more than 3,000 pounds over allowable weight, one cent per pound for each pound of excess weight.
 - (d) More than 3,000 pounds but not more than 5,000 pounds over allowable weight, two cents per pound for each pound of excess weight.
 - (e) More than 5,000 pounds over allowable weight, seven cents per pound for each pound of excess weight.
- (26) Overload violation under ORS 818.230, \$100 plus 10 cents per pound for each pound of excess weight.
- (27) Overload violations under ORS 818.040, based on weight in excess of allowable weight as follows:
 - (a) Up to 1,000 pounds over allowable weight, \$50.
 - (b) More than 1,000 pounds but not more than 2,000 pounds over allowable weight, six cents per pound for each pound of excess weight.
 - (c) More than 2,000 pounds but not more than 5,000 pounds over allowable weight, eight cents per pound for each pound of excess weight.
 - (d) More than 5,000 pounds over allowable weight, 10 cents per pound for each pound of excess weight.
- (28) Failure or refusal to stop for and submit to measurement or weighing, \$350.
- (29) Parking in a disabled parking space in violation of ORS 811.615, \$25.
- (30) Violations not otherwise provided for in this section, as follows:
 - (a) \$25 if the violation is not a contributing factor to an accident.
 - (b) \$50 if the violation is a contributing factor to an accident.

SECTION 28. ORS 809.200 is repealed.

Approved by the Governor July 16, 1987
Filed in the office of Secretary of State July 20, 1987

CHAPTER 731

AN ACT

HB 3224

Relating to classified research; amending ORS 182.000 and 351.870.

Be It Enacted by the People of the State of Oregon:

SECTION 1. ORS 351.870 is amended to read:

351.870. (1) The Legislative Assembly finds and declares that basic research is fundamental to the continuation and expansion of applied research and is thus a necessary ingredient in economic growth. The Legislative Assembly further finds that basic research is itself an important activity which should be promoted.

(2) It is the policy of this state that basic research is an appropriate and necessary activity of our public universities. Further, the State of Oregon has an obligation with other states and the Federal Government to encourage and finance basic research if the state and nation are to be active participants in a future which will require ever increasing levels of knowledge and understanding.

(3) The Legislative Assembly acknowledges that a characteristic of basic research is that no defined result

can be guaranteed and asserts that only through scholarly investigation can knowledge be advanced to be later developed and applied.

(4) The Legislative Assembly believes that moneys for basic research should be regularly appropriated and that such moneys should be used for support of qualified investigators and funding of research projects.

(5) The Legislative Assembly intends that in implementing the policy on basic research or any other research policy, the State Board of Higher Education, in keeping with the principle of academic freedom, shall insure open and free inquiry and publication in all institutions under its jurisdiction.

SECTION 2. ORS 192.500 is amended to read:

192.500. (1) The following public records are exempt from disclosure under ORS 192.410 to 192.500 unless the public interest requires disclosure in the particular instance:

(a) Records of a public body pertaining to litigation to which the public body is a party if the complaint has been filed, or if the complaint has not been filed, if the public body shows that such litigation is reasonably likely to occur. This exemption does not apply to litigation which has been concluded, and nothing in this paragraph shall limit any right or opportunity granted by discovery or deposition statutes to a party to litigation or potential litigation;

(b) Trade secrets. "Trade secrets," as used in this section, may include, but are not limited to, any formula, plan, pattern, process, tool, mechanism, compound, procedure, production data, or compilation of information which is not patented, which is known only to certain individuals within a commercial concern who are using it to fabricate, produce, or compound an article of trade or a service or to locate minerals or other substances, having commercial value, and which gives its user an opportunity to obtain a business advantage over competitors who do not know or use it;

(c) Investigatory information compiled for criminal law purposes, except that the record of an arrest or the report of a crime shall not be confidential unless and only so long as there is a clear need in a particular case to delay disclosure in the course of a specific investigation. Nothing in this paragraph shall limit any right constitutionally guaranteed, or granted by statute, to disclosure or discovery in criminal cases. For purposes of this paragraph, the record of an arrest or the report of a crime includes, but is not limited to:

(A) The arrested person's name, age, residence, employment, marital status and similar biographical information;

(B) The offense with which the arrested person is charged;

(C) The conditions of release pursuant to ORS 135.230 to 135.290;

(D) The identity of and biographical information concerning both complaining party and victim;

(E) The identity of the investigating and arresting agency and the length of the investigation;

(F) The circumstances of arrest, including time, place, resistance, pursuit and weapons used; and

(G) Such information as may be necessary to enlist public assistance in apprehending fugitives from justice;

(d) Test questions, scoring keys, and other examination data used to administer a licensing examination, examination for employment, or academic examination before the examination is given and if the examination is to be used again;

(e) Information consisting of production records, sale or purchase records or catch records, or similar business records of a private concern or enterprise, required by law to be submitted to or inspected by a governmental body to allow it to determine fees or assessments payable or to establish production quotas, and the amounts of such fees or assessments payable or paid, to the extent that such information is in a form which would permit identification of the individual concern or enterprise. This exemption does not include records submitted by long term care facilities as defined in ORS 442.015 to the state for purposes of reimbursement of expenses or determining fees for patient care. Nothing in this paragraph shall limit the use which can be made of such information for regulatory purposes or its admissibility in any enforcement proceeding;

(f) Information relating to the appraisal of real estate prior to its acquisition;

