

ALASKA LEGISLATIVE COMMITTEE FILES DO NOT DOZ 00/2

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SJ

SB 90

Barry Stern, representing the Dept. of Law, emphasized in his testimony that existing statutes addressing freedom of information are inadequate. He further remarked that the constitutional provision for a right to privacy frequently conflicts with the public's right to know. The concept of the right to privacy is left up to the agency to decide. Mr. Stern stressed the need for guidelines in determining the scope of a person's right to privacy. He also maintained that the exemptions section of the legislation is too specific, and agreed to transmit to the committee written suggested language to amend this section.

Elizabeth Cuadra, of the League of Women Voters of Alaska, gave brief testimony expressing support for SB 90 and for accessibility of records.

Patty Moriarty, of the Ombudsman's office, provided testimony from two perspectives: that of the Ombudsman's office, and that of the complainant seeking assistance from the Ombudsman's office. She read from the Ombudsman's report of Hawaii which bore the premise that information should be shared between the people and their elected representatives for decision-making purposes. Ms. Moriarty proposed language changes for specific sections of SB 90.

Earl Deater, of the Operating Engineers Union-302, testified in favor of SB 90, pointing out passage of such a measure would assist people in many professions in obtaining information.

Lee Sharp, attorney for the City and Borough of Juneau, provided testimony on the bill regarding the effect it would have on municipalities. Mr. Sharp maintained that local government should make decisions on how local records should be made available. He pointed out that additional costs would be created by the passage of SB 90 in terms of "search costs" and duplication costs. Mr. Sharp concluded his testimony with the statement that he agreed that public records should be made public, but that some things must rest at the local level.

Roland Shanks, of the Alaska Environmental Lobby, provided brief testimony in support of the bill and the intent behind it, noting that "public corporations" were not included in the list of people and agencies covered by the bill.

Chairman Fischer adjourned the meeting in light of the fact that scheduled time had expired.



Official Business

Alaska State Legislature

Senate

Committee on State Affairs

Pouch V
State Capitol
Juneau, Alaska 99811

Feb. 5, 1981

Capitol Building

1:30 p.m.

Room 118

MEMBERS PRESENT

SENATOR FISCHER, CHAIRMAN
SENATOR BRADLEY
SENATOR COLLETTA

MEMBERS ABSENT

SENATOR ELIASON
SENATOR STIMSON

AGENDA All-sites teleconference on SB90 "An Act relating to privacy and public information; and changing Rule 65 of the Alaska Supreme Court Rules of Civil Procedure."

Chairman Fischer opened the meeting and introduced SB90. He also called for those testifying and any others to send in written comments by the end of next week.

Testimony was received from the following:

From Fairbanks: Dean Gottearar, Task Force for
Professional Journalists
Box 74573
Fairbanks 99701

Susan Fischer
Society of Professional Journalists
Box 710
Fairbanks 99701

From Anchorage: Howard Weaver
Daily News
Pouch 6616
Anchorage 99502

From Ketchikan: Lew Williams, Editor
Ketchikan Daily News
501 Dock Street
Ketchikan 99901

Exhibit B

From Kodiak: Jon Newstrom
KMXT Radio
P. O. Box 484
Kodiak 99615

Deborah Nelson
Kodiak Daily Mirror
P. O. Box 1307
Kodiak 99615

From Homer: Annabel Lund
Managing Editor
Homer News
Box 254
Homer 99603

From Fairbanks: Scott Sterling
224 Nerland
Fairbanks 99701

Jamie Bryson
860B Yak Estates
Fairbanks 99701

From Sitka: Ray Medlin
Box 1339
Sitka 99835

From Skagway: Lucinda Hites
Box Three
Skagway 99840

From Soldotna: Steve Rinehart
The Peninsula Clarion
Box 1341
Kenai, Alaska 99611

From Anchorage: Job Lohr
Rural Cap
327 Eagle St.
Anchorage

From Palmer/Wasila: Mark Harris

From Haines: Leo Land
Box 122
Haines 99827

From Nome: Stanley Summers
KICY AM/FM
Box 82C
Nome, Alaska 99762

Feb. 5, 1981

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From Fairbanks: Kent Sturgis
Box 710
Fairbanks 99701

From Anchorage: Kay Fanning
Alaska Newspaper Assoc. & Daily News
Pouch 6616
Anchorage 99502

Ted Berns, Attorney
Mun. of Anchorage
Pouch 6-650
Anchorage 99501

From Fairbanks: Tom Knapp
Box 970
Fairbanks 99701

Bruce Wammack
913 Noble St.
Fairbanks 99701

From Anchorage: Matt Zencey
AKPIRG
Box 1093
Anchorage 99510

Mark Beltz
343 W. 12th Ave.
Anchorage 99512

From Ketchikan: Christine M
KINB Radio
Ketchikan 99901

Their comments are summarized as follows:

All testimony was in favor of the bill and strongly endorsed its passage. The majority felt that a definition of "right of privacy" needed to be established, that the question of fees for documents be looked at (it should not be a barrier), and that local municipalities and boroughs should not be able to opt out. Other testimony addressed the problem of tampering with public records and the problems that would occur if

Feb. 5, 1981

Page 4

if original entry police records were exempt from disclosure. Further testimony touched on difficulties with "sexist pronouns" in the language of the bill and the inclusion of state employees' performance records as public documents.

Chairman Fischer concluded the teleconference thanking participants for their constructive comments and requested written testimony be sent to the Senate State Affairs Committee by the end of next week.

2/17/81 Work Draft

COMMENTS ON SB 90 entitled "An Act relating to privacy and public information; and changing Rule 65 of the Alaska Supreme Court Rules of Civil Procedure."

→ Kevin -
This is a brief
overview of
testimony & written
comments to SB 90
Nan

Page 1 - No suggested changes

Page 2

line 16 - add the words "in person" (2 comments)

line 17 - add "The request can be made verbally or in writing."

beginning line 19 through 22 - a fee should be charged for searching for the records

bill should permit municipalities to establish a charge for documents which does not exceed the actual cost of producing and duplicating the documents.

establish a uniform fee schedule similar to the regs proposed by the governor. - 20 pages free within a 24 hour period

Less than 100 copies free - Commissioner of Administration shall by regulation provide a method by which indigent persons may secure information without payment of fees.

Fee should be waived in the public interest.

Fees should not be used to discourage the public

Fees currently charged are prohibitive.

line 25 - add federal law or regulation

add "or required to be kept confidential by federal law or regulation."

Page 3

lines 19 through 21 - Include "applicants" ; expand social services to include public benefits

lines 22 through 25 - exemption too broad; should be deleted (2 comments)

Page 4

lines 5 through 8 - Who decides what are trade secrets, etc?

lines 9 through 10 - Current driver's manual contains sample questions which are in some cases, actual questions on drivers license test.

line 11 - "intelligence" needs to be defined.

Excludes those records prepared by a police officer at the time the original action is taken.

Excludes original entry police records - doesn't allow the press to be a watchdog to see that police do not violate civil rights.

Do not alter section; must be read in tandem with page 6, line 8 through 12.

Page 5

lines 1 through 6 - Who makes the decision?

line 29 - rewrite subsection (h) to read:

(h) The exceptions provided under this section do not preclude

(1) production and release of subpoenaed records or information to a state or municipal agency during the course of an investigation;

(2) production and release of records to the ombudsman when requested during the course of an investigation by him; records released to the ombudsman shall be kept confidential by him while the records are in his custody, except the ombudsman may, upon prior notice to the agency, release the records to the court for in camera review pursuant to AS 40.25.025(d).

Page 6

lines 3 through 7 - Oppose access to an employee's record of current performance on the job. (3 comments).

Each municipality should make the decision on personnel records.

beginning line 27 -the records shall be made [promptly] available to the person making the request within 10 days of the receipt of the request.

.....as soon as practicable but no more than 10 days.

