

ALASKA LEGISLATURE COMMITTEE FILES 1981-1982 8672

1674 SJ SB 90.

The Honorable Patrick M. Rodey
March 26, 1981
Page two


As a result of our judgment that medical records are a private matter and that they could be released under the current version of CSSB90, we request that CSSB90 be amended to specifically declare that medical records are not public records and are not disclosable under AS 40.25.015. We would suggest that the amendment be as follows:

On Page 1 after Line 26, insert:

- (7) for purposes of this chapter, medical records are private information and do not constitute a public record.

Thank you for your consideration in this matter.

Sincerely,



Dennis L. DeWitt,
Executive Director

DLD/sam

cc: Members of Senate Judiciary Committee
Senator Charles H. Parr

THE ALASKA HOSPITAL AND MEDICAL CENTER, INC.

April 3, 1981

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Emmitt Wilson

Ronald A. Pavellas
Administrator

Mr. Kevin K. Bruce
Committee Aide
Alaska State Legislature
Senate Judiciary Committee
Pouch V
State Capitol
Juneau, Alaska 99811

Dear Mr. Bruce:

Thank you for your invitation to testify on CSSB 90
on April 10.

Unfortunately, I will be unable to attend on that date.
However, Mr. Dennis DeWitt, Executive Director of the Alaska
State Hospital Association, will be able to attend and make
comment upon the proposed legislation.

His testimony will include any comments I would make.

Sincerely,

Ronald A. Pavellas
Ronald A. Pavellas
Administrator

RAP:jb
cc: Dennis DeWitt

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Pouch B-1
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NEA - ALASKA

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Deputy Executive Secretary
Fairbanks Office

March 27, 1981

TO: Senator Pat Rodey, Chair
Senate Judiciary Committee

FROM: NEA-Alaska

MEMORANDUM: RE: CSSB 90 (SA)

NEA-Alaska respectfully requests and urges that the bill be amended to provide that any records pertaining to assessment, evaluation and performance of job responsibilities in all regards; formal, informal, and casual, including but not limited to solicited and unsolicited statements from persons outside the scope of normal responsibility for evaluation of a certificated teachers performance of duties be specifically included under Section 40.25.030 EXEMPTIONS (a), rather than in the current paragraph (f) which makes same open for public inspection.

As CSSB 90 (SA) is currently constructed, general public access provided in the manner referenced above seems to be in direct conflict with the intent of this bill as stated in Section 40.25.010, (5) and (6) especially in application of the Constitution of the State of Alaska, Article 1, Sections 7, 14, 15, and 22.

The process of evaluation and assessment of performance and the general accumulation of records attendant to same has been one of confidentiality as evidenced by 4AAC 19.010 - .060, contract language between school districts and recognized certificated teacher bargaining agents, and by tradition. To open these records and make them generally accessible will only serve to diminish and make far less effective the process of evaluation of performance.

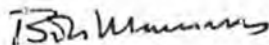
The dangers inherent in such access may focus on problems attendant to:

- a) Conclusion drawing by inference from such things as leave records, grievance records, transfer requests where the person requesting such records may not be knowledgeable about background attendant to same.
- b) Reluctance for candor on the part of evaluators both in making recommendations for improvements and for making statements which might lead to non-retention or dismissal.

- c) Possible compromise to an author of a communication when the person assumed that the communication would be confidential.
- d) Circumstances when entries into a personnel record may not even be known by the employee to whom they pertain.
- e) College placement records which as a condition of availability are required to be treated confidentially.

Thank you for your consideration of this request.

Respectfully submitted:



Robert Manners
Executive Secretary

RM:jw

W. Powell
Alaska

TESTIMONY BEFORE THE TELECONFERENCE OF THE HOUSE AND SENATE JUDICIARY COMMITTEES ON
HB 7 and SB 90

Committee Chairmen and Members: On behalf of the Alaska Freedom of Information Task Force, an organization of more than 40 newspapers, radio and television stations, magazines and other media organizations, I want to thank you for scheduling this joint teleconference and expediting action on this very important bill. Our organization is dedicated to bringing government out of the shade where the people's business is being hidden and keep it in the sunshine where that is presently the case.

I have urged our members to judge any proposed legislation against the current law. Both HB 7, which is based in great measure on a Model Bill we developed, and SB 90 are improvements over the present law. If they were the only versions of this legislation under consideration, we would be pleased and certain that our goals would be accomplished. Unfortunately, two other versions have also been presented for the Legislature's consideration - the Senate Affairs committee substitute for SB 90 and a proposed substitute prepared by the Department of Law. Both of these versions are unacceptable to the task force and I believe to the state's media.

Perhaps the central dilemma of the Alaskan situation is any legislation to regulate access to public records must take into account the Alaskan constitutional provision protecting the right of privacy. I believe our Model Bill, HB 7 and SB 90 all do that in ways much preferable to CSSB 90 (SA) and the Department of Law's proposed substitute. I believe the U.S. Constitution, the Federal Freedom of Information Statutes and our current state law on public records places public access to government records above personal privacy interests in all but a few, well-defined instances. The Model Bill, HB 7 and SB 90 for the most part specifically define the exceptions. The other two versions establish a vague, undefined exception that could exempt records the disclosure of which would constitute an unjustifiable invasion of personal privacy. Exceptions must be specifically defined and governmental units must not be allowed great discretion in determining what records are open and what records are

closed because such action would result in a great many more records being closed than is now the case.

I don't wish to leave the impression that HB 7 and SB 90 are perfect. I will be submitting additional written testimony outlining specific changes we favor, but let me note a few of the more important changes. Both Bills would benefit by including a definition of the right of privacy. The Constitutional privacy provision mandates that the legislature protect that right and we believe that part of protecting it is defining it. We suggest the definition from the restatement of torts: Privacy is that right of an individual to be protected against publicity of a matter concerning that individual's private life when the matter publicized is of a kind that (a) would be highly offensive to a reasonable person and (b) is not of legitimate concern to the public.

Both bills would benefit from a section waiving fees when it is in the public interest or when the requestor is indigent and also providing for 20 pages of free copies in any 74-hour period.

In HB 7 we are concerned that a requestor be able to file a suit under the act in that individual's home jurisdiction, rather than be forced to travel to the jurisdiction where the record is located.

In SB 90, we would like to see original entry police records--those documents completed when an individual is taken into custody--eliminated from the exceptions. The Press has historically monitored police to see that no individual is held unjustly and removing original entry records makes police abuse a much greater burden. Also § 7 C of subsection 13 dealing with police records speaks of an unjustifiable intrusion into a person's right of privacy. If such language is to remain here and in other sections of the bill, we need a definition of a justifiable intrusion. Either that or delete the section. It is important here, as in other sections, that no one be left with the impression that anything unflattering is private when that simply isn't the case.

We would also like to see SB 90 place the burden of proof in a suit for disclosure on the governmental unit to prove that it was required not to release requested records.

TO: Rep.
Brown, Chair
House Judiciary
and

TO: Sen. Rodey
Chair, Senate
Judiciary

FROM: Allan
Lesche

FROM: Allan
Lesche

Phone 6-610
Anchorage 99501

Page 3 of 4

information. The courts should be instructed to presume in favor of disclosure.

Governmental units should be required to keep a public file of letters of denial of information requests, which would allow easy monitoring to determine whether the governmental units are complying with the law.

Finally, the bill should include computer maintained records and should also cover independent contractors paid with public money in whole or in part and under the supervision of a governmental unit. Increasingly the public's business is being conducted through private contractors and these actions must be subject to public scrutiny.

Your task is not an enviable one. You will undoubtedly be urged to exclude various branches of government or one or another of a multitude of types of records. Please recall that the public has a right to know what is being done by its government and in its name. It also has a right to know what is being done with the public moneys that support governmental units. I urge you to have the courage to keep the government in the sunshine. Remember that it is the people who benefit--not the media. 75 percent or more of all requests under the Federal Freedom of Information laws come from non-media sources and only 25 percent or less come from the media.

FROM: Allan
Teschle

Page 4 of 4

6 CONCEPTS

1. FEDERAL WFO SOURCE - REVIEWED FROM HBT
2. WFO & INVESTIGATION REPORT DISTURBANCE IN US SOURCE PRIVATE
3. PB-HBT-LOG ON US DISTURBANCE
4. P9-6117-DEV CONT UNIT IN CLOUDS WFO CONTRACTORS PLS. ON IN CLOUDS OF PUBLIC WORK
5. HBT REPORTS 4 MONTHS WITH PUB RELS. 5890 COST 1 N.

76, 77, 79

NOT A FEEDBACK LETTER
PUB



NEA - ALASKA

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March 12, 1981

Senator Pat Rodey
Alaska State Senate
Pouch V
Juneau, Alaska 99811

ATTENTION: Kevin Bruce RE: CS SB 90

Dear Pat:

NEA-Alaska has serious problems with certain sections of CS SB 90. While agreeing in principle with the basic intent of the bill, it seems apparent that Section 40.25.030(f) is in serious conflict with the policy statement, especially Section 40.25.010 (5) and (6).

Section 40.25.030(f) is so broad and all encompassing that it renders the teachers record of performance totally vulnerable to public scrutiny with virtually no consideration for the fact that such a record may not be accurate in any way. It appears to be in serious conflict with 4AAC 19.010-060 as well.

The evaluation of teaching performance is highly subjective and in many cases the product of personality relationships with administration. Further, student, parent, and community sensitivities may cause materials to become a part of a teacher's file and work record completely absent the knowledge of the teacher.

At the time of entry into the "record" it may not be known that such materials would subsequently become a part of litigation. The knowledge of same could easily deprive a teacher of fair and equitable treatment before an administrative agency such as a school board or in a community generally.

Each year we are faced with an increasing number of actions against teachers as employees which are all too frequently based on data which is not completely accurate and, in many cases, nothing more than the opinion of another person. To make this kind of information generally available appears to be a most serious intrusion into basic constitutional protections as well as a teachers right to reasonable academic and individual freedom.

I believe the potential exists for major problems as a result of the enactment of this kind of legislation and would strongly recommend that Section 40.25.030(f) (at least lines 23 - 28) be included as part of Section 40.25.030(a) EXEMPTIONS.

Further, Section 40.25.090 (5), in the definition of "records" does nothing more than compound the problem from our perspective in that it appears to make just about anything and everything relating to job performance available as a matter of record.

Perhaps 40.25.030(a) (12) could be broadened sufficiently to accommodate our concerns and still accomplish the general intent of this bill. There still remains, however, the potential for conflict between this bill and the content of negotiated agreements on matters pertaining to personnel files.

Finally, in looking at two other sections of the bill; in 40.25.015(d), there seems to exist a potential for extremely high cost of administration to the State and/or other governmental agency or sub-division, especially when considered in light of Section 40.25.015(c) which seems to make the process of access far too casual. Recently we have witnessed the extremely effective results of extremist and single issue oriented activity by various groups around the country who are well organized but whose success is sometimes dependent upon distortion and/or misinformation. This bill gives far too much latitude to those who do not always serve the public interest.

On behalf of NEA-Alaska, teachers throughout the State, and, I am sure, many other public employees, I respectfully request your attention to these concerns.

Sincerely,



Robert Manners
Executive Secretary

RM:jw

C: Senator Parr
Senator Fischer
Senator Stimson

CITY AND BOROUGH OF JUNEAU SCHOOL DISTRICT
P.O. BOX 808 • DOUGLAS, ALASKA 99824

April 10, 1981

The Honorable Patrick M. Rodey
Chairman of Senate Judiciary Committee
Pouch V
State Office Building
Juneau, AK 99811

Dear Senator Rodey:

I have been asked by the Alaska Association of School Administrators to prepare a position statement and submit it to your committee on Committee Substitute for Senate Bill 90 that is in your committee. The administrators in the state have some serious concerns about this particular bill and I will try to express them as concisely as possible. On the second page, line 15, copies of records and the ability to request them by telephone still causes all of us concern. We feel we should have full knowledge of whoever we are required to give the information to, which means something in writing signed by the person or them signing a log in the office as they request the information. On line 24 on the same page we have a concern about the section that says 20 pages of records copied without charge within any 24 hour period...we would suggest if this has to be, it should be within either one or two working days, as opposed to a 24 hour period. In addition to that, the school districts could be forced into having to hire extra help to cover cost of copying 20 pages if the requests become excessive.

Page 7 beginning on line 23 is request for information about personnel files that should remain confidential to protect the rights of the individuals. In addition, this would destroy the evaluation process which is designed to encourage supervisors to provide constructive criticism as well as areas their employees are performing satisfactory so they can improve. With this information going public, the threat of litigation will suppress candid and honest evaluation. Information such as job description, education, or training, past experience are part of the application forms and can be made public now.

CITY AND BOROUGH OF JUNEAU SCHOOL DISTRICT
P.O. BOX 808 • DOUGLAS, ALASKA 99824

Page 2


The Honorable Patrick M. Rodey

On page 8 line 3, we feel the finalists should be limited to upper management level positions for inspection as opposed to every job application in the school district. We do not feel that the benefits for making all job positions open in such a manner, would serve the best interest of the public or school, but would rather place a large undue burden on the backs of school districts.

One of the major concerns expressed by administrators is the fact this particular bill will place an undue burden on them to determine whether they will or will not release their records. Most of the smaller school districts do not have immediate access to a lawyer, so it places that decision on the back of the school administrator, and many are concerned about this additional responsibility placed on them. The school administrators do not want this interpreted as a desire on their part not to make information available to the public; however, we feel this bill under the current draft is going to add additional burdens and cost to the districts.

We thank you for this opportunity to present our concerns.

Sincerely,


Donald L. MacKinnon
Superintendent of Schools

DLM/el
cc: Darroll Hargraves

ANALYSIS OF HB 7, SB 90, CSSB 90(SA), Department of Law Proposed Substitute and Model Bill

By Dean M. Gottehrer, Univ. of Alaska, Journalism Dept.
Chairman Fairbanks, Alaska 479-7761
Alaska Freedom of Information Task Force

Five versions of a bill to create a new chapter in the state statutes on Privacy and Public Information have been created for the consideration of the Legislature. For purposes of analysis and comparison, it is difficult to hold one bill up as the standard and compare the others against it. A number of items have been suggested that could easily be incorporated into the Model Bill and strengthen it. Many more suggestions have been made that weaken access to information. So comparisons will have to be made across the different bills.