(g) The names and signatures of employees who sign authorization cards or petitions for the purpose of requesting representation or decertification elections;

(h) Investigatory information relating to any complaint filed under ORS 659.010 or 659.015, until such time as the complaint is resolved under ORS 659.050, or a final administrative determination is made under ORS 659.060;

(i) Investigatory information relating to any complaint or charge filed under ORS 243.676 and 663.180;

(j) The circulation records of a public library showing use of specific library materials by named persons;

(k) Records, reports and other information received or compiled by the director under ORS 697.732;

(l) Information concerning the location of archaeological sites or objects as those terms are defined in ORS 358.005, except if the governing body of an Indian tribe requests the information and the need for the information is related to that Indian tribe's cultural or religious activities. This exemption does not include information relating to a site that is all or part of an existing, commonly known and publicized tourist facility or attraction; [and]

(m) A personnel discipline action, or materials or documents supporting that action; and []

(n) Writings prepared by or under the direction of faculty of public educational institutions, in connection with research, until publicly released, copyrighted or patented.

(2) The following public records are exempt from disclosure under ORS 192.410 to 192.500:

(a) Communications within a public body or between public bodies of an advisory nature to the extent that they cover other than purely factual materials and are preliminary to any final agency determination of policy or action. This exemption shall not apply unless the public body shows that in the particular instance the public interest in encouraging frank communication between officials and employees of public bodies clearly outweighs the public interest in disclosure;

(b) Information of a personal nature such as but not limited to that kept in a personal, medical or similar file, if the public disclosure thereof would constitute an unreasonable invasion of privacy, unless the public interest by clear and convincing evidence requires disclosure in the particular instance. The party seeking disclosure shall have the burden of showing that public disclosure would not constitute an unreasonable invasion of privacy;

(c) Information submitted to a public body in confidence and not otherwise required by law to be submitted, where such information should reasonably be considered confidential, the public body has obliged itself in good faith not to disclose the information, and when the public interest would suffer by the disclosure;

(d) Information or records of the Corrections Division, including the State Board of Parole, to the extent that disclosure thereof would interfere with the rehabilitation of a person in custody of the division or substantially prejudice or prevent the carrying out of the functions of the division, if the public interest in confidentiality clearly outweighs the public interest in disclosure;

(e) Records, reports and other information received or compiled by the Supervisor of the Savings and Loan, Credit Union and Consumer Finance Section in the administration of ORS chapters 723 and 725 and the Supervisor of the Banking Section in the administration of ORS chapter 726, not otherwise required by law to be made public, to the extent that the interests of lending institutions, their officers, employees and customers in preserving the confidentiality of such information outweighs the public interest in disclosure;

(f) Reports made to or filed with the court under ORS 137.077 or 137.530;

(g) Any public records or information the disclosure of which is prohibited by federal law or regulations;

(h) Public records or information the disclosure of which is prohibited or restricted or otherwise made confidential or privileged under ORS 1.440, 7.211, 7.215, 9.545, 40.225 to 40.295, 41.675, 56.100, 57.850, 135.155, 146.780, 147.115, 173.230, 179.495, 181.540, 251.145, 308.290, 308.410, 314.836, 314.840, 326.106, 341.200, 342.860,

344.600, 346.165, 346.167, 351.065, 351.070, 410.150, 410.690, 411.320, 418.135, 418.770, 419.567, 441.113, 441.671, 469.090, 476.090, 656.702, 657.660, 671.550, 673.415, 673.710, 677.425, 678.126, 679.280, 684.023, 684.100, 706.720, 706.730, 722.419, 731.264, 731.312, 734.850, 734.830, 744.017, 756.075, 760.140, 761.421, 767.644, 802.220, 807.710 or ORS chapter 432;

(i) Public records or information described in this section, furnished by the public body originally compiling, preparing or receiving them to any other public officer or public body in connection with performance of the duties of the recipient, if the considerations originally giving rise to the confidential or exempt nature of the public records or information remain applicable;

(j) Records of the Energy Facility Siting Council concerning the review or approval of security programs pursuant to ORS 449.530 (3);

(k) Employee and retiree address, telephone number and other nonfinancial membership records maintained by the Public Employees' Retirement System pursuant to ORS 237.001 to 237.320;

(L) Records submitted by private persons or businesses to the State Treasurer or the Oregon Investment Council relating to proposed acquisition, exchange or liquidation of public investments under ORS chapter 293 may be treated as exempt from disclosure when and only to the extent that disclosure of such records reasonably may be expected to substantially limit the ability of the Oregon Investment Council to effectively compete or negotiate for, solicit or conclude such transactions. Records which relate to concluded transactions are not subject to this exemption;

(m) The monthly reports prepared and submitted under ORS 293.761 and 293.766 concerning the Public Employees' Retirement Fund and the Industrial Accident Fund may be uniformly treated as exempt from disclosure for a period of up to 90 days after the end of the calendar quarter; and

(n) Reports of abandoned property filed by the holders of such property pursuant to ORS 98.352, until such time as the Director of the Division of State Lands has provided public notice of the abandoned property as required by ORS 98.356 and the property has been delivered to the director pursuant to ORS 98.362.

(3) If any public record contains material which is not exempt under subsection (1) or (2) of this section, as well as material which is exempt from disclosure, the public body shall separate the exempt and nonexempt material and make the nonexempt material available for examination.

