*SCS for CS HB 405,An Act relating to requests for information by public agencies, and relating to the copyrighting of software produced by or for public agencies. This bill is scheduled for final action. The new CS incorporates the Bureau of Vital Statistics, Department of Law, University of Alaska and Alaska Railroad amendments. Section 10, relating to access to crime information on candidates has been changed to require the Department of Public Safety to provide a copy of the conviction record to the candidate 14 days prior to releasing the information to the requestor, allowing the candidate time to correct inaccuracies. The CS also eliminates the word subcommittee from the definition of public agency (Sec. 9) and allows a person to seek injunctive relief without exhausting other remedies established by a public agency. (Sec. 7)

John McKay & Terry Fleischer

Hoping to talk to you re CS for SB 405 yet tonite -- like before 5:00 pm. Any possibility?

(1)

(They're waiting for me to call them back)

276-3390 (W)
274-3154 (H)

HB 405

MONDAY NIGHT:

"NOT A GOOD BILL"

WHILE YOU WERE OUT

Susie
Larry Houle
ARR

4/30 1:30
265-2502

MESSAGE

re HB 405

D

URGENT ☐ RETURNED CALL ☐ CALL BACK ☐ WILL CALL AGAIN ☐ PHONED ☐ WANTS TO SEE YOU ☐ WAS IN ☐

AMPAD NO. 23-176—400 SETS NO. 23-376—200 SETS

"Another State Agency", 1985 Act similarity."

Sec. 2/3 = fees must be reasonable. Why include R.R. in more bureaucracy

Sec. 4 = leasing, switching, passenger
line 13, page 5 deposited in Gen. Fund.

Sec. 5 =

Sec. 6 = TLC to supervise
more regulation of R.R.

Sec. 16 = R.R. written notice

Dept. of the Railroad or A RR. Corporation:

PHONE MEMO

TO Jessie
DATE 4/17
TIME 11:20 AM PM
FROM Greg Van Goren
OF Fairbanks
AREA CODE
NO. 452-4761
EXT. ext 412.

MESSAGE
- FBX interested in Sec. 14 — supports this strongly. (Legislator voting records)

SIGNED

PHONED ☒ CALL BACK ☒ RETURNED CALL ☐ WANTS TO SEE YOU ☐ WILL CALL AGAIN ☐ WAS IN ☐ URGENT ☐

The Alaska Wildlife Alliance

Valerie Brown
Executive Director

P.O. Box 202022, Anchorage, AK 99520 (907) 277-0897

LAW OFFICES OF

GUESS & RUDD

A PROFESSIONAL CORPORATION

[illegible]

TELECOPY COVER SHEET

TO: [illegible]

[illegible] Alaska State Legislature

TELEPHONE NO.: [illegible]

TELECOPY NO.: [illegible]

FROM: [illegible], Esq.

DATE: [illegible] TIME: [illegible]

NUMBER OF PAGES: [illegible]

[illegible]

SENATE COMMITTEE REPORT

DATE: 3/30/90 FURTHER: ~~Finance~~ Judiciary

DATE TURNED INTO OFFICE: ____________

State Affairs Committee considered CSHB 405 (Fin) am

Requests for information by public agencies; relating to the copyrighting of software produced by or for public agencies.

and recommended:

[ ] replace with S CS CS HB 405 (STA) [ ] same title
[ ] or adopt ______ CS ______ [ ] new title
[ ] technical title change (HB only)

[ ] attached amendment(s)
[ ] ____________ letter of intent adopted

[ ] do pass

[ ] do not pass

[ ] no recommendation

[X] 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) ____________

[ ] Governor's bill w/fiscal note

SIGNING DO PASS:

Jan Faiks

OTHER RECOMMENDATIONS:

Al Adams

Pat Pourchot do pass

Chair: Signature and Recommendation

AMENDMENT # 1 Adopted Incorporated in new CS.

OFFERED IN THE SENATE

TO: SCS CSHB 405 (State Affairs) (draft 6-1782G, dated 4/12/90)

Page 3, lines 14 - 15:

Delete "an amount that does not exceed the cost of performing the record searches"

Insert "agency expenses on the same basis that is used by the agency immediately before the effective date of this Act"

Page 15, line 3:

Delete "or"

Page 15, line 5, following "law":

Insert new material to read:

"; or

(5) the information is not subject to inspection and copying under AS 09.25.110 - 09.25.120, even if the information is eventually subject to inspection and copying under AS 18.50.310(f)."

DEPARTMENT OF LAW

PROPOSED AMENDMENTS TO SCS CSHB 405 (S.A.)

Amendment #2 Adopted Incorporated in New CS

Page 1, line 12:

Delete "(a)"

Page 2, lines 7 - 9:

Delete all material

Page 8, lines 17 - 23:

Delete all material (section 8)

PAT_ handwritten comments are not on committee copies.

TO: Senator Pat Pourchot

FROM: Representative Kay Brown

DATE: April 7, 1990

SUBJECT: CS HB 405 (Fin) am, Public access to information

As we discussed, below is a list of suggested changes to CS HB 405 (Fin) am.

Section 4

• Page 3, line 25 after "feasible." insert: "However, the discretionary activities authorized by this chapter shall not take precedence over a public agency's primary responsibilities." Suggested by Roger Slothower, US Fish and Wildlife Service.

• Page 5, lines 2-3, delete "not reasonable," insert "unreasonably high," Suggested by John McKay, attorney representing Anch. Daily News and other "freedom of information" clients

Section 5

• Page 5, line 26, after "privacy" insert "of suspect, defendant, victim or witness" Suggested by McKay – OK with Dept. of Law.

Page 5, line 27, after "disclose" insert "confidential" – Sara

Section 7

• Page 7, line 19, after "who" insert "denies,"; Page 7, line 21, after "in" insert "denying" McKay – OK with Dept. of Law.

• Make the new provision affording injunctive relief without exhausting administrative remedies also applicable to municipalities. **(Note: Pat, we did not discuss this proposal, but I support it. If you need more information, please let me know.)**

Section 9

• page 8, line 15, delete "or"
Suggested by D.N.R.

Page 8, line 16, after "base" insert "or duplicating an electronic file or data base from a geographic information system"

- Page 8, line 28, delete "providing" and insert "generating". Suggested by Kimball Forrest, URISA member.
- Page 9, line 25, make clear that definition of public agency includes school boards and other local bodies.

Section 12

- Delete Section 12. Address issue in SB 516. (Fish and Game)

Section 17

- Page 13, line 26, delete "an oral or" Suggested by Rep. Gruenberg

New Section

- Add a provision relating to public records involved in litigation. See attached amendment drafted by Bannister. Suggested by Juneau attorney David George, OK with Dept of Law/Jeff Bush.

Thank you for your consideration.

6-1782Ma
Bannister

A M E N D M E N T

OFFERED IN THE SENATE

TO: CSHB 405 (Finance) am

Page 2, line 17, following "request":

Insert ", satisfaction of the requestor's disclosure obligation under AS 09.25.122(b),"

Page 6, following line 22:

Insert a new section to read:

"Sec. 09.25.122. LITIGATION DISCLOSURE. (a) A public record that is subject to disclosure and copying under AS 09.25.110 - 09.-25.120 remains a public record subject to disclosure and copying even if the record is used for, included in, or relevant to litigation, including law enforcement proceedings, involving a public agency.

(b) To obtain a public record from a state agency, a person shall disclose to the state agency whether the person is involved in litigation with a state agency. If the person discloses that the person is involved in litigation with a state agency, the state agency shall, after releasing the public record, notify the Department of Law that the request was made.

(c) In (b) of this section,

(1) "involved in litigation" means a party to litigation or representing a party to litigation, including obtaining public records for the party;

(2) "state agency" means a public agency, but does not include a municipality or an administrative unit of a municipality."

AMENDMENT #3 revised version

Adopted incorporated

OFFERED IN THE SENATE

TO: SCS CSHB 405 (State Affairs)(dated 4/12/90, 6-1782G)

Page 3, following line 15:

Insert a new subsection to read:

"(f) Notwithstanding other provisions of this section to the contrary, the Board of Regents of the University of Alaska may establish reasonable fees for the inspection and copying of public records, including record searches."

Reletter the following subsections accordingly.

Page 5, line 7:

Delete ", the University of Alaska,"

Page 5, line 8, following "Corporation,":

Insert "but not including the University of Alaska,"

Page 5, line 26, following "(5)":

Insert "to the extent the records are required to be kept confidential under 20 U.S.C. 1232g and the regulations adopted under 20 U.S.C. 1232g in order to secure or retain federal assistance; (6)"

Page 7, line 14:

Delete ", the University of Alaska,"

Page 7, following line 21:

Insert a new subsection to read:

"(d) The Board of Regents of the University of Alaska shall supervise and adopt procedures for the operation and implementation of AS 09.25.110 - 09.25.140 by the University of Alaska."

Reletter the following subsections accordingly.

Page 15, line 3:

Delete "or"

Page 15, line 5, following "law":

Insert "; or

(5) the information is not subject to inspection and copying under AS 09.25.110 - 09.25.120"

6-1782Gf
Bannister

Alaska Railroad Corporation

A M E N D M E N T #4 Adopted (A) CS

OFFERED IN THE SENATE

TO: SCS CSHB 405 (State Affairs) (dated 4/12/90, 6-1782G)

Page 3, following line 15:

Insert a new subsection to read:

"(f) Notwithstanding other provisions of this section to the contrary, the board of directors of the Alaska Railroad Corporation may establish reasonable fees for the inspection and copying of public records, including record searches."

Reletter the following subsections accordingly.

Page 5, line 7:

Following "Authority" delete ","

Insert "and"

Following "Alaska," delete "and"

Insert "but not including"

Page 5, line 13, following "municipality":

Insert "or the Alaska Railroad Corporation"

Page 7, line 14:

Following "Authority" delete ","

Insert "and"

4/24/90

AKK.

Following "Alaska," delete "and"

Insert "but not including"

Page 13, line 26, following "information":

Insert "that may be included in a public record"

Page 16, line 29, following "Alaska":

Delete ","

Insert "and"

Page 17, line 1:

Delete "and"

Insert "but not including"

AMENDMENT

#5 Amendment FAILED

OFFERED IN THE SENATE

TO: SCS CSHB 405 (State Affairs)(6-1782G, 4-12-90)

Page 3, line 27, following "may":

Insert ", at the agency's discretion,"

Page 8, line 17:

Delete "a new section"

Insert "new sections"

Page 8, following line 23:

Insert a new section to read:

"Sec. 09.25.217. EXCLUSION. AS 09.25.110 - 09.25.122 and 09.25.124 - 09.25.125 do not apply to a municipality if the municipality has adopted an ordinance governing public records and if the ordinance contains provisions that are substantially similar to those provisions of AS 09.25.110 - 09.25.122 and 09.25.124 - 09.25.125 that apply to municipalities."

AMENDMENT

#6 Amendment Failed

OFFERED IN THE SENATE

TO: SCS CSHB 405(State Affairs) (6-1782G, 4/12/90)

Page 12, following line 9:

Insert new bill sections to read:

"* Sec. 14. AS 29.10.200 is amended by adding a new paragraph to read:

(51) AS 29.20.650 (personnel records).

* Sec. 15. AS 29.20 is amended by adding a new section to read:

Sec. 29.20.650. PERSONNEL RECORDS. (a) The personnel records of a municipality, including employment applications and examination materials, are confidential and are not open to public inspection except as provided in this section.

(b) The following information about the employees of a municipality is available for public inspection, subject to reasonable requirements on the time and manner of inspection:

(1) the names and position titles of all employees of the municipality;

(2) the position held by an employee;

(3) prior positions held by an employee;

(4) the dates of appointment and separation of an employee; and

(5) ~~the~~ all compensation ~~authorized for~~ + benefits accrued by or paid to an employee.

(c) An employee of a municipality has the right to examine the employee's own personnel files and may authorize others to examine

those files.

(d) This section applies to home rule and general law municipalities."

Renumber the following bill sections accordingly.

Page 17, line 12:

Delete "sec. 16"

Insert "sec. 18"

Amendment # 1 By Adams

Incorporated in CS

HB 405

Page 10, line 16:

Delete the word subcommittee

Amendment # 2 By Adams

HB 405

Page 18, lines 14 - 16:

Delete the sentence beginning with "The person may seek injunctive relief under .....established by a public agency."

Portion incorporated in CS.

Now reads in CS:

. under Enforcement: Injunctive Relief

A person may seek injunctive relief under this section without exhausting the person's remedies under AS.09.25.123 - 09.25.124 [or other remedies established by a public agency.

Department of Public Safety

6-1782Gh
Bradley/
Bannister

AMENDMENT #7 NOT INCORPORATED

OFFERED IN THE HOUSE BY REP. ULMER

TO: SCS CSHB 405 (State Affairs)(drafted 4/12/90, 6-1782G)

Page 11, line 16, after "record.":

Insert "A person may not bring an action for damages based on the release of incorrect information under this section, unless the action is for damages caused by intentional conduct."

Page 11, after line 23:

Insert new bill sections to read:

"* Sec. 12. AS 15.25.030(a) is amended to read:

(a) A member of a political party who seeks to become a candidate of the party in the primary election shall execute and file a declaration of candidacy. The declaration shall be executed under oath before an officer authorized to take acknowledgments and shall state in substance:

(1) the full name of the candidate;

(2) the full mailing address of the candidate;

(3) if the candidacy is for the office of state senator or state representative, the election or senate district of which the candidate is a resident;

(4) the office for which the candidate seeks nomination;

(5) the name of the political party of which the person is a candidate for nomination;

(6) the full residence address of the candidate, and the date on which residency at that address began;

(7) the date of the primary election at which the candidate seeks nomination;

(8) the length of residency in the state and in the district of the candidate;

(9) that the candidate will meet the specific citizenship requirements of the office for which the person is a candidate;

(10) that the candidate is a qualified voter as required by law;

(11) that the candidate will meet the specific age requirements of the office for which the person is a candidate;

(12) that the candidate requests that the candidate's name be placed on the primary election ballot;

(13) that the required fee accompanies the declaration;

(14) that the person is not a candidate for any other office to be voted on at the primary or general election and that the person is not a candidate for this office under any other declaration of candidacy or nominating petition;

(15) the manner in which the candidate wishes the candidate's name to appear on the ballot; [AND]

(16) that the candidate is registered to vote as a member of the political party whose nomination is being sought; and

(17) the date of birth of the candidate.

* Sec. 13. AS 15.25.030 is amended by adding a new subsection to read:

(d) In addition to the information required under (a) of this

section for the declaration of candidacy, the director shall request the social security number of the candidate.

* Sec. 14. AS 15.25.180(a) is amended to read:

(a) The petition shall state in substance

(1) the full name of the candidate;

(2) the full residence address of the candidate, and the date on which residency at that address began;

(3) the full mailing address of the candidate;

(4) the name of the political group supporting the candidate;

(5) if the candidacy is for the office of state senator or state representative, the election or senate district of which the candidate is a resident·

(6) the office for which the candidate is nominated;

(7) the date of the election at which the candidate seeks election;

(8) the length of residency in the state and in the district of the candidate;

(9) that the subscribers are qualified voters of the state or election or senate district in which the candidate resides;

(10) that the subscribers request that the candidate's name be placed on the ballot;

(11) that the proposed candidate accepts the nomination and will serve if elected, with the statement signed by the proposed candidate;

(12) if the candidacy is for the office of the governor, the

name of the candidate for lieutenant governor running jointly with the candidate for governor;

(13) the name of the candidate as the candidate wishes it to appear on the ballot; [AND]

(14) that the candidate is not a candidate for any other office to be voted on at the primary or general election and that the candidate is not a candidate for this office under any other nominating petition or declaration of candidacy; and

(15) the date of birth of the candidate.

* Sec. 15. AS 15.25.180 is amended by adding a new subsection to read:

(d) In addition to the information required under (a) of this section for the petition, the director shall request the social security number of the candidate."

Renumber the remaining sections accordingly.

Page 17, line 12:

Delete "sec. 16"

Insert "sec. 20"

April 1, 1990
Rep. Kay Brown

Directory of Fiscal Notes on CS HB 405 (Finance) am

		COSTS	RECEIPTS
GENERAL FUNDS:			
2/15/90	DOE/State Library	$35,000	0
PROGRAM RECEIPTS:			
1/19/90	DOA/Information Ser.	$ 0	$ 0
1/19/90	DPS/Admin. Services	0	0
2/21/90	DNR/Information Res. Mgmt.	10,000	10,000
2/22/90	ADF&G/Off. of Commissioner	24,500	24.500
3/6/90	DOR/Child Support Enforcement	0	10,000
3/6/90	DOA/Div. of Finance	0	0
3/16/90	DOT/ Information Services	10,000	10,000
		$79,500	$54,500
	NET COSTS:	$25,000	

STATE OF ALASKA
1990 LEGISLATIVE SESSION

BILL VERSION : CSHB 405
PUBLISH DATE : 2/7/90

FISCAL NOTE

REQUEST:

Revision Date:
Title : Public access to the information of the state
Sponsor : Representative Brown
Requestor :

Agency Affected : Division of State Libraries
BRU : State Library
Components : Library Operations

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL	35.0					
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	35.0					

CAPITAL						

REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND	35.0					
FEDERAL FUNDS						
OTHER						
TOTAL	35.0					

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary) The intent of HB405 is to make government information available to the public. The bill requires public agencies to notify the State Library Distribution Center of electronic services and products offered. For the State Library to make that information available to the public it must be organized and made accessible. A contract employee will set up a uniform reporting format and then catalog/arrange information for entry.

Prepared by : Karen R. Crane
Division : State Library and Archives
Phone : 465-2910
Date : 2/15/90

Approved by Commissioner : Steve Hole
Agency : Department of Education
Date : 2/15/90

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

STATE OF ALASKA

DEPARTMENT OF EDUCATION

OFFICE OF THE COMMISSIONER

STEVE COWPER, GOVERNOR

GOLDBELT PLACE
801 WEST 10TH STREET
P.O. BOX F
JUNEAU, ALASKA 99811-0500

FEB 15 1990

February 15, 1990

The Honorable Kay Brown
Alaska State House of Representatives
P.O. Box V
Juneau, AK 99811

Dear Representative Brown:

Attached is the proposed fiscal note for CSHB405. I believe it conforms to the discussion and agreement you had with Karen Crane. I have also attached for your information a copy of the increment request submitted by the State Library and Archives. If you have questions or concerns, please contact me or Karen.

While the fiscal note indicates a one time cost, we want to be clear about our intent. The reason the State Library originally submitted an increment for a contract employee is that there is no reasonable way to determine the amount of work this will generate. It was felt that a contractual approach would allow us to evaluate the response and document the need for staff. The library believes that staff will be necessary if the information is to be kept current and made available to the public. In addition, the volume of electronic products and services will continue to grow. However, the contractual amount proposed in the fiscal note is a reasonable approach to determining the next step.

Sincerely,

William G. Demmert
Commissioner

by: Karen R. Crane
Director
State Library and Archives

Enclosure

05-E1LH

INCREMENT/DECREMENT DESCRIPTION (Limit to 98 Characters)
Inventory of State Databases

AGENCY CONTACT/PHONE NUMBER:
Mary Hakala - 2800

DESCRIBE WHY THIS INCREMENT/DECREMENT IS NEEDED AND WHAT IT PURCHASES:

In addition to being an information consumer, the State produces vast amounts of information. Today much of that information is in an electronic format, housed on the State's mainframe computer or on personal computers scattered throughout State government. As a result, the information is not widely accessible. Much of it is managed on databases available only to those working with them.

A great deal of state information is collected and maintained in this format. Educational statistics, corporate data, natural resources information and more reside in departmental computers. There is no directory to or inventory of these information resources. As a result neither the public nor other state agencies have access to it. It is assumed that there is duplication of effort among state agencies in the collection of information and the types of statistics collected.

The Public Access Subcommittee of the Telecommunications Information Council (AS 44.19.502) has begun the process of identifying state databases. Once the information is collected, it will have to be organized and indexed by subject. In order for the information to be current, updated regularly, and accessible, it will have to be maintained online.

Some time will have to be devoted to organizing and indexing the information, for example, developing subject access. The State Library proposes to contract with a cataloger/librarian for initial development of the inventory. The information collected will not be of value unless it can be analyzed and is made available across state government.

CODE	EXPENDITURE BY OBJECT	AGENCY REQ.	GOV'S REQ.
100	Personal Services		
200	Travel		
300	Contractual Services	35.0	
400	Supplies		
500	Equipment		
600	Lands, Buildings, Etc.		
700	Grants, Claims, Etc.		
800	Miscellaneous		
	TOTAL	35.0	
	I-A Transfer (NON-ADD)		
1002	Federal Receipts		
1003	General Fund Match		
1004	General Fund	35.0	
1005	Program Receipts/GF		
1007	I-A Receipts		
	Other		
POSITION INFORMATION	PFT		
	PPT		
	Non Permanent		
	Staff Months		

[X] Enhance Existing Service Compared to FY 90

[ ] New Service Compared to FY 90

[ ] Continuation of FY 90 Service Level

[ ] Formula Program

IMPACT FROM CAPITAL PROJECT (NAME)

Chapter _____ SLA _____ Page/Line _____

C5 INCREMENT/DECREMENT REQUEST

AGENCY PRIORITY 5 OF _

AGENCY Department of Education

BRU Alaska State Library

COMPONENT Library Operations

PROJECT Inventory of State Databases

Page ____ of ____

Revised _____

FY - 91

STATE OF ALASKA
1990 LEGISLATIVE SESSION

BILL VERSION : CSHB 405 (SA)
PUBLISH DATE : _____

FISCAL NOTE

REQUEST:

Revision Date: 02/21/90
Title : Public Access to EPD Information

Agency Affected : Administration
BRU : Information Services

Sponsor : Rep. Brown
Requestor : Finance Committee

Components : _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL	0	0	0	0	0	0
REVENUE	0	0	0	0	0	0

FUNDING: (Thousands of Dollars)

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

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

ANALYSIS : (Attach a separate page if necessary)

See attached.

Prepared by : Paul Monette, Director
Division : Information Services

Phone : 465-2220
Date : February 21, 1990

Approved by Commissioner : Frank S. Baxter
Agency : Administration

Date : 2/27/90

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

Department of Administration
Division of Information Services

CSHB 405 (SA) - - FISCAL NOTE

An Act Relating to Public Access to the Information of the State

No fiscal impact is predicted in FY90 and beyond. The Division provides computing and telecommunication services for state agencies. Although the Division provides a security software package for applications that runs on the Division's mainframe computers, it is the responsibility of each agency, as custodians of their data, to set their own security parameters and authorize access. The Division does not allow access to other departments/agencies data.

There is no way to predict the impact of this bill on this Division's computer or telecommunication services. Some agencies may encourage electronic access to data on the Division's mainframes while other agencies may not. Current policies dictate that agencies are responsible for paying all charges associated with the use of the Division's services. It is assumed that agencies would pay for any services incurred as a result of this bill.

STATE OF ALASKA
1990 LEGISLATIVE SESSION

BILL VERSION: HB 405
PUBLISH DATE:

FISCAL NOTE

REQUEST:

Revision Date: 01/08/90
Title: An Act Relating to Public Access to the Information of the State
Sponsor: Rep. Brown, Boucher, Goll
Requestor: State Affairs

Agency Affected: Public Safety
BRU: DS Administration
Component: Administrative Services

EXPENDITURES/REVENUES: (Thousands of Dollars) (Inflation not included)

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

FUNDING: (Thousands of Dollars)

GENERAL FUND	0	0	0	0	0	0
FEDERAL FUNDS						
OTHER/PROG RCPT						
TOTAL	0	0	0	0	0	0

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

ANALYSIS: (Attach a separate pag. if necessary)
The Department has been able to accommodate requests for information to date. This bill provides for collection of fees for services. The Department cannot reasonably estimate what the additional number of requests associated with this bill will be. Accordingly, we have indicated a zero fiscal note with the assumption the Department may request through the budget process, to receive and expend funds generated by these services to provide these services.

JNR 1/19/90

Prepared by: KEB Ken Bischoff
Phone: 465-4336
Division: Administrative Services
Date: 01/19/90

Approved by Commissioner: Arthur English
Date: 1-19-90
Agency: Department of Public Safety

STATE OF ALASKA
1990 LEGISLATIVE SESSION

BILL VERSION : HB 405
PUBLISH DATE :

FISCAL NOTE

REQUEST:

Revision Date: 21-Feb-90
Agency Affected: Natural Resources
Title: An Act relating to Public Access & changes to information
BRU: Management & Administration
Sponsor: Brown, Boucher, Goll
Components: Information Resource Management
Requestor: Brown

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL	10.0	10.0	10.0	10.0	10.0	10.0
SUPPLIES						
EQUIPMENT						
LAND&STRUCTURES						
GRANTS,CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	10.0	10.0	10.0	10.0	10.0	10.0
CAPITAL						
REVENUE	10.0	10.0	10.0	10.0	10.0	10.0

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER/Program Rcpts	10.0	10.0	10.0	10.0	10.0	10.0
TOTAL	10.0	10.0	10.0	10.0	10.0	10.0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

See Attached

Prepared by: Dianne M. Lyles
Phone : 762-2384
Division: Management and Administration
Date : 21-Feb-90

Approved by Commissioner: Lennie Gorsuch
Date: 21-Feb-90
Agency: Department of Natural Resources

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

The Information Resources Management component, Department of Natural Resources, is requesting the authority to receive program receipts generated from the implementation of HB405. Under this bill, the Department has the responsibility to make information records available to the public, and for this the Department can collect fees. Additionally under this bill, the Department has the opportunity to create new information products and services. For this the Department can also collect fees.

The Information Resources Management (IRM) component, which manages and maintains many of the Department's land records, must be positioned to respond to public requests for information. Authority to receive these program receipts will allow the Department's IRM component to defray the incremental costs of serving the public's requests for land records information.

The requested amount, $10.0, is the component manager's best estimate of revenue generation, without the benefit of any historic data for purposes of forecasting. Because fees will be charged based on covering incremental costs, and on recouping a reasonable portion of the costs associated with building and maintaining this information, agency costs are expected to match revenues generated.

STATE OF ALASKA
1990 LEGISLATIVE SESSION

BILL VERSION: HB405
PUBLISH DATE:

FISCAL NOTE

REQUEST:

Revision Date: 02/07/90
Title: An act relating to public access and changes . . .
Sponsor: Representative Brown
Requestor:

Agency Affected: Fish and Game
BRU: ALL
Components: Office of the Commissioner

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES	18.0	18.0	18.0	18.0	18.0	18.0
TRAVEL						
CONTRACTUAL	5.0	5.0	5.0	5.0	5.0	5.0
SUPPLIES	1.5	1.5	1.5	1.5	1.5	1.5
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	24.5	24.5	24.5	24.5	24.5	24.5

CAPITAL						

REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER Program Receipts	24.5	24.5	24.5	24.5	24.5	24.5
TOTAL						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

No FY 90 impact.
To reprogram and format information to respond to inquiries including chargeback and supplies cost.

Prepared by: Beverly Reaume
Division: Administration
Phone: 465-4120
Date: 02/22/90

Approved by Commissioner: Wallace Whitley
Agency: Fish and Game
Date: 02/22/90

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

STATE OF ALASKA

OFFICE OF THE GOVERNOR

BILL ANALYSIS

DEPARTMENT	DIVISION	BILL NUMBER	SPONSOR
Fish and Game	Administration	HB405	Representative Kay Brown

SHORT TITLE OF BILL

Public Access to Information

DEPARTMENT POSITION

We support the concept of public access, but have serious reservations about confidentiality of some of our records.

PREPARED BY	DATE	COMMISSIONER'S SIGNATURE	DATE
Beverly D. Reaume	02/22/90	Dan A. Wiley	2-22-90

SUMMARY

OTHER AGENCIES AFFECTED BY BILL	CONSTITUENT GROUP(S) AFFECTED BY BILL
ALL	
ORGANIZATIONAL SUPPORT FOR BILL	**ORGANIZATIONAL OPPOSITION TO BILL**

FISCAL IMPACT: ☐ NONE ☑ FISCAL NOTE ATTACHED

BACKGROUND/LEGISLATIVE INTENT

ANALYSIS OF BILL/PROGRAM EFFECTS

See enclosed.

AMENDMENTS PROPOSED

See enclosed.

PLEASE ATTACH A SEPARATE SHEET FOR ADDITIONAL COMMENTS OR ANALYSIS.

01-009 (Rev. 12/83)

ANALYSIS OF BILL/PROGRAM EFFECTS

The department's concerns are primarily confidentiality of data not yet analyzed, confidentiality of exact location of a specific fish and/or game resources, and confidentiality of individual management survey responses.

- Confidentiality of Data Not Yet Analyzed
  Multi-million dollar fisheries and many other resource users depend upon a careful analysis of large amounts of data collected in many locations throughout the state. Each piece of this data resides on microcomputers in locations near where it is gathered. Any piece of this data taken out of context is meaningless and invalid for management use. The data in total provides a complete picture of the resource health, resource population, and potential resource use. Improper disclosure and use of a piece of this data by the public will jeopardize the department's ability to manage the resources prudently and could lead to lawsuits questioning the department's authority and responsibility in dealing with management and harvest of the resource.

- Confidentiality of Exact Location of a Specific Fish and/or Game Resource
  Through technological advancement, the department is able to track and monitor the locations of certain big game and fish species. Access to this information by the public will have a negative effect upon the department's ability to protect the individual unit, the department's ability to track the individual unit, and the department's ability to manage the resource at large. For example, the department currently does not divulge the locations of radio collared bears in their denning sites. This bill will force us to provide this information since it is contained in a computerized database.

- Confidentiality of Individual Management Survey Responses
  Much information collected by the department for use in resource management is collected with the understanding the individual survey responses will remain confidential. The department is usually able to get satisfactory and useful information only because the respondents know the responses will be kept confidential. This bill raises a doubt as to whether we will be able to continue collection of the necessary information needed to adequately manage the resources.

To address these concerns we offer a proposed amendment to insert additional language under Title 16.05.815.

> **Sec. 16.05.815. Confidential nature of certain reports and records.** (a) Except as provided in (b) of this section, records required by regulations of the department concerning the landings of fish, shellfish or fishery products, and annual statistical reports of buyers and processors required by regulation, <u>records of the telemetry radio frequencies of monitored species, denning sites, location of fish and wildlife species, when that knowledge may be detrimental to the population, and uncorrected raw research data</u> of the department are confidential and may not be released by the department except that the department may release

STATE OF ALASKA
1990 LEGISLATIVE SESSION

Bill Version: HB 405
Publish Date:

FISCAL NOTE

REQUEST:
Revision Date:
Title: An Act Relating to Public Access to the Information of Public Agencies,...
Sponsor: Rules Committee
Requestor: Governor

Agency Affected: Department of Revenue
BRU: Child Support Enforcement Division
Components:

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LANDS & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL	0	0	0	0	0	0
REVENUE	10.0	10.0	10.0	10.0	10.0	10.0

FUNDING: (Thousands of Dollars)

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

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

ANALYSIS: See attached analysis.

Prepared By: Susan Goodman
Phone: 263-0218
Division: CSED
Date: March 6, 1990

Approved by Commissioner:
Date: 3/6/90
Agency: Department of Revenue

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

FN: 31491 P.3 HB 405

There will be no fiscal impact for FY 90.

Because the only information that CSED is allowed to release to the public is the names of the obligors, the amount of arrears on child support cases, and any formal court documents, the fiscal impact on the Division is minimal. We have projected program receipts, generated by charging a fee to requestors based on operating costs, in the amount of $10,000 annually. This figure is computed at the projected rate of $1,000 per request, and is based on receiving 10 requests each year.

STATE OF ALASKA
1990 LEGISLATIVE SESSION

Bill Version: CSHB 405 (FIN)
Publish Date: _____

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: An Act relating to public access to the information of the State
Sponsor: Brown
Requestor: Finance

Agency Affected: Division of Finance
BRU: Finance
Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

FUNDING: (Thousands of Dollars)

GENERAL FUND	0	0	0	0	0	0
FEDERAL FUNDS	0	0	0	0	0	0
OTHER G/F RECEIPTS	0	0	0	0	0	0
TOTAL	0	0	0	0	0	0

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

ANALYSIS: (Attach a separate page if necessary)

It is not possible to anticipate exact costs and revenues generated by this program. Any fiscal impact will be submitted through the Legislative Budget and Audit Committee in the form of revised program receipts requesting permission to receive and expend program receipts for this purpose.

Prepared by: Keith Busch, Director — Phone: 465-2240
Division: Finance — Date: 3/6/90

Approved by Commissioner: Frank S. Baxter — Date: 3/6/90
Agency: Department of Administration

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

4/3K2/020105-0/1&2

Rev: 11/89

STATE OF ALASKA
1990 LEGISLATIVE SESSION

BILL VERSION: HB 405
PUBLISH DATE: _____

FISCAL NOTE

REQUEST:

Revision Date: 2/27/90
Title: An Act relating to Public Access & changes to information.
Sponsor: Brown, Boucher, Goll, Ellis
Requestor: Brown

Agency Affected: Transportation & Public Facilities
BRU: Statewide Information Systems
Components: Information Systems

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL	10.0	10.0	10.0	10.0	10.0	10.0
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	10.0	10.0	10.0	10.0	10.0	10.0
CAPITAL						
REVENUE	10.0	10.0	10.0	10.0	10.0	10.0

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER /Program Repts.	10.0	10.0	10.0	10.0	10.0	10.0
TOTAL	10.0	10.0	10.0	10.0	10.0	10.0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

Prepared by: Chuck Greeson
Phone: 465-2889
Division: Information Systems
Date: 16 March 1990

Approved by Commissioner: Mark. S. Hickey
Date: 3/19/90
Agency: _____

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

The Information Systems component, Department of Transportation and Public Facilities, is requesting the authority to receive program receipts generated form the implementation of HB405. Under this bill, the Department has the responsibility to make information records available to the public and for this the Department can collect fees. Additionally under this bill, the Department has the opportunity to create new information products and services. For this the Department can also collect fees.

The Information Systems (IS) component, which manages and maintains many of the Department's automated records, must be positioned to respond to public requests for information. Authority to receive these program receipts will allow the Department's IS component to defray the incremental costs of serving the public's request for land records information.

THE REQUESTED AMOUNT, $10.0, is the component manager's best estimate of revenue generation, without the benefit of any historic data for purposes of forecasting. Because fees will be charged based on covering incremental costs, and on recouping a reasonable portion of the costs associated with building and maintaining this information, agency costs are expected to match revenues generated.

IN THE HOUSE BY THE STATE AFFAIRS COMMITTEE

SENATE CS FOR CS FOR HOUSE BILL NO. 405 (State Affairs)

IN THE LEGISLATURE OF THE STATE OF ALASKA

SIXTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to requests for information by public agencies; relating to public access to and changes to the information of public agencies; and relating to the copyrighting of software produced by or for public agencies."

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

* Section 1. LEGISLATIVE FINDINGS AND INTENT. (a) The legislature finds that

(1) public access to government information is a fundamental right that operates to check and balance the actions of elected and appointed officials and to maintain citizen control of government;

(2) computers and electronic data bases have proliferated throughout government raising issues regarding access to electronic information that are not addressed in present law;

(3) to protect the public's right to know, public records must be available at nominal cost;

(4) to protect an individual's right to privacy under the state and federal constitutions, the state shall inform individuals if personal information about them will be subject to public disclosure;

(5) an individual should have the opportunity to change personal information contained in public records if the information is inaccurate or incomplete;

(6) if public agencies increase electronic access to the state's information systems, particularly for the more isolated communities of the

Section 2 makes the public records of all public agencies open to inspection by the public under reasonable rules during regular office hours, except where specifically provided otherwise. Directs the custodial public officer to provide on request and on payment of a specified fee a certified copy of the public record.

Section 3. Sec. 09.25.110(b) establishes, except as otherwise provided, that the basic fee for copying public records may not exceed the standard unit cost of duplication established by the public agency.

Sec. 09.25.110(c) authorizes the public agency to charge personnel costs for record production under certain circumstances. Limits personnel costs to the actual salary and benefit costs for performing the search and copying tasks. Requires the fee to be paid before the records are disclosed and authorizes the agency to require payment in advance of the search.

Sec. 09.25.110(d) authorizes a public agency to reduce or waive a fee in certain circumstances. Requires that fee reductions and waivers be uniformly applied. Authorizes a public agency to waive a fee of $5 or less if the fee is less than the cost to arrange payment.

Sec. 09.25.110(e) authorizes the Bureau of Vital Statistics, the library archives, and the Division of Banking, Securities, and Corporations to continue charging the same fees for performing record searches, and to increase the fees as necessary to recover an amount that does not exceed the cost of performing the record searches.

Sec. 09.25.110(f) authorizes the judicial branch to establish by court rule reasonable fees for the inspection and copying of public records, including record searches.

Sec. 09.25.110(g) requires that electronic information provided in printed form be made available without codes or symbols, unless accompanied by an explanation of the codes or symbols.

state, the delivery of public services and the availability of information throughout the state would be enhanced;

(7) public access to state and municipal information systems will be enhanced by establishing user fees for electronic services and products that are calculated to recover a reasonable portion of the costs associated with building and maintaining a public information system.

(b) Except for personal information, if a provision in this Act is determined to be ambiguous as to whether a record is subject to disclosure to the public, the ambiguity shall be construed in favor of disclosure.

* Sec. 2. AS 09.25.110 is amended to read:

Sec. 09.25.110. INSPECTION AND COPIES OF PUBLIC RECORDS. Unless specifically provided otherwise, the [BOOKS, RECORDS, PAPERS, FILES, ACCOUNTS, WRITINGS, AND TRANSACTIONS OF ALL AGENCIES AND DEPARTMENTS ARE] public records of all public agencies [AND] are open to inspection by the public under reasonable rules during regular office hours. The public officer having the custody of public records shall give on request and payment of the fee established under this section or AS 09.25.115 [COSTS] a certified copy of the public record.

* Sec. 3. AS 09.25.110 is amended by adding new subsections to read:

(b) Except as otherwise provided in this section, the fee for copying public records may not exceed the standard unit cost of duplication established by the public agency.

(c) If the production of records for one requester in a calendar month exceeds five person-hours, the public agency shall require the requester to pay the personnel costs required during the month to complete the search and copying tasks. The personnel costs may not exceed the actual salary and benefit costs for the personnel time required to perform the search and copying tasks. The requester shall pay the fee before the records are disclosed, and the public agency

Section 4. Sec. 09.25.115(a) authorizes a public agency, upon request and fee payment, to provide electronic services and products involving public records to members of the public. Encourages public agencies to make information available in usable electronic formats to the greatest extent feasible. Prohibits giving the activities authorized under this section a priority over primary agency responsibilities.

Sec. 09.25.115(b) indicates how fees are to be set for electronic services and products. Authorizes the reduction or waiver of a fee under certain circumstances. Requires that fee reductions and waivers be uniformly applied.

Sec. 09.25.115(c) establishes that the fee for duplicating a public record in the electronic form kept by a public agency may not exceed the actual incremental costs of the public agency.

Sec. 09.25.115(d) requires public agencies to include certain security and liability provisions in contracts for electronic services and products.

Sec. 09.25.115(e) requires each public agency to notify the state library of the electronic services and products offered by the agency under sec. 09.25.115. Requires the notification to include a summary of the available format options and the fees charged.

Sec. 09.25.115(f) requires public agencies that offer on-line access to an electronic file or data base to also provide without charge on-line access to the electronic file or data base through one or more public terminals.

Sec. 09.25.115(g) directs each public agency to establish the fees for the electronic services and products. Authorizes the TIC to cancel unreasonably high fees of public agencies in the executive branch.

Sec. 09.25.115(h) prohibits a public agency from making electronic services and products available to some persons and not to others.

Sec. 09.25.115(i) directs a public agency other than a municipality to separately account for the fees received by the agency under sec. 09.25.115 and deposited in the general fund. Authorizes the legislature to use the annual estimated balance in the account to make appropriations to the agency to carry out the agency's activities.

may require payment in advance of the search.

(d) A public agency may reduce or waive a fee when the public agency determines that the reduction or waiver is in the public interest. Fee reductions and waivers shall be uniformly applied among persons who are similarly situated. A public agency may waive a fee of $5 or less if the fee is less than the cost to the public agency to arrange for payment.

(e) Notwithstanding other provisions of this section to the contrary, the Bureau of Vital Statistics, the library archives in the Department of Education, and the division of banking, securities, and corporations in the Department of Commerce and Economic Development may continue to charge the same fees that they are charging on the effective date of this Act for performing record searches, and may increase the fees as necessary to recover an amount that does not exceed the cost of performing the record searches.

(f) Notwithstanding other provisions of this section to the contrary, the judicial branch may establish by court rule reasonable fees for the inspection and copying of public records, including record searches.

(g) Electronic information that is provided in printed form shall be made available without codes or symbols, unless accompanied by an explanation of the codes or symbols.

* Sec. 4. AS 09.25 is amended by adding a new section to read:

Sec. 09.25.115. ELECTRONIC SERVICES AND PRODUCTS. (a) Notwithstanding AS 09.25.110(b) - (d) to the contrary, upon request and payment of a fee established under (b) of this section, a public agency may provide electronic services and products involving public records to members of the public. A public agency is encouraged to make information available in usable electronic formats to the

greatest extent feasible. The activities authorized under this section may not take priority over the primary responsibilities of a public agency.

(b) The fee for electronic services and products must be based on recovery of the actual incremental costs of providing the electronic services and products, and a reasonable portion of the costs associated with building and maintaining the information system of the public agency. The fee may be reduced or waived by the public agency if the electronic services and products are to be used for a public purpose, including public agency program support, nonprofit activities, journalism, and academic research. Fee reductions and waivers shall be uniformly applied among persons who are similarly situated.

(c) Notwithstanding (b) of this section, the fee for duplicating a public record in the electronic form kept by a public agency may not exceed the actual incremental costs of the public agency.

(d) Public agencies shall include in a contract for electronic services and products provisions that

(1) protect the security and integrity of the information system of the public agency and of information systems that are shared by public agencies; and

(2) limit the liability of the public agency providing the services and products.

(e) Each public agency shall notify the state library distribution and data access center established under AS 14.56.090 of the electronic services and products offered by the public agency to the public under this section. The notification must include a summary of the available format options and the fees charged.

(f) When offering on-line access to an electronic file or data base, a public agency also shall provide without charge on-line access

Section 5 states that every person has a right to inspect a public record in the state, except in certain listed circumstances. Except as provided in AS 09.25.215, requires custodial public officers to permit the inspection and give a certified copy of the record on demand and payment of the required fee. States that the copy is evidence of the original. In the rest of the section, makes technical changes to conform the terminology to the use of "public records".

to the electronic file or data base through one or more public terminals.

(g) Each public agency shall establish the fees for the electronic services and products provided under this section. The Telecommunications Information Council may cancel the fees established by a public agency in the executive branch, including the Alaska State Housing Authority, the University of Alaska, and the Alaska Railroad Corporation, if the council determines that the fees are unreasonably high.

(h) A public agency may not make electronic services and products available to one member of the public and withhold them from other members of the public.

(i) A public agency other than a municipality shall separately account for the fees received by the agency under this section and deposited in the general fund. The annual estimated balance in the account may be used by the legislature to make appropriations to the agency to carry out the activities of the agency.

* Sec. 5. AS 09.25.120 is amended to read:

Sec. 09.25.120. INSPECTION AND COPYING OF PUBLIC RECORDS. Every person has a right to inspect a public [WRITING OR] record in the state, including public [WRITINGS AND] records in recorders' offices except (1) records of vital statistics and adoption proceedings which shall be treated in the manner required by AS 18.50; (2) records pertaining to juveniles; (3) medical and related public health records; (4) records required to be kept confidential by a federal law or regulation or by state law; (5) records or information compiled for law enforcement purposes, but only to the extent that the production of the law enforcement records or information (A) could reasonably be expected to interfere with enforcement proceedings, (B) would deprive

a person of a right to a fair trial or an impartial adjudication, (C) could reasonably be expected to constitute an unwarranted invasion of the personal privacy of a suspect, defendant, victim, or witness, (D) could reasonably be expected to disclose the identity of a confidential source, (E) would disclose confidential techniques and procedures for law enforcement investigations or prosecutions, (F) would disclose guidelines for law enforcement investigations or prosecutions if the disclosure could reasonably be expected to risk circumvention of the law, or (G) could reasonably be expected to endanger the life or physical safety of an individual. Except as provided in AS 09.25.215, every [. EVERY] public officer having the custody of records not included in the exceptions shall permit the inspection, and give on demand and on payment of the [LEGAL] fees under AS 09.25.110 - 09.25.115 [THEREFOR] a certified copy of the [WRITING OR] record, and the copy shall in all cases be evidence of the original. Recorders shall permit memoranda, transcripts, and copies of the public [WRITINGS AND] records in their offices to be made by photography or otherwise for the purpose of examining titles to real estate described in the public [WRITINGS AND] records, making abstracts of title or guaranteeing or insuring the titles of the real estate, or building and maintaining title and abstract plants; and shall furnish proper and reasonable facilities to persons having lawful occasion for access to the public [WRITINGS AND] records for those purposes, subject to reasonable rules and regulations, in conformity to the direction of the court, as are necessary for the protection of the [WRITINGS AND] records and to prevent interference with the regular discharge of the duties of the recorders and their employees.

* Sec. 6. AS 09.25 is amended by adding new sections to read:

Sec. 09.25.122. LITIGATION DISCLOSURE. A public record that is

Section 6 enacts three new sections.

Sec. 09.25.122 declares that a public record subject to disclosure and copying remains such a public record even if the record is related to litigation involving a public agency, except that for persons involved in litigation, the records are to be disclosed under applicable court procedures.

Sec. 09.25.123(a) directs the TIC to supervise and adopt regulations for the implementation of AS 09.25.110 - 09.25.-140 by public agencies in the executive branch.

Sec. 09.25.123(b) directs the Legislative Council to supervise and adopt procedures for the implementation of AS 09.-25.110 - 09.25.140 by public agencies in the legislative branch.

Sec. 09.25.123(c) directs the administrative director of courts to supervise and adopt procedures for the implementation of AS 09.25.110 - 09.25.140 by public agencies in the judicial branch.

Sec. 09.25.123(d) requires that the regulations and procedures adopted under sec. 09.24.123 include procedures for making an administrative appeal of public agency action taken under AS 09.25.110 - 09.25.140.

Sec. 09.25.123(e) provides certain definitions for sec. 09.-24.123.

Sec. 09.25.124 provides a right of appeal from final administrative orders made by a public agency under AS 09.25.110 - 09.25.140.

Section 6

subject to disclosure and copying under AS 09.25.110 - 09.25.120 remains a public record subject to disclosure and copying even if the record is used for, included in, or relevant to litigation, including law enforcement proceedings, involving a public agency, except that with respect to a person involved in litigation, the records sought shall be disclosed in accordance with applicable court rules. In this section, "involved in litigation" means a party to litigation or representing a party to litigation, including obtaining public records for the party.

Sec. 09.25.123. SUPERVISION AND REGULATION. (a) The Telecommunications Information Council shall supervise and adopt regulations for the operation and implementation of AS 09.25.110 - 09.25.140 by public agencies in the executive branch, including the Alaska State Housing Authority, the University of Alaska, and the Alaska Railroad Corporation.

(b) The legislative council shall supervise and adopt procedures for the operation and implementation of AS 09.25.110 - 09.25.140 by public agencies in the legislative branch.

(c) The administrative director of courts shall supervise and adopt procedures for the operation and implementation of AS 09.25.110 - 09.25.140 by public agencies in the judicial branch.

(d) The regulations and procedures adopted under this section must include the establishment of procedures for making an administrative appeal of public agency action that is taken under AS 09.25.110 - 09.25.140.

(e) In this section,

(1) "action" includes the calculation of a fee, the denial of a fee reduction or waiver and the denial of a request to inspect or copy a public record;

Section 7 amends AS 09.25.125 to cover the denial or attempt to deny the inspection of a public record. Also authorizes a person to seek injunctive relief under AS 09.25.125 without exhausting the person's remedies under AS 09.25.123 - 09.25.124 or other remedies established by a public agency.

Section 8 requires that if it is ambiguous whether an application of AS 09.25.100 - 09.25.220 to personal information violates the right to privacy provision in the state constitution, the ambiguity must be resolved in favor of the right to privacy.

Section 9 provides definitions for AS 09.25.100 - 09.25.220, including "electronic services and products", "public agency", and "public records". "Public agency" is defined to cover instrumentalities of the state and municipalities.

(2) "public agency" does not include a municipality.

Sec. 09.25.124. APPEALS. A person may appeal to the superior court the final administrative order made by a public agency under AS 09.25.110 - 09.25.140.

* Sec. 7. AS 09.25.125 is amended to read:

Sec. 09.25.125. ENFORCEMENT: INJUNCTIVE RELIEF. A person having custody or control of a public record who denies, obstructs, or attempts to obstruct, or a person not having custody or control who aids or abets another person in denying, obstructing, or attempting to obstruct, the inspection of a public record subject to inspection under AS 09.25.110 or 09.25.120 may be enjoined by the superior court from denying, obstructing, or attempting to obstruct, the inspection of public records subject to inspection under AS 09.25.110 or 09.25.120. A person may seek injunctive relief under this section without exhausting the person's remedies under AS 09.25.123 - 09.25.124 [or other remedies established by a public agency.]

* Sec. 8. AS 09.25 is amended by adding a new section to read:

Sec. 09.25.215. INTENT REGARDING AMBIGUITY. If the application of AS 09.25.100 - 09.25.220 to personal information is ambiguous as to whether the application violates art. I, sec. 22, Constitution of the State of Alaska, the ambiguity shall be construed in favor of the right of privacy. In this section, "personal information" has the meaning given in AS 44.99.040.

* Sec. 9. AS 09.25.220 is amended to read:

Sec. 09.25.220. DEFINITIONS. In AS 09.25.100 - 09.25.220 [AS 09.25.150 - 09.25.220], unless the context otherwise requires,

(1) "electronic services and products" means computer-related services and products provided by a public agency, including

(A) electronic manipulation of the data contained in

public records in order to tailor the data to the person's request or to develop a product that meets the person's request;

(B) duplicating public records in alternative formats not used by a public agency, providing periodic updates of an electronic file or data base, or duplicating an electronic file or data base from a geographic information system;

(C) providing on-line access to an electronic file or data base;

(D) providing information that cannot be retrieved or generated by the existing computer programs of the public agency;

(E) providing functional electronic access to the information system of the public agency; in this subparagraph, "functional access" includes the capability for alphanumeric query and printing, graphic query and plotting, nongraphic data input and analysis, and graphic data input and analysis;

(F) providing software developed by a public agency or developed by a private contractor for a public agency;

(G) generating maps or other standard or customized products from an electronic geographic information system;

(2) "news organization" means

(A) an individual, partnership, corporation or other association regularly engaged in the business of

(i) publishing a newspaper or other periodical that reports news events, is issued at regular intervals and has a general circulation;

(ii) providing newsreels or other motion picture news for public showing; or

(iii) broadcasting news to the public by wire, radio, television or facsimile;

(B) a press association or other association of individuals, partnerships, corporations, or other associations described in (A)(i), (ii), or (iii) of this paragraph engaged in gathering news and disseminating it to its members for publication;

(3) [(2)] "privilege" means the conditional privilege granted to public officials and reporters to refuse to testify as to a source of information;

(4) [(3)] "public official" means a person elected to a public office created by the Constitution or laws of this state, whether executive, legislative, or judicial, and who was holding that office at the time of the communication for which privilege is claimed;

(5) "public agency" means a political subdivision, department, institution, board, commission, division, authority, public corporation, council, committee, subcommittee, or other instrumentality of the state or a municipality; "public agency" includes the University of Alaska, the Alaska State Housing Authority, and the Alaska Railroad Corporation;

(6) "public records" means books, papers, files, accounts, writings, including drafts and memorializations of conversations, and other items, regardless of format or physical characteristics, that are developed or received by a public agency, or by a private contractor for a public agency, and that are preserved for their informational value or as evidence of the organization or operation of the public agency; "public records" does not include proprietary software programs;

(7) [(4)] "reporter" means a person regularly engaged in the business of collecting or writing news for publication, or

Section 10 allows a person to request from the Department of Public Safety a record from Alaska listing each criminal conviction involving an individual who has filed for public office in the state. Requires the department to provide a copy to the person and to the candidate. Authorizes the department to establish by regulation reasonable fees to cover the costs of researching and reproducing the conviction record.

Section 11 requires each state agency to notify the state library of the creation of certain data, including automated data bases, and provide for their accessibility through the library, except in certain circumstances.