ANALYSIS OF HB 7: Of the three bills currently before one or another committees of the Legislature, this bill most approximates the Model Bill drafted by the Task Force. It has been rewritten from the Model Bill and many of the changes are insignificant and will not be noted here. Following are suggestions for improvement or questions raised by the rewriting: On page 2, line 17: Provision should be made for in person requests. Page 2, line 22: The section on charges, waivers and 20 pages free each 24 hours in CSSB 90 would improve the section on fees. On page 3, line 9: "that person's designee" is somewhat ambiguous and could be more specific as "the designees of any of these persons;" On page 3, lines 17 and 18 add physician-patient privilege to the Model Bill's language. All medical, psychological and sociological records should be available to the subjects of those records without exception. On page 4, beginning on line 1 the following language was added "privileged information and confidential commercial, financial" and should be removed. Page 4, line 21: Why was criminal removed? On page 5, line 7 change "the notes" to "all notes" so there is no possible ambiguity. Page 6, line 3: insert "date and" between "the" and "time" in the early part of the line. On page 7 in the section on denial of requests, what is a record of denials of requests for records? Is this a file of all copies of denials of requests and if so shouldn't that be said? Also on line 10, shouldn't it say "public" inspection? In 40.25.025(a) the question of jurisdiction was removed. The language in the Model Bill was intended to allow an individual to bring suit in that person's home jurisdiction, rather than forcing that person to travel to Anchorage, Juneau or Fairbanks, for example, to file suit. Page 9, line 13 adds "cities" to the list and should be included. HB 7 does not include a definition of privacy and we believe it should. Page 9, line 26 "information stored in a computer storage system" was added to the definition of record which improves the definition.

ANALYSIS OF SB 90: A detailed analysis of SB 90 has been done elsewhere, so here I will just restate some specific conclusions. SB 90 rates high with the Task Force. It includes all branches of government, provides speedy access to government documents and generally sides with free and open government. Most exclusions are justified. Needed changes include: A definition of the right of privacy, striking 0.25.015 (e)(8) which is too general an exclusion, eliminating from 40.25.015 (13) original entry police records and striking subsection (C) of that section which speaks of an unjustifiable intrusion into a person's right of privacy, placing the burden of proof in a suit for disclosure on the governmental unit to prove it was required not to release requested information, requiring each governmental unit to keep a file of letters of denial of information requests that should itself be public, include information stored in a computer system and independent contractors paid with public money in whole or in part and under the supervision of a governmental unit" in areas covered by the law.

ANALYSIS OF CSSB 90 (SA): Four changes to SB 90 found in CSSB 90(SA) improve the bill and should be incorporated into the Model Bill and HB 7. Page 2 subsection (d) on the fee schedule, waiver of fees and number of pages copied without charge in a 24-hour period improve the bill. 40.25.040 on Access to records by record subject and 40.25.06... Correction and amendment of records improve the bill and should be added. They provide that the subject of a record should have access to those records and that a process should be provided for correcting and amending records and where that is not done providing a method for the record subject to indicate differences with the records. On page 7, subsection (f) on personnel file information is a mixed blessing. The section on what is open in a file is an improvement over previous language. However, the part on applications limits the open record to finalists. While that is better than nothing, every applicant should be open to the public. Finally, this version also includes computer tape or information stored in a computer system, which is a plus. Unfortunately the committee decided to adopt a great deal of language from the Department of Law's proposed substitute that has the effect of delaying access, providing for the potential supremacy of personal privacy over the public interest in disclosure (section (12) on page 6 is particularly noxious here), perhaps removing autopsy records from public disclosure, probably providing for the notification of all persons named in records before the records are disclosed, eliminating the name of a crime victim as a public record and thus generally removing many records that are now public from disclosure or access by the public. Current legislation is preferable to CSSB 90(SA).

ANALYSIS OF DEPARTMENT OF LAW'S PROPOSED COMMITTEE SUBSTITUTE FOR SB 90: A number of the changes noted above to SB 90 originated in this version of the bill. Notable are the language on fees, waivers and free copies, access to records by the subject, correction and amendment of records and some of the language on employee records that would be open. A number of changes are neutral, but the overwhelming number of changes make this the most atrocious version of the bill yet presented. Any version of the bill is to be preferred to this one and certainly the present law is much better than this. The bill provides for much extended delays in denying records and for appeals of denials before an individual could go to court. (See page 3.) The bill establishes the "unusual circumstances" concept that will only act to delay access to public records. (See page 4, (d) (1-4) for the specifics.) The bill establishes the balancing of privacy against the public interest for disclosure and then lists a number of dubious factors for the governmental unit to consider before disclosing--including possible adverse effects on the individual of possible disclosure. (See pp. 6-8, subsections (b) and (c).) It also requires the governmental unit to make reasonable efforts, which are never defined, to notify a person subject of a record when there is a substantial probability that the person would object. The bill also distinguishes accessible records and defines them in such a way as to practically guarantee that individuals who wish to see records about themselves or amend or correct them will have a difficult time doing so. (See (1) on page 12.) Finally, the effective date is July 1, 1982 and there is no reason that justifies such an extended delay. The bill also drops sections found in SB 90, CSSB 90(SA), HB 7 and the Model Bill pertaining to attorney work product and judicial documents. It also eliminates the name of the victim of a crime and the definition of personal information. It fails to define privacy and an unwarranted invasion of personal privacy.

MODEL BILL: As noted above, some additional sections found in various version could easily be incorporated in the Model Bill--specifically the sections on fees, waivers and free copies, and the sections on access to records by their subjects and corrections and amendments to records.

TO: Rep. Brown, Chair. House Judiciary and Sen. Rodey, Chair. Senate Judiciary

FROM: Dean M. Gottehrer, Chairman, Alaska Freedom of Information Task Force

Univ. of Alaska, Journalism Dept. Fairbanks, Alaska 479-7761

APR 23 1980

TO: The Honorable W. R. Hudson
Commissioner
Department of Administration

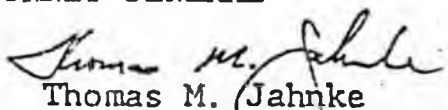
DATE: February 21, 1980

FILE NO: J-66-209-80

TELEPHONE NO.

FROM: AVRUM M. GROSS
ATTORNEY GENERAL

SUBJECT: Disclosure of names
& addresses of long-
evity bonus recip-
ients

By: 
Thomas M. Jahnke
Assistant Attorney General
Department of Law

By memorandum dated October 4, 1979 you requested our opinion on whether disclosure of the names and addresses of longevity bonus recipients to legislators violates their right to privacy. We believe that it does not.

The question presented is controlled by AS 09.25.-110 which provides that all agency records, papers, and files are open to public inspection unless specifically provided otherwise. We are aware of no statute or regulation which is to the contrary.

We do not believe that Alaska Const., art. I, § 22 dictates a different result. It states:

The right of the people to privacy is recognized and shall not be infringed.

The scope of this right has been barely defined in decisions by the courts.

In Falcon v. Alaska Public Offices Commission, 570 P.2d 469 (Alaska (1977)) the court noted the potential for unconstitutional invasion of privacy in the operation of a statute requiring a doctor/candidate to disclose the names of patients to the commission. Information which might be deemed protected by one's right to privacy was said to include

that which a person desires to keep private and which, if disseminated, would tend to cause substantial concern, anxiety, or embarrassment to a reasonable person.

570 P.2d at 479. (Emphasis added.) We do not believe that reasonable persons could suffer substantial anxiety or embarrassment by reason of any disclosure to legislators that

The Honorable W.R. Hudson
February 21, 1980
Page #2

they are long-time domiciliaries of Alaska and over age 65.


We note that there are specific statutory prohibitions against disclosure by the Department of Health and Social Services of the names of recipients of public assistance. AS 47.05.020 -- 47.05.030. That restriction has no force in the Department of Administration, Division of Pioneer Benefits. Additionally, AS 47.45.170 makes it absolutely clear that longevity bonus is a reward or incentive, not a form of public assistance. The absence of a comparable non-disclosure provision in AS 47.45 militates in favor of disclosure.

We do not address the question whether such disclosures may be made to parties other than legislators.

TMJ:md

TO: Non. Lee McAnerney, Commissioner DATE: April 17, 1979
 Department of Community & Regional Affairs
 ATTN: Palmer McCarter, Director FILE NO: J-66-642-79
 Local Government Assistance TELEPHONE NO:

FROM: AVRUM M. GROSS SUBJECT: Availability of
 ATTORNEY GENERAL mailing lists

By: 
 Rodger W. Pegues
 Assistant Attorney General

You have asked whether mailing lists or names of persons who apply for tax exemptions as senior citizens or as owners of farm land are privileged.

The answer to your question will depend on the circumstances of each case. The right to privacy under the Alaska Constitution is not absolute. Falcon v. A.P.O.C., 570 P.2d 469, 476 (Alaska 1977). However, it may not be infringed upon without "sufficient justification." Id. The result is that, prior to making a disclosure, there must be a weighing and balancing of the interests to be served by making the disclosure against the interests to be invaded or infringed upon.

If, for example, a legislator requires information in order to aid him in the performance of his duties as a legislator, the interest to be served by disclosing the information to him is an important governmental interest. A correspondingly important interest in privacy would be required to deny the request.

On the other hand, the public interest, if any, in making mailing lists available to vendors, interest groups, pollsters, and the like is slight indeed; and the individual's interest in being left alone and in not having the government facilitate an invasion of his privacy appears, on its face, to be more important.

There is a difference, however, in furnishing a copy of a mailing list to someone, on the one hand, and allowing that same person to look at and copy information on file, on the other. If a person wishes to take the time and make the effort to gather names and addresses which are on file -- and that information does not in itself reveal matters which a reasonable person of ordinary prudence would wish to keep private -- the files are open for inspection and copying.

Palmer McCarter
April 17, 1979
Page #2

We do not believe that a person who applies for a tax exemption for farm land can reasonably expect that information to be kept private. There is nothing embarrassing about having a farm, and assessment records are public records at any event. On the other hand, he can reasonably expect the state not to sell (or give) the mailing list on which he appears to a farm supplier or what have you.

A person who applies for a senior-citizen tax exemption may well wish that information to be kept private. Many people, still vigorous and capable, are rejected for one thing or another because they are "too old." While attitudes on aging may be improving, for the present, many people prefer that their having reached 65 years of age not be made a matter of public knowledge. That appears to be a reasonable proposition. However, their right to privacy is not absolute, and to the extent that there is a public need to know which -- as opposed to how many -- persons have the exemption, the information could be disclosed on a case-by-case basis. So far, we have not been advised of any need to know the names of persons with this exemption. Accordingly, neither a mailing list nor the files should, as a general rule, be available on senior-citizen tax exemptions. Of course, information on file which does not reveal names or addresses is public.

There are few easy answers in these matters. You are under a duty to make your files available for public inspection and copying. AS 09.25.110, 120. Records made confidential by state law, however, may not be disclosed. AS 09.25.120. The right to privacy guaranteed by the constitution is, of course, one of those laws. Alaska Const., art. I, § 22. You must obey those commands, and in doing so, reconcile them so as to avoid conflicts between them. For example, by excising names and addresses you can, in most instances, give the inquirer the information he needs while still protecting the privacy of the individuals. When in doubt, it is best to err on the side of non-disclosure. A court or higher administrative authority can always correct an erroneous refusal to disclose. No one can correct an erroneous disclosure.

For now and with respect to the problem as stated, we can give you the following rules:

1. As a general rule, the government may not

Palmer McCarter
April 17, 1979
Page #3

furnish mailing lists of individuals to vendors, interest groups, and the like:

2. As a general rule, the names and addresses of applicants for the senior-citizen tax exemption are confidential.

3. As a general rule, the names and addresses of applicants for the farm-use tax exemption may be disclosed.

RWP/pjg

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

PO BOX 8 - STATE CAPITOL
JUNEAU 99811

July 31, 1978

Mr. Francis M. Flavin, Ombudsman
840 'K' Street, Suite 203
Anchorage, Alaska 99501

Re: Ombudsman Complaint
#A78-0655 (license
plate information)
Our File: J-66-787-78

Dear Mr. Flavin:

Your letter to the Attorney General on this matter has been referred to me for reply. The issue presented is whether the adoption of the Privacy Amendment to the Alaska Constitution, art. I, § 22, impliedly amended AS 09.25.110. */

Often called the Alaska Freedom of Information Act, AS 09.25.110 **/ provides generally that, absent a "specific" dictate to the contrary, all public records are open to public inspection and copying. Nothing in the section requires (or

*/ A threshold question is whether AS 44.23.020 allows the Attorney General to provide the Ombudsman with legal advice. We believe that, as an agency of the legislature, AS 24.55.110, the Office of Ombudsman is entitled to a written legal opinion under AS 44.33.020(b)(4). Even in the absence of that statute, the Attorney General's common law powers would appear to authorize the opinion. *Public Defender Agency v. Super. Ct., 1st Jud. Dist., 534 P.2d 947 (Alaska 1975)*.

**/ The section reads as follows:

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 and are open to inspection by the public under reasonable rules during regular office hours. The public officer having the custody of public records shall give on request and payment of costs a certified copy of the public record.

Francis M. Flavin, Ombudsman
Anchorage, Alaska

July 31, 1978
- 2 -

even authorizes) the keeper of the records to inquire into the bona fides of the request for a record or other information. Nothing in the section allows the keeper of the records to reject a request simply because he doubts that it is legitimate or even if he is convinced on the basis of the information available to him that the request is illegitimate. The statute is Kantian in its dictate. If a rapist asks for a girl's name and address, under the statute's plain language, the keeper of the records must reveal them.

This office has, however, consistently rejected the Kantian formulation and taken the position that the constitutional right of privacy takes precedence over the Freedom of Information Act. When the two come in conflict, the keeper of the records (the state) can facilitate or cause a person's privacy to be invaded only to the extent that a legitimate public interest requires it. Falcon v. A.P.O.C., 570 P.2d 469 (Alaska 1977). Hence, if a public release of information would result in a disclosure which would stigmatize one or subject one to opprobrium or otherwise disclose matters which an ordinary, reasonable person would prefer remain private, then there must be a legitimate public interest in releasing the information sufficient to justify the invasion of privacy before the information can be released. Falcon v. A.P.O.C., supra; cf., Ravin v. State, 537 P.2d 494 (Alaska 1975) (balancing of interests).

With respect to motor vehicle registration, as a general rule, the release of the information is in itself harmless. The probability of serious misuse does not appear to be great. The likelihood of potentially obnoxious use (e.g., an unsolicited offer to purchase) does not appear much greater. As a general rule, persons requesting the information will have an interest sufficient to justify the information's release, i.e., hit-and-run victims, seekers of witnesses to accidents, junkyard dealers, auto towers, and creditors. Even a would-be, albeit unsolicited, purchaser has a legitimate interest. */ No one has suggested that there is any pattern of misuse of

*/ We cannot agree with your assumption that the only legitimate use of registration information is to further its major purpose, i.e., revenue and law enforcement. It is, for instance, used to establish ownership. AS 28.10.560; State Farm Mut. Auto Ins. Co. v. Clark, 397 F.Supp. 745 (D. Alaska 1975).

