LEGISLATIVE FINANCE-HOUSE/SENATE FINANCE COMM. FILES 8879

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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).

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

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 of 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

Directorate-General
for Telecommunications,
Information Industries and
Innovation

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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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Guidelines for improving the synergy between the public and private sectors in the information market

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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.
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Geographic Information Systems: Issues Arising from the Proliferation of Information

Phillip Parent

Phillip Parent is a consultant with BSI Consultants, Inc. in Oakland, California. Formerly associated with the National Center for Geographical Information and Analysis, he has a background in survey, publications, hazardous waste management, and management of geographic information systems.

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 300,000 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 were 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." ■

THE FLORIDA LEGISLATURE
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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.

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

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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.

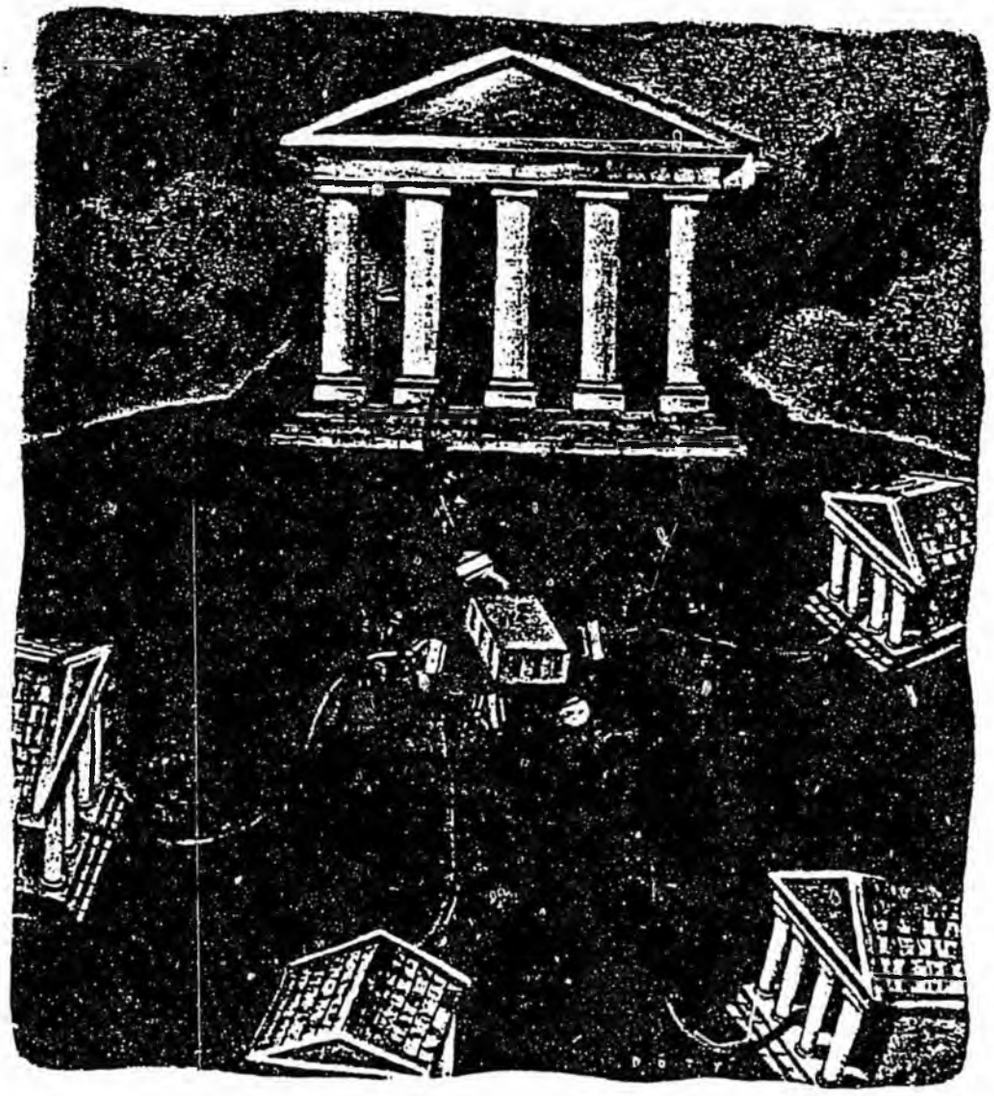
These issues have already created difficulties for legislatures. In Texas an optical storage law has been challenged because it allowed for the destruction of "the original" paper records and authorized the use of technology for which there are no national standards.