Must allow for 10 days because it places the request over all other government business. (2 comments)

Page 7

lines 1 through 11 - the use of the word "suitable" is too vague. Should use Federal FOIA "reasonable segregability".

Any governmental unit that is applying an exemption should be required to include a packet of instructions, including the form drawn up by the Superior Court, on how to proceed in court without counsel to challenge the exemption.

lines 15 through 29 - smaller communities don't have Superior Court Judge full time. Suggestion that the magistrate's office do initial paperwork.

line 26 - change to "actual" attorney fees.

Page 8

line 25 through 29 - Who is the "head" of a governmental unit? What is an a "agency? If an agency is a department, the commissioner would be the "head"; if agency means the division, the director would be the "head". Who is the "head" of for example, the Human Rights Commission - the Executive Director or the Chair?

Would you need a "designee" in each office location - for example, an employee in Fairbanks Natural Resources office need to contact a designated custodian in Anchorage before releasing a record?

Page 8 con't

line 7 - case should be heard as a priority matter. 10 - 30 days maximum to hear trial.

line 16 - change reasonable to actual attorney fees and other actual litigation costs.

line 27 - definition of "governmental unit" should include "governmental instrumentality", "public corporation", "REAA" and "independent contractors paid with government funds but limited only to those activities related to the government contracts."

Page 9

line 11 - include "computer maintained records and information stored in a computer system"

line 24 - What is a "public body?" Would, for example, this section apply in a meeting between several state agencies and the U.S. Army?

beginning at line 28 - delete entire section - Repeals present authority of state or local government body to go into executive session to discuss matters which are required or authorized by federal law to be discussed in executive session. Would also repeal the present authority of municipalities to establish by charter or ordinance additional subjects which may be discussed in executive session.
(Above supported by Juneau, Kodiak, Nome and Municipal League)

OTHER COMMENTS

Exempt municipalities (Kodiak, Juneau, Municipal League)

Don't exempt municipalities (8 comments)

Allow municipalities to opt out after adopting similar ordinance.

Include an Administrative Appeal process.

Define "right to privacy" and "unjustifiable intrusion into a person's right of privacy."

Someone who would be adversely affected by disclosure of an arguably exempt record should be allowed to intervene in a case involving the application of an exemption.

Change pronouns to read he/she, him/her

Witnesses will not be protected if names, addresses & other personal info can be given to the public.

Recommend preparing poster to be hung in each office - 1) how to request info; 2) cost per page; 3) public's right to know; 4) what to do for enforcement.

Each governmental unit should be required to keep a file of letters of denial that should itself be made public.

Burden of proof should rest with the governmental unit. Presumption in favor of disclosure

Comment SB 90

Page 4

Preliminary labor negotiations should be private.

Public is not even aware of what is available.

Public will be paying additional "thousands of dollars" to staff a government unit to produce these records.

Page 10, Section 4 - good faith defense should be clearly limited as applying only to impairing the availability of a public record.



Official Business

Alaska State Legislature

Senate

Committee on State Affairs

Pouch V
State Capitol
Juneau, Alaska 99811

March 3, 1981

SENATE STATE AFFAIRS

COMMITTEE REPORT

ON

CSSB 90 ENTITLED "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."

Committee Substitute Bill Summary

The committee substitute makes a number of substantive and technical changes to the original SB 90. The following changes should be noted:

- 1) The committee substitute permits a reduction or waiver of copying fees in the public interest or if the requester is indigent. Sec. 40.25.015(d).
- 2) The committee substitute allows a person to obtain 20 pages of a record copied without charge within any 24-hour period. Sec. 40.25.015(d).
- 3) The committee substitute specifies four "unusual circumstances" which allow the governmental unit additional time to produce the records. Sec. 40.25.020(e).
- 4) The committee substitute reduces the number of exemptions from the duty to make disclosure from 17 to 12. Sec. 40.25.030(a).
- 5) The committee substitute states that all records become public after they are 50 years old unless specifically exempted from disclosure by state statute. Sec. 40.25.030(c).
- 6) The committee substitute provides a mechanism to allow a person whose privacy interests may be invaded unwarrantedly by disclosure of a public record to present arguments against disclosure to the governmental unit. Sec. 40.25.030(b).

- 7) The committee substitute provides a mechanism whereby individuals can compel government to correct or amend incomplete or inaccurate information in records pertaining to them.
Sec. 40.25.060.

Background

The current statutes AS 09.25.110 and AS 09.25.120 addressing access to public records were adopted in 1962. AS 09.25.125 concerning enforcement and injunctive relief was added in 1975.

A bill relating to privacy and public information was first introduced in the 9th Legislature, 1st Session by the then Representative Parr. From first introduction in 1975 and throughout each subsequent legislative session, the proposed legislation received exhaustive study by standing committees of each house and Free-Conference committees.

SB 90 was introduced on January 15, 1981, and referred to the State Affairs and Judiciary Committees. A Senate State Affairs Committee hearing was held on January 29, 1981 (see attached minutes - Exhibit A) and an all-sites teleconference on February 5, 1981 (see attached minutes - Exhibit B). A mark-up session was held on Tuesday evening, February 17, 1981. Consistent with public testimony and the committee input, CSSB 90 was drafted.

It is the Committee's intent that CSSB 90, or a form thereof, be enacted by this legislative session.

Purpose of Committee Substitute SB 90

It is the intention that this legislation be interpreted and implemented in light of the policy that all records of governmental units are open to the public unless specifically exempted by provisions of this bill. The provisions exempting records should be interpreted in the narrowest possible sense, so that in cases of any doubt, the information should be made open to public inspection. The exclusions in the bill balance the sometimes conflicting rights of freedom of information and the right to privacy of the individual.

The committee substitute retains those sections of SB 90 that received virtually unanimous support during public testimony, including: (1) the prohibition against charging the public for

the costs of document searches; (2) the inclusion of municipalities within the coverage of the bill; and (3) the simplified injunctive relief provisions.

Major substantive changes to the original SB 90 include: (1) a reduction or waiver of copying fees in the public interest or if the requester is indigent; (2) allows a person to obtain 20 pages of a record copied without charge within any 24-hour period; (3) specifies four "unusual circumstances" which allow the governmental unit additional time to produce the records; (4) reduces the number of exemptions from the duty to make disclosure from 17 to 12 with the twelfth exemption exempting records from disclosure which would constitute an unjustifiable invasion of privacy; (6) all records become public after they are 50 years old unless specifically exempted from disclosure by state statute; (7) provides a mechanism to allow a person whose privacy interests may be invaded unwarrantedly by disclosure of a public record to present arguments against disclosure to the governmental unit; and (8) provides a mechanism whereby individuals can compel governmental units to correct or amend incomplete or inaccurate information in records pertaining to them.

It is the committee's desire that the Judiciary Committee consider the following when analyzing CSSB 90: whether medical records should be specifically exempted in light of the provision that all records become public after they are 50 years old and whether independent contractors paid with government funds should be included in the definition of governmental unit. Other concerns were the inclusion of original police entry records in the exemption section and whether there was a need to include a definition of "the right to privacy".

Section Analysis

Sec. 1.

Sec. 40.25.010. Specifies the Findings and Purpose.

Sec. 40.25.015. Provides that all records are open to inspection and copying, and provides for a uniform fee schedule which may be varied in the public interest or if the requester is indigent.

Sec. 40.25.020. Establishes the duties and procedures of a governmental unit to follow when a request for documents is made.

Sec. 40.25.030. Specifies the exemptions.

Sec. 40.25.040. Allows individuals to have access to records that pertain to them.

Sec. 40.25.060. Provides a mechanism whereby individuals can compel governmental units to correct or amend incomplete or inaccurate information in records pertaining to them.

Sec. 40.25.070. Establishes court procedures to require the governmental unit to release the records.

Sec. 40.25.080. Gives a civil cause of action against a person wrongfully withholding records.

Sec. 40.25.090. 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. Changes 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.