Section 12 makes a technical change to conform to other changes in the bill.

presentation to the public, through a news organization; it includes persons who were reporters at the time of the communication, though not at the time of the claim of privilege;

(8) "Telecommunications Information Council" means the Telecommunications Information Council established under AS 44.19.502.

* Sec. 10. AS 12.62 is amended by adding a new section to read:

Sec. 12.62.031. ACCESS TO CRIME INFORMATION INVOLVING A CANDIDATE FOR PUBLIC OFFICE. A member of the public may request from the Department of Public Safety a record from this state listing each criminal conviction involving an individual who has filed for public office in the state. The Department of Public Safety shall provide a copy of the conviction record to the member of the public and shall also provide a copy of the conviction record to the person who is the subject of the request. The Department of Public Safety may establish by regulation reasonable fees to cover the costs of researching and reproducing the conviction record.

* Sec. 11. AS 14.56.120(b) is amended to read:

(b) Each state agency shall notify the center of the creation of all data published or compiled by or for it at public expense, including automated data bases, and provide for its accessibility through the center [,] unless the data is protected by the constitutional right to privacy or is of a type stated by law to be confidential or the agency is otherwise prohibited by law from doing so.

* Sec. 12. AS 18.50.310(f) is amended to read:

(f) Notwithstanding the provisions of AS 09.25.120, when 100 years have elapsed after the date of a birth, or 50 years have elapsed after the date of a death, marriage, divorce, dissolution of marriage, or annulment, the records of these events in the custody of the state registrar become public records subject to inspection and copying as

Section 13 directs that the voting record for each legislator is to be made available to any person on request. Directs the Legislative Affairs Agency to keep voting records compiled annually under this section on the agency data system and to distribute copies to all legislative information offices for a fee established under AS 09.25.-115.

Section 14 authorizes a municipality to copyright software and to enforce its copyright rights.

Section 15 makes a technical change to conform to other changes in the bill.

provided in AS 09.25.110 - 09.25.140 [AS 09.25.110 AND AS 09.25.121 - 09.25.125].

* Sec. 13. AS 24.08 is amended by adding a new section to read:

Sec. 24.08.105. RECORD OF VOTES. The voting record for each legislator shall be made available to any person on request. The Legislative Affairs Agency shall keep voting records compiled annually under this section on the agency data system and shall distribute copies to all legislative information offices for a fee established under AS 09.25.115.

* Sec. 14. AS 29.71 is amended by adding a new section to read:

Sec. 29.71.060. COPYRIGHTS. A municipality may hold the copyright for software created by the municipality or developed by a contractor for the municipality, and may enforce its rights to protect the copyright.

* Sec. 15. AS 40.21.030(a) is amended to read:

(a) In order to carry out the archival program, the state archivist shall:

(1) negotiate for, acquire, and receive public records of permanent value including public records of the state and political subdivisions of the state and of defunct public agencies;

(2) establish and operate a state archival depository that [WHICH] shall provide for the preservation, arrangement, repair, rehabilitation, duplication, reproduction, description, and exhibition of permanent public records or other documentary material transferred to, or acquired by the state archivist;

(3) review and approve all agency records retention schedules to identify and to ensure the preservation of those records having permanent value;

(4) make permanent records under the supervision of the

Section 16 adds four new sections.

Sec. 44.99.020(a) requires a state agency that requests personal information directly from the subject of the information to give when the request is made to the individual a written notice that provides certain listed information.

Sec. 44.99.020(b) describes how the agency may provide the notice required by sec. 44.99.020(a).

Sec. 44.99.020(c) exempts certain listed requests for information from the notice requirement of sec. 44.99.020(a).

Sec. 44.99.030(a) allows an individual to challenge the accuracy and completeness of personal information on the individual that is maintained by a state agency and that is subject to public disclosure.

Sec. 44.99.030(b) states that an individual may challenge the accuracy or completeness of information under sec. 44.-99.030(a) by filing a written request to change the information. States what the request must contain.

Sec. 44.99.030(c) authorizes the state agency to request within a certain time verification of disputed personal information from the individual who made the request to change the information.

Sec. 44.99.030(d) requires the state agency, within a certain period of time, to review the request for change and either change the information or deny the request. Requires the agency to notify the individual of the change or denial and include certain information in the notification of denial.

Sec. 44.99.030(e) allows the individual whose request for change is denied to provide the agency with a statement providing the individual's reasons for disagreeing with the decision. Directs the agency to maintain the request for change and the statement in its records. Requires that the agency clearly note on all of the agency's records that contain the disputed information which portions are disputed. Clarifies how this is to be done if the record is in electronic form

Sec. 44.99.030(f) exempts certain listed records and information from sec. 44.99.030.

Sec. 44.99.040 defines certain terms for the previous two sections. "Person" is defined to mean an individual. "State agency" is defined to cover the executive, judicial, and legislative branches of state government.

Sec. 44.99.050 authorizes a state agency to copyright software and to enforce its copyright rights. "State agency" is defined to cover the executive, legislative, and judicial branches of state government.

archivist, other than those required by AS 09.25.120 to be kept confidential, available for public use at reasonable times;

(5) for a fee established under AS 09.25.110 - 09.25.115, make available to any person [FOR A REASONABLE FEE] copies of archival material under AS 09.25.120;

(6) adopt a seal for official use and for certification of record copies which copies shall have the same force and effect as if made by the original custodian of the records;

(7) negotiate payment for the acquisition of public records with the possessor of them;

(8) if negotiations under (7) of this subsection are unsuccessful or if the person in possession of the public records is unwilling to enter into those negotiations, arrange with the person in possession for the microfilming of the records;

(9) accept gifts, bequests, and endowments for purposes consistent with the objectives of this chapter;

(10) prepare inventories, indexes, catalogs, and other finding aids or guides to facilitate the use of the archives;

(11) accept documents, including motion picture film, still pictures, and sound recordings, that are appropriate for preservation by the state as evidence of its organization, functions, policies, decisions, procedures, and transactions.

* Sec. 16. AS 44.99 is amended by adding new sections to read:

ARTICLE 1A. PERSONAL INFORMATION IN PUBLIC RECORDS.

Sec. 44.99.020. NOTICE REGARDING PERSONAL INFORMATION. (a) When a state agency requests personal information directly from the person who is the subject of the information, the agency shall give the person a written notice at the time of the request that states

(1) the name and address of the agency;

(2) the citation of the statute or regulation that authorizes the agency to request the information;

(3) a statement indicating whether the person is required to supply the information;

(4) the consequences to the person, if any, of not providing all or part of the requested information;

(5) a statement of the agency's anticipated uses of the information, including the agency's internal uses of the information and disclosure of the information to other state agencies;

(6) the fact that the information may be subject to inspection and copying under AS 09.25.110 - 09.25.120; and

(7) a statement summarizing how a person may challenge under AS 44.99.030 the accuracy or completeness of personal information maintained by a state agency.

(b) An agency may provide the written notice required under (a) of this section by

(1) placing the notice on the form used to request the information from the person;

(2) giving the person the notice on a separate sheet that accompanies the form used to request the information from the person;

(3) giving the person a statement in a pamphlet, booklet, manual, or other printed matter at the time the information on the person is requested; or

(4) prominently posting a sign containing the notice in a prominent location so that the sign can be easily observed and read by the person at the time the information is requested.

(c) This section does not apply to a request for information on a person if

(1) the request is made by a peace officer; in this

paragraph, "peace officer" has the meaning given in AS 01.10.060;

(2) the person is the agency's employee;

(3) the information is related to litigation; or

(4) the information is being collected by a public agency when investigating a possible violation of law.

Sec. 44.99.030. INFORMATION ACCURACY AND COMPLETENESS. (a) A person who is the subject of personal information that is maintained by a state agency and subject to public disclosure under AS 09.25.-110 - 09.25.140 may challenge the accuracy or completeness of the personal information.

(b) To challenge the accuracy or completeness of personal information under (a) of this section, the person must file with the state agency a written request that the personal information be changed. The request must provide

(1) a description of the challenged personal information;

(2) the changes necessary to make the personal information accurate or complete; and

(3) the person's name and the address where the department may contact the person.

(c) Within 30 days after receiving a written request made under (b) of this section, the state ag request verification of the disputed personal information from the person who made the request.

(d) Within 30 days after receiving the written request under (b) of this section or the verification under (c) of this section, the state agency shall review the request and

(1) change the personal information according to the request and notify the person in writing of the change; or

(2) deny the request and notify the person in writing of the reasons for the decision and the name, title, and business address

of the person who denied the request.

(e) If a request is denied under (d) of this section, the person may provide to the state agency a concise written statement that states the person's reasons for disagreeing with the decision. The state agency shall maintain in its records the request made under (b) of this section and the statement provided by the person under this subsection. On all of the state agency's records that contain the disputed information, the state agency shall clearly note which portions of the records are disputed. If the record is in electronic form, the state agency may note the dispute in one field of the electronic form and maintain the other information about the dispute in paper form.

(f) This section does not apply to criminal intelligence or criminal investigative records, state agency personnel or retirement system records, records of applicants for employment with the state agency, or information in documents recorded under AS 40.17.

Sec. 44.99.040. DEFINITIONS. In AS 44.99.020 - 44.99.040,

(1) "person" means an individual;

(2) "personal information" means information that can be used to identify a person and from which judgments can be made about a person's character, habits, avocations, finances, occupation, general reputation, credit, health, or other personal characteristics, but does not include a person's name, address, or telephone number, if the number is published in a current telephone directory, or information describing a public job held by a person;

(3) "state agency" means a department, institution, board, commission, division, authority, public corporation, committee, or other administrative unit of the executive, judicial, or legislative branch of state government, including the University of Alaska, the

Section 17 states that requests for personal information made by a state agency on or after the effective date of the bill are covered by sec. 44.99.020.

Alaska State Housing Authority, and the Alaska Railroad Corporation.

ARTICLE 1B. COPYRIGHTS BY STATE AGENCIES.

Sec. 44.99.050. COPYRIGHTS. A state agency may hold the copyright for software created by the agency or developed by a private contractor for an agency, and may enforce its rights to protect the copyright. In this section, "state agency" means a department, institution, board, commission, division, authority, public corporation, committee, or other administrative unit of the executive, judicial, or legislative branch of state government, including the University of Alaska, the Alaska State Housing Authority, and the Alaska Railroad Corporation.

* Sec. 17. AS 44.99.020, as enacted by sec. 16 of this Act, applies to requests for personal information made by a state agency on or after the effective date of this Act.

4-12-90

IN THE HOUSE BY THE STATE AFFAIRS COMMITTEE

SENATE CS FOR CS FOR HOUSE BILL NO. 405 (State Affairs)

IN THE LEGISLATURE OF THE STATE OF ALASKA

SIXTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to requests for information by public agencies; relating to public access to and changes to the information of public agencies; and relating to the copyrighting of software produced by or for public agencies."

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

* Section 1. LEGISLATIVE FINDINGS AND INTENT. (a) The legislature finds that

(1) public access to government information is a fundamental right that operates to check and balance the actions of elected and appointed officials and to maintain citizen control of government;

(2) computers and electronic data bases have proliferated throughout government raising issues regarding access to electronic information that are not addressed in present law;

(3) to protect the public's right to know, public records must be available at nominal cost;

(4) to protect an individual's right to privacy under the state and federal constitutions, the state should inform individuals if personal information about them will be subject to public disclosure;

(5) an individual should have the opportunity to change personal information contained in public records if the information is inaccurate or incomplete;

(6) if public agencies increase electronic access to the state's information systems, particularly for the more isolated communities of the

state, the delivery of public services and the availability of information throughout the state would be enhanced;

(7) public access to state and municipal information systems will be enhanced by establishing user fees for electronic services and products that are calculated to recover a reasonable portion of the costs associated with building and maintaining a public information system.

(b) Except for personal information, if a provision in this Act is determined to be ambiguous as to whether a record is subject to disclosure to the public, the ambiguity shall be construed in favor of disclosure.

* Sec. 2. AS 09.25.110 is amended to read:

Sec. 09.25.110. INSPECTION AND COPIES OF PUBLIC RECORDS. Unless specifically provided otherwise, the [BOOKS, RECORDS, PAPERS, FILES, ACCOUNTS, WRITINGS, AND TRANSACTIONS OF ALL AGENCIES AND DEPARTMENTS ARE] public records of all public agencies [AND] are open to inspection by the public under reasonable rules during regular office hours. The public officer having the custody of public records shall give on request and payment of the fee established under this section or AS 09.25.115 [COSTS] a certified copy of the public record.

* Sec. 3. AS 09.25.110 is amended by adding new subsections to read:

(b) Except as otherwise provided in this section, the fee for copying public records may not exceed the standard unit cost of duplication established by the public agency.

(c) If the production of records for one requester in a calendar month exceeds five person-hours, the public agency shall require the requester to pay the personnel costs required during the month to complete the search and copying tasks. The personnel costs may not exceed the actual salary and benefit costs for the personnel time required to perform the search and copying tasks. The requester shall pay the fee before the records are disclosed, and the public agency

may require payment in advance of the search.

(d) A public agency may reduce or waive a fee when the public agency determines that the reduction or waiver is in the public interest. Fee reductions and waivers shall be uniformly applied among persons who are similarly situated. A public agency may waive a fee of $5 or less if the fee is less than the cost to the public agency to arrange for payment.

(e) Notwithstanding other provisions of this section to the contrary, the Bureau of Vital Statistics, the library archives in the Department of Education, and the division of banking, securities, and corporations in the Department of Commerce and Economic Development may continue to charge the same fees that they are charging on the effective date of this Act for performing record searches, and may increase the fees as necessary to recover an amount that does not exceed the cost of performing the record searches.

(f) Notwithstanding other provisions of this section to the contrary, the judicial branch may establish by court rule reasonable fees for the inspection and copying of public records, including record searches.

(g) Electronic information that is provided in printed form shall be made available without codes or symbols, unless accompanied by an explanation of the codes or symbols.

* Sec. 4. AS 09.25 is amended by adding a new section to read:

Sec. 09.25.115. ELECTRONIC SERVICES AND PRODUCTS. (a) Notwithstanding AS 09.25.110(b) - (d) to the contrary, upon request and payment of a fee established under (b) of this section, a public agency may provide electronic services and products involving public records to members of the public. A public agency is encouraged to make information available in usable electronic formats to the

greatest extent feasible. The activities authorized under this section may not take priority over the primary responsibilities of a public agency.

(b) The fee for electronic services and products must be based on recovery of the actual incremental costs of providing the electronic services and products, and a reasonable portion of the costs associated with building and maintaining the information system of the public agency. The fee may be reduced or waived by the public agency if the electronic services and products are to be used for a public purpose, including public agency program support, nonprofit activities, journalism, and academic research. Fee reductions and waivers shall be uniformly applied among persons who are similarly situated.

(c) Notwithstanding (b) of this section, the fee for duplicating a public record in the electronic form kept by a public agency may not exceed the actual incremental costs of the public agency.

(d) Public agencies shall include in a contract for electronic services and products provisions that

(1) protect the security and integrity of the information system of the public agency and of information systems that are shared by public agencies; and

(2) limit the liability of the public agency providing the services and products.

(e) Each public agency shall notify the state library distribution and data access center established under AS 14.56.090 of the electronic services and products offered by the public agency to the public under this section. The notification must include a summary of the available format options and the fees charged.

(f) When offering on-line access to an electronic file or data base, a public agency also shall provide without charge on-line access

to the electronic file or data base through one or more public terminals.

(g) Each public agency shall establish the fees for the electronic services and products provided under this section. The Telecommunications Information Council may cancel the fees established by a public agency in the executive branch, including the Alaska State Housing Authority, the University of Alaska, and the Alaska Railroad Corporation, if the council determines that the fees are unreasonably high.

(h) A public agency may not make electronic services and products available to one member of the public and withhold them from other members of the public.

(i) A public agency other than a municipality shall separately account for the fees received by the agency under this section and deposited in the general fund. The annual estimated balance in the account may be used by the legislature to make appropriations to the agency to carry out the activities of the agency.

* Sec. 5. AS 09.25.120 is amended to read:

Sec. 09.25.120. INSPECTION AND COPYING OF PUBLIC RECORDS. Every person has a right to inspect a public [WRITING OR] record in the state, including public [WRITINGS AND] records in recorders' offices except (1) records of vital statistics and adoption proceedings which shall be treated in the manner required by AS 18.50; (2) records pertaining to juveniles; (3) medical and related public health records; (4) records required to be kept confidential by a federal law or regulation or by state law; (5) records or information compiled for law enforcement purposes, but only to the extent that the production of the law enforcement records or information (A) could reasonably be expected to interfere with enforcement proceedings, (B) would deprive

a person of a right to a fair trial or an impartial adjudication, (C) could reasonably be expected to constitute an unwarranted invasion of the personal privacy of a suspect, defendant, victim, or witness, (D) could reasonably be expected to disclose the identity of a confidential source, (E) would disclose confidential techniques and procedures for law enforcement investigations or prosecutions, (F) would disclose guidelines for law enforcement investigations or prosecutions if the disclosure could reasonably be expected to risk circumvention of the law, or (G) could reasonably be expected to endanger the life or physical safety of an individual. Except as provided in AS 09.25.215, every [. EVERY] public officer having the custody of records not included in the exceptions shall permit the inspection, and give on demand and on payment of the [LEGAL] fees under AS 09.25.110 - 09.25.115 [THEREFOR] a certified copy of the [WRITING OR] record, and the copy shall in all cases be evidence of the original. Recorders shall permit memoranda, transcripts, and copies of the public [WRITINGS AND] records in their offices to be made by photography or otherwise for the purpose of examining titles to real estate described in the public [WRITINGS AND] records, making abstracts of title or guaranteeing or insuring the titles of the real estate, or building and maintaining title and abstract plants; and shall furnish proper and reasonable facilities to persons having lawful occasion for access to the public [WRITINGS AND] records for those purposes, subject to reasonable rules and regulations, in conformity to the direction of the court, as are necessary for the protection of the [WRITINGS AND] records and to prevent interference with the regular discharge of the duties of the recorders and their employees.

* Sec. 6. AS 09.25 is amended by adding new sections to read:

Sec. 09.25.122. LITIGATION DISCLOSURE. A public record that is

subject to disclosure and copying under AS 09.25.110 - 09.25.120 remains a public record subject to disclosure and copying even if the record is used for, included in, or relevant to litigation, including law enforcement proceedings, involving a public agency, except that with respect to a person involved in litigation, the records sought shall be disclosed in accordance with applicable court rules. In this section, "involved in litigation" means a party to litigation or representing a party to litigation, including obtaining public records for the party.

Sec. 09.25.123. SUPERVISION AND REGULATION. (a) The Telecommunications Information Council shall supervise and adopt regulations for the operation and implementation of AS 09.25.110 - 09.25.140 by public agencies in the executive branch, including the Alaska State Housing Authority, the University of Alaska, and the Alaska Railroad Corporation.

(b) The legislative council shall supervise and adopt procedures for the operation and implementation of AS 09.25.110 - 09.25.140 by public agencies in the legislative branch.

(c) The administrative director of courts shall supervise and adopt procedures for the operation and implementation of AS 09.25.-110 - 09.25.140 by public agencies in the judicial branch.

(d) The regulations and procedures adopted under this section must include the establishment of procedures for making an administrative appeal of public agency action that is taken under AS 09.25.110 - 09.25.140.

(e) In this section,

(1) "action" includes the calculation of a fee, the denial of a fee reduction or waiver and the denial of a request to inspect or copy a public record;

(2) "public agency" does not include a municipality.

Sec. 09.25.124. APPEALS. A person may appeal to the superior court the final administrative order made by a public agency under AS 09.25.110 - 09.25.140.

Adam S: administrative first

* Sec. 7. AS 09.25.125 is amended to read:

Sec. 09.25.125. ENFORCEMENT: INJUNCTIVE RELIEF. A person having custody or control of a public record who denies, obstructs, or attempts to obstruct, or a person not having custody or control who aids or abets another person in denying, obstructing, or attempting to obstruct, the inspection of a public record subject to inspection under AS 09.25.110 or 09.25.120 may be enjoined by the superior court from denying, obstructing, or attempting to obstruct, the inspection of public records subject to inspection under AS 09.25.110 or 09.25.120. A person may seek injunctive relief under this section without exhausting the person's remedies under AS 09.25.123 - 09.25.124 or other remedies established by a public agency.

* Sec. 8. AS 09.25 is amended by adding a new section to read:

Sec. 09.25.215. INTENT REGARDING AMBIGUITY. If the application of AS 09.25.100 - 09.25.220 to personal information is ambiguous as to whether the application violates art. I, sec. 22, Constitution of the State of Alaska, the ambiguity shall be construed in favor of the right of privacy. In this section, "personal information" has the meaning given in AS 44.99.040.

* Sec. 9. AS 09.25.220 is amended to read:

Sec. 09.25.220. DEFINITIONS. In AS 09.25.100 - 09.25.220 [AS 09.25.150 - 09.25.220], unless the context otherwise requires,

(1) "electronic services and products" means computer-related services and products provided by a public agency, including

(A) electronic manipulation of the data contained in

public records in order to tailor the data to the person's request or to develop a product that meets the person's request;

(B) duplicating public records in alternative formats not used by a public agency, providing periodic updates of an electronic file or data base, or duplicating an electronic file or data base from a geographic information system;

(C) providing on-line access to an electronic file or data base;

(D) providing information that cannot be retrieved or generated by the existing computer programs of the public agency;

(E) providing functional electronic access to the information system of the public agency; in this subparagraph, "functional access" includes the capability for alphanumeric query and printing, graphic query and plotting, nongraphic data input and analysis, and graphic data input and analysis;

(F) providing software developed by a public agency or developed by a private contractor for a public agency;

(G) generating maps or other standard or customized products from an electronic geographic information system;

(2) "news organization" means

(A) an individual, partnership, corporation or other association regularly engaged in the business of

(i) publishing a newspaper or other periodical that reports news events, is issued at regular intervals and has a general circulation;

(ii) providing newsreels or other motion picture news for public showing; or

(iii) broadcasting news to the public by wire, radio, television or facsimile;

(B) a press association or other association of individuals, partnerships, corporations, or other associations described in (A)(i), (ii), or (iii) of this paragraph engaged in gathering news and disseminating it to its members for publication;

(3) [(2)] "privilege" means the conditional privilege granted to public officials and reporters to refuse to testify as to a source of information;

(4) [(3)] "public official" means a person elected to a public office created by the Constitution or laws of this state, whether executive, legislative, or judicial, and who was holding that office at the time of the communication for which privilege is claimed;

Adams- why?

(5) "public agency" means a political subdivision, department, institution, board, commission, division, authority, public corporation, council, committee, subcommittee or other instrumentality of the state or a municipality; "public agency" includes the University of Alaska, the Alaska State Housing Authority, and the Alaska Railroad Corporation;

(6) "public records" means books, papers, files, accounts, writings, including drafts and memorializations of conversations, and other items, regardless of format or physical characteristics, that are developed or received by a public agency, or by a private contractor for a public agency, and that are preserved for their informational value or as evidence of the organization or operation of the public agency; "public records" does not include proprietary software programs;

(7) [(4)] "reporter" means a person regularly engaged in the business of collecting or writing news for publication, or

presentation to the public, through a news organization; it includes persons who were reporters at the time of the communication, though not at the time of the claim of privilege;

(8) "Telecommunications Information Council" means the Telecommunications Information Council established under AS 44.19.502.

* Sec. 10. AS 12.62 is amended by adding a new section to read:

Sec. 12.62.031. ACCESS TO CRIME INFORMATION INVOLVING A CANDIDATE FOR PUBLIC OFFICE. A member of the public may request from the Department of Public Safety a record from this state listing each criminal conviction involving an individual who has filed for public office in the state. The Department of Public Safety shall provide a copy of the conviction record to the member of the public and shall also provide a copy of the conviction record to the person who is the subject of the request. The Department of Public Safety may establish by regulation reasonable fees to cover the costs of researching and reproducing the conviction record.

* Sec. 11. AS 14.56.120(b) is amended to read:

(b) Each state agency shall notify the center of the creation of all data published or compiled by or for it at public expense, including automated data bases, and provide for its accessibility through the center [,] unless the data is protected by the constitutional right to privacy or is of a type stated by law to be confidential or the agency is otherwise prohibited by law from doing so.

* Sec. 12. AS 18.50.310(f) is amended to read:

(f) Notwithstanding the provisions of AS 09.25.120, when 100 years have elapsed after the date of a birth, or 50 years have elapsed after the date of a death, marriage, divorce, dissolution of marriage, or annulment, the records of these events in the custody of the state registrar become public records subject to inspection and copying as

provided in AS 09.25.110 - 09.25.140 [AS 09.25.110 AND AS 09.25.121 - 09.25.125].

* Sec. 13. AS 24.08 is amended by adding a new section to read:

Sec. 24.08.105. RECORD OF VOTES. The voting record for each legislator shall be made available to any person on request. The Legislative Affairs Agency shall keep voting records compiled annually under this section on the agency data system and shall distribute copies to all legislative information offices for a fee established under AS 09.25.115.

* Sec. 14. AS 29.71 is amended by adding a new section to read:

Sec. 29.71.060. COPYRIGHTS. A municipality may hold the copyright for software created by the municipality or developed by a contractor for the municipality, and may enforce its rights to protect the copyright.

* Sec. 15. AS 40.21.030(a) is amended to read:

(a) In order to carry out the archival program, the state archivist shall:

(1) negotiate for, acquire, and receive public records of permanent value including public records of the state and political subdivisions of the state and of defunct public agencies;

(2) establish and operate a state archival depository that [WHICH] shall provide for the preservation, arrangement, repair, rehabilitation, duplication, reproduction, description, and exhibition of permanent public records or other documentary material transferred to, or acquired by the state archivist;

(3) review and approve all agency records retention schedules to identify and to ensure the preservation of those records having permanent value;

(4) make permanent records under the supervision of the

archivist, other than those required by AS 09.25.120 to be kept confidential, available for public use at reasonable times;

(5) for a fee established under AS 09.25.110 - 09.25.115, make available to any person [FOR A REASONABLE FEE] copies of archival material under AS 09.25.120;

(6) adopt a seal for official use and for certification of record copies which copies shall have the same force and effect as if made by the original custodian of the records;

(7) negotiate payment for the acquisition of public records with the possessor of them;

(8) if negotiations under (7) of this subsection are unsuccessful or if the person in possession of the public records is unwilling to enter into those negotiations, arrange with the person in possession for the microfilming of the records;

(9) accept gifts, bequests, and endowments for purposes consistent with the objectives of this chapter;

(10) prepare inventories, indexes, catalogs, and other finding aids or guides to facilitate the use of the archives;

(11) accept documents, including motion picture film, still pictures, and sound recordings, that are appropriate for preservation by the state as evidence of its organization, functions, policies, decisions, procedures, and transactions.

* Sec. 16. AS 44.99 is amended by adding new sections to read:

ARTICLE 1A. PERSONAL INFORMATION IN PUBLIC RECORDS.

Sec. 44.99.020. NOTICE REGARDING PERSONAL INFORMATION. (a) When a state agency requests personal information directly from the person who is the subject of the information, the agency shall give the person a written notice at the time of the request that states

(1) the name and address of the agency;

(2) the citation of the statute or regulation that authorizes the agency to request the information;

(3) a statement indicating whether the person is required to supply the information;

(4) the consequences to the person, if any, of not providing all or part of the requested information;

(5) a statement of the agency's anticipated uses of the information, including the agency's internal uses of the information and disclosure of the information to other state agencies;

(6) the fact that the information may be subject to inspection and copying under AS 09.25.110 - 09.25.120; and

(7) a statement summarizing how a person may challenge under AS 44.99.030 the accuracy or completeness of personal information maintained by a state agency.

(b) An agency may provide the written notice required under (a) of this section by

(1) placing the notice on the form used to request the information from the person;

(2) giving the person the notice on a separate sheet that accompanies the form used to request the information from the person;

(3) giving the person a statement in a pamphlet, booklet, manual, or other printed matter at the time the information on the person is requested; or

(4) prominently posting a sign containing the notice in a prominent location so that the sign can be easily observed and read by the person at the time the information is requested.

(c) This section does not apply to a request for information on a person if

(1) the request is made by a peace officer; in this

paragraph, "peace officer" has the meaning given in AS 01.10.060;

(2) the person is the agency's employee;

(3) the information is related to litigation; or

(4) the information is being collected by a public agency when investigating a possible violation of law.

Sec. 44.99.030. INFORMATION ACCURACY AND COMPLETENESS. (a) A person who is the subject of personal information that is maintained by a state agency and subject to public disclosure under AS 09.25.-110 - 09.25.140 may challenge the accuracy or completeness of the personal information.

(b) To challenge the accuracy or completeness of personal information under (a) of this section, the person must file with the state agency a written request that the personal information be changed. The request must provide

(1) a description of the challenged personal information;

(2) the changes necessary to make the personal information accurate or complete; and

(3) the person's name and the address where the department may contact the person.

(c) Within 30 days after receiving a written request made under (b) of this section, the state agency may request verification of the disputed personal information from the person who made the request.

(d) Within 30 days after receiving the written request under (b) of this section or the verification under (c) of this section, the state agency shall review the request and

(1) change the personal information according to the request and notify the person in writing of the change; or

(2) deny the request and notify the person in writing of the reasons for the decision and the name, title, and business address

of the person who denied the request.

(e) If a request is denied under (d) of this section, the person may provide to the state agency a concise written statement that states the person's reasons for disagreeing with the decision. The state agency shall maintain in its records the request made under (b) of this section and the statement provided by the person under this subsection. On all of the state agency's records that contain the disputed information, the state agency shall clearly note which portions of the records are disputed. If the record is in electronic form, the state agency may note the dispute in one field of the electronic form and maintain the other information about the dispute in paper form.

(f) This section does not apply to criminal intelligence or criminal investigative records, state agency personnel or retirement system records, records of applicants for employment with the state agency, or information in documents recorded under AS 40.17.

Sec. 44.99.040. DEFINITIONS. In AS 44.99.020 - 44.99.040,

(1) "person" means an individual;

(2) "personal information" means information that can be used to identify a person and from which judgments can be made about a person's character, habits, avocations, finances, occupation, general reputation, credit, health, or other personal characteristics, but does not include a person's name, address, or telephone number, if the number is published in a current telephone directory, or information describing a public job held by a person;

(3) "state agency" means a department, institution, board, commission, division, authority, public corporation, committee, or other administrative unit of the executive, judicial, or legislative branch of state government, including the University of Alaska, the

Alaska State Housing Authority, and the Alaska Railroad Corporation.

ARTICLE 1B. COPYRIGHTS BY STATE AGENCIES.

Sec. 44.99.050. COPYRIGHTS. A state agency may hold the copyright for software created by the agency or developed by a private contractor for an agency, and may enforce its rights to protect the copyright. In this section, "state agency" means a department, institution, board, commission, division, authority, public corporation, committee, or other administrative unit of the executive, judicial, or legislative branch of state government, including the University of Alaska, the Alaska State Housing Authority, and the Alaska Railroad Corporation.

* Sec. 17. AS 44.99.020, as enacted by sec. 16 of this Act, applies to requests for personal information made by a state agency on or after the effective date of this Act.

6-1782G
Bannister
4/27/90

Original sponsor(s): REP. BROWN, Boucher, Goll, Ellis

IN THE HOUSE BY THE STATE AFFAIRS COMMITTEE

SENATE CS FOR CS FOR HOUSE BILL NO. 405 (State Affairs)

IN THE LEGISLATURE OF THE STATE OF ALASKA

SIXTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to requests for information by public agencies; relating to public access to and changes to the information of public agencies; and relating to the copyrighting of software produced by or for public agencies."

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

* Section 1. LEGISLATIVE FINDINGS AND INTENT. The legislature finds that

(1) public access to government information is a fundamental right that operates to check and balance the actions of elected and appointed officials and to maintain citizen control of government;

(2) computers and electronic data bases have proliferated throughout government raising issues regarding access to electronic information that are not addressed in present law;

(3) to protect the public's right to know, public records must be available at nominal cost;

(4) to protect an individual's right to privacy under the state and federal constitutions, the state shall inform individuals if personal information about them will be subject to public disclosure;

(5) an individual shall have the opportunity to change personal information contained in public records if the information is inaccurate or incomplete;

(6) if public agencies increase electronic access to the state's information systems, particularly for the more isolated communities of the

state, the delivery of public services and the availability of information throughout the state would be enhanced;

(7) public access to state and municipal information systems will be enhanced by establishing user fees for electronic services and products that are calculated to recover a reasonable portion of the costs associated with building and maintaining a public information system.

* Sec. 2. AS 09.25.110 is amended to read:

Sec. 09.25.110. INSPECTION AND COPIES OF PUBLIC RECORDS. Unless specifically provided otherwise, the [BOOKS, RECORDS, PAPERS, FILES, ACCOUNTS, WRITINGS, AND TRANSACTIONS OF ALL AGENCIES AND DEPARTMENTS ARE] public records <u>of all public agencies</u> [AND] are open to inspection by the public under reasonable rules during regular office hours. The public officer having the custody of public records shall give on request and payment of <u>the fee established under this section or AS 09.25.115</u> [COSTS] a certified copy of the public record.

* Sec. 3. AS 09.25.110 is amended by adding new subsections to read:

(b) Except as otherwise provided in this section, the fee for copying public records may not exceed the standard unit cost of duplication established by the public agency.

(c) If the production of records for one requester in a calendar month exceeds five person-hours, the public agency shall require the requester to pay the personnel costs required during the month to complete the search and copying tasks. The personnel costs may not exceed the actual salary and benefit costs for the personnel time required to perform the search and copying tasks. The requester shall pay the fee before the records are disclosed, and the public agency may require payment in advance of the search.

(d) A public agency may reduce or waive a fee when the public agency determines that the reduction or waiver is in the public

interest. Fee reductions and waivers shall be uniformly applied among persons who are similarly situated. A public agency may waive a fee of $5 or less if the fee is less than the cost to the public agency to arrange for payment.

(e) Notwithstanding other provisions of this section to the contrary, the Bureau of Vital Statistics, the library archives in the Department of Education, and the division of banking, securities, and corporations in the Department of Commerce and Economic Development may continue to charge the same fees that they are charging on the effective date of this Act for performing record searches, and may increase the fees as necessary to recover agency expenses on the same basis that is used by the agency immediately before the effective date of this Act.

(f) Notwithstanding other provisions of this section to the contrary, the Board of Regents of the University of Alaska may establish reasonable fees for the inspection and copying of public records, including record searches.

(g) Notwithstanding other provisions of this section to the contrary, the board of directors of the Alaska Railroad Corporation may establish reasonable fees for the inspection and copying of public records, including record searches.

(h) Notwithstanding other provisions of this section to the contrary, the judicial branch may establish by court rule reasonable fees for the inspection and copying of public records, including record searches.

(i) Electronic information that is provided in printed form shall be made available without codes or symbols, unless accompanied by an explanation of the codes or symbols.

* Sec. 4. AS 09.25 is amended by adding a new section to read:

Sec. 09.25.115. ELECTRONIC SERVICES AND PRODUCTS. (a) Notwithstanding AS 09.25.110(b) - (d) to the contrary, upon request and payment of a fee established under (b) of this section, a public agency may provide electronic services and products involving public records to members of the public. A public agency is encouraged to make information available in usable electronic formats to the greatest extent feasible. The activities authorized under this section may not take priority over the primary responsibilities of a public agency.

(b) The fee for electronic services and products must be based on recovery of the actual incremental costs of providing the electronic services and products, and a reasonable portion of the costs associated with building and maintaining the information system of the public agency. The fee may be reduced or waived by the public agency if the electronic services and products are to be used for a public purpose, including public agency program support, nonprofit activities, journalism, and academic research. Fee reductions and waivers shall be uniformly applied among persons who are similarly situated.

(c) Notwithstanding (b) of this section, the fee for duplicating a public record in the electronic form kept by a public agency may not exceed the actual incremental costs of the public agency.

(d) Public agencies shall include in a contract for electronic services and products provisions that

(1) protect the security and integrity of the information system of the public agency and of information systems that are shared by public agencies; and

(2) limit the liability of the public agency providing the services and products.

(e) Each public agency shall notify the state library

distribution and data access center established under AS 14.56.090 of the electronic services and products offered by the public agency to the public under this section. The notification must include a summary of the available format options and the fees charged.

(f) When offering on-line access to an electronic file or data base, a public agency also shall provide without charge on-line access to the electronic file or data base through one or more public terminals.

(g) Each public agency shall establish the fees for the electronic services and products provided under this section. The Telecommunications Information Council may cancel the fees established by a public agency in the executive branch, including the Alaska State Housing Authority, but not including the University of Alaska and the Alaska Railroad Corporation, if the council determines that the fees are unreasonably high.

(h) A public agency may not make electronic services and products available to one member of the public and withhold them from other members of the public.

(i) A public agency other than a municipality or the Alaska Railroad Corporation shall separately account for the fees received by the agency under this section and deposited in the general fund. The annual estimated balance in the account may be used by the legislature to make appropriations to the agency to carry out the activities of the agency.

* Sec. 5. AS 09.25.120 is amended to read:

Sec. 09.25.120. INSPECTION AND COPYING OF PUBLIC RECORDS. Every person has a right to inspect a public [WRITING OR] record in the state, including public [WRITINGS AND] records in recorders' offices except (1) records of vital statistics and adoption proceedings which

shall be treated in the manner required by AS 18.50; (2) records pertaining to juveniles; (3) medical and related public health records; (4) records required to be kept confidential by a federal law or regulation or by state law; (5) to the extent the records are required to be kept confidential under 20 U.S.C. 1232g and the regulations adopted under 20 U.S.C. 1232g in order to secure or retain federal assistance; (6) records or information compiled for law enforcement purposes, but only to the extent that the production of the law enforcement records or information (A) could reasonably be expected to interfere with enforcement proceedings, (B) would deprive a person of a right to a fair trial or an impartial adjudication, (C) could reasonably be expected to constitute an unwarranted invasion of the personal privacy of a suspect, defendant, victim, or witness, (D) could reasonably be expected to disclose the identity of a confidential source, (E) would disclose confidential techniques and procedures for law enforcement investigations or prosecutions, (F) would disclose guidelines for law enforcement investigations or prosecutions if the disclosure could reasonably be expected to risk circumvention of the law, or (G) could reasonably be expected to endanger the life or physical safety of an individual. Every public officer having the custody of records not included in the exceptions shall permit the inspection, and give on demand and on payment of the [LEGAL] fees under AS 09.25.110 - 09.25.115 [THEREFOR] a certified copy of the [WRITING OR] record, and the copy shall in all cases be evidence of the original. Recorders shall permit memoranda, transcripts, and copies of the public [WRITINGS AND] records in their offices to be made by photography or otherwise for the purpose of examining titles to real estate described in the public [WRITINGS AND] records, making abstracts of title or guaranteeing or insuring the titles of the real

estate, or building and maintaining title and abstract plants; and shall furnish proper and reasonable facilities to persons having lawful occasion for access to the public [WRITINGS AND] records for those purposes, subject to reasonable rules and regulations, in conformity to the direction of the court, as are necessary for the protection of the [WRITINGS AND] records and to prevent interference with the regular discharge of the duties of the recorders and their employees.

* Sec. 6. AS 09.25 is amended by adding new sections to read:

Sec. 09.25.122. LITIGATION DISCLOSURE. A public record that is subject to disclosure and copying under AS 09.25.110 - 09.25.120 remains a public record subject to disclosure and copying even if the record is used for, included in, or relevant to litigation, including law enforcement proceedings, involving a public agency, except that with respect to a person involved in litigation, the records sought shall be disclosed in accordance with applicable court rules. In this section, "involved in litigation" means a party to litigation or representing a party to litigation, including obtaining public records for the party.

Sec. 09.25.123. SUPERVISION AND REGULATION. (a) The Telecommunications Information Council shall supervise and adopt regulations for the operation and implementation of AS 09.25.110 - 09.25.140 by public agencies in the executive branch, including the Alaska State Housing Authority, but not including the Alaska Railroad Corporation.

(b) The legislative council shall supervise and adopt procedures for the operation and implementation of AS 09.25.110 - 09.25.140 by public agencies in the legislative branch.

(c) The administrative director of courts shall supervise and adopt procedures for the operation and implementation of

AS 09.25.110 - 09.25.140 by public agencies in the judicial branch.

(d) The Board of Regents of the University of Alaska shall supervise and adopt procedures for the operation and implementation of AS 09.25.110 - 09.25.140 by the University of Alaska.

(e) The regulations and procedures adopted under this section must include the establishment of procedures for making an administrative appeal of public agency action that is taken under AS 09.25.110 - 09.25.140.

(f) In this section,

(1) "action" includes the calculation of a fee, the denial of a fee reduction or waiver and the denial of a request to inspect or copy a public record;

(2) "public agency" does not include a municipality.

Sec. 09.25.124. APPEALS. A person may appeal to the superior court the final administrative order made by a public agency under AS 09.25.110 - 09.25.140.

* Sec. 7. AS 09.25.125 is amended to read:

Sec. 09.25.125. ENFORCEMENT: INJUNCTIVE RELIEF. A person having custody or control of a public record who <u>denies,</u> obstructs, or attempts to obstruct, or a person not having custody or control who aids or abets another person in <u>denying,</u> obstructing, or attempting to obstruct, the inspection of a public record subject to inspection under AS 09.25.110 or 09.25.120 may be enjoined by the superior court from <u>denying,</u> obstructing, or attempting to obstruct, the inspection of public records subject to inspection under AS 09.25.110 or 09.25.120. <u>A person may seek injunctive relief under this section without exhausting the person's remedies under AS 09.25.123 - 09.25.124.</u>

* Sec. 8. AS 09.25.220 is amended to read:

Sec. 09.25.220. DEFINITIONS. In <u>AS 09.25.100 - 09.25.220</u>

[AS 09.25.150 - 09.25.220], unless the context otherwise requires,

(1) "electronic services and products" means computer-related services and products provided by a public agency, including

(A) electronic manipulation of the data contained in public records in order to tailor the data to the person's request or to develop a product that meets the person's request;

(B) duplicating public records in alternative formats not used by a public agency, providing periodic updates of an electronic file or data base, or duplicating an electronic file or data base from a geographic information system;

(C) providing on-line access to an electronic file or data base;

(D) providing information that cannot be retrieved or generated by the existing computer programs of the public agency;

(E) providing functional electronic access to the information system of the public agency; in this subparagraph, "functional access" includes the capability for alphanumeric query and printing, graphic query and plotting, nongraphic data input and analysis, and graphic data input and analysis;

(F) providing software developed by a public agency or developed by a private contractor for a public agency;

(G) generating maps or other standard or customized products from an electronic geographic information system;

(2) "news organization" means

(A) an individual, partnership, corporation or other association regularly engaged in the business of

(i) publishing a newspaper or other periodical that reports news events, is issued at regular intervals and has a general circulation;

(ii) providing newsreels or other motion picture news for public showing; or

(iii) broadcasting news to the public by wire, radio, television or facsimile;

(B) a press association or other association of individuals, partnerships, corporations, or other associations described in (A)(i), (ii), or (iii) of this paragraph engaged in gathering news and disseminating it to its members for publication;

(3) [(2)] "privilege" means the conditional privilege granted to public officials and reporters to refuse to testify as to a source of information;

(4) [(3)] "public official" means a person elected to a public office created by the Constitution or laws of this state, whether executive, legislative, or judicial, and who was holding that office at the time of the communication for which privilege is claimed;

(5) "public agency" means a political subdivision, department, institution, board, commission, division, authority, public corporation, council, committee, or other instrumentality of the state or a municipality; "public agency" includes the University of Alaska, the Alaska State Housing Authority, and the Alaska Railroad Corporation;

(6) "public records" means books, papers, files, accounts, writings, including drafts and memorializations of conversations, and other items, regardless of format or physical characteristics, that are developed or received by a public agency, or by a private contractor for a public agency, and that are preserved for their informational value or as evidence of the organization or operation of the public

agency; "public records" does not include proprietary software programs;

(7) [(4)] "reporter" means a person regularly engaged in the business of collecting or writing news for publication, or presentation to the public, through a news organization; it includes persons who were reporters at the time of the communication, though not at the time of the claim of privilege;

(8) "Telecommunications Information Council" means the Telecommunications Information Council established under AS 44.19.502.

* Sec. 9. AS 12.62 is amended by adding a new section to read:

Sec. 12.62.031. ACCESS TO CRIME INFORMATION INVOLVING A CANDIDATE FOR PUBLIC OFFICE. (a) A member of the public may request from the Department of Public Safety a record from this state listing each criminal conviction involving an individual who has filed for public office in the state. The Department of Public Safety shall first provide a copy of the conviction record to the candidate. If within 14 days after receiving the record the candidate does not dispute the accuracy of the record, the department shall release the record to the person making the request. If within 14 days after receiving the record the candidate disputes the accuracy of the record, the department shall either (1) correct the record as requested by the candidate, or (2) notify the candidate that it does not agree with the requested correction. If a dispute is not resolved within the 14-day period, the department shall release the record to the person making the request with the disputed portion marked as disputed and the candidate's requested correction indicated on the record.

(b) The Department of Public Safety may establish by regulation reasonable fees to cover the costs of researching and reproducing the conviction record under (a) of this section.

* Sec. 10. AS 14.56.120(b) is amended to read:

(b) Each state agency shall notify the center of the creation of all data published or compiled by or for it at public expense, including automated data bases, and provide for its accessibility through the center [,] unless the data is protected by the constitutional right to privacy or is of a type stated by law to be confidential or the agency is otherwise prohibited by law from doing so.

* Sec. 11. AS 18.50.310(f) is amended to read:

(f) Notwithstanding the provisions of AS 09.25.120, when 100 years have elapsed after the date of a birth, or 50 years have elapsed after the date of a death, marriage, divorce, dissolution of marriage, or annulment, the records of these events in the custody of the state registrar become public records subject to inspection and copying as provided in AS 09.25.110 - 09.25.140 [AS 09.25.110 AND AS 09.25.121 - 09.25.125].

* Sec. 12. AS 24.08 is amended by adding a new section to read:

Sec. 24.08.105. RECORD OF VOTES. The voting record for each legislator shall be made available to any person on request. The Legislative Affairs Agency shall keep voting records compiled annually under this section on the agency data system and shall distribute copies to all legislative information offices for a fee established under AS 09.25.115.

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Sec. 29.71.060. COPYRIGHTS. A municipality may hold the copyright for software created by the municipality or developed by a contractor for the municipality, and may enforce its rights to protect the copyright.

* Sec. 14. AS 40.21.030(a) is amended to read:

(a) In order to carry out the archival program, the state

archivist shall:

(1) negotiate for, acquire, and receive public records of permanent value including public records of the state and political subdivisions of the state and of defunct public agencies;

(2) establish and operate a state archival depository that [WHICH] shall provide for the preservation, arrangement, repair, rehabilitation, duplication, reproduction, description, and exhibition of permanent public records or other documentary material transferred to, or acquired by the state archivist;

(3) review and approve all agency records retention schedules to identify and to ensure the preservation of those records having permanent value;

(4) make permanent records under the supervision of the archivist, other than those required by AS 09.25.120 to be kept confidential, available for public use at reasonable times;

(5) for a fee established under AS 09.25.110 - 09.25.115, make available to any person [FOR A REASONABLE FEE] copies of archival material under AS 09.25.120;

(6) adopt a seal for official use and for certification of record copies which copies shall have the same force and effect as if made by the original custodian of the records;

(7) negotiate payment for the acquisition of public records with the possessor of them;

(8) if negotiations under (7) of this subsection are unsuccessful or if the person in possession of the public records is unwilling to enter into those negotiations, arrange with the person in possession for the microfilming of the records;

(9) accept gifts, bequests, and endowments for purposes consistent with the objectives of this chapter;

(10) prepare inventories, indexes, catalogs, and other finding aids or guides to facilitate the use of the archives;

(11) accept documents, including motion picture film, still pictures, and sound recordings, that are appropriate for preservation by the state as evidence of its organization, functions, policies, decisions, procedures, and transactions.

* Sec. 15. AS 44.99 is amended by adding new sections to read:

ARTICLE 1A. PERSONAL INFORMATION IN PUBLIC RECORDS.

Sec. 44.99.020. NOTICE REGARDING PERSONAL INFORMATION. (a) When a state agency requests personal information that may be included in a public record directly from the person who is the subject of the information, the agency shall give the person a written notice at the time of the request that states

(1) the name and address of the agency;

(2) the citation of the statute or regulation that authorizes the agency to request the information;

(3) a statement indicating whether the person is required to supply the information;

(4) the consequences to the person, if any, of not providing all or part of the requested information;

(5) a statement of the agency's anticipated uses of the information, including the agency's internal uses of the information and disclosure of the information to other state agencies;

(6) the fact that the information may be subject to inspection and copying under AS 09.25.110 - 09.25.120; and

(7) a statement summarizing how a person may challenge under AS 44.99.030 the accuracy or completeness of personal information maintained by a state agency.

(b) An agency may provide the written notice required under (a)

of this section by

(1) placing the notice on the form used to request the information from the person;

(2) giving the person the notice on a separate sheet that accompanies the form used to request the information from the person;

(3) giving the person a statement in a pamphlet, booklet, manual, or other printed matter at the time the information on the person is requested; or

(4) prominently posting a sign containing the notice in a prominent location so that the sign can be easily observed and read by the person at the time the information is requested.

(c) This section does not apply to a request for information on a person if

(1) the request is made by a peace officer; in this paragraph, "peace officer" has the meaning given in AS 01.10.060;

(2) the person is the agency's employee;

(3) the information is related to litigation;

(4) the information is being collected by a public agency when investigating a possible violation of law; or

(5) the information is not subject to inspection and copying under AS 09.25.110 - 09.25.120, even if the information is eventually subject to inspection and copying under AS 18.50.310(f).

Sec. 44.99.030. INFORMATION ACCURACY AND COMPLETENESS. (a) A person who is the subject of personal information that is maintained by a state agency and subject to public disclosure under AS 09.25.-110 - 09.25.140 may challenge the accuracy or completeness of the personal information.

(b) To challenge the accuracy or completeness of personal information under (a) of this section, the person must file with the state

agency a written request that the personal information be changed. The request must provide

(1) a description of the challenged personal information;

(2) the changes necessary to make the personal information accurate or complete; and

(3) the person's name and the address where the department may contact the person.

(c) Within 30 days after receiving a written request made under (b) of this section, the state agency may request verification of the disputed personal information from the person who made the request.

(d) Within 30 days after receiving the written request under (b) of this section or the verification under (c) of this section, the state agency shall review the request and

(1) change the personal information according to the request and notify the person in writing of the change; or

(2) deny the request and notify the person in writing of the reasons for the decision and the name, title, and business address of the person who denied the request.

(e) If a request is denied under (d) of this section, the person may provide to the state agency a concise written statement that states the person's reasons for disagreeing with the decision. The state agency shall maintain in its records the request made under (b) of this section and the statement provided by the person under this subsection. On all of the state agency's records that contain the disputed information, the state agency shall clearly note which portions of the records are disputed. If the record is in electronic form, the state agency may note the dispute in one field of the electronic form and maintain the other information about the dispute in paper form.

(f) This section does not apply to criminal intelligence or criminal investigative records, state agency personnel or retirement system records, records of applicants for employment with the state agency, or information in documents recorded under AS 40.17.

Sec. 44.99.040. DEFINITIONS. In AS 44.99.020 - 44.99.040,

(1) "person" means an individual;

(2) "personal information" means information that can be used to identify a person and from which judgments can be made about a person's character, habits, avocations, finances, occupation, general reputation, credit, health, or other personal characteristics, but does not include a person's name, address, or telephone number, if the number is published in a current telephone directory, or information describing a public job held by a person;

(3) "state agency" means a department, institution, board, commission, division, authority, public corporation, committee, or other administrative unit of the executive, judicial, or legislative branch of state government, including the University of Alaska and the Alaska State Housing Authority, but not including the Alaska Railroad Corporation.

ARTICLE 1B. COPYRIGHTS BY STATE AGENCIES.

Sec. 44.99.050. COPYRIGHTS. A state agency may hold the copyright for software created by the agency or developed by a private contractor for an agency, and may enforce its rights to protect the copyright. In this section, "state agency" means a department, institution, board, commission, division, authority, public corporation, committee, or other administrative unit of the executive, judicial, or legislative branch of state government, including the University of Alaska, the Alaska State Housing Authority, and the Alaska Railroad Corporation.

* Sec. 16. AS 44.99.020, as enacted by sec. 15 of this Act, applies to requests for personal information made by a state agency on or after the effective date of this Act.