Francis M. Flavin, Ombudsman
Anchorage, Alaska

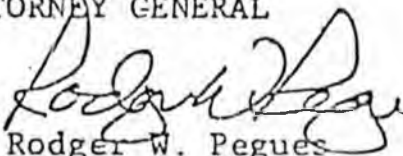
July 31, 1978
- 3 -

information or any serious or persistent problem in the misuse of information which would support an imposition of administrative restrictions on the release of information under AS 09.25.100 and 110. If such a pattern or problem existed, then the protections of the Privacy Amendment could be invoked. But absent both, the statute controls.]

It would certainly be possible, if it chooses to do so, for the legislature to amend title 28 to provide for the administrators to devise regulations or forms for protecting motor vehicle registrants (and others) from constitutionally permissible but nevertheless unwanted intrusions into their privacy. We do not believe that, absent a change in the law or the existence of an actual and serious problem involving someone's privacy, the administrators have the authority to carve out their own exceptions from the statutory dictates of AS 09.25.110. That would be a real abuse of discretion, an abuse which you would, undoubtedly, soon be called upon to examine.

Sincerely yours,

AVRUM M. GROSS
ATTORNEY GENERAL

By: 
Rodger W. Pegues
Assistant Attorney General

RWP:md

MEMORANDUM

State of Alaska

The Honorable Andrew S. Warwick
Commissioner
Department of Administration

DATE: July 22, 1976

FILE NO:

TELEPHONE NO:

Richard A. Bradley
Assistant Attorney General
Department of Law

SUBJECT: Access to employees'
home address by members
of the public

A request by a union for the names and addresses of state employees has caused us to review the questions that the releases of such information may raise. Authority for such a release was offered by the union and was said to include AS 09.25.120; AS 40.21.060(1); and AS 29.40.070.

As I understand the situation, you have no objection to the release of the names of state employees or to the release of the identity of their employing agency. The address at which the employee receives personal mail presents a greater difficulty; it is not the policy of the State to deliver through the State's mail system what is personal mail of an employee.

AS 09.25.120 (and its sister section, §110) generally provides for the release of information to the public unless the information is required to be maintained confidential. I consider that it is clear that the addresses of state employees are not required to be kept confidential by any affirmative law or regulation; it is apparently the practice of the Division of Personnel not to view employee addresses as part of the employee's "personal history"; and it is therefore not confidential under Personnel Rule 14 07.0.

AS 40.21.061(1) obliges the chief executive officer of each agency to maintain the records of his agency; it bears at best obliquely on the question presented.

AS 29.40.070 simply states the policy of the collective bargaining act to promote the harmonious and cooperative relations between government and its employees and affirmatively recognizes the right of public employees to organize for the purposes of collective bargaining. While its policy cannot be denied, it does not deal with the question of access to employees' addresses.

While the policy of AS 09.25.120 is generally to provide access to records maintained by public agencies, its listing of what may be considered confidential cannot be

12-04-4.1

The Honorable Andrew S. Warwick
Department of Administration

July 22, 1976

- 2 -

considered exhaustive in view of Art. I, 522 of the Alaska Constitution: "The right of the people to privacy is recognized and shall not be infringed."

The name and place of employment of a state employee may be considered public information as is certain other information not relevant here. The home address of an employee is, generally speaking, not the kind of information that the public has any rights in nor is there any clear public purpose in making the information available to members of the public. 1/ It represents the kind of information that quite properly can and should be viewed by the State government as protected under the constitutional right of privacy. In this sense, the request of the union under AS 09.25.120 is well placed; it has stated no special reasons for disclosure of employee addresses to it that other public groups or members of the public could not articulate.

On the other hand, I agree that it could be appropriate for the Labor Relations Agency to order the release of this information. The Excelsior Underwear, Inc. case, 156 NLRB 126, 61 LRRM 1217 (1966) and NLRB v. Eymann-Gordon Co., 394 U.S. 759 (1969) both recognize that the NLRB, as a labor relations agency may order the release of the names and addresses of employees eligible to vote in an election when necessary to insure the fairness of an election; in the Excelsior Underwear case, the order provided that the employer would provide the regional director of the NLRB with the list of employees and their addresses within seven days after an election has been called.

Accordingly, in summary, we are prepared to defend a determination by you that a list of public employees would not be available to a member of the public if it contained residence or calling addresses; we would have defended this refusal on the ground of the constitutional right of privacy. As we say this, we suggest that you may wish to review the policies of your Department on the present access of the public to the information.

1/ Mike McMullin, Chief of Recruitment and Examining in the Division of Personnel, advised that he would allow access to a personnel file with confidential material removed but with the residence address remaining, to a member of the press who requested it. Mr. McMullin advised that he would deny access to a wholesale request for employee addresses.

The Honorable Andrew S. Warwick
Department of Administration

July 22, 1976

- 3 -

We believe that a proper request to the Labor Relations Agency would possibly generate a list of employees qualified to vote in a given election. We acknowledge, moreover, that a bargaining unit may possibly have a contractual right to the same information.

RAB:md

Rep BROWN - INTRODUCTION OF HEARING

Rep. RODGERS - Revere Sponsor

015 EXCEPTION

NO CRIMINAL PENALTIES IN SB90.
030

SEN. PACE - "STRIKES A BALANCE" "NOT A FREEDOM OF PRESS BILL"
"UNLESS IT IS DEEMED CONFIDENTIAL IT IS PUBLIC"
"PRIVACY TO BE DETERMINED BY COURT"

Points of Contention:

- APPLIES TO MUNICIPALITIES
- SHOULD INCLUDE COURT RECORDS
- ATTORNEY WORK PRODUCT
- EMPLOYEE PERFORMANCE
- IMMEDIACY OF REQUEST
- CONTRACTOR RECORDS

HOWARD COXAVES - PRES. SOCIETY OF PROFESSIONAL JOURNALISTS

PUBLIC'S RIGHT TO KNOW
PRESS IS SURROGATES OF PUBLIC

PRIVACY PRESODICE

DEAN GOTTHEBERG - FREEDOM OF INFORMATION TASK FORCE

CSB90 - UNACCEPTABLE

VAGUE - UNDEFINED EXCEPTIONS

RIGHT OF PRIVACY - DEFINE (RESTATEMENT OF TORT)

BURDEN OF GOVERNMENT - COURTS TO CONTRIBUTE
LITERALLY

QUESTIONS - CONTRACTOR

DEPARTMENT OF LAW
FEE WARRER

7 23-28

APPLICATION

DELAYING OF ACCESS SEC 1276

SUSAN FISHER - FOX NEWS WINNERS

STRONGLY SUPPORT INCLUSION OF MUNICIPALITIES
DEFINE RIGHT OF PRIVACY
DON'T LIKE

WENDY AUBENHACE

ARCHAEOLOGICAL ASS.

ARCHAEOLOGY SITES EXEMPTED

KENT STURGIS

MANHATTAN ESTATE - FOX NEWS WINNER

TOM SWAPP - PUBLISHER ALASKA WEEKLY

ALAN TESCHER - MUNICIPALITY OF ANCHORAGE

CSSB90 - BEST COMPROMISE

MUNICIPAL NEGOTIATIONS WITH EMPLOYEE UNIONS
MAY 10 12 1990

EMERGENCY WORK PRODUCE
LIMITATION RESTRICTION

WRITTEN REQUEST

FAIRBANKS

SEN. PARR

HOWARD GARY GRAMES

DEAN ~~GEORGE~~ GOTTEHRER

SUSAN FISHER

Kent Stuirgis

Tom Sharp.

^{ALLEN}
~~ARTHUR~~ TESCHIE

Wendy McEwen

3/30/81

Robert Gisell
2909 Arctic Blvd.
Anchorage, Ak.
99503

Regarding HB 7 and SB 90 , Mr. Gisell
feels the bills should contain a provision
for appeal to a third party, if an agency
refuses to turn over information. These
bills deal with freedom of information....
Also, he believes, a time limit on response
to appeal should be provided for, so that
a citizen would not have to wait forever to
get an answer.....



Official Business

Alaska State Legislature

Senate

Judiciary Committee

Pouch V
State Capitol
Juneau, Alaska 99811

MEMORANDUM

TO: Senator Bennett
Senator Hohman
Senator Parr
Senator Ray

FROM: Senator Rodey *PMR*

DATE: May 7, 1981

SUBJECT: SE 90 "An Act relating to privacy and public information; changing Rule 65 of the Alaska Supreme Court Rules of Civil Procedure; and providing for an effective date."

Please find attached a committee substitute draft of SB 90.

The draft incorporates the ideas discussed at the committee meetings and those submitted by you upon the circulation of the first draft.

I would like to move this bill out if the committee is satisfied with its form.

PMR/ods
Attachment

JUNEAU EMPIRE

WILLIAM S. MORRIS III
PRESIDENT and PUBLISHER

JEFFREY A. WILSON
GENERAL MANAGER

CARL SAMPSON FRED HOWARD TOM BLUMENSHINE
Managing Editor Circulation Manager Production Manager

Speak for yourself

Whether they were based on his experiences or on some other wisdom, we believe Juneau City-Borough Attorney Lee Sharp's testimony on a state freedom of information bill was an affront to the city-borough assembly and the people of this municipality.

According to Mr. Sharp's opinion, city officials and no one else should determine which information is open to the public. For the purposes of freedom of information, municipalities are not a part of the state of Alaska, says Mr. Sharp. Rather, they are independent feifdoms in which local assembly members can open and close local records at will. This feudal concept of freedom of information position has consistently been rejected by state courts. Nevertheless, Mr. Sharp continues to insist it is a viable modus operandi for local governments.

We couldn't disagree more. Local governments receive a major portion of their funding from the state. In fact, local governments are created by the state. In every area we can think of, local governments must comply with state law. According to Mr. Sharp's position, however, local governments should be free to close all of their records, if they so desire.

That simply isn't a proper way to run a government. The city-borough government, as well as the state and federal governments, are governments of the people. To argue a group of elected or appointed government officials can combine to hide information from the rest of the people is a concept we and all Alaskans must reject outright, with very few exceptions.

As Mr. Sharp fully knows, according to current state law, "The people, in delegating authority, do not give their public servants the right to decide what is good for them to know and what is not good for them to know." It is the law which includes that statement which Mr. Sharp seeks to

Get

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People were bar been there long

The next man to I've got a hostage told him we'd write picture with his ar agent. . . What do There are more ag cadets. Hold page the story now? . . .

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Oratory never has the farewell address sanctimonious style

GRAND DESER NEA



repeat on the local level.

Generally speaking, the local city-borough assembly has been relatively responsive to freedom of information requests — especially after they were taken to court and lost. Last summer, the Juneau Empire was forced to seek a preliminary injunction against the city-borough to obtain public information, the names and qualifications of applicants for city-borough manager, police chief and fire chief. At the urging of Mr. Sharp, the assembly and city-borough manager had refused our requests.

As occurred in the three previous statewide cases and one since, the preliminary injunction ordering the city-borough to hand over the applicants was granted over the protests of Mr. Sharp.

Now we find Mr. Sharp advocating that municipalities be given the right to exempt themselves from any state freedom of information law. And, shockingly, some members of the city-borough assembly — Mr. Sharp's bosses — were unaware of his anti-freedom of information lobbying efforts. At least one city-borough assembly member told us the assembly at no time has discussed or laid out a position on the subject.

"I didn't agree with what he said, and it (Sharp's testimony) doesn't represent my position ... I would hope it does not represent the assembly's position," said Assembly member Diane Bergstrom.

According to City Manager Carl Laird, "It hasn't been brought up at an assembly meeting ... the assembly (members) are the policy-makers. I'm not going to get involved in a policy decision."

Therefore, we can only assume that Mr. Sharp's comments are either his personal opinions or the official position of the assembly. If they are his personal opinions, he has no right spending city-borough time—and money—by offering them. If they are not the assembly's official position why are they being offered as such?

As far as we have been able to determine, the assembly has not adopted an official policy on freedom of information.

Until the assembly publicly discusses and adopts a position on the freedom of information bill, we have some respectful advice for Mr. Sharp: speak for yourself.

CHECKLIST
1. Knock a
WOOD.

Black

A black child still lack and contribute in America

So asserts the Children's advocacy group, in a new Black and White Children's findings:

— Millions of black children lack health care. As a result, the handicaps that could have

— Blacks are twice as likely to die a year of life, twice as likely to be unemployed.

— One out of every two black children has never seen a dentist and one out of five has never seen a doctor for health care. Two out of five black children are not immunized against

This pathology is compounded by the assumption that the gap between black and white America was closed during the 1960s.

"Millions of black children are still in need of help," says Marian Wright Edelman, director of the Children's Defense Fund. "Unless immediate action is taken to meet black children's needs,

Presi of re

By DONALD
AP Photo

WASHINGTON (AP) — Ronald Reagan's inauguration was a rush of visual and verbal images.

There was the new president's Cabinet, welcoming the freed president's first news conference. At the same time, he was firming the nation's military posture.

The opening scenes were

Now, though, comes the first test of the credibility of the president's promises — and how he is fighting the good fight against

Reagan began his term with a flourish when the American held the inauguration ceremony. For a week he used the White House ceremony as a "swift and effective retribution."

At his first news conference he was plagued by the president's "trigger happy."

Now that the hostages are being held, Reagan was the voice of revenge for their long ordeal.

"I don't think revenge is a good thing," Reagan said. "I don't think revenge is a good thing."

JUNEAU EMPIRE

AN INDEPENDENT NEWSPAPER

Published daily Monday through Friday, except holidays, by Southeastern Newspapers Corporation, 235 Second St., Juneau, Alaska 99801.

Second Class postage paid at Juneau, Alaska. Postmaster: Send address changes to JUNEAU EMPIRE, 235 Second St., Juneau, AL 99801.

TELEPHONE

Business Office 586-3743
Circulation 586-3746

Member of the AP wire and NEA news services; represented for national advertising by Branham-McLaney, Inc., 620 First Avenue West, Seattle, Washington 98101. Phone (206) 284-0256.

MAIL DELIVERY RATES

One Month \$4.25
One Year \$51.00

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City-Borough Area per month \$5.70
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State editors query government 'right to privacy'

4/3/81
By Empire Staff

The public — and especially members of the press — got a chance Thursday to tell Alaska lawmakers what they think of a proposed freedom of information bill that has been in the works for over five years.