SEN. VIC FISCHER, CHAIR




SEN. BRADLEY



SEN. COLLETTA



SEN. ELIASON



SEN. STIMSON



Alaska State Legislature

Senate

Committee on State Affairs

Pouch V
State Capitol
Juneau, Alaska 99811

Official Business

Jan. 29, 1981

Behrends Bldg.

1:30 p.m.

First Floor

MEMBERS PRESENT

SENATOR FISCHER, CHAIRMAN
SENATOR BRADLEY
SENATOR COLIETTA

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

Barry Stern, representing the Dept. of Law, emphasized in his testimony that existing statutes addressing freedom of information are inadequate. He further remarked that the constitutional provision for a right to privacy frequently conflicts with the public's right to know. The concept of the right to privacy is left up to the agency to decide. Mr. Stern stressed the need for guidelines in determining the scope of a person's right to privacy. He also maintained that the exemptions section of the legislation is too specific, and agreed to transmit to the committee written suggested language to amend this section.

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Feb. 5, 1981

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MEMBERS ABSENT

SENATOR ELIASON
SENATOR STIMSON

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Howard Weaver
Daily News
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Anchorage 99502

From Ketchikan:

Lew Williams, Editor
Ketchikan Daily News
501 Dock Street
Ketchikan 99901

Exhibit B

Feb. 5, 1981

Page 2

From Kodiak: Jon Newstrom
KMXT Radio
P. O. Box 484
Kodiak 99615

Deborah Nelson
Kodiak Daily Mirror
P. O. Box 1307
Kodiak 99615

From Homer: Annabel Lund
Managing Editor
Homer News
Box 254
Homer 99603

From Fairbanks: Scott Sterling
224 Nerland
Fairbanks 99701

Jamie Bryson
860B Yak Estates
Fairbanks 99701

From Sitka: Ray Medlin
Box 1339
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Their comments are summarized as follows:

All testimony was in favor of the bill and strongly endorsed its passage. The majority felt that a definition of "right of privacy" needed to be established, that the question of fees for documents be looked at (it should not be a barrier), and that local municipalities and boroughs should not be able to opt out. Other testimony addressed the problem of tampering with public records and the problems that would occur if

Feb. 5, 1981

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Chairman Fischer concluded the teleconference thanking participants for their constructive comments and requested written testimony be sent to the Senate State Affairs Committee by the end of next week.



Official Business

Alaska State Legislature

Senate

Judiciary Committee

Pouch ✓
State Capitol
Juneau, Alaska 99811

TO: File
FROM: Oleta Simmons
DATE: April 5, 1981
SUBJECT: SB 90

I talked with Shemie Shelly of APEA (586-2334) regarding the Friday, April 10 hearing of SB 90. She indicated that the following individual would like to be asked to testify before the committee:

Fred Muller, ext. 2200
Deputy Commissioner of Personnel
Department of Administration

/ods



Official Business

Alaska State Legislature

Senate

Pouch V
State Capitol
Juneau, Alaska 99811

M E M O R A N D U M

TO: SEN. PAT RODEY, CHAIR
JUDICIARY COMMITTEE

FROM: SEN. VIC FISCHER VF

DATE: MARCH 5, 1981

RE: SB 90, "Freedom of Information" Bill

Attached are a number of communications on this legislation received after Senate State Affairs Committee Mark-up and re-draft of the bill. Many of the issues raised were considered by our committee, but you may wish to give them some further attention.

Municipality of Anchorage



POUCH 6-650
ANCHORAGE, ALASKA 99502
(907) 264-4545

GEORGE M. SULLIVAN,
MAYOR

OFFICE OF THE MUNICIPAL ATTORNEY

February 24, 1981

Senator Vic Fischer
Pouch V
Juneau, Alaska 99811

Re: Senate Bill No. 90 - Public
Information Statute

Dear Senator Fischer:

I apologize for the delay in responding to your request for information concerning the Municipality's position on the above referenced bill. Enclosed please find a copy of Chapter 3.90 of the Anchorage Municipal Code dealing with access to public records within the Municipality. As you can see, this ordinance is quite comprehensive in attempting to set standards and procedures for complying with requests for municipal information. With respect to Senate Bill No. 90, I am pleased, as I indicated during my teleconference testimony, that the proposed act seems much improved over earlier versions of this legislation submitted in previous years. Although I expect to conduct a more detailed analysis of the proposed bill and to provide input on the proposed legislation as it moves through the legislative process, I would like to offer the following preliminary observations at this time.

1. In the interests of protecting personal rights to privacy, I strongly support provisions in the proposed bill allowing state and local government personnel to protect personal information maintained in files on public employees and in other files in situations in which the release of such information would be an unwarranted invasion of privacy.
2. On page 4 of SB 90, proposed exemption no. 11 refers to trade secrets and other privileged information furnished in compliance with state statutes or municipal ordinances. This exemption appears somewhat narrower than the one found at AMC 3.90 which is intended to protect the rights of private business by preventing disclosure of any private business information which, if disclosed publicly, would create a competitive advantage to others in the marketplace. Specifically, I call your attention to Sec. 3.90 .040(F).

3. I also note that SB 90 does not appear to deal with at least two categories of information that I strongly feel should be in most cases given no disclosure or at least limited disclosure. One item is any type of preliminary costing or other analyses or documents prepared during the course of labor negotiations. I strongly suggest that members of your committee and other legislators consult with representatives of organized labor and seek other input concerning the affect which unlimited disclosure of this type of information would have on the chances for successful collective bargaining by state and local governments. I also do not see any reference to any type of confidentiality allowed for names and addresses of complaining witnesses in building code or health code violation cases. The Municipality presently allows such information to be received in confidence at the preliminary stage before the existence of any violation has been determined. Of course, if a violation is found and enforcement proceedings are commenced, the names of complaining witnesses are available for disclosure. The reason for this proposed exemption is to encourage persons to report problems that they believe to exist.

4. On page 6 of SB 90, the proposed AS 40.25.020 appears to require "immediate" production of any records in response to "any request" including, presumably, requests received over the telephone or in some other nonwritten form. I am concerned that the "immediate" standard is frankly unrealistic, especially in light of some rather serious penalty provisions provided elsewhere in the bill which presumably could be applied for failure to meet the "immediate" production requirement.

5. With respect to proposed section 40.25.025, it is not totally clear whether the court in following the expedited procedures set forth will be required to notify the municipality or the state to give government officials an opportunity to present their side of a disputed case. It seems that basic fairness would require that such notice be given so that government officials could, in legitimate circumstances, explain their reasons for attempting to protect particular categories of records or information.

6. On page 9 of the bill, proposed section 44.62.310 would appear to alter the present open meeting statute to provide that any staff conference or other administrative meeting would need to be open to the press or any other onlooker unless such a meeting followed the formal procedures prescribed for executive sessions of legislative bodies. Again, I question whether this type of standard is realistic and whether the authors of the proposed legislation have seriously considered how this provision might be abused.

7. Also on page 9 of the proposed bill, the legislation would delete the ability of municipalities to prescribe by ordinance matters which could be discussed in executive session. The

Senator Vic Fischer
February 24, 1981
Page 3

rationale behind this proposed deletion appears to be that somehow the state legislature is the only body capable of making the difficult policy decision as to when it might be necessary, in the best interests of the public, for a local legislative body to discuss certain matters in executive session. Since the procedures for calling an executive session are quite stringent and since (I would argue) local legislative bodies are susceptible to pressures from the media if they abuse their power to hold executive sessions, I question the wisdom of the proposed amendment.

I would like to thank you for the opportunity to testify at the teleconference hearing on SB 90, and I look forward to having continued input on the legislation as it progresses during the present session. As I indicated during my testimony, I would like to congratulate you and all of the sponsors of SB 90 for what I believe is an improved approach to this serious problem over previous attempts. If you have any questions concerning the above, please do not hesitate to contact me.