Teleconference

April 25, 1990

CS HB 405, Public access to information.

TO TESTIFY; Please take in order

Representative Brown or Mary Core,staff

JEFF BUSH: will present amendments for Vital Stats, Dept. of Law, Public Safety

RAILROAD AMENDMENTS; Larry Houle or _____?

WENDY REDMOND; U of A amendment

MUNICIPALITY OF ANCHORAGE; Glenn Lundell proposed amendment
John McKay to testify against

NOTES;

Summary memo briefly reviews each amendment.

Fish and Game is going to propose "radical" amendments IN FINANCE COMMITTEE, however, if they go back on their word, Valerie Brown of the Wildlife Alliance is listening in on line and wishes to testify in opposition to their amendments.

KAY DOES NOT SUPPORT THE MOA AMENDMENTS. The others have received her approval.

DNR supports bill.

FURTHER REFERRAL; Finance

HOUSE VOTE; 34 Yeas
3 Nays

April 27, 1990 TELECONFERENCE

CS HB 405, Public access to information.

TO TESTIFY;

Represenative Brown or Mary Core

AVAILABLE FOR QUESTIONS OR ISSUES;

John McKay
Paul Fleischer
Gail Horetski: DPS
Heather Flynn: MOA amendment issue
Paul GRant: ACLU

NOTES;

NEW LANGUAGE FOR CANDIDATE CRIME INFORMATION; Section 9, Page 11
Gail Horetski says Department has no objection. They do not need to change the fee language but warn that fees will be higher than others.

CS contains Amendments 1-5. (See amendments if your notebook, it is too hard to highlight the changes given all the deletions, etc.) It also contains Adams Amendment to eliminate "subcommittees" and changes the Injunctive Relief language to allow a person to seek injunctive relief without exhausting a public agencies remedies. Page 1, the "shoulds" have been changes to shall in (4) and (5).

See Senator Faiks amendment request. IF YOU DECIDE TO OPEN THIS CAN OF WORMS: Heather Flynn, John McKay, Paul Fleischer, Paul Grant and Glen Lundell all wish to testify. Recommendation: preserve status quo. The current ordinances have stood up in court. Most of the cases have come since Fink came into office, but the Daily News has won each time.

Kay understands that you are ready to move the bill out in the new CS format and doesn't expect you to have to spend much time on this MOA issue. She can handle a Judiciary referral if necessary. She does want the bill out of committee today (according to Mary Core).

FURTHER REFERRAL; Judiciary and Finance

HOUSE VOTE; 34 Yeas
3 Nays

April 18, 1990

CS HB 405, Public access to information.

NOTIFIED; * indicates will testify

*Representative Kay Brown
Bob Motznik
Dept. of Ed: State Library, Karen Crane
Dept. of Admin: Information Services, Paul Monette
Finance: Keith Busch
Dept. of Public Safety: Administrative Services, Ken Bischoff
*DNR: Management & Administration, Dianna Lyles
Fish & Game: Administration, Beverly Reaume
Dept. of Revenue: CSED Susan Goodman
DOT/PF: Information Services, Chuck Greeson
*Municipality of Anchorage: Glenn Lundell NOTE; HE IS PROPOSING AN AMENDMENT, SEE MOA LETTER IN PACKET.
*Gray Van Doren— North Star Borough Assembly, strongly support section relating to Legislative Voting Records.

FURTHER REFERRAL; Finance

HOUSE VOTE; 34 Yeas
3 Nays

NOTES:

(1.) ON The lastest amendment re: municipality excluded if the municipality has ordinances w/ similar provisions. JOHN McKAY and/or Howard Weaver wish to testify on Amendment.

Section 1 provides findings and intent for the bill.

Alaska State Legislature

HOUSE OF REPRESENTATIVES

Official Business

P.O. Box V
State Capitol
Juneau, Alaska 99811

DATE: April 9, 1990

TO: Senator Pat Pourchot
Chair, Senate State Affairs Committee

FROM: Representative Kay Brown

SUBJECT: CS HB 405 (Finance) am

Thank you for scheduling CS HB 405 (Finance) am, which deals with public access to state and local government records, for a hearing in the Senate State Affairs Committee.

The Major provisions of the bill:

- Govern access to and fees for obtaining public records. The provisions cover all agencies of the executive, legislative, judicial branches of state government, and of municipalities.

- Establish discretionary authority for public agencies to offer to the public electronic services and products, and criteria for setting fees. The intent is that electronic services and products would be offered if there is sufficient public demand to generate enough fees (program receipts) to cover the costs.

- Authorize state agencies and municipalities to copyright software.

- Address privacy rights of individuals by requiring state agencies to inform individuals that personal information may be subject to public disclosure, and providing a process to correct inaccurate personal information in public files.

- Define terms, including public records, electronic services and products, and personal information.

Please let me know if I can answer any questions about the bill. Thank you for your interest and support.

Public Access to INFORMATION

HB 405

Date: May 8, 1990

To: Senator Pourchot

From: Representative Kay Brown

Re: SCS CS HB 405 (Finance)am, an act relating to requests for information by public agencies; relating to public access to and changes to the information of public agencies; and relating to the copyrighting of software produced by or for public agencies.

Changes in bill by Senate Finance Committee;

- Deletes Sections on Municipal Personnel Records;
- Deletes Access to Candidate's Conviction Records; and
- Adds Fish and Wildlife Data Section (same as in House version);

Significant changes in the bill by Senate State Affairs Committee:

- Deletes two separate sections of bill that were in conflict with the test the Dept. of Law uses in determining balance between confidential and public information;
- Designates Board of Directors to adopt regulations for the Alaska Railroad;
- Designates Board of Regents to adopt regulations for the University Alaska;
- Specifies that information that is subject to disclosure, even if the information is relevant to litigation, remains subject to disclosure; and
- Designates certain school records confidential in compliance with federal funding requirements.

Thank you for making the floor speech.

Prepared by Brown's office —

FLOOR SPEECH SCS CS HB 405 (Finance) am
5/8/90

Under present law an agency is prohibited from charging more than the cost of duplication for public records. This remains a workable system for requests for individual paper documents, but current law does not address a new category of products and services that have resulted from the proliferation of computer systems in state government.

Present Law

This bill will allow public agencies to provide records and information in electronic format, and to charge a fee sufficient to cover the cost of doing so.

For example, the Department of Natural Resources has developed several geographic Information System databases, a technology that allows resource decisions to be made based on mapped information. Mining, oil, timber, and other resource development companies desire access to computerized resource and land title information.

DNR example

This bill will enable DNR to provide the information in the form desired, and to recover the costs.

One database is the hydrography (land water interface) database of the entire Cook Inlet Region. A private sector company representing the oil industry has approached DNR requesting access to the hydrography (land water interface) database. DNR needs the legislation to establish a policy framework, for addressing requests of this type, and for setting appropriate fees.

example

Many of the state records change daily. The Division of Mining has a computer terminal in its Anchorage office through which the public can access daily updated mining records. office. If this legislation is passed, the Division would be able to extend similar access by modem on a subscription basis and provide state wide access to the information.

Division of Mining

Large projects, such as the proposed Yukon Pacific Corporation gas

line, would be able, for a fee, to compile information from several state databases, and using a geographic information system program, map land ownership, environmental considerations, and engineering details within one system. This bill would provide for less redundant data gathering for the private sector. It will provide consistency of data between the resource developer and the resource owner in the event of environmental accidents or concerns.

Many individuals have requested information from state agencies in disk format. To date there have been no uniform policies established to respond to these requests. Under the provisions of this legislation, state agencies will set fees for these services and the Telecommunication Information Council will set uniform regulations.

By adopting SCS CS HB 405 (Finance) State government can recover the costs of providing electronic information and can assist the private sector and members of the public who desire to obtain

public information in computer format.

Public information is vital to society. It is important for the state to establish an appropraite cost recoveryand policy framework for the Information Age.

Alaska State Legislature

Sen. Pat Pourchot, Chairman

Sen. Jan Faiks, Vice Chairman
Sen. Al Adams
Sen. Tim Kelly
Sen. Rick Uehling

P.O. Box V
State Capitol
Juneau, Alaska 99811

907-465-3712

Senate State Affairs Committee

MEMORANDUM

TO: Senate State Affairs Committee Members

FROM: Senator Pat Pourchot

RE: Wednesday, April 25 Committee Hearing

DATE: April 24, 1990

On Wednesday, April 25 at 1:30 p.m. in the Beltz Room the Senate State Affairs Committee will hear the following bills:
*Indicates bill will be teleconferenced.

SB 206, An Act relating to intrastate competition in telecommunications; continuing the existence of the APUC; and providing for an effective date. Rescheduled to April 27

*CS HB 405.An Act relating to requests for information by public agencies, and relating to the copyrighting of software produced by or for public agencies. Sponsored by Representative Brown, this bill deals with public access to state and local government records. The major provisions of the bill are:

- .to govern access to and fees for obtaining public records, covering all agencies of state government and municipalities.
- .to establish discretionary authority for public agencies to offer to the public electronic services and products and criteria for setting fees, based on public demand and sufficient program receipts.
- .to authorize state agencies and municipalities to copyright software.
- .to address privacy rights of individuals by requiring state agencies to inform individuals that personal information may be subject to public disclosure and to provide a process to correct inaccurate personal information.

This is the second hearing for for this bill. Your packet contains the proposed State Affairs CS and six amendments. We are expecting an additional amendment from Department of Public Safety. The proposed amendments are numbered, briefly they include:
Amendment #1: Would allow the Bureau of Vital Statistics to continue set their own fees and exempt them from personal information notification because information will not be released for 50-75 years.
Amendment # 2: allows the Department of Law to rely on established court standards for what is public information.
Amendment # 3: corrects a problem the University of Alaska has had with federal law requiring student records to be confidential for students to be eligible for federal assistance, it removes U of A out from under TIC authority and it allows them to set their own fees.

+ FAIKS/McKay amendment

Amendment # 4: Removes the Alaska Railroad out from under TIC authority and allows them to set their own fees.
Amendment # 5: Allows Municipalities to be excluded from this act if they can demonstrate substantially similar ordinances.
Amendment # 6: Changes the presumption from "open records" to "confidential records" for municipalities.
Proposed DPS amendment: Requests additional voluntary information from candidates to reduce chance of error and has a liability clause to protect DPS from distributing incorrect information.

*CS HB 556, An Act relating to disaster emergencies and disaster and emergency relief and preparedness. This bill, sponsored by Representative Gruenberg, revises the Alaska Disaster Act. Major provisions of this bill are to limit legislative involvement to instances whereby the governor proposes to spend more than $1 million to alleviate effects of disaster or $500,000 to avoid a disaster or an amount that exceeds the Disaster Relief Fund's unallocated balance and clarification of the Governor's role in declaring a disaster emergency. Sections 3-17 are changes suggested by the Division of Emergency Services which revise and update statutes relating to disaster emergencies and preparedness.

SB 240, An Act relating to the notice requirements for the adoption, amendment or repeal of regulations. Sponsored by Senator Adams, this bill would provide state agencies the option of providing notice of regulation change by publication in a newspaper or by broadcasting by radio or television. Included in your packet are two amendments proposed by Senator Adams.

SB 517, An Act relating to initiative and referendum elections in home rule municipalities. Sponsored by the Community and Regional Affairs Committee, this bill would allow initiatives and referendum elections in home rule and general law municipalities to be passed on a simple majority basis.

CS HB 511 (SA) am, An Act making a special appropriation to reimburse the dividend fund in fiscal year 1990 for prisoner gate money, sex offender treatment programs and the Violent Crimes Compensation Board. . .
Sponsored by Representative Boucher, this bill would authorize an immediate $1.5 million appropriation to the dividend fund for deductions made in 1989 for Department of Corrections and Department of Public Safety programs. This would allow dividend recipients to be reimbursed for the 1989 deductions in their 1990 dividend check.

Alaska State Legislature

Senate Judiciary Committee

April 26, 1990

MEMORANDUM

TO: Senator Pat Pourchot, Chairman
Senate State Affairs Committee

FROM: Senator Jan Faiks

SUBJECT: Amendment to HB 405

Passed incorporated into Final CS.

Through the office of Representative Brown, I was provided with a copy of a letter to you from John McKay concerning an amendment to HB 405 regarding personnel records.

Following a subsequent telephone conversation with Terry Fleischer, I will be asking the State Affairs Committee to consider amending HB 405 per Mr. McKay's suggested language. For your reference, a copy is attached.

Thank you.

Post Office Box V • Juneau, Alaska 99811

OFFERED BY FAIKS: #8 Adopted

AMENDMENT

OFFERED IN THE SENATE

TO: SCS CSHB 405(State Affairs) (6- 1782G, 4/12/90)

Page 12, following line 9:

Insert new bill sections to read:

"* Sec. 14. AS 29.10.200 is amended by adding a new paragraph to read:

(51) AS 29.20.650 (personnel records).

* Sec. 15. AS 29.20 is amended by adding a new section to read:

Sec. 29.20.650. PERSONNEL RECORDS. (a) The personnel records of a municipality are presumptively confidential and are not open to public inspection except (i) as provided in subsection (b) of this section; or (ii) when disclosure of such municipal records would not constitute an unwarranted invasion of an employee's right of privacy.

(b) The following information about the employees of a municipality is available for public inspection, subject to reasonable requirements on the time and manner of inspection:

(1) the names and position titles of all employees of the municipality;

(2) resumes and applications;

(3) the position held by an employee;

(4) prior positions held by an employee;

(5) the dates ~~and~~ of appointment and separation of an employee; and

(6) the compensation actually paid to an employee, and the compensation authorized for any position.

(c) An employee of a municipality has the right to examine the employee's own personnel files and may authorize others to examine those files.

(d) This section applies to home rule and general law municipalities."

Renumber the following bill sections accordingly.

Page 17, line 12:

Delete "sec. 16"

Insert "sec. 18"

MEMORANDUM
DEPARTMENT OF NATURAL RESOURCES

STATE OF ALASKA
DIVISION OF MANAGEMENT

To: Senate State Affairs Committee

Date: April 23, 1990

The Department of Natural Resources has been pleased to work with the sponsor of HB405, and we strongly endorse the concepts of public access embodied in the bill. The current version, S_CS_CS_HB405_ (State Affairs) lays a good framework for most categories of computer information, but DNR believes that the State's Geographic Information System (GIS) databases require the specific language found in this current version. GIS is a technology that allows resource decisions to be made based on mapped information, and on the statistical analysis of the resources graphically portrayed. As an example, ADNR is using their GIS database to quantify the marketable timber yield for the Susitna Basin.

HB405 provides for necessary administrative inclusion of GIS database access under products and services, allowing for contractual relationships with the public requestors. This inclusion allows the agency to assure:

* Necessary liability disclaimers,
* Copyright protection, and
* The requisite technology transfer that must accompany this complex and interpretive data.

The lesson being learned now is that once a "map" is in the computer, one can do an awful lot more that just plot it out again. You can calculate areas, strategize appropriate resource development, argue boundary interpretations, and take advantage of other new applications as they appear. Thoughtful contract language, associated with access requests, will protect the State from data liabilities not previously encountered in the production of agency products.

ADNR has submitted a $10.0 fiscal note designed to defray the cost of expanding public access to the agency's GIS databases, through the authority to expend the program receipts generated by the product and service contracts.

I urge you to pass this bill out of committee with the sponsor's proposed amendments.

Submitted by: Dianne M. Lyles
Division of Management
Land Records Information Section

American Civil Liberties Union

Alaska Civil Liberties Union -Legislative Committee-217 Second St. #204-Juneau, Alaska 99801

Susie -

Here's the information on Sec. 10 of HB 405. ACLU objects strongly to the use of fingerprints as a "pre-employment" screening device. We see no reason why legislators have any lesser privacy rights than other folks. We don't want to inhibit people from running for office and we don't see any job qualifications that require a clean record.

We also object, in general, to release of criminal justice information in the absence of very stringent safeguards - which are set out in the attachment.

Please call if you have any other Q.'s.

586-2701

Policy #257

[redacted]

Fingerprinting is an invasion of an individual's privacy and right of anonymity. While its use may be an aid in the enforcement of criminal law in certain situations, the areas in which the taking of fingerprints is permissible should be strictly limited. Were fingerprinting to be carried out indiscriminately, the individual's freedom of movement might easily be curbed, minority groups and aliens would be subjected to close surveillance, and the way would be prepared for labor blacklists, police blackmail and frame-ups, and eventually search without warrant and denial of habeas corpus.

For these reasons, persons acquitted of a criminal charge should have their prints returned to them. [Board Minutes, February 7, 1938; Thumbs Down, 1938.]

The employment of public school teachers is not an area in which fingerprinting is permissible. The fingerprinting of teachers would be proper only if used for the detection of cheating in license examinations, and then only if the prints are not sent on to be filed with the FBI or the local police. [Board Minutes, June 10, 1963; Minutes of Academic Freedom Committee, November 1, 1960.] (For fingerprinting of children, see Section (b) of the policy on Children's Rights.)

Policy #203

Criminal Justice Records

The need to protect the privacy rights of individuals and the need of the public to monitor the activities of governmental agencies raise difficult questions. One of these, which seems to pit First Amendment rights of expression against the right of privacy, is this: to what kinds of criminal justice record, if any, should the press and public be allowed to access? We have been and continue to be concerned with the maintenance of criminal justice records in general: they are often inaccurate; they refer, in a large number of instances, to arrests for acts which should have enjoyed constitutional protection, and most importantly, they are abused by the many people in our society who draw improper inference from arrests not resulting in convictions. In this way, the arrest record places a stigma upon an individual which has serious impact on his or her prospects for employment, housing, education and other opportunities.

On the other hand, access to certain types of arrest records and statistics is vital to the public's ability to guard against abuses by its police agencies. Such access is of special importance in minority group neighborhoods, where sealing of all arrest records would seriously undercut efforts to curb police misconduct. After examination of these issues, we reaffirm our strong view that there should be absolutely no prior restraints or sanctions placed on anyone for publishing whatever information can be obtained.

* * *

(a) The traditional term "arrest records" encompasses a range of records that differ in function, content and the way they are maintained, and we therefore use the broader term "criminal justice records." The question of the public's right of access to information in criminal justice records requires balancing several conflicting interests: the public's right to be informed of the workings of the government, the public policy interest in eliminating discrimination against the subjects of records, the privacy rights of the subjects, and the interest in controlling and reducing crime. How these interests balance varies with the different types of records.

Chronologically listed and name-indexed files can be distinguished. Chronological records which are not indexed as to the names of individuals, such as the police blotter (see definition below), are public documents, subject to access in accordance with the provisions below. The public's right to information about official state action and exercise of police power requires that these records be open to public scrutiny. Only an informed public can curb abuses of police power. Because such records are maintained chronologically, the potential threat to individual reputations is mitigated and cannot override the public interest in access. However, the public right to know about official police action does not necessarily include a right of access to individuals' state-compiled histories of arrests, convictions and other involvement with the criminal justice

system. The potential harm to individual reputations and society's interest in eliminating discrimination require proof of a compelling reason for release.

Use of criminal justice records in determining grants or denials of benefits or employment tends to perpetuate discrimination against the poor and minorities because they are arrested and convicted more frequently than those who engage in the same conduct who are of other races or of different economic status.

Standards for determining granting of access to the following types of records:

1) Blotter

a) Definition: Chronological police station records that list arrests, detentions, stops, called-in complaints and miscellaneous anecdotal information.

b) Right of access: The blotter should be divided into records of arrests, which should be publicly available (because arrests are official police action and require probable cause), and records of stops, called-in complaints and other anecdotal information, which should not be public because they do not represent official police accusations, except upon court order upon showing of legitimate purpose.

2) Investigative Records

a) Definition: Records relating to identifiable individuals that are kept only upon reasonable belief that 1) a crime other than a petty offense was or will be committed; and 2) the record subject was or will be a participant in or has knowledge of significant facts concerning such crimes.

b) Right of access:

i.) Subject individual: Investigative records containing information pertaining to an active investigation can be denied to the individual involved and to the public.

Records pertaining to an investigation where a final decision has been reached (an investigation is presumptively inactive after a specified amount of time) are available to the subject individual, qualified by certain narrow exceptions and subject to court review, to protect sources, privacy and information about police investigative techniques before the subject individual is granted access.

ii.) Press and Public: The subject of the record should be given notice and the opportunity to consent to disclosure. The person seeking access bears the burden of finding the individual involved. If the individual does not affirmatively consent or cannot be located, the person seeking access may obtain the records only if he or she bears the burden of demonstrating that the interest in disclosure outweighs the privacy interest of the individual. If access is granted, names of living persons and other material in the records that would identify living persons shall be removed to protect their privacy, unless such persons have consented to disclosure of their identity.

iii.) Investigative Records: Investigative records should contain only information relevant to a law enforcement purpose.

3) Rap Sheets

a) Definition: Rap sheets are name-indexed files of an individual's complete criminal history.

b) Right to Access

i.) Records of Arrests: Arrests (for adults or juveniles) not resulting in conviction (other than pending arrests) should not be included in compilations of an individual's criminal justice record that are available to the press and/or the public. Such information may, however, be available to law enforcement agencies for investigation.

ii.) Records of Conviction: Records of conviction of adult offenses should be publicly available provided laws prohibiting the misuse of the information are strengthened to include the following:

-- Time limits on the use of conviction records for purposes of employment, licensing and granting credit. These limits may vary depending on the nature of the offense;
-- Requirements that the identity and affiliation of those who obtain access can be recorded;
-- Notice of restrictions on the use of the information to those who obtain access;
-- The burden of proof should be on the employer, licensing agency, credit granting agency, etc. to show that the conviction is relevant to the benefit involved;
-- The subject of the records should be provided with the opportunity to explain a conviction;
-- In case of pardons, or convictions reversed or procured under laws determined to be unconstitutional or otherwise invalid, the convictions should be removed from records of conviction.

[Board Minutes, January 29-30, 1983; September 24-25, 1988.]

* * *

(b) In light of increasingly serious civil liberties and social problems raised by the indiscriminate use by employers of criminal history records, ACLU will seek the adoption of legislation to forbid employers to inquire, by use of a form or other similar means, into the criminal history records of employees or applicants for employment in cases where no conviction has resulted. ("Conviction" means conviction by a court other than a juvenile court, and should not include a conviction that has been reversed or has been followed by a pardon on grounds of innocence.)

There is an obvious contradiction between an employer's use of an applicant's criminal history record to determine suitability for a job and the theoretical meaninglessness of an arrest without a conviction in our system of criminal justice. For ghetto residents and other poor people, including many hundreds arrested in civil rights and other demonstrations who were subsequently acquitted, a criminal history record alone can be a permanent bar to a decent job.

The Union favors prohibitory legislation applying to all employers because of the impossibility of carving out reasonable exceptions, and because, in any case, employers in sensitive areas have other, more valid means to discover the background of an employee, such as face-to-face discussion between the employer

and the prospective employee, that might uncover both the arrest and the surrounding circumstances. Such legislation should also prohibit the exclusion or expulsion of a person from membership in a labor organization because of a prior or subsequent arrest that does not result in conviction. [Board Minutes, May 9, 1968.]*/

* * *

(c) Any individual ought to be able to get his or her arrest record from the FBI, either directly or through the local police department. Adequate safeguards must be incorporated into any administrative procedure to protect privacy of arrest records from disclosure to unauthorized persons.

Arrest records should always contain a notation whether a person arrested was convicted, acquitted, or released without prosecution. They ought also to allow some opportunity for explanation by the person arrested as to the circumstances surrounding the arrest and prosecution. [Minutes of Due Process Committee, March 10, 1965.]

The FBI has the responsibility to take affirmative action to see that final disposition of each case reported to it by local law agencies is accurately and promptly recorded in its files. Failure to do so prejudices a person who was not prosecuted or was acquitted. [Minutes of Due Process Committee, October 18, 1960.]**/

---

*/ The changes made in Section (b) of this policy were approved at the Executive Committee meeting of June 14, 1989 and will be submitted for ratification at the October 14-15, 1989 Board meeting.

**/ Section (c) of this policy was approved at the Executive Committee meeting of June 14, 1989 and will be submitted for ratification at the October 14-15, 1989 Board meeting.

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April 26, 1990

Senator Pat Pourchot
Chairman, State Affairs Committee
Alaska State Legislature
P.O. Box V
Juneau, Alaska 99811

Sent by Fax

Re: SCS CSHB 405 (State Affairs)

Dear Senator Pourchot:

Thank you for the opportunity to testify before the Senate State Affairs Committee yesterday on behalf of the Alaska Newspaper Association and the Alaska Public Radio Network. Since that hearing, I have worked with Terry Fleischer, attorney for The Anchorage Times, to address some issues and concerns raised at the hearing and at the request of Senator Faiks. I will be available for the teleconference hearing tomorrow at 1:30, and I understand that Mr. Fleischer -- although he will be out of state -- would like to also participate telephonically. Meanwhile, I would offer the following comments for your consideration as you prepare for that hearing and prepare any Committee substitute bill. I have discussed these comments with Mr. Fleischer by phone today, and he concurs with them.

1. Exclusion of Municipalities from the State Public Records Act (Title 9) (referred to in Committee as "Amendment No. 5").

The Alaska Newspaper Association and APRN continue to oppose the Municipality of Anchorage's request to exempt itself and other municipalities from the state public records law. In short, the Municipality's proposed amendment would undercut or reverse the most significant Alaska Supreme Court rulings favoring public access to government information, and would unquestionably provide citizens with less access than they presently enjoy. Our reasons for this opposition are stated in more detail at your Committee hearing yesterday, and in the interest of time will not be repeated here. If you would like any further elaboration on either the general concerns or specific problems, I would be happy to supply them.

This amendment was not even moved in Committee, and we believe that was the appropriate response to it. No further action should be taken on it, and we would oppose any attempts to resurrect it, or to adopt any version of it.

3. Exemption for Municipal Personnel Records (referred to in Committee as "Amendment No. 6").

(a) The Alaska Newspaper Association and APRN oppose the adoption of Amendment No. 6. It failed in Committee yesterday, and we urge that it not be reconsidered or included in any further version of the bill. If it is reconsidered, we urge that it be rejected. The reasons are perhaps best summarized by the testimony of the Municipality's own testimony to the Committee on this matter yesterday: Mr. Koeninger stated that it is important that the law balance the legitimate interests of the public in having disclosure of information of public interest, on the one hand, and the individual's right of privacy on the other hand. This sort of balancing of the public's interest and the individual's right of privacy is already a part of the municipal law in Anchorage and in most other municipalities throughout the state. It is also a feature of federal law governing access to such information.[1] The amendment proposed by the Municipality of Anchorage would eliminate the opportunity for this balancing, and would lead to results quite contrary to the public interest. In several important instances, the public has been able to learn about fraud or misconduct by public officials and employees and other similar matters of legitimate public interest and concern only because of the applicability of state law principles. A few of these examples were cited at the Committee hearing yesterday. Access to such documents, including documents that have been freely provided by the city to date because disclosure was appropriate under this balancing of the competing interests, would now be foreclosed under this amendment. The current state of the law appropriately takes into account the individual's right to privacy, and balances it with the public interest. This law works. The Municipality has lived with it for years. It's not broken. Please don't "fix it."

[1] This balancing approach is not incorporated in the state law governing access to records of a limited class of state employees. That is a flaw in that statute that perhaps should be addressed at some future date, but it is beyond the scope of these remarks or of the legislation before this Committee.

(b) Alternate Language. If the Committee does wish to address this matter by way of amendment, I have attached to these comments a revision of the Municipality of Anchorage's proposed amendment to Title 29. This revised amendment was developed by Mr. Fleischer, on behalf of the Times, and me, on behalf of the members of the newspaper association and the radio network. We strongly support its adoption. Specifically, our revised amendment incorporates in a new subsection (AS 29.20.650(a)(ii)) the same balancing test that the Municipality's witness said was important, that we agree is important, and that presently exists in the Anchorage Municipal Code, as well as in the federal law governing access to federal employee personnel matters.

There are two other changes in this revised amendment. One addresses the comments raised -- we believe by Senator Kelly -- concerning the disclosure of compensation actually paid to public employees as well as compensation authorized for their positions. The Municipality indicated at the hearing it had no objection to this. It also makes clear, in subsection (2) that resumes and applications are part of the information available to the public. There is a strong public interest in deterring applicants for public employment from falsifying or misrepresenting information on employment applications and resumes, and strong interest of the public in being able to know about it when they do. There is virtually no legitimate countervailing interest imaginable.

3. Exhaustion of Remedies.

Senator Adams asked that the Committee consider two amendments. The one of concern to us is the suggestion that the Committee delete the last sentence of section 7 (AS 09.25.125, page 8, lines 14-16 on the version we have).[2] We strongly oppose

---

[2] The other issue of concern to Senator Adams involved the inclusion of the word "subcommittee" in the groups covered by this bill. Senator Adams expressed the concern that because subcommittees are not generally required to generate documents, this might impose upon them some recordkeeping requirements they do not already have. We do not take a position on this amendment because it is of no significance one way or the other. However, perhaps a clarification would indicate that it is unnecessary. Public records laws do not require public agencies to create records that do not exist, but rather only to provide copies of records that do exist. As a result, if the word subcommittee

(Footnote Continued)

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the deletion of this language. This is so for several reasons, but in particular because the need of the public for access to government information is often very time critical, and deleting this opens the door for abuses by agencies that would benefit from delay in the release of public records when there is no just cause for it. This is not mere speculation or conjecture. The Municipality of Anchorage, for example, is presently under a permanent injunction issued by the superior court specifically in response to problems with delaying or manipulating the release of public records for political or other reasons not authorized by law. It is noteworthy that the state administration and department of law do not oppose this language. The track record on the part of the public generally, and the news media in particular, demonstrate that they have not unreasonably or frivolously run into court on repeated occasions. In virtually every instance that I am aware of, the courts have upheld claims by members of the public, including news media, who have been forced to seek judicial assistance in obtaining public records. On a number of those occasions, the judges have chastized the municipality or other public agency for delaying or withholding the information. One issue that was raised on behalf of a legislator after the hearing yesterday was a concern that this provision could somehow facilitate a damage suit against a clerk or other records custodian for damages for failure to provide a public record. It does nothing of the kind. Nothing about this provision or any other provision in the Alaska statutes that I am aware of, would impose upon any records custodians civil liability for failure to provide public records upon request. If that is a concern of any member of the Committee, it need not be. It is simply not an issue here.

Thank you for consideration of our comments.

Sincerely,

MIDDLETON, TIMME & McKAY

D. John McKay

DJM:dka

(Footnote Continued)
remains, nothing about this bill would require that committee, or for that matter any other government agency, to create records that do not otherwise exist.

---

cc: Senator Faiks
Senator Adams
Senator Kelly
Senator Uehling

A M E N D M E N T

OFFERED IN THE SENATE

TO: SCS CSHB 405(State Affairs) (6- 1782G, 4/12/90)

Page 12, following line 9:

Insert new bill sections to read:

"* Sec. 14. AS 29.10.200 is amended by adding a new paragraph to read:

(51) AS 29.20.650 (personnel records).

* Sec. 15. AS 29.20 is amended by adding a new section to read:

Sec. 29.20.650. PERSONNEL RECORDS. (a) The personnel records of a municipality are presumptively confidential and are not open to public inspection except (i) as provided in subsection (b) of this section; or (ii) when disclosure of such municipal records would not constitute an unwarranted invasion of an employee's right of privacy.

(b) The following information about the employees of a municipality is available for public inspection, subject to reasonable requirements on the time and manner of inspection:

(1) the names and position titles of all employees of the municipality;

(2) resumes and applications;

(3) the position held by an employee;

(4) prior positions held by an employee;

(5) the dates and appointment and separation of an employee; and

(6) the compensation actually paid to an employee, and the compensation authorized for any position.

(c) An employee of a municipality has the right to examine the employee's own personnel files and may authorize others to examine those files.

(d) This section applies to home rule and general law municipalities."

Renumber the following bill sections accordingly.

Page 17, line 12:

Delete "sec. 16"

Insert "sec. 18"

Glenn

Municipality of Anchorage

P.O. BOX 196650
ANCHORAGE, ALASKA 99519-6650
(907) 343-4425

TOM FINK,
MAYOR

DEPARTMENT OF EMPLOYEE RELATIONS

April 19, 1990

Senator Pat Pourchot
Room 504, Capitol
P. O. Box V
Juneau, Alaska 99811

Dear Senator Pourchot:

During the last week, my office has been in contact with Representative Kay Brown regarding my April 13 correspondence on HB 405. Representative Brown has faxed to us three amendments to HB 405 intended to respond to our concerns on the original bill, as previously amended.

We have reviewed the amendments (attached) and find that they are responsive to our concerns in that they:

- clarify the term "may", making it clear that a public agency has full discretion whether to respond to requests involving electronic services and products; and

- specifically provide for the confidentiality of municipal employee personnel files.

However, we continue to believe that the amendments suggested in my April 13, 1990 letter with respect to the exemption of municipalities if they have adopted public disclosure laws and the ability of local assemblies to determine what municipal records should be kept confidential are appropriate.

We look forward to the opportunity to testify to your committee on Friday, April 20.

Sincerely,

Glenn Lundell

Glenn Lundell
Employee Relations Director

Attachments

6-1782Gb
Bannister

A M E N D M E N T

OFFERED IN THE SENATE

TO: SCS CSHB 405(State Affairs) (6-1782G, 4/12/90)

Page 12, following line 9:

Insert new bill sections to read:

"* Sec. 14. AS 29.10.200 is amended by adding a new paragraph to read:

(51) AS 29.20.650 (personnel records).

* Sec. 15. AS 29.20 is amended by adding a new section to read:

Sec. 29.20.650. PERSONNEL RECORDS. (a) The personnel records of a municipality, including employment applications and examination materials, are confidential and are not open to public inspection except as provided in this section.

(b) The following information about the employees of a municipality is available for public inspection, subject to reasonable requirements on the time and manner of inspection:

(1) the names and position titles of all employees of the municipality;

(2) the position held by an employee;

(3) prior positions held by an employee;

(4) the dates of appointment and separation of an employee; and

(5) the compensation authorized for an employee.

(c) An employee of a municipality has the right to examine the employee's own personnel files and may authorize others to examine

those files.

(d) This section applies to home rule and general law municipalities."

Renumber the following bill sections accordingly.

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Delete "sec. 16"

Insert "sec. 18"

THEODORE C. FLEISCHER
FRANCIS E. SMITH, JR.
HERBERT BERKOWITZ
DAVID M. SUNDT
PHILLIP J. ZIDE
GARY A. ZISKIN
LOUIS R. VEERMAN
RICHARD M. ROSSTON
JAMES O. LINXWILER
JAMES D. DEWITT
JOSEPH J. PERKINS, JR.
PATRICK J. COUGHLIN
MARK E. WILKERSON
JOHN M. MILLER
GEORGE LYLE
PAUL M. ASHTON
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W. EUGENE GUESS 1926-1979
JOSEPH RUDD 1933-1978

April 26, 1990

Senator Pat Pourchot
Chairman, State Affairs Committee
Alaska State Legislature
P.O. Box V
Juneau, Alaska 99811

Re: SCS CSHB 405 (State Affairs)

Dear Senator Pourchot:

I testified yesterday before your committee in behalf of my client, The Anchorage Times. After that testimony Senator Faiks requested that I consider whether it would be possible to draft some compromise language to a number of amendments which I had opposed. I responded that while The Times was philosophically opposed to the amendments proposed by the Municipality of Anchorage, nevertheless I would do my best to see whether some language could be crafted that would be acceptable to all parties. I have worked with John McKay, counsel for the Newspaper Association, who also testified yesterday, to jointly draft some revisions, which I will discuss below.

Following is The Times' position on the pending amendments:

1. Amendment No. 5 (offered by the Municipality of Anchorage): The Times continues to oppose this request by the Municipality of Anchorage to exempt itself from application of the Public Records Law. The Times firmly believes that public access to municipal documents would become more restricted if municipalities are given the power to write their own ordinances controlling access to local governmental records. Alaska has had a long standing legislative policy of providing citizen access to state and local public records. Allowing municipalities to cut themselves loose from this statewide legislative policy of openness in government would be a giant step backward.

2. Amendment No. 6 (proposed by the Municipality of Anchorage): The Times opposes adoption of this amendment, which would make all personnel records of municipal employees, with few exceptions, confidential. The proposed amendment is a virtual carbon copy of an exemption available to State employees. While it might seem attractive as a matter of symmetry to extend the same coverage to municipal employees, the testimony yesterday revealed that in several cases the media have obtained documents from municipalities which have disclosed significant inaccuracies in the resumes of applicants for public employment. Certainly it cannot be argued that it is good public policy to keep this type of information secret. While The Times continues to oppose adoption of the amendment, if the amendment is adopted we urge the Committee to add a clause which would require disclosure of personnel records where that disclosure would not constitute an unwarranted invasion of privacy. This would ensure that there would be a balancing between the public's right to know and a municipal employee's right not to have unwarranted interference with his or her privacy. (The language of the proposed revision has been forwarded by Mr. McKay's office under separate cover.)

3. Exhaustion of Remedies: During the hearing an amendment was tabled, which was not available to me while I was testifying, which proposes deleting the last sentence of Section 09.25.125. That sentence provides that a person may seek injunctive relief without first exhausting the administrative remedies provided by the statute or other similar remedies established by a public agency. The Times opposes the deletion of that critically-important language. Recently The Times was faced by a refusal of the Municipality of Anchorage to turn over documents, in a timely fashion, which related to a hotly-debated public issue. The Municipality desired to delay making documents public, which under State statute were required to be disclosed, until the administration was prepared to "go public" with a position. Faced with this refusal, The Times sued the Municipality of Anchorage seeking immediate release of the documents. One of the Municipality's defenses was that there was an administrative appeal provided by ordinance which had to be "exhausted" prior to a final decision being made, and that appeal would take seven working days. Obviously if that position had been accepted, the Municipality would have gained exactly the delay which it wanted. Judge Ripley granted a temporary restraining order requiring the Municipality immediately to turn over the documents, without waiting for exhaustion of any administrative

remedy. Often a public agency wants to control the timing of disclosure of public documents, not necessarily to withhold them. Therefore, in our view it is absolutely critical that the sentence which allows a requesting party to go directly to court to obtain an injunction be retained in the bill.

The Times appreciates having been given the opportunity to testify and the Committee's consideration of its position. I understand that the Committee may hold another public hearing on Friday. Because I will be in Seattle at the time, I will make arrangements to testify in behalf of The Times via telephone.

Thank you for your consideration.

Very truly yours,

GUESS & RUDD

Theodore E. Fleischer

TEF/hr:61

cc: Senator Faiks
Senator Adams
Senator Kelly
Senator Uehling

THEODORE C. FLEISCHER
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HERBERT BERKOWITZ
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W. EUGENE GUESS 1932-1978
JOSEPH RUDD 1933-1978

April 26, 1990

Senator Pat Pourchot
Chairman, State Affairs Committee
Alaska State Legislature
P.O. Box V
Juneau, Alaska 99811

Re: SCS CSHB 405 (State Affairs)

Dear Senator Pourchot:

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Thank you for your consideration.

Very truly yours,

GUESS & RUDD

Theodore E. Fleischer

Theodore E. Fleischer

TEF/hr:61

cc: Senator Faiks
Senator Adams
Senator Kelly
Senator Uehling

STATE OF ALASKA

STEVE COWPER, GOVERNOR

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

REPLY TO:

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ANCHORAGE, ALASKA 99501-1994
PHONE: (907) 276-3550
FAX: (907) 276-3697

☐ *1st NATIONAL CENTER*
100 CUSHMAN ST. SUITE 400
FAIRBANKS, ALASKA 99701-4679
PHONE: (907) 452-1568
FAX: (907) 456-1317

☑ *P.O. BOX K—STATE CAPITOL*
JUNEAU, ALASKA 99811-0300
PHONE: (907) 465-3600
FAX: (907) 463-5295

April 11, 1990

APR 11 1990

Hon. Kay Brown
Alaska State Legislature
P.O. Box V
Juneau, AK 99811

Re: CSHB 405(Fin) am

Dear Kay:

I have reviewed your proposed amendment to CSHB 405(Fin) am regarding public records in litigation, and I have also spoken with several other attorneys in the department. One significant problem we have identified is that this proposal probably amends several court rules, including Civil Rules 26 and 34. Those rules specifically provide a set procedure for a party to obtain records from an opposing party in litigation. To the extent that this proposal authorizes a litigant to obtain public records in the normal manner, even when that party is in litigation with the state, the proposal is amending the court rules.

We would therefore recommend that your proposal be modified by adding the following clause to the end of current subsection (a): ", provided that with respect to a person involved in litigation, the records sought shall be disclosed in accordance with applicable court procedures." I then believe that you should delete subsection (b) and modify subsection (c) accordingly.

If you decide not to make these changes to your proposal and go forward with the court rule changes, we then recommend that subsection (b) be changed to require an agency to contact the Department of Law "before" releasing the public record, rather than "after" releasing it. Agency personnel may not recognize when a document is subject to one of the litigation privileges, and this department must be consulted to avoid an improper release of privileged information.

Please feel free to contact me or Craig Tillery if you wish to discuss this matter further.

Sincerely yours,

DOUGLAS B. BAILY
ATTORNEY GENERAL

By:
Jeffrey W. Bush
Assistant Attorney General

JWB:jf

cc: Craig Tillery, Assistant Attorney General, Anchorage
Mark Worcester, Assistant Attorney General, Anchorage
Laurie Otto, Assistant Attorney General, COCO

A M E N D M E N T

OFFERED IN THE SENATE

TO: CSHB 405 (Finance) am

Page 2, line 17, following "request":

Insert "<u>, satisfaction of the requestor's disclosure obligation under AS 09.25.122(b),</u>"

Page 6, following line 22:

Insert a new section to read:

"Sec. 09.25.122. LITIGATION DISCLOSURE. (a) A public record that is subject to disclosure and copying under AS 09.25.110 - 09.-25.120 remains a public record subject to disclosure and copying even if the record is used for, included in, or relevant to litigation, including law enforcement proceedings, involving a public agency.

(b) To obtain a public record from a state agency, a person shall disclose to the state agency whether the person is involved in litigation with a state agency. If the person discloses that the person is involved in litigation with a state agency, the state agency shall, after releasing the public record, notify the Department of Law that the request was made.

(c) In (b) of this section,

(1) "involved in litigation" means a party to litigation or representing a party to litigation, including obtaining public records for the party;

(2) "state agency" means a public agency, but does not include a municipality or an administrative unit of a municipality."

April 12, 90

6-1782Mc
Bannister

A M E N D M E N T

OFFERED IN THE SENATE

TO: CSHB 405 (Finance) am

Page 3, line 9:

Delete "the judicial branch,"

Page 3, line 14, following "searches":

Insert ", and may increase the fees as necessary to recover an amount that does not exceed the cost of performing the record searches"

Page 3, following line 14:

Insert a new subsection to read:

"(f) Notwithstanding other provisions of this section to the contrary, the judicial branch may establish by court rule reasonable fees for the inspection and copying of public records, including record searches."

Reletter the following subsection accordingly.

STATE OF ALASKA
DEPARTMENT OF FISH AND GAME
OFFICE OF THE COMMISSIONER

STEVE COWPER, GOVERNOR

P.O. BOX 3-2000
JUNEAU, ALASKA 99802-2000
PHONE: (907) 465-4100

March 19, 1990

MAR 20 1990

The Honorable Kay Brown
Alaska State Legislature
P.O. Box V
Juneau, AK 99811

Dear Representative Brown:

I appreciate the time you have taken to address the concerns we have raised for releasing information to the public in HB 405. You have asked us how we would address these situations if your bill, with the enclosed amendment, were to pass:

* furbearer sealing certificates
* licenses, tags, and subsistence permits issued under AS 16.05.330
* harvest information under AS 16.05.370
* bear baiting site registration documents

The information contained in these listed documents is currently considered public information, and would still be considered public information if your bill passes, so long as its release did not jeopardize the fish and wildlife population. In addition, the department understands that we are only responsible for releasing the information in the form in which we have it.

One further comment concerns bear baiting site registration documents. Under existing regulations, a hunter must mark the bait station with a sign which displays the hunter's name and current address, phone number, hunting license number, and bait station registration number. There are a number of proposals before the Board of Game, now meeting in Anchorage, to limit the information on the sign to just the registration number or to eliminate the identification completely. If the board does exercise its authority to remove or modify the identification at the bear station itself, the department would still consider the actual site registration documents public information.

Sincerely,

Don W. Collinsworth
Commissioner

Enclosure

11-K2LH

STEVE COWPER
GOVERNOR

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

March 21, 1990

Ms. Valerie Brown
Executive Director
The Alaska Wildlife Alliance
P.O. Box 202022
Anchorage, AK 99520

Dear Ms. Brown:

Thanks for your letter of February 15, regarding your efforts to secure the names of people who purchased Alaska trapping licenses in 1988.

The database containing the information captured from the Department of Fish and Game's (ADF&G) sport licenses is stored on the State's mainframe computer. For 1988, there are 408,178 sport license records on file. Each record is 222 characters in length. Under AS 09.25.110, ADF&G will provide a certified copy of public records in their possession. This statute precludes the manipulation of the information record in order to provide customized copies of public information. To provide only part of the information on a sport license would violate the concept of "certified copy." To provide a file containing only certain types of records from the file requires a considerable amount of an analyst/programmer's time. The records stored on the sport license file for 1988 represent over 90 million characters of data. This is the approximate capacity of 75 high density double-sided diskettes. Therefore, ADF&G provides all information (except social security number) for all sport licenses on a 1600 BPI tape. A 1600 BPI tape can be read by a suitably equipped microcomputer, minicomputer, or mainframe computer. Additionally, there are several data processing service organizations in the Anchorage area who can read the tape and manipulate the information into any format you may desire.

After several requests for customized files from other organizations such as yours, ADF&G adopted its current policy, since excess staff time is not available to

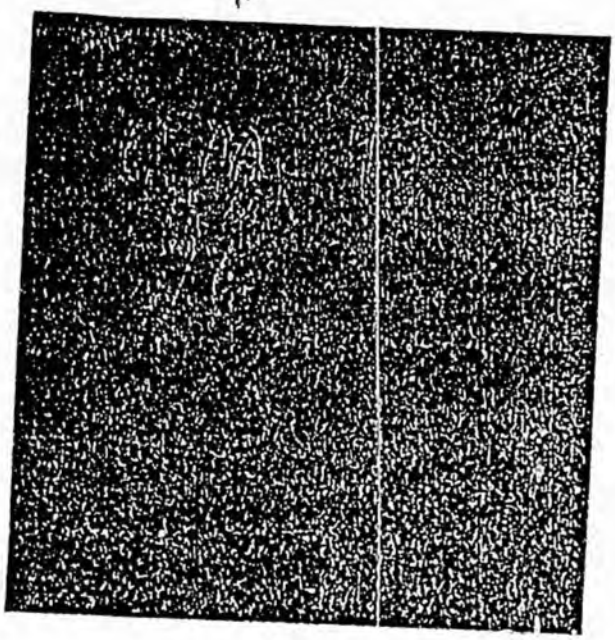
manipulate or oversee the transfer of this data from the mainframe to the microcomputer in order to create diskettes. The flat fee of $250 is a part of the cost incurred by ADF&G when copying the license records from the database to the 1600 BPI magnetic tape.

I know that these requests have continued for some time, but I do not concur that ADF&G has any intent to purposefully withhold the information. I encourage you to work with the Department to obtain the tapes you need.

Thanks again for your letter.

Sincerely,

Denby S. Lloyd
Special Staff Assistant
to the Governor



THE ALASKA WILDLIFE ALLIANCE
P. O. Box 190953
Anchorage, Alaska 99519
907-277-0897

September 13, 1989

Denby Lloyd
Office of the Governor
Pouch A
Juneau, AK 99802-2000

Dear Mr. Lloyd:

This is in response to your letter to Mr. Wayne Hall (Sept. 6, 1989, which was a response to his letter to Governor Cowper on August 16, 1989. We appreciate you checking into the fact that the Department of Fish and Game no longer keeps hunter and trapper names as part of the sealing record database.

We did not request that hunter and trapper addresses be made available to us, nor do we object to the omission of this particular piece of data from the ADF&G sealing record database. We do feel that user names are a vital part of the public record and that the public has a right to review who is using public resources. The time it takes to continue to include two fields of information could not possible be cost prohibitive for the Department. We would like to request that the Department reverse its decision and enter the user information (the only two fields that were deleted) in the upcoming season's database.

You suggested that all we have to do is contact the Licensing Section of ADF&G and request a printout or a computer diskette to obtain hunter and trapper names. We did that prior to contacting you, and were informed that there would be a $250 charge for a printout of the information (copy of response enclosed). We have made an additional request for a free copy of that information from the Licensing Section of the Department (enlcosed). We have also requested that the Department let us have access to the original sealing records in Anchorage, which are now sitting in a box in Fairbanks (copy enclosed, no response yet from Fairbanks).

We should not have to pay a fee to obtain what you agree should be part of the public record. We have no desire to contact anyone on the list, we simply wish to review public information about who is using our public resources. We appreciate any assistance you can offer to bring this now somewhat lengthy affair to a rapid and satisfactory conclusion.

Thank you for your time and cooperation.

Sincerely,

Valerie Brown
Staff Representative

Enclosures (3)

cc: Licensing Section, ADF&G (w/ incoming)

STATE OF ALASKA
DEPARTMENT OF FISH AND GAME

STEVE COWPER, GOVERNOR

1300 COLLEGE ROAD
FAIRBANKS, ALASKA 99701-1599

September 18, 1989

Ms. Valerie Brown
The Alaska Wildlife Alliance
P.O. Box 190953
Anchorage, AK 99519

Dear Ms. Brown:

The 1988-89 furbearer sealing certificates you have asked to examine are here in Fairbanks. as I mentioned on the phone to one of your staff. However, based on your letter dated August 25, 1989, but postmarked September 1, 1989, it appears you have misjudged the magnitude of the task of looking through the documents.

There are 3,359 documents. Over the years, the average number of animal records per document has ranged between 2 and 4 resulting in a higher number of records than there are documents. Only one hunter/trapper name and address appears on each document so it is the number of documents, not records, that affects the amount of material you need to examine.

In the past, the requests your group has made for sealing data has been limited to lynx, river otter, wolf, and wolverine. Of the 3,359 sealing documents, 1,544 contain information on beaver. If you are not interested in this species, the maximum number of documents of interest to you would be only 1,815.

Since you already have all the animal record information on diskette, you can link this information to the names and addresses for the certificates of interest via the hunter/trapper license number.

You can obtain hunter/trapper names, addresses and license numbers from the Licensing Section, Alaska Department of Fish and Game, P.O. Box 3-2000, Juneau, AK 99802. If you request this information on diskette, you should be able to link the two files using your own computer. This will be more convenient and efficient for you than either travelling to Fairbanks or going to our office in Anchorage to examine documents.

Sincerely,

HR Melchior

Herbert R. Melchior
Furbearer Coordinator
Division of Wildlife Conservation
(907) 456-5156

cc: Pamplin

11-K17LH

THE ALASKA WILDLIFE ALLIANCE
P. O. Box 190953
Anchorage, Alaska 99519
907-277-0897

September 13, 1989

Linda Lockridge
Licensing Section
Department of Fish and Game
P.O. Box 3-2000
Juneau, AK 99802

Dear Ms. Lockridge:

We would like to request a copy of the names and license numbers of all individuals who purchased a hunting or trapping license in Alaska for the 1988-89 season. If you maintain this database in dBASE please provide us with the files on diskette. Otherwise, we will be satisfied with a printout as long as it includes both license numbers and names.

We are a non-profit organization and we request that this information be made available to us free of charge. We have contacted the governor's office concerning this request and the response is enclosed.

I have enclosed 4 blank, formatted diskettes with my order form to make this job as simple and inexpensive as possible for your office. Thank you for your time and I look forward to your reply.

Sincerely,

Valerie Brown
Staff Representative

Enclosures

cc: Governor Cowper
Denby Lloyd

STEVE COWPER
GOVERNOR

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

September 6, 1989

Mr. Wayne Hall
Director
The Alaska Wildlife Alliance
P.O. Box 190953
Anchorage, AK 99519

Dear Mr. Hall:

On behalf of Governor Cowper, thanks for your letter of August 16 expressing concern because the Department of Fish and Game has been reluctant to provide you names and street addresses of trappers from fur sealing records. As you point out, these records are public and should be made available on request.