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. ∎

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 Döty 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.

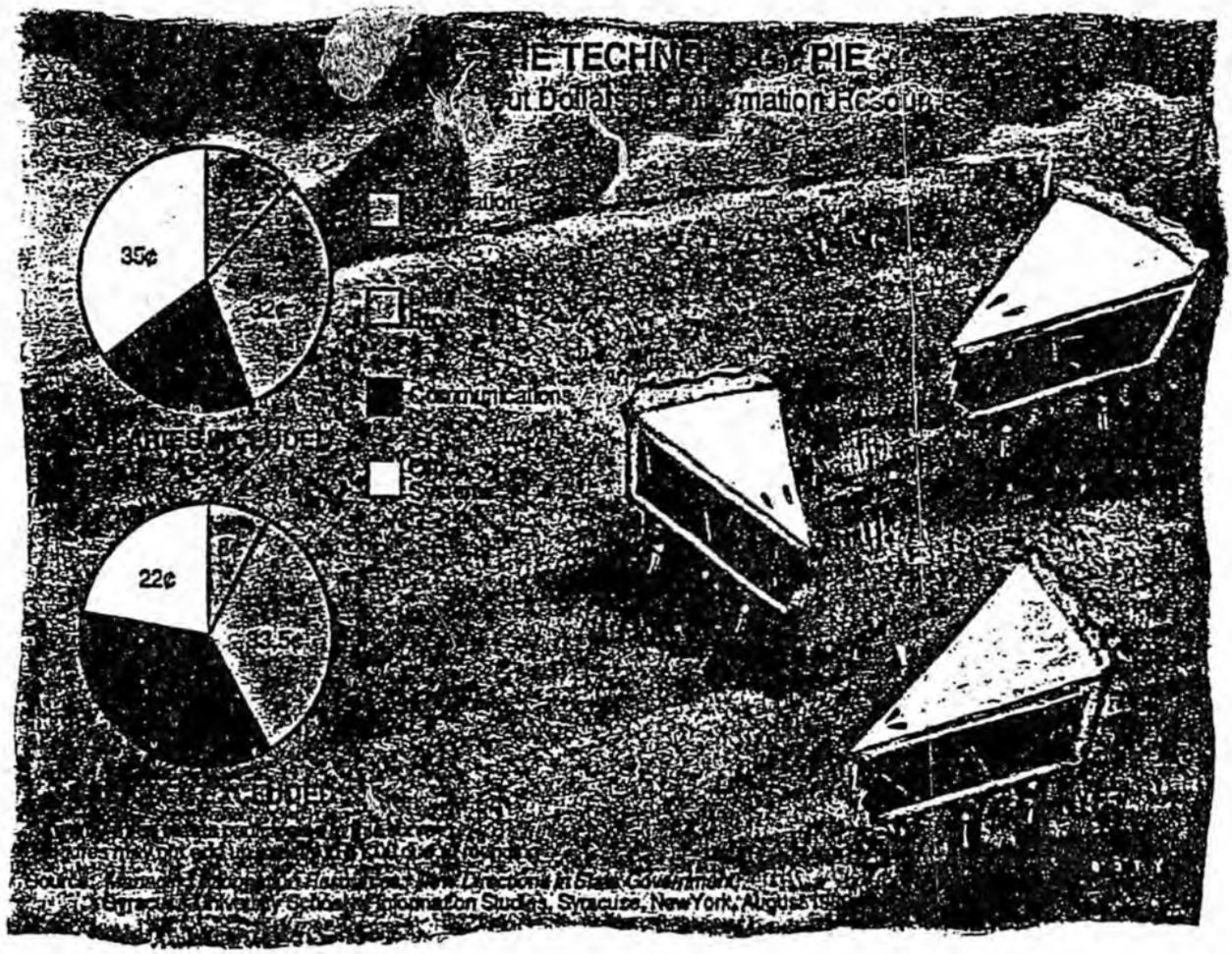
The effective management of information resources thus promises to increase productivity in the states. "If you are going to improve the quality of state government," asks Marchand, "where else would you look?" In the future, states will be judged on how well they define their information needs and how 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 ill prepared for the information explo-