Very truly yours,

DEPARTMENT OF LAW



Theodore D. Berns
Municipal Attorney

TDB:gml
Enclosure
cc: Mitch Gravo

Chapter 3.90

ACCESS TO PUBLIC RECORDS

Sections:

- 3.90.010 Policy of the municipality.
- 3.90.020 Definitions.
- 3.90.030 Information available to the public.
- 3.90.040 Exemptions for particular records.
- 3.90.050 Departmental regulation of time, place and manner of inspection of public records.
- 3.90.060 Response to requests for public records.
- 3.90.070 Ombudsman and community councils.

3.90.010 Policy of the municipality.

It is the policy of the municipality to provide the fullest and most rapid public access to municipal records and information, so that the right of the people to remain informed is protected. In enacting this measure, the Assembly recognizes the competing interests of personal privacy and the right of the public to have access to information concerning the conduct of the people's business. This chapter shall therefore be liberally construed to require full disclosure of all public records in the possession or control of the municipality, except those specifically exempted under Section 3.90.040 of this chapter. (AO 77-50A).

3.90.020 Definitions.

For purposes of this chapter:

- A. "Document" means any method of storing information, including but not limited to spoken words, handwriting, typewriting, printing, photostating, photographing and any other form of communication or reproduction, upon any medium, including but not limited to paper, magnetic or paper tape, photographic film or prints, magnetic or punched cards, discs, drums and phonograph records.

- B. "Municipal agency" means any department, division, board, commission or private contractor which has custody of public records as defined in this chapter.
- C. "Records" means any document containing information relating to the conduct of the people's business which is prepared, owned, used or retained by a municipal agency, regardless of the physical form or characteristic of the document. (AO 77-50A).

3.90.030 Information available to the public.

Except as provided by Section 3.90.040 of this chapter, or by other provisions of municipal, state or federal law, all public records shall be open to inspection by any person subject to guidelines regulating the time, place and manner of inspection which may be adopted by the manager pursuant to Section 3.90.050 of this chapter. The types of records and information open to public inspection pursuant to this chapter shall include but shall not be limited to the following:

- A. Financial and operational cost information, including information as to revenues, expenditures, indebtedness, departmental budget requests and formal departmental recommendations in regard to project priority.
- B. Information relating to contracts to which the municipality is a party, including payment provisions, information relating to bids and requests for proposals received or solicited by the municipality, and information relating to the status of goods or services furnished pursuant to contract.
- C. Regulatory, financial, assessment and tax information concerning real property located within the municipality.
- D. Salary levels and fringe benefits accorded municipal officers and employees by law, including information in regard to the pay range and step grade of an employee or officer, and statistical analyses or compilations relating to municipal practices and policies concerning compensation for various occupational groups, departments and divisions.
- E. Statistical information and analyses concerning case loads, numbers and categories of persons for whom services were performed or treatment provided, results achieved and per patient and per unit cost.

- F. Feasibility, management, cost effectiveness and similar reports prepared by the municipality with municipal moneys.

The foregoing enumeration of information available for public inspection is not designed to limit the categories of records and information that shall be made available to the public pursuant to this chapter. The policy of providing public access to public information shall be broadly and liberally construed. (AO 77-50A).

3.90.040 Exemptions for particular records.

This chapter shall not be construed to require disclosure of:

- A. Communications between any agency and the municipal attorney's office which contain legal questions concerning pending or actual litigation. This subsection does not protect from disclosure documents which were public records prior to the commencement of the litigation, and public records which are otherwise subject to disclosure may not be protected from disclosure by mere submission to the attorney.
- B. Personnel, payroll or medical files, Equal Rights Commission files or other files which reveal the financial or medical status of any specific individual, the release of which would constitute an unwarranted invasion of privacy.
- C. Police investigation files compiled by any agency as a part of an investigation of criminal activity, except that such records may be released to other governmental agencies if necessary to the proper administration of justice. Police information practices in regard to criminal justice information shall be governed by the provisions of AS 12.62.010 et seq. and the regulations promulgated thereunder.
- D. The name, address, telephone number or other identifying information about complainants in actions to enforce building, zoning, environmental or other municipal ordinances or regulations.
 - 1. This subsection does not prohibit disclosure of the contents of the complaint, so long as the complainant is not identifiable.

2. This subsection does not prohibit disclosure of the name of the complainant when such disclosure becomes necessary to fair and just disposition of the charge or complaint in enforcement proceedings.
- E Records held by the Port of Anchorage or any public utility pertaining to any client, customer or subscriber, the release of which would constitute an unwarranted invasion of the privacy of that customer.
- F Records or engineering or other technical data, which, if released would provide a competitive advantage to any other person or corporation engaged in similar or related activities.
- G Proprietary information which a manufacturer, consultant or provider reasonably requires to be kept privileged or confidential to protect the property interests of persons providing the information or data.
- H Information which municipal governments engaged in collective bargaining regularly consider to be privileged or confidential for purposes of successful collective bargaining.
- I Information obtained by and in the custody of insurance carriers insuring the municipality and their attorneys and agents regarding possible and pending claims against the municipality.
- J Health, mental health, medical, juvenile and personality problem information obtained or prepared by the municipality with respect to any person for whom treatment or services were provided.
- K Personal information other than name and address given to the municipality with the legitimate expectation of privacy in conjunction with licenses, permits or other municipal services. (AO 77-50A).

3.90.050 Departmental regulation of time, place and manner of inspection of public records.

The mayor shall, pursuant to Chapter 3.20, adopt municipal regulations for each municipal department as to the time, place and manner of inspection of public records held by the municipality. Such regulations may also provide:

- A. That a fee may be required. The fee shall not exceed the actual cost to the agency. No fee shall be charged when a person simply requests access to the information. In the event the person is unable to pay any requested fee, and signs an affidavit to the effect he or she is indigent, there will be no cost to the above-described person.
- B. The form in which the specified documents shall be made available. Documents need not be reproduced in the exact form or medium in which they are stored. However, any alteration of the form or medium of public records shall not change the substantive content of the information contained in the public record. When the actual content is changed, the nature of the change and why it was necessary shall be communicated to the requester.

Regulations adopted pursuant to this section shall be posted in a conspicuous manner at the place designated for inspection of each department or agency's documents. (AO 77-50A, am AO 79-27).

3.90.060 Response to requests for public records.

All municipal officers and employees shall, consistent with the orderly conduct of municipal business, make a good faith and diligent effort to provide a rapid and intelligible response to requests for inspection of records made pursuant to this chapter. To effect this policy, the following guidelines are adopted.

- A. Information pursuant to this chapter shall be furnished promptly to the requesting party unless the information requested is declared privileged or confidential pursuant to applicable federal, state or municipal law. If the officer or employee considers the information to be privileged, he shall prepare a slip setting forth the date, the item of information requested, the specific provision of applicable state, federal or municipal law exempting the requested information from disclosure, and the title and signature of the person withholding the information. A copy of this slip shall be provided to the party requesting the information. If an officer or employee of the municipality called upon to furnish information pursuant to this chapter is uncertain as to whether or not the material sought is privileged or otherwise exempt from disclosure, he or she shall

indicate this on the slip, and shall further identify his or her supervisor so that the request for inspection of documents may be submitted to the officer or employee authorized to make a decision on the matter. A copy of this slip shall be given to the requesting party.

- B. Any denial of a request for information or inspection of public records shall be automatically appealed to the mayor, and a written reply will be given within seven working days either granting or denying the appeal.

Any appeal from the clerk's office or ombudsman's office shall go to the Assembly. Any appeal from the school district shall go to the School Board.

- C. All requests for records and information made pursuant to this chapter shall be responded to within a reasonable time period. If the records and information cannot be located in time to make a response within two working days of the request, the requesting party shall be promptly advised, and, if the requesting party still desires the information or records, a reasonable and diligent search shall be made for it. (AO 77-50A).