Approved by the Governor July 16, 1987

Filed in the office of Secretary of State July 20, 1987

the subject of the record is under legal disability, "person in interest" means and includes his parent or duly appointed legal representative.

(5) "Political subdivision" means and includes every county, city and county, city, town, school district, and special district within this state.

(6) "Public records" means and includes all writings made, maintained, or kept by the state or any agency, institution, or political subdivision thereof for use in the exercise of functions required or authorized by law or administrative rule or involving the receipt or expenditure of public funds. It does not include criminal justice records which are subject to the provisions of part 3 of this article.

(7) "Writings" means and includes all books, papers, maps, photographs, cards, tapes, recordings, or other documentary materials, regardless of physical form or characteristics.

Source: L. 68, p. 201, § 2; C.R.S. 1963, § 113-2-2; L. 77, p. 1250, § 2; L. 85, p. 867, § 1.

Autopsy reports are "public records", as defined in this section. *Denver Publishing Co. v. Dreyfus*, 184 Colo. 288, 520 P.2d 104 (1974).

Police records are not "public records". Police department files and records showing arrests, convictions, and other information are not public records. *Losavio v. Mayber*, 178 Colo. 184, 496 P.2d 1032 (1972).

Records of university not included. Reference to "institution" in definition of "public records" is not specific enough to demonstrate legislative intent to make open records law applicable to the university of Colorado. *Uberoi v. University of Colorado*, 686 P.2d 785 (Colo. 1984) (decided prior to 1985 enactment of subsection (1.5)).

24-72-203. Public records open to inspection. (1) All public records shall be open for inspection by any person at reasonable times, except as provided in this part 2 or as otherwise provided by law, but the official custodian of any public records may make such rules and regulations with reference to the inspection of such records as are reasonably necessary for the protection of such records and the prevention of unnecessary interference with the regular discharge of the duties of the custodian or his office.

(2) If the public records requested are not in the custody or control of the person to whom application is made, such person shall forthwith notify the applicant of this fact, in writing if requested by the applicant. In such notification he shall state in detail to the best of his knowledge and belief the reason for the absence of the records from his custody or control, their location, and what person then has custody or control of the records.

(3) If the public records requested are in the custody and control of the person to whom application is made but are in active use or in storage and therefore not available at the time an applicant asks to examine them, the custodian shall forthwith notify the applicant of this fact, in writing if requested by the applicant. If requested by the applicant, the custodian shall set a date and hour within three working days at which time the records will be available for inspection.

Source: L. 68, p. 202, § 3; C.R.S. 1963, § 113-2-3.

Colorado

First amendment does not guarantee the press a constitutional right of special access to information not available to the public generally. This is true where the information sought is personal in nature and is to be published primarily for commercial purposes. *Eugene Cervi & Co. v. Russell*, 184 Colo. 282, 519 P.2d 1189 (1974).

Court considers and weighs public interest in determining disclosure question. The limiting language making certain of the open records provisions applicable except as "otherwise provided by law" is a reference to the rules of civil procedure and expresses the legislative intent that a court should consider and weigh whether disclosure would be contrary to the public interest. *Martinelli v. District Court*, 199 Colo. 163, 612 P.2d 1083 (1980).

Construction of open records law. Open records law is a general act and will not be interpreted to repeal a conflicting special provision unless the intent to do so is clear and unmistakable. *Uberoi v. University of Colorado*, 686 P.2d 785 (Colo. 1984) (decided prior to 1985 enactment of § 24-72-202 (1.5)).

Implied duty to delete exempt information. Under our public records act, there exists an implied duty to delete exempt information from that which may be disclosed and to structure the record to provide the information which the public is entitled to have. *Western*

Serv., Inc. v. Sargent School Dist., RE 719 P.2d 355 (Colo. App. 1986).

Vital statistics records held confidential exempt from right to inspect. *Eugene Co. v. Russell*, 31 Colo. App. 525, 506 748 (1972), aff'd, 184 Colo. 282, 519 1189 (1974).

Claim that transportation contracts entered into between city department of public utility and railroad were confidential comm. matters did not preclude disclosure of tracts under open records act, where governmental body is involved. *Freedom News Denver & Rio Grande R. Co.*, 731 P.2 (Colo. App. 1986).

Federal law, i.e. the Staggers Act of which provides that certain information contracts filed with Interstate Commerce Commission is available only where required by certain specified parties does not preclude disclosure under open records act. *Transportation contracts entered into by city and railroad. Freedom News v. Denver Rio Grande R. Co.*, 731 P.2d 740 (Colo. 1986).

Privileges for attorney-client communication and attorney work product established by common law, though incorporated into records law, are waived by any voluntary disclosure by privilege holder to a third party. *Denver Post Corp. v. University of Colorado*, 739 P.2d 874 (Colo. App. 1987).

24-72-204. Allowance or denial of inspection - grounds - procedure - ap

(1) The custodian of any public records shall allow any person the right of inspection of such records or any portion thereof except on one or more of the following grounds or as provided in subsection (2) or (3) of this section:

(a) Such inspection would be contrary to any state statute.

(b) Such inspection would be contrary to any federal statute or regulation issued thereunder having the force and effect of law.

(c) Such inspection is prohibited by rules promulgated by the supreme court or by the order of any court.