Commissioner Collinsworth has reviewed this matter at my request, and it turns out that there was a very practical reason for omitting street addresses in the 1987-88 records and the trappers' names in the 1988-89 records. As a result of budgeting constraints, neither the trappers' names nor addresses are presently being entered into the computer. A trapper's license number is part of the data file, and should it be necessary for the Department to review the activities of a given trapper, they can get the individual's name and address from the license number. Because the Department is principally interested in biological matters such as total harvests for a species, it is not necessary for them to have names and addresses of individual trappers.

Because you already have access to the fur sealing records, you need merely request a printout or computer diskette from the Licensing Section, Department of Fish and Game, P.O. Box 3-2000, Juneau, AK, 99802, to connect license numbers with names and addresses of the trappers.

Thanks again for your letter.

Sincerely,

Denby S. Lloyd

Denby S. Lloyd
Special Staff Assistant
to the Governor

THE ALASKA WILDLIFE ALLIANCE
P. O. Box 190953
Anchorage, Alaska 99519
907-277-0897

August 25, 1989

Herbert Melchior
Furbearer Coordinator
Division of Wildlife Conservation
1300 College Road
Fairbanks, AK 99701-1599

Dear Mr. Melchior;

The Alaska Wildlife Aliiance has been requesting access to complete sealing record data since June 5 of this year when I originally wrote to you to obtain the computerized database that has been provided to us in the past. Since that time, I have obtained the database which is maintained here in Anchorage, which I discovered no longer captures trapper names.

I have been informed by several people in the Anchorage office that the only place that data is still maintained is on the original sealing records, which were not available at the Anchorage office. After someone on our staff requested access to the original sealing records at you office she was informed by you that the records had just been received by the Fairbanks office and were in a cardboard carton, unsorted. We were willing to send someone to Fairbanks to use the original records, but it is impractical for someone on our staff to remain in Fairbanks long enough to sort through 12,455 records to obtain information that should be a matter of public record and a part of the ADF&G sealing record database.

We would still like access to the records, but since our staff is here is Anchorage, we can more efficiently use the records if they are here in the Department's Anchorage office. Since the records in Fairbanks will not be sorted for the next several months, and the Department seems to have no immediate interest in the data on those documents, we request that you make them available for us here in the Anchorage office.

Thank you for your time and I appreciate whatever help you can give in making those documents available in Anchorage. I look forward to your reply.

Sincerely,

Valerie Brown
Staff Representative

cc: Governor Cowper
Lewis Pamplin

STATE OF ALASKA

STEVE COWPER, GOVERNOR

DEPARTMENT OF FISH AND GAME

1111 W. 8th St., Rm. # 108
Juneau, Alaska 99801-0404

DIVISION OF ADMINISTRATION

8/23/89

Gentle People:

In response to your request to purchase the Alaska Fish & Game License and/or Vendor files, I am enclosing an order form for your use. Please complete it in full and return it to this office along with your payment.

Please note that there will be additional charges for the cost of tape or diskette media. You will be billed at cost for these materials, and payment must be received before the file is sent to you.

If you have any questions, you may contact me at (907) 465-2376

Cordially,

Linda Gene Lockridge

Linda Gene Lockridge
Licensing Supervisor
Fish & Game Licensing Section

0005.LGL Rev.(6/89)

Department of Fish & Game
Division of Administration
Licensing Section

1111 W. 8th Street, #108
Juneau, Alaska 99801
(907) 465-2376

REQUEST FOR PURCHASE OF FISH & GAME FILE Page 1

Please complete this "Request for Purchase" in full and return it to the Licensing Section at the above address along with the appropriate payment. If you have any questions, you may contact us at the number shown above.

COST: Payable in advance

_____ License File Information $250.00

_____ License Vendor Information $100.00

FORMAT: Indicate format desired for each file requested

_____ Printed List (No Additional Charge)

_____ Labels (No Additional Charge)

NOTE. You will be charged for the cost of the following media:

_____ 1600/96 BPI Tapes

_____ 5-1\4" Diskette IBM DOS Compatible

_____ Single Sided _____ Single Density

_____ Double Sided _____ Double Density

_____ High Density

_____ 3-1\2" Diskette IBM DOS Compatible

_____ Single Sided _____ Single Density

_____ Double Sided _____ Double Density

_____ High Density

THE ALASKA WILDLIFE ALLIANCE
P. O. Box 190953
Anchorage, Alaska 99519
907-277-0897

August 16, 1989

Governor Steve Cowper
P. O. Box A
Juneau, AK 99801

Dear Governor Cowper,

For the past four years, The Alaska Wildlife Alliance has sought to obtain the trapping sealing records from the Alaska Department of Fish and Game (ADF&G). Although we have tried to make this aquisition of public records as painless as possible for the State, the staff of ADF&G has tried several times to make it as difficult or expensive as possible. It is no secret to us that ADF&G feels these records should not be available to the public. In several State legislative sessions they have strongly supported bills which would have made those records off limits to the public. Not only has such legislation not been adopted, but the courts, in a lawsuit brought by the Alaska Trappers Association to block public release, affirmed that the records are indeed public. The Alaska Supreme Court refused to hear an appeal by the Trappers Association.

We have ultimately obtained the records in question for each of the trapping seasons 84-85, 85-86, 86-87, 87-88 and, most recently, 88-89. At our request and to save the State the time and the Alliance the outrageous cost of obtaining physical copies of the sealing certificates, these records have been provided by ADF&G on computer diskettes (supplied by the Alliance). But now, in what we feel is an attempt by the Department to accomplish unilaterally what they were not able to accomplish either through legislation or the courts, ADF&G has omitted vital data from the records they have provided on diskette.

Beginning with the 87-88 season records, the Department omitted the physical street address of the trapper as required on the physical sealing certificate. As long as the city of residence was available for statistical analysis, we did not feel that was a meaningful omission., However, in the 88-89 season records recently provided (and not yet complete even six months after the close of the season) the trappers' names have been omitted from the computer records provided. What will they delete next? We are interested in reviewing data for potential abuse by any given trapper or even by Department employees even if the Department is not. Trapper names are essential in that review.

Even now, there are still 25 "fields" in every computer sealing record including the "sealer" first and last names. The entry of the trapper name would not add appreciably to the time required for data entry or the computer storage space needed. There is just no practical reason to avoid entering the trapper names other than to restrict access of the public to this information.

If the Department is allowed to proceed with this treatment of public records which have been previously available, and if indeed the trapper name information is not captured in the computer data base, we feel that physical copies of the trapper records should be provided at no cost.

We would appreciate your assistance in making this information available one way or the other and will look forward to hearing from you. Thank you very much for your cooperation.

Sincerely,

Wayne Hall
Director

CS HB 405,An Act relating to requests for information by public agencies, and relating to the copyrighting of software produced by or for public agencies. Sponsored by Representative Brown, this bill deals with public access to state and local government records. The major provisions of the bill are:

- .to govern access to and fees for obtaining public records, covering all agencies of state government and municipalities.
- .to establish discretionary authority for public agencies to offer to the public electronic services and products and criteria for setting fees, based on public demand and sufficient program receipts.
- .to authorize state agencies and municipalities to copyright software.
- .to address privacy rights of individuals by requiring state agencies to inform individuals that personal information may be subject to public disclosure and to provide a process to correct inaccurate personal information.

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

M E M O R A N D U M April 12, 1990

SUBJECT: Sectional summary of draft of SCS CSHB 405 (State Affairs) (6-1782G, 4-12-90)

TO: Senator Pat Pourchot
Chair, Senate State Affairs Committee
Attn: Susie

FROM: Theresa L. Bannister TB
Legislative Counsel

You have requested a sectional summary of the above described bill.

As a preliminary matter, note that a sectional summary of a bill should not be considered an authoritative interpretation of the bill and the bill itself is the best statement of its contents. If you would like an interpretation of the bill as it may apply to a particular set of circumstances, please advise.

Section 1 provides findings and intent for the bill.

Section 2 makes the public records of all public agencies open to inspection by the public under reasonable rules during regular office hours, except where specifically provided otherwise. Directs the custodial public officer to provide on request and on payment of a specified fee a certified copy of the public record.

Section 3. Sec. 09.25.110(b) establishes, except as otherwise provided, that the basic fee for copying public records may not exceed the standard unit cost of duplication established by the public agency.

Sec. 09.25.110(c) authorizes the public agency to charge personnel costs for record production under certain circumstances. Limits personnel costs to the actual salary and benefit costs for performing the search and copying tasks. Requires the fee to be paid before the records are

disclosed and authorizes the agency to require payment in advance of the search.

Sec. 09.25.110(d) authorizes a public agency to reduce or waive a fee in certain circumstances. Requires that fee reductions and waivers be uniformly applied. Authorizes a public agency to waive a fee of $5 or less if the fee is less than the cost to arrange payment.

Sec. 09.25.110(e) authorizes the Bureau of Vital Statistics, the library archives, and the Division of Banking, Securities, and Corporations to continue charging the same fees for performing record searches, and to increase the fees as necessary to recover an amount that does not exceed the cost of performing the record searches.

Sec. 09.25.110(f) authorizes the judicial branch to establish by court rule reasonable fees for the inspection and copying of public records, including record searches.

Sec. 09.25.110(g) requires that electronic information provided in printed form be made available without codes or symbols, unless accompanied by an explanation of the codes or symbols.

Section 4. Sec. 09.25.115(a) authorizes a public agency, upon request and fee payment, to provide electronic services and products involving public records to members of the public. Encourages public agencies to make information available in usable electronic formats to the greatest extent feasible. Prohibits giving the activities authorized under this section a priority over primary agency responsibilities.

Sec. 09.25.115(b) indicates how fees are to be set for electronic services and products. Authorizes the reduction or waiver of a fee under certain circumstances. Requires that fee reductions and waivers be uniformly applied.

Sec. 09.25.115(c) establishes that the fee for duplicating a public record in the electronic form kept by a public agency may not exceed the actual incremental costs of the public agency.

Sec. 09.25.115(d) requires public agencies to include certain security and liability provisions in contracts for electronic services and products.

Sec. 09.25.115(e) requires each public agency to notify the state library of the electronic services and products offered by the agency under sec. 09.25.115. Requires the notification to include a summary of the available format options and the fees charged.

Sec. 09.25.115(f) requires public agencies that offer on-line access to an electronic file or data base to also provide without charge on-line access to the electronic file or data base through one or more public terminals.

Sec. 09.25.115(g) directs each public agency to establish the fees for the electronic services and products. Authorizes the TIC to cancel unreasonably high fees of public agencies in the executive branch.

Sec. 09.25.115(h) prohibits a public agency from making electronic services and products available to some persons and not to others.

Sec. 09.25.115(i) directs a public agency other than a municipality to separately account for the fees received by the agency under sec. 09.25.115 and deposited in the general fund. Authorizes the legislature to use the annual estimated balance in the account to make appropriations to the agency to carry out the agency's activities.

Section 5 states that every person has a right to inspect a public record in the state, except in certain listed circumstances. Except as provided in AS 09.25.215, requires custodial public officers to permit the inspection and give a certified copy of the record on demand and payment of the required fee. States that the copy is evidence of the original. In the rest of the section, makes technical changes to conform the terminology to the use of "public records".

Section 6 enacts three new sections.

Sec. 09.25.122 declares that a public record subject to disclosure and copying remains such a public record even if the record is related to litigation involving a public agency, except that for persons involved in litigation, the records are to be disclosed under applicable court procedures.

Sec. 09.25.123(a) directs the TIC to supervise and adopt regulations for the implementation of AS 09.25.110 - 09.25.-140 by public agencies in the executive branch.

Sec. 09.25.123(b) directs the Legislative Council to supervise and adopt procedures for the implementation of AS 09.25.110 - 09.25.140 by public agencies in the legislative branch.

Sec. 09.25.123(c) directs the administrative director of courts to supervise and adopt procedures for the implementation of AS 09.25.110 - 09.25.140 by public agencies in the judicial branch.

Sec. 09.25.123(d) requires that the regulations and procedures adopted under sec. 09.24.123 include procedures for making an administrative appeal of public agency action taken under AS 09.25.110 - 09.25.140.

Sec. 09.25.123(e) provides certain definitions for sec. 09.24.123.

Sec. 09.25.124 provides a right of appeal from final administrative orders made by a public agency under AS 09.25.110 - 09.25.140.

Section 7 amends AS 09.25.125 to cover the denial or attempt to deny the inspection of a public record. Also authorizes a person to seek injunctive relief under AS 09.25.125 without exhausting the person's remedies under AS 09.25.123 - 09.25.124 or other remedies established by a public agency.

Section 8 requires that if it is ambiguous whether an application of AS 09.25.100 - 09.25.220 to personal information violates the right to privacy provision in the state constitution, the ambiguity must be resolved in favor of the right to privacy.

Section 9 provides definitions for AS 09.25.100 - 09.25.220, including "electronic services and products", "public agency", and "public records". "Public agency" is defined to cover instrumentalities of the state and municipalities.

Section 10 allows a person to request from the Department of Public Safety a record from Alaska listing each criminal conviction involving an individual who has filed for public office in the state. Requires the department to provide a copy to the person and to the candidate. Authorizes the department to establish by regulation reasonable fees to cover the costs of researching and reproducing the conviction record.

Section 11 requires each state agency to notify the state library of the creation of certain data, including automated data bases, and provide for their accessibility through the library, except in certain circumstances.

Section 12 makes a technical change to conform to other changes in the bill.

Section 13 directs that the voting record for each legislator is to be made available to any person on request. Directs the Legislative Affairs Agency to keep voting records compiled annually under this section on the agency data system and to distribute copies to all legislative information offices for a fee established under AS 09.25.-115.

Section 14 authorizes a municipality to copyright software and to enforce its copyright rights.

Section 15 makes a technical change to conform to other changes in the bill.

Section 16 adds four new sections.

Sec. 44.99.020(a) requires a state agency that requests personal information directly from the subject of the information to give when the request is made to the individual a written notice that provides certain listed information.

Sec. 44.99.020(b) describes how the agency may provide the notice required by sec. 44.99.020(a).

Sec. 44.99.020(c) exempts certain listed requests for information from the notice requirement of sec. 44.99.020(a).

Sec. 44.99.030(a) allows an individual to challenge the accuracy and completeness of personal information on the individual that is maintained by a state agency and that is subject to public disclosure.

Sec. 44.99.030(b) states that an individual may challenge the accuracy or completeness of information under sec. 44.-99.030(a) by filing a written request to change the information. States what the request must contain.

Sec. 44.99.030(c) authorizes the state agency to request within a certain time verification of disputed personal information from the individual who made the request to change the information.

Sec. 44.99.030(d) requires the state agency, within a certain period of time, to review the request for change and either change the information or deny the request. Requires the agency to notify the individual of the change or denial and include certain information in the notification of denial.

Sec. 44.99.030(e) allows the individual whose request for change is denied to provide the agency with a statement providing the individual's reasons for disagreeing with the decision. Directs the agency to maintain the request for change and the statement in its records. Requires that the agency clearly note on all of the agency's records that contain the disputed information which portions are disputed. Clarifies how this is to be done if the record is in electronic form.

Sec. 44.99.030(f) exempts certain listed records and information from sec. 44.99.030.

Sec. 44.99.040 defines certain terms for the previous two sections. "Person" is defined to mean an individual. "State agency" is defined to cover the executive, judicial, and legislative branches of state government.

Sec. 44.99.050 authorizes a state agency to copyright software and to enforce its copyright rights. "State agency" is defined to cover the executive, legislative, and judicial branches of state government.

Section 17 states that requests for personal information made by a state agency on or after the effective date of the bill are covered by sec. 44.99.020.

TLB:pl
WKP4/058

cc: Representative Kay Brown

THE ALASKA WILDLIFE ALLIANCE
P. O. Box 202022
Anchorage, Alaska 99520
907-277-0897

MAR 26 1990

March 23, 1990

Kay Brown
Pouch V
Juneau, AK 99811

Dear Representative Brown,

Thank you for calling in response to my concerns about House Bill 405, relating to requests for information from public agencies. I received you message and the amendment, which I had already reviewed. With the help of Sharon Sturgess, a staff attorney for Trustees for Alaska, we have identified several potential problems with the bill as written.

The most important consideration is the definition of "personal information" as it appears in Sec. 44.99.030 (page 16 of the bill). While names, addresses and phone numbers are excepted, the language is ambiguous in other respects. "...information that can be used to identify a person and from which judgments can be made about ...habits, avocation, finance, occupation..." are too general. If a person is a trapper by trade, then access to complete sealing records would reveal information about habits, finance and occupation. While this may be a stretch of possible applications, people who do not want their names associated with wildlife consumption may try to argue this point. While I do not have specific wording, the definition of "personal information" should specifically exclude any documents that pertain to wildlife harvest or other natural resource consumption. The four specific types of public documents you listed (including sealing records) for exclusion are a good place to start, but the exemption should be broad enough to cover future needs for public disclosure of documents.

While the bill states that a court should rule on the side of disclosure if there is any ambiguity, there is an explicit exemption for personal information in Section 1 (b). This is the section which will direct a court how to interpret the legislation. The wording in this section is too broad in our view, and may allow more information than necessary to be withheld, unless personal information is more narrowly defined.

Our biggest difficulty with access to public documents has been with the Department of Fish and Game over complete furbearer sealing records. Prior to the 88-89 harvest season, ADF&G included all the necessary information in a computer database which we could obtain. They now omit names of hunters and trappers from the database, and there is no easy way to obtain names and licence numbers to review consumptive use of furbearers. To document the hurdles we have encountered obtaining these records during the last year, I have attached a series of letters. You might wish to carefully review the March 21, 1990 letter from Denby Lloyd in the Governor's office which states the position of the State on access to sport license numbers and names. There are tens of thousands of those documents which we have no interest in, yet this seems to be the only way to link user names with sealing record information, if we are ever able to obtain them in a form we can use without employing a professional data analyst. We feel the best solution would be for the Division of Wildlife Conservation to resume including names in the sealing record database, but we have been unable to convince them of this and I assume that this year's computerized harvest data will also omit user names.

We feel that Sec. 09.25.124 (page 7, line 13) which allows appeal of the final administrative order to superior court is important. This is an excellent provision that will allow more immediate relief if public disclosure is denied by an agency. What remains unclear to us is whether or not the remainder of the scope of the bill is redundant to the access we already should have to public records. We feel that the access that has been denied to us so far by the Alaska Department of Fish and Game violates existing regulations so the problem may lie more in administrative red-tape, stalling and adept data "burying" than inadequate legislation to require disclosure. At least in our case, reasonable cooperation from the Division of Wildlife Conservation is all that is necessary to continue access to complete sealing records, but obviously that has not been forthcoming. If this proposed legislation can fix this problem then we are fully in support of it.

Despite the controversy over what should and shouldn't be public information, The Alaska Wildlife Alliance firmly believes the public interest is always best served by open public access to information about resource use. We appreciate you efforts on HB 405 and we hope to continue working with you on this. Thanks for your time and for your concern.

Sincerely,

Valerie Brown
Executive Director

Enclosures

cc: Sharon Sturgess, Trustees for Alaska

ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES
RESEARCH AGENCY

P.O. Box Y, State Capitol
Juneau, Alaska 99811-3100
Mail Stop 3100
(907) 465-3991

April 20, 1989

MEMORANDUM

TO: Representative Kay Brown

FROM: Maria Gladziszewski
Legislative Analyst

RE: **The Impacts of Technology on Public Access to Information, Computer Crimes and Employee Surveillance**
Research Request 89.268

You asked us to conduct research on several aspects of advancing information technology. Specifically, you were interested in three areas: 1) public access to information, 2) computer crime, and 3) employee monitoring. I will discuss each area in detail after the following brief summary of findings.

SUMMARY

- All fifty states operate under Freedom of Information (FOI) provisions, either from state constitutional or statutory authority. The federal Freedom of Information Act (FOIA), passed in 1966, established for the first time a statutory right of access to federal government information.

- Federal and state laws regarding public access to information were written with paper records in mind, and most observers have concluded that current laws do not adequately address information dissemination in the computer age.

- The director of the National Center for Computer Crime Data stated that computer crime legislation needs constant revision to outpace new technologies. Legislation must prohibit alteration, damage, and destruction of data, as well as disruption and denial of services.

- Dean Guaneli, assistant attorney general, knows of no cases of computer crime prosecuted in Alaska. Several sections in the criminal statute could be used to prosecute unauthorized access to computers. Mr. Guaneli stated that having all sections dealing with potential computer crimes in one place in the statutes would be useful.

- Because of the increased number of computers in the workplace and the resultant increased ability to monitor employees, electronic monitoring has recently become a topic of public policy debate.

- Intrusive monitoring can conflict with traditional expectations of what is fair on the job. Monitoring without warning can make employees feel like they are being spied upon and may violate personal privacy of both employees and customers.

- Electronic monitoring is a topic that especially affects women and minorities because they comprise the majority of the clerical work force likely to be monitored (routine computer programmers, word processing clerks, telephone operators, airline reservation agents, etc.)

PUBLIC ACCESS/FREEDOM OF INFORMATION

You requested information relating to rights of the public to access governmental information and mentioned concerns about invasion of privacy. You asked that the public access research attempt to 1) define "public access," 2) determine what other states are doing regarding public access to information and 3) determine the status of current Alaska laws in this area. A brief review of federal and state legislation on access to information and privacy issues is offered below as an attempt at defining "public access." Also included is a discussion of access to information in relation to computerized databases.

"Public Access" to Information

Information has long been recognized as playing an essential role in a democratic political system. Rapid advances in information technology have raised new economic and policy issues to be addressed by Congress, the courts, and state legislatures. The technology makes it possible for agencies to acquire information electronically (via magnetic tape, cassettes, disks, optical disks, or transmission over telephone links) and to release information electronically (via the same media and by satellite transmission). The new technologies can improve public access to information. They can also, however, be very costly and can threaten the position of established electronic information suppliers. Additional questions arise depending upon whether one considers access obligations under freedom of information laws or whether one considers more active information dissemination initiatives (through some form of electronic publishing). "Public" access to information released electronically really means access by a relatively small portion of the population with access to microcomputers. Until every citizen has a microcomputer, the concept of "public" availability really means "direct availability to certain technologically sophisticated constituencies, such as investors, inventors and

patent attorneys, tariff filers or medical researchers, or indirect availability to members of the general public using agency public reference rooms or public libraries."[1]

Federal Legislation Relating to Access to Information

Public access to information held by federal agencies is addressed in three federal acts.[2] The Administrative Procedure Act (APA) of 1946 requires agencies to publish information about agency procedures and rules in the Federal Register. The APA was "drawn upon the theory that administrative operations and procedures are public property which the general public, rather than a few specialists or lobbyists, is entitled to know..."[3]

The Freedom of Information Act (FOIA) of 1966 revised the public information disclosure section of the APA. The APA generally had been recognized as falling short of its disclosure goals and "came to be looked upon as more a withholding statute than a disclosure statute."[4] The FOIA established for the first time a statutory right of access to federal government information. Underlying principles of the FOIA, however, are inherent to the democratic ideal: "The basic purpose of FOIA is to ensure that an informed citizenry, vital to the functioning of a democratic society, needed to check against corruption and to hold the governors accountable to the governed."[5] In an effort to clarify and extend the disclosure requirements of the FOIA, and also as a reaction to the abuses of the Watergate era, the FOIA was substantially amended in 1974. These amendments significantly narrowed the ability of

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[1]Henry H. Perritt, Jr., Electronic Acquisition and Release of Federal Agency Information, (The Administrative Conference of the United States, 1988), p. 18.

[2]The Administrative Procedure Act of 1946 (5 USC §1002), the Freedom of Information Act of 1966 (5 USC §552), and the Privacy Act of 1974 (5 USC §552a).

[3]Lotte E. Feinberg, "Managing the Freedom of Information Act and Federal Information Policy," Public Administration Review, November/December 1986, p. 616.

[4]Guidebook to the Freedom of Information and Privacy Acts, pp. 1-10.

[5]NLRB v. Robbins Tire & Rubber Co., 437 U.S. 214, 242 (1978) cited in Guidebook to the Freedom of Information and Privacy Acts, compiled and edited by Justin D. Franklin and Robert F. Bouchard (1986).

agencies to withhold records.[6] The Act contains nine exemptions which protect the following types of records from access, disclosure, or dissemination: 1) national security, 2) agency personnel matters, 3) matters specifically exempted from access by another statute, 4) commercial secrets, 5) agency deliberations, 6) private personal matters, 7) law enforcement investigations, 8) financial institution investigations and 9) geological surveys. The Federal FOIA applies only to "records" maintained by "agencies" of the Executive Branch of the federal government (including the Executive Office of the President and independent regulatory agencies). The FOIA does not apply to records maintained by the courts, by Congress, or by state governments.

The Privacy Act of 1974 responded to concerns about government use and possible misuse of personal information. Although the government had gathered information about citizens for decades, public concern was heightened at the time for several reasons. Among these were the abuses of Watergate (illegal wiretapping and surveillance of private citizens by federal agencies) and the technological capability to collect vast amounts of information on individuals. While information had previously been stored in manual files, advances in technology made it easier than ever for the government to compile, retrieve, analyze and disseminate data.

The Privacy Act states that "any citizen of the United States or an alien lawfully admitted for permanent residence" can use the Act and is entitled to its protection. The scope is more narrow than that of the Federal Freedom of Information Act, which allows use by "any person." The Privacy Act applies to records in a "system of records" and can be documents, regardless of physical form, which contain an "identifying particular" that could be used to identify someone (social security number, draft registration number, fingerprint, etc.) The Privacy Act adopts the definition of "agency" in the FOIA and also does not apply to records compiled by Congress, by the courts, or by state governments.

The Freedom of Information Act does contain provisions addressing potential conflicts between privacy interests and pro-disclosure policies. The FOIA attempts to resolve the conflict between public access to agency records and individual privacy by permitting agencies to delete private or proprietary information from records made available to the public. The Act states that "[a]ny reasonable segregable portion of a record shall be provided to any person requesting such record after deletion of the portions which are exempt..."

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[6] In 1976 Congress again narrowed what could be withheld from disclosure and in 1978 made some technical changes to the FOIA. Congressional hearings held in 1981 demonstrated that, after several years of administrative experience with the FOIA, the Act was "in need of both substantive and procedural reform." The most recent FOIA amendments passed through Congress in 1986.

States' Action Relating to Freedom of Information

All fifty states operate under Freedom of Information provisions, either from state constitutional or statutory authority. According to the Council of State Governments (CSG), some states operate under restrictive open records provisions that classify as public records only those documents required to be kept by law or those made pursuant to law.[7] Less restrictive laws usually provide that "all records in the possession of a public agency" are public unless otherwise specified in statute or regulation. Thirty-six states, including Alaska, have laws of this type.[8]

Attachment B, a chart prepared by the National Conference of State Legislators (NCSL), lists states with FOIAs which specifically cover access to public records regardless of the physical characteristics of the records. Thirty-one states have laws that specifically include computerized public records.

All states provide exemptions to open records laws and the same categories of exemptions can be found in all states. Exemptions to state open records laws are of six types: 1) information classified as confidential by state law; 2) law enforcement and investigatory information (e.g., criminal history records, child abuse records); 3) trade secrets and commercial information, 4) preliminary department memoranda (e.g., working papers and correspondence of the governor and legislators, intra-agency memorandums); 5) personal privacy information; and 6) information relating to litigation against a public body (e.g., legislative research documents, bill drafting services).[9] Table 2 lists information classified as confidential in Alaska statute.

In March 1989, The Reporters Committee for Freedom of the Press, a nonprofit organization based in Washington, D.C., completed fifty-one guides to open meetings and open records laws entitled Tapping Officials' Secrets. The guides include analyses of statutes, exemptions, and other legal limitations. The open records chapter in each guide includes a section addressing the law on specific categories of records (e.g., bank records, hospital records, public utility records, etc.) The guides explain the foundations for state open government in common law, in the first state laws after independence, and in territorial laws in western states. A compendium of guides to all states is available for $200, or they are available individually for $5 per state. A copy of the guide for Alaska has been requested and will be forwarded to your office upon receipt.

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[7]See Attachment A, a memorandum issued in December 1988 by the Council of State Governments, for more information on state public record laws.

[8]North Dakota Legislative Council, Open Records Laws, October 1986, p. 8, as cited in CSG Backgrounder No. 128801 (Attachment A).

[9]Braverman and Heppler, "A Practical Review of State Open Records Laws," 49 Geo. Wash. Law Rev., 1981, p. 739.

Access to Information in Alaska

The Alaska legislature has not passed legislation entitled Alaska's "Freedom of Information Act." Rather than one "open records" or "freedom of information" section in statute, provisions relating to access to information are found in many sections of Alaska statutes. The definition of "public record" was not added to statute until 1978.[10] The sections considered to be Alaska's FOIA, were passed by the legislature in 1962.[11] These provisions pertaining to public records are relatively general as compared with some states' provisions. Whereas some states have passed specific laws and list many exceptions to open records provisions in their FOI laws, the principal part of Alaska's FOI statute lists as confidential only "(1) records of vital statistics and adoption proceedings; (2) records pertaining to juveniles; (3) medical and related public health records; (4) records required to be kept confidential by federal law or regulation or by state law..." The sections of the Alaska Administrative Code regarding public information became effective in 1982.

We have prepared Tables 1, 2, 3, and 4 in an effort to determine the status of current Alaska laws relating to public access. Table 1 lists statutes specifying records as public, Table 2 lists statutes specifying records as confidential, Table 3 lists other statutes relating to public access to information, and Table 4 lists the titles of interpretations of Alaska law issued by the Office of the Attorney General.

According to Assistant Attorney General James L. Baldwin, determining which records are confidential and which are public has not been predictable: "we buy a lawsuit every time we deal with it." Mr. Baldwin also stated that because of the "skeletal" nature of Alaska's public records statutes, difficulty arises when attempting to sort out what information is exempt from public disclosure.

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[10]AS 11.81.900.

[11]See Attachment C, AS 9.25.100-125 and 6 AAC 95, Alaska statutes and regulations regarding public information.

Access to Information in the Computer Age

The laws passed by Congress and state legislatures regarding access to information were written with paper records in mind; most do not adequately address the impact of computer technology on public access to information.[12] The Federal FOIA applies only to "records" maintained by "agencies" of the federal government. The statute does not distinguish information stored in computers from information on paper, but some agencies have contended that the Act does not apply to electronic records. Although federal agencies are not always consistent in interpreting whether computer data should be disclosed under the FOIA, and Congress has not amended the law to specifically include changes in technology, federal courts have ruled that electronic records, like paper records, are public under the FOIA.[13]

Significant unresolved issues remain, however, regarding access to information in an electronic age. Case law as applied to paper records under the federal FOIA establishes that agencies are not required to create new records in fulfilling requests. Electronic information technologies, however, obscure the boundaries between records and nonrecords (for example, databases resemble information "pools" rather than discrete records--does an agency "create" a record when sorting an information pool). New technologies also can change the definition of what is a "reasonable" search.

The Public Records Division of the Office of the Massachusetts Secretary of State sponsored the first national conference on issues concerning computerized public records in January 1987. Massachusetts officials organized the conference to address several problems arising from requests for access to computerized records. First, as mentioned above, it is difficult for those who maintain records to translate existing access principles into computer access principles. Second, the increased availability to gather and manipulate vast amounts of information on individuals is still a concern and may not be

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[12]Several recent reports address public access to electronic information. The following reports can be seen at this office: U.S. Congress, Office of Technology Assessment, Informing the Nation: Federal Information Dissemination in an Electronic Age (October 1988, 333 pages); Administrative Conference of the United States, Electronic Acquisition and Release of Federal Agency Information (October 1988, 135 pages) and Federal Agency Use of Computers in Acquiring and Releasing Information (Recommendation No. 88-10, December 1988, 14 pages); Office of the Massachusetts Secretary of State, Report of the First National Conference on Issues Concerning Computerized Public Records (1987); U.S. House of Representatives, Committee on Government Operations, Electronic Collection and Dissemination of Information by Federal Agencies: A Policy Overview (April 1986, 70 pages).

[13]Long v IRS, 596 F.2d 362, 365 (9th Cir 1979), cert denied, 446 U.S. 917, 100 S. Ct. 1861, 64 L.Ed.2d 271 (1980), as cited in Electronic Acquisition and Release of Federal Agency Information, p.103.

adequately addressed by existing privacy laws.[14] Thirdly, the commercial value of information can be much greater than what custodians may charge under existing laws.

A 1986 nationwide survey conducted by the Public Records Division of the Massachusetts Secretary of State found that the two areas of greatest concern to state freedom of information administrators are 1) "the best method for transposing existing FOIA provisions into a form which is adaptable to computer records" and 2) "the policing of the use of the vast amounts of personal data which can now be obtained in large quantities through requests for copies of computer tapes and disks."[15]

One issue already mentioned concerns whether an agency creates a new record by compiling information from a database in response to a FOIA request. The federal FOIA and state freedom of information laws obligate agencies to allow examination of existing records. Agencies are not required to interpret information or create new records. According to the Reporters Committee for Freedom of the Press, the Justice Department (which provides FOIA guidance to all federal agencies) contends that agencies are not required to program their computers to respond to information requests.[16] In December 1988, however, the Administrative Conference of the United States (an independent federal agency established to improve the procedures of federal agencies) issued recommendations stating that "agencies using electronic databases rather than paper records should not deny access to the electronic data on the grounds that the electronic data are not "records," that retrieval of the electronic information is equivalent to the creation of a "new" record, or that programming is required for retrieval."[17]

In general, states have followed the federal practice of allowing FOI requests to seek the disclosure only of existing, identifiable records within an agency's possession and have held that agencies are not required to create or acquire records in response to a disclosure request.[18]

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[14] Electronic Record Systems and Individual Privacy, a report issued in June 1986 by the Office of Technology Assessment, addresses this issue.

[15] Public Records Division, Office of the Massachusetts Secretary of State, Report of the First National Conference on Issues Concerning Computerized Public Records, 1987, Vol. 1.

[16] "Computer Data Access is Problem," The News Media and the Law (Winter 1989), p. 4.

[17] Recommendation 88-10, see note 12.

[18] B.A. Braverman and F.J. Chetwynd, Information Law: Freedom of Information, Privacy, Open Meetings, and Other Access Laws, 1985, p. 912.

The Office of Technology Assessment (OTA) recently issued a report that urged Congress to amend the federal FOIA to maintain the Act's "integrity in an electronic environment."[19] Fred Wood, project director of the OTA study, told me that while technology has made it possible to make available many types of information, national and state policies on access to information established in a pre-electronic era are unable to adequately deal with the electronic advances. We now have increased options for accessing and disseminating information (data can be retrieved more quickly; databases can be searched for subsets of data) but we still operate with an outdated policy framework. Mr. Wood stated that Congress and state legislatures need to clarify the gray areas still unresolved in their open records laws by updating policies to reflect technological advances.

Although Alaska statute does not specifically mention computerized records, James L. Baldwin, assistant attorney general, stated that the definition of a public record is broad enough that the form of a record is not relevant to whether a record is considered public (computerized records would be considered public records). He also stated, however, that agencies would not be obligated to "create" a record in response to a request for information. Alaska laws regarding access to computerized information are no more clear than federal law. Issues concerning access to computerized records--what in a database must be disclosed, how much effort an agency must expend to sort public data within a confidential database, must an agency provide data in a format convenient for the requester, etc.--have not been adequately addressed.

COMPUTER CRIME

You requested information on several state computer crime laws; copies are included as Attachment D.[20] You also requested copies of specific computer crime legislation (Attachment E)[21] and model computer crime legislation (Attachment F).

The Computer Crime Law Reporter lists 48 states as having criminal provisions relating to computer crimes (Attachment G). The Alaska provision (AS 11.46.74) states that a person commits the crime of criminal use of a computer if "having no right to do so...the person knowingly accesses...a computer...and as a

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[19]Office of Technology Assessment, Informing the Nation.

[20]Computer crime laws from the states of Arkansas, California, Illinois, Minnesota, Missouri, New Jersey, Washington and Wisconsin are included.

[21]Federal legislation includes the Computer Fraud and Abuse Act of 1986 amends section 1030 of title 18, United States Code (the amended version of 18 USC 1030 is attached along with the text of PL 99-474, 100 Stat 1213); the Electronic Communications Privacy Act of 1986 (PL 99-508, 100 Stat 1848); and the Computer Security Act of 1987 (PL 100-235, 101 Stat 1724).

result of that access...obtains information concerning a person or...introduces false information into a computer...with the intent to damage or enhance the data record of a person..."

J.J. BloomBecker, director of the National Center for Computer Crime Data, states that legislation needs constant revision to outpace new technologies. "Computer crime confounds the legislator because it requires aiming at a moving target. It can be safely predicted that as long as our computer and communications technologies continue to advance at their current breakneck pace, criminals will continue to come up with new ways to exploit them."[22] Mr. BloomBecker contends that computer crime legislation must prohibit alteration, damage, and destruction of data, as well as disruption and denial of services.

Mr. BloomBecker said that the legislation drafted by the Data Processing Management Association (Attachment F) is the most current model legislation written. He also said that a few states, such as Pennsylvania, have adopted legislation similar to the Federal Computer Security Act of 1987 (included in Attachment E).

Dean Guaneli, assistant attorney general, knows of no cases of computer crime prosecuted in Alaska. Several sections in the criminal code, in addition to the section that prohibits criminal use of a computer, could be used to prosecute unauthorized access to computers. When asked about instances of "hackers" accessing computer records, Mr. Guaneli told me that a prosecutor would need to jump around a bit to find the relevant statute.[23] He stated that it would be useful to have all sections dealing with potential computer conflicts in one place in the statutes.

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[22]See Attachment H, "Cracking Down on Computer Crime," State Legislatures, August 1988, for more information on state computer crime legislation and a chart listing acts forbidden under current computer crime laws.

[23]AS 11.46.740 (prohibits the criminal use of a computer), AS 11.46.200 (prohibits theft of services), AS 11.46.480-484 (prohibits criminal mischief), AS 11.46.490 (defines "tamper"), and AS 11.56.815-820 (prohibits tampering with public records).

COMPUTER SURVEILLANCE AND EMPLOYEE MONITORING

You asked us to provide information about computer surveillance and employee monitoring by employers. You also requested copies of two bills relating to employee monitoring; they are included as Attachment I.[24]

Supervisors have always monitored employees. Technological advances, however, now make constant monitoring possible--counting keystrokes of employees working on computers, listening in on telephone calls of airline reservation agents, recording vehicle speed, shifting, idling and the duration of truck drivers' lunch stops. Those monitored include word processing and data entry clerks, telephone operators, customer service representatives, mail clerks, airline reservation representatives, and truck drivers.

Some aspects of employee monitoring, such as telephone monitoring, have been around for many years. Because of the increased number of computers in the workplace and the resultant ability to monitor more employees, however, the issue has become a topic of public policy debate.

Intrusive monitoring can conflict with traditional expectations of what is fair on the job. A 1987 OTA report states that monitoring, "when done without notice or warning, can contribute to a feeling of being spied upon, and may have implications for the privacy of customers as well as employees."[25] The report also states that the new information technology "might give employers power of surveillance and control in the workplace that might be abused--used simply for the sake of control, beyond what is necessary to organize the work process."

According to the OTA report, women and minorities are most likely to be monitored electronically because "the clerical work force is predominantly female, and the low-skill end of the clerical work force has a disproportionate number of minority women. Similarly, women are more likely to be employed...[-in jobs such as] routine computer programming...Because monitoring is most likely to be applied to precisely these lower level jobs, work monitoring is a topic that especially affects women and minorities."

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[24]You requested copies of a bill in the 100th Congress endorsed by the Communications Workers of America (HR 1950/S 1124--to amend title 18 of the U.S. Code to require that telephone monitoring by employers be accompanied by a regular audible warning tone) and a worker advocate bill in Massachusetts that would limit the amount of employee monitoring (Massachusetts House Bill 4383--"An Act to Prevent Potential Abuses of Electronic Monitoring in the Workplace").

[25]U.S. Congress, Office of Technology Assessment, The Electronic Supervisor: New Technologies, New Tensions, September 1987.

According to Leslie Lople of the Communications Workers of America (CWA), legislation introduced in the 100th Congress requiring that telephone monitoring by employers be accompanied by a regular audible warning tone (HR 1950 and S 1124) received more than 170 co-sponsors in the House and 13 co-sponsors in the Senate. Because of the rapid favorable response on the issue, CWA began lobbying for an expanded version of the legislation. Ms. Lople expects a revised version of the bill to be introduced in Congress within the next few weeks by Representatives Don Edwards (CA) and Bill Clay (MO). The revised version resembles the Massachusetts legislation (included as Attachment I) and mandates employees' "right to know" that they are being monitored.

The government relations division of the Communications Workers of America reports that no state has passed comprehensive employee monitoring legislation. Ms. Lople stated that the Massachusetts legislature is still considering its employee monitoring bill originally introduced in 1987. Minnesota legislators are also working on an employee monitoring bill this session. Representative Tom Hayden introduced legislation in California in 1987 that prohibited employers from any type of electronic monitoring of employees without providing notice to workers; the bill, amended to prohibit only "subliminal message programs which carry messages by suggestion of self-hypnosis on a worker without the consent of the worker," passed the Assembly and the Senate but was vetoed by Governor Deukmejian.

* * * *

I hope this information is useful. Please contact me if you have additional questions.

Attachments

Municipality of Anchorage

P.O. BOX 196650
ANCHORAGE, ALASKA 99519-6650
(907) 343-4425

TOM FINK,
MAYOR

DEPARTMENT OF EMPLOYEE RELATIONS

April 13, 1990

Senator Pat Pourchot
Rm 504, Capitol
P O Box V
Juneau, AK 99811

Dear Senator Pourchot:

The Municipality has reviewed with particular concern HB 405, an act relating to public access to the records of public agencies and recognizing the availability of electronic services and products.

The Anchorage Assembly has enacted AMC 3.90, Access to Public Records, which clearly recognizes the right of the people to the fullest and most rapid public access to municipal records and information. The policy statement provides that this chapter shall be liberally construed to require full disclosure of public records, except for those specifically exempted by this chapter.

Under the definition of "electronic services and products", the Municipality would be compelled to develop new computer applications and programs, and manipulate data to develop a product(s) specifically to respond to a request for public information. Although the bill provides that reasonable costs can be assessed for this effort, given the state of existing Municipal resources and the backlog of work requests for development and maintenance of operating systems for Municipal agencies themselves, it would place an undue financial hardship on this organization.

To recognize the ability of municipalities to establish appropriate standards for public disclosure, and the level of responsiveness to requests for public information in terms of fiscal and human resources, we suggest the following amendments to HB 405:

Amend Sec. 09.25.120 (4) to read:

(4) records required to be kept confidential by a federal law or regulation [OR], by state law, or municipal ordinance;

Amend Sec. 09.25.220 (5) to read:

(5) "public agency" means a department, institution, board, commission, division, authority, public corporation, committee, or other administrative entity of the executive, judicial, or legislative branch or state government, or of a municipality <u>which has not adopted public disclosure legislation</u>; "public agency" includes the University of Alaska, the Alaska State Housing Authority, and the Alaska Railroad Corporation;

It is our understanding that Senate State Affairs will be holding a hearing on HB 405 on Wednesday, April 18 at 1:30 p.m. We would appreciate the opportunity to testify regarding the bill and our proposed amendments by teleconference.

The Municipality supports the concept of public disclosure as is evidenced by AMC 3.90. However, we believe that local determination by municipalities is essential, especially given the significant additional costs which would be incurred as a result of this legislation.

Sincerely,

Glenn Lundell
Employee Relations Director

Sidney Robertson, Director
Management Information Systems

Rep. Brown
5/7/90 revised

SCS CS HB 405 (FINANCE)

Major provisions		Bill Section	Municipalties covered?
Fees for public records			
* paper	duplication	3, (b)	yes
large requests (5+ hours/mo.)	duplication + personnel costs	3, (c)	yes
* electronic public records	actual cost	4, (c)	yes
* electronic services and products	actual cost + reasonable portion of system overhead	4, (b)	yes
Executive agencies set fees under regulations adopted by TIC		4,(g);6,(a)	no
Alaska Railroad sets fees under regulations adopted by Board of Director		3(g),4,(g)	no
Univ. of Alaska sets fees under regulations adopted by Board of Regents		3(f),4(g)	no
Notice to state library of electronic products and services (formats and fees)		4, (c)	yes
Program receipts accounting for fees		4,(i)	no
Confidential student records		5	yes
Copyright software		13,15	yes
Personal information notice by state agencies		15	no
Change inaccurate personal information in public files		15	no
Injunctive relief without exhausting administrative appeal		7	yes
Definitions		8	yes
Legislative voting records		12	no
Litigation disclosure		6	yes
Fish & Wildlife Data		10	no

Rep. Brown
4/17 /90 revised

CS HB 405 (Finance) am

Major provisions		Bill section	Municipalities covered?
Fees for public records			
* paper	duplication	3, (b)	yes
large requests (5+ hours/mo.)	duplication + personnel costs	3, (c)	yes
* electronic public records	actual cost	4, (c)	yes
* electronic services and products	actual cost + reasonable portion of system overhead	4, (b)	yes
Executive agencies set fees under regulations adopted by TIC		4,(g);6,(a)	no
Notice to state library of electronic products and services (formats and fees)		4, (e)	yes
Program receipts accounting for fees		4,(i)	no
Copyright software		14, 16	yes
Personal information notice by state agencies		16	no
Change inaccurate personal information in public files		16	no
Injunctive relief without exhausting administrative appeal		7	yes
Personal information: disclosure/privacy		1,(b);8	yes
Definitions		9	yes
Legislative voting records		13	no

STATE FREEDOM OF INFORMATION ACTS

Chart IV-A
4/87

	States with FOIAs which specifically cover access to public records in computer, electronic or magnetic tape form or records regardless of physical form or characteristics	Charging policy for copies of public records
ALABAMA		
ALASKA		
ARIZONA	x	Cost of providing copies plus value of reproduction on commercial market
ARKANSAS	x	No express charging policy
CALIFORNIA	x*	Cost of duplication or statutory fee
COLORADO	x	Reasonable fee for actual costs or statutory fee
CONNECTICUT	x	Cost to public agency
DELAWARE		
FLORIDA	x	Statutory fee or actual cost of duplication (cost of material and supplies, not labor or overhead)
GEORGIA	x	Compensation for reproduction at rate agreed to by custodian and requestor
HAWAII		
IDAHO		
ILLINOIS	x	Actual cost of reproducing and certifying and for use of reproduction equipment
INDIANA	x	Computer tape or disk produced by legislative services agency: fee must not exceed sum of 1) direct cost of supplying information in that form, 2) standard cost of selling same information in publication form, 3) percentage of direct cost of maintaining information system (3 may not exceed 1 and 2).
IOWA	x	Reasonable fee not to exceed cost of providing service
KANSAS	x	Statutory fee or for records maintained in computer facilities, cost of computer services including staff time
KENTUCKY	x	Reasonable fee which does not exceed actual cost (not staff required)
LOUISIANA	x	Reasonable fees
MAINE	x	When inspection can't be accomplished without translation of electronic data, may charge for cost of translation
MARYLAND		Reasonable fee or statutory fee
MASSACHUSETTS	**	
MICHIGAN	x	Mailing costs, actual cost of duplication or or publication (labor, cost of search, examination, review, deletion and separation of exempt material)
MINNESOTA	x	Actual cost of making, certifying and compiling copies plus an additional reasonable fee (related to development costs of information), if data base has a commercial value
MISSISSIPPI	x	Actual cost of searching, reviewing, duplicating and mailing
MISSOURI	x	Reasonable fee

* Records maintained by Legislative Counsel are not subject to FOIA.
** FOIA may not apply to legislature.
***Not required to supply computer tapes if data is promptly published and offered for sale

	States with FOIAs which specifically cover access to public records in computer, electronic or magnetic tape form or records regardless of physical form or characteristics	Charging policy for copies of public records
MONTANA		
NEBRASKA	x	No express charging policy
NEVADA		
NEW HAMPSHIRE		
NEW JERSEY		
NEW MEXICO		
NEW YORK	x	Statutory fee or actual cost of reproducing record
NORTH CAROLINA	x	Statutory fee
NORTH DAKOTA		
OHIO		
OKLAHOMA	x	Cost of reproducing copy, and if request is for commercial purpose or would cause excessive disruption of public body's functions, reasonable fee for direct cost of document search
OREGON	x	Actual cost in making records available
PENNSYLVANIA	**	
RHODE ISLAND	x	Reasonable expense in retrieval and/or copying
SOUTH CAROLINA	x	Actual cost of searching for or making copies of records and may charge reasonable hourly rate for making records available
SOUTH DAKOTA		
TENNESSEE	x	No express charging policy
TEXAS		
UTAH	x	Reasonable fees
VERMONT		
VIRGINIA	x	Actual cost (copying and search time)
WASHINGTON		
WEST VIRGINIA	x	Actual cost of making reproductions
WISCONSIN	x***	Statutory fee or actual, necessary and direct cost of reproduction and transcription
WYOMING	x	Reasonable fee

* Records maintained by Legislative Counsel are not subject to FOIA.
** FOIA may not apply to legislature.
***Not required to supply computer tapes if data is promptly published and offered for sale or distribution.

TABLE 1
ALASKA STATUTES MANDATING A RECORD AS PUBLIC

09.25.110 "Unless specifically provided otherwise the books, records, papers, files, accounts, writings, and transactions of all agencies and departments are public records and are open to inspection by the public..." (Section 3.22 ch 101 SLA 1962)

09.25.120 "Every person has a right to inspect a public writing or record in the state, including public writings and records in recorders' offices except (1) records of vital statistics and adoption proceedings...; (2) records pertaining to juveniles; (3) medical and related public health records; (4) records required to be kept confidential by federal law or regulation or by state law..." (Section 3.23 ch 101 SLA 1962)

11.81.900 "'Public record' means a document, paper, book, letter, drawing, map, plat, photo, photographic file, motion picture, film, microfilm, microphotograph, exhibit, magnetic or paper tape, punched card or other document of any other material, regardless of physical form or characteristic, developed or received under law...and preserved...by any agency, municipality, or any body subject to the open meeting provision of AS 44.62.310, as evidence of the...activities of the state or municipality or because of the informational value in it; it also includes staff manuals and instructions to staff that affect the public...." (Section 10 ch 166 SLA 1978)

STATUTE	TYPE OF RECORD
34.45.310	Abandoned property, lists of
24.45.370	Abandoned property, record of proceeds from the sale of
44.62.500	Administrative adjudication, copies of proposed decisions
18.26.040	Alaska Medical Facility Authority, minutes of board meetings
37.13.110	Alaska Permanent Fund, conflict of interest of board members of
37.13.200	Alaska Permanent Fund, information in the posse sion of, with exceptions
42.06.260	Alaska Public Utilities Commission, applications for certificates of public convenience and necessity
42.05.671	Alaska Public Utilities Commission, records in the possession of, with exceptions
42.06.445	Alaska Public Utilities Commission, records in the possession of, with exceptions
42.06.210	Alaska Public Utilities Commission, reports regarding oil and gas pipeline facilities
37.12.120	Alaska Resources Corporation, information in the possession of, with exceptions
08.13.050	Barbers and hairdressers, licensing records of
39.52.220	Boards and Commissions members, declaration of potential ethics violations
45.55.250	Broker-dealers/investment advisors, applications for registration and revocation orders
06.20.190	Business licensees, annual report
08.18.021	Construction contractors, applications for registration
08.18.081	Construction contractors, claims against
10.15.240	Cooperative corporations, name of each party to the contract
23.20.105	Employing units, records of, containing information prescribed by the Department of Labor
46.15.020	Environmental conservation, applications for permits and other documents in the Commissioner's office
39.52.210	Executive branch officials, declaration of potential ethics violations
39.52.130	Executive branch officials, some gifts received by, with a value of $50 or more
16.10.410	Fish hatcheries, public meetings regarding issuance of licenses for
16.10.290	Fish processor/primary buyer, records of suits against
46.03.311	Hazardous waste, permit applications/reports of persons who generate, with exceptions
23.05.020	Labor, records of all proceedings of the Department of
24.05.135	Legislative floor sessions
24.23.060	Legislative professional service contracts
24.20.120	Legislative council, reports released by
24.10.120	Legislators, report of compensation to
24.60.100	Legislators, disclosure of representation for compensation by
24.60.050	Legislators, records of receipt of state loans or participation in state programs by, with exceptions
24.60.110	Legislators, conflict of interest
24.60.080	Legislators, gifts received by, with a value of $100 or more
24.60.070	Legislators/public officials, some close economic associations of
44.47.571	Local boundary commission, minutes of all meetings and hearings
25.05.191	Marriage license docket
40.05.010-030	Mining claims, some information on the status of
45.30.018	Mobile homes, attorney general actions regarding claims against manufacturers of
08.71.055	Opticians, names of applicants and licensees
06.40.100	Premium finance licensees, annual report
36.30.530	Procurement, information regarding state contracts, "except as otherwise provided by state law"
39.35.040	Public Employees Retirement Board, record of proceedings of
39.45.025	Public Employees Retirement Board, record of proceedings of, deferred compensation
39.30.155	Public Employees Retirement Board, record of proceedings of, supplemental benefits
40.21.010-150	Public records, management and preservation of
40.17.010	Real property
43.05.010	Revenue, Commissioner of, record of each order, process and certificate issued
27.21.100	Surface coal mining, applications for permits for
45.50.130	Trademarks registered
14.40.160	University of Alaska Board of Regents, board meeting records

Prepared by the House Research Agency, April 1989 (89.258A).