3.90.070 Ombudsman and community councils.

Nothing in this chapter shall be construed to increase or diminish the rights, powers and responsibilities accorded to the municipal ombudsman, or the various community councils pursuant to separate ordinance. (AO 77-50A).

ALASKA ANTHROPOLOGICAL ASSOCIATION

N

PRESIDENT
KATHEN W. WORKMAN
3310 E. 41st Ave., Anchorage, Alaska 99504

BOARD OF DIRECTORS
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February 26, 1981

Senator Vic Fischer, Chairman
Standing Committee on State Affairs
Pouch V, State Capitol
Juneau, AK 99811

Dear Senator Fischer:

The purpose of this communication is to comment on Senate Bill 90. Freedom of information in state government is crucial to encourage public input and insure that operations are conducted in a forthright manner.

It is realized that the release of all information is neither useful nor in the best interests of all citizens, thus your bill calls for several useful exclusions. One category that is not protected in the bill is archaeological sites. I ask that access to information on locations of these endangered properties be somewhat restricted.

Presently the Office of History and Archaeology serves both research and preservation functions. The Alaska Heritage Resources Survey provide the ongoing inventory of known sites. The state employed archaeologists readily offer locational information to responsible persons engaged in land planning, development, or academic reports. Recently the Division of Parks sanctioned the Office of History and Archaeology to withhold specific site location information to a very few unscrupulous individuals whose intent, based upon their past actions, was to damage archaeological sites in the process of gaining artifacts for sale in a thriving but illegal antiquities market. Senate Bill 90 might once again permit and even condone this abuse unless protective exclusions for site locational data are maintained.

A visit to a site that has suffered from these unprincipled despoilers is a saddening experience. Huge random holes, much like bomb craters scar the surface. Desecrated human burials are evident from scattered bones. Simple or common artifacts are discarded in favor of a few choice pieces of ivory to be shipped

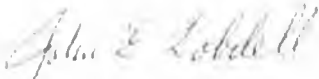
Senator Vic Fischer
Page 2
February 26, 1981

out of state and sold at obscene profits. Ancient environmental data is ruined. Scientific information, once out of natural context, becomes worthless.

Archaeologists, in scientifically excavating a site, engage in limited and controlled excavations. The goal is to reconstruct past lifeways through careful study of all ecofacts and artifacts. Most importantly, after careful study the collections are placed in museums so that all Alaskans can view and enjoy the ancient remains.

I applaud the general intentions of this bill and its authors are to be commended. I would, however, respectfully recommend that the bill be modified to exclude specific cultural resource site locational information. Many ancient sites have unfortunately succumbed to natural erosion. These losses could be greatly compounded by the few persons who would wantonly rob us of a delicate record of human heritage. Continued protection by the State of Alaska can only be viewed as sound management of scarce resources and certainly in the best interests of all Alaskans.

Very respectfully,



John E. Lodbell, Ph.D.
Chairman, Archaeology Advocacy Committee
Alaska Anthropological Association

/lke

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF LAW

CRIMINAL DIVISION

POUCH KC - STATE CAPITOL
JUNEAU, ALASKA 99811

February 6, 1981

The Honorable Vic Fischer
Chairman, Senate State Affairs Committee
Alaska State Senate
Pouch V
Juneau, Alaska 99811

Re: SB 90

Dear Senator Fischer:

At the January 29, 1981 meeting of the Senate State Affairs Committee you requested that I provide the Committee with proposed amendments to SB 90, An Act relating to privacy and public information. Additionally, you requested that I incorporate as many suggestions for amendments that were raised during public testimony that would be consistent with the administration's proposed procedural regulations on public records and the general approach to the subject adopted by the Department of Law after consulting with other state agencies.

To this end, I have drafted and enclosed for your Committee's consideration a proposed committee substitute for SB 90. Additionally, I have prepared a draft of commentary to accompany the legislation. The commentary should naturally be expanded and revised to provide evidence of legislative intent as the bill itself is revised. The draft commentary highlights the differences between the proposed committee substitute and SB 90.

While the proposed committee substitute makes a number of substantive and technical changes to SB 90, the following changes should be noted:

1. The proposed committee substitute permits a reduction or waiver of copying fees in the public interest, consistent with public testimony and the administration's proposed regulations on the subject. Sec. 40.25.015(d).
2. The proposed committee substitute allows a person to obtain 20 pages of a record copied without charge within any 24-hour period, consistent with public testimony and the administration's proposed regulations on the subject. Sec. 40.25.015(d).

3. The proposed committee substitute specifies a reasonable time frame to permit a governmental unit to search for and locate a requested record and to determine whether an exemption to disclosure applies. This approach is consistent with the administration's proposed regulations on the subject, prior versions of the bill, and the federal act. Sec. 40.25.020.
4. The proposed committee substitute reduces the number of exemptions from the duty to make disclosure from 17 to 12. This approach is consistent with general public testimony on the bill. Sec. 40.25.030(a).
5. The proposed committee substitute specifies guidelines that are to be used by government in determining whether disclosure of a particular record would constitute an unwarranted invasion of privacy. Though not specifically defining the "right to privacy", the guidelines are consistent with public testimony that has requested clarification on this issue. Sec. 40.25.030(b).
6. The proposed committee substitute provides a mechanism to allow a person whose privacy interests may be invaded unwarrantedly by disclosure of a public record to present arguments against disclosure to the governmental unit. Sec. 40.25.030(c).
7. The proposed committee substitute provides a mechanism whereby individuals can compel government to correct or amend incomplete or inaccurate information in records pertaining to them. Sec. 40.25.060.

It also should be noted that the proposed committee substitute retains those sections of SB 90 that received virtually unanimous support during public testimony, including: (1) the prohibition against charging the public for the costs of document searches; (2) the inclusion of municipalities within the coverage of the bill; and (3) the simplified injunctive relief provisions.

There is likely to be some disagreement as to several of the changes made by the proposed committee substitute. Most notably, employee personnel evaluations and the names of crime victims are exempt from public disclosure under the proposed committee substitute. However, these relatively minor areas of disagreement should not detract from the general consensus that has developed on the need for legislation on the subject and the significant areas of agreement among all proposals.

I will, of course, be available to discuss this matter further with you at your convenience and to answer any questions that the proposed committee substitute may raise. In the meantime, I look forward to working with the committee during mark-up of SB 90. I have taken the liberty of copying Senator Parr with this letter, the proposed committee substitute and the draft commentary, as I know that as the bill's primary sponsor he will take particular interest in reviewing the changes made to SB 90 by the proposed committee substitute.

Very truly yours,

WILSON L. CONDON
ATTORNEY GENERAL

DANIEL W. HICKEY
CHIEF PROSECUTOR

By: 

Barry Jeffrey Stern
Assistant Attorney General

BJS:dm

cc: The Honorable Charles M. Parr
Alaska State Senate

Wilson L. Condon
Attorney General

Jerry Reinwand
Executive Assistant to Governor

Keith Specking
Legislative Assistant

Art Peterson
Assistant Attorney General



OFFICE OF THE FEDERAL INSPECTOR
ALASKA NATURAL GAS TRANSPORTATION SYSTEM
POUCH 6619, ANCHORAGE, ALASKA 99502
907-271-3668

4 FEB 1981

The Honorable Vic Fischer
Alaska State Senate
Pouch V
Juneau, Alaska 99811

Dear Senator Fischer:

The State Affairs Committee is holding public hearings on Senate Bill No. 90 introduced by you, Senators Parr, Stimson and Rodey. The Office of the Federal Inspector, Alaska Natural Gas Transportation System (ANGTS) has reviewed the bill and urges the State Affairs Committee to consider its comments. AS 09.25.120, one of the statutes which would be repealed by SB 90, sets out various exceptions to public disclosure. One category of documents excepted from public disclosure by AS 09.25.120 is "documents required to be kept confidential by a federal law or regulation..." This exception should be included in any legislation addressing freedom of information in this State.

