

**HB**

**452**

# SENATE FINANCE COMMITTEE REPORT

DATE: 3/6/90

FURTHER:

DATE TURNED INTO OFFICE: 3/8/90

The Finance Committee considered CSHB 452 (State Affairs) an

Act relating to the office of the ombudsman and to the powers and duties of the ombudsman.

and recommended:

- |   |   |
|---|---|
| <input type="checkbox"/> replace with _____ CS _____    | <input type="checkbox"/> same title                       |
| <input type="checkbox"/> or adopt _____ CS _____        | <input type="checkbox"/> new title                        |
|   | <input type="checkbox"/> technical title change (HB only) |
| <input type="checkbox"/> attached amendment(s)          |   |
| <input type="checkbox"/> _____ letter of intent adopted |   |

do pass

do not pass

no recommendation

individual recommendations

further referral to \_\_\_\_\_

ATTACHES NEW FISCAL NOTE(S):

Dept/Date:

fiscal note(s) \_\_\_\_\_

\_\_\_\_\_

zero fiscal note(s) \_\_\_\_\_

\_\_\_\_\_

appropriation-no fiscal note

APPROVES PREVIOUS:

Dept/Date:

fiscal note(s) \_\_\_\_\_

\_\_\_\_\_

zero fiscal note(s) Ombudsman <sup>8/1/90</sup>

\_\_\_\_\_

SIGNING DO PASS:

OTHER RECOMMENDATIONS:

*[Handwritten signatures]*

\_\_\_\_\_

1. Sen. Keith Uehry (DO PASS) Sen. John R. ... No Rec  
Co-Chairs: Signatures and Recommendations

**FISCAL NOTE**

**REQUEST:**

Revision Date: \_\_\_\_\_  
Title: An Act Relating to the Office of the Ombudsman  
Sponsor: \_\_\_\_\_  
Requestor: Office of the Ombudsman

Agency Affected: Legislative  
BRU: Office of the Ombudsman  
Comments: \_\_\_\_\_

**EXPENDITURES/REVENUES: (Thousands of Dollars)**

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0

CAPITAL	0	0	0	0	0	0
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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)**

This bill has no fiscal impact on the State Operating budgets

Prepared by: Duncan C. Fowler Phone: 465-4970  
Division: Ombudsman Date: 2-7-90  
Approved by Commissioner: [Signature] Date: 2-7-90  
Agency: Ombudsman

**Distribution (by preparer):**

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

Adopted

Original sponsor(s): Rules/Legislative Council

1 IN THE HOUSE

BY THE STATE AFFAIRS COMMITTEE

2

CS FOR HOUSE BILL NO. 452 (State Affairs) am

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 office of the ombudsman and

7

to the powers and duties of the ombudsman."

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

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\* Section 1. AS 24.55.040(b) is amended to read:

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(b) If the term of an ombudsman expires without the appointment

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of a successor under this chapter, the incumbent ombudsman may con-

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tinue in office until a successor is appointed. If the ombudsman

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dies, resigns, becomes ineligible to serve, or is removed or suspended

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from office, the person appointed as [DEPUTY OMBUDSMAN BECOMES] acting

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ombudsman under 24.55.070(a) serves until a new ombudsman is ap-

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pointed for a full term.

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\* Sec. 2. AS 24.55.070(a) is amended to read:

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(a) The ombudsman shall [MAY] appoint a person to serve as

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acting [DEPUTY] ombudsman in the absence of the ombudsman. The om-

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busdman shall also appoint assistants and clerical personnel necessary

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to carry out the provisions of this chapter.

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\* Sec. 3. AS 24.55.070(b) is amended to read:

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(b) The ombudsman may delegate to the [DEPUTY OR] assistants any

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of the ombudsman's duties except those specified in AS 24.55.190 and

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24.55.200, however, during the ombudsman's absence from the principal

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business offices, the ombudsman may delegate the duties specified in

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AS 24.55.190 and 24.55.200 to the acting ombudsman [DEPUTY] for the

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duration of the absence. The duties specified in AS 24.55.190 and

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24.55.200 shall be performed by the acting [DEPUTY] ombudsman when

1 serving [AS ACTING OMBUDSMAN] under AS 24.55.040(b).