The general consensus? Government should have little or no right to privacy.

The Senate State Affairs Committee headed up by Sen. Vic Fischer, R-Anchorage, held a statewide teleconference on the bill (SB90), which would standardize state policy on privacy and public access. The bill attempts to walk the fine line between the public's right to review government records and the protection of a person's right to privacy.

The bill is sponsored by Sen. Charlie Parr, D-Fairbanks.

Susan Fisher, a reporter at the Fairbanks Daily News-Miner, told lawmakers the rights of citizens, not government agencies, are at stake. She said privacy laws are designed to protect citizens, and "the government has no right to privacy."

In recent months, four Alaska newspapers have brought suit



ALASKA NEWS

against local governments to gain information — usually about candidates for top-level public jobs.

Kay Fanning, publisher of the Anchorage Daily News, which has a freedom of information suit pending, said it is too expensive to go to court every time an agency decides not to release requested information.

In the 10-page bill, there are 17 categories of public records'

which would be excluded from public review, including tax or information returns, personal information on public employees, medical records, student records, trade secrets and notes or memoranda prepared by a justice or judge.

The way the bill reads, if a government agency refuses to release a record, the burden of proof on showing the record is a public document rests on the individual or firm seeking the record.

Dean Gottehrer, assistant professor at the University of Alaska, Fairbanks, and head of the Alaska Freedom of Information Task Force, said the burden of proof for not releasing information should be on the agencies themselves. Individuals should not be required to show that the information should be provided, he said.

Juneau City-Borough Attorney Lee Sharp has argued the bill fails to recognize federal law requires certain state records be kept secret. He said the bill as it is now written presents a conflict with federal requirements of confidentiality in certain government matters.

Sharp argued before lawmakers last week that municipalities

should have the right to keep certain matters private — especially those relating to applications of candidates for municipal jobs. Sharp maintained a number of applicants for city manager this summer were forced to withdraw their applications because the media wanted to make them available for public inspection.

The Empire eventually took the city to court over the matter and Superior Court Judge Thomas Stewart ruled the city had to make the applications public.

Other agencies that would be affected by the legislation have complained that the cost of meeting requests for information will be too high and have asked that copying fees include an additional charge for finding the information.

As the bill now reads, fees would be set by the commissioner of the Department of Administration and would include only the direct cost of duplication.

An Anchorage municipal attorney said a sufficient charge is needed to "deal with flagrant abuse" of access to public records. He said some lawyers may use more liberal access laws as a "discovery tool" at taxpayer's expense.

Speak for yourself

2/5/81

Whether they were based on his experiences or on some other wisdom, we believe Juneau City-Borough Attorney Lee Sharp's testimony on a state freedom of information bill was an affront to the city-borough assembly and the people of this municipality.

According to Mr. Sharp's opinion, city officials and no one else should determine which information is open to the public. For the purposes of freedom of information, municipalities are not a part of the state of Alaska, says Mr. Sharp. Rather, they are independent fiefdoms in which local assembly members can open and close local records at will. This feudal concept of freedom of information position has consistently been rejected by state courts. Nevertheless, Mr. Sharp continues to insist it is a viable modus operandi for local governments.

We couldn't disagree more. Local governments receive a major portion of their funding from the state. In fact, local governments are created by the state. In every area we can think of, local governments must comply with state law. According to Mr. Sharp's position, however, local governments should be free to close all of their records, if they so desire.

That simply isn't a proper way to run a government. The city-borough government, as well as the state and federal governments, are governments of the people. To argue a group of elected or appointed government officials can combine to hide information from the rest of the people is a concept we and all Alaskans must reject outright with very few exceptions.

As Mr. Sharp fully knows, according to current state law, "The people, in delegating authority, do not give their public servants the right to decide what is good for them to know and what is not good for them to know." It is the law which includes that statement which Mr. Sharp seeks to repeal on the local level.

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"I didn't agree with what he said, and it (Sharp's testimony) doesn't represent my position ... I would hope it does not represent the assembly's position," said Assembly member Diane Bergstrom.

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Therefore, we can only assume that Mr. Sharp's comments are either his personal opinions or the official position of the assembly. If they are his personal opinions, he has no right spending city-borough time—and money—by offering them. If they are not the assembly's official position why are they being offered as such?

As far as we have been able to determine, the assembly has not adopted an official policy on freedom of information.

Information free under Senate plan

Associated Press

2/19/81

90

Judeau — Members of a Senate committee decided Tuesday that there should be no charge for up to 20 pages per day of records disclosed under proposed state freedom of information laws.

The original bill (SB90) introduced by Sen. Charlie Parr, D-Fairbanks, called for the commissioner of the Department of Administration to set fees to cover duplication costs. However, people testifying before the Senate State Affairs Committee said some people cannot afford even minimum charges.

During a Tuesday night committee session to rework the bill, several changes were made by Parr and Committee Chairman Vic Fischer, D-Anchorage, but the changes still must be approved by the full committee.

Responding to recent suits brought by newspapers against local governments, the committee members tentatively approved changes to the bill to open the records of finalists applying for all public positions. No definition for finalists was given, however.

A suggestion by the Department of Law to provide 30 days for administrators to review the denial of a request for records was rejected by the committee.

Parr said he preferred court review of denials because "after they go to the courts a few times they'll stop dragging their feet."

However, Assistant Attorney General Barry Stern said going to court would probably take longer than having an administrator review the denial.

The committee adopted a suggestion that agencies be allowed up to five days to decide whether to release records in some cases. Stern said more time is needed to be sure that a person's privacy is not violated or when there is a lot of information requested.

The original bill required immediate release of information.

Stern said the extra time is needed because "once you have exposed the information, there is no remedy."

The committee initially has adopted a Department of Law recommendation that names of all crime victims — instead of simply victims of sex crimes — be protected from disclosure.

Computer-stored information was added to materials subject to disclosure.

Legislators hear information law debate

Associated Press

2/6/81

Juneau — Changes in state freedom of information laws are needed because government agencies often thwart citizen efforts to get information, a Sitka woman told lawmakers Thursday.

Lucinda Hite said "the public is definitely at a disadvantage" in seeking information, and is frequently forced to deal with "four or five different" bureaucrats to get one piece of information.

Hite was among several people, primarily members of the media, who testified before a Senate committee in favor of a bill (SB90) which would standardize state policy on privacy and public access. The bill is sponsored by Sen. Charlie Parr, D-Fairbanks.

Susan Fisher, reporter at the Fairbanks Daily News-Miner, told

lawmakers the rights of citizens, not government agencies, are at stake. Privacy laws are designed to protect citizens, and "the government has no right to privacy," she said.

Fisher said that while Parr's bill, and a similar House bill backed by Rep. Brian Rogers, D-Fairbanks, may be seen as special interest bills for the media, they are not. Fisher said the legislation would benefit the public.

Lew Williams, publisher of the Ketchikan Daily News, said he is pleased the bill covers local government agencies, as well as state agencies. In recent months, four Alaska newspapers have brought suit against local governments to gain information.

Kay Fanning, publisher of the Anchorage Daily News, which has a freedom of information suit pending,

said it is too expensive to go to court every time an agency decides not to release requested information.

There are provisions in the bill for agencies to refuse to release information. Dean Gottehrer, assistant professor at the University of Alaska-Fairbanks and head of the Alaska Freedom of Information Task Force, said the burden of proof for not releasing information should be on agencies. Individuals should not be asked to show that the information should be provided, he said.

Some agencies affected by the

legislation have complained that the cost of meeting requests for information will be high, and have asked that copying fees include the expense of collecting information.

Under the bill, fees would be set by the commissioner of the Department of Administration and would include only the direct cost of duplication.

An Anchorage municipal attorney said a sufficient charge is needed to "deal with flagrant abuse" of access to public records.

Union sues for access to names

By The Associated Press

The state's largest public employee union filed suit Wednesday against the University of Alaska for refusing the names, job titles and locations of classified university employees.

Cherie Shelley, executive director of the Alaska Public Employees Association, said the university has refused to

turn over the information in an attempt to block employees from unionizing.

However, Sherman Carter, UA executive vice president, said it would be a violation of employees' privacy to release the information. He said the union has asked for the addresses of employees, but Ms. Shelley said addresses are not sought.

Other state agencies routinely

release the names, job titles, locations and salaries of state employees.

Whatever the request, Assistant Attorney General Rodger Pegues said state law does not protect employees' addresses, and that it would be "unusual" for the court to rule in favor of not releasing the addresses. The suit was filed in Fairbanks Superior Court.

"You can hardly say releasing addresses is an invasion of privacy when people pay to have them published" in telephone directories, Pegues said. "It sounds to me like a spurious attempt (by the UA) to prevent the (employees) from unionizing."

Carter said the university does not have a computer print-out listing only employees' job

titles and locations, and "we do not feel obligated to make a fresh computer run for any private association for commercial purpose."

He said the information the APEA wants is already available in public documents, including campus directories. But Ms. Shelley said much of the information is not up-to-date.

Information bill moves

By The Associated Press

The Senate State Affairs Committee made split recommendations on a bill which would standardize state policy access and privacy.

Under the bill (CSSB90) introduced by Sen. Charlie Parr, D-Fairbanks, state and local agencies would be required to release requested information immediately, unless it harms an individual's privacy or is protected by existing state law.

In response to recent suits brought by newspapers against local governments, the bill would require public access to records of finalists applying for all public positions. The bill defines finalists as the top three individuals or 10 percent of the applicants, whichever is greater.

Dean Gottehrer, assistant

professor at the University of Alaska-Fairbanks and head of the Alaska Freedom of Information Task Force, said all names of applicants should be subject to release.

The committee did not adopt suggestions that names of crime victims be protected.

The bill would apply to all state and local agencies, including government units, committees, boards, legislative bodies and school boards.

Panel splits on information freedom bill

Associated Press

Juneau — The Senate State Affairs Committee made split recommendations on a bill that would standardize state policy on public access and privacy.

Under the bill (CSSB90) introduced by Sen. Charlie Parr, D-Fairbanks, state and local agencies would be required to release requested information immediately, unless it harms an individual's privacy or is protected by existing state laws.

Also, there would be no charge for up to 20 pages per day of information, and additional fees could be waived if it is in the public interest or if the requester is indigent.

In response to recent suits brought by newspapers against local governments, the bill would require public access to records of finalists applying for all public positions. The bill defines finalists as the top three individuals or 10 percent of the applicants, whichever is greater.

Dean Gottehrer, assistant professor at the University of Alaska, Fairbanks, and head of the Alaska Freedom of Information Task Force, said all names of applicants should be subject to release.

The committee did not adopt suggestions that names of crime victims be protected from public access, which Gottehrer said would have been "one of the most horrendous things" that could have happened to the bill.

The bill would apply to all state and local agencies, including government units, committees, boards, legislative bodies and school boards.

The measure now goes to the Judiciary Committee for consideration.

Shedding light

Much has been said — and threatened — as a reaction to the manner in which this newspaper handles its business, the gathering and dissemination of accounts of events of general public interest. While ample heat has been shed upon the subject, relatively little light has been added.

It has been charged by some that as a result of its reportage this newspaper has demonstrated a policy of bias against women. In fact, no such policy exists, and, we believe, neither does such a bias. This newspaper has only one, overriding policy: to report newsworthy events fairly and accurately under pressure of a daily deadline.

To charge that any excesses or shortcomings in news coverage is the result of a conspiratorial consistency for or against any group, individual or thing is erroneous.

An example cited by critics is a recent incident involving a woman who was attacked. After she escaped from her assailant she was taken to the local women's shelter operated by AWARE (Aiding Women from Abuse and Rape Emergencies). We reported that, as it was relayed to us by police spokesmen.

Then the roof caved in. We were accused of endangering the lives of the women at the shelter by indicating where the victim had been taken. It was feared the suspect could more easily track her through the newspaper article.

That's the version of the story most people heard. Several important facts, however, are missing from that recollection of the chain of events.

First, when we learned where the victim was taken, there was no caveat included. Before the story appeared, none of the sources we spoke to flagged us down to inform us that many times assailants — let alone this suspect — trail victims to shelters, possibly endangering shelter occupants. The fact another assailant had been seen outside the shelter earlier that week no doubt added to the potential problems for the shelter's occupants and the police. As an aside, the suspect has never appeared at the shelter, and the victim has left town.

Second, it was assumed — wrongly — that the location of the shelter was confidential. That the woman was taken to AWARE, it seemed, would not particularly endanger anyone if the location is secret. The location was formerly confidential, but its operators found that in a city Juneau's size maintaining that confidentiality is impossible.

Third, we viewed the fact the woman was taken to AWARE as we would view a traffic accident victim being taken to Bartlett Memorial Hospital. Both are public agencies which perform specialized public services. As such, publishing that AWARE was involved would not only reaffirm the public's faith that the agency was doing its job but inform other potential domestic violence victims that such services are available.

With this in mind, we printed that the woman and her children were taken to the AWARE shelter.

Unfortunately, we learned of the other relevant circumstances only after the article was published. The following morning a member of the Juneau Police Department informed us of them. At that point, we and the AWARE people should have sat down to talk. We didn't, though, and that's where misconceptions began to flourish.

In fact, representatives from AWARE and the Empire never talked face-to-face until yesterday, when the accusations and assumptions were laid to rest. The reasons for the delay in that meeting are at this point unimportant but have nothing to do with unwillingness on the part of either side to discuss the matter.

What followed from that meeting, which actually involved more of an exchange of information than anything, is more of an understanding on the part of this newspaper of how AWARE operates and on the part of AWARE of how newspapers operate. There were no accusations. Neither were there disagreements.

Just as AWARE plays an important role in the community by aiding victims of violence, so does this newspaper by presenting the news. Each, however, is more restricted by the resources available to it than by any "policies" for or against individuals or groups.

This newspaper intends to maintain an open line of communication with AWARE — and any other groups involved in issues and events of general public interest. To do that, however, requires communication and consultation, not threats and accusations.

By CAREN ROBINSON
Executive Director, AWARE

We at AWARE (Aiding Women from Abuse and Rape Emergencies) are concerned by the Empire's insensitivity in printing information in news articles which increases the danger to victims of violent crimes.

The most recent example of this was the March 4th front page story of a woman who escaped from her allegedly assaultive ex-husband and the subsequent police rescue of her children. The police did not capture her assailant, whom they described as armed and dangerous. In the same article it was stated that the woman and her children were taken to the AWARE shelter.