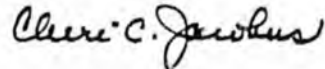
This exemption is important both to the current Alaska natural gas pipeline construction project and to other relations with the federal government. The State Pipeline Coordinator's Office and the Federal Inspector's Office enjoy a free flow of information between them which helps both agencies to adequately monitor construction of the gasline. The State and the Federal Inspector's Office are negotiating a joint agreement which in part addresses the confidentiality of documents exchanged between them, and the agreement depends on the existence of a State statute exempting such documents from public disclosure. Any change will jeopardize this interchange of documents between the Federal Inspector and the State Pipeline Coordinator.

With these concerns in mind, the Federal Inspector's Office recommends that the legislature clearly include this exemption in SB 90 by changing the proposed Sec. 40.25.015(e)(1) to read as follows:

(1) Those exempted from disclosure by State statute or required to be kept confidential by federal law or regulation;

Thank you for the opportunity comment on SB 90.

Sincerely,



Cheri C. Jacobus
Attorney

RECEIVED

~~FEB 19 1981~~

February 19, 1981

FEB 2 1981

Mr. Stanford J. Grayson
Professional Accountancy Coordinators
P. O. Box 16780, Plantation Branch
Fort Lauderdale, Florida 33318

Dear Mr. Grayson:

Thank you for sending the materials concerning SB 90.

The bill is under consideration by the Senate State Affairs Committee and I am forwarding the materials you sent to the Chairman of that Committee for his possible use. Also, I will see that the material goes to the Chairman of the Judiciary Committee.

Sincerely,

Charles H. Parr

CHP:vc

cc: Senator Vic Fischer
Chairman
State Affairs Committee

Senator Pat Rodey ✓
Chairman
Judiciary Committee

PROFESSIONAL ACCOUNTANCY COORDINATORS

TELEPHONE: 741-1403 AREA CODE 305

P.O. BOX 16780 PLANTATION BRANCH
FT. LAUDERDALE, FLORIDA 33318

February 11, 1981

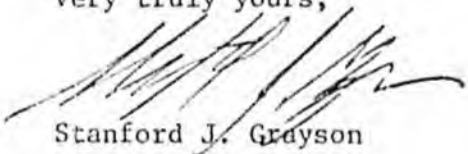
Senator Parr
The Senate
Pouch "V"
Juneau, Alaska 99811

Dear Senator Parr:

It was pleasant speaking to you by telephone today and we are certain that the educational organizations would appreciate and need the enclosed amendment to S90. Various other materials are enclosed. The furtherance of education is of course in the public interest.

Assuring you of our interest and cooperation at all times, I remain

Very truly yours,



Stanford J. Grayson

SJG:ng

Amendment to S90

Nothing in this act shall prohibit the release of only names and addresses of persons applying for or possessing licenses to engage in professional occupations, for the purpose of providing such persons with informational materials relating to available professional educational materials and courses.

DONNA J. CARLSON
447 WEST HILLVIEW CIRCLE
MESA, ARIZONA 85201
CAPITOL: 255-4002
DISTRICT 28



COMMITTEES:
COUNTIES & MUNICIPALITIES
CHAIRMAN
COMMERCE
HUMAN RESOURCES
JUDICIARY
NATIONAL CHAIRMAN
AMERICAN LEGISLATIVE
EXCHANGE COUNCIL

Arizona House of Representatives
Phoenix, Arizona 85007

THIRTY-FOURTH LEGISLATURE
1979-1980

December 28, 1979

Dear Colleague:

Re: "Professional and Occupational Freedom of Information Act"

Soon you will be receiving the "Source Book for State Legislators" (formerly entitled Suggested State Legislation) published by the American Legislative Exchange Council (ALEC). The 1980 edition compiled by a geographically selected committee, contains many fine innovative legislative proposals.

Hearings were held in Washington, D. C. in June and the committee selected 20 bills, some are updates from earlier editions and some are new concepts. As usual, we had more good bills than time and space would allow us to handle. We also received several excellent bills after the hearings were held. One such bill is the reason I am writing you.

The bill, which is enclosed, is called the "Professional and Occupational Freedom of Information Act", and at the request of a majority of the ALEC Suggested State Legislation Committee, I am submitting the bill for your consideration in hopes that you will review it's applicability to your particular state.

If you are interested in introducing the legislation, a complete file of research information will be available through my office.

Sincerely,

A handwritten signature in cursive script that reads "Donna Carlson".

DONNA J. CARLSON
Chairman ALEC

DJC:md
Enclosures

PROFESSIONAL AND OCCUPATIONAL FREEDOM OF INFORMATION ACT

Section 1. Title

This act shall be known as the "Professional and Occupational Freedom of Information Act".

Sec. 2. Findings; purpose

The legislature finds that:

1. State privacy acts enacted to protect individuals from having personal information contained in their applications for licenses released for public consumption has barred such applicants from receiving valuable information from bona fide professional and occupational services and educational organizations which are on occasion necessary for the applicant or licensee to meet state requirements for initial qualifications, renewal of license or continuing education required or encouraged by statutes or rules and regulations. This result is unintended and is not in the public interest.

2. The purpose of this act is, in furtherance of the public interest, to make available to professional and occupational services and educational organizations lists of applicants and licensees of related professions and occupations to aid in the receipt of informational materials relating to available current professional or occupational educational materials or courses for compliance with licensing requirements and for continuing education..

Sec. 3. Definitions

1. "Information" means any recorded data maintained by an occupational licensing agency regardless of its form relating to a person's name, title, current address, whether a person is an applicant or licensee.

2. "Maintain" means hold, possess, preserve, retain, store or exercise administrative control over.

3. "Occupational licensing agency" means any unit of government of this state or political subdivision of this state with the authority to grant, deny, suspend or revoke a license or other authorization to practice any profession or occupation in this state.

4. "Professional or occupational service or educational organization" means any person, business, group or institution, public or private, organized to provide formal or informal educational materials or courses to persons seeking initial qualification, licensure, license renewal or continuing education for any profession or occupation.

Sec. 4. Access to information

Notwithstanding any other provision of the law of this state, an occupational licensing agency shall provide access to information maintained by such agency for purposes of inspection or copying to any professional or occupational service or educational organization which request such information for the sole purpose of such organization providing applicants for licenses or licensees with informational materials relating to available current professional or occupational educational materials or courses.

Sec. 5. Exemptions

1. Nothing in this Act shall be construed to require disclosure of the following:

(a) Investigative information compiled for law enforcement purposes if disclosure would:

(i) Interfere with an ongoing investigation or law enforcement proceeding.

(ii) Disclose the identity of a confidential source.

(iii) Disclose confidential investigative techniques and procedures not known to the general public.

(iv) Endanger the life or physical safety of any individual.

(b) Testing or examination material used solely to determine individual skills or qualifications, if disclosure would compromise the objectivity or fairness of the testing or examination process.

2. If a person requests information containing material that is exempt under this section, the agency shall delete the exempt portions of the record and provide any reasonably segregable portion of the remainder of the record to the person requesting it.

Sec. 6. Judicial review; penalty

1. Any professional or occupational service or educational organization whose request for access to information has been denied may bring an action to compel the production of records alleged to have been improperly withheld. The court in the district in which the information is maintained has jurisdiction over an action under this section. The burden of proof is on the agency to sustain a claim of exemption.

2. If the complainant prevails in any action brought under this section, the court shall assess against the occupational licensing agency reasonable attorneys' fees and reasonably incurred litigation costs.