2 \* Sec. 4. AS 24.55.080(a) is repealed and reenacted to read:

3 (a) Subject to restrictions and limitations imposed by the  
4 executive director of the Legislative Affairs Agency, the administra-  
5 tive facilities and services of the Legislative Affairs Agency, in-  
6 cluding computer, data processing, and teleconference facilities, may  
7 be made available to the ombudsman to be used in the management of the  
8 office of the ombudsman and to carry out the purposes of this chapter.

9 \* Sec. 5. AS 24.55.090 is amended to read:

10 Sec. 24.55.090. PROCEDURE. (a) The ombudsman shall, by regula-  
11 tions adopted under the Administrative Procedure Act (AS 44.62),  
12 establish procedures for receiving and processing complaints, conduct-  
13 ing investigations, [AND] reporting findings, and ensuring that confi-  
14 dential information obtained by the ombudsman in the course of an  
15 investigation will not be improperly disclosed.

16 (b) The [HOWEVER, THE] ombudsman may not charge fees for the  
17 submission or investigation of complaints.

18 \* Sec. 6. AS 24.55.130 is amended by adding a new subsection to read:

19 (c) Notice given under this section may be oral but the om-  
20 budsman shall state in writing the reasons for not investigating a  
21 complaint if requested by the complainant.

22 \* Sec. 7. AS 24.55.140 is amended to read:

23 Sec. 24.55.140. NOTICE TO THE AGENCY. If the ombudsman decides  
24 to investigate a complaint, the ombudsman shall notify the agency of  
25 the intention to investigate unless the ombudsman believes that ad-  
26 vance notice will unduly hinder the investigation or make it ineffec-  
27 tual. Notice given under this section may be oral or written, at the  
28 discretion of the ombudsman.

29 \* Sec. 8. AS 24.55.160(a) is amended to read:

- 1 (a) In an investigation, the ombudsman may  
2 (1) make inquiries and obtain information considered neces-  
3 sary;  
4 (2) enter without notice to inspect the premises of an  
5 agency, but only when agency personnel are present; [AND]  
6 (3) hold private hearings; and  
7 (4) notwithstanding other provisions of law, have access at  
8 all times to records of every state agency, including confidential  
9 records, except sealed court records, production of which may only be  
10 compelled by subpoena, and except for records of active criminal  
11 investigations and records that could lead to the identity of confi-  
12 dential police informants.

13 \* Sec. 9. AS 24.55.170(a) is amended to read:

14 (a) Subject to the privileges that [WHICH] witnesses have in the  
15 courts of this state, the ombudsman may compel by subpoena, at a  
16 specified time and place, the

17 (1) [COMPEL BY SUBPOENA, AT A SPECIFIED TIME AND PLACE,  
18 THE] appearance and sworn testimony of a person who the ombudsman  
19 reasonably believes may be able to give information relating to a  
20 matter under investigation; and

21 (2) production by [COMPEL] a person of a record or object  
22 that [, BY SUBPOENA, TO PRODUCE DOCUMENTS, PAPERS, OR OBJECTS WHICH]  
23 the ombudsman reasonably believes may relate to the matter under  
24 investigation.

25 \* Sec. 10. AS 24.55.180 is amended to read:

26 Sec. 24.55.180. CONSULTATION [WITH AGENCY]. Before giving an  
27 opinion or recommendation that [WHICH] is critical of an agency or  
28 person, the ombudsman shall consult with that agency or person. The  
29 ombudsman may make a preliminary opinion or recommendation available

1 to the agency or person for review, but the preliminary opinion or  
2 recommendation is confidential and may not be disclosed to the public  
3 by the agency or person.