(2) (a) The custodian may deny the right of inspection of the following records, unless otherwise provided by law, on the ground that disclosure of the records to the applicant would be contrary to the public interest:

(I) Any records of the investigations conducted by any sheriff, prosecuting attorney, or police department, any records of the intelligence information or security procedures of any sheriff, prosecuting attorney, or police department, or any investigatory files compiled for any other law enforcement purpose;

(II) Test questions, scoring keys, and other examination data pertaining to administration of a licensing examination, examination for employment or academic examination; except that written promotional examination questions and results thereof conducted pursuant to the state personnel laws

reproduction, by the person in interest after the conducting and grading of any such examination;

(III) The specific details of bona fide research projects being conducted by a state institution; and

(IV) The contents of real estate appraisals made for the state or a political subdivision thereof relative to the acquisition of property or any interest in property for public use, until such time as title to the property or property interest has passed to the state or political subdivision; except that the contents of such appraisal shall be available to the owner of the property at any time, and except as provided by the Colorado rules of civil procedure. If condemnation proceedings are instituted to acquire any such property, any owner thereof who has received the contents of any appraisal pursuant to this section shall, upon receipt thereof, make available to said state or political subdivision a copy of the contents of any appraisal which he has obtained relative to the proposed acquisition of the property.

(b) If the right of inspection of any record falling within any of the classifications listed in this subsection (2) is allowed to any officer or employee of any newspaper, radio station, television station, or other person or agency in the business of public dissemination of news or current events, it shall be allowed to all such news media.

(3) (a) The custodian shall deny the right of inspection of the following records, unless otherwise provided by law; except that any of the following records, other than letters of reference concerning employment, licensing, or issuance of permits, shall be available to the person in interest under this subsection (3):

(I) Medical, psychological, sociological, and scholastic achievement data on individual persons, exclusive of coroners' autopsy reports and group scholastic achievement data from which the individual cannot be identified; but either the custodian or the person in interest may request a professionally qualified person, who shall be furnished by the said custodian, to be present to interpret the records;

(II) Personnel files, except applications and performance ratings; but such files shall be available to the person in interest and to the duly elected and appointed public officials who supervise his work;

(III) Letters of reference;

(IV) Trade secrets, privileged information, and confidential commercial, financial, geological, or geophysical data furnished by or obtained from any person;

(V) Library and museum material contributed by private persons, to the extent of any limitations placed thereon as conditions of such contributions;

(VI) Addresses and telephone numbers of students in any public elementary or secondary school;

(VII) Library records disclosing the identity of a user as prohibited by section 24-90-119; and

(VIII) Data collected by and furnished to the Colorado health data commission pursuant to article 28 of title 25, C.R.S.

(b) Nothing in this subsection (3) shall prohibit the custodian of records from transmitting data concerning the scholastic achievement of any student

... shall anything in this sub-

inspection, from making copies, print-outs, or photographs of, or from transmitting data concerning the scholastic achievement or medical, psychological, or sociological information of any student to any law enforcement agency of this state, of any other state, or of the United States where such student is under investigation by such agency and the agency shows that such data is necessary for the investigation.

(c) Nothing in this subsection (3) shall prohibit the custodian of the records of a school, including any institution of higher education, or a school district from transmitting data concerning standardized tests, scholastic achievement, or medical, psychological, or sociological information of any student to the custodian of such records in any other such school or school district to which such student moves, transfers, or makes application for transfer, and the written permission of such student or his parent or guardian shall not be required therefor. No state educational institution shall be prohibited from transmitting data concerning standardized tests or scholastic achievement of any student to the custodian of such records in the school including any state educational institution, or school district in which such student was previously enrolled, and the written permission of such student or his parent or guardian shall not be required therefor.

(d) Notwithstanding the provisions of subparagraph (VI) of paragraph (a) of this subsection (3), under policies adopted by the local board of education, the names and addresses of students in any secondary school may be released to a recruiting officer for any branch of the United States armed forces who requests such information, unless the student requests in writing that said information not be released. The recruiting officer shall use the data released for the purpose of providing information to students regarding military service and shall not use it for any other purpose or release such data to any person or organization other than individuals within the recruiting services of the armed forces.

(4) If the custodian denies access to any public record, the applicant may request a written statement of the grounds for the denial, which statement shall cite the law or regulation under which access is denied and shall be furnished forthwith to the applicant.

(5) Any person denied the right to inspect any record covered by this part 2 may apply to the district court of the district wherein the record is found for an order directing the custodian of such record to show cause why he should not permit the inspection of such record. Hearing on such application shall be held at the earliest practical time. Unless the court finds that the denial of the right of inspection was proper, it shall order the custodian to permit such inspection and, upon a finding that the denial was arbitrary or capricious, it may order the custodian personally to pay the applicant's court costs and attorney fees in an amount to be determined by the court.

(6) If, in the opinion of the official custodian of any public record, disclosure of the contents of said record would do substantial injury to the public interest, notwithstanding the fact that said record might otherwise be available to public inspection, he may apply to the district court of the district in which such record is located for an order permitting him to restrict such disclosure. Hearing on such application shall be held at the earliest practical time and shall be held upon a finding that

istration. A university may limit or deny the privilege for courses which are in programs for which the Board of Regents has established selective admissions criteria. Persons paying full fees and state employees taking courses on a space-available basis shall have priority over those persons whose fees are waived in all cases where classroom spaces are limited.

(5) Students enrolled in a dual enrollment or early admission program pursuant to s. 240.116 shall be exempt from the payment of registration, matriculation, and laboratory fees. Students enrolled in accordance with this subsection may be calculated as the proportional shares of full-time equivalent enrollments each such student generates for state funding purposes.