TABLE 2
ALASKA STATUTES WHICH MANDATE A RECORD AS CONFIDENTIAL

STATUTE	TYPE OF RECORD
PROPRIETARY INFORMATION (TRADE SECRETS, MARKETING INFORMATION, ETC.)	
46.03.180	Air contaminant sources, production figures or techniques of an operator of
44.88.340	Alaska Industrial Development Authority, commercially sensitive information of exporters obtained by
37.13.200	Alaska Permanent Fund, information which discloses the particulars of the business or affairs of a private enterprise
42.06.445	Alaska Public Utilities Commission, certain information regarding pipeline carriers
42.05.671	Alaska Public Utilities Commission, some records can be deemed privileged records, a person may make written objection to disclosure
38.06.060	Alaska Royalty Oil and Gas Development Authority, records relating to business or marketing information of producers
43.80.065	Commercial fish processors, information from reports used to identify individuals
44.81.260	Commercial Fishing and Agriculture Bank, information regarding the business records of, with exceptions
16.05.815	Commercial fishing, records which identify individual fishermen, buyers or processors
10.06.820	Corporations, information obtained by DCED from interrogatories
46.03.020	Environmental compliance, secret processes or methods of manufacture discovered by DEC during investigations regarding
08.54.230	Guided hunts, records maintained by DCED regarding
46.03.311	Hazardous waste, information that would divulge products or processes entitled to protection as trade secrets
27.20.041	Mine operation, all reports/information required to be filed regarding
27.25.090	Mineral assays, information pertaining to the results of, (for 2 years)
27.29.030	Mining loans, information supplied by applicants for
18.60.099	Occupational safety inspections, information that may reveal trade secrets obtained by the Department of Labor during
38.05.036	Oil and gas contracts, some information made available to Revenue during audits of royalty and net profit payments
38.05.035	Oil and gas leasing, some information received by DNR regarding
31.05.035	Oil and gas, reports filed by holders of permits to drill, with exceptions
46.04.025	Oil pollution control, proprietary technical information regarding
36.30.360	Procurement contracts, some information furnished by a bidder for
36.30.040	Procurement contracts, techinical data and trade secrets submitted by bidders for
36.60.230	Procurement contracts, trade secrets and other proprietary information contained in proposal documents for
36.30.140	Procurement contracts, trade secrets and other proprietary information disclosed during bidding for
37.17.090	Science and Technology Foundation grant recipients, some information generated by (if agreed upon before grant is issued)
27.21.200	Surface coal mining exploration permit, information that is a trade secret or privileged competitive right of an applicant for
27.21.100	Surface coal mining, certain information relating to the competitive rights of a permit applicant
REGARDING COMMERCE	
37.12.120	Alaska Resources Corporation, information which discloses the particulars of the business or affairs of a private enterprise
06.05.175	Bank records pertaining to depositors and customers, with exceptions
08.24.250	Collection agencies, some reports filed by
21.27.350	Insurance agents, brokers, and adjusters, records in the possession of the Division of Transactions of
21.36.400	Insurance claim investigations, information received by the Division of Insurance regarding
21.22.120	Insurance holding companies, examinations of
21.39.120	Insurance rating organizations, examinations of, until approved by the director of insurance
36.10.190	Public contracts, information regarding specific employees of holders of
06.30.120	Savings and loan records, with exceptions
06.30.655	Savings and Loans, information obtained by DCED regarding
21.34.090	Surplus lines insurance, records of examinations of
21.34.080	Surplus lines insurance, report submitted to the Director regarding
43.19.010	Tax compacts, information obtained during audits of multistate
43.05.230	Tax returns, particulars set out or disclosed in, with exceptions
09.25.100	Taxation, information which discloses the particulars of the business or affairs of a taxpayer
44.33.020	Tourism-related businesses, information obtained by DCED that discloses the particulars of an individual business

TABLE 2 (Continued)
ALASKA STATUTES WHICH MANDATE A RECORD AS CONFIDENTIAL

STATUTE	TYPE OF RECORD
LAW ENFORCEMENT AND INVESTIGATORY INFORMATION	
47.17.040	Child protection, investigation reports and reports of harm
12.62.015	Criminal justice information
28.35.032	Driving while intoxicated, information supplied to the court system by providers of treatment programs for persons convicted of
28.35.030	Driving while intoxicated, information supplied to the court system by providers of treatment programs for persons convicted of
47.37.170	Intoxicated persons, record of protective custody for
33.16.170	Parole, preparole reports and other information obtained by the parole board
33.20.211	Prisoners, certain documents regarding
REGARDING PUBLIC EMPLOYEES	
22.30.011	Judicial conduct commission, private reprimand of a judge by
22.30.060	Judicial conduct commission, proceedings of
24.60.160	Legislative ethics committee, advisory opinions of
24.60.170	Legislative ethics committee, investigations of complaints submitted to
39.25.080	Personnel records of state employees
39.52.340	Public employees, information obtained during ethics investigations of, while on-going
39.52.320	Public employee, attorney general's report declaring no probable cause to believe an ethical violation was committed by
39.52.240	Public employee, request for advice of the attorney general regarding an ethics violation of
39.52.260	Public employee, supervisor's report of a potential violation by, unless formal proceedings are initiated
37.10.071	Public fund investment records, if records contain information that discloses the particulars of the business or affairs of a person
09.25.150	Public officials or reporters, sources of information obtained in duty as
REGARDING THE LEGISLATURE	
24.20.301	Legislative budget and audit committee, reports and records of, until released
24.60.050	Legislative budget and audit division, report to the committe prepared by, until released
24.20.100	Legislators, research and bill drafting services for
24.55.160	Ombudsman investigations, identities of complainants or witnesses

TABLE 2 (Continued)
ALASKA STATUTES WHICH MANDATE A RECORD AS CONFIDENTIAL

STATUTE	TYPE OF RECORD
REGARDING HEALTH AND SOCIAL SERVICES	
25.23.150	Adoption, all papers and records pertaining to, unless the court and all interested parties consent
47.37.210	Alcoholics/intoxicated persons, records of treatment facilities for
08.95.900	Clinical social workers, information about clients of
18.20.090	Hospital, information received by DHSS regarding an individual or a
09.25.120	Medical
18.23.030	Medical review organizations, all data/records, with exceptions
47.30.845	Mentally ill patients, information obtained in the course of evaluation, examination or treatment of
47.30.590	Mentally ill persons, information obtained by DHSS regarding
47.30.840	Mentally ill persons, photographs taken of
44.21.235	Older Alaskans Commission, records obtained by the office of the long-term care ombudsman
18.05.046	Persons with impairments, registry maintained by DHSS of
17.30.155	Pharmacy board, medical practitioners not required to furnish names of patients or research subjects to
08.86.200	Psychologists, information about clients of
47.05.020	Public assistance, information concerning persons applying for or receiving assistance
09.25.120	Public health
18.23.010	Reviews of health care services, physician-patient confidentiality cannot be used to withhold info during
47.10.340	Runaway minors, records of licensed programs for
47.35.060	Social service institutions, records regarding individuals placed for care in
23.15.190	Vocational rehabilitation, information concerning persons applying for or receiving
OTHER	
18.60.087	Accident and health hazards, comments and names of employees reporting
08.48.071	Architects, engineers and land surveyors, some records of the Board of Registration of
18.80.220	Civil rights, data on age, sex and race required to administer laws regarding
13.26.013	Decedents estates, guardianships and trusts, court records of proceedings regarding
13.26.109	Decedents estates, guardianships and trusts, statements made by respondents during the course of examinations of
47.24.050	Elderly, investigative reports and reports of harm received by DHSS regarding
09.25.120	Juveniles
09.25.140	Library, personal identifying information of people who have used library materials
14.43.910	Loan applications for postsecondary education
28.15.151	Motor vehicles, some information maintained by the Department of
18.60.475	Radiation sources, data obtained as a result of registration or investigation of
45.50.521	Unfair trade practices/consumer protection, records of an attorney general investigation regarding
09.25.120	Vital statistics, records of birth, death, marriage, divorce, adoption and related data, with exceptions
13.11.315	Wills deposited with a superior court for safekeeping
23.20.110	Workers' compensation, information obtained by the Department of Labor

Prepared by the House Research Agency, April 1989 (89.268B).

TABLE 3
ALASKA STATUTES RELATING TO ACCESS TO INFORMATION

§ 25.25.150	Access to confidential information, child support enforcement (allows access to confidential information for the purposes of child support enforcement)
§ 44.19.448	Access to confidential information, equal Employment Opportunity (allows the state EEO office access to confidential records necessary to carry out its functions; the office may not make public information designated as confidential under AS 39.25.080)
§ 24.20.271	Access to confidential information, legislative budget and audit (authorizes access to the confidential information of every state agency)
§ 39.90.010	Access to public information (a public employee may not be subject to disciplinary action for communicating information under AS 09.25.110 and AS 09.25.120)
§ 09.25.125	Access to public records (a person having control of a public record who obstructs the inspection of a public record subject to inspection under AS 09.25.110 or 09.25.120 may be enjoined by the superior court from obstructing the inspection of public records)
§ 12.40.060	Access to public records by the grand jury (the grand jury is entitled to access all public records)
11.46.740	Criminal use of a computer (a person commits a crime if, having no right to do so, the person knowingly accesses a computer and as a result of that access obtains information concerning a person or introduces false information into a computer with the intent to damage or enhance the data record of a person)
§ 14.30.272	Education (allows parents/guardians of an exceptional child the right to review the child's records)
§ 24.60.060	Legislators, improper disclosure of information by (it is a conflict of interest if legislators willfully disclose or knowingly use information that by law is not available to the public and that they acquired in the course of official duties)
§ 39.52.140	Public officers, improper disclosure of information by (public officers may not disclose or use information acquired in the course of official duties that is confidential by law)
§ 11.56.860	Public officers, misuse of confidential information by (public servants commit a crime if they use confidential information learned through employment as public servants for personal gain)
§ 11.56.815-820	Tampering with public records (a person commits a crime if the person makes false entry in, falsely alters, destroys, mutilates, suppresses, conceals, removes, or otherwise impairs the verity, legibility, or availability of a public record; make a false entry means to change or create a public record by means of erasure, obliteration, deletion, insertion of new matter, transposition of matter, or by any other means so that the changed record states or implies a fact that the maker knows is not true)

Prepared by the House Research Agency, April 1989 (89.268C).

TABLE 4
SOME OPINIONS ISSUED BY THE OFFICE OF THE ATTORNEY GENERAL
REGARDING OPEN RECORDS LAW IN ALASKA

DATE ISSUED	SUBJECT
10/9/86	Appendix TT to the civil manual contains a 64-page discussion about public records (found in special binder at Juneau AGO)
10/9/86	Appendix TT to the civil manual contains a lengthy discussion of the "executive" or "deliberative process" privilege (found in special binder at Juneau AGO)
4/24/85	IRS computer access to confidential Employment Services Division files is not permitted under AS 23.20.110
10/3/84	Judicial council must consider constitutional right to privacy and deliberation process in deciding if particular records are confidential
10/3/84	Judicial council has authority to adopt regulations regarding confidentiality, consistent with public disclosure statutes
6/25/84	Common law privileges are state laws that may require public records to be kept confidential under AS 09.25.120
6/25/84	The "executive" or "deliberative process" privilege is meant to encourage the free flow of advice and opinions to the decision maker in state government
5/19/83	Summary of AG opinions dealing with open meetings and public records issued between 1975 and 1983
9/30/82	Providing certain information by computer to a state agency is not a release of information under confidentiality statutes
4/12/82	Under AS 09.25.110-120, an agency need not divert scarce resources, to the detriment of its public mission, to find and provide a record
4/12/82	Commentary on and administrative intent of 6 AAC 95 (public information regulations)
4/12/82	AS 09.25.110-AS 09.25.120 do not extinguish various constitutional and common law rights, principles, privileges and exemptions
4/12/82	Statutory command to disclose government records cannot be heeded when it would invade property, privacy or governmental rights
4/12/82	Statutory command to disclose government records cannot be heeded where it would intrude into governor's judicial appointment power

TABLE 4 (Continued)
SOME OPINIONS ISSUED BY THE OFFICE OF THE ATTORNEY GENERAL
REGARDING OPEN RECORDS LAW IN ALASKA

DATE ISSUED	SUBJECT
11/24/80	A federal confidentiality law or regulation must specifically include a state official before confidentiality applies
11/24/80	Federal freedom of information act exemptions do not apply to state records
11/24/80	The constitution is a state law for the state freedom of information act exemptions
11/24/80	Interest in privacy not absolute is balanced against public interest in disclosure
11/24/80	"Public records" is to be given a broad meaning
11/24/80	"Reasonable basis test" applies to agency determination on right of privacy and confidentiality
7/3/79	Agency has burden of proof identifying federal law or regulation or state law which makes record confidential
11/10/77	Records can be kept confidential when necessary to protect important public interest
6/4/76	Federal freedom of information act does not bind state
6/4/76	Privately prepared material is probably a public record if it is a part of the states' records and files
10/27/65	Voter registration list, but not the computer tape, is available for public use and reproduction

Note: More than 200 opinions are filed under the subject "public information" in the computer index of Attorney General Opinions. Those listed above are some of the general opinions and those that specifically mention computers in the heading. The above list includes Memoranda of Advice (informal opinions that are general interpretations of law), and Opinions (formal opinions interpreting more significant or complex issues of law).

Source: Index to Attorney General Opinions

Prepared by the House Research Agency, April 1989 (89.268D).

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4, Ak. Const.

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k. Const.
Ak. Const.
Ak. Const.

6 AAC 95.130. COPIES AND FEES. (a) The office responsible for maintaining the records sought shall provide copies of records only at the request of the requestor and at the requestor's expense. The agency shall prescribe in writing the standard unit charges for copies. The charge for copies may not exceed the cost to the before making the copies, except in the case of a request from an employee or agent of a news organization.

(b) Copying charges of $5 or less may be waived where the cost to the agency of contacting the requestor to arrange payment exceeds the copying charges.

(c) Searches must be conducted as a public service, free of charge. However, if one or more requests by a single requestor or agent of a requestor within a calendar month require more than 10 person-hours to complete search and copying tasks, the agency head may ask the commissioner of administration for authority to require the requestor to pay costs for the period in excess of 10 hours. The costs may not exceed the unit cost of salary and benefits for the searching and copying employee. Except in the case of news organizations, authorized search costs must be paid before the records are disclosed, and the agency may require payment in advance of the search. If requests from a news organization or its agents require more than 10 person-hours to complete, the commissioner may grant authority to require payment of search costs by the news organization only when requests are unreasonable or in bad faith, or require extraordinary expenditure of state resources.

(d) Agencies or offices with a primary function of performing records searches and which have customarily charged a fee for searches, including the Bureau of Vital Statistics, the District Recorder, and the Division of Banking, Securities, and Corporations, may continue to do so in accordance with written standard search charges. (Eff. 10/8/82, Register 84)

Authority: AS 09.25.110 Art. III, secs. 1, 16,
AS 09.25.120 and 24, Alaska Const.
AS 44.17.030

6 AAC 95.140. CONVERSION OF INFORMATION. (a) It is the responsibility of the requestor to translate, transcribe, decode, or otherwise convert information in records into a form useable by the requestor. The agency shall make available records to assist in this conversion if those records are disclosable.

(b) Nothing in this chapter requires an agency to organize, coordinate, collate, modify, create, interpret, or program records requested. Only a literal or verbatim record need be provided. (Eff. 10/8/82, Register 84)

Anchorage Daily News

Gerald E. Tilly, Publisher
Howard Weaver, Editor

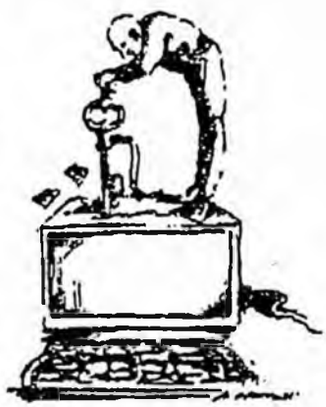
Michael Carey, Editorial Page Editor
Patrick Dougherty, Managing Editor

Katherine Fanning, Editor and Publisher 1971 to 1983
Lawrence Fanning, Editor and Publisher 1967 to 1971
Founded in 1946 by Norman C. Brown

Bits and bytes

Bring state records law into computer age

Buried in the bits and bytes of state computers are warehouses full of useful and fascinating information.



As the public grows more computer-sophisticated, public demands for access to these computer data have grown. People want the information searched and tabulated. People want data released onto computer disks for easy use.

The public has a right to that information, yet some agencies hesitate. Sorting data on their computers takes time and money from busy staffs and tight budgets.

Anchorage Rep. Kay Brown wants to change that. She's shepherded a bill through the House that would encourage agencies to handle computer requests by letting them charge fees for the service.

Rep. Brown's bill, HB405, would add a mixture of other good ideas to the state records law. When Alaskans are asked for personal information, the state would have to say why the information is needed and let people know if it may be made public. The bill also would give Alaskans a way to seek corrections if the state has compiled erroneous information about them.

Access to public information isn't what you'd call a sexy legislative subject. Work on the bill went along quietly until House lawmakers added two catchy items. One would publicize individual legislators' voting records; the other would open the state's criminal "rap sheets" on political candidates.

Those are good ideas, too. If senators will embrace the full package, they'll help Alaskans take advantage of computers to stay better informed about their government.

LOOKING AHEAD / ROBERT M. CURTICE

How Future Information-Based Firms Will Cut Fat

What business theorist Peter F. Drucker has called "the information-based organization" is indeed upon us:

• Citicorp has realigned its information systems and organizational structure to enable an account manager to deal with almost any customer's request.

• A new information system has enabled a telephone company to merge its installation and repair departments, eliminating one-third of its work force while improving customer service.

• Airline ticket agents can sell not only airplane seats but also automobile rentals, hotel rooms and tickets to Disney World.

Fast disappearing is the military-based, hierarchical management structure that passes information and decisions up and down the chain of command. The future corporation will provide one person or a small team of colleagues with all the necessary information to make decisions and take action.

As a result, each person or team will be more responsive to its customers inside and outside the company, and layers of middle managers will disappear.

Drucker has compared the organization of the future to an orchestra in which each musician has clear responsibility. No middle managers check on individual musicians. The proper notes are left to the musicians themselves, under the direction of a conductor, who frequently "manages" more than 75 people. The musicians takes full responsibility for themselves, based on clear instruction from the conductor and the music.

In the modern organization, a customer service representative should bear full responsibility for taking, entering and pricing an order, verifying credit, determining the shipping location and date and confirming delivery.

Most organizations are over-staffed not at the bottom or top but in the middle. Mid-level managers are largely couriers, assemblers and frequently filters of information. They build staffs, often no more than five people, who report to them. Through reports, the manager has access to unique information, which only he or she can add to a decision or transaction.

However, modern information systems can now assemble previously unique information and coordinate it with other previously unique information to allow one person close to the customer or shop floor to make decisions. Layers of staff can thus be reduced or eliminated entirely.

As the information-based organization continues to unfold, one can expect to see staffs reduced along the following lines:

• Companies will attempt to minimize handoffs. Rather than have several people participate in an action, with each person handing a partially completed task to the next, a company will give one person the responsibility of processing the task to completion.

• Information systems and databases will shape organizational structure, not vice versa. Modern approaches recognize that structures change over time, but key information does not. Systems must be structured around information and business processes, not organizational units.

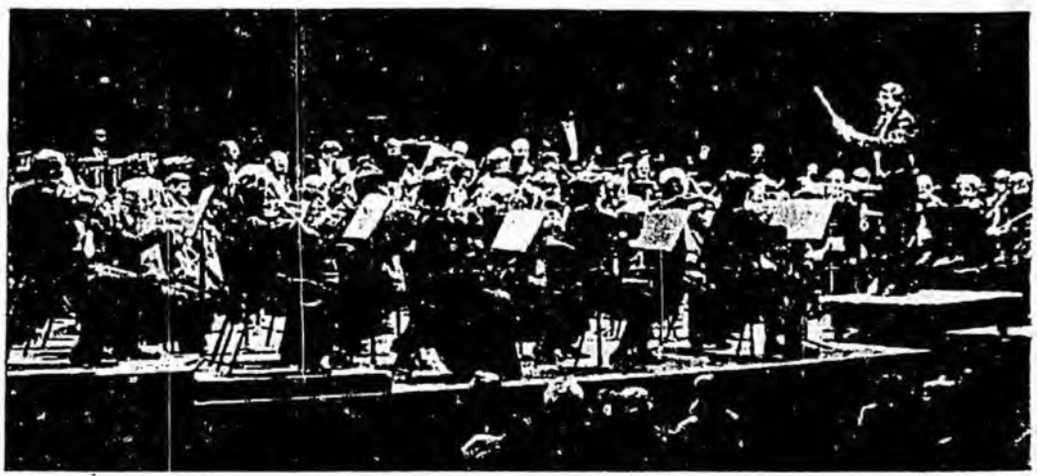
• Companies will seek to design jobs so that managers manage and workers add value. Managers must resist the temptation to create situations where they do the work as well as manage others. They will find little to be gained by taking the most interesting and visible tasks for themselves and leaving their subordinates with the dregs.

• Finally, companies can be counted on to remove management layers that consolidate and merely send on information. This action is inevitable once the preceding steps have been pursued and a modern information system is in place.

As stated earlier, we are beginning to see indications that the "information-based organization" has arrived.

A national conference titled "Information-Based Organizations: From Vision to Reality" will take place March 15-16 in Rancho Mirage. Among the companies scheduled to send speakers to the conference are Sunkist Growers of Van Nuys and Kendall-McGaw, a pharmaceuticals company based in Irvine.

For information on the conference, contact Marie Malangone at Arthur D. Little Inc. (617-864-5770).



Los Angeles Time

Author Peter F. Drucker has compared the organization of the future to an orchestra in which each musician has clear responsibility.

ROBERT M. CURTICE *is a vice president, specializing in information systems planning, at Arthur D. Little, the international management and technology consulting firm headquartered in Cambridge, Mass.*

THE DAZZLING BENEFITS (AND HIDDEN COSTS) OF COMPUTERIZED MAPPING

Geographic information systems are transforming governments. But you can't get there by just plugging in a box.

By Boyce Thompson

Brevard County, Florida, home of the John F. Kennedy Space Center, can put a man on the moon. But when the county assessor goes out to value a vacant lot, he often has no idea how it's zoned; the maps are kept by another agency. And for lack of readily available information, the county road and bridge department has paved over manholes that had been put in place by the utilities department only months before.

Brevard, like many counties and cities, is counting on a computerized geographic information system, or GIS, to improve its operations dramatically. Once this dream machine is operational, county agencies will use it to call up a map of the county and zoom in on any parcel, subdivision or other geographic region. The GIS will aid in spatial analysis by displaying—in color-coded layers—parcels, roads, water and sewer lines, zoning and topography. At a command, users will be able to pull out other data that might be associated with a point on the map, such as maintenance schedules for a road or the type of materials used to build a house, and display it on a separate computer screen.

Brevard County, Florida, GIS director Michael Wentworth: 'GIS is the kind of project that will make or break you.'

The county of 390,000 bought its GIS hardware and software for $300,000 two years ago. But before the system can work its wonders, it must be tediously loaded with data. Perhaps the most difficult chore is creating the base map, the one that every agency will use, by converting mountains of information into numeric data the computer can read. That's called "digitizing." Because of the personnel costs, it's the most expensive part of getting a GIS up and running.

The task was given to Michael Wentworth, director of the county's Geographic Research Division. In a largely abandoned shopping mall, across the hall from Fabric King, Wentworth and his staff are tracing the appraiser's paper maps into the computer, section by section. Unfortunately, because of inaccuracies in the maps, the sections don't fall into place like pieces of a puzzle. To fit, they must be squeezed and stretched through a process called "rubbersheeting," which is no more than a technical term for fudging.

One section map has different northeast corners set by three different surveyors, who probably relied on trees, barns or some other now-nonexistent landmarks as reference points. "Which corner do you use?" Wentworth asks. He lays two more maps side by side, something that whoever drew them apparently never did. A county road that winds through one map dead-ends suddenly at the border with the next. The road continues 20 feet to the

Boyce Thompson is a Washington, D.C.-based free-lance writer. Research for this article was contributed by Lisa Warnecke, an independent consultant based in Syracuse, New York, who specializes in public-sector geographic information development.

Tom Sauer photograph; Scott Rovert illustration opposite

Brevard County planning technician Dave Jordan traces a paper map to convert it into digital form. Creating the computerized base map for an area is perhaps the most difficult chore in getting a geographic information system up and running.

south on the second map.

After Wentworth's staff finishes the two-year task of loading the base map into the system in June 1990—at a cost of $250,000, mostly in payroll—Wentworth expects to spend at least a year editing it and two years adding data for the zoning, topography and other layers. These expenses don't include the cost of continuously updating data in the system, which, at roughly $125,000 a year, will be the largest single cost associated with the project. When the five-year, $1.2 million development phase (excluding updating) is complete, the GIS hardware and software purchase will represent less than one-third of total costs. In many projects, it accounts for an even smaller share.

Welcome to the sobering world of GIS implementation. It's a world that GIS vendors may gloss over or ignore completely while dazzling potential buyers with color graphics, map print-outs that look as if they could have been published in *National Geographic*, instant answers to "what if" policy questions and lots of good shop talk about pixels, rasters and cadastres.

Some jurisdictions are taking the plunge into computerized cartography without an appreciation of implementation costs. "The technology is leading everybody by the nose," says Costis Toregas, president of Public Technology Inc., a nonprofit consulting and research arm of the National League of Cities and the International City Management Association. "People aren't asking themselves the basic questions, such as 'Why do I want this system in the first place?' and 'What are the total project costs?' "

"I'm sure that a lot of systems are sold with high expectations and too little attention to cost," agrees Thomas M. Palmerlee, executive director of the Urban and Regional Information Systems Association, an organization for public officials who deal with GIS. "But the other side of that coin is that the costs of not doing GIS are pretty great, too."

Palmerlee refers to political costs—the taxpayer's perception that a city or county doesn't have its management act together. It's the image that develops when the sewer department, repairing pipes, digs up a road that was paved by another agency several months before; or a road crew plows into telephone lines no one knew were there, zapping service on the block; or a person in search of a building permit spends weeks traipsing from one department to the next.

The more quantifiable cost savings associated with GIS, although not huge, are hard to ignore as well. Brevard County, for instance, works from 54 different types of maps, some of them hopelessly out of date. When subdivision maps come in, six agencies, ranging from utilities to planning, redraw them to their own specifica-

Tom Silver photograph

tions. When a parcel of land switches hands, map keepers may or may not learn of the development. Brevard expects $440,000 in annual savings from its GIS.

Considering these benefits, it's no wonder local and state government is buying into GIS in a big way. Daratech Inc., a Cambridge, Massachusetts, market research firm, estimates that those levels of government accounted for nearly 20 percent, or $105 million, of the $529 million in GIS software, hardware and closely related services sold in 1988. That $529 million generated another $2.4 billion in sales for additional GIS-related services—digitizing, surveying and consulting.

Daratech projects a 32 percent annual growth in GIS sales through 1993, as the technology continues to come within easier reach of potential buyers. Hardware costs are one-fifth of what they were five years ago, and the amount of processing power available for a given dollar has been doubling every year. Five years ago, few jurisdictions with less than 500,000 in population could cost-justify GIS, which required a minimum investment of $500,000. Today, nearly any city or county can afford some type of system, whether it's based on personal computers, more powerful engineering workstations or mainframe computers. PCs may suffice in small jurisdictions, and a GIS based on them can perform relatively sophisticated planning analysis; using PCs, however, may limit expansion later on. Many jurisdictions are opting for workstations, tied together in networks, to take a load off their mainframes. Larger cities and counties, with more data to crunch and more potential users, may need a minicomputer- or mainframe-based system.

When you consider that at least 80 percent of the information collected by local governments relates back to a particular location, the management promise of GIS comes into sharper focus. An address is the common denominator, notes Tom Foss, a Tallahassee, Florida, consultant to local governments, "whether I am registering to vote, registering a car or boat, getting a fishing license, paying my property taxes, getting a building permit or even paying a parking ticket."

GIS is already being put to some exciting uses. It's being used to optimize school-bus routes; to decide on sites for fire stations and other emergency-services buildings; to redraw political districts, and to map the outbreak of diseases. The city of Los Angeles is developing one of the first GIS systems that can do earthquake analysis. Pilot studies already have revealed that a road the city expected to use as an emergency escape route lies on a fault line and that proposed development in the marina district would be endangered if the Big One hit. (Northern California jurisdictions were relying on paper rather than computerized topographic maps to do earthquake planning before the October earthquake.)

South Carolina is building a statewide GIS with the goal of putting economic development resources to the best use. The state hopes the system will help officials make decisions about funding road, water, sewer and other public works projects on a more rational basis. The central GIS files will be accessible to local governments through a network of workstations and terminals.

More than half the states use GIS in natural resource applications. In New Hampshire, for instance, where rapid population growth has raised concern about the loss of open space and access to public waters, GIS has been employed to identify deer habitats, forest types and aquifers. A statewide inventory of pesticide applications during the past 25 years is being put into the system, along with the locations of leaking underground storage tanks and hazardous-waste facilities.

Milwaukee found that it spent more time checking its base map for accuracy than it spent building the map in the first place.

A big appeal of GIS is its ability to picture "what if" scenarios, says Bob Henderson, a Leon County, Florida, commissioner. Leon County is jointly funding a GIS with the city of Tallahassee. "Say we were considering a change in the ratio of commercial to residential acreage," says Henderson, who is also a GIS consultant. "If we asked the planning department to bring us some maps, they would hem and haw and say it would take them months to do. After awhile, policy makers are reluctant to even ask for those kinds of things—you know what kind of a burden it is, what kinds of resources it takes. With the GIS, you can basically push a few buttons and you've got the 'what if' pictured for you."

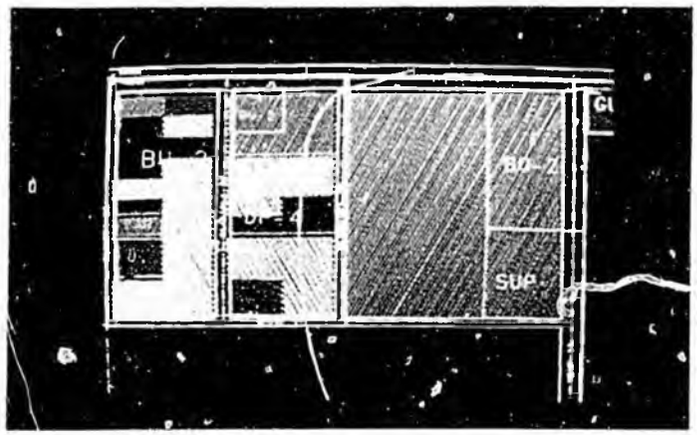
Milwaukee's $4.5 million system is capable of pretty quick response to complicated queries. When city employees were given the option of joining health maintenance organizations, a health care provider asked the city for a list of optimum health care sites, based on the density of city workers living nearby. The city produced an answer in a day, says William Huxhold, who runs Milwaukee's GIS operation, and could have done it faster had all the relevant data already been loaded into the computer. Still, that's a lot faster than going through an address list and sticking pins on a giant map, the process that many jurisdictions must still go through to answer that kind of question.

Unfortunately, a city or county can't buy a GIS, plug it in and expect instant answers from it. Several years may elapse between the day a system is bought and the day it becomes fully operational. During this phase, unexpected costs and delays may deflate the high expectations that prevailed when the system was purchased.

Milwaukee found that it spent more time checking its base map for accuracy than it spent building the map in the first place, a hidden cost that any GIS buyer should expect. Determining accuracy is not just a matter of checking addresses and street names, explains Huxhold, who is writing a GIS textbook. "You've got to make sure that each category of data—street names, house numbers, utilities—is on the right layer."

The Route to Geomapping Information

A wealth of information, much of it free for the asking, is available to government officials planning, purchasing or implementing a geographical information system.



The Institute for Land Information, a forum for organizations with an interest in digital mapping and related subjects, has identified more than 100 such groups and plans to publish a directory. Copies are expected to be available in early 1990 from the address listed below.

Some national associations of state and local government officials are producing publications or sponsoring conference sessions on the topic. They include the Council of State Governments, the International City Management Association, the National Association of Counties, the National Association of Regional Councils, the National Conference of State Legislatures, the National League of Cities, the National Governors' Association and Public Technology Inc.

Other associations of governmental agencies and professionals have a special interest in the benefits of this technology. The American Association of State Highway and Transportation Officials for instance, has held conferences on GIS-related technologies and in 1990 will participate with the National Research Council's Transportation Research Board in a study of GIS use in transportation agencies. The International Association of Assessing Officers holds courses on computer-assisted mapping and provides services such as consulting and research.

Societies of professionals in the geographic information field are heavily involved in automated mapping and can be a source of technical expertise. They include the American Congress on Surveying and Mapping, the American Society for Photogrammetry and Remote Sensing, the Association of American Geographers, Automated Mapping Facilities Management International (whose membership includes utilities) and the Urban and Regional Information Systems Association.

—*Lisa Warnecke*

AMERICAN ASSOCIATION OF STATE HIGHWAY AND TRANSPORTATION OFFICIALS
Contact: Francis Francois, (202) 624-5800
444 N. Capitol St., Washington, D.C. 20001

AMERICAN CONGRESS ON SURVEYING AND MAPPING
Contact: Richard Dorman, (301) 493-0200
5410 Grosvenor Lane, Bethesda, Md. 20814-2160

AMERICAN SOCIETY FOR PHOTOGRAMMETRY AND REMOTE SENSING
Contact: William Fritsch, (703) 534-6617
5410 Grosvenor Lane, Bethesda, Md. 20814-2160

ASSOCIATION OF AMERICAN GEOGRAPHERS
Contact: Ronald F. Abler, (202) 234-2744
1710 16th St., N.W., Washington, D.C. 20009-3198

AUTOMATED MAPPING, FACILITIES MANAGEMENT INTERNATIONAL
Contact: Robert M. Samborski, (303) 779-8310
8725 E. Orchard Road, Suite 820, Englewood, Colo. 80111

COUNCIL OF STATE GOVERNMENTS
Center for the Environment and Natural Resources
Contact: R. Steven Brown, (606) 231-1866
P.O. Box 11910, Iron Works Pike, Lexington, Ky. 40578

INSTITUTE FOR LAND INFORMATION
Contact: Jim Stem, (301) 443-8739
130 First St., N.W., 8th floor, Washington, D.C. 20001

INTERNATIONAL ASSOCIATION OF ASSESSING OFFICERS
Contact: Richard Muny, (312) 947-2069
130 E. South St., Chicago, Ill. 60637-9990

INTERNATIONAL CITY MANAGEMENT ASSOCIATION
Contact: Christine Ulrich, (202) 626-4600
1120 G St., N.W., Suite 500, Washington, D.C. 20005

NATIONAL ASSOCIATION OF COUNTIES
Research Department
Contact: James Golden, (202) 393-6226
440 First St., N.W., Washington, D.C. 20001

NATIONAL ASSOCIATION OF REGIONAL COUNCILS
Contact: Alice Watland, (202) 457-0710
1700 K St., N.W., Suite 1300, Washington, D.C. 20006

NATIONAL CONFERENCE OF STATE LEGISLATURES
Contact: Steve Gratl, (303) 623-7800
1050 17th St., Suite 2100, Denver, Colo. 80265

NATIONAL LEAGUE OF CITIES
Contact: Kathryn Shane McCarty, (202) 626-3000
1301 Pennsylvania Ave., N.W., Washington, D.C. 20004

NATIONAL GOVERNORS' ASSOCIATION
Information Management Program
Contacts: Richard Hayes, Lorraine Amico, (202) 624-5300
444 North Capitol St., Washington, D.C. 20001

PUBLIC TECHNOLOGY INC.
Contacts: Costis Toregas, Francie Gilman, (202) 626-2400
1301 Pennsylvania Ave., N.W., Washington, D.C. 20004

URBAN AND REGIONAL INFORMATION SYSTEMS ASSOCIATION
Contact: Thomas M. Palmerlee, (202) 289-1083
900 2nd St., N.E., Suite 304, Washington, D.C. 20002

Buyers are also likely to encounter the need for separate custom software so that their new GISs can "talk" with other computer systems or print out documents such as permits and licenses. Custom software rarely works perfectly the first time. "The unfortunate thing about this technology," says Glenn Montgomery, president of Utility Graphics Consultants, a private consulting firm that has worked on more than 300 GIS projects, "is that you can't send someone down to K-Mart to buy it off the shelf. It requires a reasonable amount of customization, which can be a big hump to get over in terms of cost."

Bulky maps like the one studied by Brevard County technician Helen Daubs will be digitized.

When it comes to preparation, the city of Houston is widely considered to be a model of neglect. The city embarked on its five-phase Metrocom project in 1978. All the work was done under contract with one firm. Only when the contractor billed the city for the final phase, data conversion, did the city council learn that additional computer hardware would be needed to use the GIS software and the new data, says Frank L. Hanigan, who was a project manager for the contractor and was involved in the project at several points. It took the city two years to ready itself to receive the data—buying computers, finding a place to put them and training personnel.

When the converted data arrived, it was inaccurate and incomplete because the city had failed to set any quality assurance standards, Hanigan says. In subsequent years, he adds, the city hasn't spent enough money to maintain and upgrade the database: it doesn't include areas annexed since 1981. Also, because the system was primarily designed for engineering purposes, it is missing planning data that would be most useful to other agencies. Joseph Chow, assistant director in the planning department, says he's looking into buying additional software so the system can be used to develop land-use plans or ensure compliance with ordinances regulating the location of sexually oriented businesses.

Hanigan believes blame for Houston's difficulties lies with the city council. Elected to two-year terms, the council members "never looked beyond the current year's operating budget," he says. A big contributing factor, says Chow, whose department has inherited the GIS project, was that the main force behind it, the public works director, died in the planning stages. No overall project manager was appointed in his stead, until Hanigan arrived.

The most important lesson to be learned from Houston's experience, Hanigan says, is that cities and counties must understand that they are getting into a long-term project and stick with it. But as many project sponsors have learned the hard way, it's equally important that the project show early results, because no politician wants to pay for a project that won't bear fruit during his or her term of office. Oklahoma City, stuck with its second GIS project—its first one, dating back to the 1970s, was limited to planning uses—for four years, at a cost exceeding $1 million, then cut off funding because it saw no useful results. "They bought a GIS, assigned people to it, and the people went behind closed doors and started coding, geocoding, processing—doing things," says Toregas, whose firm was part of a team called in by the city to straighten things out in 1988. "The people opened the door and said, 'More money, please,' and more money was thrown in. They kept working and working, but after four years nothing had come out the other side. Finally, out of frustration, the city put a stop to the project."

Four years of effort to build a base map of the city had produced a highly accurate one of water and waste water facilities, from fire hydrants to water lines to mains and meters—for one-fifth of the city. Bobbie Borchardt, who was hired as GIS manager a year ago, says the system can be used "for little more than automated mapping. There is really no attribute [reference] data to speak of for analysis. There's no water pressure data, for instance." The sewer department could have used this information to determine what would happen to the rest of the system if it turned off one portion to fix a valve.

Back in Brevard County, Wentworth is seeking to avoid political broadsides by showing early results through three pilot projects. Enough of the county is digitized for him to have recently completed a test for the natural resources department that will track the impact of development and storm water run-off on sea grass and other vegetation in and along the Indian River.

After that, he plans to assist a government redevelopment agency in its quest to develop a downtown district for unincorporated Merritt Island, by providing one-stop shopping for parcel information for developers. Next, he will examine zoning compliance within one unincorporated area of the county. Why three projects? Each happens to be a pet project of one of the five county commission members. "All you need is a three-to-two majority," he says, only half-joking.

Political support is especially critical now because unforeseen delays have added costs. The project was nearly

stillborn in 1987 when the county failed to come to contract terms with the consultant it initially selected, a consortium that had developed a GIS for another Florida county. Wentworth had felt so comfortable with the consultants that he had started work with them even though a contract hadn't been signed. After six months, however, it was clear that the group would not be able to agree on how to split the fees and duties.

"One of the most humiliating experiences in this project," says Wentworth, "was going back before the county council and saying, 'Sorry, we picked the wrong consultant. We'll have to select another.' We had passed the date when we were supposed to start digitizing. One of the first questions I was asked was, 'How much will this cost us?'" Wentworth had to answer that the six-month delay had cost the county $220,000, half of what it expected to save each year once the GIS was operational.

There were more delays. The software selection committee was forced to re-advertise its software contract when a local firm complained that it hadn't had enough time to prepare a bid. Then a local engineering firm criticized the selection committee's eventual software choice before the county council; that drew out the process of gaining final approval of the committee's selection.

Wentworth saw the political support for the project beginning to unravel. "Another unforeseen delay would have been fatal to the project," he says, adding that momentum is going the other way now. "A former county administrator once told me that GIS is the kind of project that will make or break you, and he's right. Nothing displeases an elected official like an expensive, lengthy project that shows no tangible results. The delays caused some dissension and second-guessing, not only with elected officials but also with county staff on the project."

In the absence of a consensus around a single GIS, individual agencies may run off and develop systems of their own, which, by perpetuating redundancies, defeats the purpose of buying a system in the first place. "When you get right down to it," explains URISA's Palmerlee, "agencies have different data requirements in terms of accuracy and precision." Indeed, the biggest bone of contention often is how accurate to make the base map, which coincidentally also happens to be the biggest cost variable in a GIS project. The assessor, if he intends to use the map for legal purposes, may insist on absolute accuracy in the base map. The same may go for public works, which may want to use the system to design roads or bridges or for other engineering purposes. The planning department may not need that level of accuracy. Unless the jurisdiction's paper maps are extremely accurate to begin with, a highly unlikely proposition, obtaining absolute accuracy will entail expensive surveying.

Someone will be upset if the costs of a particular level of accuracy must be shared equally. "Accuracy is something you typically can't negotiate," says Montgomery, adding that the greatest accuracy needs must dictate. "That throws in a political ball—who pays for what? Are people stuck with having to pay for absolute accuracy even though they didn't want it?"

The city of Huntsville, Alabama, bought a GIS and paid for expensive satellite surveying of most of the county, and only then invited the county to participate. If the county wants to pay for costly surveying, the city says it will digitize the rest of the county. Why didn't the two governments discuss a joint project at the outset? The two have a long history of noncooperation, explains David Buckelew, director of management information services for the city. "We wanted the work done to our standards."

Despite conflicts, most GIS experts say the technology is fostering unprecedented cooperation among agencies, governments and private interests.

Despite those kinds of questions and conflicts, most GIS experts say the technology is fostering unprecedented cooperation among agencies, governments and even private interests. Montgomery says that single departments within a city rarely proceed on GIS projects alone anymore because, working together, they can cut into the biggest cost of the project—building the base map—and complete the project faster.

Montgomery's company, UGC, served as master consultant in one of the largest GIS endeavors to date, the $10 million Indianapolis project. Eight city and private agencies initially contributed to the conversion of more than eight million documents. The project was structured so that 20 other potential beneficiaries, including Marion County agencies, that initially couldn't afford the project could buy in later. Two years passed before the county agencies were able to sign on.

In Brevard County, cities were left out of the project initially because it was hard enough gaining support within the county. Wentworth doesn't want to think about the conflicts and questions that might have arisen had the cities been involved from the beginning. Whose maps do you digitize? Which parts of the county do you digitize first? What level of accuracy do you use? How would the county charge the cities for use of its computers and personnel?

But now, as the base map conversion process draws to a close, several cities and private utilities in the county have expressed interest in joining the project, which is expected to happen soon. At the same time, Wentworth says sentiment appears to be building among county agencies to increase the accuracy of the base map (so that it can be used by the tax assessor and county engineer) by doing some ground and aerial surveying.

With more exact geographic references, Wentworth the technician could do some more rubbersheeting to line up the section maps more accurately. He is clearly excited by this prospect. For now, however, Wentworth the politician must be content with what he refers to as "GIS on $5 a day."

THE DATA GAME

Modern technology has made information about individuals both accessible and vulnerable. A few states are trying to balance the need to protect sensitive data with open-government concerns.

By Anita Amirrezvani

At the age of 21, Los Angeles actress Rebecca Schaeffer had already co-starred in the TV series *My Sister Sam* and appeared in a movie. But her good fortune ended when she answered her doorbell last July. A fan whom police described as obsessed with Schaeffer shot her in the chest, killing her with a single blast.

Police say the suspect, Robert John Bardo, didn't stalk his victim in the usual way. According to Los Angeles police detective Dan Andrews, Bardo allegedly hired a Tucson-based investigative firm for $250, and it obtained Schaeffer's home address through the California Department of Motor Vehicles.

Schaeffer's murder caused an uproar in California and prompted quick action in the legislature. Within two weeks, Assembly member Mike Roos, a Democrat, introduced a bill allowing motor vehicle registrants to require that their home addresses remain confidential. The bill also imposed a 10-day delay on the release of most motor vehicle files, so that affected individuals could be notified of a request. Two months later, the bill became law.

Schaeffer's story illustrates the tension between government's need to gather and use personal data and the individual's right to privacy. In an age when governmental agencies at all levels are gathering and trading massive amounts of computerized information, personal records are increasingly vulnerable. The concurrent growth of corporate databases, many of which feed on government data, intensifies the threat to privacy. Even so, there are few comprehensive data-privacy laws, and proposed legislation has faced fierce opposition, especially from the private sector.

Federal legislation dealing with data privacy is relatively new. Congress passed the Privacy Act in 1974, when public fears were aroused by the aggressive government surveillance practices exposed during the Watergate scandal, as well as the rapid computerization of massive records systems. The law gives individuals a measure of control over personal information held by federal agencies, including the right to obtain a copy of their records and to request corrections. The Privacy Act also regulates the disclosure of federal data, although loosely. Records are not supposed to be released without the consent of the individual except for "routine use"—the specific purpose for which they were collected.

Shortly before the federal law was enacted, Minnesota passed its own law regulating state records. Ten other states—Arkansas, California, Connecticut, Hawaii, Indiana, Massachusetts, New York, Ohio, Utah and Virginia—have followed suit. Most of the state laws are modeled on the federal act.

None of the remaining 39 states have comprehensive data-privacy legislation, according to Robert Ellis Smith, editor of the newsletter *Privacy Journal*. In some states, separate open-records laws and regulations often permit individuals to see their own files, but Smith says there may be "no statutory right to correct information, no requirement that the information not be used for other purposes and no government-wide limitation on disclosure." A smattering of laws prohibit the release of narrowly defined types of data, such as library borrowing records.

Berkeley, California-based free-lance writer Anita Amirrezvani is a contributing editor of PC World *magazine.*

John M. McCabe, legislative director for the National Conference of Commissioners on Uniform State Laws, believes that having different privacy laws around the country is "outlandish," especially because computerized data doesn't respect political boundaries. To address this problem, in the last 10 years the commissioners have approved model privacy laws covering medical records and criminal history records, as well as a more comprehensive Uniform Information Practices Code. So far, only Hawaii has adopted a modified version of the comprehensive law, and Montana and Illinois have passed laws covering medical and criminal history records, respectively.

In Florida, an omnibus data-privacy bill approved by the House has failed to gain Senate approval for three years in a row, largely because of budget considerations. A joint legislative committee estimated that the bill would cost about $25,000 to administer, but state agencies put the figure at closer to $2 million. A new version of the bill

Gary Neander/Illustration

introduced in the 1989 legislative session may have a better chance. Known as the "economy model," the draft law reduces some of the paperwork requirements and excludes some records.

Challenges by the news media to proposed privacy statutes have turned on concerns that they conflict with open-records and open-meeting laws whose purpose is to make government accessible and accountable. That tension erupted last year in Minnesota when the state Supreme Court ruled, in a case brought by a weekly newspaper, that meetings must be closed whenever information classified by Minnesota's data-privacy law as "not public" is discussed. There are more than 300 categories of such information, including welfare department records, criminal investigative files on suspected child abusers, and the home addresses and home phone numbers of public employees. Mark R. Anfinson, general counsel for the Minnesota Newspaper Association, says that the court decision has "turned our open-meeting law into something resembling a Swiss cheese."

Most state officials agree that privacy laws and freedom of information laws can coexist, but they acknowledge that a balancing act is required.

Officials involved in administering state freedom of information laws say agencies sometimes try to use privacy laws as an excuse for withholding information that should be public. In Massachusetts, Timothy B. Gassert, director of the Division of Public Records, says state agencies know exactly how to get around freedom of information laws: by mixing public and private data in a computerized database. Current law requires them to release public information, but agencies cannot be compelled to write a new computer program to extract only the public data.

Most state officials agree that freedom of information and privacy laws can coexist but that a balancing act is required. Robert Freeman, executive director of the New York Committee on Open Government, a state agency that administers both laws, says his office takes both into account when requests for information are received. But Freeman says that one of the challenges in interpreting the laws, in cases where there is no statutory direction, is that reasonable people disagree about what constitutes an unwarranted invasion of privacy. "Everyone has a different idea about privacy and a different line of demarcation," he says.

Even if individuals differ, Americans as a group are deeply concerned about personal privacy, according to opinion polls. In a recent survey conducted by Cambridge Reports, a Massachusetts public opinion firm, 67 percent of those polled said that personal privacy is very important compared with the other things they think about; half called for new laws to protect it better.

Privacy advocates say that this concern is justified, especially because of rapid advances in technology. When individual records were stored on paper in disparate locations, there was less risk of their being assembled into accessible dossiers. But now "the physical location [of the data] doesn't make any difference anymore; technology has allowed it to be interconnected," says Priscilla Regan, an associate professor at George Mason University in Virginia and the author of a 1986 report by the congressional Office of Technology Assessment on federal record systems and data privacy.

Because personal information may be gathered and shared by local, state and federal agencies, a single mistake in an individual's file can multiply into a series of nightmares. Civil libertarians point to the case of Terry Dean Rogan, who was arrested by police several times, and even jailed, because of incorrect information in the FBI's National Crime Information Center database. Rogan, a Michigan resident, was on file because a wanted criminal had obtained some of Rogan's identification and used his name while committing crimes in Los Angeles in the early 1980s. The Los Angeles Police Department had entered Rogan's name into the FBI database, which is used by local, state and federal law enforcement officials.

Although Rogan informed police of the error, no one bothered to take his name out of the system, according to Paul Hoffman, legal director for the American Civil Liberties Union in Southern California. Eventually, the real criminal was found and Rogan's name was removed. The ACLU sued the city of Los Angeles on Rogan's behalf and won a summary judgment in 1987. Rogan got a settlement of $55,000.

Like public records, privately held files full of sensitive information may circulate widely without the knowledge of affected individuals. Employers, hospitals and medical insurance companies, for example, routinely trade data about individuals and use it to make critical decisions about them. Regulation of privately held records is spotty. "Most of the attention has been focused on government abuses," says Robert Jacobson, a researcher at the University of Washington and a former California legislative staffer. "Now it's becoming clear that we are dealing with megacorporations that are almost as big as the government itself, equipped with technology that might be more advanced than what the government has, and therefore more powerful."

In the last two decades, the federal government has passed laws regulating private-sector records held by credit-reporting agencies, banks, educational institutions, cable TV companies and even video rental stores (that law, known as the "Bork Bill," passed after a newspaper published a list of the movie videos rented by U.S. Supreme Court nominee Robert Bork and his family).

Several states have passed their own privacy laws in an attempt to regulate other industries, but legislation is "piecemeal and chaotic," according to David Linowes, who was chairman of the federal Privacy Protection Study Commission from 1974 to 1977. In his 1989 book, *Privacy in America*, Linowes says that only 17 states have privacy laws covering all or some of the personal data collected by insurance companies, and only 13 states regulate both

public and private personnel files.