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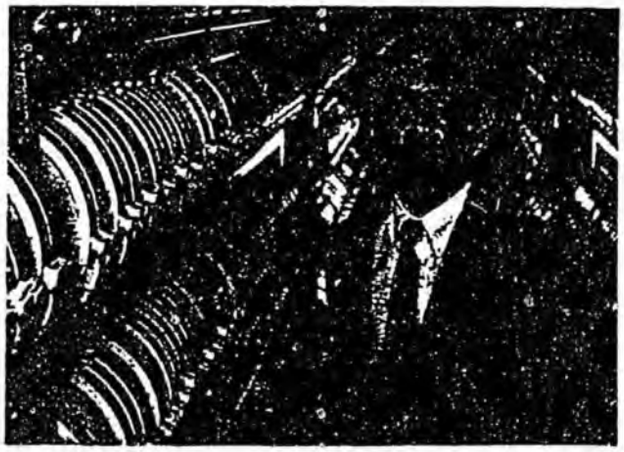
A MAN AND HIS DATA:
STEVE DOOLEY OF KENTUCKY

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 1983 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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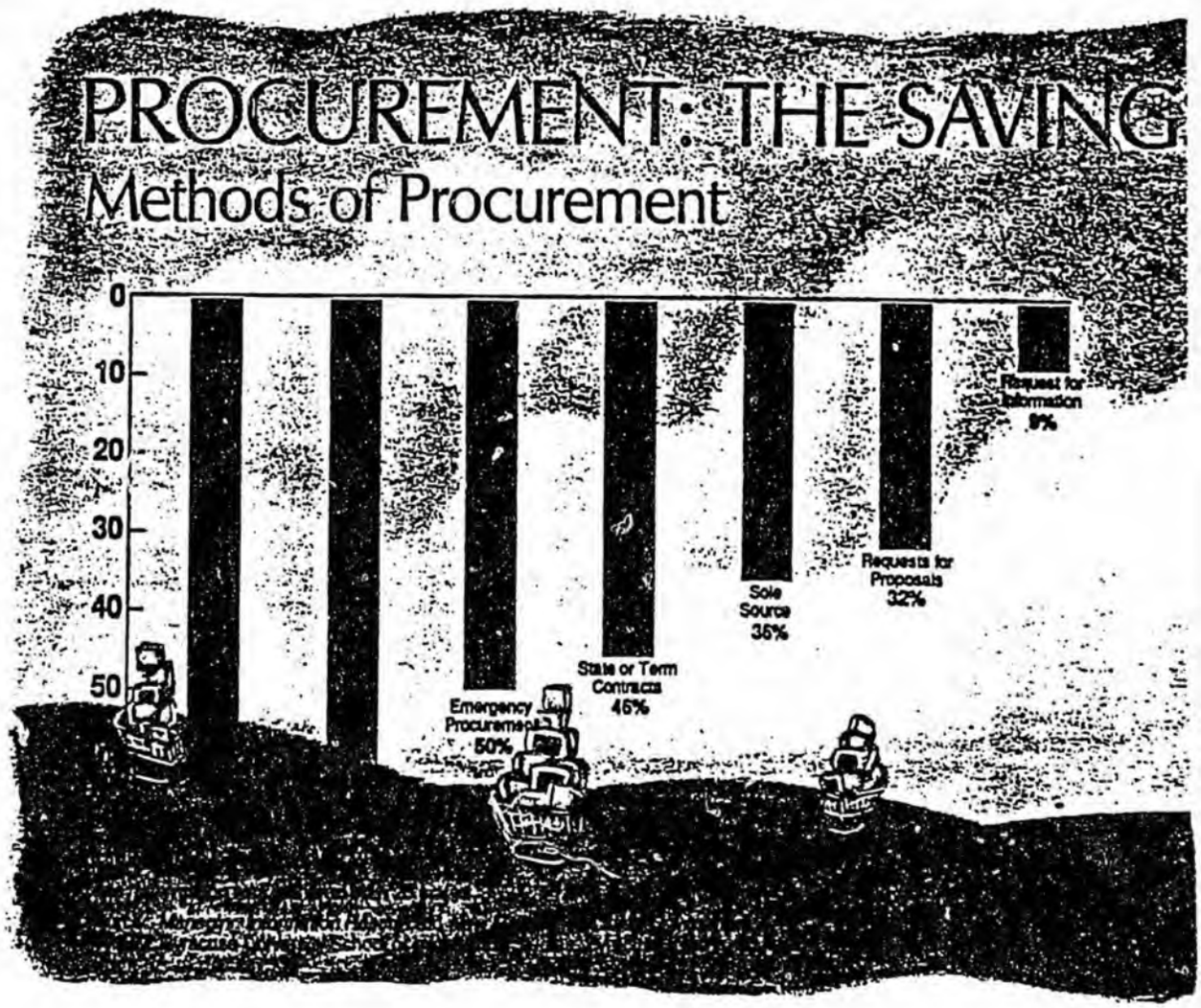
PROCUREMENT: THE SAVING