On the day that story was printed, our shelter housed four women and eight children. By printing the information that they had been taken to AWARE, the Empire endangered not only the 12 women and children staying at the shelter but also the AWARE staff and assorted visitors. The Empire could have conveyed the same information, without endangering the victims, by stating, "Police took the woman and children to an undisclosed location."

It is important that Empire readers be informed when violent crimes occur in our community. But it is imperative that the news be written in a manner which is sensitive to the very real danger that threatens the victims and that the reporting does not increase

the victim's danger.

Another area that needs re-examination is the Empire's handling of sexual assaults in the Police Blotter. State law prohibits newspapers from publishing the victim's name for her protection and to give her anonymity. The Empire's policy of publishing exact times and places of sexual assaults often makes a name unnecessary. Mere acquaintances have told rape victims that they read about the rape in the Police Blotter and knew it was them from the age and location. Again, rather than printing that a sexual assault was reported from a "Tr. Street address in the Highlands, the Empire could print that "a sexual assault was reported in town".

Craig Medred has argued that the public needs to know the exact location, time, age of victim, etc. in order to better defend themselves. Because a rape occurs on Gastineau Avenue does not mean that residents of Glacier Avenue are safe. If the Empire is concerned about the public's safety why don't they print a description of the assailant rather than the victim? It would also be beneficial for the Empire to print, at regular intervals, descriptions of the various methods employed by local rapists, especially those who are still at large. It is also important that follow-up reports include the types of sentencing that rapists receive from the courts.

There is a clear difference between information which benefits the public, as the investigative reporting in the Ellsberg and Watergate cases, and detail which are not necessary to an understanding of the news, as the location of an assault victim when her assailant is armed and at large. We are not talking about censorship, i.e. the suppression of information, but the sensitivity, intelligence and style with which the information is conveyed.

Freedom of the press is guaranteed by the Bill of Rights. But we ask the Empire, does "freedom of the press" give newspapers the license to endanger people's safety? Is it possible that "freedom of the press" involves more than the simple equation "the public's right to know"? We at AWARE believe that along with the press's freedom comes the basic responsibility to report news without increasing the danger to victims of violent crimes.

We would like to thank the individuals and businesses in the Juneau community who supported us in these views.

We are asking the Empire for a change of public policy when it comes to victims of domestic violence and sexual assault. With a sexual assault rate 335% higher than cities with similar populations, Juneau residents need to be concerned about how news reports affect victims of violent crimes if only because we are all potential victims.

COMPARATIVE ANALYSIS

FREEDOM OF INFORMATION LAW
(OR EQUIVALENT)

AS IT RELATES TO

STATE LEGISLATURES

SEPTEMBER 16, 1980

Prepared by:

JOSEPH MARTORANA,
DEPUTY CLERK AND
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NEW YORK STATE ASSEMBLY

Presented to:

NCSL ANNUAL TRAINING SEMINAR
OF LEGISLATIVE CLERKS AND
SECRETARIES - ASLC&S MEETING
MADISON, WISCONSIN 9/14-18/80

ACKNOWLEDGEMENTS

An attempt to compare just 1 law between 50 states may at first seem easy. But when consideration is given to the distances separating the states, to the fact that the recipient of the request may or may not be "in session" (a factor as to when an answer can be anticipated), and to the extent of the request (the time required to compile all the requested material), the task becomes a difficult one for all concerned. Therefore, it is with deep appreciation that acknowledgement is made of the fine cooperation extended by the Chief Clerks and Secretaries of the 50 State Legislatures and their staffs. Without the 100% response, there would not have been a complete report.

Thank you.

An acknowledgement would not be complete without giving credit to the individuals who did all the "work". In my case, my Administrative Assistant, Marjorie Quinn, and my Deputy Records Access Officer, Sharon Galarnec. My sincerest appreciation is extended to both for their patience and their diligence.

Thanks for your help.

JOSEPH MARTORANA
Deputy Clerk and
Records Access Officer
New York State Assembly

Public Information Office
State Capitol - Room 148
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INTRODUCTION

On September 1, 1974, an "open records law", short titled the "Freedom of Information Law", took effect in the State of New York which declared basically that the public should have access to the records of government. In the section on definitions, "agency" was all-inclusive--there were no exceptions, therefore, the State Legislature was included and was required to comply with the requirements of the act in the same manner as other state and municipal agencies.

On January 1, 1978, an amended version of the New York State law took effect which excluded the Judiciary and the State Legislature from the definition of "agency". However, in the new law a new section was created entitled "access to state legislative records" as distinguished from a section entitled "access to agency records". A principal difference of these two sections is that under "access to agency records" all records are public (made available for public inspection and copying) except those specifically exempted; whereas under "access to legislative records" only those records are public which are listed, therefore, all others are not public.

The difference in the access standards to public records noted above has created some demand for the return to the former law. There are those who claim that "state legislative records" are no different from "agency records" and, therefore, all records should come under the same access standards. Equally strong in opinion are those who claim there is a difference and that access to state legislative records should remain by separate statute and, therefore, under different access standards.

In order to help respond to this basic question, it was felt that a study should be made which would compare New York State's approach to "open records" to that of other states. Thus this comparative study was undertaken posed with the question:

"Are records of State Legislatures made available to the public by separate rule or statute or do they come under the same access standards as the remainder of government, i.e. state agencies and local governments?"

In the pursuit of answers to this question, other related and relevant observations were made. If this study serves some good in responding to New York's question, it is felt that its findings and conclusions, limited as they may be, should be shared with the other states.

FINDINGS

On April 8, 1980, and subsequently, a letter (Appendix I) was sent to all Chief Clerks and Secretaries of the 50 State Legislatures requesting various materials and information to respond to the question:

"Are records of State Legislatures made available to the public by separate rule or statute or do they come under the same access standards as the remainder of government, i.e. state agencies and local governments?"

All 50 states responded in various degrees, some forwarded copies of their "open record laws" or equivalent but most forwarded excerpts from their Constitutions or statutes or legislative rules and offered commentaries on the subject matter. (Appendix II)

A review and analysis of the material received reveals the following:

1. Only five states (California, Nevada, New York, Oklahoma and Pennsylvania) have a separate or specific statute governing legislative records to be made available to the public.
2. The remaining forty-five states make their legislative records available to the public either by:
 - a. inclusion as an agency or public body in the statute governing access to agency or public body records;
or
 - b. constitutional provision; or
 - c. rules of the legislature (House and/or Senate Rules); or
 - d. tradition, custom and/or policy.
3. All the states except Mississippi have enacted a Freedom of Information Law or equivalent. (Appendix III)
4. Few of the states list in their statutes specific legislative records which are required to be made available to the public. Most state legislatures list in their Rules records which are accessible to the public.

5. Where records to be made available to the public are not specifically listed, the extent of which records are included is determined by the definition of "public records". Some states define "public records" to mean "all documents made or received"; others define "public records" to mean "all records maintained in public offices"; and others define "public records" to mean "all records required by law to be made, maintained or kept."
6. The extent of which records are to be made available to the public is also determined by the limitations or exemptions provided in the law. Some states prohibit disclosure of records which could constitute an "unwarranted invasion of personal privacy"; others exempt "records involved in legislative investigations" or "records pertaining to pending litigation to which the Legislature is a party"; and others exempt from disclosure "memoranda, correspondence and working papers of individual members or their immediate staffs."
7. Where "legislative records" are to be made available to the public because the "state legislature" is included as an "agency", the definition of "public records" is not descriptive of the usual records of a state legislative body, i.e. "public records" mean any written or printed report, book or paper, map or plan of the State vs. "state legislative records" mean bills and amendments thereto, fiscal notes, introducers' bill memoranda, resolutions, journal and index records, messages received from the governor, etc.
8. A description of "state legislative records" required to be made available to the public was best contained in individual "Rules of the House" or "Rules of the Senate" which were more specific. Constitutional requirements were also well described as well as Journal entries.
9. Although there is some uniformity in the language of the "legislative intent" or "declaration" and "definitions" sections of the "open records laws" of the various states, there is a lack of uniformity in the overall laws between the states.
10. Notwithstanding the fact that most state legislatures are included in "open records laws" as an "agency", there was doubt expressed by some states as to whether or not they are in fact "included". Some indicated the Legislature is both "included" and "exempted"(?); others indicated it was difficult to figure out how to comply with the law. Many states indicated that they voluntarily comply with the intent of Freedom of Information.

CONCLUSIONS

1. This study undeniably reveals that records of State Legislatures are made available to the public more often than not under the same access standards as the remainder of government, i.e. state agencies and local governments. Most State Legislatures are included in the definition of "agency" or "public body" and, therefore, are required to comply with "open records laws" in the same manner as agencies generally.

2. However, this study also reveals a gross lack of uniformity in the various "open records laws" of the states as they apply to State Legislatures. Also, the lack of specific clarity in the statutes of the meaning of "legislative records" as opposed to the well-defined descriptions contained in House and Senate Rules, creates doubt as to the desirability of including State Legislatures as "agencies" in "open records laws".

3. It appears that if "open records laws" which include State Legislatures as "agencies" have operated successfully in the past, such accomplishment can be traced not to the appropriateness of the laws but rather to the willingness of the State Legislatures to comply with the intent of Freedom of Information.

4. Insofar as responding to the objection raised to New York's present Freedom of Information Law, it would appear from the observations and conclusions noted above that it is a more specific, effective and manageable law as it is presently constituted than it would be if it were broadened to include the State Legislature as an agency--notwithstanding that currently it provides more restrictive rights of access to legislative records than agencies generally. Including state legislatures within the same standards as the remainder of government might appear to be more open, fair and equitable, but it might also create a chaotic condition detrimental to the operation of good government.

5. Finally, although there was a 100% response to this study by all the 50 states, it should not be considered a totally complete and final report. First, not all the states forwarded entire copies of their "open records" laws and all the material requested, thereby preventing a complete comparative analysis. Second, the time required to read and analyze the material received was not available--some of the responses from the states were received just a few days before the making of this report. And third, before continuing or extending this type of a study to a final report, some thought should be given to first having some serious discussions on the subject. An open forum will not only reveal the pitfalls of an operation but could also invite some good ideas.

APPENDIX I



THE ASSEMBLY
STATE OF NEW YORK
ALBANY

(518) 455-4219

JOSEPH MARTORANA
Public Information Officer
Deputy Clerk of the Assembly
Records Access Officer

X6X8 X72X6X30
X6X8 X72X7X28

Public Information Office
State Capitol — Room 148
Albany, New York 12248

SHARON GALARNEAU
Deputy Records Access Officer

April 8, 1980

Dear

I have been asked by my Speaker to make a comparative analysis of the Freedom of Information Law of all the states. The main purpose of this study will be to determine whether records of State Legislatures are made available to the public by separate rule or statute or if they come under the same access standards as the remainder of government, i.e., state agencies and local governments.

In view of the above, kindly send me at your earliest convenience a copy of your state's Freedom of Information Law or regulation governing records to be made available to the public. (NYS copies enclosed for your information)

Also advise whether your Legislature is included in such law and, if not, is it required by separate statute to comply with the Freedom of Information Law. Also, specific legislative records which are required to be made available to the public. (NYS Assembly copy enclosed FYI)

In connection with this request, please be advised that upon my completion of this study I also anticipate making a report on my findings to the American Society of Legislative Clerks and Secretaries. In turn, a copy will be made available to you for your purposes.

Many thanks for your cooperation.

Sincerely,

A handwritten signature in cursive script that reads "Joseph Martorana".

JOSEPH MARTORANA
Deputy Clerk of the Assembly

JM/mq
Encs.

APPENDIX II

FREEDOM OF INFORMATION LAW
(or equivalent)

COMPARATIVE ANALYSIS

SUMMARIES AND/OR EXTRACTS FROM LAWS

ALABAMA: No distinction between public records and records of the Legislature.

Chapter 13. Public Records

§41-13-1. Public records defined.

"As used in this article, the term "public records" shall include all written, typed or printed books, paper, letters, documents and maps made or received in pursuance of law by the public officers of the state, counties, municipalities and other subdivisions of government in the transactions of public business "

Title 41 Right to Inspect Records.
Every citizen entitled to inspect and copy public records.

§145. (2695)

"Every citizen has a right to inspect and take a copy of any public writing of this state..."

ALASKA: Open Records Law

§ 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 and are open to inspection by the public under reasonable rules during regular office hours."

§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..."

NOTE: Underscore not part of law, for emphasis purposes only.

ARIZONA: Chapter 1. - Public Records

§39-121. Inspection of public records.

"Public records and other matters in the office of any officer at all times during office hours shall be open to inspection by any person."

§39-121.01. Copies, printouts or photographs of public records.

" "Officer" means any person elected or appointed to hold any elective or appointive office of any public body."

ARKANSAS: Arkansas does not have a specific list of legislative records required to be made public under the Freedom of Information Act.

Freedom of Information Act.

§12-2803. Definitions

"Public records" are writings, recorded sounds, films, tapes, or data compilations in any form (a) required by law to be kept,...". All records maintained in public offices or by public employees within the scope of their employment shall be presumed to be public records."

§12-2804. Examination and copying of public records.

"...all public records shall be open to inspection and copying by any citizen of the State of Arkansas during the regular business hours of the custodian of the records. It is the specific intent of this Section that...unpublished memoranda, working papers, and correspondence of the Governor, Legislators, Supreme Court Justices and the Attorney General...shall not be deemed to be made open to the public under the provisions of this Act."

CALIFORNIA: Records of the California State Legislature are made available to the public by the State Constitution and by separate Statute.

Constitution, Article IV, Section 7

(c) "The proceedings of each house and the committees thereof shall be public except as provided by statute or by concurrent resolution..."

California Public Records Act

§6252 Definitions

"(a) "State agency" means every state office, officer, department, division, bureau, board, and commission or

other state agency, except those agencies provided for in Article IV of the California Constitution."

Legislative Open Records Act

§9072. Definitions

"(b) "Legislature" includes any Member of the Legislature, any legislative officer, any standing, joint or select committee or subcommittee of the Senate and Assembly, and any other agency or employee of the Legislature."

"(c) "Legislative records" means any writing prepared on or after December 2, 1974 which contains information relating to the conduct of the public's business prepared, owned, used, or retained by the Legislature.

§9073. Inspection...

"Legislative records are open to inspection at all times during the normal office hours of the Legislature and any person has a right to inspect any legislative record, except as hereafter provided." (§9075 lists certain records not to be disclosed.)

COLORADO: Public Records

§24-72-202. Definitions

"(6) "Public records" means and includes all writings made, maintained or kept by the state or any agency, institution or political subdivision thereof for use in the exercise of functions required or authorized by law or administrative rule or involving the receipt or expenditure of public funds."