4 \* Sec. 11. AS 24.55.190 is amended by adding a new subsection to read:

5 (c) The report provided under (a) of this section is confiden-  
6 tial and may not be disclosed to the public by the agency. The om-  
7 budsman may disclose the report under AS 24.55.200 only after provid-  
8 ing notice that the investigation has been concluded

9 (1) to the agency; and

10 (2) if the investigation was conducted in response to a  
11 complaint, to the complainant under AS 24.55.210.

12 \* Sec. 12. AS 24.55.310 is amended to read:

13 Sec. 24.55.310. CONFLICT OF INTEREST. The ombudsman, the acting  
14 [DEPUTY] ombudsman and their professional staff are subject to AS 39.-  
15 50 (conflict of interest).

16 \* Sec. 13. AS 24.55.320 is amended to read:

17 Sec. 24.55.320. MUNICIPALITIES AND SCHOOL DISTRICTS. A munic-  
18 ipality or school district may [BY ORDINANCE] elect to become subject  
19 to the jurisdiction of the ombudsman appointed under this chapter. If  
20 a municipality or school district so elects, it shall notify the  
21 ombudsman of that election and shall thereafter be considered an  
22 agency for the purposes of this chapter. If a municipality or school  
23 district subjects itself to the jurisdiction of the ombudsman, the  
24 municipality or school district shall pay its pro rata share of the  
25 cost of the operation of the office of the ombudsman based on the  
26 number of complaints or the case load emanating from that municipality  
27 or school district, as prescribed by the ombudsman. If a municipality  
28 or school district elects to remove itself from the jurisdiction of  
29 the ombudsman, it [SHALL DO SO BY ORDINANCE,] shall notify the

1        ombudsman of that election and shall not thereafter be considered an  
2        agency for the purposes of this chapter. A municipality that elects  
3        to become subject to the jurisdiction of the ombudsman or to remove  
4        itself from that jurisdiction must do so by ordinance. A school  
5        district that elects to become subject to the jurisdiction of the  
6        ombudsman or to remove itself from that jurisdiction must do so by  
7        resolution.

8        \* Sec. 14. AS 24.55.330 is amended by adding a new paragraph to read:

9                (4) "record" means a document, paper, memorandum, book,  
10        letter, file, drawing, map, plat, photo, photographic file, motion  
11        picture, film, microfilm, microphotograph, exhibit, magnetic or paper  
12        tape, punched card, or other item developed or received under law or  
13        in connection with the transaction of official business, but does not  
14        include an attorney's work product.



State of Alaska  
**Ombudsman**

Duncan C. Fowler

March 6, 1990

MAR 6 1990

Senator Rick Uehling, Co-Chairman  
Senate Finance Committee  
Post Office Box V  
Juneau, Alaska 99811-3100

RE: CSSB-416(SA)/CSHB-452(SA) am,  
Proposed ombudsman legislation

Dear Senator *Uehling* Uehling:

This bill is scheduled to come before the Senate Finance Committee at its March 8 meeting. I thought it might be useful for you to receive some background on the matter prior to the meeting. You may be interested to know SB-416, was heard by the Senate State Affairs Committee. Because of the similarity of CSSB-416(SA) and CSHB-452(SA)am, the Senate State Affairs passed on hearing the house version and forwarded it to your committee. I would appreciate a positive recommendation by the Senate Finance Committee. There is a zero fiscal note associated with this bill.

I had asked the Legislative Council to introduce this bill as I was seeking the support of a non-partisan body legislative group for this matter. This bill is a product of review and modification by the council, as well as the Court System, Attorney Generals' civil and criminal divisions plus committee work and debate on the House floor. If passed, this bill would significantly improve and strengthen my office's ability to function as an independent investigative agency within the legislative branch of government.

Despite the fact the Alaska Ombudsman Act is considered model legislation, weakness have been identified over the past 15 years. The proposed bill offers solutions to those weakness.

The improvements include: a provision to keep preliminary reports to agencies confidential while the agencies prepare their responses to ombudsman investigations; a provision to ensure the ombudsman's access to confidential records; and general administrative changes such as requiring the appointment of a designee should the ombudsman become incapacitated, formalizing the office's relationship with the Legislative Affairs Agency (LAA) and clarifying how school districts could opt for ombudsman services.