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 sp $15.8 million on computer hardware—plus $4.4 mill on software—in FY 1987-1988. Meanwhile, outlays state governments nationwide continue to grow at timated rate of 7 percent each year.

As Caudle and Marchand acknowledge, such estima are a far cry from hard and fast statistics, and imprecision shows that the states have only a vague ic of the amounts they are spending on information sources. The culprit: outmoded accounting systems t are either too crude or too complex to accurately tra information-technology expenditures. Some states, for ample, lump purchases of computers and bulldozers gether as capital-equipment costs; others record eve purchase in unnecessary detail, frustrating manage

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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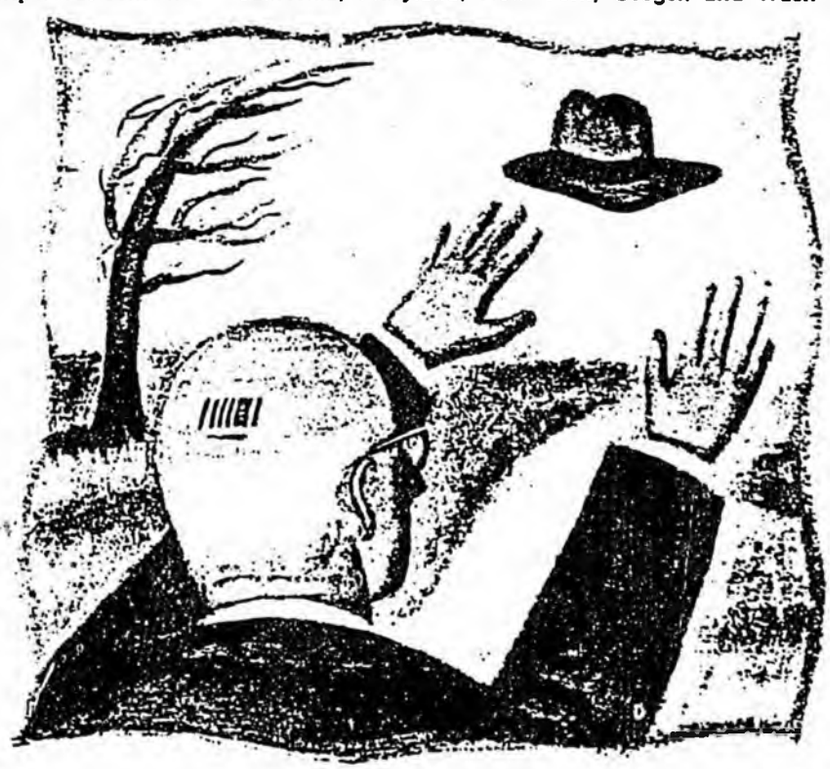
THEORY INTO PRACTICE

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.