History.—s. 19, ch. 79-222, s. 1, ch. 80-14, s. 1, ch. 80-237, s. 25, ch. 81-193, s. 3, ch. 83-326, s. 8, ch. 86-177, s. 11, ch. 87-212.

240.237 Student records.—The university may prescribe the content and custody of records and reports which the university may maintain on its students. Such records shall be open to inspection only as provided in s. 226.093.

History.—s. 15, ch. 73-338, s. 3, ch. 77-60, s. 26, ch. 79-222, s. 3, ch. 86-65, s. 8, ch. 86-145.

Note.—Former s. 239.77.

240.239 Associate in arts degrees; issuance.—

(1) The purpose of this section is to require state universities to present associate in arts certificates upon request to qualified students.

(2) Students at state universities may request associate in arts certificates if they have successfully completed the minimum requirements for the degree of associate in arts (A.A.).

(3) An associate in arts degree shall not be granted unless a student has successfully completed minimum requirements for college-level communication and computation skills adopted by the State Board of Education and a minimum of 60 academic semester hours or the equivalent, with not less than 36 of the semester hours in general education courses such as communications, mathematics, social sciences, humanities, and natural sciences.

History.—ss. 1, 2, 3, 4, ch. 71-178, s. 28, ch. 79-222, s. 5, ch. 82-180.

Note.—Former s. 241.478.

240.241 Divisions of sponsored research at state universities.—

(1) Each university, with the approval of the Department of Education, is authorized to create, as it deems advisable, divisions of sponsored research which will serve the function of administration and promotion of the programs of research, including sponsored training programs, of the university at which they are located.

(2) The university shall set such policies to regulate the activities of the divisions of sponsored research as it may consider necessary to effectuate the purposes of this act and to administer the research programs in a manner which assures efficiency and effectiveness, producing the maximum benefit for the educational programs and maximum service to the state. To this end, materials that relate to methods of manufacture or production, potential trade secrets, potentially patentable material, actual trade secrets, business transactions, or proprietary information received, generated, ascer-

tained, or discovered during the course of research conducted within the state universities shall be exempt from the provisions of chapter 119, except that a division of sponsored research shall make available, upon request, the title and description of a research project, the name of the researcher, and the amount and source of funding provided for such project.

(3) A division of sponsored research created under the provisions of this act shall be under the supervision of the president of that university, who is authorized to appoint a director, to employ full-time and part-time staff, research personnel, and professional services; to employ on a part-time basis personnel of the university; and to employ temporary employees whose salaries are paid entirely from the permanent sponsored research development fund or from that fund in combination with other nonstate sources, with such positions being exempt from the requirements of the Florida Statutes relating to salaries, except that no such appointment shall be made for a total period of longer than 1 year.

(4) The president of the university where a division of sponsored research is created, or his designee, is authorized to negotiate, enter into, and execute research contracts; to solicit and accept research grants and donations; and to fix and collect fees, other payments, and donations that may accrue by reason thereof. The president or his designee may negotiate, enter into, and execute contracts on a cost-reimbursement basis and may provide temporary financing of such costs prior to reimbursement from moneys on deposit in the sponsored research development fund, except as may be prohibited elsewhere by law.

(5) A division of sponsored research shall be financed from the moneys of a university which are on deposit or received for use in the research or related programs of that particular university. Such moneys shall be deposited by the university in a permanent sponsored research development fund in a depository or depositories approved for the deposit of state funds and shall be accounted for and disbursed subject to regular audit by the Auditor General.

(6) The fund balance on hand in any existing research trust fund in the respective university, at the time a division of sponsored research is created, shall be transferred to a permanent sponsored research development fund established for the university, and thereafter the fund balance of the sponsored research development fund at the end of any fiscal period may be used during any succeeding period for the purposes and in the manner authorized by this act.

(7) Moneys deposited in the permanent sponsored research development fund of a university shall be disbursed in accordance with the terms of the contract, grant, or donation under which they are received. Moneys received for overhead or indirect costs and other moneys not required for the payment of direct costs shall be applied to the cost of operating the division of sponsored research. Any surplus moneys shall be used to support other research or sponsored training programs in any area of the university. Moneys allocated for the payment of salaries from the sponsored research development fund shall be paid out by the Comptroller of the state in the same manner as salaries from other state

Historical Note

R.S. 1836, c. 2, § 6, cl. 14 P.S. 1882, c. 3, § 3, cl. 18
 G.S. 1860, c. 3, § 7, cl. 14 R.L. 1902, c. 8, § 5, cl. 18

"Public records". Twenty-sixth, "Public records" shall mean all books, papers, maps, photographs, recorded tapes, financial statements, statistical tabulations, or other documentary materials or data, regardless of physical form or characteristics, made or received by any officer or employee of any agency, executive office, department, board, commission, bureau, division or authority of the commonwealth, or of any political subdivision thereof, or of any authority established by the general court to serve a public purpose, unless such materials or data fall within the following exemptions in that they are:

(a) specifically or by necessary implication exempted from disclosure by statute;

(b) related solely to internal personnel rules and practices of the government unit, provided however, that such records shall be withheld only to the extent that proper performance of necessary governmental functions requires such withholding;

(c) personnel and medical files or information; also any other materials or data relating to a specifically named individual, the disclosure of which may constitute an unwarranted invasion of personal privacy;