The following is a discussion of each section of the proposed legislation.

Reply to:

- P.O. Box 102636  
Anchorage, AK 99510-2636  
(907) 563-3673  
(800) 478-2624
- P.O. Box W0  
Juneau, AK 99811-3000  
(907) 465-4970  
(800) 478-4970
- P.O. Box 74358  
Fairbanks, AK 99707  
(907) 452-4001  
(800) 478-3257

*file*

**Sec 1-3, 12) Appointment of an acting ombudsman**

These sections require the ombudsman to designate a person to act in his/her place to ensure the orderly continuation of the Office of the Ombudsman should the ombudsman become incapacitated. Current law makes such an appointment permissive. All but one of the previous ombudsmen have chosen to make such an appointment. Not having a designated successor creates the potential of a crisis within the office. In that case, no person would have the statutory authority necessary to issue findings or recommendations as required by the Ombudsman Act should the ombudsman become incapacitated.

**Sec 4) Administrative support - Legislative Affairs Agency**

This section formalizes the relationship the ombudsman has enjoyed with the Legislative Affairs Agency (LAA) for the past 15 years. Current law was really intended to help open the doors of the Office of the Ombudsman in 1975, its first year of operation. It required the Legislative Council to provide the ombudsman "suitable space and equipment." Currently, the LAA provides data processing support both with our main frame applications and some of our equipment. The Legal Division provides occasional advice and opinions.

**Sec 5, 8, 9, & 13) Access to Confidential Information**

These sections clarify the ombudsman's access to confidential records in the possession of state agencies. Currently we rely on regulations to provide agencies with the assurance that their confidential records and information will be properly handled. It would be more appropriate to clarify our access in statute.

Clear access to confidential records is critical for the ombudsman to do a credible job investigating several types of citizen complaints. This issue has also been the source of the majority of Attorney General Opinions involving the ombudsman's office in the past 15 years. In fact, two are pending completion now.

In most cases we are able to receive releases for access to confidential medical, financial or case record data from those citizens who complain about their treatment. Many times while we investigate those complaints we find what appears to be system-wide problems but are prevented from verifying our suspicions. We are unable to access the names or files of other Alaskans in similar situations to test our concerns. I believe that in several of those cases we could have prevented problems for many more citizens other than just our complainants.

It should be noted that just because the ombudsman has greater access to confidential information, it does not allow the ombudsman to release that information to the public or other government agencies. The ombudsman would have no additional privilege to release that information than the agency that is the original custodian of the data. It should be noted also that ombudsman investigative files are confidential and staff are prevented by statute from testifying in court about matters brought before them.

The terminology used in Sec. 8 is similar in concept to Legislative Audit's statute. Section 5 makes it clear the ombudsman may implement regulations to provide the mechanisms to protect the confidentiality of the records we access. Sections 9 and 13 help define what a "record" is for the purposes of these sections.

I have enclosed copies of our existing regulations for handling confidential records and information. These regulations describe in detail how this office handles confidential information. Please note a process exists to mediate disagreements with agencies about the confidentiality of records. A provision allows for the courts to determine whether or not a record is in fact confidential.

The Court System, the Attorney General including his criminal and civil divisions and the Department of Public Safety have no objections to CSHB 452(SA)am. They offered amendments which have been included in this bill. These amendments have strengthened the bill. The court system asked that sealed court records only be accessed by subpoena. Public Safety and the Criminal Division of law asked that *active* police investigations and records identifying confidential police informants be excepted from review. This was to ensure the integrity of evidence in active criminal investigations. The amendment limiting access to the identities of confidential police informants was offered to protect the physical safety of the informants.

#### Sec 6 & 7) Oral Notification

Each year the Office of the Ombudsman receives thousands of complaints and inquiries. We will exceed 11,000 this year. Most are received by telephone and a large number of these complaints are handled as "assists" or are "decline/advise" as premature complaints. We either "fix" the citizen's complaint with the state agency or provide the necessary guidance during that phone call. Citizens often know the disposition of their complaint by the time they hang up the phone. Current law requires written notification of the complaint's disposition to all complainants. Current staffing does not make this practicable. Further, even if given extra staff, I do not believe maintaining such a requirement would provide a better service to Alaskans.