Predictably, recent bills regulating corporate databases have met with stiff opposition. In Massachusetts, Democratic Senator Lois Pines sponsored a bill last year that would give individuals the right to see and correct records gathered by insurance companies, and to be informed of the reasons behind any denial of coverage.

William F. Carroll, president of the Life Insurance Association of Massachusetts, says the industry opposes the bill because it gives the state insurance commissioner "tremendous latitude in developing insurance information policy and allows the commissioner to hear appeals from insurance applicants who have been denied coverage," effectively allowing the commissioner to make decisions that should be reserved for the companies. Carroll favors less restrictive legislation introduced by Democratic Representative Frank A. Emilio, which is based on a model law developed by the National Association of Insurance Commissioners and which Carroll says many large insurers follow voluntarily.

It makes no difference where data is located, says privacy report author Priscilla Regan. 'Technology has allowed it to be interconnected.'

In Minnesota, a bill giving individuals access to their private-sector personnel files became law in 1989, but not without controversy. Donald Gemberling, director of Minnesota's Data Protection Division, says businesses claimed it would result in "the end of the business climate in Minnesota as we know it." The bill made it through, but only with several exceptions and the stipulation that employees who request their personnel files do so "in good faith." This vague language, which was inserted to satisfy business lobbying groups concerned about potential disruptions during labor disputes, may end up requiring extensive judicial interpretation.

Privacy advocates and civil libertarians recognize that both the private sector and the government have a legitimate need to collect information about individuals. But "we have to strike a balance between the need for the information and the individual's control over it," says Janlori Goldman, a staff attorney for the ACLU's Privacy and Technology Project.

Regan, the George Mason University professor, sees a need to re-evaluate privacy rights and responsibilities. "Any time you fill out an application, you set off a whole chain of [data] exchanges and linkages that you don't necessarily know about," she says. Instead of putting the burden on the individual to track down and correct erroneous information, Regan feels, the burden should be shifted to the information bureaucracies themselves.

The amount of data in government files should be limited, says Mitchell Pearlman, director of the Connecticut Freedom of Information Commission. "The real invasion of privacy occurs because the government collects too much information about people, not because it is made public," he says. As an example, he points to Connecticut's marriage license form, which requests the occupation of both spouses. "That may be very interesting," says Pearlman, "but what does it have to do with the state's interest in authorizing marriages?"

In the long run, reformers hope to ensure that personal information isn't used to create potentially damaging life-history dossiers. It takes little imagination to see how information about an individual's race, religion, political affiliation or sexual preferences could be abused by a Big Brother administration or megacorporation.

To keep that from happening, privacy advocates see the need for a shift in basic attitudes, along with stronger laws. "The American people have to overcome their ambivalence over privacy," says Smith, the *Privacy Journal* editor. "We are ambivalent—we complain about [invasions of privacy], but we are very curious about other people, and we give up our privacy for whatever perceived threat may be current, whether it's terrorism, hijacking or whatever. We have to scrutinize these cases very carefully and make sure that the intrusion is only to the extent necessary." □

Paul Fetters photograph

Policies for the Electronic Information Age

Now that computers have taken over, states need to update the rules for managing their information resources.

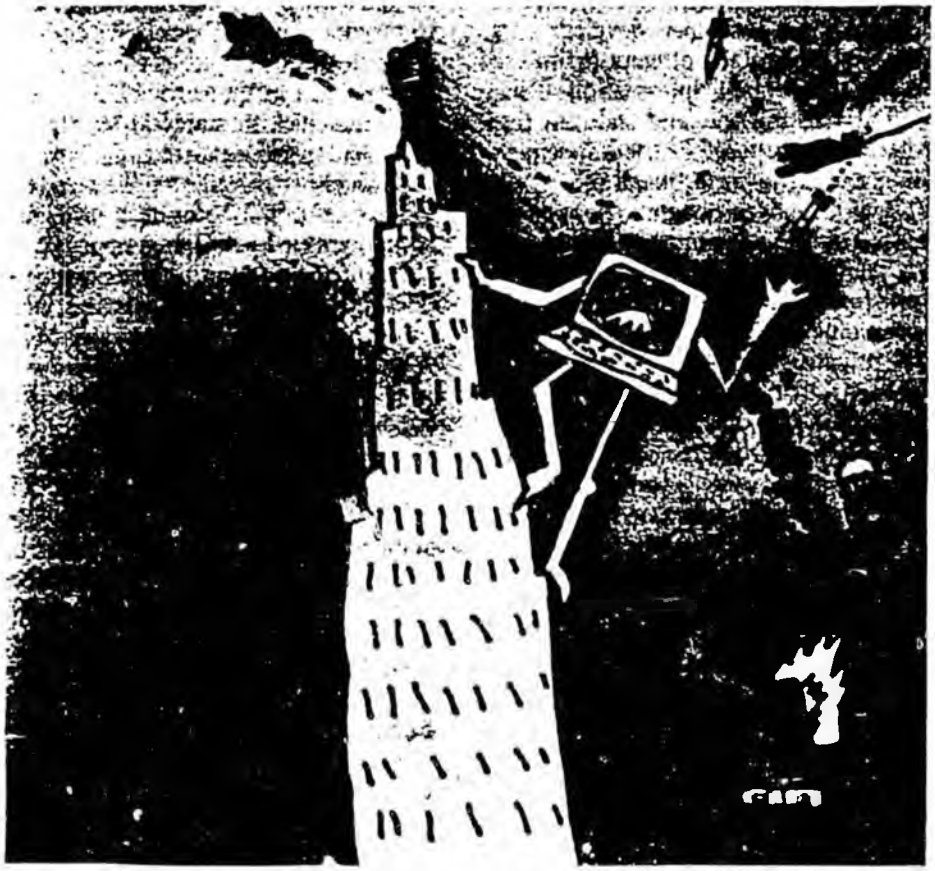
Edwin Levine

Information – the lifeblood of government – is getting more complicated to manage.

Like everyone else, states have become totally dependent on computers and software, networks and telephones, for storing, sorting and providing access to their information. Managing this electronic data and the technological structure that supports it will become the challenge of the 90s.

Statutes dealing with government information and the public's right to know have become outdated. Lawmakers are finding themselves embroiled in complex debates over information dissemination and the costs of access to computerized government information, copyright, computer security, optical storage and computer privacy.

Edwin Levine is staff director of the Florida Legislature's Joint Committee on Information Technology Resources.



The need for redefinition is based on the increased value of the information being produced, created and stored by government today. It was valuable as "marks on paper," but the costs of finding, sorting, combining and analyzing paper files were prohibitively high. Computerizing the information has reduced costs, improved the ease of use and provided capabilities for information management that were impractical with paper records.

Today it is possible to use technology to manage information, rather than having to manage the technology itself. For state legislatures this is a critical distinction. If we separate the information from the technology that stores and processes it, the underlying policy issues are much clearer. These issues are the meat and potatoes of state legislatures: How will scarce resources be allocated? What are the equity concerns? What is the public interest?

Information is an asset. But does the information belong to the individual who provided it to the motor vehicle registration bureau? Or to the bureau, which wants to sell it to a company that markets mailing lists? Or is it now "public information," which must be provided to any person who asks for it, including the child support enforcement unit that wants to find recalcitrant parents?

Legislative responses to these questions are eclectic. Some states restrict the release of "personally identifiable information," while others limit only distribution of "confidential" information. At the federal level, Congress passed the Computer Matching and Privacy Protection

Act last October. It establishes stringent controls on matching computerized information about individuals.

Studying the problems raised by the growth of computerized government, the Florida Legislature's Joint Committee on Information Technology Resources identified four major groups of issues that lawmakers are going to have to deal with – control of information, its dissemination, its security and its preservation.

One of the problems of controlling information is the question of privacy, allowing people to know what personal information is being collected about them, why it was collected, where it came from, how it will be used, who has access to it. The common concern is the individual's lack of control over information about himself once it is computerized.

The second set of issues raises fundamental questions about government's responsibility for providing access to public information. It brings up such questions as whether government can copyright its information, whether software written by government employees should be sold, who should be allowed and who prevented from disseminating government information, whether government will provide only what the private sector won't, whether information will be available to everyone or only to those with a computer, whether it's fair to provide a computer printout to some and a diskette or tape to others.

The debate over who will profit from the use of information is fierce. Many public agencies would like to offset the tax burden with profits from their investment, but should taxpayers have to pay again for what they have already funded? Minnesota allows its counties to copyright and sell their software. Is it in the public interest to have government compete with private business? Should private software companies be taxed if the receipts are to be used to fund the marketing of software developed by public employees?

Is it fair for government to charge for the examination of its actions? Is it appropriate to require that examination of the public record be based on fees or the ability to pay, or should citizens have free access to this material?

The third and fourth sets of issues that legislatures must address are those of security and preservation. Security is vital to ensure that data is neither altered nor destroyed and that confidential information is not released. Other security issues have to do with disaster recovery, access controls, security plans and protection of functions such as electronic voting systems where the integrity of the process must receive extraordinary attention.

Preservation problems have to do with saving and managing public records that are stored on non-paper media such as magnetic tape or optical disk. Questions that have to be answered include what is the status of non-paper records as evidence, whether a document is a copy or "the" original, how to manage access and destruction of computer records and the software used to search them, and how to determine what records to preserve given the glut of useless information that can now be cheaply stored electronically. Then there is new technology such as electronic mail that never creates a paper document at all.

These issues have already created difficulties for legislatures. In Texas an optical storage law has been challenged because it allowed for the destruction of "the original" paper records and authorized the use of technology for which there are no national standards.

New York has completed a plan to manage and preserve electronic records. The Uniform Commercial Code is being reviewed to determine how electronic records will affect current law.

State legislatures have dealt with broad societal changes in the past, but the information age is speeding toward us a lot faster than anything we've ever dealt with before. The adoption of information technology may be virtually complete by the turn of the century. Will lawmakers have enough time to determine the public interest in these issues?

The treatment of government's own information will be most troublesome. Who will control this information, who will disseminate it, how will it be secured and how will it be preserved? The information age will force every legislature to re-examine old and settled issues from a new perspective.

THE NEW CIO

Kentucky Department of Information Systems

Statewide Goal: General Purpose Info Bank

The Kentucky Information Systems Commission was created in 1984 to coordinate statewide strategic planning for computerized information systems. As chairman of the commission and commissioner of the Department of Information Systems, Stephen N. Dooley ensures information is planned for and managed.

By Lea Brooks
Associate Editor

Bulky food stamp policy manuals are one target of Kentucky state government's effort to build an online "locator" system that will electronically disseminate frequently used information to government employees and citizens.

"We feel we have an obligation to find easy ways to disseminate commonly used information electronically, as opposed to paper passing," explained Stephen N. Dooley, commissioner of the Kentucky Department of Information Systems (DIS) and chairman of the Information Systems Commission.

"We're looking for a way to present information in an easily used format for people — information that changes frequently and is frequently referenced. We're doing a lot of pilots with different tools for that purpose."

One of the pilots involves food stamp policy manuals used by caseworkers. Two of Kentucky's 120 counties are participating in the development of an electronic manual that can be easily accessed and updated.

Dooley said he also wants to build a general purpose information bank where the public can find out how to do business with state government; the status on bids; and "general information on how state government operates: the players and organizations — types of things you can find out but it's often in two or three different publications that are outdated after a couple of months."

Dooley is a Kentucky native who left a position with the Federal Reserve Bank of Atlanta in 1977 to accept a job with the Kentucky Division of Computer Services in Frankfort — the state capital and his home town. Dooley rose through the ranks to the commissioner post in March 1984.

"In government, there is an opportunity to watch projects develop and actually see improvements in things that you've had a hand in," he said. "Sometimes in a corporation, you do not have as great an impact as you do in the government environment. Some things we get involved with impact most every citizen in the state. It's a real challenge being involved with these projects."

Dooley said his biggest satisfaction is "bringing people from different backgrounds, different agencies and different perspectives and getting them to work together, getting a consensus on what to do. Our biggest strength in the department is the people. We have just outstanding individuals in both the management and technical perspective. They make my job easy."

Photos by David Sterling

Commissioner Duties

As commissioner, Dooley is responsible for the planning, development and operation of all government information systems within the executive branch. This includes establishing information strategies and policies for state government; development and support of automated systems for mainframes, departmental systems and microcomputers; and management of the Commonwealth Data Center and its statewide network.

Dooley, who reports to the Finance and Administration Cabinet secretary and serves at the pleasure of the governor, works closely with cabinet and agency management, the governor's budget and administration staff, and the Legislature.

The DIS, which employs 405 people and has an annual budget of $27 million, has six divisions: Data Management; Information Resources Management; Operations; Special Projects; Systems Engineering; and Systems Support. Kentucky spent an estimated $65 million on information technology in fiscal 1987-88, excluding higher education.

The department also provides staff to the commission, an independent agency of state government charged with coordinating the statewide strategic planning for computerized information systems. The commission published the commonwealth's first strategic plan in December 1987 and the Kentucky Information Resources Architecture in conjunction with the planning process.

"We feel we have an obligation to find easy ways to disseminate commonly used information electronically."

By law, the DIS commissioner is a member of the 16-member commission, which is comprised of representatives from state and local government and the general public. Dooley was elected to the chairmanship by the other commissioners.

"My overall function (at DIS) primarily is to provide direction to our different divisions," he sa... "I work with the directors to set the overall direction and overall goals. I also make sure they have the resources and skills they need to accomplish their responsibilities.

"We're primarily a service agency. At the same time, our role is to provide leadership and direction through architecture. We try to dovetail those two things. We're dealing with numerous agencies, each one with its own set of priorities. We're trying to help them.

"The commission is the planning body — I'm just a member. They do the architecture. They have a lot to do with overall directions, strategies, and emphasizing or promoting things in state government."

The DIS "always keeps planning in mind while emphasizing services — they go hand in hand. I think there is a definite benefit of having a commission and a department at our level," he said. "It allows us to emphasize and give examples where technology has offered a solution. It gives visibility, especially when competing with other priorities.

"It's worked out this way for Kentucky. I'm not sure it would work in every situation. It takes a lot of work to make it work."

Negative Feelings Overcome

The evolution of information technology in Kentucky state government "has been a long, hard road," according to Dooley.

One of the biggest obstacles has been overcoming agencies' "negative feelings" stemming from the state's centralization and consolidation of computer services, he said. Computer operations were merged under one roof in 1973; applications development functions were combined in a separate department in early 1981.

The two functions were merged in late

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1981 to create the Department of Information Systems.

When services were initially consolidated, the agencies were told, "(Technology-related) people on your staff are now with a new department and that department will charge you to use those services," Dooley said. "I can certainly understand the negative feelings — agencies are now paying an hourly rate to the people they used to have on their staffs. . .and they have no control.

"When I took over, the perception of our department was not real good among agencies. We could not do the things we felt we needed to accomplish if we were not on good terms with our customers."

Under Dooley, the DIS has focused on customer service to smooth over the hard feelings. "The only reason this department is here is to serve the other agencies," he said. "If we're not doing that, we're not doing our job. We've changed the job from strictly a control environment to a service environment. It has taken a lot of effort to try to be responsive instead of an impediment for an agency to get something done."

The rapid change in the marketplace triggered by the microcomputer presents another challenge. "Traditionally, we have been highly centralized, mainframe-oriented," Dooley said. "We're trying to find that medium-point between highly centralized and decentralized.

"We're trying to emphasize that there are multiple solutions — let's get the right fit for the right reasons."

"We want our agencies to be able to take advantage of all things out there."

Photos by David Sterling

"We're trying to find that medium-point between highly centralized and decentralized."

"We have really tried to encourage people to use microcomputers — we consider departmental systems appropriate. We're trying to emphasize that there are multiple solutions — let's get the right fit for the right reasons. We're trying to get our professional people to look at it that way and support that solution.

"We're not downplaying the importance of the Data Center," he emphasized. "Certainly, small systems offer significant opportunities for improvement in state operations. We want our agencies to be able to take advantage of all things out there."

Strategic Planning Emphasized

Information resources planning was consolidated through creation of the Kentucky Information Systems Commission by the 1984 General Assembly.

"The Legislature didn't know what was going on in information systems," Dooley said. "I think there had not been a great relationship between this department and the legislators. There was concern about some of the activities going on. The commission was the Legislature's answer to that."

There was a lot of "wheel spinning" during the commission's first year, according to Dooley. "We felt that if we were going to make the commission of value, we needed a focus and more defined charter."

Rather than getting involved in day-to-day activities, commissioners wanted to concentrate on long-term planning and strategy. They recommended that the original legislation be amended to emphasize strategic planning.

The 1986 General Assembly directed the commission to establish and coordinate a statewide strategic planning process for automated systems in the three branches of state government and the constitutional offices.

The first biennial planning process was developed based upon the following premises:

- Government information is a valuable resource which has been entrusted to public officials and should be managed as such.
- The value of the state's information lies in its application. Information should be created or collected only to the extent that it has practical use in fulfilling the agency's mission.
- The public has right of access to governmental information, but that rights of access must be balanced by the individual's right to privacy.
- Agencies should identify their information needs and document how automated information systems fulfill those needs. To avoid duplication and maximize efficiency, agencies should consider obtaining information from existing sources or taking advantage of existing systems before spending funds to create entirely new ones.
- A primary procurement consideration should be compatibility with existing systems. This includes interconnectivity of processing devices as well as selection of software which facilitates data exchange within the agency or between agencies.
- Agencies must manage their records as an ongoing process.
- Managers are to be responsible for assuring that information within a system is protected and that controls are in place which assure that information within the system is being collected and used appropriately.
- Information resources are to be managed for the benefit of the commonwealth as a whole and the public at large.

Each agency is required to submit an

See *The New CIO*, page 38

Stephen N. Dooley

AGE: 37

BIRTHPLACE: Louisville, Ky.

EDUCATION: Earned a bachelor's in industrial management from the Georgia Institute of Technology in Atlanta in 1973 and a master of decision science from Georgia State University in Atlanta in 1976.

CAREER: From 1973-75, worked at the Miami branch of the Federal Reserve Bank of Atlanta, initially as an associate systems analyst and later as a systems analyst. From 1975-77, was initially a planning analyst and later a communications department manager for the Federal Reserve Bank of Atlanta. From 1977-80, was branch manager of traffic control for the Kentucky Division of Computer Services; from 1980-81, he was assistant director of telecommunications for the division. From 1981-84, was director of the Kentucky Division of Information Systems' Division of Systems Support.

PERSONAL: Lives in Frankfort with his wife, Cheryl, and sons, Andrew, 12, and Bradford, 8. Enjoys water skiing, playing softball and other sports, and attending his sons' soccer games. ■

Kentucky Technology Applications

The following are a few of the information technology applications in Kentucky state government:

- The Kentucky Automated Management and Eligibility System (KAMES) determines eligibility for food stamps and is being expanded to other assistance programs, including Families with Dependent Children and Medicaid.

When the integrated system is implemented, the commonwealth will have one statewide system that supports the administration of all assistance programs.

"We implemented a system where each caseworker in the field in 120 counties does online interviews with their clients," Department of Information Systems (DIS) Commissioner Stephen N. Dooley said. "They input information as they go through the interview — a questionnaire-type deal."

If a caseworker has all the information, he or she determines on the spot whether the client is eligible for benefits. If more information is needed, the system automatically schedules another meeting with the client.

- The Data Dictionary contains information about computer systems residing on the state's mainframe computers. "It's an information repository that tells you what systems do what," Dooley explained.
- The Department of Information Systems, the Department of Education and IBM jointly developed and funded Project Vision, a computerized math skill presentation for first and second grades that combines interactive videodisk technology with a computer touch screen. It allows a student to work on the computer without a keyboard. The software reinforces concepts introduced by teachers in the classroom.
- In 1973, the Kentucky Board of Elections implemented the first automated voter registration system. In 1986, a statewide version of voter registration, which provides county clerks online capability for maintenance of voter registration records, was implemented.

A vote tally system has been developed so county clerks can report election results to the state for federal and state offices.

- Kentucky is installing a statewide purchasing system that will be available to all agencies. "The purchasing system up to this point is primarily a manual process that involves lots of paper," Dooley said. "This, we think, will certainly assist in streamlining the process and getting a better handle on the types of information our people need to do effective purchasing."
- The DIS has formed a task force to develop standards and procedures that will enable geographic information system (GIS) resources to be shared across the Kentucky Statewide Network.
- The DIS is also looking at the feasibility of putting together an executive information system for financial management. ■

The New CIO *continued from page 34*

Information Resources Plan to the commission, which makes recommendations to the governor's office and the General Assembly for use in preparing the biennial budget.

"We review them not so much on dollars spent but rather, is it reasonable?" Dooley said. "Does it have statewide potential? Should we support it? Does it relate to the overall business mission? Is it consistent with the architecture?"

During the first planning cycle in fiscal 1988-90, some agencies were hesitant about preparing the plans.

"Once they got into it, they found it was beneficial to involve their people in information technology," he said. "The first time was the hardest. Some things that didn't work have been revised. Planning is a process — not a project. You keep refining it."

Dooley said the DIS's relationship with the Legislature "has been very good since the commission began focusing on the planning process. They (legislators) feel more comfortable having a group looking at what agencies are doing with information technology — someone with a background in information technology who can raise red flags if they need to be raised."

A four-member legislative subcommittee on information systems has been created. "We have made a strong effort to develop a good link with them. They oversee the review activity of the commission and my department. We've tried to develop a good relationship with them," he said.

Information Resources Architecture

The Information Resources Architecture is a framework of standards, guidelines and directional statements related to information resources management in the commonwealth.

The architecture was designed to promote and facilitate information and resource management across organizational and geographic boundaries. It provides guidance for planners, standards for implementation and a framework for resource sharing.

In the past, DIS's planning efforts dealt mainly with technology. With the adoption of the architecture, DIS is taking a broader view of information systems to consider the information itself as an asset which must also be planned for and managed.

The architecture is divided into three broad categories —technology, information and the organization — and three levels of information management — state-level, departmental and desktop.

Applying Ideas

Dooley noted that the DIS "is covering twice as much area" despite a reduction in its staff by some 25 employees since its inception. "We've come a long way," he said. "Our people can feel good about themselves having been able to accomplish all that they have with virtually the same level of resources. I think that's a credit to them.

"We try to act upon other people's ideas as well as our own," Dooley said. "If someone has a good idea, let's see if we can implement and put it to use. We want to be able to recognize a good idea or a possibility and put parties and resources together to apply technology to that issue." ■

Rochester P.D. To Mug With Still VHS

ROCHESTER, N.Y. — Two local area law enforcement agencies are exploring applications of electronic photography to identify and record images of arrested suspects with still video equipment.

Agents from the local FBI office and the Rochester Police Department recently used Kodak still video equipment to obtain hard copy prints of suspected criminals from surveillance video tapes.

The process uses electronic digital imaging to help convert the video signal to a color or black and white image. Thermal prints are then produced in 4- by 5.2-inch size using a color Kodak video printer.

Banks and convenience stores use VHS-type video systems for surveillance because they are easy to use and cost-efficient. The drawback for police work is the length of time it takes to translate video images to hard copy that can be used by officers. The process generally takes about two weeks, according to Dennis Penna of the Rochester P.D. Crime Analysis Unit.

But Penna said the Police Department is excited about the potential of electronic imaging when combined with same-day production of hard copy prints.

Electronic imaging equipment — designed by Fdicon, a Kodak subsidiary in Brighton, N.Y. — is scheduled for installation by the end of the third quarter.

The first application of the new system will not be in conjunction with video surveillance, said Police Chief Gordon Urlacher. The department plans to use the equipment as part of a new computer mug shot system to help speed up the process of having victims identify criminal suspects.

"By comparing many physical categories of suspects, this system will help us narrow down the number of suspects much more quickly and efficiently than flipping through thousands of mug shots," said Urlacher. He added that the videotape surveillance application would be reexamined upon successful implementation of the computer mug shot system. ■

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The costs of free information

RICHARD A. GUIDA

THE FREEDOM of Information Act (FOIA) is revered by some, defamed by others, and unknown to most. It strives to make government more open and accountable, a goal that Americans embrace as essential to participatory democracy. The FOIA finds its staunchest supporters among university researchers, historians, and journalists. Newspaper articles prominently announce the source of information obtained under the FOIA, and editorial scorn routinely greets the failure of federal agencies to respond promptly and fully to FOIA requests. Those whom the FOIA benefits—either intellectually or financially—are quick to sing its praises. But the statute has had a number of unintended and perverse effects. Though Congress has taken some steps to address these effects, more remains to be done.

Congress enacted the original FOIA in 1966 as an amendment to the Administrative Procedures Act. Its stated purpose was simple: "To establish a general philosophy of full agency disclosure unless information is exempted under clearly delineated statutory language...." The statute did exempt several categories of informa-

tion, including classified material, business-proprietary material, information whose release would invade personal privacy, and other material whose disclosure would compromise the public interest. It allowed requesters to seek any written or recorded material in the possession of government agencies, but agencies were not obligated to create material to respond to a request. Requesters did not need to state their purposes in asking for the records, nor did they have to be U.S. citizens.

For several years after its enactment, however, the FOIA had little effect. Bureaucratic inertia, coupled with reluctance to open files for public view, resulted in only a trickle of information being provided to those who requested material under the act. As a consequence, Congress strengthened the law in 1974. Over President Ford's veto, it required federal agencies to respond to requests within two to four weeks, and to afford a simple, internal appellate process to assure uniformity of agency decisions. It also permitted federal district courts to intervene when agencies failed to meet their deadlines, and it empowered the courts to review agency decisions to withhold material; government officials found to be withholding information or treating FOIA requests in an "arbitrary or capricious" fashion faced statutory penalties. Finally, the 1974 amendments permitted government agencies to charge requesters only for the effort expended in searching for responsive material and for duplicating what could be released. In fact, agencies were encouraged in most cases to waive all fees.

At the time of the amendments, the House Committee on Government Operations asserted that for the entire federal government, "additional costs that may be required by this legislation should not exceed $50,000 in fiscal year 1974 and $100,000 for each of the succeeding five fiscal years." Total government costs since then have exceeded these estimates by amounts that would earn harsh criticism were they caused by errors in the executive branch. The FBI estimates that its FOIA costs alone exceeded $55 million between 1974 and 1983; it had three hundred people working full-time to answer FOIA requests. By 1987 federal agencies were receiving a combined total of more than 375,000 FOIA requests annually, and spending almost $60 million a year in order to answer them.

FOIA fees covered only about 5 percent of these costs. In calendar year 1984, for example, the Department of Defense (DOD) and its component activities received a total of 81,179 indi-

vidual FOIA requests, the vast majority of which sought more than one record, and some of which sought hundreds of records. The Department spent more than $30 million in responding to those requests, but it recovered less than $1 million from requesters.

The bulk of the expense results from something called the "segregability review": each document requested under the FOIA must be reviewed sentence by sentence to determine what material can be released. In the case of DOD documents, much of the material is either classified or protected under statutes governing unclassified military technology. Great care must be taken to ensure that no militarily sensitive information is released. In addition, when technical records are sought, the segregability review must be performed by people with the requisite technical and security training. Such experts are in short supply; handling FOIA requests is an unwelcome distraction from their important tasks.

Indeed, only senior DOD officials have the authority to withhold information under the FOIA. This restriction, though not explicitly required by the statute, is necessary to ensure that the correct decisions are made and that the Department's actions can be defended in the event of court challenge.

Finally, the FOIA enables requesters to bring legal action after the two- or four-week deadlines have passed. Since many requests involve large numbers of documents, including some that must be recalled from departmental archives, the deadlines imposed in the act often cannot be met. If a suit is filed as a consequence of "slow" departmental response, many (though not all) judges give the Department sufficient time to search for and produce responsive releasable material without undue disruption; most courts recognize that despite the contentions of those who demand the production of documents, the FOIA enjoys no special status over other statutes that agencies are obliged to obey or enforce. Even so, however, the Department must invariably defray the plaintiffs' legal costs.

FOIA uses and abuses

Though usually touted as a check on government, the FOIA is used most often by businesses seeking information on competitors. The material sought ranges from data provided by companies bidding on government contracts, to information provided by firms seeking licensing or approval of new products, to personnel data and financial material that companies are legally required to

report. The effect is particularly pronounced at regulatory agencies, as illustrated by testimony given by Food and Drug Administration officials shortly after the 1974 amendments were enacted:

> Individual citizens were responsible for only eight percent of FDA's FOI requests in 1976 and the press and public interest groups were responsible for only about five percent. Most of the agency's FOI requests—more than 80 percent in 1976—originated from industry or persons working on their behalf.

In 1979 the New York Bar Association issued a report showing that the federal government's increasing regulatory role has encouraged commercial interests to put the FOIA to unexpected uses:

> In enacting the FOIA, Congress intended to open the governmental process to increased public scrutiny. It was not Congress' intent that the FOIA be used as a *carte blanche* for unrestricted access to otherwise nonpublic information submitted by private citizens and businesses. Nevertheless, the trend among government agencies to require an ever-increasing plenitude of reports and information from the private sector has made the federal government's files a virtual treasury of valuable and sensitive information about private citizens and businesses. Increasingly, the FOIA has been used by various parties to unlock this treasury for the purpose of obtaining information that the government has collected from private concerns.

In the early 1980s, the FOIA showed it could be as much a burden as a benefit. Serious errors began to occur in processing FOIA requests, as agencies released corporate trade secrets that they should have withheld. In a notorious 1982 case, the Environmental Protection Agency mistakenly released the formula for a Monsanto Corporation herbicide, causing Monsanto to lose its domination of a $450-million-per-year market. The *Washington Post* story on the case observed that

> the law has been widely exploited by lawyers for clients who use the government data to develop strategies for fighting federal investigations, spying on the competition and discovering how strictly federal regulations are really enforced....

This and similar cases led Congress to amend the FOIA in 1986. Agencies now can charge the full cost of processing commercial enterprises' requests for information of competitive or commercial value. Further, private firms that submit information to the federal government are now required to identify whether the material is considered "business proprietary." When proprietary material is requested under the FOIA, the originator is asked to explain why the material is considered proprietary. The govern-

ment agency retains the ultimate authority to withhold or release the material, but the originator may challenge release decisions in federal court. Conclusive data are not yet available to establish whether business use of the FOIA has declined, but there has been one unmistakable effect: the care that federal agencies must devote to handling business requests has markedly increased.

Criminals also use the FOIA heavily. Prisoners use the law to seek information from law-enforcement files about who incriminated them; other criminals use it to try to avoid prosecution. In lengthy testimony before Congress in 1981 and 1983, William Webster—then the Director of the FBI—recited numerous examples of the FOIA's perverse effects:

> We received informant information that Organized Crime members in the Detroit area have been instructed to submit FOIA requests in an effort to identify our sources.... [T]o date, thirty-eight members and associates of the Detroit Organized Crime Family have made requests.... [They] have obtained over twelve thousand pages of FBI documents....
>
> From 1975 through 1981, over seventy members or former members of the Weathermen have made FOIA requests of the FBI.... [T]he FBI has released over 60,000 pages of documents concerning the Weather Underground....
>
> FBI agents are investigating allegations of political corruption and gambling in a major metropolitan area. Several of the principals ... are ranking city employees. The central figure ... made a request under FOIA ... [and] claimed to a fellow employee that ... he could determine whether the FBI was investigating the matter.... In this case we furnished the requester some collateral records while advising that all other materials responsive to the request were being withheld on the basis of the exemption designed to protect pending investigations. By asserting the appropriate exemption, however, we confirmed that an investigation was under way. Soon thereafter, subtle changes were made in the operation, including the shift of personnel from the correct department to other duties. The purge successfully removed cooperative employees ... and completely disrupted the FBI's investigation.

The problem extends beyond the FBI. In 1982, for example, the Drug Enforcement Administration (DEA) reported that of four hundred sample investigations involving FOIA requests, all had been hurt and 14 percent had been aborted, significantly compromised, or reduced in scope. The assessment also indicated that criminals originate more than 60 percent of the FOIA requests that the DEA receives.

The FOIA has also been used to acquire technical material and other information of intelligence value. In the 1970s the Central

Intelligence Agency was the target of a concerted effort to obtain information that would uncover its agents and informants. The seriousness of this threat led Congress to an action that it was extraordinarily loath to take: in 1983 it made the CIA's "operational files" automatically inaccessible to FOIA requests, so that the CIA need not assert specific exemptions to keep the records in these files secret.

Also in 1983, Congress gave the Secretary of Defense specific authority to protect "technical data having a space or military application." Previously, federal agencies could not cite export-control statutes as a basis for withholding sensitive but unclassified technical data, because the FOIA exemption for statutorily protected information required more specificity than the export-control laws provided. Foreign interests accordingly used this loophole to receive technical data that would not have been released had an export license been sought.

While the FOIA's authors may not have foreseen how useful the FOIA would be to criminals and foreign agents, they did expect the news media to use it heavily. Use by the media, however, is uneven; some segments rarely use the FOIA, while others go on extensive fishing expeditions in hopes of catching something.

During one six-month period in 1984, for instance, *Washington Post* reporter Scott Armstrong submitted over a thousand FOIA requests to the Department of Defense. The documents that he sought included drawings of weapons systems, reports by the Inspector General, and the guides used to classify material in all three services. The Army duly accumulated the material and released the unclassified guides; the Air Force accumulated the material but then balked at releasing even the unclassified guides; and the Navy fought the request from the start, claiming that release of such compiled information would harm the national security. (The theory that unclassified information can become classified if compiled in certain ways has been sustained in court.) Only after the Navy alerted the DOD General Counsel did the services take a consolidated position, which was in close accord with the Navy's initial posture. The services' different reactions themselves received some newspaper coverage, illustrating that the news media are opportunistic if nothing else.

Some members of the media have an odd conception of the FOIA's purposes. As part of an "investigatory journalism" effort, a television station sought documents from a federal agency through

the FOIA. The agency concluded that the information in the documents would interest the general public, and rather than releasing the documents to the television station alone, it arranged for them to be displayed in the reading room of a local public library. Upon hearing of this plan, the reporter who had requested the documents called the agency, irate that her "scoop" would now be available to other newspeople. When the surprised agency representative replied that he understood the purpose of the FOIA to be to inform the public, the reporter announced that the purpose of the FOIA was to help the news media, which, like any other business, "has to sell its product."

The FOIA requests of public-interest groups may be as scattershot as those of the news media. At the Nuclear Regulatory Commission (NRC), for example, a total of almost five hundred FOIA requests were received during the first six months of 1986. Fully eighty-one were from the Government Accountability Project (GAP), an organization that regularly intervenes to oppose nuclear power-plant projects. The GAP also filed sixty-nine of the 104 appeals that the NRC handled in the first six months of 1986. The GAP's requests, moreover, have tended to be longer and more complex than others. One request, for example, involved the release of 114,000 pages and more than 1,700 staff hours of review. In all, nineteen public-interest groups submitted 149 FOIA requests to the NRC during the first half of 1986.

The FOIA is also used extensively by litigants in lawsuits involving the federal government. Lawyers often use the FOIA to supplement the legal discovery process, for three reasons: it is inexpensive, it has tight time deadlines that are enforceable by law, and it may produce material that is not available through discovery. In 1983 the Administrative Conference of the United States reviewed this problem and concluded that changes to the FOIA were essential to protect the government's interests in litigation. But the recommended changes were never enacted.

The FOIA's effects on documentation

Another of the FOIA's drawbacks has received less attention. Government officials now often avoid fully documenting the process used to arrive at a particular policy decision, for fear that much of what they write will be released under the FOIA. While such material is explicitly exempted from the FOIA as "predecisional," judicial interpretation of the exemption has given

bureaucrats cause for concern. For example, the U.S. District Court for the District of Columbia ruled in a 1985 suit that the factual information that led to a decision cannot be withheld under the FOIA—despite the government's arguments that the way such factual information is selected and presented reveals too much about the decisionmaking process. The effect is undeniable. A recent informal poll of senior executive-branch officials suggests that the FOIA has discouraged many of them from memorializing useful background information or otherwise treating their actions in writing. In the short term, this hesitancy may not significantly detract from the decisionmaking process. But in the long term, it is vital that the factors bearing on decisions be adequately recorded, to ensure that an official's successor fully understands the behind-the-scenes considerations that affected the decision.

Many in the news media predictably reject this view. But they are in no position to gauge its accuracy; journalists enjoy the blanket coverage of the First Amendment, which lets them keep secret every aspect of their work other than that which they choose to release—that is, publish. More to the point, common sense strongly suggests a conclusion diametrically opposite to that of the journalists. As one simple example, consider the plight of an administrator seeking to assess his agency's performance in some area. He naturally wants a candid, objective evaluation. But lest the FOIA be used to embarrass their boss and their agency, his subordinates might instead gloss over any biting findings in their written report, and convey those findings orally (or not at all). This scenario is not far-fetched; government employees are routinely reminded in meetings to be cautious about what they write because of the FOIA, and supervisors regularly order that all draft copies of reports be destroyed when the final document is issued. If the news media were to ask federal executives involved with a potentially controversial project or decision whether the FOIA affects what they and their staffs write down or how they conduct their affairs, the honest majority would in turn ask the reporters: "If someone could inquire into your files and background material, would it change the way you operate—and for better or worse?"

One further question should greet those who laud the FOIA as an essential tool in assuring open and accountable government: Why limit it to the executive branch? Shouldn't congressional offices be equally accountable? One would search the records in vain for an exploration of this question during the congressional hear-

ings on the original FOIA or its amendments. Equally unfruitful would be an exploration of the news media's coverage of whether the FOIA should be extended to Congress.

Proposed amendments

But despite its flaws, the FOIA is here to stay. It is both futile and wrongheaded to seek its repeal, since the statute does provide a useful and important window enabling the public to peer into federal government processes. Nonetheless, the window could be much better built. The following amendments should be made to the FOIA:

1. Requests for information should be limited to U.S. citizens, and to those who are not in prison or acting on behalf of prisoners.
2. All material from criminal investigations should be exempted from FOIA requests.
3. As suggested by the Administrative Conference of the United States, the FOIA should be changed to prohibit its use in the legal discovery process.
4. Time limits for responding to requests, particularly those seeking many documents or old material, should be substantially increased. The responding agency should be able to establish a schedule for responses which takes into account volume, age, complexity of material, necessary review time, and so on. A request for fifty documents comprising three thousand pages of classified material might face a standard response time of several months, while the current two-week deadline could continue to apply to simple requests.
5. The full cost of administering the FOIA should be borne by the users. Though the news media are now specifically exempted from FOIA fees, this exemption should be abolished. The fees should cover search time, segregability-review time, the effort required to decide whether to release material, and the cost of copying documents and mailing them to the requester.
6. The FOIA should be extended to cover congressional committees and agencies such as the General Accounting Office.

Until these reforms are enacted, the costs of "free" information will continue to counterbalance its benefits.

GOVERNING GUIDE

MANAGING INFORMATION

MANAGING INFORMATION

This GOVERNING Guide is based on a recent study of the ways in which states use technology to manage information. *Managing Information Resources: New Directions in State Government* was prepared by Sharon Caudle, Donald Marchand and three colleagues at Syracuse University's School of Information Studies. It is the first comprehensive study of state use of information technology.

Managing Information Resources examines the tactics being used to channel the rising tide of data in state government. The study, conducted in cooperation with the National Association for State Information Systems, was funded by Bell South, Digital Equipment Corporation, Electronic Data Systems, Bull Worldwide Information Systems, IBM, NCR, NYNEX Business Information Systems, Plexus Computers, Prime Computer, Tandem Computers, UNISYS and US WEST Communications. Copies are available for $50 from the School of Information Studies, Syracuse University, Syracuse, New York 13244.

By Harrison Donnelly

Curt Dōty Illustrations

Transforming Chaos

When experts studied the state of Virginia's use of computers and other forms of technology in the early 1980s, they found a tangled mess. Not only were information services costly and labor intensive, but the responsibility for managing them was divided among three separate state offices. Meanwhile, little was being done to integrate different forms of technology, the purchase of new equipment was a complex process, and planning suffered as a result.

Over the next few years, Virginia state government officials pushed hard to develop systems that would put them back in control of this increasingly important aspect of state operations. Although certain problems persist, today Virginia boasts a number of policies and programs that are dedicated to improving the state's use of both technology and information.

The Old Dominion's efforts to bring order out of technological chaos reflect changes that are reshaping the way state and local governments do business. Keenly aware that the efficient management of information is crucial to their mission, policy makers have adopted a broad array of tactics and strategies designed to improve the way they employ computers, telecommunications, office systems and—above all—the people who oversee them.

The states appear to be succeeding in such efforts beyond expectations. In a report issued by Syracuse University's School of Information Studies in August of 1989, Sharon Caudle and Donald Marchand note that many states are making great strides in streamlining their information-resource management—that is, their control of the acquisition, use, transmission, and storage of information.

The 23 states surveyed are not simply installing new computers or telecommunications equipment. Rather, they are formulating by trial and error a new management discipline.

The stakes are high. Indeed, ready and reliable information about state programs has become so prized by state policy makers that decisions concerning its management have migrated from the computer room to the board room. Governors, legislators and top agency executives have all grown increasingly dependent on technology for the data they need to make decisions. To meet this demand, Caudle and Marchand believe, the focus of information technology must shift from the technical goals of specialists to the state government's overall mission.

On a scale unimaginable 10 years ago, the new information-management policies are transforming the work process and the nature of service delivery all across the United States. The reason: State governments are data-intensive enterprises. Far more than most industries of comparable size, state governments have a mandate to collect and utilize information, be it about welfare recipients, licensed drivers or schoolchildren.

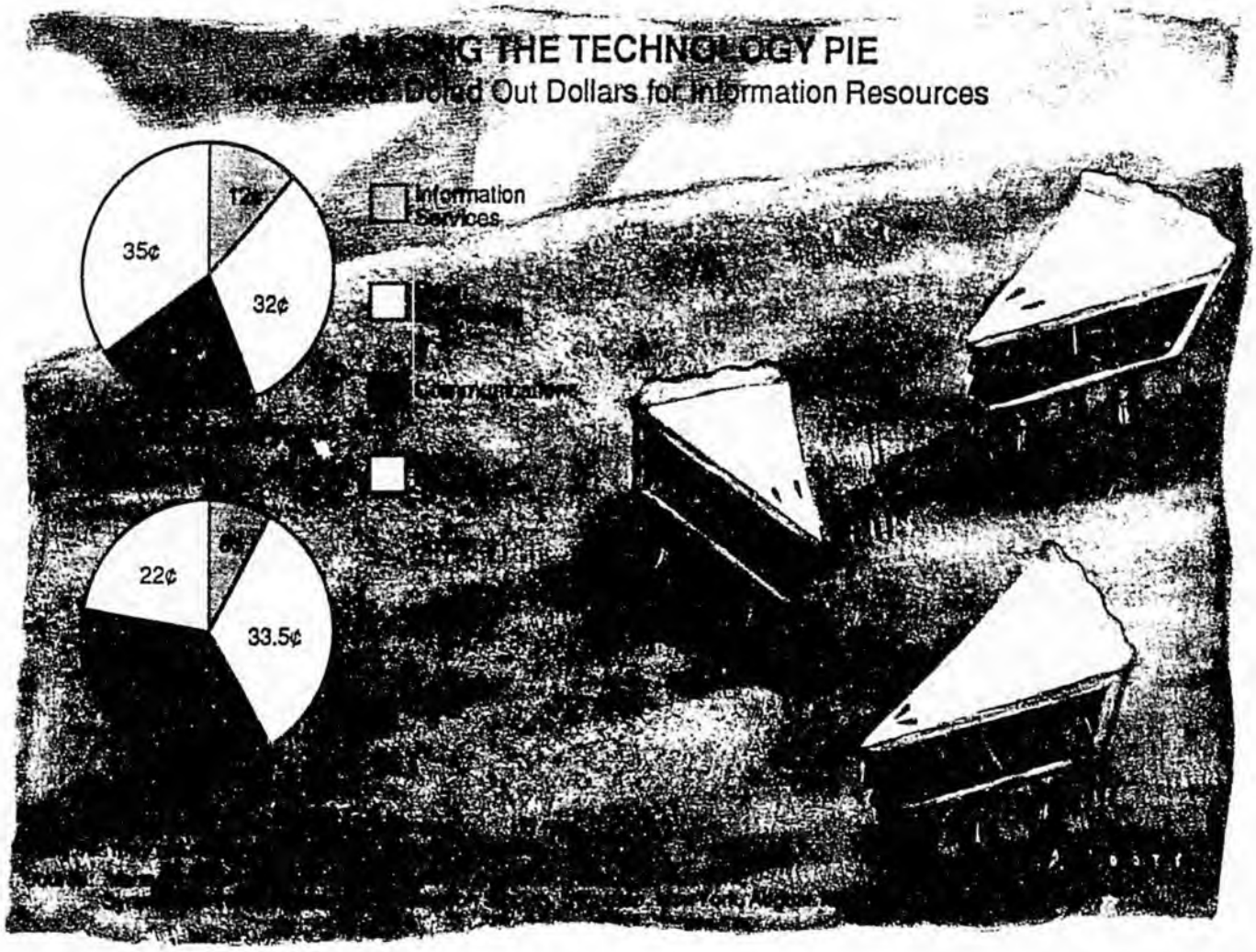
The effective management of information resources thus promises to increase productivity in the states. "If you are going to improve the quality of state government," asks Marchand, "where else would you look?" In the future, states will be judged on how well they define their information needs and how well they manage huge masses of information. State and local governments that succeed will prosper; those that do not may lag far behind.

In recent years, several factors have combined to inflate the importance of these issues. The policies of the Reagan administration, for example, shifted responsibility for many social programs onto the states. Simultaneous budget constraints, however, kept the states from hiring more people to cope with their new duties. Not only that, but most states had their hands full trying to assimilate an unprecedented series of technological and regulatory changes in the information field, including the influx of personal computers (PCs) into offices in the early 1980s and the court-ordered breakup of AT&T in 1984.

Despite the reality of budgetary pressures, Caudle and Marchand caution, the goal of information-resource policies is not solely to reduce costs; rather, it is to help states do what they do better. After all, governments are in the business of delivering services, not of saving money. Policy makers should therefore use the information resources at their disposal to deliver services more effectively—in short, to get more bang for the bucks.

COMING TO TERMS

Throughout their study, Drs. Caudle and Marchand distinguish between two carefully defined concepts. They use the term **"information resources"** to signify everything from information itself to the machines that manipulate it to the manpower and money involved in the process. **"Information technologies"** has a more specific meaning. It denotes computer hardware and software, telecommunications devices that handle voice, data and video messages, and office systems—that is, high-tech tools such as electronic mail, facsimile machines and bar-code scanners that promise to increase worker productivity.



For many states, the implementation of successful information policies has been a Sisyphean struggle. Inevitably, conflicts and obstacles arise, ranging from a lack of political support for change to tensions between state agencies accustomed to doing things their own way.

The process has also been costly. Using an estimate of per capita spending for a wide range of technologies, Caudle and Marchand calculate that state executive branches spent $19.9 billion on information-resource management in fiscal 1989. That is roughly equal to what the federal government is thought to spend on similar efforts and nearly double the $10 billion estimated for comparable municipal spending.

After studying the field for a year, Caudle and Marchand advise each state government to design an information-management strategy that accords with its own politics, resources and traditions. While flexibility is the key, equally valuable is vision—a top-to-bottom understanding of the importance of information and the need to improve its management.

Six Sample Cases

To better understand the challenges facing states that institute new information-management policies, Caudle and Marchand made an in-depth study of the process in six states: Florida, Kentucky, Minnesota, New Jersey, South Carolina and Virginia. (The other states included in the study are: Arizona, California, Colorado, Connecticut, Delaware, Maryland, Massachusetts, Michigan, Montana, New Hampshire, New York, Oklahoma, Oregon, Texas, Utah, Vermont, Washington and Wyoming.)

Although each state's experience was distinctive, their motivation for the change came from the shared realization, early in the 1980s, that state government employees were unprepared for the information explo-

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A MAN AND HIS DATA:
STEVE DOOLEY OF KENTUCKY

For Steve Dooley, Kentucky's commissioner of information systems since 1984, improving the state's management of information resources has been the fruit of a simple seed: getting people in state government to talk to one another. "A big part of it is just starting a process of communication," says Dooley, "and getting the key people to think alike."

Dooley seems to fit an archetype defined by Caudle and Marchand—that of the state official who can articulate a vision of where the government needs to go in the field. As Dooley sees his role, a crucial first step on the road to more effective data management is getting people's minds off the narrow topic of equipment and onto the broader question of their information needs and how to meet them. "We've tried to change the way people view information," he explains. The ideal is to consider information as "an asset, rather than just concentrating on what type of computers we have."

Dooley: Information is an asset; its management involves far more than choosing computers.

A vision such as Dooley's takes time to implement: Kentucky has been working since July 1977 to set up an organizational structure and planning process to better manage its information. That glacial pace notwithstanding, the state has managed to skirt some of the obstacles that other states are now meeting head on.

"A lot depends on the environment," says Dooley. "We've come from a very centralized perspective and have been moving toward a more decentralized environment. But other states have had problems when they've started with a decentralized environment and tried to go in the other direction."

For Kentucky, a key tool in the process has been its regularly updated "architecture" document, which charts the state's course in information resources. The document spells out standards and policies which government officials then seek to apply.

An advantage of this architecture, Dooley notes, is that it presents the state's overall information-management goals without dictating how they are to be met. "Since users have a road map of the direction the state is going," he says, "the architecture helps make their decisions easier. But it's not a document that says, 'Everyone has to follow this all the way down the line.' "

Kentucky's priority at the moment, says Dooley, is to expand the universe of people who benefit from the state's information resources: "We're working more and more on how to get information to people—not just to state and local government personnel but also to the public at large." Toward that end, Kentucky officials are in the midst of converting government information now on paper into electronic form. This will make data on, say, state procurement practices more readily available both to state employees and to small firms eager to do business with the state. The frequently changing rules on distribution of food stamps, to cite another example, can be put on-line to keep human resource personnel up to date without constantly consulting massive policy manuals.

As evidence of its dedication to effective information management, Kentucky is extending its efforts to the local level. "By learning who the people are that we need to talk to, and by being more aware of their needs," says Dooley, "we've begun to build bridges with the local governments."

Kenneth Hayden photograph

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sion already under way. PCs were pouring into offices, and deregulation had made a complex thicket of telecommunications policies that once consisted of nothing more involved than paying the phone bill. To cope with this rising tide of technology, state officials realized, would require a large dose of proactive management—the practice of addressing problems before they arise.

The result has been a textbook experiment in federalism. Each state has found its own way, formulating laws, executive orders and policies designed to manage its information resources more coherently than in the past. Not only have the states' experiences varied widely, but individual agencies within each state have had to customize policies to suit their own particular needs. The use of computers in a corrections department, for example, differs significantly from computer use in a human services agency.

Not that every state is reinventing the disk drive. By sharing information among themselves, many states have adopted ideas and approaches that were first put into practice elsewhere. Still, cooperation can go only so far. No matter how good a borrowed strategy may be, it will not work unless officials tailor it to their own state's culture, politics and governmental structure. Anyone who neglects this fine-tuning of an information-management agenda is likely to experience a discordant period of implementation.

The six states in the case study ran the gamut of organizational models, from centralized (Florida) to decentralized (South Carolina). In each model, the management of information resources has evolved successfully.

For a number of reasons—among them personalities, priorities and resources—other states have not matched the progress of the six test cases. Louisiana and Mississippi, for example, have been held back by budget problems, while Texas officials cannot agree whether to make changes through a single policy imposed from above or through individual initiative by the state's highly decentralized agencies. Even though several agencies in the state have developed effective policies on their own, Marchand observes, comprehensive changes in a state as loosely organized as Texas will take a long time.

In the test states, meanwhile, progress in managing information resources has been more concrete but no less arduous. A number of distinct steps seem crucial to success. First, state officials must be made aware of any weaknesses in their government's information management. In South Carolina, for example, officials were alerted to this condition by a 1981 report from the University of South Carolina that spotlighted deficiencies in the state's use of telecommunications, data processing and office systems. Next, states must establish an organizational structure for the overall management of information resources. In Florida, a 1985 law created the Information Resource Commission, an oversight committee with a charter to coordinate the state's efforts in years to come. Finally, states must devise a planning process, adopt goals and—as have Kentucky and Minnesota—create an information-management "architecture," or overall framework of standards, policies and guidelines.