§24-72-203. Public records open to inspection.

"(1) All public records shall be open for inspection by any person at reasonable times, except as provided in this part 2 or as otherwise provided by law..."

CONNECTICUTT: Connecticut Legislature included in the Freedom of Information Act.

Freedom of Information Act. Public Records and Meetings.

§1-18a. Definitions.

"(a) "Public agency" or "agency" means any executive, administrative or legislative office of the state or any political subdivision of the state and any state or town agency, ..."

§1-19. Access to public records. Exempt records.

"(a) Except as otherwise provided by any federal law or state statute, all records maintained or kept on file by any public agency, whether or not such records are required by any law or by any rule or regulation, shall be public records and every person shall have the right to inspect or copy such records at such reasonable time as may be determined by the custodian thereof."

DELAWARE: Freedom of Information Act

§10002. Definitions

"(a) "Public body" means any regulatory, administrative, advisory, executive or legislative body of the State or any political subdivision of the State..."

"(d) "Public record" is written or recorded information made or received by a public body relating to public business."

§10003. Examination and copying of public records.

"(a) All public records shall be open to inspection and copying by any citizen of the State during regular business hours by the custodian of the records for the appropriate public body."

FLORIDA: Chapter 119 Public Records

§119.01 General state policy on public records.

"It is the policy of this state that all state, county, and municipal records shall at all times be open for a personal inspection by any person."

§119.011. Definitions

"(1) "Public records" means all documents, papers, letters, ...made or received... in connection with the transaction of official business by any agency."

"(2) "Agency" means any state, county district, authority, or municipal officer... or other separate unit of government created or established by law..."

§119.07 Inspection and examination of records; exemptions

"(1) (a) Every person who has custody of public records shall permit the records to be inspected and examined by any person desiring to do so, at reasonable times, under reasonable conditions, and under supervision by the custodian of the records or his designee."

Florida Senate - Rules and Manual

§2.3 - Committee reports prior to session, availability of records and reports.

"The records and reports of standing committees and the subcommittees thereof shall be available in the same manner as the reports and records of state agencies. Provided, however, that this rule shall not affect legislative records specifically protected by law, ..."

GEORGIA: The Georgia General Assembly is included in the Public Records Act.

Inspection of Public Records

§40-2701. Right of public to inspect records.

"All State, county and municipal records, except those, which by order of a court of this State or by law, are prohibited from being open to inspection by the general public, shall be open for a personal inspection of any citizen of Georgia at a reasonable time and place, and those in charge of such records shall not refuse this privilege to any citizen."

HAWAII: Although the Hawaii Legislature is explicitly exempt from the Administrative Procedure statute, it is not excluded from the Public Agency Meetings and Records statute.

Title 8. Public Proceedings and Records

Chapter 92, Part V, Public Records

§92-50 Definition.

"As used in this part, "public record" means any written or printed report, book or paper, map or plan of the State or of a county and their respective subdivisions and boards..."

§92-51 Public records; available for inspection.

"All public records shall be available for inspection by any person during established office hours unless public inspection of such records is in violation of any other state or federal law..."

IDAHO: Idaho does not have a Freedom of Information Law as such, however, it does have an Open Meetings Law and provisions in its General Laws for making records available to the public.

General Laws Annotated.

§59-1009. Official records open to inspection.

"The public records and other matters in the office of any officer are, at all times during office hours, open to the inspection of any citizen of this state."

§9-301. Public writings - Right to inspect and take copy -

"Every citizen has a right to inspect and take a copy of any public writing of this state, except as otherwise expressly provided by statute."

ILLINOIS: The Freedom of Information Act

Requires all public bodies (except the courts) to make their records available to the public for inspection and copying. Provides that certain documents are exempt from inspection and copying.

§2. Definitions (EB1472)

"(a) "Public body" means every State office, agency, department, division, bureau, board and body; every legislative board, commission, committee, and every officer thereof; and any officer or employee of any of the above. For purposes of the Act, "public body" does not include the courts."

INDIANA: Indiana does not have a specific statute which deals with access to state legislative records. However, its Constitution requires the Senate and the House to publish Journals of their respective proceedings which are made available to the public. Indiana's "Fair Information Practices Law" deals with the classification and availability of information kept by agencies of the Executive branch of state government. Statute does not refer to legislative records, however, Indiana's "Open Door Law" includes the Legislature and its committees in the definition of a public agency.

"Chapter 1.5 The Indiana Open Door Law

§5-14-1.5-2. Definitions

"(a) "Public Agency" means: (1) any board, commission, department, agency or authority...exercising a portion of the executive, administrative, or legislative power of the state."

IOWA: Iowa Code Chapter 68A appears to apply to the Legislature.

Chapter 68A. Examination of Public Records

68A.1 Public records defined.

Wherever used in this chapter, "public records" includes all records and documents of or belonging to this state... or any branch, department, board, bureau, commission, council, or committee of any of the foregoing."

68A.2 Citizen's right to examine.

"Every citizen of Iowa shall have the right to examine all public records and to copy such records, and the news media may publish such records, unless some other provision of the Code expressly limits such right or requires such records to be kept secret or confidential."

KANSAS: Kansas statute relative to "Records Open to Public" applies to all state agencies including the Legislature.

Article 2. - Records Open to Public

"45-201 (a) All official public records of the state, counties, municipalities, townships, school districts, commissions, agencies and legislative bodies, which records by law are required to be kept and maintained, ...shall at all times be open for a personal inspection by any citizen, ..."

NOTE: A comprehensive "Open Records Act" (S.B. 877) was considered by the 1980 Kansas Legislature, however, it was not enacted into law.

KENTUCKY: Records of the Kentucky State Legislature are made available to the public by the Kentucky Open Records Law. (KRS61.870 to 61.884)

Open Records

61.870 Definitions.

"(1) Public agency" means every state or local officer, state or local officer, state department, division, bureau, board, commission and authority; every legislative board, commission, committee and officer;..."

61.872 Right to inspection - Limitation.

"(1) All public records shall be open for inspection by any person,..."

NOTE: The Kentucky Legislative Research Commission is required by statute to keep confidential drafts of legislative proposals which it has been requested to help prepare or revise.

LOUISIANA: The Legislature is subject to the Public Records Act with the exception of certain records pertaining to legislative investigations.

Title 44 Public Records and Recorders

§1. General definitions

"A. (1) As used in this Chapter, the phrase "public body" means any branch, department, office, agency, ... or any other instrumentality of state, parish, or municipal government..."

§2. Records involved in legislative investigations.

"Subject to the proviso set forth in Sub-section B of R.S. 44:3, the provisions of this Chapter shall not apply to any records, writings, accounts, letters, letter books, photographs or copies thereof, in the custody or control of any attorney or counsel whose duties or functions are performed by or under the authority of the legislature and which concern or hold relation to any case, cause, charge or investigation being conducted by or through the legislature, until after the case, cause, charge or investigation has been finally disposed of.

"After final disposition, the records, writings, accounts, letters, letter books, photographs or copies thereof, are public records and subject to the provisions of this Chapter."

MAINE:

The Legislature is included in the Maine Freedom of Access Law with certain exceptions. There is no listing of specific legislative records which are required to be made available to the public.

Freedom of Access Law

§402. Definitions.

"2. Public proceedings. The term "public proceedings" as used in this subchapter shall mean the transactions of any functions affecting any or all citizens of the State by any of the following:

A. The Legislature of Maine and its committees and subcommittees; ..."

"3. Public records. The term "public records" shall mean any written, printed or graphic matter or ... that is in the possession or custody of an agency or public official of this state or ...

C. Records, working papers and interoffice and intraoffice memoranda used or maintained by any Legislator, legislative agency or legislative employee to prepare proposed Senate

or House papers or reports for consideration by the Legislature or any of its committees during the biennium in which the proposal or report is prepared;"

§408. Public records available for public inspection.

"Except as otherwise provided by statute, every person shall have the right to inspect and copy any public record during the regular business hours of the custodian or location of such record; ..."

MARYLAND: The Maryland Public Information Act is applicable to the General Assembly, as well as to State Agencies.

Article 76A Public Information

§1. Definitions.

"(b) "Public records" when not otherwise specified shall include any paper, correspondence, form, book ... or other written document ... that have been made by any branch of the State government, including the legislative, judicial, and executive branches, ..."

§2. Inspection of public records generally.

"(a) All public records shall be open for inspection by any person at reasonable times, except as provided in this article or as otherwise provided by law."

MASSACHUSETTS: Records of the General Court (Legislature) are not subject to the Public Records statute.

Public Records

Chapter 4 §7. Definitions of statutory terms.

"26. "Public records" shall mean all books, papers, maps, ... or other documentary materials ... made or received by any officer or employee of any agency, executive office, department ... of the commonwealth, or ..."

Chapter 66 §18. Application of chapter.

"This chapter shall not apply to the records of the general court, ..."

In decision of the Supreme Judicial Court in the case of Westinghouse Broadcasting Company, Inc. v. Sergeant-at-Arms of the General Court of Massachusetts (Mass., 375 N.E. 2nd 1205), the court held that the records of the General Court (Legislature) were not subject to the Public Record statute.

MICHIGAN: Legislature has provided requested information freely in accordance with the terms of the Freedom of Information Act, although not specifically required to.

Freedom of Information Act.

15.232 Definitions

"(b) "Public body" means:

(i.) An agency, board, commission, or council in the legislative branch of the state government."

"(c) "Public record" means a writing prepared, owned, used, in the possession of, or retained by a public body in the performance of an official function, from the time it is created. This act separates public records into 2 classes: (i) those which are exempt from disclosure under section 13, and (ii) all others, which shall be subject to disclosure under this act."

15.233 Public records; right to inspect, copy or receive...

"§3. (1) Upon an oral or written request which describes the public record sufficiently to enable the public body to find the public record, a person has a right to inspect, copy or receive copies of a public record of a public body, except as otherwise expressly provided by section 13."

MINNESOTA: Chapter 15, Data Privacy Laws

15.17 Official Records

"Subdivision 1. Must be kept. All officers and agencies of the state, and all officers and agencies of the counties, cities and towns, shall make and keep all records necessary to a full and accurate knowledge of their official activities.

"Subd. 4. Accessible to public. Every custodian of public records shall keep them in such arrangement and condition as to make them easily accessible for convenient use...Except as otherwise expressly provided by law, he shall permit all public records in his custody to be inspected, examined, abstracted, or copied at reasonable times and under his supervision and regulation by any person;..."

The Minnesota Government Data Practices Act.

15.1621 Access to Government Data

"Subdivision 1. Public Data. All government data, collected, created, received, maintained or disseminated by a state agency, political subdivision, or statewide system shall be public unless classified...as not public."

Minnesota Constitution

Article IV, Legislative Department

"15 Officers, journals...Both houses shall keep journals of their proceedings, and from time to time publish the same..."

Permanent Rules of The House 1980

"7.3 Duties of Chief Clerk. The Chief Clerk...shall keep records showing the situation and progress of all bills, memorials and resolutions."

"7.8 Index. The Index Clerk, under the supervision of the Chief Clerk, shall prepare an index in which bills may be indexed by topic, number, author, subject, section of the code amended, committees, and any other subject that will make it a complete and comprehensive index. The Index shall be open for public inspection at all times during the session and shall be printed in the permanent Journal of the House."

MISSISSIPPI: Does not have a Freedom of Information Act, however, a bill passed the Senate this year but failed to be approved by the House of Representatives. The House, however, has always maintained a policy that all records, with the exception of the House Ethics Committee records which are confidential by rule, be made available to the public. A Mississippi Administrative Procedure Act which deals with agency rules and regulations and their availability to the public does not include the Legislature.

MISSOURI: Revised Statutes - Public and Business Records

109.180 Public records open to inspection.

"Except as otherwise provided by law, all state, county and municipal records kept pursuant to statute or ordinance shall at all reasonable times be open for a personal inspection by any citizen of Missouri, and those in charge of the records shall not refuse the privilege to any citizen."

MONTANA: Constitution of Montana

Section 10. Right to Know.

"No person shall be deprived of the right to examine documents or to observe the deliberations of all public bodies or agencies of state government and its subdivisions, except in cases in which the demand of individual privacy clearly exceeds the merits of public disclosure."

Montana Statute

93-1001.4 (10542) Every citizen entitled to inspect and copy public writings.

"Every citizen has a right to inspect and take a copy of any public writings of this state, except as otherwise expressly provided by statute."

NEBRASKA: Article 12 Records Management Act

84-1202. Terms, defined.

"(1) Agency shall mean any department, division, office, commission, court, board, or any other unit or body, however designated, of the state government or of the government of any local political subdivision;"

"(10) Legislative record shall mean a record created or maintained by the Legislature pursuant to the Constitution or statutes of the State of Nebraska;"

Revised Statutes

84-712 Public records; free examination; memorandum and abstracts.

"Except as otherwise expressly provided by statute, all citizens of this state, and all other persons interested in the examination of the public records, are hereby fully empowered and authorized to examine the same, and to make memoranda and abstracts there from, all free of charge, during the hours the respective office may be kept open for the ordinary transaction of business."

NEVADA:

Does not have a Freedom of Information Act, however, it does have a Public Records Law (Chapter 239 of the Nevada Revised Statutes).

239.010 Public books, records open to inspection.

"1. All public books and public records of state, county, city, ... shall be open at all times during office hours to inspection by any person, ..."

There is a separate law involving legislative records. Also, there is a law which specifically excludes from disclosure work done for legislators by the legislative staff. This would include bill drafting materials, research documents and fiscal work done specifically for a legislator. Such materials may not be released to any other persons without the consent of the legislator who requested the work.

Also, the Constitution requires that both houses of the legislature keep a journal. In addition, the rules of both houses require that committees keep minutes of their proceedings and that committee records are to be open to the public.

NEW HAMPSHIRE: The "Access to Public Records" statute applies to the New Hampshire legislature.

Chapter 91-A Access to Public Records

91-A: 1-a Definition of Public Proceedings.

"The term "public proceedings" as used in this chapter means the transaction of any functions affecting any or all citizens of the state by any of the following:

- I. The general court including executive sessions of committees;
- II. The governor's council;
- III. Any board or commission of any state agency or authority;
- IV. Any board, commission, agency or authority, of any county, town, municipal corporation, school district, or other political subdivision, or any committee, subcommittee or subordinate body thereof, or advisory committee thereto.

91-A: 4 Minutes and Records Available for Public Inspection

"Every citizen during the regular or business hours of all such bodies or agencies, and on the regular business premises of such bodies or agencies, has the right to inspect all public records, including minutes of meetings of the bodies or agencies, and to make memoranda abstracts, photographic or photostatic copies. of the records or minutes so inspected, except as otherwise prohibited by statute or RSA 91-A:5."