~~(d) inter-agency or intra-agency memoranda or letters relating to policy positions being developed by the agency; but this subparagraph shall not apply to reasonably completed factual studies or reports on which the development of such policy positions has been or may be based;~~

~~(e) notebooks and other materials prepared by an employee of the commonwealth which are personal to him and not maintained as part of the files of the governmental unit;~~

(f) investigatory materials necessarily compiled out of the public view by law enforcement or other investigatory officials the disclosure of which materials would probably so prejudice the possibility of effective law enforcement that such disclosure would not be in the public interest;

~~(g) trade secrets or commercial or financial information voluntarily provided to an agency for use in developing governmental policy and upon a promise of confidentiality; but this subparagraph shall not apply to information submitted as required by law or as a condition of receiving a governmental contract or other benefit;~~

(h) proposals and bids to enter into any contract or agreement until the time for the opening of bids in the case of proposals or bids to be opened publicly, and until the time for the receipt of bids or proposals has expired in all other cases; and inter-agency or intra-agency communications made in connection with an evaluation process for reviewing bids

or proposals, prior to a decision to enter into negotiations with or to award a contract to, a particular person.

(i) appraisals of real property acquired or to be acquired until (1) a final agreement is entered into; or (2) any litigation relative to such appraisal has been terminated; or (3) the time within which to commence such litigation has expired.

(j) The names and addresses of any persons contained in, or referred to in, any applications for any licenses to carry or possess firearms issued pursuant to chapter one hundred and forty or any firearms identification cards issued pursuant to said chapter one hundred and forty and the names and addresses on sales or transfers of any firearms, rifles, shotguns, or machine guns or ammunition therefor, as defined in said chapter one hundred and forty and the names and addresses on said licenses or cards.

(k) that part of the registration or circulation records of every public library which reveals the identity of a borrower.

(l) test questions and answers, scoring keys and sheets, and other examination data used to administer a licensing examination; provided, however, that such materials are used to administer another examination.

Any person denied access to public records may pursue the remedy provided for in section ten of chapter sixty-six.

Amended by St.1958, c. 626, § 1; St.1962, c. 427, § 1; St.1969, c. 831, § 2; St.1973, c. 1060, § 1; St.1977, c. 691, § 1; St.1978, c. 247; St.1979, c. 230; St.1982, c. 189, § 2; St.1983, c. 113; St.1985, c. 220.

Historical Note

St.1897, c. 489, § 1.

R.L.1902, c. 85, § 5.

St.1928, c. 192, § 8.

As appearing in G.L.1982 (Ter.Ed) this section read:

'Twenty-sixth, 'Public records' shall mean any written or printed book or paper, any map or plan of the commonwealth, or of any county, city or town which is the property thereof, and in or on which any entry has been made or is required to be made by law, or which any officer or employee of the commonwealth or of a county, city or town has received or is required to receive for filing, and any book, paper, record or copy mentioned in sections five to eight, inclusive, and sixteen of chapter sixty-six, including public records made by photographic process as provided in section three of said chapter.'

St.1958, c. 626, § 1, approved October 7, 1958, inserted "district," twice following "county," and inserted "section eleven A of chapter thirty A, where applicable, section nine F of chapter thirty-four, section twenty-three A of chapter thirty nine, or" following "mentioned in".

Section 11 of St.1958, c. 626, provided:

"Upon the effective date of this act, the provisions of all special acts which are inconsistent with the provisions of this act shall, only to the extent that they conflict with this act, become null and void."

St.1962, c. 427, § 1, approved May 10, 1962, inserted "any official correspondence of any officer or employee of the commonwealth or of a county, district, city or town," following "received for filing".

Mass

13.34 EXAMINATION DATA.

Data consisting solely of testing or examination materials, or scoring keys used solely to determine individual qualifications for appointment or promotion in public service, or used to administer a licensing examination, or academic examination, the disclosure of which would compromise the objectivity or fairness of the testing or examination process are classified as nonpublic, except pursuant to court order. Completed versions of personnel, licensing, or academic examinations shall be accessible to the individual who completed the examination, unless the responsible authority determines that access would compromise the objectivity, fairness, or integrity of the examination process. Notwithstanding section 13.04, the responsible authority shall not be required to provide copies of completed examinations or answer keys to any individual who has completed an examination.

History: 1980 c 603 s 14; 1981 c 311 s 10,39; 1982 c 545 s 24

13.35 FEDERAL CONTRACTS DATA.

To the extent that a federal agency requires it as a condition for contracting with a state agency or political subdivision, all government data collected and maintained by the state agency or political subdivision because that agency contracts with the federal agency are classified as either private or nonpublic depending on whether the data are data on individuals or data not on individuals.

History: 1980 c 603 s 19; 1981 c 311 s 39; 1982 c 545 s 24

13.36 FIREARMS DATA.

All data pertaining to the purchase or transfer of firearms and applications for permits to carry firearms which are collected by state agencies, political subdivisions or statewide systems pursuant to sections 624.712 to 624.719 are classified as private, pursuant to section 13.02, subdivision 12.

History: 1981 c 311 s 20,39; 1982 c 545 s 24; 1987 c 384 art 2 s 1

13.37 GENERAL NONPUBLIC DATA.

Subdivision 1. Definitions. As used in this section, the following terms have the meanings given them.