All that takes time. Yet state government information managers operate under political pressure to produce quick results. Elected officials seek to make changes during their term in office, but most management functions tend to evolve over a far longer time span; designers of effective information policies follow a long-

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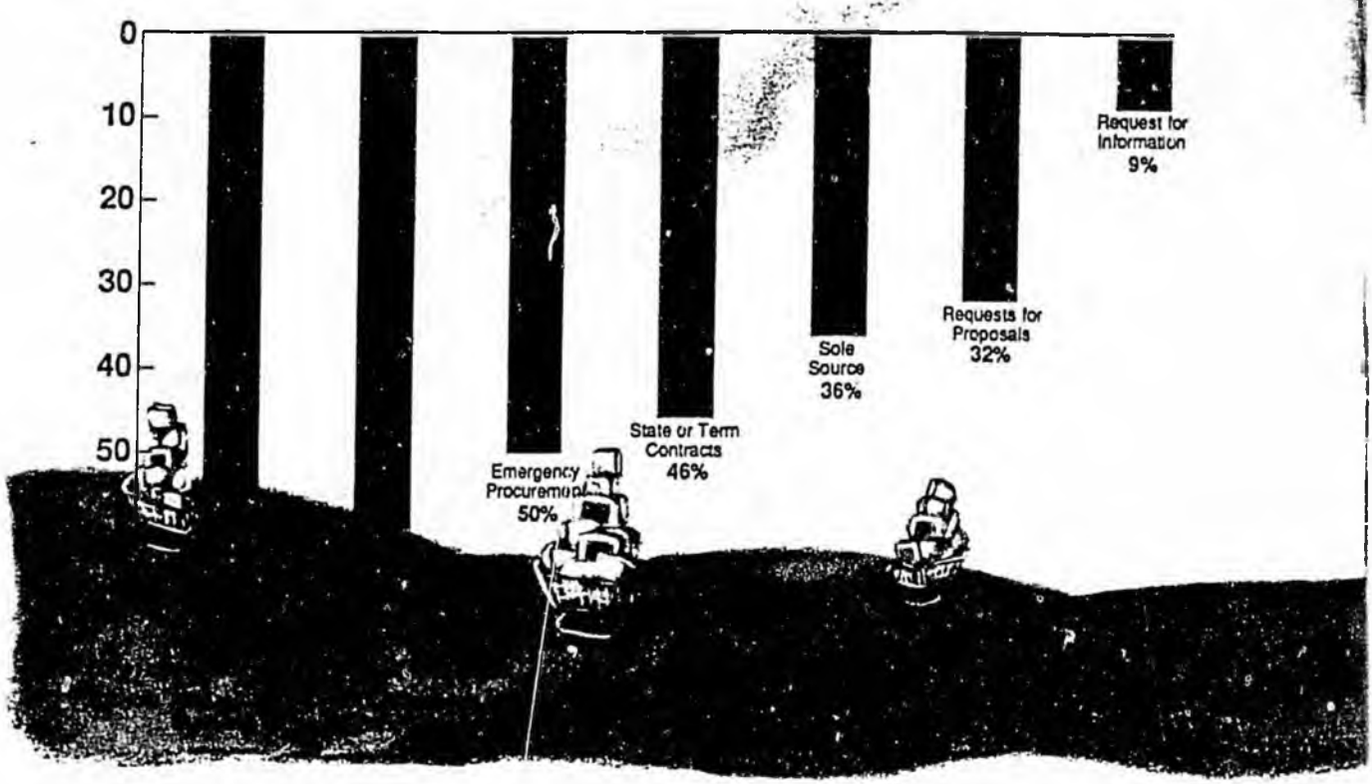
PROCUREMENT: THE SAVINGS

Methods of Procurement



Public managers seeking to contain costs may be able to reap substantial savings in the area of information-technology expenditures. State governments' procurement of information technology, says study co-author Donald Marchand, represents "the only area where significant cost savings are possible. Major economies can be achieved by focusing on procurement."

The sums spent on procurement in the past hint at the savings possible in the future. In fiscal year 1989, the report's authors estimate, the 50 state governments shelled out nearly $20 billion—an average of $36.50 per capita—for information resources. Purchases of information equipment and related expenses consumed nearly 2 percent of the states' budgets; with salaries factored in, that average rose to 3.4 percent. New York alone spent $15.8 million on computer hardware—plus $4.4 million on software—in FY 1987-1988. Meanwhile, outlays for state governments nationwide continue to grow at an estimated rate of 7 percent each year.

As Caudle and Marchand acknowledge, such estimates are a far cry from hard and fast statistics, and the imprecision shows that the states have only a vague idea of the amounts they are spending on information resources. The culprit: outmoded accounting systems that are either too crude or too complex to accurately track information-technology expenditures. Some states, for example, lump purchases of computers and bulldozers together as capital-equipment costs; others record every purchase in unnecessary detail, frustrating managers.

PLACE

says Marchand. "You can't manage what you don't see."

Marchand and Caudle have pinpointed several procurement policies that contribute to the muddle. Many states have allowed individual agencies to decide what sort of equipment to buy and how much to pay for it, leaving the central state government ill-informed about which computer and communications systems are in place. The result is often a jumble of incompatible technologies. "You can't leave purchasing totally to agencies," says Marchand. "You can't have 70 different types of PCs and five different operating systems that you can't link together."

Many states are striving to become smarter shoppers in the information-technology marketplace. In Kansas, Mississippi and Oklahoma, the state acts as a single consumer where information technology is concerned. This "one-buyer" approach enables the state to take maximum advantage of its considerable marketplace leverage, acquiring the best equipment at the lowest cost. The tactic also promotes the use of standardized, compatible technology, allowing states to follow an economical "hand-me-down" approach in which outdated or outgrown equipment can be passed on to smaller or less automated offices.

In most states, the decision to purchase any type of information technology involves several separate state offices. Usually one office reviews the need and the proposed purchase, a second office approves the purchase and a third office actually makes the purchase. A number of states are experimenting with giving a single information technology office the authority to control all or part of this process. Other states are finding value in adding yet another layer to the process for particularly large purchases. Florida's Information Technology Resource Procurement Advisory Council reviews all information resources acquisitions that cost more than half a million dollars over a two-year period.

Another approach is to encourage competitive bids before awarding a contract. Still another is to establish tough ethics codes that prevent conflicts of interest in purchasing. South Carolina, for example, has adopted special guidelines governing the procurement of information technology. These rules ban the unauthorized release of proposed procurement needs, informal contacts between responsible government officials and vendors, and the tailoring of specifications to a vendor's products. Just knowing what the state owns and keeping track of it can improve procurement notably. Nine states in the study have installed or will soon install computerized inventory systems to keep tabs on all purchases. New Jersey's system, on-line since 1986, provides users immediate access to the inventory of hardware and software maintained by the state telecommunications and information systems office—what it is, where it is, what it cost, how old it is, and who uses it. The same system generates inventory reports, both general ones and site-specific ones, detailing what equipment is actually at a particular location.

Ultimately, says Marchand, the key to efficient procurement lies in a flexible outlook. States should focus on setting guidelines and negotiating large contracts. He believes, while giving individual agencies leeway to select the technology that suits their own particular needs

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term strategy, which may not yield tangible results for another 5 or 10 years, when many current officials will no longer be on the scene. As one state official commented, "To be effective, information-resources management needs more than legislative support—it needs mechanisms and education and time."

The quandary is thus one of deferred versus immediate gratification, and nowhere is it more acute than in budget issues. Information reforms typically cost a good deal of money in the short term, yet they are unlikely to produce significant savings for several years. As one state official put it, "A short-term cost is a long-term productivity gain."

The slowness of the process even in successful states, say Caudle and Marchand, does not indicate that managers have failed to act quickly. Rather, it stems from a basic fact of human nature: To change behavior or a way of thinking takes time. People in government must be educated to tackle their jobs from a statewide perspective, rather than from a parochial view of one agency's needs. To substantiate this argument, Caudle and Marchand point to other management changes of comparable scope that have taken as long or longer: After nearly 30 years, they point out, the most recent wave of state executive-branch reorganizations is still going on.

To Centralize or Not?

As in other government domains, the question of centralized control in the states' management of information has sparked considerable debate—even acrimony. At issue is whether state information managers will impose government-wide policies or foster agency innovation.

The heart of the matter is the central state information offices. Despite their differing titles, each such office is usually responsible for the same task: to coordinate information-management policy statewide.

Too often, however, these central offices have tried to fill too many roles. In addition to formulating and communicating an overall policy direction for the state, they have attempted to provide data processing and other services to the state's agencies. As one state official points out, this very diversity has created friction: "First, our role is regulatory; we review agency proposals and we can reject them, and that paints a certain image of our organization.

"Second, we are facilitators," the official continues. "That's our most important hat to wear, to make sure that good ideas get through the process." In addition, he continues, his office functions as both consultant and overseer. "All those roles are hard to reconcile," he concludes, "and the seeds of adversity will always be there as long as we are in those roles. Plus, they all happen in a political context."

Permeating the conflict between the central state offices and the agencies they oversee is the dynamic of service versus control. Because they are often under political pressure to rapidly improve state operations, the central offices risk becoming sidetracked by a desire to keep the agencies in line. As one state office manager has observed, "We were trying to control processes *and* trying to provide services, and we really enjoyed the control much more. Agencies were building their own systems and buying personal computers, and that was an affront to us; we were losing power and control."

The state agencies, for their part, welcome the help of the central information office but resent the control, even when it is part of a larger effort to coordinate policy. Many agencies

The Top Twelve Tools

Type of Technology	Percentage of States* Using It
Electronic Mail	64%
Voice Communications (e.g., voice mail, call-handling)	55
High-capacity Storage (e.g., optical disks)	50
Image Processing/Electronic Data Exchange	50
Distributed Processing	41
Scanning Devices (e.g., bar-code readers)	41
Teleconferencing	36
Desktop Publishing	36
Advanced Computer Graphics	36
Fiber Optics	32
Portable PCs	32
Facsimile Machines	32

*Twenty-two states were surveyed.

Source: *Managing Information Resources: New Directions in State Government*, Syracuse University School of Information Studies, Syracuse, New York, August 1989.

have viewed the central office as an incarnation of "Big Brother," sometimes even lobbying to overturn its influence. "The central offices should act like a service organization, not like prima donnas," says one agency official. "They need to facilitate, to be technical advisers, to assist; they are a means to an end, not an end."

One item that was certain to kindle emotions in the past was the planning process. In their early years—from 1980 to 1985 or so—many central offices required the state agencies to report in excruciating detail on their information resources and needs. The result: a planning process that was costly, complex and unusually taxing.

Florida officials, for example, still remember with rancor generating massive planning documents on tight deadlines. According to one agency manager in the state, the central office demanded to know "how many printer ribbons you wanted to buy. The level of detail in the first plan was crazy." Worse yet, the planning documents so painstakingly assembled seemed to have little impact on the state legislature's budget decisions.

Many of the tinderboxes that touched off those battles have since been shelved. One key step has been to subdivide the functions of the central office, leaving one organization in charge of policy and planning and a second responsible for providing services.

A newborn service ethic in the central state offices is also helping to defuse the power struggle. Where state agencies once had no choice but to rely on the central data center, end users in those agencies today enjoy many more options—including processing the data themselves or taking it to a private provider. The central state information offices, whose operating budgets are underwritten by the state agencies they serve, must therefore work harder to "sell" data-management services to their "customers."

Meanwhile, a number of states are actively exterminating the bugs in the planning process. In Florida, for instance, central office officials have removed several layers of the detail once required in agency reports. And South

Carolina agencies, which initially resisted centralized planning, now acknowledge that the central state office promises to improve, not expropriate, their use of information resources. South Carolina agency officials report that centralized planning has helped the state to organize information based on its overall needs, rather than on the type of data housed in each agency. "For the first time," notes one Palmetto State official, "we have grouped information in state government according to whom the information serves and what it does, regardless of agency structures."

Essential to the new accord between once-warring factions is the recognition that the central state office can provide overall policy direction without micromanaging every aspect of the agencies' information resources. "The successful states," says Marchand, "are those that have de-emphasized control and are stressing mutual support."

A Sampling of Successes

Turf battles aside, many states have succeeded in introducing effective information-management policies. "A lot more states have made progress than we anticipated," says Marchand. "The momentum looks solid. Other states besides the ones we studied are progressing as well."

The states' rate of advance is not really that different from the evolution of other management functions, notes Marchand, "except that it is taking place in the context of the fastest-changing technology the world has ever seen."

The Caudle-Marchand report identifies a number of domains in which the states have significant accomplishments. They include:

• **Automation.** Most states have automated their administrative systems and are now working hard to automate service delivery as well. In South Carolina, for example, a 1987 study found that 80 percent of state agencies had automated key financial and personnel systems; a majority had done so for budgets, procurement and inventory control.

The sheer magnitude of the states' computing resources hints at the degree of progress so far. In 1988, Caudle and Marchand estimate, 47 states owned a total of 197,300 microcomputers, a 17 percent increase over 1987. California alone operates 35 mainframe computers, nearly 800 minicomputers and more than 14,000 PCs. The state government's largest computing facility, the Teale Data Center, hosts 15,000 terminals executing 1.8 million transactions a day.

• **Telecommunications.** Nineteen of the 23 states surveyed have in place or are planning to install a communications network able to integrate voice, data, video and image communications. Seven states—Florida, Maryland, Montana, Oregon, South Carolina, Texas and Washington—have already developed extensive networks. Florida's SUNCOM network, for example, can handle both digital and analog data communications. The state's transportation department boasts an analog microwave system, while its department of environmental regulation recently unveiled a system for voice teleconferencing.

• **Innovative technologies.** States are devoting substantial resources to cutting-edge technologies that promise to improve everything from service delivery to regulation to decision-making. Many agency officials are introducing technologies that aid end users, such as portable PCs, facsimile machines and desktop publishing systems, while state administrators are seeking overall improvements in as communications, data access and document handling.

Some states have even established formal organizations to investigate and apply new technologies. In Minnesota, for example, this role is played by a governmental arm known as the Technology Futures office. In California, meanwhile, state-run data centers have joined forces with private industry to examine how the state might make better use of its minicomputer workstations and Local Area Networks (LANs). An office in the state's health-and-welfare data center is even developing an "expert system"—a

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THEORY INTO PRACTICE

The Syracuse survey uncovered scores of innovative technology uses: some of the more imaginative ones are described below. Although these applications come from a diversity of state programs, they all have two goals in common: to make government workers more efficient and to improve services to the public.

One widely adopted system draws on data-handling technologies that were first developed for automatic-teller machines and supermarket checkout devices. California, for example, is working to replace driver's licenses and ID cards with magnetic-strip cards containing digitized images of photographs and signatures. Such cards would allow information about individuals to be recorded by mechanical card readers, rather than transcribed by hand.

In Michigan, meanwhile, state residents can use "opportunity" cards to gain admission to education and training programs. Citizens of Massachusetts can use "smart" cards to confirm their continued eligibility for health and welfare benefits, while their counterparts in Washington may be able to verify their eligibility for unemployment benefits by using a push-button telephone. In New Hampshire, automatic-teller machines are selling lift tickets at state-owned ski resorts, while in Oregon the same type of machines are being used to deliver welfare benefits.

Other states are using information technologies to track items that would be too difficult or time-consuming to follow manually. Colorado, for instance, keeps an eye on stream flows—and possible floods—in the state's rugged terrain via satellite, while Oregon has a weigh-in-motion system featuring electronic sensors that read special license plates mounted on trucks rumbling down the state's highways. California has a computerized inventory of state real property holdings, organized by agency and location.

A number of systems aim to make information more accessible to state workers. Bank examiners in New York and Florida, to cite one such case, can call up and record data about financial institutions on laptop computers. Welfare workers in Florida can also use an on-line system to summon forth information about recipients of the state's social service programs.

Automated fingerprint retrieval systems are in use in California, Maryland, New York, Oregon and Washington, while Florida has both that system and one providing access to criminal records as well as prints. Delaware is using videoconferencing to conduct arraignments of prisoners without the security risk of transporting them from jail to court. California is experimenting with using personal computers and video discs to teach young offenders to read.

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computer program that incorporates the expertise and ratiocinative techniques of human specialists—that will help government employees prepare and review certain types of claims.

• **Sharing information.** For reasons that ranged from the pure to the petty, many state agencies once resisted sharing information among themselves. Some were genuinely concerned about possible violations of privacy laws, while others bridled at the prospect of losing their identity within the state bureaucracy. Today, by contrast, a number of states are striving to implement a multifunctional approach to information management, maintaining their data in a single archive benefitting a variety of agencies.

The multifunctional approach has worked especially well in human services. Utah is devising an on-line database of clients that will enable state workers to determine a resident's eligibility for welfare and other aid. Florida is developing an on-line network that will furnish information about the state's provision of welfare, food stamps, Medicaid, child-support enforcement and refugee assistance. A third state, New York, is working on a "Crimenet" database that aims to bring together information about the state's criminal justice, prison and probation systems.

The statewide sharing of resources has also encouraged the compilation of new geographic information systems (GIS), which combine data from a variety of sources to reveal details about a specific region. Minnesota has assembled a GIS that interweaves data about each county's business patterns, labor force, population, agriculture and land ownership, while New York has pioneered the use of a GIS for assessing property taxes.

• **Cooperation.** A spirit of cooperation between the executive branch and the legislature characterizes state efforts to improve information management. Agency officials are working to educate and involve key legislators in the process, while lawmakers have become keenly aware of the merits of sound data-management policies.

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THE HUMAN FACTOR

As state governments seek better ways to manage data and technology, they often overlook a key element: the employees who use those resources on a daily basis.

No longer is the management of information resources a computer-room pursuit: as of 1989, Caudle and Marchand estimate, more than 420,000 state executive-branch jobs existed in the field. That figure is nearly 20 percent of all state executive employees, excluding educational personnel.

One problem: salaries for state employees involved in information resources pale beside those in private industry. Florida found that state telecommunications workers are paid 29 percent less than in private industry, while state computer personnel receive 18 to 50 percent less. To remedy this, some states are setting higher rates for new positions and upgrading the pay for existing jobs.

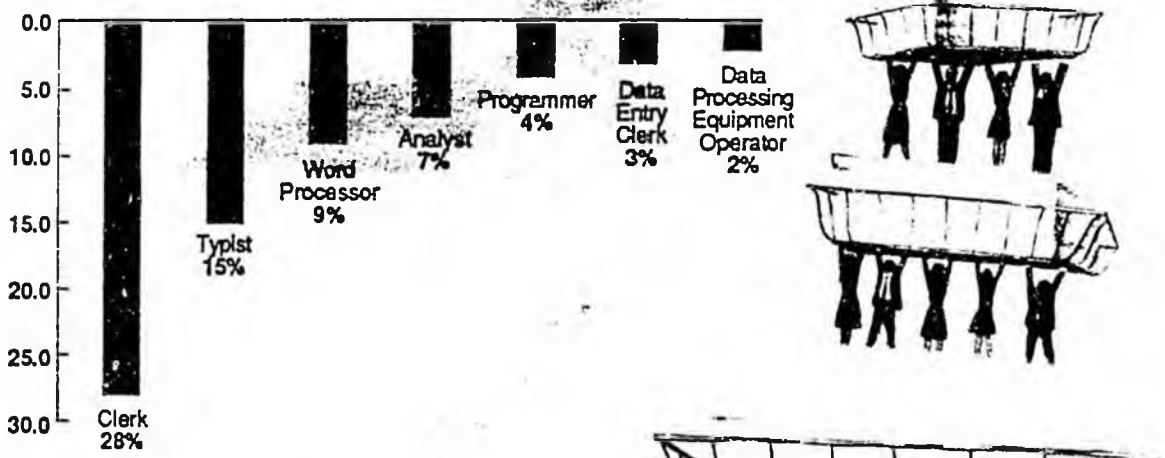
Recruiting employees has become a thorny proposition at best, while attrition has begun to take its toll among skilled personnel. In 1985, Florida estimated that its turnover rate for employees involved in data processing was three times that of private industry.

A bright spot, say Caudle and Marchand, is training. Most states offer their employees a wide range of sophisticated courses at little or no cost. But even there, tunnel vision can set in. Although many states instruct their workers in how to operate available equipment, the optimum use of information resources demands that the entire work force be trained. "If you're going to improve the quality of service," says Marchand, "you have to pay more attention to human development."

"Corporations spend huge amounts to train their work forces," Marchand observes, "but there has been no comparable emphasis in state government. The need for training isn't taken seriously enough in the public sector."

THE ROLES PEOPLE PLAY IN INFORMATION RESOURCES

(In percents)



Note: Based on information gathered from 21 states

Source: *Managing Information Resources: New Directions in State Government*, Syracuse University School of Information Studi Syracuse, New York, August 1989

THE EIGHT COMMANDMENTS OF DATA MANAGEMENT

1. Information is a valuable government asset; it should be managed to benefit the people.
2. The public should have access to government information, unless such access would jeopardize the privacy of any individual.
3. Information belongs to the government as a whole; agencies are only its keepers and should share it widely among themselves.
4. The information technology employed by a government should encourage all branches of the government to communicate freely with one another.
5. Agencies should collect only the information they need, and managers should seek to minimize the burden on those who must provide it.
6. Governments should develop—and adhere to—a clearly stated design of how they intend to handle information.
7. Because most information is time-sensitive, governments should consider how old their data is in deciding what to do with it.

8. Standards serve a purpose. Governments should strive to get the best technology quickly and economically.

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"The legislators are coming more and more from businesses that are automated," observes one state office manager. "We don't need to tell them a second or third time about the difference that information technology can make in management, in analysis and in program decisions. They are experiencing it in their own businesses."

1990 and Beyond

Despite this evidence of success, Caudle and Marchand remain realistic about the challenges facing states. The architects of tomorrow's information policies, they note, today face tight budgets, high expectations on the part of political leaders and the need to comprehend ever-more-complex technologies. Moreover, say the report's authors, some states may not be able to sustain their progress toward better use of information resources; initiatives that succeed early on may later founder because of problems with the state's politics or economy. "States are still a long way from realizing the real payoffs," Marchand believes. "It's not something where you can say, 'They're there now.'"

In the 1990s, as states struggle to move from an emphasis on technological concerns to a broader focus on information-management issues, they will continue to face an array of vexing questions. One is the lack of understanding within state governments of the capacities of computers other than traditional mainframes and of the potential benefits of a statewide approach to information management. Despite intensive educational efforts within the state, notes one official, "We are still grasping for [computer] literacy." In addition, state efforts in this area need leaders who can alert people in government to the dynamic potential of information-resource management.

A prime source of frustration is that the states' fragmented data structures can keep information managers from answering simple yet significant questions posed by state government executives. Until recently, for example, no one had thought to integrate data on recipients of food stamps with information about Aid to Families with Depen-

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dent Children. As a result, information officials in most states could not say for certain how many state residents were on welfare. Although states worked throughout the 1980s to ensure that their various data systems were compatible, managers have by and large failed to combine data from different sources into a coherent whole. State leaders are therefore demanding technologies that will give them ready access to the information needed to make the best policy decisions.

In addition to designing systems that can answer policy makers' questions, says Marchand, information-resource managers and advocates of change must act with near-missionary zeal to correct habits and outlooks ingrained in the bureaucracy. "You've got to continually sell the vision to get people to think horizontally rather than vertically," declares Marchand. "Within agencies, information managers have to sell to the program managers and administrators and help them develop confidence in the process." An agency official expresses a similar goal: "I want to expand the horizons of those above me as mine have been expanded."

Finally, the next decade will see the states attempt to dovetail their information resources with those of their counties and municipalities. Although the Syracuse University report does not address this matter in local governments, Marchand is currently planning a study of information-resource management at the county level.

Clearly, state and local governments stand to reap many benefits from coordinating their information and resources. But pitfalls lurk as well. Local efforts to join state voice networks or to buy computers through state purchasing systems, for example, might encounter protests from the local telephone company or from the local government's traditional supplier of hardware. "There's lots of money involved," says Marchand, "and that always raises political questions." Still, the task of including municipalities in the information-management process seems more or less inevitable. "Integrating the local service-delivery arm is the next step," according to Caudle, "and states are going to have to deal with it." □

"Information is valuable property, and that creates a set of issues that will be with us for a long time."

James Ettema

James Ettema is one of the developers of Northwestern University's innovative Telecommunications Science, Management and Policy master's program. He was involved in the FirstHand videotex project and his research includes a project sponsored by the National Science Foundation on business and consumer applications of electronic publishing

I was very interested in the list of acronyms that Commissioner Guess had. I teach a class at Northwestern and on the first day I give them a list of 25 acronyms. It is called the test of "Information Age IQ," although it has really very little to do with IQ. But it does tap the exposure that students have to the technical infrastructure of modern communication. There are two they always know. They always know VCR and they always know PC. But they don't know things like RBOC (Regional Bell Operating Company) among a long list including some of those we've just seen. So that's a little game I like to play with them, suggesting that in the last few years a lot of things have changed, dramatically.

Another game that I like to play with them is called, "When Did The Revolution Start?" They have this sense that it's been the last ten years that has made sense of the notion that what's going on is an information revolution. But the game I like to play with them makes them consider some alternatives and maybe that's an instructive game to play here for just a couple of minutes.

Consider the 1960s. What was interesting about the '60s? Well, that's often the time which those who study the business of telecommunications point to as the period in which "the grids" started to converge. Telecommmunications became a part of computing and vice versa and then all of that started to come together with the broadcast grid. So this convergence that people have made reference to here really goes back 20-30 years. Another reason for picking the 1960s as the beginning of the Information Age, if you will, is that it was early in the '60s that the number of workers involved in information work surpassed the number of workers involved in manufacturing jobs. That was very early in the '60s, nearly 30 years ago now.

But then, of course, why don't we consider the 1940s. The '40s are interesting because that is when electronic computing got off the ground. Why? Well, the story is well known. World War II created the need for a couple of different kinds of things. One was encryption—secret codes. Another was ballistics tables. Early work on computers was devoted to very practical problems of wartime America and England. After the war, of course, the foundation for modern consumer society was laid down. Mass media became the social forces at that point that they are today.

Or how about the 1920s with the emergence of broadcasting as a mass medium? A date that my students never guess in this game is what is interesting about 1927? They think about radio. They think about early regulation of broadcasting. Well, that is when television was first publicly demonstrated. Do you know who did it? AT&T demonstrated television in 1927.

Or how about the 1900s and the origin of wireless communication? It's an interesting kind of situation if you want to understand where technology comes from. Like computers in the '40s, a force behind the development of that system was another technology: the dreadnaught battleship. The dreadnaught battleships regularly sailed far enough apart from each other so semaphors wouldn't work. So that I think offers an interesting insight into the interrelationships between technologies.

But in our game I will push the students back to the 1870s and 1880s. That's a well-known period, of course. It is 1876 that we typically say the telephone was invented by Alexander Graham Bell. There were other telephones and other inventors at that time. Thomas Edison had a telephone at about that time. But we've over the years decided we will give Bell the credit and he was successful in getting a business off the ground. An interesting question there is, what took the telephone so long?

One of the reasons that it took so long is because telegraphy was so good. The telegraph system was a very extensive system. There were telegraphic fire alarms, stock tickers, and so forth. When investors heard this scheme about voice communication they said, "Wait a minute, is it true this is not going to create a paper record? You mean people are going to have to write down the message? That is not an advance over the telegraph." There were printing

telegraphs that created a paper record, not in the dots and dashes we think of but in written English.

When we play this game I ask the students to think about Gutenberg and the printing press and even the Phoenicians working out the alphabet but those are other revolutions. Those are not *our* revolution. But even so, even if we focus on electronic communication, we have a wide range of choices here to think about in terms of the beginning of the Information Age.

Another approach to this is to think about things in terms of, not so much a *longer* context, but a *larger* context, if you will. So let me tell you a little bit different story here. It is one that I am borrowing from a historian, Jim Beniger, who has written a book that some of you might be interested in called "The Control Revolution." It is a history of the information society but he begins it with two devices that seem to have nothing to do with communication. One is the float valve, a device that can turn pumps off and on. The other is a fan tail. You know what a fan tail is? It's not a part of a ship, at least not the fan tail I'm thinking of. My students wouldn't have the faintest notion what this is. I suspect that in this state people are a little more likely to know. The fan tail is the device on a windmill that turns it into the wind.

Why would we begin the history of the information revolution there? Beniger's point is that those are two control devices. His story is the control revolution and his point is that the control revolution is the revolution we are really talking about here. The control revolution includes not only the information revolution, but the industrial revolution as well. And so what he argues about information technology is that it is part of the overall system of manufacturing and transportation. It's the way we control everything else. It is part of that larger system. So his story about computers fits very naturally into a history that focuses on how we use electronic technologies and earlier technologies to control transportation, manufacturing and so forth.

The point I want to draw from this is that when we tell these stories, talk about the information revolution or the control revolution, we typically focus on the technologies and we focus on a particular application of the technologies. And the application is one that's devoted to productivity, devoted to the workplace, devoted to making things and moving things. I think that's important, but the main thing I want to do here is talk about another story, a somewhat different story although a related story. I don't really want to talk too much about hardware anymore. We have seen some wonderful things about hardware, but I am the person Larry asked to come and talk about other kinds of issues because he knows I don't particularly like the hardware. The hardware always seems to cost more than they said it would. It always seems to take longer and it never seems to do everything they said it would do. So I am not a big fan of hardware although certainly I'm not a Luddite. I recognize its importance and some of the things we've seen here I think are fascinating.

There is a story I like that pokes fun at hardware enthusiasts. It is a situation in which people from various disciplines are sitting around talking about the greatest device now available to mankind. Of course, the computer scientists and electrical engineers are quick to jump on the computer and say, "Now there's an amazing technology, that must be the greatest of all technologies." But those in health care will have other nominations. They might say that something as simple as the scalpel is really amazing or how about the hypodermic needle along with germ theory that accounted for a revolution in health care. So there are all sorts of nominations , the rocket engine, the internal combustion engine, all sorts of things like that.
From the back of the room comes a little voice that says, "I think the greatest invention is the vacuum bottle, not the vacuum tube but the vacuum bottle – the Thermos bottle. "People turn around and say, "The Thermos bottle, what are you talking about?" The voice at the back of the room says, "Well, think about it. It keeps hot things hot, cold things cold. My question is, how does it know?" A little skepticism is in order here.

What I want to talk about is another story that has to do with technology. I don't want to be too cynical and sarcastic here but I am going to tell another story and I want to start at a point where Anthony Smith started. I want to go back to Plato for just a minute – I am sorry but I am a college professor, I just have to do these things.

Those of you who remember Plato may remember him from reading "The Republic" which is a foundational document in western culture. I just want to make one little point about it and that is the size of this imagined republic. Does anybody remember how big Plato thought the republic ought to be? The number of citizens isn't particularly important, but why he limited it is. He limited the republic to a size that could assemble and be heard, could hear each other and could hear an orator. His community was limited by the means of communication available to it. He saw public communication to be absolutely essential to community,and to democracy. He limited the community because there was no means of communication other than the sound of the human voice

Let's fast forward here, as they say. Let me talk for just a minute about Ben Franklin because one of the things that I want to do is tell an American story for the most part. Tony Smith told a story about western civilization and what I want to add is an American twist. So let's go to a quintessential American, Ben Franklin, who in 1749 wrote out a curriculum for the Pennsylvania Academy. In 1749 a new society is being built in this country. Here's Ben Franklin designing the academy for that society and he's thinking, "I have to be concerned about the means of communication." He said that there are two communication arts that ought to be taught in the Pennsylvania Academy. One is political oratory, public speaking. To this day my department at Northwestern University still teaches the kinds of things that, not just Ben Franklin, but Plato and Aristotle knew about public speaking. There is a skill that hasn't changed very much or the changes have probably not been for the better in the era of the 30 second sound bite.

The other thing Ben Franklin was interested in teaching the students of the Pennsylvania Academy was the art and the craft of newspaper publishing, because he saw already in 1749 that it was through the mass medium of newspapers that much political communication occurred. The spoken word was important but more and more in this new country that was beginning to spread up and down the

eastern seaboard newspapers were the means of mass communication.

Let us jump ahead another century to the 1830s. One of the most insightful observers in American history was the Frenchman Alexis de Tocqueville. Let me read you a quote from Alexis de Tocqueville that suggests Ben Franklin knew what he was talking about:

> "The leading citizens living in aristocratic countries can see each other from afar and if they want to unite their forces they can go to meet one another bringing a crowd in their train. But in democratic countries it often happens that a great many men who both want to and need to get together cannot do so, for all being very small and lost in a crowd, they do not see one another at all. They do not know where to find one another. Then a newspaper gives publicity to the feeling or idea that occurred to them all simultaneously but separately. The newspaper brought them together and continues to be a necessary force to hold them together."

That's an insight we still study in academia – the notion of mass communication as the force for social integration, bringing like minded people together, helping them organize, helping them create social action and to achieve public participation. That is really what I want to talk about here: the means of communication as a story, not so much about productivity, but about public participation.

Let me continue to tell my American story. At mid-19th century, the American project is one of expansion, expansion geographically of course, but expansion into other sorts of unknown regions. An age of scientific exploration. Already in the 1850s historians are writing the history of the means of modern communication. In the 1850s they have the telegraph and that's about it, right? No, they saw themselves as the culmination of the long history of amazing progress.

Let me give one example of writing from this period. It's by an historian and a booster of telegraphy named T. P. Shaffner, writing in 1854. Here's how he ended his history of communication going back to the alphabet. He ends it, of course, with the most modern technology he knows of and that's the telegraph:

> "But what is all this to the subjugation of the lightnings, the mythological voice of Jehovah, the fearful omnipotence of the clouds, causing them in the fine agony of chained submission to do the offices of a common messenger."

The social role of telegraphy was clear to Shaffner. He went on to say, "The telegraph binds together by a vital cord all the nations of the earth. It's impossible that old prejudices and hostilities should longer exist while such an instrument has been created for an exchange of thought between all the nations of the earth."

Think about the rhetoric here. It's a rhetoric we still hear very regularly. The notion of the subjugation of the lightnings, the mythological voice of Jehovah always reminds me of the rhetoric of the 1950s about nuclear technology. The famous quote from one of the physicists there at the detonation of the first atomic bomb that summons up the Hindu god Shiva: "I am become death, shatterer of worlds." Here Shaffner tells us telegraphy is "the mythological voice of Jehovah, the fearful omnipotence of the clouds."

Let's move next to American project at the turn of the century. Now the American project is devoted to issues of urbanization,to coming to terms with industrialization,and great waves of immigration. Where do thinkers look once again for some answers, for some hope? John Dewey, another quintessentially American thinker and founder of American pragmatism along with sociologist Charles Horton Cooley, saw in the means of communication available to them the means to build a new American community. Communication technologies now, of course, include not only telegraphy but the telephone. Film is now available. Newspapers are now a mass circulation medium: the rotary printing press has been around for several decades. A new development at the time though was the mass circulation magazine which opened up the era of modern journalism in certain ways. This was the era of the muckrakers, for example. Journalism became a social and political force in a new way at this time.

So here's Charles Horton Cooley writing in 1909 about these new technologies and what they offered. He finds in them a set of attributes. Listen to his attributes, and see if you recognize this rhetoric. One is "expressiveness, or the range of ideas and feelings these technologies are competent to convey." Another is "permanence of record or the overcoming of time." Another is "swiftness or the overcoming of space." A fourth is "diffusion or access to all classes of men." He says "they make it possible for society to be organized more and more on the higher faculties of man, on intelligence and sympathy rather than on authority, task and routine. They mean freedom, outlook and definite possibilities." That is the rhetoric of computers, but spoken in 1909.

At the turn of the century, thinkers like Cooley and Dewey saw democracy as threatened and looked for the means to restore it. In fact, Dewey's concern was restoring what he called the Great Community. He sensed that something had been lost under the pressures of urbanization, industrialization, immigration and that it could be restored through communication technology, at least in part. It's a powerful vision, a vision that shapes our thinking about *our* information revolution.

I'll give you a couple of examples here very briefly. One that I want to share with you is from a computer scientist named Harold Sackman, who in 1971 wrote a book that developed the notion of an information utility. It's what we would now call a database, but it also had the capability for electronic plebiscite– an instant poll, if you will. Here's what he said about the notion of an information utility: "Mass information utilities linked to the real time information bases in the public domain could conceivably provide the leading instrumentality for the public to scan the social scene, identify problems, contribute to social control, provide continuing corrective feedback on the interplay of pluralistic social experimentation." This notion of social experimentation he gets from John Dewey who saw the possibility of a society devoted not just to scientific research but to social research focusing on practical social problems. Sackman says we can do it now that we have the computer. The technology is here at last so we can do it.

The information utility idea is an interesting one and with every new technology that comes along somebody

reads the possibility of the information utility into it. Cable television was one in which people said, "There's our channel capacity. Now is our chance to make television into what it *could* be. It will be that educational, informational medium we always knew it could be. Here is our chance."

Let me give you one more example, paying homage to one of our lecturers here and holding him accountable to something he wrote in 1980 in "Goodbye Gutenberg." Anthony Smith wrote, among many interesting things, this: "The interactive electronic mode of knowledge can be likened to an Alexandria without walls." Alexandria is, of course, the library of the ancient world that, for its time, really was the information utility. One of the great tragedies in the history of mankind was that this library was destroyed.

> "Knowledge is power after all and so access becomes an important issue."

Anthony Smith is talking about in *electronic* Alexandria, "an Alexandria without walls unified, but universally accessible, emphasizing the sovereignty of mankind over the totality of its knowledge." Again, the visions of accessibility and control — control for important social purposes — is very much alive in our own time.

My point here is to balance the vision of technology as hardware in the service of productivity with the notion of systems in the service of participation. Think of those as twin values and in some sense they are two sides of the same coin, I think. They are two values from which many other issues and values flow. Productivity is the one that dominates public discussion these days. High definition television, HDTV, is seen to be an issue primarily of saving the American computer industry, at least from one point of view.

Intellectual property is an issue that flows from the concern for productivity. Information is property. It's valuable property and that creates a set of issues that I think will be with us for a long time. We've seen a change of copyright law fairly recently. I think we've seen only the beginning of those kinds of issues.

One of the many issues that flows from a concern about participation is the issue of privatization of information. The selling of information that used to be public property and the increased cost of information that used to cost only a small amount. So privatization, I think, is another issue that will be with us for some time to come.

These are twin issues but often they are in tension. They are not mutually exclusive: they are not contradictory but they often exist in tension. That is what I want to think about for a few minutes, the tension between productivity, or property, and the vision of participation. Knowledge is power after all and so access becomes an important issue. A couple of stories about access—just the proverbial food for thought.

One concerns access to public information or what we might think of as information that *ought* to be public. Not so long ago academics, in particular economists, asked the Federal Reserve Board for the computer algorithm used to monitor the monetary supply. It is what the Federal Reserve Board uses to determine when to put more money into the economy, how to adjust discount rates and those kinds of things. The Federal Reserve Board said, "no, sorry. That computer program is not a public document, not a public record. It is an internal decision making device. It's part of our deliberative process. It is not a public record so the Freedom of Information Act doesn't cover a thing like that." I haven't heard if that one has been resolved yet. If not, it is in the courts and maybe we'll have a resolution soon. The question is then, "What are records?" What ought we to have access to? It's really been made more complicated by computing technology.

Another story, a related story from the private sector: Several months ago Dunn & Bradstreet, which vends several very large database services, tried to cut off certain users. Those users included the organizational libraries in labor unions and also some other libraries. They said, "The information is less valuable to our primary customers if organizations like labor unions have it. So what we need to do is to respect the wishes of our most important customers, large corporations, and we need to maintain the value of our product and so we're going to prune away certain undesirable users." You can imagine what hit the you- know- what at this point and they backed off. But I think we haven't heard the last of that sort of issue. The notion of privatization is more than just the notion that this is going to cost us something. Much information is now in the hands of people who can make decisions about access but who have no public accountability mechanisms other than perhaps adverse publicity and of course the mechanisms of the market place.

The third story: Larry mentioned that I had done some work on electronic publishing, serving agribusiness. I looked at several services but one in particular is a very well run operation that viewed as its market the 10-20% of farmers who were the largest farm operators. I went to them as the well-intentioned academic, with good values and all of that. I said, "The largest farmers! Is that fair? What about those other 80-90% of the farmers out there, some of whom are very small? (And of course, this was a number of years ago when the midwest farm economy was in very bad shape.) Is this fair? Is this the right thing to be doing? Can you sleep with yourself doing these sorts of things?"

They said, "You just don't understand our situation.' And here is what they told me: "It is true that we're really not interested in small operators; they just can't afford us. But we do think we're doing something about access and equity. In fact, that is what we offer—access and equity. You're just not framing the situation quite right. What we are doing is equalizing power between those farmers that we serve and the grain dealers. It is not the difference within the farm community, it's the difference between farmers and the people they have to deal with elsewhere in agribusiness. After all, it is only the very largest farmers around here who have any use at all for information like barge rates on the Mississippi River or the rainfall on the Steppes of Russia—the kinds of things we're selling and we're selling at a very high cost. The operator with 100-200 acres simply does not need that. What he needs to do is to use his telephone to call the local grain elevator. But

it's when you sell 100,000, two, three, 400,000 bushels of soybeans, corn, whatever, that those barge shipping rates become the kind of thing that you want to know right now and people are willing to spend a few hundred dollars a month to get that kind of thing.'

That gave me an enriched sense of the complexity of the issues that fall from these twin values of productivity and participation. The notion of access is not a simple one. In fact, I think it's maybe worth thinking about the issue of privacy as an issue of access in a certain way. Let me tell you what I mean. By a fairly recent count, the federal government has about 8,000 systems, 8,000 computer systems or record keeping systems, that have data about individuals in them. Eight thousand separate systems! According to this estimate, every individual in this country has his or her name in about 15 systems on the average. So you think, "Ok, I'm in Social Security. I have a military record. Maybe a police record." But you are in an average of 15 government systems.

> "There is no privacy, there never will be privacy again."

The thing I'd like to think about here is the notion of privacy as being that horse that is already out of the barn. There is no privacy, there never will be privacy ever again. So what do we need instead? What I think we need to do now is to substitute access for privacy. Privacy is about gone. What we need to know is what others know about us and what is being done with it. Some of you might have received something that I received from TRW. Does the name TRW mean anything to people? You think of it as a company that makes hardware of various kinds. Do you know what else they do? They run a credit check service. They're one of the firms who do your credit rating. I just got something from them in the mail that said, "We'd be happy to sell your credit record to you." They want me to subscribe to a service that does a couple of things. First of all, it gives me access to my credit record whenever I want. I can order it up the same as amyone else, including the smallest retailer. Further, they'll let me know when anyone else orders it. It is a bargain and I'm inclined to do it. The idea is to substitute access for privacy. Privacy is lost to us but access can help a little bit in managing this problem.

The last point I want to make is the notion that when it comes to both productivity and participation, those wonderful possibilities always seem to be just one step away. They are never here, so no matter what wonderful machines are there, somehow those possibilities seem to step back and back and back. Who has a paperless office? Who has been promised a paperless office by about 1990? Everybody, right? The point is that when you look at the promises for productivity there have been some amazing strides but those promises often elude us. In fact, the great investments that we have seen in the last few years in terms of information technology really aren't returning productivity increases anything like the steam engine did in the factory. Not even close. A whole conference can be devoted to problems of implementation of technology.

I don't want to go into that, however, I want to stick to participation and think about how *those* promises always seem to be one step away. In fact, now we are worrying about communication technology as a cause of fragmentation in this country rather than the restoration of the great American community that John Dewey saw. We worry about people subdividing based on economic status and increasingly on language and on tastes. Fragmentation now is the concern. Where is that community John Dewey foresaw in technology? Or think about Harold Sackman's vision of the information utility bringing government closer to citizens.

I spend much time talking with my students about the media as a means of manipulation of the electorate. With modern polling technology, survey research technologies, direct mail technologies — now there's a powerful communications technology, direct mail technology — along with advertising, you have very powerful means of voter manipulation.

So those are the concerns that we are confronting once again with the technology that we have now and that's available to us. Still, we haven't given up the notion of information technology as a means to enhance productivity and we shouldn't give it up as a means to enhance citizen participation. And so I eagerly clip any good news in this regard that I can find. One story I clipped lately is that Santa Monica, Calif., is building a local information utility. Those of you who know southern California know that Santa Monica in many ways is a long, long way from East LA, a long way from Watts and when the information utility gets there I will be really interested! But for the time being Santa Monica has a public information system that you can access through your PC. So we'll see what happens. These things always have to start somewhere. Where they start is among the early adopters and we all know who the early adopters are. They're the kind of people who live in the Santa Monicas of the world. Everything has to start somewhere. Maybe this is the start.

A lower tech version of that, not a low-tech version, but a lower tech version is something that we see in Chicago as an important political force. That is the black owned and operated radio stations in Chicago that really do give authentic voice to the black community in a way that the "mainstream," meaning white, newspapers don't do and television, of course, doesn't do.

One more story in this regard: It's a project that Northwestern University has worked on for a number of years. I really wish I could take credit for this but I can't. It was done by the Center for Urban Affairs and Policy Research. For a number of years they ran a project called the Affirmative Neighborhood Information Project. What that did was something conceptually really very simple and in terms of the hardware, really very simple. They did it on the ever popular Apple Computer. What they did was collect from the city of Chicago information that the city itself regularly collects. This would include information like building inspections and health inspections, information about capital expenditures. In other words, where are the streets being repaired? Where are new sewer lines going in? Where are sidewalks being fixed? And, of course, also records from the police department. These existed in many different forms, some in paper, some in computer files and so forth. They were available in many different formats for

many different kinds of machines and many different modes. None of those modes though seemed to be very useful for people who wanted to do anything other than safely store this information away somewhere. Anybody who wanted to use this information was really hindered by its inaccessibility. Here is a hardware problem and an organizational problem.

What this group did was start collecting this information and developing a system to organize it. One of the most useful ways they found to organize it was visually, in maps. So they would create maps about where capital expenditures were going, and anybody who knows anything about Chicago can make a guess that capital expenditures are not evenly distributed across the city. What do you do with that kind of information? Do you sit around waiting for citizens to walk in? Of course not. The tradition of the Center for Urban Affairs and Policy Research is a very activist kind of tradition. The idea is to do something that makes a difference. What are they going to do with it? They are going to make it available to community groups in the city. They are going to tell community groups how to massage the data and what it's for, and what it means. There is an educational component there that operates through these organizations.

Another interesting branch of that project was the crime data and, of course, they worked closely with the police department. The city police department was interested in this information because they could graphically array information of all kinds. They could do things like look at drug arrests in the evening after a major athletic event in the city and see where they happened -- not only space but time was a dimension here. So the police department began using this system to redesign its patrol routes, reassign officers. But given that urban activist tradition the center staff said, "This can't be in the hands of only the cops, it's got to be in the hands of citizens as well." So the same information goes to the community groups and the community groups take it back to the police department and say, "You know we've been complaining about this intersection and all the accidents there and you've always said there aren't any more accidents here than there are anywhere else. Look at the map. The map says there are. We want the stop light. We want the crossing guard."

The point I want to draw here in summing up the idea of participation is the idea that when we talk about using technology to empower citizens, the notion of empowering citizens one by one is probably not what we should be most concerned about. Certainly we need to make the information accessible to individuals on a one by one basis but typically the notion of empowerment means that we should empower *organizations*. The idea is that dealing with the information poor is a matter not just of more information but more information in the service of more organization. So think about how to mediate, organize and disseminate information to and through organizations. Mediate it through the traditional mass media. Give it to the newspapers but also give it to the neighborhood council, community organizations, hospitals, community groups of all kinds. You could probably think of lots of applications to your own situations.

I don't want to be too optimistic here. I want to always keep in mind the notion that we've always hoped for a lot from technology and that the history of technology suggests that those hopes are never fully met. They always seem to recede off into the future. But the history of technology also suggests that we must hope, that we have no choice but to hope.

Thank you.

State Representative Kay Brown and Anchorage Attorney John McKay talk during a coffee break

INFORMATION MANAGMENT

THESE MAPS CAN FIND OIL —OR SELL BURGERS

Powerful 'geosystems' marry digital maps and data bases

A few Texaco geologists still recall the days before 1984, when picking places to drill for oil was 90% grunt work: Complex maps were drawn by hand. Then Texaco installed a new computer called a geosystem, and the sweating stopped. The geosystem makes color maps and lets geologists peel away layer after layer of earth—at their terminals. It also answers questions about land-leasing terms, oil strikes, and rock formations. Texaco Inc. says making the maps now takes 40% less time—and accuracy is up.

Today, lots of companies use computerized mapping. According to Market researcher Dataquest Inc., sales of geosystems rose 50% last year, to $282 million, and are expected to go as high as $600 million by 1992. And oil drillers aren't even the best customers.

TEXACO'S CUSTOM $10 MILLION SYSTEM MAKES EXPLORATION MAPS MORE QUICKLY AND ACCURATELY THAN EVER

Those are companies like Arby's Inc., the 2,000-store restaurant chain. It recently installed a geosystem to measure the performance of existing franchises and to pick the best sites for new ones by looking at traffic patterns. It found that one store in Phoenix wasn't as successful as it seemed: Though its volume was high, its market penetration was low. Stepped-up promotions put the outlet on the mend. Now, Arby's also chooses new locations more skillfully, says Hal Reid, vice-president of franchise planning. With a less haphazard approach, "we've reduced our bad decisions dramatically."

DOUBLE PLAY. At the heart of a geosystem are two separate data bases: one containing maps, the other essential information such as demographic breakdowns, market research, or sales figures. The computer combines them to create a more revealing view than either set of data would provide alone.

Let's say a bank wants to pitch a new financial service. Its geosystem could create a map by Zip code area, pinpointing the people within 100 miles who have bank accounts with more than $1 million. It's possible to draw up such a list without a geosystem. But a computerized map makes it easier for the bank to plan personal approaches to these potential customers through its network of branches. "It's a powerful way to thread through information," says KPMG Peat Marwick's Richard G. Silage.

It's a powerful hit to the budget, too. A large-scale, custom-designed geosystem like Texaco's can cost upward of $10 million. Even a less ambitious system that uses predeveloped maps and canned demographic information costs about $100,000, though desktop systems now are emerging that cost $20,000 or less.

The market leader in big geosystems is the Environmental Systems Research Institute in Redlands, Calif., which had sales of $22 million in 1987. Hot on its heels is Intergraph Corp., a graphics workstation company, with $17 million in 1987 sales, and IBM, with $13 million.

Of the three, Intergraph seems most aggressive right now. It recently sold 40 systems to the U.S. Geological Survey, which plans to digitize its library of maps showing every county, town, river, lake, mountain, and highway in the nation. The USGS hopes to make these electronic maps the standard included in geosystems sold commercially. While Intergraph is soaring, IBM's geosystem sales are a bit flat, apparently because it hasn't kept up with graphics and data-base breakthroughs. Says Jay Leonard, president of Denver geosystem consultants Platte River Associates Inc.: "IBM has a lot of catching up to do."

LOTS OF HELP. So do potential customers, many of whom have little idea what a geosystem can do. They're about to get lots of help from consultants such as EDS, KPMG Peat Marwick, Arthur Andersen, and Price Waterhouse, who plan to cash in as the market develops.

As the use of geosystems spreads, one side effect is a shot in the arm for sellers of data-base-manager software, which controls a geosystem's maps and data bases. Britton Lee, Oracle, and Servio Logic are the leading contenders to supply geosystem manufacturers—or big corporations that build their own systems from scratch.

One company that built its own is Budget Rent a Car Corp., which uses a data-base manager to power its new Automap geosystem. Budget's Automap for Chicago contains 12 billion street and address combinations that the data-base manager turns into a printed set of directions on how to get there from here. Says Harold Saper, Budget's director of map systems: "Ours is so sophisticated that we will be able to quickly satisfy 99% of the people 99% of the time."

That claim may soon become common. For years, companies have had tons of data they couldn't make sense of, because of limitations in methods for analyzing it. Now, digital mapmaking could be the perfect technology for putting data in its proper place.