NEW JERSEY: "Right to Know" Law Chapter 1A. Examination and Copies of Public Records

47:1A-2. Public records; right of inspection; copies; fees.

"Except as otherwise provided in this act...all records which are required by law to be made, maintained or kept on file by any board, body, agency, department, commission or official of the State...shall...be deemed to be public records. Every citizen of this State...shall have the right to inspect such records...shall have the right to copy such records..."

There is a bill pending in the Legislature (Assembly No.889) which would repeal the above cited law (C. 47:1A-1 etsq.) and replace it with a "Public Information Act."

NEW MEXICO: Does not have a Freedom of Information Law, per se, but the state legislature does come under the same access standards as regular state agencies and local governments.

All government records are a matter of public record, except those legally specified and exempted.

New Mexico Statutes Annotated

71-5-1. Right to inspect public records--Exceptions.

"Every citizen of this state has a right to inspect any public records of this state except:

- A. records pertaining to physical or mental examinations and medical treatment of persons confined to any institutions;
- B. letters of reference concerning employment, licensing or permits;
- C. letters or memorandums which are matters of opinion in personnel files or students' cumulative files; and
- D. as otherwise provided by law."

2-3-13. Legislative council service, confidential nature.

"Neither the director nor any employee of the council service shall reveal to any person outside of the service the contents or nature of any request or statement for service, except with the consent of the person making such request or statement. They shall not urge or oppose any legislation, nor give any member of the legislature advice concerning the economic or social effect of any bill or proposed bill except upon the request of such member.

NEW YORK: Although the State Legislature is included in the same act creating a Freedom of Information Law, public access to legislative records is by a separate part of the statute.

Article 6 - Freedom of Information Law

§86. Definitions.

"3. "Agency" means any state or municipal department, board, bureau, division, commission, committee, public

authority, public corporation, council, office or other governmental entity performing a governmental or proprietary function for the state or any one or more municipalities thereof, except the judiciary or the state legislature."

§87. Access to agency records.

"2. Each agency shall, in accordance with its published rules, make available for public inspection and copying all records, except that such agency may deny access to records or portions thereof that:" (exemptions list)

§88. Access to state legislative records.

"2. The state legislature shall, in accordance with its published rules, make available for public inspection and copying:"
(specific list)

NORTH CAROLINA: Chapter 132 Public Records

§132-1. "Public records" defined. -

"Public record" or "public records" shall mean all documents, papers, letters, maps, books, photographs, films, sound recordings, magnetic or other tapes, electronic data-processing records, artifacts, or other documentary material, regardless of physical form or characteristics, made or received pursuant to law or ordinance in connection with the transaction of public business by any agency of North Carolina government or its subdivisions. Agency of North Carolina government or its subdivision shall mean and include every public office, public officer or official (State or local, elected or appointed), institution, board, commission, bureau, council, department, authority or other unit of government of the State or of any county, unit, special district or other political subdivision of government."

NORTH DAKOTA: Has no Freedom of Information Law as such, however, Article 103 of the Amendments of the Constitution provides for open governmental records.

Constitution of North Dakota - Amendments

Article 103

"Unless otherwise provided by law, all records of public or governmental bodies, boards, bureaus, commissions, or agencies of the state or any political subdivision of the state, or organizations or agencies supported in whole or in part by public funds, or expending public funds, shall

be public records, open and accessible for inspection during reasonable office hours."

In addition, the North Dakota Century Code statutorily provides for access to records of governmental bodies.

North Dakota Century Code

44-04-18. Access to public records.

"1. Except as otherwise specifically provided by law, all records of public or governmental bodies, boards, bureaus, commissions or agencies of the state or any political subdivision of the state, or organizations or agencies supported in whole or in part by public funds, or expending public funds, shall be public records, open and accessible for inspection during reasonable office hours."

OHIO:

Does not have a Freedom of Information Law as such, however, Ohio does have several statutes which relate to the release of information to the public.

Chapter 149: Documents, Reports, and Records

§149.43 Availability of public records.

"(1) "Public record" means any record that is required to be kept by any governmental unit, including, but not limited to, state, county, city, village, township, and school district units, except medical records, records pertaining to adoption, probation and parole proceedings, trial preparation records, confidential law enforcement investigatory records, and records the release of which is prohibited by state or federal law."

"(B) All public records shall be promptly prepared and made available to any member of the general public at all reasonable times for inspection. Upon request, a person responsible for public records shall make copies available at cost, within a reasonable period of time."

OKLAHOMA:

Has no comprehensive Freedom of Information or Public Records statutes, however, Oklahoma has a general statute relating to all governmental entities and a specific statute relating to legislative records.

§24. Records open for public inspection.

"It is hereby made the duty of every public official of the State of Oklahoma, and of its subdivisions, who are required by law to keep public records pertaining to their said offices,

to keep the same open for public inspection for proper purposes, at proper times and in proper manner, to the citizens and taxpayers of this State, and its sub-divisions, during all business hours of the day; provided, however, the provisions of this act shall not apply to Income Tax Returns filed with the Oklahoma Tax Commission, or other records required by law to be kept secret."

§73. Records and journals - Public inspection - Confidentiality.

"A. The records and journals of each House of the Legislature required by the Constitution of Oklahoma to be kept and preserved reflecting the yea or nay vote of each member entered in all votes taken by the Legislature or the disclosure of any personal or private interest in any measure or bill pending before the Legislature shall be available, at all reasonable times, to inspection by the public.

B. The records and files of the Legislature, not otherwise provided by law to be open to public inspection, shall be confidential and privileged and may be released for public consumption only upon approval by the Presiding Officer of each House respectively."

OREGON: Oregon Revised Statutes

Inspection of Public Records

192.410 Definitions for ORS 192.410 to 192.500. As used in ORS 192.410 to 192.500:

"(1) "Public body" includes every state officer, agency, department, division, bureau, board and commission; every county and city governing body, school district, special district, municipal corporation, and any board, department, commission, council, or agency thereof; and any other public agency of this state.

(2) "State agency" includes every state officer, agency, department, division, bureau, board and commission.

(4) "Public record" includes any writing containing information relating to the conduct of the public's business, prepared, owned, used or retained by a public body regardless of physical form or characteristics."

192.420 Right to inspect public records.

"Every person has a right to inspect any public record of a public body in this state, except as otherwise expressly provided by ORS 192.500"

The Senate Rules define the Senate records that shall be made available to the public.

Rules of the Senate

14.03 Senate Records

"As used in this rule, "Senate record" means a measure or amendment thereto, a document, book, paper, photograph, sound recording or other material exclusive of personal correspondence, regardless of physical form or characteristics, made by the Senate, a Senate committee or Senate personnel thereof, in connection with the exercise of legislative or investigatory functions, but does not include the record of an official act of the Legislative Assembly kept by the Secretary of State under Section 2, Article VI of the Oregon Constitution.

(2) Subject to the needs therefor required by Senate members and Senate personnel in the performance of their official duties, Senate records in the possession of the Senate shall be made available for public inspection, subject to such requirements to insure their safety as may be imposed by the President."

PENNSYLVANIA: The Pennsylvania "Right-to-Know" Law does not generally include the General Assembly. However, the Public Agency Open Meeting Law requires the minutes of proceedings of the General Assembly be made available for public inspection and copying in accordance with the "Right-to-Know" Law.

Right-to-Know Law

Inspection and Copying of Records

§66.1 Definitions

"(1) "Agency." Any department, board or commission of the executive branch of the Commonwealth, any political subdivision of the Commonwealth, ..."

§66.2 Examination and inspection

"Every public record of an agency shall, at reasonable times, be open for examination and inspection by any citizen of the Commonwealth of Pennsylvania."

Open Meeting Law

§261. Definitions

" "Agency" means any branch, department, board, authority or commission of the Commonwealth of Pennsylvania, ... the term "agency" shall include the General Assembly or any state department, ..."

264. Minutes of meetings, recollection; records public

"The minutes of a public meeting of an agency shall be taken and promptly recorded and shall be a public record under and subject to the Act of June 21, 1957. "(Right-to-Know Law.)"

The Rules of the Senate and House of Representatives provide for public access to certain records.

RHODE ISLAND: The Legislature is included in Rhode Island's "Open Records" Law.

Title 38 Public Records

Chapter 38-2 Access to Public Records

38-2-2. Definitions.

"(a) 'Public body' means any executive, legislative, judicial, regulatory, administrative body of the state or any political subdivision thereof;..."

"(d) 'Public record' is written or recorded information made or received by a public body relating to public business."

38-2-3 Records of Public Bodies.

"...all records maintained or kept on file by any public body, whether or not such records are required by any law or by any rule or regulation, shall be public records and every person shall have the right to inspect and/or copy such records at such reasonable time as may be determined by the custodian thereof."

SOUTH CAROLINA: The General Assembly is a "public body" as defined in § 30-4-20(a) of the Freedom of Information Act and is thus covered by this Act.

Public Records
Freedom of Information Act

§ 30-4-20. Definitions. "(a) "Public body" means any department of the State, any state board, commission, agency and authority, any public or governmental body or political subdivision of the State..."

§ 30-4-30. Right to inspect or copy public records. "(a) Any person has a right to inspect or copy any public record of a public body, except as otherwise provided by § 30-4-40. (Matters exempt from disclosure.)

During the 1980 Session an amendment was enacted to the Freedom of Information Act which provides for certain documents of the General Assembly to be exempt from the provisions of the Act.

§ 30-4-40. Matters exempt from disclosure. "(a) The following matters may be exempt from disclosure under the provisions of this chapter: "(8) Memoranda, correspondence and working papers in the possession of individual members of the General Assembly or their immediate staffs,..."

SOUTH DAKOTA: All public records of the three branches of government are open to the public under South Dakota's public information laws.

Chapter 1-27 Public Records and Files

1-27-1. Records open to inspection. "In every case where the keeping of a record, or the preservation of a document or other instrument is required of an officer or public servant under any statute of this state, such record, document, or other instrument shall be kept available and open to inspection by any person during the business hours of the office or place where the same is kept."

1-27-3. Records declared confidential or secret. "Section 1-27-1 shall not apply to such records as are specifically enjoined to be held confidential or secret by the laws requiring them to be so kept."

1-27-9. Records management programs - Definition of terms. - "(1) "State agency" or "agency" or "agencies" includes all state officers, boards, commissions, departments, institutions

and agencies of state government.

(3) "State record" means:

- (a) A record of a department, office, commission, board or other agency, however designated, of the state government.
- (b) A record of the state Legislature.
- (c) A record of any court of record, whether of state-wide or local jurisdiction.
- (d) Any other record designated or treated as a state record under state law."

1-27-17. Legislative and judicial records management programs.-

"Upon request, the commissioner of administration shall assist and advise in the establishment programs in the legislative and judicial branches of state government and may, as required by them, provide program services similar to those available to the executive branch of state government pursuant to the provisions of §§ 1-27-9 to 1-27-16, inclusive."

TENNESSEE:

Tennessee Code Annotated

15-304. Records open to public inspection. "All state, county and municipal records shall at all times, during business hours, be open for personal inspection by any citizen of Tennessee, and those in charge of such records shall not refuse such right of inspection to any such citizen, unless otherwise provided by law or regulations made pursuant thereto. (Acts 1957, ch.285, §1.)

15-401. Definitions.

"2. "Public record" or "public records" shall mean all documents, papers, letters, maps, books, photographs, microforms, electronic data processing output, films, sound recordings, or other material regardless of physical form or characteristics made or received pursuant to law or ordinance or in connection with the transaction of official business by any governmental agency.

6. "Agency" shall mean any department, division, board, bureau, commission, or other separate unit of government created or established by the constitution, by law or pursuant to law."

TEXAS:

The Legislature is included in the Texas Freedom of Information statute. Under the provisions of the law and because of various Attorney Generals' opinions, all records of the Legislature, including personnel records and expenditures are included. In the House of Representatives the Rules of the House are more specific concerning public access to legislative information.

Art. 6252-17a. Access by public to information in custody of governmental agencies and bodies.

"Sec.2. In this Act:

(1) 'Governmental body' means:

(A) any board, commission, department, committee, institution, agency, or office within the executive or legislative branch of the state government, or which is created by either the executive or legislative branch of the state government, and which is under the direction of one or more elected or appointed members;

(2) 'Public records' means the portion of all documents, writings, letters, memoranda, or other written, printed, typed, copied, or developed materials which contains public information."

"Sec.3. (a) All information collected, assembled, or maintained by governmental bodies pursuant to law or ordinance or in connection with the transaction of official business is public information and available to the public during normal business hours of any governmental body, with the following exceptions only:..."

UTAH:

Archives and Records Service and Information Practices Act

63-2-61. Definitions

"(1) 'Public records' mean all written or printed books, papers, letters, documents, maps, plans, photographs, sound recordings, and other records made or received in pursuance of state law or in connection with the transaction of public business by the public offices, agencies, and institutions of the state and its counties, municipalities, and other subdivisions of government."

"(7) 'State publication' or 'publication' mean any document, compilation, journal, law, resolution, blue-book, statute, code, register, pamphlet, book, report, hearing, legislative bill, leaflet, order, regulation, directory, periodical, or magazine issued in print by the state, any officer of the state, the legislature, or any state agency."

63-2-66. Archives and records service - Access - Certified copies.

"The archivist shall keep the public archives in his custody in such arrangement and condition as to make them accessible for convenient use and shall permit them to be inspected, examined, abstracted, or copied at reasonable times under his supervision by any person."

VERMONT: Subchapter 3. Access to Public Records

316. Access to public records and documents.

"(a) Any person may inspect or copy any public record or document of a public agency,..."

317. Definitions; public agency; public records and documents.

"(a) As used in this subchapter, 'public agency' or 'agency' means any agency, board, department, commission, committee, or authority of the state."

"(b) As used in this subchapter, 'public record' or 'public document' means all papers, staff reports, individual salaries, salary schedules or any other written or recorded matters produced or acquired in the course of agency business except:..."

318. Procedure.

"(a) Upon request the custodian of a public record shall promptly produce the record for inspection, except that:..."

VIRGINIA: The Virginia Freedom of Information Act

2.1-341. Definitions.

"(b) 'Official records' means all written or printed books, papers, letters, documents, maps and tapes, photographs, films, sound recordings, reports or other material, regardless of physical form or characteristics, prepared, owned, or in the possession of a public body in the transaction of public business."

"(e) 'Public body' shall mean any of the groups, agencies or organizations enumerated in subsection (a) of this section." (Legislative bodies of the state are included.)