SUMMARY SHEET

Numerous states have adopted, considered or will consider "privacy acts" barring public access to governmental information regarding private citizens, including applications for licenses and licensee records maintained by State and local professional and occupational licensing agencies. Some have recognized the need to continue the flow of educational materials to applicants for licenses and licensees by commercial and non-profit organizations, and have accordingly provided a statutory exemption for this purpose, e.g., California, Florida, Massachusetts, Montana, Virginia and Washington.* While 23 Attorneys General opinions and the courts of Colorado, Connecticut, Georgia, Indiana, Massachusetts, New Jersey, Pennsylvania, Tennessee and Utah have determined that the release of the names and addresses of applicants and licensees for educational purposes "is in the public interest", enactment of a privacy act without a statutory exemption could forbid access where the interest is valid and proper. (Attorneys General opinions have been issued in Arkansas, California, Delaware, District of Columbia, Florida, Georgia, Idaho, Kansas, Kentucky, Louisiana, Massachusetts, Minnesota, Missouri, Nebraska, New Hampshire, Ohio, Oklahoma, Pennsylvania, Puerto Rico, South Dakota, Texas, Virginia and Washington.)

* Additionally, two states (Illinois and Michigan) have limited exemptions.

CPA candidates rely upon our professional and graduate levels of instruction. The CPA Examinations are so extremely difficult today *** that only 15% to 25% pass of those who do not attend a CPA review school. Most CPA candidates sit for CPA Examinations approximately three years after leaving college and in most cases our instruction is extremely necessary for them, due to the difficulty of the examinations. There is no other effective reasonable means of reaching these CPA candidates of our course offerings, other than through use of the list below. In our profession there is a desperate need for more CPA's, not less.

It is so important to permit the copying of CPA registrants' names and addresses because it is considered to be in the public interest to such an extent that it is specifically mentioned in various states' accountancy statutes. For example, note attached Illinois and Florida statutes which state that it is in the public interest and not an invasion of privacy that the names and addresses of registrants for CPA Examinations are public records and should be revealed as public information. Even of more significance is the rest of the paragraph in these Acts, which shows the desire of these CPA Boards and their Legislatures to keep all the other information about an applicant confidential, but they have particularly gone out of the way to state and recognize into law this one very important exception. What better proof is there than the fact that CPA Boards feel that candidates' names and addresses are a public record which can be revealed and should be revealed in the public interest for accounting education purposes. Why would they specifically and purposefully insert this into the Law? Why didn't these statutes just state all information about a candidate should be secretive? These statutes contain this important exception because they favor education similar to practically all the other states, and decided that candidates' names and addresses should be available to all educational organizations.

49 States have agreed and are presently furnishing us with similar inspections. Therefore it is clear that the overwhelming majority of the states agree with our request, and it has been proven to be in the public interest for many reasons. The major obvious reasons are:

- 1) Professional education is in the public interest and these persons should possess the highest technical proficiency attainable. Their high competence is necessary because the state licenses them to serve the general public. The exemption is not for a specific profession but rather for the entire general professional field. This long standing practice of continuing education is needed for all professions and should be continued similar to past years. Other states' Committees have also recognized this fact and have included similar exemptions in their Freedom of Information bills.
- 2) The furtherance and availability of accountancy and other professional education.
- 3) It is the easiest method for CPA and other professional registrants to know of the availability of all of these educational courses to choose from with the least effort.
- 4) Serves as an informative circular to remind them of the detailed contents and starting dates, etc. of these courses.
- 5) Reduces the cost of these courses to the candidates because the mail offerings are the most practical for the course management; these specialized courses cannot be advertised in any mass media because accounting candidates are a tiny percentage of the general population, and we cannot advertise for example in our professional magazine effectively (although we have tried this but it hardly reaches these candidates) because

these registrants are not members of the professional societies and therefore do not receive a professional magazine. Solicitations in colleges are ineffective because most CPA candidates sit for the Examinations a few years after graduating from college.

In making this information available to educational organizations, it is not an invasion of a person's privacy by merely mailing him our course offerings. These educational course offering circulars describe us, not the recipient. It is inconceivable the mere receiving of an educational course offering in the mail that is printed (no personal letter to the recipient included) be an unwarranted invasion of privacy and against the public interest. On balance, greater weight should be given to the furtherance of professional accountancy education rather than secrecy of these records. It is unreasonable to conclude that recipients (and especially knowledgeable professionals who are intelligent sufficiently and can distinguish between various offerings) are so supersensitive that their privacy is ruined by the mere receipt of an informative educational circular. The purpose of the present Bill is for greater dissemination of information and against secrecy, and for the protection of a person's confidential background. We are not interested in the personal detailed data concerning a registrant's background and history, but only the impersonal names and addresses of all professional licensee registrants. Surely the mere copying of names and addresses for professional educational purposes only, should be allowed because it is not against the public interest. We certainly need more and better educated professional candidates.

***All CPA review schools raise passing percentages from 25% to 70% on the average, because of their intensive review courses.

THE FOLLOWING DOCUMENT(S) MAY NOT FILM
LEGIBLY BECAUSE OF POOR QUALITY OF THE
ORIGINAL.

TO: Nancy Groszek, Staff Member, Senate State Affairs Committee

FROM: Dean H. Gottferrer, Alaska Freedom of Information Task Force
P. O. Box 74573, Fairbanks 99707

Society of Professional Journalists

Farthest North Chapter
Box 74573
Fairbanks, Ak. 99707

Sigma Delta Chi

January 26, 1981

Members
Senate State Affairs Committee
Alaska State Legislature
Juneau, Alaska

Dear Committee Members:

On behalf of the Alaska Freedom of Information Task Force, I thank you for the opportunity to submit written testimony on Senate Bill 90. The FOI Task Force was organized by the Farthest North Chapter of the Society of Professional Journalists and numbers nearly 40 members, among them most of the state's daily newspapers, many weekly papers, broadcast stations, magazines and other media organizations. The Task Force is dedicated to seeking the passage of a Freedom of Information bill that will bring 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. On that standard I believe SB 90 rates high. It includes all branches of state government, covers municipal and borough governments and provides for speedy access to inspect government documents. Generally, it sides with free and open government so that the people may know what is being done in their name. For the most part the exclusions listed in the bill are rational and legitimate and balance the sometimes conflicting rights of freedom of information and the right to privacy of the individual.

There are, however, some areas of the bill we would like to see changed. Presently the bill contains no definition of the right of privacy. We believe the Legislature, following the constitutional mandate should define that right. We suggest the following 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 publicizes his of a kind that (a) would be highly offensive to a reasonable person and (b) is not of legitimate concern to the public.

We believe the exclusion listed in Sec. 40.25.015 (e)(8) should be stricken from the bill. It is of such a general nature that many records the Legislature would probably want public could be withheld under that exclusion. Sec. 40.25.015 (13) concerns us for two reasons. First, it potentially excludes original entry police records--those documents completed when a suspect is taken into custody. One of the roles of the press historically has been to see that no individual is held by the police unjustly and closing original entry records makes that a much greater potential hazard. Second, (C) of (13) speaks of an unjustifiable intrusion into a person's right of privacy. If that language is to remain here and in other sections of the bill we believe a definition is needed of what is a justifiable intrusion. Since that seems almost impossible, we would prefer to see

Dedicated to Professionalism in Journalism

January 26, 1981

that language removed. We don't want to see the police or other governmental unit employees left with the impression that anything unflattering is private.

In a suit for disclosure, the burden of proof should rest with the governmental unit to prove it was required not to release requested information. The courts should be instructed to presume in favor of disclosure.

Each governmental unit should be required to keep a file of letters of denial of information requests that should itself be public. This would allow easy monitoring of governmental units to determine whether they are complying with the law.

The bill does not clearly include computer maintained records as it should. The section defining records should be amended to include "information stored in a computer system." Independent contractors paid with government funds should also be included in the bill's coverage. The definition of governmental unit should include "independent contractor paid with public money in whole or in part and under the supervision of any of the above groups or units."

Whether the state should charge for document copies and how much is a question that has plagued us for some time. Some members believe the media should not be charged since they are doing the public's business when requesting documents while researching a story. Others are willing to pay. No one, however, believes a governmental unit should charge more than the actual copying cost. The method contained in the Governor's proposed regulations is a good compromise. Each requestor receives 20 pages free of charge in any 24 hour period. Above that the charge is 10 cents per page. Currently a great variety of charges exists among agencies. It would help all if the Legislature standardized these charges.