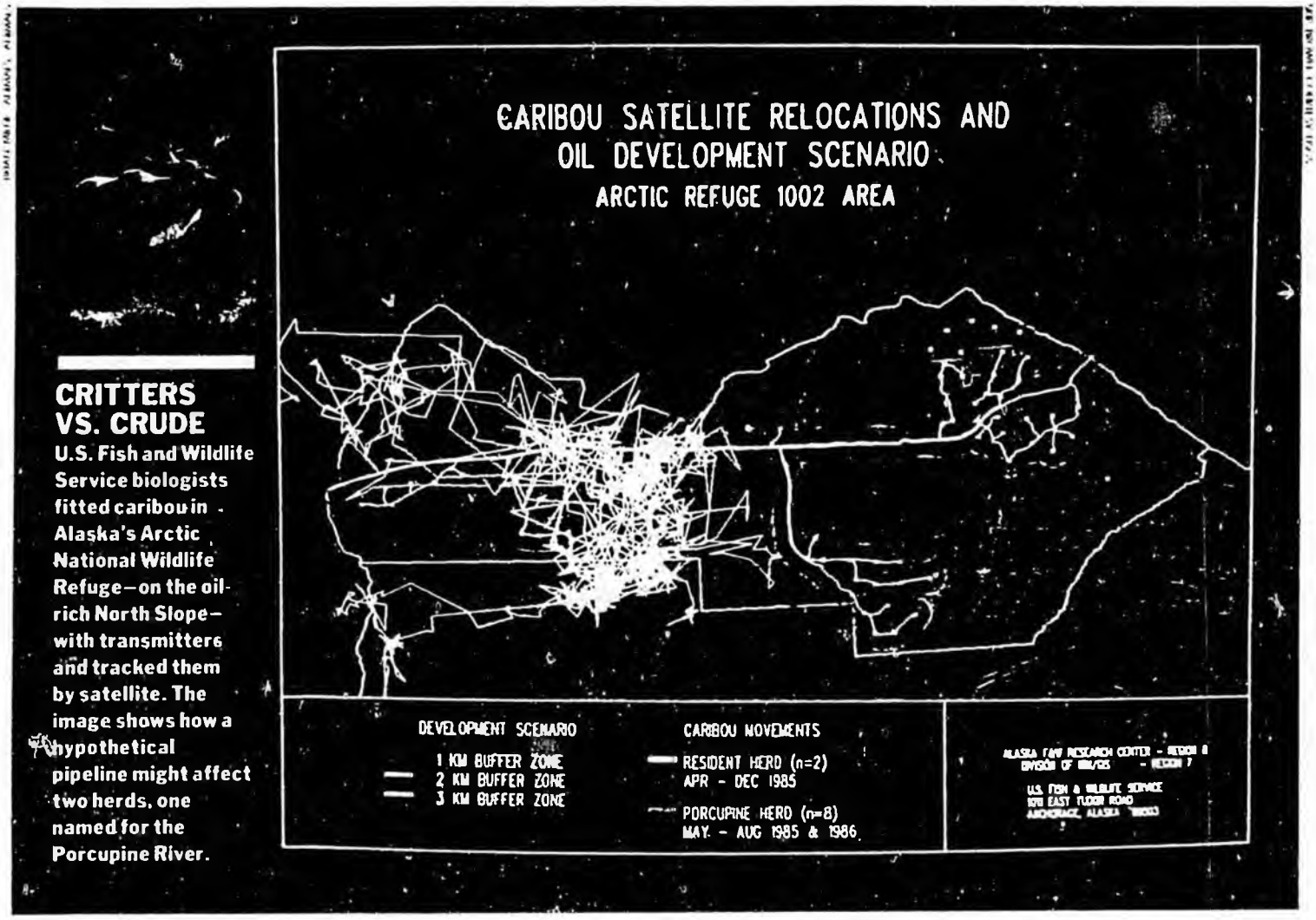
By Jeffrey Rothfeder in New York

MANAGING WITH ELECTRONIC MAPS

They can help you sell soft drinks, produce oil, and break up traffic jams. As the systems get cheaper, ever more users are turning to this hot new form of computing. ■ *by Gene Bylinsky*

"IT WAS AN AWFUL MESS," recalls Gene Wirsig, a technical services manager for the western division of Potlatch Corp. The FORTUNE 500 forest products company owns 600,000 acres of timberland in northern Idaho, and ten years ago the keepers of its inventory were spending a mere $200 annually on data processing. An old Monroe mechanical calculator cranked out columns of figures on a narrow paper tape. Maps of the company's timber stands, scattered among 2.2 million acres of federal, state, and private property, an area bigger than Rhode Island and Delaware combined, were hopelessly out of date—no small matter when cutting trees on someone else's land can cost you triple damages. Information about a single timber stand was stored in hundreds of individual office files, often miles apart. Says Wirsig: "We were trying to address questions about changes in ownership, for example, that would take months of delving into that antiquated database to answer."

This year Potlatch's inventory group will lay out $180,000 for data processing—and the company thinks that's a bargain. A new combination of automated mapping and data processing gives Potlatch up-to-the-minute information on the status of 4,900 separate timber stands. A forest manager sitting at a terminal can check land ownership changes in a few minutes by zooming



CRITTERS VS. CRUDE
U.S. Fish and Wildlife Service biologists fitted caribou in Alaska's Arctic National Wildlife Refuge—on the oil-rich North Slope—with transmitters and tracked them by satellite. The image shows how a hypothetical pipeline might affect two herds, one named for the Porcupine River.

in on a map of a particular site. "We can now find exactly what we're looking for," says Wirsig. "This is really a quantum leap in data management." The company has combined digitized maps of its properties with computerized data on the type and age of trees, soil quality, access roads, ruggedness of terrain, ownership of abutting land, and market prices of different kinds of finished lumber. The data can be updated continually, and other variables are automatically adjusted in turn.

Potlatch has spent about $650,000 on hardware and software since it began putting in its new system three years ago. Wirsig and his colleagues figure that they have far exceeded the 27% annual return on investment they had promised their bosses. While they can't put exact dollar figures on their savings, they know they are substantial. Two administrative jobs have been eliminated, for example. The division has become a finely tuned mechanism that manages the timber inventory much more efficiently than it used to and responds far faster to sudden challenges from competitors or other changes in market conditions.

WHAT POTLATCH has adopted—a geographic information system, or GIS for short—makes possible storing dozens of different kinds of data and viewing all or some of them at will in a clear, integrated display. It's one of the fastest-growing branches of computing, with ever-widening uses that range from identifying crime patterns to planning marketing strategies to plotting wildlife tracks in areas where natural resources may be developed. GIS technology is spreading because, for one thing, it is becoming a lot less expensive. It may still cost as much as $200,000 for the hardware and software necessary to get a medium-size GIS system going on a minicomputer or a mainframe. But ComGrafix Inc., a small company in Clearwater, Florida, has just begun offering software for as little as $8,500 that runs on a $2,000 Macintosh. IBM has given GIS its blessing and sells a $2,500 software package for its PCs.

Until recently the only way to keep track visually of lots of different kinds of data about a geographical area had been to use a basic map and a series of overlays, each presenting a specific type of information—fire station sites, for example, or pollution sources, or neighborhood variations in

REPORTER ASSOCIATE *Alicia Hills Moore*

COMPUTERIZED GEOGRAPHY

At Potlatch Corp.'s western division in Idaho, the company's geographic information system is going into its third year. The Potlatch installation handily illustrates the enormous variety of tasks computerized geography can perform and its many uses as a management tool.

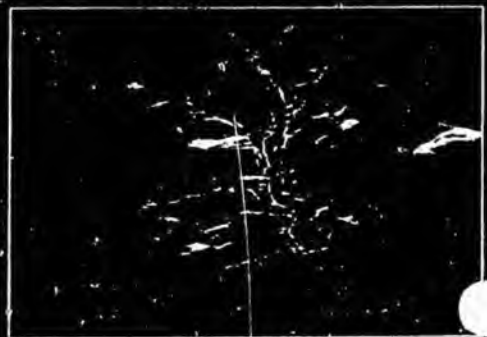
As with many other computer applications, data gathering begins undramatically in the field, where foresters like Paul Gravelle (above) measure the height and girth of trees, which Potlatch calls its "factories." The data are passed on to specialists like Stephen H. Smith (facing page).

Smith can generate a needed image on his computer screen and print out a computer-generated map that shows the up-to-the-moment status of Potlatch's individual timber stands. He can figure out which end products the logs should be turned into for maximum profit. He can retrieve information on the height and diameter of ten species of trees—the company's living inventory—and in effect grow the trees inside the computer, projecting the development of the stand at any point before it is to be harvested 60 to 80 years hence. He can quickly decide whether it makes sense to buy multimillion-dollar harvesting equipment that cuts trees only up to a certain diameter and only on level ground.

To make such timely data displays possible, Potlatch foresters compile and frequently update information on as many as 300 variables that describe each of the company's 4,900 timber stands covering 600,000 acres in northern Idaho. The geographical information system allows Potlatch to generate a "living" map of its timberlands. As Smith says, "It's like pulling out a timber stand with a string and looking at it. And we can simulate thinning or fertilizing effects that may occur over the life of the stands."

In addition, computerized geography allows Potlatch to create a three-dimensional view of the surface of any area (below, at right) and combine different types of data into a multilayered overview of its timberlands. The series of images running diagonally from lower left to upper right on the facing page can be combined to make the kind of a composite view of a piece of terrain that can prove equally valuable in planning the development of a city, keeping track of oil and gas leases, or speeding a fire engine to a burning building by the shortest possible route.

All the available information is readily accessible to the resource staff at Potlatch via a shared electronic file, and the process takes seconds rather than the weeks or even months it required before computerization. As Potlatch executive Gene Wirsig puts it: "What used to be a paper chase is now a unified database."



Who owns which land doesn't show up on an aerial photo of Idaho's Dworshak reservoir area (left), but a three-dimensional electronic map identifies Potlatch property clearly.

OOSTS PROFITS AT POTLATCH

anager Smith prints out a view of Potlatch "factories."

'LIVING' MAP

integrated look at part of tlatch's timber holdings arts with a computerized map land ownership (image A, low). Next come layers showing tlatch lands in green (B), ridge es (C), streams (D), roads (E), d recent logging in yellow (F). e layers can be combined any order. By using such maps, anager can call up data, for ample, on tree species and tential timber yields of ividual stands.

Combining three layers of data shows the accessibility of Potlatch properties where trees are ready to be harvested.

household income. The idea of recording different layers of data on a single map dates back at least to the Revolutionary War, when a French cartographer prepared hinged overlays for General Washington showing troop movements at the battle of Yorktown. In 1855 a map of a cholera epidemic in London helped solve a public health crisis by pinpointing a contaminated well as the cause of the outbreak. When more than two or three overlays are combined, however, maps quickly get confusing. Computers have changed all that.

Pioneers Jack and Laura Dangermond run the Environmental Systems Research Institute (ESRI) of Redlands, California, the largest supplier of geographic information systems.

IN A SENSE, geographic information systems are the geographical equivalent of a computerized spreadsheet. What users of Lotus 1-2-3 are accustomed to doing with financial data, GIS makes possible with maps as well. Says Lisa Thorell, an analyst at the Dataquest market research firm, who has a Ph.D. in visual sciences: "Eighty percent of the input pathways in the nervous system are devoted to bringing visual information to the brain. The more information you can absorb visually, the quicker you can come to a decision. Everyone can read a map. It doesn't look abstract, and it's much more appealing than looking at tables of figures."

By marrying computerized data with automated mapmaking, the pioneers in this field have created a remarkably versatile new tool to help manage corporations, cities, wildlife refuges, military bases, and a variety of other operations with a precision unattainable before. GIS software similar to Potlatch's is being used, for example, by Ducks Unlimited, a conservation group that hopes to reverse a decline in some migratory bird species by combining satellite images with other computerized geographical data to pinpoint man's encroachment on marshland. "We're getting a handle on the habitat," says Barbara Vogel, a Ducks Unlimited computer cartographer.

In cities and towns from Tacoma to East Greenwich, Rhode Island, planners, police and fire officials, road builders, and others are using GIS programs. Their tasks vary from keeping property ownership up to date for tax purposes to unifying maps used by different government departments so as to avoid tearing up freshly paved streets to repair utility lines.

Commercial uses of GIS are even more wide-ranging. Examples:

■ Oil companies such as Shell and Amoco are putting it to work processing ever-changing lease maps, making three-dimen-

HOW COMPUTERIZED GEOGRAPHY COULD HELP SAVE EARTHQUAKE VICTIMS

To learn how an earthquake would delay rescue vehicles from fire stations (marked F) on the edge of Salt Lake City, researchers superimposed a map showing normal response times on one illustrating likely damage from the quake. The blue areas can be reached in under 2.5 minutes, while streets shown in white would be a full ten minutes or more from help.

Normal response times

Where the faults are (red lines)

Response times after a quake

sional geological models, and finding optimum locations for gas stations in developing areas.

■ Pennsylvania Power & Light is creating new meter maps and helping prospective business customers find suitable building sites.

■ Coca-Cola, Frito-Lay, UPS, and Federal Express use GIS to direct their trucks along the fastest possible routes.

■ Yellow Cab of Tampa, Florida, enters the addresses of customers who telephone for a taxi and then transmits a code to its drivers, to avoid interception of fares by competitors.

■ The feed division of Hubbard Milling in Mankato, Minnesota, employs GIS to estimate the amount of feed the company can sell in a 12-state area, based on animal populations and average consumption of each species by county.

Thorell of Dataquest puts last year's worldwide GIS hardware and software volume at $282 million, about half of it in the U.S. She sees the market reaching $590 million by 1992. The growth rate could rise to 35% a year, she predicts, if the use of IBM and Apple personal computers for GIS accelerates as expected.

POWERING the most sophisticated GIS applications more often than not is software supplied by a small, fast-growing, privately held company called Environmental Systems Research Institute (ESRI) of Redlands, California. IBM has just begun to resell ESRI's programs for use not only on its PCs but on its workstations and mainframes as well. The software also runs on computers and workstations made by many other companies, including Apollo, Sun Microsystems, Data General, Digital Equipment, Hewlett-Packard, and Prime Computer.

Widely viewed as the father of commercial GIS, Jack Dangermond, 43, ESRI's founder and president, is a Harvard-trained environmentalist who founded the company with his wife, Laura, 20 years ago using $1,100 in savings. ESRI has developed what is generally conceded to be the most advanced GIS program, Arc/Info, which takes its name from a mathematical term and "information." The software makes it possible to combine and manipulate geographical data from maps and numerical information about demographics or almost anything else that's pertinent. The company turned a profit from the start and now employs 350 people around the world. Sales reached $40 million in 1988, nearly double the year before.

Normal travel times

Travel during evening rush hour

BEATING THE RUSH

Getting there may become less painful thanks to computerized geography. To show precisely how much travel time by automobile increases from downtown Burbank during the evening rush hour, a computer programmer fed into the system data on important variables like block lengths, traffic light timing, and traffic density. Starting from the city center, he then simulated traffic flow and speed. Each colored band represents 30 seconds of travel time. Engineers could use the data to calculate the effect of bottleneck-easing measures like changing traffic light cycles to speed outbound traffic and turning some arteries into one-way streets during peak periods.

Among other suppliers of GIS systems are such smaller companies, also privately held, as GeoVision of Ottawa, Erdas Inc. of Atlanta, and Geographic Data Technology Inc. of Lyme, New Hampshire, whose products include software to integrate electoral and census information with mapmaking. It hopes to cash in on the nationwide redrawing of congressional and state legislative district lines that will follow the 1990 census.

Catching up with Jack Dangermond's ESRI has become a principal preoccupation of competitors, which include Intergraph Corp. of Huntsville, Alabama, and Synercom Technology Inc. of Houston, both public companies. ESRI's rivals began as computer-aided design (CAD) or automated-mapping companies, which use computers to augment or even replace the painstaking hand work of cartography. Intergraph, already a relatively large and booming company (1988 sales: $800 million), seems particularly eager to strike it big in GIS. Like ESRI, Intergraph was started by entrepreneurs 20 years ago. Among the principal founders, who began the company with $60,000, were James Meadlock, 55, and his wife, Nancy, now an executive vice president.

There the similarities between the two companies—and the two men—end. Kindly and eloquent, Dangermond runs ESRI with unusual concern for his employees. Professionals can set their hours and work at home if they want. Dangermond hopes that eventually GIS will help save the world from environmental destruction. Says he: "Sometimes I have these fantasies of giant rototillers going across the landscape digging huge surface mines, the tropical jungle being obliterated, all the timber being cut in Nepal. How can we begin to get a handle on this problem as planners, analysts, rational people?"

DANGERMOND IS PROUD that the United Nations Environmental Program has used ESRI software to study the decline in the number of African elephants. The study concluded that unless poaching and encroachment on their terrain are soon stopped, the big beasts will become extinct by the year 2000. He adds that "at the other end of the scale, if some guy in a small city is able to make a better decision about where to locate a fire station, or the people

at Exxon are able to discover oil with less unpredictability—when you see that kind of application, it really gets you excited. I love business. I love to make things work."

Blunt-talking Jim Meadlock is unlikely to have nightmares about rototillers roaming the world. He used giant bulldozers to level part of Intergraph's 400-acre campus on the outskirts of Huntsville. Twenty years ago, working for IBM, Meadlock was in charge of software development for the Apollo moon mission at the Marshall Space Flight Center in Huntsville. Now, in the shadow of that center, he has constructed 23 sprawling buildings, where 5,000 people work. His tightly organized company, with 7,000 employees worldwide, has a hammerlock on providing automated-mapping equipment for military agencies in the U.S. and abroad.

AUTOMATED MAPMAKING is the first step in GIS. Atlas publishers and mapmakers like Hammond and Rand McNally are switching over to the new, computerized approach. First, just as all GIS users do, they must go through the painstaking and often costly process of digitizing existing maps, assigning coordinates to streets, buildings, rivers, and other features so the information can be stored in a computer. Some already digitized geographical data can also be bought from federal agencies, principally the U.S. Geological Survey, and from private companies like Etak Inc., of Menlo Park, California. Etak is the pioneering producer of navigational maps for automobiles and trucks that move as the vehicle does, displaying streets and intersections coming up; it has licensed its map displays to General Motors, as well as to European and Japanese companies, and expects GM's luxury cars to be equipped with its moving maps in about two years. Mapmakers also

A NEW KIND OF SELECTIVE MARKETING

How does the optimum merchandise mix vary for department stores in different parts of the country? How should you pitch your promotions to middle-income customers? To the affluent? Marketing questions like those can now be answered at the click of a computer "mouse" button with software introduced a few months ago by Tactics International Ltd. of Andover, Massachusetts. A user – a department store chain, for example – can determine in seconds the most salable selection of stock for its far-flung stores. On the map at right, hardware turned out to be big in Tennessee, while sporting goods were tops with Arizonans. In Chicago another customer produced an income distribution map to help find the best site for an upscale store. Still another, a packaged goods company, used income, family size, and other demographic data in the system to determine what kind of soft-drink promotion – a 12-cent coupon, a trial size, or a special price – would be most effective at each of ten stores around the city.

Who buys what goods where

Red means rich in Chicago.

Which promotion is best

get up-to-date information from aerial and satellite imagery. The French SPOT satellite pictures, finer in resolution than those provided by the U.S. Landsat, are catching on with GIS users particularly fast.

ONCE THE COSTLY, time-consuming, and occasionally error-prone digitizing is done, it's relatively easy to keep maps current. An Erdas system used in conjunction with Arc/Info typically allows a user to superimpose on a satellite image a digitized map of the same area. An operator can then update the map simply by entering the features of, say, a new subdivision that occupies a once-empty space onto the digitized map with a cursor pen. An updated new map can then be printed out on the spot. To keep the database up to date at Potlatch, foresters gather information on each timber stand and pass it on to the GIS operators. The foresters will soon be equipped with hand-held data acquisition devices much like those used to keep track of inventory in grocery stores. Says Stephen H. Smith, inventory systems manager: "Our stands are changing every day. Harvesting is going on all the time. We're always planting trees and building new roads."

MANAGING THE LAND
To advise the World Bank and other lenders, the U.N.'s Food and Agricultural Organization produced a computerized atlas of Africa. In this region of Tanzania the white areas are most suitable for irrigation, followed by those in red, blue, and dark green. The ocean appears in olive green.

For larger users it still takes knowledgeable and well-trained personnel to install and operate a GIS system. But inexpensive, simplified versions are beginning to appear. In Tacoma detectives and firemen run them. The city began in 1975 by entering the coordinates of 80,000 land parcels and streets into its GIS database. City officials are delighted with their new ability to keep instant track of changes in property assessments, which improves their estimates of future tax revenues. The police department charts burglaries and other crimes; it can spot developing patterns quicker than it used to. Tacoma firefighters are cutting response time by shifting the deployment of equipment. The municipally owned water company plans to optimize meter-reading routes and make it easier to locate electric meters and also to find water shut-off valves in emergencies. Savings could easily amount to hundreds of thousands of dollars a year. What pleases Donna Wendt, a systems analyst who works with Tacoma's GIS, is that key users in many city departments are profiting from the system. Says Wendt: "We're accomplishing more work and turning out better map products."

More and more corporations are discovering GIS. ESRI already counts more than 20 FORTUNE 500 companies among its Arc/Info users, and Dangermond foresees a major expansion in the corporate world this year. Along with software that runs on Macintosh and IBM personal computers, the emergence of faster, less expensive workstations equipped with better graphics and more capacious memory is speeding the spread of GIS. Optical disks in particular now allow storage of massive amounts of geographical and digital data. DeLorme Mapping Co. of Freeport, Maine, sells a world atlas on an optical disk. Selected areas can be called up on a computer screen, and the viewer can zoom in on specific locales with a resolution of three feet, making an object the size of an automobile easily discernible on the screen.

ALBUQUERQUE'S FAST NEW AMBULANCE SERVICE
Guided by a computerized city map displayed near the dashboard, driver-technician Jim Nelson and paramedic Bill Ziegler of the Albuquerque Ambulance Service answer a call. Most response times have been cut by two minutes.

SOON COMPANIES may simulate responses to challenges from competitors, expanding the systems' usefulness by combining databases that contain ever more detailed commercial data with all the sophisticated geographical resources of GIS. "It's an exciting idea," says Thorell of Dataquest. "In a future corporate war room you would have a huge flat panel display hooked up to a very fast computer capable of displaying customer, competitive, and other information." Could a competitor make a lower bid, for example, because his materials storage sites are more strategically located? Geography has come a long way since you memorized the state capitals for Miss McGonagle in the fifth grade. F

OTA REPORT BRIEF

October 1988

Informing the Nation: Federal Information Dissemination in an Electronic Age

The government today stands at a major crossroads with respect to the future of Federal information dissemination. Technical advances are creating opportunities for productivity improvement in Federal information dissemination that OTA estimates, conservatively, at hundreds of millions of dollars per year. Technological advances have opened up many new and potentially cost-effective ways to disseminate Federal information, especially those types of information (such as bibliographic, reference, statistical, and scientific and technical) that are particularly well-suited to electronic formats. For example, an entire year's worth of the *Congressional Record* or *Federal Register*, or several Bureau of the Census statistical series on employment and demographic trends, can be placed on one compact disk that can be easily read with a low-cost reader and basic microcomputer. Press releases, weather and crop bulletins, and economic or trade indices can be disseminated immediately via electronic bulletin boards or online information systems.

OTA expects important underlying technical advances in microcomputers, printers, scanners, electronic publishing systems, optical disks, and a host of online networks to continue unabated for at least the next 3 to 5 years and 10 years or more in many cases.

On the demand side, OTA's 3- to 5-year outlook indicates that overall demand for Federal information in paper formats will decline modestly and the demand for microfiche will drop rather markedly (except for document storage and archival purposes), while the demand for electronic formats will continue to increase dramatically. The results of surveys conducted by the General Accounting Office indicate, for example, that civilian agencies disseminated electronically over 7,500 information products in fiscal year 1987, which is more than triple that of 4 years earlier.

Information is the lifeblood of many Federal Government programs and activities and is essential to the implementation of agency missions and to informed public debate. The advent of electronic dissemination has generated serious conflicts over how to maintain and strengthen public access to government information and balance the roles of the Federal Government and the private sector. Congress has enacted numerous laws that emphasize the importance of broad public access to Federal information and assign various information dissemination functions to individual Federal agencies and governmentwide clearinghouses. But the existing statutory and institutional framework was established by Congress largely during the pre-electronic era, and technological advances are creating a number of problems and challenges.

- At a fundamental level, electronic technology is changing or even eliminating many distinctions between reports, publications, databases, records, and the like, in ways not anticipated by existing statutes and policies. A rapidly growing percentage of Federal information exists in an electronic form on a computerized system as part of a "seamless web" of information activities.
- Electronic technology is eroding the institutional roles of governmentwide information dissemination agencies. While many individual Federal agencies disseminate at least some of their information in electronic formats, the central governmentwide dissemination mechanisms (primarily the Superintendent of Documents sales program at the U.S. Government Printing Office, Depository Library Program administered by GPO, and National Technical Information Service) are presently limited largely to paper or paper and microfiche formats and thus disseminate a declining portion of Federal information.
- Technology has outpaced the major governmentwide statutes that apply to Federal information dissemination. The Printing Act of 1895, Depository Library Act of 1962, and Freedom of Information Act of 1966 predate the era of electronic dissemination. The Paperwork Reduction Act of 1980 was amended in 1986 to include information dissemination within its scope, but substantive statutory guidance on electronic information dissemination per se is minimal.
- The advent of electronic dissemination raises new equity concerns since, to the extent electronic formats have distinct advantages (e.g., in terms of timeliness, searchability), those without electronic access are disadvantaged. In general, library, research, media, consumer, and related groups

The Office of Technology Assessment (OTA) is an analytical arm of the U.S. Congress. OTA's basic function is to help legislators anticipate and plan for the positive and negative impacts of technological changes.
Address: OTA, U.S. Congress, Washington, DC 20510-8025. Phone: 202 224-9241. John H. Gibbons, *Director*

argue that the Federal Government has a responsibility to assure equity of access to Federal information in paper and electronic formats.

- Technological advances complicate the Federal Government's relationships with the commercial information industry. While those companies that market repackaged or value-added Federal information (e.g., with additional indexing or analysis) benefit from access to electronic formats, some of these firms are concerned about possible adverse effects of government competition and oppose government dissemination of "value-added" information. This conflicts with the long-established government role in producing and disseminating value-added information products in paper format and its logical extension to electronic formats.

OTA concludes that congressional action is urgently needed to resolve Federal information dissemination issues and to set the direction of Federal activities for years to come. Congress needs to provide direction to existing agencies and institutions with respect to electronic information dissemination. Key policy alternatives are listed in the box below.

Copies of the OTA report, "Informing the Nation: Federal Information Dissemination in an Electronic Age," are available from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402-9325, (202) 783-3238. The GPO stock number is 052-003-01130-1, the price is $14.00. Copies of the report for congressional use are available by calling 4-8996. Summaries of reports are available at no charge from the Office of Technology Assessment.

Key Policy Alternatives

Options for the Government Printing Office
- —strengthen the GPO role in standards-setting, training, and innovation relevant to electronic publishing.
- —include selected electronic information formats and products in the Superintendent of Documents sales program (while preserving the prerogatives of agencies to disseminate electronic information themselves and of private vendors to further enhance and resell electronic information).
- —improve traditional GPO printing services through more competitive pricing and delivery, itemized estimating and billing practices, surveys of customer needs and problems, and revised and strengthened GPO advisory groups.
- —accelerate the introduction and use of electronic formats for the *Congressional Record*, *Federal Register*, and other key governmental process information products.

Options for the National Technical Information Service
- —decide where NTIS should be located within the Federal Government and how it should relate to other Federal agencies, including what materials agencies should submit to NTIS.
- —develop and implement an electronic document system, using a range of electronic publishing technologies.
- —increase the cooperation with the Superintendent of Documents in regard to indexing, marketing, and international exchange of Federal information.

Options for the Depository Library Program
- —offer electronic formats and products for distribution to depository libraries.
- —conduct pilot projects, demonstrations, and tests involving various electronic technologies, financial arrangements, and delivery mechanisms (including possible involvement of the private sector).
- —consider a reorganization or restructuring of the Depository Library Program in light of both electronic options and the evolving nature of libraries and the telecommunication infrastructure.

Options for Technical/Management Improvement
- —establish governmentwide technical standards on text markup, page document description, optical disks, and other areas important to electronic information dissemination.
- —establish governmentwide information index to major Federal information products, regardless of format.
- —establish agency innovation centers to exchange learning and experience about technological innovations and user needs relevant to electronic information dissemination.
- —revise the information resources management program to give information dissemination a stronger role.
- —establish an electronic press release service for dissemination of time-sensitive Federal information directly to the press, via private electronic news and wire services, and to the Depository Library Program taking care that the needs of smaller, less affluent or technically sophisticated, and/or out-of-town news organizations are met.

Options for Statutory Change
- —amend the Printing Act, Depository Library Act, and/or Paperwork Reduction Act to provide statutory direction for specific institutional and technical/management alternatives as well as to provide general philosophical guidance on electronic information dissemination.
- —legislate a renewed congressional commitment to public access to Federal information in an electronic age.
- —legislate a governmentwide electronic information dissemination policy, including more specific guidance on the role of the private sector, contracting out of Federal information dissemination, user charges, and provision of value-added information products.
- —amend the Freedom of Information Act to bring electronic formats clearly within the statutory purview, and define the scope, fees, and procedures for FOIA requests and searches in an electronic environment.
- —amend FOIA to function more broadly as an "access to information" statute rather "access to records" statute.

Options within the legislative branch
- —establish a strategic direction for electronic dissemination of legislative branch information.
- —determine how to ensure that electronic congressional information is available to the public, and how that information should be made available (by GPO, congressional offices, depository libraries, and private vendors).
- —establish a coordinating mechanism of House, Senate, and support offices involved with the dissemination of congressional information, to maximize the exchange or learning, minimize potential overlap, and take advantage of opportunities for technologically enhanced access.

COMMISSION OF THE
EUROPEAN COMMUNITIES

Guidelines for improving the synergy between the public and private sectors in the information market

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FOREWORD

Information is considered more and more as a motor for the industrial development of the Community within a highly competitive world market. The setting up of an information services market as decided by Council on 26 July 1988[1] is a major aim in the Community's overall strategy.

It is recognized that a strong and healthy information market in the European Community can only be achieved through the work of a wide range of participants. As is recognized in the plan of priority actions for the setting up of an information services market, the public sector has an important role to play, as a major producer of basic data and information, as a provider of information goods and services and as a major consumer. According to the way it functions, it can either encourage or hinder initiatives leading to the development of a strong European information industry.

To promote optimal synergy between public sector support and private sector initiatives, the Commission undertook a series of consultations and discussions with representatives of the public and private sectors of the European information market in all Member States. As a result, the Commission has now produced 'Guidelines for improving the synergy between the public and private sectors in the information market', which have been endorsed by the representatives of the

[1] OJ L 285 p 39. 88/524/CEC

Member States meeting within the Senior Officials Advisory Committee (SOAC).

Guidelines are considered essential in order to help the public sector in decision-making related to making information available for external use and supporting the development of the information market; and to establish certain ground rules for avoiding possible unfair competition.

The guidelines, which are advisory only, are aimed at providing a basic set of generally agreed principles and recommendations which can be used in the development of national guidelines in individual Member States. They are in no sense directives, but it is hoped that they will, by virtue of their production at the Community level, support national initiatives designed to promote the growth of the European information industry.

C. JANSEN VAN ROSENDAAL

INTRODUCTION

Governments and public sector bodies collect large amounts of data and information, as part of their routine functions, which could be made available to the private sector for the construction and marketing of electronic database services. The private sector is well placed to combine information from a variety of government sources, and its prime function is to produce and distribute information products oriented to the needs of the market. In order to develop and strengthen the information industry, a positive initiative is required from governments, to encourage the use and exploitation of public sector data and information. However, there are few convergent policies or guidelines within Member States relating to the role of the public sector in this area. In addition, if there are different policies operating in the different Member States, then it will be very difficult to develop the market. It is therefore desirable that national policies, as far as they exist, be coordinated at the Community level in order to allow the majority of the EC countries not yet having such a policy to follow these orientations on a national level.

In the following text, the guidelines are numbered, and explanatory material is printed in italic.

GUIDELINES FOR IMPROVING THE SYNERGY BETWEEN THE PUBLIC AND PRIVATE SECTORS IN THE INFORMATION MARKET

THE PUBLIC SECTOR AS A PRODUCER OF BASIC DATA AND INFORMATION

Following the general principles used in the European System of Integrated Economic Accounts (ESA) (Sector 60, general government), the public sector includes central and local public administrations, which administer and finance a group of activities, principally of a non market nature, intended for the benefit of the community, and institutions whose principal resources are derived from public funds. Organizations wholly or partly owned by the public sector and operating under the normal rules of the market are considered for the purpose of these guidelines as being in the private sector.

In the following guidelines, 'exploitation' may include some or all of the activities involved in the construction, manufacture and distribution of value-added information services. Electronic information services include all products and services originating from binary storage in a computer.

1. Public administrations regularly and systematically collect basic data and information in the performance of their governmental functions. These collections have value beyond their use by governments, and their wider availability would be beneficial both to the public sector and to private industry. Public organizations should, as far as is practicable and when access is not restricted for the protection of legitimate public or private interests, allow these basic information materials to be used by the private sector and exploited by the information industry through electronic information services.

   Information to which access would be likely to be restricted includes material relating to national security, external relations, the safety of the State and public security, matters sub judice,

personal privacy and personal data, commercial and industrial confidentiality, and in general any material required by law to be held in confidence. When availability of data or information for use or exploitation is denied to the private sector, an explanation of the reason for non-availability should be given.

2. Member States should compile and publicize guidelines defining the conditions of release, use and exploitation of public sector data and information.

   National or regional guidelines of greater specificity, developed by consultation with the appropriate bodies, are required to take account of the different conditions prevailing in the individual Member States.

3. Basic data and information collected by the public sector should be regularly reviewed, with regard to the possibility of their further use, and exploitation.

   If consideration is being given to the harmonization of public sector data and handling procedures in the interests of greater efficiency, regard should also be paid to the possibilities for easier use and exploitation of the information by the private sector. If circumstances permit, it may be advantageous to involve the private sector in the review process.

4. The availability of basic data and information should be publicized to the private sector, and the procedures by which it can be obtained and used or exploited should be made clear. Negotiation procedures and pricing principles should as far as practicable, having regard to the characteristics of the data or information, be harmonized across public administrations.

   The establishment of an advisory body, able to coordinate and share among administrative bodies experience of negotiations with the private sector of the information industry, and the development of model contracts, are measures likely to promote uniformity of procedures.

Pricing policies may vary depending on the nature of the information. A price should be established which reflects the costs of preparing and passing it to the private sector, but which does not necessarily include the full cost of collecting and handling it in the course of routine administration. The price may be reduced if provision of the resulting information service is deemed to be necessary in the public interest. Public sector accounting procedures should not impede receipt of payment for information or services sold.

5. When public sector information or data is released for exploitation by the private sector, restrictions should not normally be placed on the types of customer or the territories to which the resulting service may be made available.

   The general principle is that no unnecessary barriers to the flow of information across borders should be imposed.

6. Contracts or other arrangements with private sector database providers or host services should not grant exclusive rights if they lead to distortion of competition. If, for reasons such as the penetration of a new market or provision of a service in the public interest, an exclusive right is deemed necessary, it should be subject to regular review.

THE PUBLIC SECTOR AS A PROVIDER OF ELECTRONIC INFORMATION SERVICES

7. The public sector should adopt policies and procedures which encourage investment by the private sector in the development of information services based on public data.

   The database industry is characterized by low levels of investment and risk aversion among the traditional publishing or manufacturing groups which have entered the market. Use of public sector data and information presents an opportunity to encourage

the private sector in the provision of electronic information services.

8. When a public administration provides electronic information services directly, it should avoid any practice which leads to the distortion of competition. Before establishing a new electronic service or continuing an existing one, public administrations should consider whether an existing private sector service can be used or adapted to meet their requirements.

   Reasons for which the public sector might develop and support electronic information services could include, amongst others, the following examples:

   (i) where the service is deemed to be essential to the public interest, but the private sector is unwilling or unable to offer it on reasonable terms;

   (ii) where it is an inseparable part of public sector tasks;

   (iii) where a visibly neutral service, independent of the private information industry, is required.

9. Electronic information services directly supplied by the public sector should be regularly reviewed, with a view to deciding whether their provision by the public or private sector is most appropriate, or whether the involvement of the private sector in their production or distribution, or their replacement by appropriate commercial services is desirable.

   The public sector could, for example, develop databases and then consider offering them to the private sector, or could offer the distribution rights of public sector databases to the private sector. In order that the taxpayer may share in the rewards of success when databases which have reached commercial viability are transferred, a royalty payment in addition to the negotiated price may be considered appropriate.

10. Electronic information service entrepreneurs in European Community countries should be treated on a equal footing irrespective of their country of origin within the European Community.

The offer of, for example, rights of exploitation of public sector data or information should be made on an equal footing to all EC hosts, no special advantage being given to national hosts.

PUBLIC SECTOR SUPPORT OF INFORMATION SERVICES

While as yet no common procedures for public support have been established, in this relatively new sector certain ground rules ought to be observed.

11. Support from the public sector may only be given in accordance with the European Community rules on competition, as expressed in Articles 92 and 93 of the Treaty, on aids granted by States.

12. Subject to the provisions of Guideline 11 above, direct or indirect financial support from the public sector may be provided to encourage pre-competitive research and development, and to encourage the emergence of new market sectors.

    Public support can be given provided that reasonable and non-discriminatory procedures are set up to transfer the R&D results to interested organizations within the Community who wish to exploit them commercially. Public support should cover only part of the investment costs during development and start-up phases, and not ongoing operating costs of services, and such support, limited in time, should not generate unfair competition for existing services.

13. Public assistance may also be provided to develop and maintain information services which cannot become viable on a commercial basis but which are necessary in the public interest. Public assistance may also involve reducing linguistic barriers to the use of existing databases of European origin, by making them accessible in other languages.

14. As part of the process of stimulating the development of the information market, consideration should be given to the establishment of joint ventures between the public and private sectors.

Support can also be given by the public sector to the establishment of new electronic information services in the marketplace, by acting as a 'launch customer' and guaranteeing the purchase of an agreed amount of appropriate service provision.

15. Conditions governing application of public support to users of European electronic information services should not discriminate against these services on the basis of their European Community country of origin.

16. Public sector accounting and budgetary procedures and exchange controls should not prevent access by interested public departments to electronic information services throughout the Community.

LEGAL AND STATUTORY RESPONSIBILITIES

17. The public sector should strive to eliminate unjustified legal or other obstacles to the use of public information by the private sector and its exploitation by the information industry, while ensuring that commercial and other confidentiality considerations and civil and criminal liability are respected (see Guideline 1).

    Public administrations should, for example, be clear in the applications of rules for classification of information.

18. The public sector should, to the highest extent possible, make use of the discretion given under Article 2 (4) of the Berne Convention to exempt from copyright texts of a legislative, administrative or legal nature and official translations of such texts. In the case of texts falling under the copyright convention, the public sector ought not to award exclusive right of reproduction to a single organization as this might hinder value enhancement by other users.

    Article 2 (4), as revised at the Stockholm Copyright Convention, 1967, states that 'It shall be a matter for legislation in the countries of the Union to determine the protection to be granted to official texts of a legislative, administrative and legal nature, and to official translations of such texts'. The aim is to adopt the most favourable interpretation of the Convention in order to encourage the private sector to create advanced information services.

19. When public sector information or data is made available for private sector use or exploitation, any pre-existing citizens' rights of access to the original information as determined by legislation must be preserved.

    The individual should continue to be able to have access to such information on the same terms as obtained before its release to the private sector.

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Geographic Information Systems: Issues Arising from the Proliferation of Information

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Abstract: *Geographic information is proliferating at an unprecedented rate due to the use of computer technology in mapping and spatial analysis applications. Three basic issues must be addressed in order to ensure the effective management of this flood of information: accuracy, access, and applicability. Accuracy, which is inversely proportional to uncertainty, can be compromised in a spatial database in three ways: data capture, analysis, and compatibility. Each of these operations can introduce error and skew results. Access and privacy is another issue arising from this proliferation of information. Data accessibility should balance the public's right to know with the individual's right to privacy. Public agencies are obligated to release raw data but not processed information on request. Integrated databases compiled by public agencies can be viewed as resources that can be marketed to the commercial sector. Applicability of information leads to effective decision-making, the satisfaction of end-users and, for public agencies, equitable access in the sense that the public can have the same information on which decision-makers base their decisions. Databases generated and maintained at the application (end-user) level are generally more productive initially than large-scale corporate systems. However, such databases are sometimes only effective in applications where the data are compatible with the original intended use. Thus there is a trade-off between application (single purpose) databases and corporate (multi-purpose) databases. Consensus among users on data compatibility and goals in the initial stages of implementation will increase long-term effectiveness. Databases must be designed with the flexibility to shift as applications mature.*

With the advent of modern computer technology, it is possible to generate an overwhelming amount of output with very little effort. In fact, automation can reduce not only the effort but also reduce the amount of thought required in the production of reports, maps, and in data analysis. Data, initially unedited observations of physical phenomena that have been effectively captured, stored, processed, analyzed, and presented in a timely and comprehensible way, are an asset. These data can be classified as information, which has been defined as the antidote to uncertainty (Epstein 1987). Data that don't meet these standards are useless as they tend to obscure relevant information. Specific issues arise as more private and public agencies amass large databases. Most of the research in the field of geographic information and analysis has been focused on the technical aspects of developing and operating geographic information systems (GIS). Little has been written on the management of the information generated in respect to GIS. However, as more systems come online and mature, the issues arising from the proliferation of information will gradually make their way to the forefront of social science research.

This paper will identify and discuss three major areas that need to be fully explored: (1) accuracy; (2) access and privacy; and (3) applicability, which impacts the long-term effectiveness of a system. These are by no means the only issues

tance that compatibility should not only be considered for questions of scale and resolution, but also for the original purpose of the data gathering. This problem of incompatible applications for the same data could be another stumbling block for shared databases.

Accuracy, then, can be distilled into three basic areas: data capture, analysis, and compatibility. Although resolution and documentation play an important role, these issues in and of themselves are not the deciding factors. High resolution and documentation do not guarantee accuracy and reduce uncertainty. What will ensure accuracy is care on all levels that the data are handled in an appropriate and responsible way by competent professionals well-schooled in the intricacies of GIS.

Access and Privacy

The dilemma of the public's right to know versus the individual's right to privacy is an issue that will receive increasing scrutiny as individual databases become part of an integrated whole. The relationship between data and information is the basis for any investigation of access and privacy. In accordance with the federal Freedom of Information Act of 1966, data that are publicly held should, with the exception of proprietary records such as geophysical exploration records that must be filed for mineral claims and the like, be available to the general public. Generally speaking, agencies are required to disclose information in the format in which it is held. However, once the data are processed and analyzed, the public's right to access is diminished. For instance, agencies are not required to create new reports or formats in response to requests. Indeed, agencies do not even have to provide data in a readable form. As a rule, agencies may only recover their costs for reproducing the data, not the costs of producing them. Other factors that enter into the question of access are staff time to handle information requests and the re-use of data and the motives behind the request (Roitman 1986).

A different issue is the problem of private companies—credit bureaus, for example—that hold extensive databases on individuals. Should this information be regulated? Should it be public domain? With the ease of building and maintaining electronic databases, these issues eventually will have to be addressed. (Indeed, during the recent Bork hearing for the Supreme Court, eyebrows in Washington, D.C. were raised when a video store released the record of the movies Judge Bork rented. Although no embarrassing titles were found, the potential for abuse caused lawmakers to think about the possible ramifications of an information society gone wild.) Although there has been some excellent research on the privacy issue (Roitman 1987), there is certainly room for further study as it is an issue that will only become more important as GISs become more popular.

A public agency such as a planning department can build a sizable database consisting of tax assessment data, cable TV hookups, zoning designations, noise levels, water use and so on. Other agencies with their own data layers, such as police departments with crime-type and frequency maps, health agencies with violation maps, or school districts with bus route maps, could integrate their data and process the information. Indeed, private companies that specialize in the gathering, repackaging, and selling of information can reap huge profits. By spatially addressing this information, entire new approaches to marketing can be created. The applications for such a comprehensive database for private enterprises are substantial. Real estate firms, pollsters, direct marketing companies, and political groups among others could utilize these databases for targeting select market segments. However, few public agencies are in the business of data dissemination. They are service oriented and have acquired this data to support their mandated public duties, not as a marketable asset. An agency with such an integrated database might not have the extra staff to make this data available and is under no obligation to re-format, tabulate, or process the data for the public.

Two major groups are affected by the issue of data access: Public agencies that control the databases but are not in a position to process or market them due to economic and

political constraints, and private entities that would like to utilize the data. There are two approaches they could take. First, the private companies could request the individual raw data layers from each agency and format, process, and tabulate the resultant information themselves. This would effectively limit access to individuals and companies that have the economic or technical resources to undertake such a project. The other approach would be for the public agency involved to set up a semi-private entity to archive, format, process, tabulate, and market the databases. The entity could be non-profit or for-profit and services could range from simply gathering and re-formatting data to developing analytical software to improve the information content.

An advantage of the second approach is that the integrity of the databases could be preserved, an important consideration if the available data are generated from many different sources. Privacy could be guaranteed by having restricted databases reside in the generating agency. A single chartered entity controlling the access and distribution of data would ensure compatible formats, consistent documentation, similar scales and cartographic conventions, and the avoidance of unnecessary duplication. It would also ensure equal access to a diverse set of users. This is the way that Japan is developing its centralized GIS under the aegis of the Ministry of Construction (Okabe 1988).

Of course, this is a long-term solution that requires political sponsorship, start-up funding, and the support of the private sector. However, cooperation between the private and public sectors on the local level is increasing. If public databases and the information that results from data processing are readily available to all segments of society at a reasonable cost, the issue of access will not be a controversial subject. If the data are carefully gathered and private information shielded, the "big brother" concerns of some social critics can be avoided. However, there are no guarantees that this will be the case.

Applicability of a GIS System

The applicability of a system and the information contained within it directly impact the effectiveness of that system as a management tool. A fundamental question of all managers trying to implement a system is how can an agency measure the effectiveness of an integrated geographic information-processing system. Effectiveness, defined as the value of enhanced decision-making from increased analysis capabilities, and improved information availability attributable to the information system (Prisley and Mead 1987), can be interpreted at two levels. At the first level, it can be an improvement of end-user and over-all organizational productivity due to system application (Nunamaker and Konsynski 1986). By taking a larger view, effectiveness can be viewed as the balance between equality (the doctrine of equal rights) and equity (the concept of fairness) (Chrisman 1987). The narrower definition is based on internal productivity at the agency level while the broader definition deals with the impact of the system on the public at large. This impact, although hard to quantify, is intangible benefit that should be taken into account in a cost/benefit analysis (Prisley and Mead 1987).

Measuring an increase in internal productivity, necessary for the first definition of effectiveness, is an ongoing process starting at the earliest stages of conceptual planning. Initial productivity measures range from profits and operating expenditures to customers served to maps produced and so on (Schmidt 1979). Production goals must be decided upon before undertaking an implementation project. By comparing the impact of a GIS to the stated goal of the GIS effectiveness can be ascertained.

This traditional approach to effectiveness is being altered by changing technology. Distributed processing is becoming an attractive alternative to centralized data management. Networking capabilities are being upgraded and stand-alone work-stations are becoming less expensive. In addition, users are becoming more computer literate. Every planning department now has people who feel more comfortable behind a CRT screen than a drafting

THE GOVERNMENT PULSE

AGENCIES

Ending the Government's Paper Chase

But computerized records pose a host of new questions

By Judith Havemann
Washington Post Staff Writer

In a nondescript building in Washington, D.C., Federal Maritime Commission clerks manually insert changes in 800,000 pages of shipping rates in 5,000 green binders each year, using horse-and-buggy technology to regulate the commerce of the space age.

By 1991, these records will be computerized and made instantly available to anybody who wants to know how much it costs to ship anything by ocean around the world.

The transformation of the commission's records is an example of a process that will become increasingly common as the government moves toward "paperless" agencies by the year 2000.

But as records change from sheets of paper into electronic blips, widespread confusion prevails as to whether records like those of the Maritime Commission should be made easily accessible to the public, in what form and at what cost, and whether the government should release the information itself or turn it over to the private sector.

"The laws and policies that spell out citizen access rights to government information in the age of electronic government are woefully out of date," the American Civil Liberties Union (ACLU) has said.

Congress will take up legislation to update the government's "information dissemination policy" when it reconvenes this year.

The bill is called the Paperwork Reduction Act, and, in addition to continuing a long-standing effort to cut down on the forms the government requires citizens to fill out, it seeks to commit federal agencies to a policy of openness and disclosure when it comes to government information.

For the first time, a bipartisan House bill marries the word "electronic" to its information-policy language, telling the government to release, "to the greatest extent practicable," information maintained on computers in "usable electronic formats."

Although information policy sounds as controversial as motherhood and apple pie, it has been a contentious issue in recent years while the Office of Management and Budget established policies favoring the private sector over the government.

The Reagan administration's Office of Information and Regulatory Affairs at OMB required that federal agencies place "maximum feasible reliance on the private sector for dissemination of [information] products and services."

The policy has been dramatically modified in favor of public access under President Bush, but Congress has not been satisfied.

"We want to bring organization to dissemination anarchy," says Democratic Rep. Robert E. Wise Jr. of West Virginia, whose subcommittee on government information, justice and agriculture worked out the information dissemination language in legislation introduced in the House by the chairman and ranking minority member of the House Government Operations Committee.

Under the bill, a government agency would no longer have to step aside if a private firm was interested in selling its information. Instead, federal agencies would have to consider whether an equivalent product or service was available and "reasonably achieves the dissemination objectives of the agency product or service" the agency was about to offer.

The issue grows in importance as more and more information is stored in government computers. The Securities and Exchange Commission is developing an Electronic Data Gathering System (EDGAR) that will handle 6 million pages of security filings per year, the Patent Office is creating an Automated Trademark System, and the Transportation Department is developing an electronic system for international tariff filings.

So far, most of the new data systems are in agencies that regulate businesses, says Jerry Berman, director of the Information Technology Project for the ACLU.

But, he says, "the benefits of electronic information systems are not being equitably or widely shared by the public at large."

Although the Environmental Protection Agency recently began offering an electronic service that tells the public what toxic chemicals are being released throughout the country, "there are no large-scale dissemination projects underway at agencies such as Justice, Health and Human Services or HUD," Berman says.

Berman says more than 440 government data bases exist without a government index system detailing where they are or how to use them.

In the case of the Federal Maritime Commission, electronic versions of some or all of its records have been compiled for about five years at private expense and sold to customers.

When the commission proposed converting its records to electronic format, the private firms that had been key-punching records into computers and selling the information to steamship companies and others questioned whether the agency should "reinvent the wheel."

After a long battle, Congress allowed the agency to provide electronic information directly to the public, but in a relatively raw form—leaving the door open for private firms to "crunch" the numbers into more usable formats for customers.

Today, "everybody supports the Federal Maritime Commission modernization," says Ronald Plesser, an attorney for the private providers of information.

Republican Rep. Frank Horton of New York, ranking minority member on the Government Operations Committee, predicts that the paperwork bill will sail through the House on the noncontroversial calendar of measures.

It has the support of most industry and public-interest groups, except one big one—the American Library Association.

The association opposes the Wise provisions because of its suspicion of the Office of Management and Budget.

Under the bill, the OMB director would be required to "guide" agency information policy, following the guidelines laid out in the law.

"As librarians we know that information is power and if this goes through it will give OMB a lot of power over information," says Anne A. Heanue, an official of the Library Association's legislation committee.

"We have seen OMB in operation," says Patricia Schuman, chairman of legislation for the association. Its role would have a "chilling effect" on agencies releasing information, she says.

But the Information Industry Association, a group of 850 information companies, sees little problem with the legislation.

"We don't believe it gives OMB any more power than it has now. . . . This is the first statute setting out the right of access. Where we once argued against government competition we now believe the best way to get information to citizens is sometimes government and sometimes private."

Gary Bass, head of the citizen organization OMB Watch, says the measure "goes a long way toward advocating greater accountability for both OMB and the entire government." ■

HB 405 = 4.25.90

Kelly _ if so good, why exempt?
Faiks _ reluctance on everyone's behalf.
Not fair what Tourism got away with
Bush _ Except MOA, exemptions are from
T.I.C. not from all public access.

MOA/ Employees rights should equal state rights
Sid Robertson _

Brown

John McKay = Reject MOA.
MOA amendments = less disclosure
MOA has not complied with state laws
thus far.
AK. Suprene Court req. files _

Terry Schiescher = Reject MOA

DPS = #7
↳ requires fingerprints on other people
Kelly? Access to?
600 Terminals, 2500 users
Faiks _ will contact Schliesscher
KELLY: Request ACLU opinion

BUSH: LOOK AT AMENDMENT _

HB 405 — Terri

CS — Legal —
Adam's: Amendment "subcommittee" OK

BROWN/ULMER AMENDMENT
Take out Sec. 10

Adam's —

McKay and Fleischer: 276-3390
U of A: difficult to bring under state law under TIC
MOA: preserving status quo
- Each municipality would have to be dealt with differently
- Allow MOA to adopt regulations which increase public access.
- Supreme Court...