These amendments allow oral or telephonic notification of either the intent to investigate or to decline a complaint. This has been the practice for the past 15 years and would bring our historical practice into compliance with the statute.

#### Sec 10 & 11) Preliminary Report Confidential

The Ombudsman Act makes it clear that records of the ombudsman are confidential and can only be released "insofar as disclosures may be necessary to carry out [the ombudsman's] duties." The problem comes when a preliminary report which is critical of an agency is sent to the agency for review and comment. It is important to understand that there are many parallels between our preliminary investigative report and a preliminary audit report issued by Legislative Audit. That process should allow an orderly procedure for an agency to dispute "facts" found in an ombudsman preliminary report and offer alternative methods of correcting our proposed recommendations.

Currently the preliminary report, once in the agency's hands, becomes subject to media access through the public information regulations (6 AAC 95). In the past, some agencies have felt compelled to release our preliminary report even though it contained areas of potential factual disagreement.

This legislation prohibits the release of the preliminary report to the public by any of the participants. It offers protection to the agencies during the period of comment and review. This is similar to the handling of Legislative Audit reports.

### Sec. 13) Municipalities and School Districts

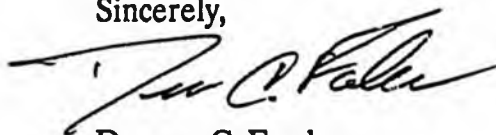
This section provides a mechanism for a school board to choose ombudsman services *independently* from the local governments' assembly or city council.

Recently, the City and Borough of Juneau School Board became the first school board to consider ombudsman services. When we considered the procedures necessary to implement such jurisdiction, it became apparent that no simple or independent method was provided to allow school boards the ability to make that decision. This is despite the fact the Alaska Ombudsman Act seems to envision such services for schools. This amendment to the Ombudsman Act allows school boards to choose or terminate jurisdiction by the Office of the Ombudsman by resolution independently from decisions made by another elected body. Neither the Alaska Council of School Administrators nor the Association of Alaska School Boards found objection to this provision.

Please let me know if you have any questions regarding the Office of the Ombudsman or this proposed legislation. As I have mentioned, the Attorney General and the Court System have reviewed the bill. They do not object to its approach.

I will be calling your office before the meeting in case you have questions about this bill. I am anxious to work with you and the committee to assist the passage of this bill. I would appreciate your support of what I believe to be important improvements to Alaska's Ombudsman Act.

Sincerely,



Duncan C. Fowler  
Ombudsman

DCF:pjc  
Enclosure

agency, the agency has initiated corrective action or commits itself to take corrective action substantially as recommended.

(b) If an agency does not initiate corrective action or does not commit itself to take corrective action substantially as presented in the ombudsman's recommendation or modified recommendation, the ombudsman will, in his or her discretion, after considering any response received from the agency, submit a report of the matter to the chief executive officer of the agency or to the governor, and then make a report to the legislature, to the press, or to the public, as the ombudsman considers appropriate.

(c) The provisions of (b) of this section do not limit the ombudsman from making a report on any investigation to the legislature, the press, or the public, as the ombudsman considers appropriate. (Eff. 9/16/84, Reg. 91; am 3/28/86, Reg. 97)

Authority: AS 24.55.090  
AS 24.55.200

**21 AAC 20.250. COMPLAINANT TO BE INFORMED.** Within 15 days after receipt of an agency's acceptance or rejection of an ombudsman's recommendation or modified recommendation, the ombudsman will notify the complainant of the result of the investigation and of the action taken or proposed to be taken by the agency. (Eff. 9/16/84, Reg. 91)

Authority: AS 24.55.090

**ARTICLE 4.  
CONFIDENTIAL INFORMATION**

**Section**

- 300. Disclosure of confidential information
- 310. Disclosure with written consent
- 320. Disclosure of information from public sources
- 330. Disclosure as statistical information
- 340. Disclosure to agency
- 350. Assertion of privacy interest by agency
- 360. Disclosure to the complainant
- 370. Disclosure to governor, legislature, or grand jury
- 380. Public disclosure
- 390. Definitions