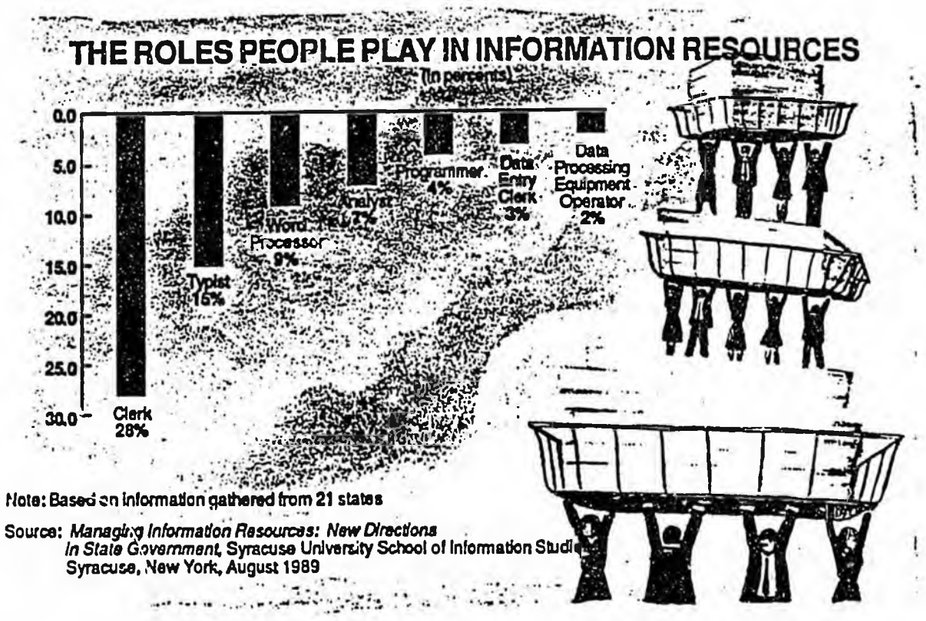
No longer is the management of information resources a computer-room pursuit; as of 1989, Caudle and Marchand estimate, more than 420,000 state executive-branch jobs existed in the field. That figure is nearly 20 percent of all state executive employees, excluding educational personnel.

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."



Note: Based on information gathered from 21 states

Source: *Managing Information Resources: New Directions In State Government*, Syracuse University School of Information Studies, 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 [illegible] 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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CONTACT POINTS

For more data on managing data, call the state contact person, designated by the National Association for State Information Systems:

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ARIZONA: Ben Froehlich, Department of Administration, (602) 255-2250.
ARKANSAS: Robert McQuade, Department of Computer Services,(501) 682-4302.
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COLORADO: Hans Hultgren, Department of Administration, (303) 866-3222.
CONNECTICUT: Franklin Johnson, Administrative Services, (203) 566-2747; Charles Miller, Information Systems, (203) 566-7093.
DELAWARE: Dr. John J. Nold, Office of Information Systems (302) 736-9628.
DISTRICT OF COLUMBIA: Michael Stover, Information Resources, (202) 727-2277.
FLORIDA: Mike Hale, Information Resource Commission (904) 488-4494.
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MAINE: Arthur W. Henry, Jr., Bureau of Data Processing, (207) 289-3631.
MARYLAND: Robert M. Bassford, Budget and Fiscal Planning, (301) 974-2280.
MASSACHUSETTS: James Corum, Administration and Finance, (617) 727-2160.
MICHIGAN: Robert Stewart, Department of Management and Budget (517) 373-7326.
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MISSISSIPPI: Frank Stebbins, Central Data Processing Authority, (601) 359-1395.
MISSOURI: Daniel Sterdley, Data Processing/Telecommunications (314) 751-1516.
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NEVADA: Hals Bennett, Department of Data Processing, (702) 687-4090.
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NEW JERSEY: Henry J. Murray, Department of the Treasury, (609) 530-6078; Marilyn Blazovsky, Department of the Treasury, (609) 530-6090.
NEW MEXICO: Gerald S. Ralston, General Services Department, (505) 827-2001.
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OHIO: Margaret Theibert, Department of Administrative Services, (614) 466-5083.
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OREGON: Gerald C. Schmitz, State Executive Department, (503) 378-3161.
PENNSYLVANIA: Joseph Connovitch, Technology Management, (717) 787-9107.
RHODE ISLAND: George Patton, Department of Administration, (401) 277-2276.
SOUTH CAROLINA: Ted Lightle, Budget and Control Board, (803) 737-0075; Bobby M. Bowers, Budget & Control Board, (803) 734-3793.
SOUTH DAKOTA: Jeff Stroup, Bureau of Administration, (605) 773-3688.
TENNESSEE: Bradley S. Dugger, Finance & Administration, (615) 741-3700.
TEXAS: Lynn Polson, Information Telecommunications Council, (512) 463-5530.
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VERMONT: Bruce MacDonald, Department of General Services, (802) 828-2334; Gerald R. Gingras, Agency of Transportation, (802) 828-2581.
VIRGINIA: Michael J. Durkin, Information Technology, (804) 225-2423.
WASHINGTON: Nancy Abraham, Department of Information Services, (206) 586-5555.
WEST VIRGINIA: Royce Chambers, Finance & Administration, (304) 348-5310.
WISCONSIN: Thomas E. Alt, Department of Administration, (608) 266-1774.
WYOMING: Joe Snow, Department of Administration/Fiscal Control, (307) 777-7801.

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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." □

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.