2.1-342. Official records to be open to inspection.

"(a) Except as otherwise specifically provided by law, all official records shall be open to inspection and copying by any citizens of this State during the regular office hours of the custodian of such records."

WASHINGTON: Although Washington has a Public Disclosure Act which deals with public records and requires same to be made available for public inspection and copying, House of Representatives attorneys have concluded that the law does not apply to the Legislature.

Public Records

42.17.260 Documents and indexes to be made public.

"(1) Each agency, in accordance with published rules, shall make available for public inspection and copying all public records."

Notwithstanding exclusion of the Legislature, the House customarily makes almost all of its records available for public inspection except for items of a confidential nature. It has not, however, adopted any formal rules in this area.

WEST VIRGINIA: Freedom of Information

Article 1. Public Records

§29B-1-2. Definitions.

"(3) "Public body" means every state officer, agency, department, including the executive, legislative and judicial departments, division, bureau, board and commission; ..."

"(4) "Public record" includes any writing containing information relating to the conduct of the public's business, prepared, owned and retained by a public body."

§29B-1-3. Inspection and copying.

"(1) Every person has a right to inspect or copy any public record of a public body in this State, except as otherwise expressly provided by section four of this article."

In addition to the Freedom of Information Law, the House of Delegates and the Senate are governed by their own rules relating to committee meetings and records. In addition, the Journals of the respective Houses are public records.

WISCONSIN: Subchapter II Custody of Official Property

19.21 Custody and delivery of official property and records.

"(1) Each and every officer of the state, or of any county, town, city, village, school district, or other municipality or district, is the legal custodian of and shall keep and preserve all property and things received from his predecessor or other persons and required by law to be filed, deposited, or kept in his office, or which are in the lawful possession or control of himself or his deputies, or to the possession or control of which he or they may be lawfully entitled, as such officers."

"(2) Except as expressly provided otherwise, any person may with proper care, during office hours and subject to such orders or regulations as the custodian thereof prescribes, examine or copy any of the property or things mentioned in sub. (1)."

19.55 Public inspection of records.

"(1) Except as provided in sub. (2), all records in the possession of the board are open to public inspection at all reasonable times.

WYOMING: The Wyoming Legislature has traditionally kept its proceedings open to the public and no problems have been encountered with regard to access to legislative records.

Chapter 9 Public Records

§9-9-101. Definitions.

"(i) "Public records" when not otherwise specified shall include any paper, correspondence, form, book, ... or other document...that have been made by the state of Wyoming...and by any agencies of the state...except those privileged or confidential by law;"

§9-9-102. Inspection; generally.

"(a) All public records shall be open for inspection by any person at reasonable times, except as provided in this act or as otherwise provided by law,..."

APPENDIX III

FREEDOM OF INFORMATION LAW
(or equivalent)

<u>STATE</u>	<u>LAW</u>
ALABAMA	Public Records Law
ALASKA	Open Records Law
ARIZONA	Public Records Law
ARKANSAS	Freedom of Information Act
CALIFORNIA	Public Records Act
COLORADO	Public Records Law
CONNECTICUT	Freedom of Information Law
DELAWARE	Freedom of Information Act
FLORIDA	Public Records Law
GEORGIA	Public Records Act
HAWAII	Public Agency Meetings and Records Law
IDAHO	Records Law
ILLINOIS	Freedom of Information Act
INDIANA	Open Door Law
IOWA	Public Records Law
KANSAS	Records Open To Public Law
KENTUCKY	Open Records Law
LOUISIANA	Public Records Act
MAINE	Freedom of Access Law
MARYLAND	Public Information Act
MASSACHUSETTS	Public Records Law
MICHIGAN	Freedom of Information Act
MINNESOTA	Government Data Practices' Act
MISSISSIPPI	None

STATELAW

MISSOURI	Public and Business Records Law
MONTANA	Right-To-Know Law
NEBRASKA	Records Management Act
NEVADA	Public Records Law
NEW HAMPSHIRE	Access to Public Records Law
NEW JERSEY	Right-To-Know Law
NEW MEXICO	Public Records Law
NEW YORK	Freedom of Information Law
NORTH CAROLINA	Public Records Law
NORTH DAKOTA	Access to Public Records Law
OHIO	Public Records Law
OKLAHOMA	Open Public Records Law
OREGON	Public Records Law
PENNSYLVANIA	Right-To-Know Law
RHODE ISLAND	Open Records Law
SOUTH CAROLINA	Freedom of Information Act
SOUTH DAKOTA	Public Information Law
TENNESSEE	Public Records Law
TEXAS	Freedom of Information Act
UTAH	Information Services Act
VERMONT	Access to Public Records Law
VIRGINIA	Freedom of Information Act
WASHINGTON	Public Disclosure Act
WEST VIRGINIA	Freedom of Information Law
WISCONSIN	Custody of Official Property Law
WYOMING	Public Records Law

SENATE JUDICIARY COMMITTEE
Sectional Summary - CSSB 90 (Jud)

*Sec. 1

40.25.010 State Policy

Specifies the findings of the Legislature and the purpose of the legislation.

40.25.015 Records to be Open to Inspection

Provides that all records are open to inspection and available for duplication. Sets out the request procedure and provides for a uniform schedule of fees for duplication and postage costs.

40.25.020 Duties of Governmental Unit

Establishes the duties and procedures governmental units follow when a request for documents is made, including administrative review of any denial of disclosure.

40.25.030 Exemptions

Specifies the records exempted from disclosure, and provides for notification of individuals to whom the record pertains.

40.25.035 Provisional Release of Information

Provides for release of exempted records upon the realization of certain conditions.

40.25.040 Access to Records by Record Subject

Allows individuals to have access to records that pertain to them or have been submitted by them.

40.25.060 Correction and Amendment of Records

Provides a procedure where individuals may compel governmental units to correct or amend inaccurate information pertaining to them.

40.25.070 Enforcement: Injunctive Relief

Establishes court procedures to require governmental unit to disclose information. Provides that the burden is on the agency to sustain its action. Changes Civil Rule 65 relating to security deposits required in civil actions.

40.25.080 Civil Action for Obstruction of Access to Records

Gives a civil cause for action against a person wrongfully withholding records.

40.25.090 Definitions

Definitions section.

*Sec. 2 and 3. Amends existing law AS 44.62.310 entitled "Agency meetings public" to remove the authority of a municipality to hold executive sessions other than in accordance with state law and adds a new subsection dealing with the State open-meeting law.

*Sec. 4. Notification of the change in Rule 65 of the Alaska Supreme Court Rules.

*Sec. 5. Repeals the existing "open records" statutes.

*Sec. 6. Provides for the effective date of July 1, 1981.

have to the money, instrument, or property, or he waives it. If the objection is to the amount of money, the terms of the instrument, or the amount or kind of property, he shall specify the amount, terms, or kind which he requires, or is precluded from objecting later. This section shall not be construed to modify or change in any manner corresponding provisions of the Uniform Commercial Code (AS 45.05). (§ 3.20 ch 101 SLA 1962)

It is not necessary to tender cash. constitute a proper tender. Ward v. Ward v. Miller, 13 Alaska 752 (1952). Miller, 13 Alaska 752 (1952).
And a check, unobjected to, would

Sec. 09.25.100. Disposition of tax information. Information in the possession of the department of revenue which discloses the particulars of the business or affairs of a taxpayer or other person is not a matter of public record, except for purposes of investigation and law enforcement. The information shall be kept confidential, except when its production is required in an official investigation or court proceeding. These restrictions do not prohibit the publication of statistics presented in a manner that prevents the identification of particular reports and items, or prohibit the publication of tax lists showing the names of taxpayers who are delinquent and relevant information which may assist in the collection of delinquent taxes. (§ 3.21 ch 101 SLA 1962)

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 and are open to inspection by the public under reasonable rules during regular office hours. The public officer having the custody of public records shall give on request and payment of costs a certified copy of the public record. (§ 3.22 ch 101 SLA 1962)

Cross references.—Sec Civ. R. 44-(b)(4). As to management and preservation of public records, see AS 40.21.

It is "specifically provided otherwise" by AS 12.45.050.—With respect to the right of inspection and copying records under this section, it is "specifically provided otherwise," so far as police records are concerned, by the terms of AS 12.45.050, thus meeting the express exception to this section. Howard v. Jackson, 7 Alas. L.J. No. 3, p. 431 (March 12, 1969).

Stated in State v. Coon, 2 Alas. L.J. No. 1, p. 3 (Jan. 1964).

ALR and C.J.S. references.—Finding of draft board as evidence of physical condition of one registered, 16 ALR 247.

Admissibility of report of public officer or employee on cause of or responsibility for injury to person or damage to property, 153 ALR 163.

32 C.J.S. Evidence §§ 649 to 675.

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 18.50.010—

18.50.380; (2) records pertaining to juveniles; (3) medical and related public health records; (4) records required to be kept confidential by a federal law or regulation or by state law. Every public officer having the custody of records not included in the exceptions shall permit the inspection, and give on demand and on payment of the legal fees 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. (§ 3.23 ch 101 SLA 1962)

Cross references.—See Civ. R. 44-45. Preservation of public records, see AS (b)(4). As to management and preservation of public records, see AS 40.21.

Sec. 09.25.130. Effect of private seals and scrolls. Private seals and scrolls as a substitute for seals are abolished. They are not required to an instrument, but when used their effect remains unchanged. (§ 3.10 ch 101 SLA 1962)

Sec. 09.25.150. Claiming of privilege by public official or reporter. Except as provided in §§ 150—220 of this chapter, no public official or reporter may be compelled to disclose the source of information procured or obtained by him while acting in the course of his duties as a public official or reporter. (§ 1 ch 115 SLA 1967)

Editor's note.—Section 2, ch. 115, SLA 1967, provides: "This bill changes Rule 43(h) of the Supreme Court Rules [of Civil Procedure] by adding to the privileges there listed, the conditional privilege for public officers and reporters as to sources of information."

Sec. 09.25.160. Challenge of privilege. (a) When a public official or reporter claims the privilege in a cause being heard before the supreme court or a superior court of this state, a person who has the right to question him in that proceeding, or the court on its own motion, may challenge the claim of privilege. The court shall make or cause to be made whatever inquiry the court thinks necessary to a determination of the issue. The inquiry may be made instanter by way of questions put to the witness claiming the privilege and a decision then rendered, or the court may require the presence of other witnesses or documentary showing or may

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requirement of Civ. R. 8(c) that such a defense be specially pleaded. Rollins v. Leibold, Sup. Ct. Op. No. 910 (File No. 1646), 512 P.2d 937 (1973).

Or be waived. — Civil R. 8(c) requires a party to plead affirmatively fraud as a defense, and failure to so plead results in a waiver of the defense. Rollins v. Leibold, Sup. Ct. Op. No. 910 (File No. 1646), 512 P.2d 937 (1973).

Party not prejudiced by raising issue of fraud at trial. — Where a party was on notice that the defense that the sale was ineffective due to the lack of delivery and change of possession of the property would be raised at trial, since these are the factual bases for the statutory presumption of fraud, it does not appear that he was prejudiced by the raising of the

issue and the resulting instruction of the court, even though the defense was not affirmatively pleaded. Rollins v. Leibold, Sup. Ct. Op. No. 910 (File No. 1646), 512 P.2d 937 (1973).

Review where issue of fraud not raised in pleadings. — Even if the issue of fraud has not been raised in the pleadings of the parties, a party is still entitled to review of the issue on appeal if the issue was tried by the express or implied consent of the parties, under Civ. R. 15(b). Rollins v. Leibold, Sup. Ct. Op. No. 910 (File No. 1646), 512 P.2d 937 (1973).

Quoted in First Nat. Bank v. Enzler, Sup. Ct. Op. No. 1170 (File No. 2181), 537 P.2d 517 (1975).

Sec. 09.25.125. Enforcement: Injunctive relief. A person having custody or control of a public record who obstructs or attempts to obstruct, or a person not having custody or control who aids or abets another person in 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 obstructing, or attempting to obstruct, the inspection of public records subject to inspection under AS 09.25.110 or 09.25.120. (§ 1 ch 74 SLA 1975)

Sec. 09.25.160. Challenge of privilege.

Cited in Allred v. State, Sup. Ct. Op. No. 1304 (File No. 2343), 554 P.2d 411 (1976).

Chapter 30. Judgments.

Article:

4. Satisfaction of judgments (§§ 09.30.300 — 09.30.310)

Article 1. Judgments.

Section

55. Offers of judgment

70. Interest on judgments

Sec. 09.30.050. Confession of judgment.

Quoted in C.Y. Inc. v. Brown, Sup. Ct. Op. No. 1569 (File No. 2781), 574 P.2d 1275 (1978).

Sec. 09.30.055. Offers of judgment. On or before the 60th day following the filing of an answer in a civil action, and on the fifth day following the day discovery closes as ordered by the court, either the

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Alaska State Legislature

Senate

Official Business

Pouch V
State Capitol
Juneau, Alaska 99811

Jan. 29, 1981

Behrends Bldg.

1:30 p.m.

First Floor

MEMBERS PRESENT

SENATOR FISCHER, CHAIRMAN
SENATOR BRADLEY
SENATOR COLLETTA

MEMBERS ABSENT

SENATOR ELIASON
SENATOR STIMSON

AGENDA: Senate Bill 90 "An Act relating to privacy and public information and changing Rule 65 of the Alaska Supreme Court Rules of Civil Procedure."

Chairman Fischer called the meeting to order and then requested testimony on Senate Bill 90. Eight persons testified on the bill (see attached sign-in sheet).

Senator Parr, prime sponsor of the legislation, outlined the provisions of the bill, from the opening general statement of policy on information to a detailed analysis of the exemptions described. With regard to the exemptions, Senator Parr suggested that there were two ways of grouping them for consideration: 1.) Alaska constitutional right to privacy, and 2.) public policy securing confidentiality for the general public benefit. The exemptions and definitions outlined in SB 90 were carefully covered by Senator Parr prior to more substantive discussion of the legislation. He cited the passage into law of the Federal legislation addressing freedom of information more than thirteen years ago as an example Alaska might follow. Senator Parr also stressed the importance of correctly balancing the people's right to privacy and the people's right to know. Although the legislation has been introduced four times since May of 1975, it has never passed, and the existing statutes remain vague, marked by insufficient definition. Sen. Parr responded to various questions about the language and intent of specific sections.

Bruce Horowitz, supervising attorney of Alaska Legal Services, provided a written proposal for amendment of SB 90. He presented the proposed amendments individually and expressed general support of the legislation.

Exhibit A