**21 AAC 20.300. DISCLOSURE OF CONFIDENTIAL INFORMATION.** A confidential record provided by an agency or a person to the office of the ombudsman during the course of an ombudsman's investigation may not be disclosed by the office of the ombudsman except as provided in 21 AAC 20.310 – 21 AAC 20.390. (Eff. 9/16/84, Reg. 91)

Authority: AS 24.55.090  
AS 24.55.160

Art. I, sec. 22, Alaska Constitution

**21 AAC 20.310. DISCLOSURE WITH WRITTEN CONSENT.** The ombudsman will, in his discretion, disclose a confidential record if the ombudsman first obtains the written consent of the person about whom information in the confidential record relates. (Eff. 9/16/84, Reg. 91)

Authority: AS 24.55.090  
AS 24.55.160

Art. I, sec. 22, Alaska Constitution

**21 AAC 20.320. DISCLOSURE OF INFORMATION FROM PUBLIC SOURCES.** The ombudsman will, in his discretion, disclose a confidential record if the information contained in the record is reasonably obtainable from other public sources without the consent of the person about whom the information relates. (Eff. 9/16/84, Reg. 91)

Authority: AS 24.55.090  
AS 24.55.160

Art. I, sec. 22, Alaska Constitution

**21 AAC 20.330. DISCLOSURE AS STATISTICAL INFORMATION.** The ombudsman will, in his discretion, disclose information contained in a confidential record as a statistical report if the person about whom the information relates is not identifiable in the statistical report. (Eff. 9/16/84, Reg. 91)

Authority: AS 24.55.090  
AS 24.55.160

Art. I, sec. 22, Alaska Constitution

**21 AAC 20.340. DISCLOSURE TO AGENCY.** Except as provided in 21 AAC 20.350, the ombudsman will, in his discretion, disclose to an agency a confidential record produced by the agency or a confidential record used by the agency in the conduct of its business in order to enable the ombudsman to present a finding,

opinion, or recommendation made to the agency. (Eff. 9/16/84, Reg. 91)

Authority: AS 24.55.090

AS 24.55.160

Art. I, sec. 22, Alaska Constitution

**21 AAC 20.350. ASSERTION OF PRIVACY INTEREST BY AGENCY.** If the ombudsman receives written notice from an agency which has provided a confidential record that it asserts a privacy interest in the record, the ombudsman

(1) will, in his discretion, disclose the record only to the person or persons within the agency having custody of the record; and

(2) will, in his discretion, make any other disclosure of the record only in accordance with 21 AAC 20.380. (Eff. 9/16/84, Reg. 91)

Authority: AS 24.55.090

AS 24.55.160

Art. I, sec. 22, Alaska Constitution

**21 AAC 20.360. DISCLOSURE TO THE COMPLAINANT.** The ombudsman may not disclose information in a record to the complainant if federal or state law or regulation prohibits disclosure of the record to the complainant. (Eff. 9/16/84, Reg. 91)

Authority: AS 24.55.090

AS 24.55.160

Art. I, sec. 22, Alaska Constitution

**21 AAC 20.370. DISCLOSURE TO GOVERNOR, LEGISLATURE, OR GRAND JURY.** If the ombudsman determines that a confidential record produced by an agency should be disclosed under AS 24.55.200 to the governor, the legislature, or a grand jury in order for the ombudsman to seek review of a finding, opinion or recommendation, the ombudsman will, in his discretion, return the record to the agency that produced it and recommend its disclosure by the agency to the governor, the legislature, or the grand jury, as applicable. (Eff. 9/16/84, Reg. 91)

Authority: AS 24.55.090

AS 24.55.160

Art. I, sec. 22, Alaska Constitution

**21 AAC 20.380. PUBLIC DISCLOSURE.** (a) The provisions of this section apply to

(1) disclosure of a confidential record to a person within an agency other than the person having custody of a confidential record if that record has been provided to the ombudsman by the agency and the agency has asserted a privacy interest under 21 AAC 20.350; and

(2) public disclosure under AS 24.55.200 of a confidential record produced by an agency.