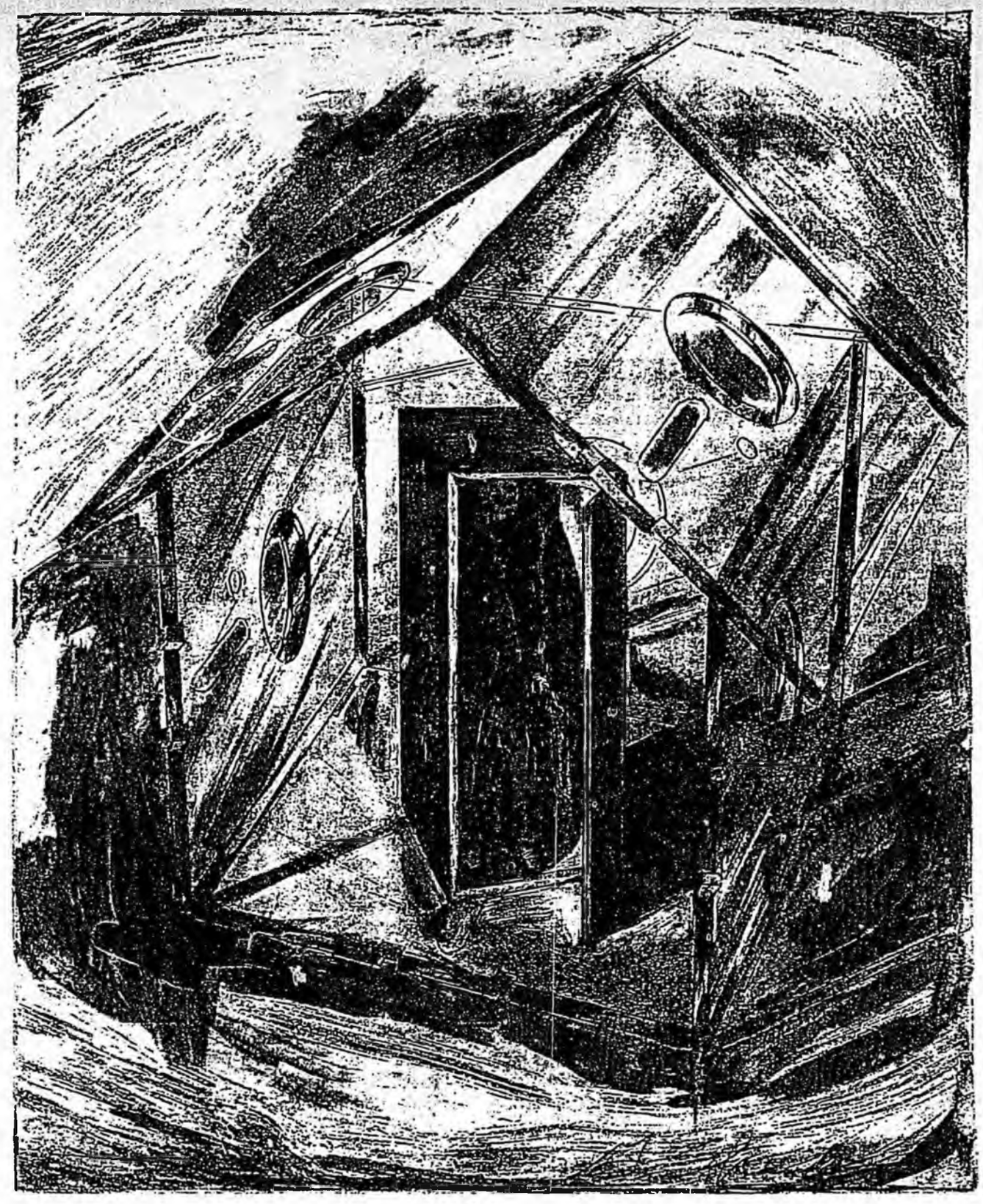
Schaeffer's story illustrates the tension between government's need to gather and use personal data and the individual's right to privacy. In an age when governmental agencies at all levels are gathering and trading massive amounts of computerized information, personal records are increasingly vulnerable. 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 $250,000 to administer, but state agencies put the figure at closer to $2 million. A new version of the bill

Gene Straimler 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."

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.

Most state officials agree that privacy laws and freedom of information laws can coexist, but they acknowledge that a balancing act is required.

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

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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.

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 page 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.

JMR 1/19/90

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

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

STATE OF ALASKA
1990 LEGISLATIVE SESSION

Bill Version: CSHB 405 (SA)
Publish Date:

FISCAL NOTE

REQUEST:

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

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 receipt: for this purpose.

Prepared by: Keith Busch, Director
Division: Finance
Phone: 465-2240
Date: 2/21/90

Approved by Commissioner: Frank S. Baxter
Agency: Department of Administration
Date: 2/21/90

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: CSHB 405 (SA)
Publish Date:

FISCAL NOTE

REQUEST:

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

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	50.9	50.9	50.9	50.9	50.9	50.9
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	50.0	50.0	50.0	50.0	50.0	50.0
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	100.9	100.9	100.9	100.9	100.9	100.9
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	100.9	100.9	100.9	100.9	100.9	100.9
TOTAL	100.9	100.9	100.9	100.9	100.9	100.9

POSITIONS:

FULL-TIME	1	1	1	1	1	1
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

ANALYSIS: (Attach a separate page if necessary)

One of the functions of the Division of Finance is to support public access to public records. However, the Division of Finance has been unable to accommodate all public and media requests for information even though an estimated $50.0 a year is spent to accommodate as many requests as possible. The type of unfulfilled requests received includes: Detailed information about purchases made by the State, including with whom they were made; lists of all outstanding State warrants; and online listings of State warrant status, thereby allowing financial institutions to automatically verify the status of State warrants. (See Attachment)

Prepared by: Keith Busch, Director — Phone: 465-2240
Division: Finance — Date: 2/15/90

Approved by Commissioner: Frank S. Baxter — Date: 2/16/90
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

CONTINUATION of FISCAL NOTE ANALYSIS

For CSHB 405 (SA)

If this bill passes, it is assumed that requests for information will increase. While it is not possible to estimate the exact amount of additional work associated with this bill, we are requesting an appropriation of general fund program receipts to allow us to meet the anticipated requests. Receipts would come from the requestors of the information, as result of the Division charging a fee, as is encouraged in the legislation.