(a) "Security information" means government data the disclosure of which would be likely to substantially jeopardize the security of information, possessions, individuals or property against theft, tampering, improper use, attempted escape, illegal disclosure, trespass, or physical injury.

(b) "Trade secret information" means government data, including a formula, pattern, compilation, program, device, method, technique or process (1) that was supplied by the affected individual or organization, (2) that is the subject of efforts by the individual or organization that are reasonable under the circumstances to maintain its secrecy, and (3) that derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use.

(c) "Labor relations information" means management positions on economic and noneconomic items that have not been presented during the collective bargaining process or interest arbitration, including information specifically collected or created to prepare the management position.

Subd. 2. Classification. The following government data is classified as nonpublic data with regard to data not on individuals, pursuant to section 13.02, subdivision 9, and as private data with regard to data on individuals, pursuant to section 13.02, subdivision 12: Security information; trade secret information; sealed absentee ballots prior to opening by an election judge; sealed bids, including the number of bids received, prior to the opening of the bids; and labor relations information, provided that specific labor relations information which relates to a specific labor organization is classified as protected nonpublic data pursuant to section 13.02, subdivision 13.

History: 1980 c 603 s 15; 1981 c 311 s 11,39; 1982 c 545 s 24; 1984 c 436 s 15; 1985 c 248 s 4

educational agency or of business, relate to employee, and are not subject to section 13.43.

Controlled or registered, by the agency or institution, or by a public agency or

on a temporary basis shall include an individual's record.

Records, including but not limited to physical or mental health records, shall be maintained but not limited to the parents shall be maintained shall be pursuant to

Except as provided in this section, all shall not be disclosed

Private data; records pursuant to the Freedom of Information Act and Code of Federal Regulations, 1979;

Sections 1232g(b)(1), (b)(2), title 45, sections 101, 1979; or

to administer immunizations, which the commission has the authority to investigate is being

not have the right of access to financial records maintained therein.

Directory information, pursuant to section 1232g and regulation 19 is public data on

institutions, for the following data on

The data shall not be used for the purpose of determining the accuracy of inconsistent provisions

1982 c 545 s 24; 1984

PRIVATE DATA.

Private data on individuals shall be confidential.

(d) For petitions circulated pursuant to Section 5091 of the Education Code, the person or persons having charge of the petition who submit the petition to the county superintendent of schools.

(e) For petitions circulated pursuant to Article 1 (commencing with Section 35700) of Chapter 4 of Part 21 of the Education Code, the person or persons designated as chief petitioners under Section 35701 of the Education Code.

(f) For petitions circulated pursuant to Part 46 (commencing with Section 74000) of the Education Code, the person or persons designated as chief petitioners under Sections 74102, 74133, and 74152 of the Education Code.

Amended Stats 1982 ch 163 § 2; Stats 1985 ch 1053 § 1.

Amendments:

1982 Amendment: (1) Amended the first paragraph by adding (a) ", and petitions circulated pursuant to Section 5091 of the Education Code," before "and all memoranda"; and (b) ", a school district or a community college district attorney" near the end of the paragraph; and (2) added subd (d).

1985 Amendment: (1) Amended the first paragraph by (a) deleting "and" after "recall petitions,"; (b) adding "petitions for the reorganization of school districts submitted pursuant to Article 1 (commencing with Section 35700) of Chapter 4 of Part 21 of the Education Code, petitions for the reorganization of community college districts submitted pursuant to Part 46 (commencing with Section 74000) of the Education Code"; and (2) added subds (e) and (f).

Cal Jur 3d (Rev) Elections § 289.

§ 6253.6. Requests for bilingual election materials

(a) Notwithstanding the provisions of Sections 6252 and 6253, information compiled by public officers or public employees revealing the identity of persons who have requested bilingual ballots or ballot pamphlets, made in accordance with any federal or state law, or other data that would reveal the identity of the requester, shall not be deemed to be public records and shall not be provided to any person other than public officers or public employees who are responsible for receiving those requests and processing the same.

(b) Nothing contained in subdivision (a) shall be construed as prohibiting any person who is otherwise authorized by law from examining election materials, including, but not limited to, affidavits of registration, provided that requests for bilingual ballots or ballot pamphlets shall be subject to the restrictions contained in subdivision (a).

Added Stats 1982 ch 1260 § 1; Amended Stats 1985 ch 1129 § 1.

Amendments:

1985 Amendment: Amended subd (a) by substituting (1) "information compiled by public officers or public employee revealing the identity of persons who have requested" for "requests for"; and (2) "provided to any person other than" for "open to inspection except by the precinct board and other".

§ 6254. Records exempt from disclosure requirements

Except as provided in Section 6254.7, nothing in this chapter shall be construed to require disclosure of records that are any of the following:

(a) Preliminary drafts, notes, or interagency or intraagency memoranda which are not retained by the public agency in the ordinary course of business, provided that the public interest in withholding those records clearly outweighs the public interest in disclosure.

(b) Records pertaining to pending litigation to which the public agency is a party, or to claims made pursuant to Division 3.6 (commencing with Section 810), until the pending litigation or claim has been finally adjudicated or otherwise settled.