(b) Before disclosing a confidential record, the ombudsman will give written notice to the agency having custody of the record and to the person about whom information in the record

relates that the ombudsman intends to disclose the record at the expiration of a 15-day period. The period during which the agency or a person may object can be extended by the ombudsman at the request of the agency or person. In providing notice, the ombudsman will indicate the basis of the decision to disclose the record.

(c) The agency or person to whom notice is given under (b) of this section may object to disclosure of the record by filing with the ombudsman a written objection to the disclosure. The objection filed by the agency or person must identify the portion of the record that the agency or person believes should remain confidential and must state the reasons for the objections to disclosure.

(d) If objection to disclosure has not been filed with the ombudsman in accordance with (c) of this section at the end of 15 days from the date of notice, or of any extension of that period approved by the ombudsman, the ombudsman will, in his discretion, disclose the confidential record.

(e) If objection to disclosure is filed with the ombudsman in accordance with (c) of this section and if, despite the objection, the ombudsman believes that disclosure of the record is essential to obtain agency acceptance of a finding and implementation of a recommendation in order to correct an action, decision or omission of the agency that was detrimental to the complainant, the ombudsman will give written notice to the agency or to the person or persons making objection under (c) of this section that he intends to disclose the record. In his notice, the ombudsman will

(1) briefly state the reason or reasons for his decision to disclose;

(2) indicate the date on which the ombudsman expects to make public disclosure of the record, not sooner than 15 days from the date of his notice; and

(3) state that the date may be extended only by mutual agreement between the agency or person and the ombudsman.

(f) At any time before expiration of the date on which the ombudsman indicates that he will dis-

close the document to the public, an agency or a person to whom notice is required to be sent under (e) of this section may apply to the superior court for an order preventing the ombudsman from disclosing the record. In making a determination as to whether the ombudsman may disclose the record

(1) if the record contains both disclosable and confidential information and the confidential information cited by the agency or person objecting to disclosure of the record may be reasonably separated from confidential portions in a manner that will allow meaningful information to be disclosed, the court may determine that the confidential information identified under the authority cited by the agency or person objecting to disclosure of the information or record must be deleted and thereafter may allow the ombudsman to release the disclosable information;

(2) if the record is wholly confidential, or if the record contains both disclosable and confidential information and the confidential information cited by the agency or person objecting to disclosure of the record cannot be reasonably separated from confidential portions in a manner that will allow meaningful information to be disclosed, the court may allow the ombudsman to disclose the record if the court determines that the need for disclosure outweighs the nature and weight of the privacy interest asserted by the agency or person. (Eff. 9/16/84, Reg. 91)

Authority: AS 24.55.090  
AS 24.55.160

Art. I, sec. 22, Alaska Constitution

**21 AAC 20.390. DEFINITIONS.** In 21 AAC 20.300 — 21 AAC 20.390

(1) "confidential" means a record or information in a record that is nondisclosable under a valid federal or Alaska statute or regulation, or by a privilege, exemption, or principle recognized by the courts, or by an agency protective order authorized by law;

(2) "person" has the same meaning as in AS 01.10.060(7);

(3) "record" means a document, paper, memorandum, book, letter, drawing, map, plat, photo, photographic file, motion picture, film,

microfilm, microphotograph, exhibit, magnetic or paper tape, punched card, or other item of any other material, regardless of physical form or characteristic, developed or received under law or in connection with the transaction of official business by an agency or person, and preserved as evidence of the organization, function, policies, decisions, procedures, operations, or other activities of the agency or person or because of the informational value in them; the term also includes staff manuals and instructions to staff that directly or indirectly affect the public. (Eff. 9/16/84, Reg. 91)

Authority: AS 24.55.090

AS 24.55.160

Art. I, sec. 22, Alaska Constitution