Program support costs include one position ($50.9) to develop the programs for extracting the requested data in an acceptable format. For security reasons, it would not be possible to give outside organizations access to raw, unedited data. In addition, more data lines, and the telecommunications hardware needed to communicate with the additional data lines would be required at a costs of $50.0, as shown below.

One full-time Analyst Programmer III	$ 50.9
Data Process Equipment and Support	50.0
Total Cost	$100.9

SENATE FINANCE COMMITTEE REPORT

DATE: 4/28/90 FURTHER:

DATE TURNED INTO OFFICE: 5/7/90

The Finance Committee considered CSHB 405 (Finance) am

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.

and recommended:

[✓] replace with S CS CSHB 405 (Finance) [✓] same title [ ] new title
[ ] or adopt _____ CS _____ [ ] technical title change (HB only)

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

[ ] do pass

[ ] do not pass

[✓] no recommendation

[ ] individual recommendations

[ ] further referral to _____

ATTACHES NEW FISCAL NOTE(S): Dept/Date:

[ ] fiscal note(s) _____

[✓] zero fiscal note(s) SFC/All 5/7/90

[ ] appropriation-no fiscal note

APPROVES PREVIOUS: Dept/Date:

[ ] fiscal note(s) _____

[ ] zero fiscal note(s) _____

SIGNING DO PASS:

1. DO PASS

2.

OTHER RECOMMENDATIONS:

No Rec

No Rec

No Rec

Co-Chairs: Signatures and Recommendations

STATE OF ALASKA
1990 LEGISLATIVE SESSION

BILL VERSION: SCS CSHB 405(Finance)
PUBLISH DATE: _____

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: Requests for information by public agencies; public access;etc
Sponsor: Representative Brown
Requestor: Senate Finance Committee

Agency Affected: All Departments
BRU: _____
Components: _____

Adopted

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

Prepared by: Senator Rick Uehling, Co-chairman
Division: Senate Finance Committee
Phone: 465-4821
Date: May 7, 1990

Approved by Commissioner: _____ Date: _____
Agency: _____

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

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

IN THE HOUSE BY THE FINANCE COMMITTEE

SENATE CS FOR CS FOR HOUSE BILL NO. 405 (Finance)

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 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. 10. AS 16.05.815 is amended by adding a new subsection to read:

(d) Except as otherwise provided in this section, the department shall keep confidential (1) personal information contained in fish and wildlife harvest and usage data; and (2) when the knowledge may be detrimental to the fish or wildlife population, the records of the department that concern telemetry radio frequencies of monitored species, denning sites, nest locations of raptors that require special attention, and the location of fish and wildlife species. The department may release records and information that are kept confidential under this subsection if the release is necessary to comply with a court order or if the requestor is a state or federal agency. After 25 years, the records and information that are kept confidential under this subsection become public records subject to inspection and

copying under AS 09.25.110 - 09.25.140 unless the department determines that the release of the records or information may be detrimental to the fish or wildlife population. In this subsection, "personal information" has the meaning given in AS 44.99.040.

* 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.

* Sec. 13. 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. 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.

CORRECTION

THIS DOCUMENT
HAS BEEN REPHOTOGRAPHED
TO ASSURE LEGIBILITY

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.

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5/7/90 am
K. Brown

Sec 9
Am #1: p 11, lines 10 thru
DELETE: p 12, lines 1-2

Am #2: p 13-14
Sec 14 & 15

6-1782P-
Bannister
5/4/90
Adopted
by SFC
5/7/90

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

IN THE HOUSE BY THE FINANCE COMMITTEE

SENATE CS FOR CS FOR HOUSE BILL NO. 405 (Finance)

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 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