42.17.310. Certain personal and other records exempt

(1) The following are exempt from public inspection and copying:

- (a) Personal information in any files maintained for students in public schools, patients or clients of public institutions or public health agencies, welfare recipients, prisoners, probationers, or parolees.
- (b) Personal information in files maintained for employees, appointees, or elected officials of any public agency to the extent that disclosure would violate their right to privacy.
- (c) Information required of any taxpayer in connection with the assessment or collection of any tax if the disclosure of the information to other persons would (i) be prohibited to such persons by RCW 82.32.330 or (ii) violate the taxpayer's right to privacy or result in unfair competitive disadvantage to the taxpayer.
- (d) Specific intelligence information and specific investigative records compiled by investigative, law enforcement, and penology agencies, and state agencies vested with the responsibility to discipline members of any profession, the nondisclosure of which is essential to effective law enforcement or for the protection of any person's right to privacy.
- (e) Information revealing the identity of persons who file complaints with investigative, law enforcement, or penology agencies, other than the public disclosure commission, if disclosure would endanger any person's life, physical safety, or property: *Provided*, That if at the time the complaint is filed the complainant indicates a desire for disclosure or nondisclosure, such desire shall govern: *Provided, further*, That all complaints filed with the public disclosure commission about any elected official or candidate for public office must be made in writing and signed by the complainant under oath.
- (f) Test questions, scoring keys, and other examination data used to administer a license, employment, or academic examination.
- (g) Except as provided by chapter 8.26 RCW, the contents of real estate appraisals, made for or by any agency relative to the acquisition or sale of property, until the project or prospective sale is abandoned or until such time as all of the property has been acquired or the property to which the sale appraisal relates is sold, but in no event shall disclosure be denied for more than three years after the appraisal.
- (h) Valuable formulae, designs, drawings, and research data obtained by any agency within five years of the request for disclosure when disclosure would produce private gain and public loss.
- (i) Preliminary drafts, notes, recommendations, and intra-agency memorandums in which opinions are expressed or policies formulated or recommended except that a specific record shall not be exempt when publicly cited by an agency in connection with any agency action.
- (j) Records which are relevant to a controversy to which an agency is a party but which records would not be available to another party under the rules of pretrial discovery for causes pending in the superior courts.
- (k) Records, maps, or other information identifying the location of archaeological sites in order to avoid the looting or depredation of such sites.
- (l) Any library record, the primary purpose of which is to maintain control of library materials, or to gain access to information, which dis-

(m) Financial information supplied by or on behalf of a person, firm, or corporation for the purpose of qualifying to submit a bid or proposal for (a) a ferry system construction or repair contract as required by RCW 47.60.680 through 47.60.750 or (b) highway construction or improvement as required by RCW 47.28.070.

(n) Railroad company contracts filed with the utilities and transportation commission under RCW 81.34.070, except that the summaries of the contracts are open to public inspection and copying as otherwise provided by this chapter.

(o) Financial and commercial information and records supplied by private persons pertaining to export services provided pursuant to chapter 53.31 RCW.

(p) Financial disclosures filed by private vocational schools under chapter 28C.10 RCW.

(q) Records filed with the utilities and transportation commission or attorney general under RCW 80.04.095 that a court has determined are confidential under RCW 80.04.095.

(r) Financial and commercial information and records supplied by businesses during application for loans or program services provided by chapters 43.31, 43.63A, and 43.168 RCW.

(s) Membership lists or lists of members or owners of interests of units in timeshare projects, subdivisions, camping resorts, condominiums, land developments, or common-interest communities affiliated with such projects, regulated by the department of licensing, in the files or possession of the department.

(t) Except as provided under section 2 of this 1987 act [1987 c 404 § 2], all applications for public employment, including the names of applicants, resumes, and other related materials submitted with respect to an applicant.

(u) The residential addresses and residential telephone numbers of employees or volunteers of a public agency which are held by the agency in personnel records, employment or volunteer rosters, or mailing lists of employees or volunteers.

(v) The residential addresses and residential telephone numbers of the customers of a public utility contained in the records or lists held by the public utility of which they are customers.

(w) Information obtained by the board of pharmacy as provided in RCW 69.45.090.

(2) Except for information described in subsection (1)(c)(i) of this section and confidential income data exempted from public inspection pursuant to RCW 84.40.020, the exemptions of this section are inapplicable to the extent that information, the disclosure of which would violate personal privacy or vital governmental interests, can be deleted from the specific records sought. No exemption may be construed to permit the nondisclosure of statistical information not descriptive of any readily identifiable person or persons.

(3) Inspection or copying of any specific records exempt under the provisions of this section may be permitted if the superior court in the county in which the record is maintained finds, after a hearing with notice thereof to every person in interest and the agency, that the exemption of such records is clearly unnecessary to protect any individual's right of

FISCAL NOTE

250

REQUEST:

Revision Date: _____
Title: "An Act Relating to Records
Developed or Used During Research for
the University of Alaska."
Sponsor: Rules Committee
Requester: Governor

Agency Affected: University of Alaska
BRU: UAF Organized Research,
UAA organized Research, UAS
Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

CAPITAL						
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REVENUE	-0-	-0-	-0-	-0-	-0-	-0-
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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)

Prepared by: Marsha Hubbard *Marsha Hubbard* Phone: 474-7593
Division: Director, Statewide Budget Date: 2/21/89

Approved by Commissioner: Vice President, Brian Rogers Date: 2/21/89
Agency: University of Alaska

Distribution (by preparer):
Legislative Finance
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Requestor
Office of Management and Budget
Impacted Agency(ies)

*Changes in the State Affairs
CS have no fiscal effects
This fiscal note is
appropriate.*