Finally, one last concern. Sec. 4 of the bill on page 10 makes a good faith reliance on AS 40.25 or other law governing confidentiality of public records a defense against the crime of tampering with public records. This defense should be clearly limited as applying only to impairing the availability of a public record and not to any of the other actions listed in AS 11.56.020.

The task you have before you is not an enviable one. You will be urged to exclude this or that branch of government, this or that agency, one or another of a multitude of types of records from coverage under the bill. As you address each of these requests, I ask that you recall that all of these governmental units exist because they are supported with public monies. The public has a right to know what is being done with these funds. Government in the sunshine is best for all people. Keeping government open primarily benefits the people--not the media. Remember that 75 percent of all requests under the federal freedom of information laws come from non-media sources and only 25 percent from the media.

Sincerely yours,



Dean M. Gustabrer
Chairman

Alaska Freedom of Information Task Force

THE PRECEDING DOCUMENT(S) MAY NOT FILM
LEGIBLY BECAUSE OF POOR QUALITY OF THE
ORIGINAL.

Alaska Newspaper Association

c/o Box 710, Fairbanks, AK 99707

FOUNDING MEMBERS

Incorporated Dec 6, 1980

ROBERT B. ATWOOD

The Anchorage Times

KATHERINE FANNING

Anchorage Daily News

LOREN STEWART

Cheechako News, Kenai

MAX SWEARINGEN

Peninsula Clanon, Kenai

GLEN COBB

The Frontiersman, Palmer

TOM GIBBONEY

Homer News

JIM C. MARTIN

Alaska Journal of Commerce

G. KENT STURGIS

Fairbanks Daily News Miner

LEW WILLIAMS

Keetchikan Daily News

CARL SAMPSON

Juneau Empire

TOM SNAPP

The Alaska Weekly

January 27, 1980

Sen. Vic Fischer, chairman
State Affairs Committee
Alaska State Senate
Pouch V
Juneau, AK 99811

Re: Senate Bill 90

Dear Sen. Fischer:

I'm unable to attend your committee's hearing Thursday on SB90, the FOI and privacy bill, but wanted you to know our organization will be following this legislation closely and look forward to helping improve it.

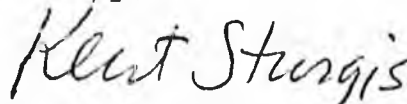
Also, we appreciate the fact you have demonstrated the importance of the FOI-privacy issue by scheduling a hearing so early in the session.

The Alaska Newspaper Association has not taken a position on SB90 but is encouraging its members to study the measure and offer comments and suggestions on an individual basis. In the meantime, we endorse the suggestions made by Prof. Dean Gottehrer of the Alaska Freedom of Information Task Force, of which the ANA is a member.

Generally speaking, it's our belief SB90 is a step in the right direction.

Thank you again.

Sincerely,



Kent Sturgis, chairman
ANA Legislative Committee

cc: Kay Fanning, Anchorage
Dean Gottehrer, Fairbanks

February 13, 1981

To: Senate State Affairs Committee
Senator Vic Fischer, Chairman
All Members of the Committee

From: Ginny Chitwood, Executive Director
Alaska Municipal League

Re: SB 90 - Privacy and Information Act

Municipalities realize the need for the public to have reasonable access to municipal records. However, the provisions in SB 90 go further than what the Alaska Municipal League considers reasonable. We can foresee many unfair burdens placed on municipalities if this bill passes in its present form. Some are as follows:

Records produced "immediately" - This would place the request for a public document as first priority over all other conduct of the government's business. A more reasonable approach would be to allow ten days as provided by the federal government. This, at least would allow determination as to whether or not the document being requested would fall under the list of exemptions and therefore not be required to be produced or whether or not it was in the public's interest to be produced. If illegal releasing of information is done by a municipal employee, the municipality would be open to a fine which means the municipal attorney would have to review all requests.

"Direct cost" - Some documents are readily available. However, it is possible and likely that to produce other documents would involve a great deal of time; searching thru archives, records of years past in storage, etc. Most of our communities do not have sophisticated retrieval systems and the amount of time needed to locate said document could take up a good portion of the employees time. The League feels the word "direct" should be deleted from page 2, line 21, or at least defined to include labor involved by the municipal employee in the search for the document that has been requested.

Subjects for executive session - The League feels the municipality is the best judge of what should be considered confidential and objects to the deletion of the right to establish these subjects by charter or ordinance (page 9, lines 28 and 29.) Procedures for charter ratification and ordinance adoption afford adequate safeguards ensuring that local actions reflect local opinion.

Secs. 140 and 150 establish the requirements of financial disclosure. Note that financial disclosure is by "category" rather than by dollar amount. Sec. 150(a).

Sec. 160 details prohibitions on activity considered a conflict of interest. Special conflict of interest provisions for legislators appear at Sec. 170. Government contracting is regulated as Sec. 180. Conflicts of interest in employment are covered in Sec. 190. A state official or state employee other than legislator who has a personal situation that presents ethical problems is directed to a course of conduct under Sec. 210.

Sec. 220 deals with similar problems for a legislator.

Disclosure of confidential information is regulated under Sec. 240.

Sec. 250 regulates the conduct of former state officials or state employees for two years after termination of state service. Penalties are established in Sec. 260. Commission remedies for violations are established under Sec. 270, including civil penalties. Direct citizen action is authorized under Sec. 280.

The definitions section, Sec. 400 is a mix of the familiar and the new. Essentially no change was made in the list of public officials for whom financial disclosure is required. The term "candidate" is defined.

The term "gift" excludes campaign contributions reported under AS 15.13.

Secs. 3 - 19 of the bill respond to the implications of the repeal of AS 39.50 and portions of AS 15.13 and 24.45.

The Act takes effect July 1, 1981.

RAB:ljb



February 11, 1981

State Affairs Committee
Pouch V (MS 3100)
Juneau, AK 99811

The City of Kodiak would like to voice our strong objection to both the passage of SB 90 - Privacy and Public Information Act, and also to consider including municipalities under this act.

Of first concern would be the requirement to immediately produce records, specifically the personnel records. Most employees with municipal government have assigned responsibilities for eight hours, and occasionally ten or 12 hours a day. If this standard were approved there would be an immediate requirement for additional help to retrieve and produce records. Plus, the direct cost would be unrealistic due to the need for additional employees; an additional tax burden to the taxpayer.

Next would be to take away the Councils right to executive session. This would leave every municipal government wide open for a law suit, or prevent them from transacting business. Executive sessions were established for the protection of an individuals character, their tax dollars or legal matters. The general public, and most importantly the press, should be knowledgeable of why executive sessions are held. The failure to transact business because a municipality could be held liable for a "defamation of character" or "misappropriation of funds" law suit would be ever present.

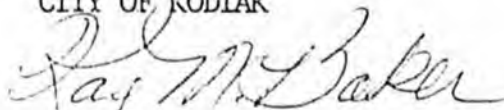
Another very important item would be the disclosure of an applicants resume for municipal positions. We strive to employ the highest caliber of personnel, but just to reveal their names could prevent a well qualified individual from applying due to reprisal with a present employer. If the legislature allows this bill to become law they will deny an individual his or her right to privacy. When reviewing personnel records "that" individual should be the one to approve such action.

State Affairs Committee
SB 90
Page 2

Historically the City Clerk's office has been open to the public, supplying all information with the exception of documents that would injure an individual's character, harm the municipality financially, or matters that are pending litigation. We see no valid justification for this procedure to change.

Sincerely,

CITY OF KODIAK

A handwritten signature in cursive script, appearing to read "Kay M. Baker".

Kay M. Baker
City Clerk

KMB/d

cc: Alaska Municipal League



THE JUDITH GROUP INC.

P. O. Box 2334

Soldotna, AK 99669

PHONE: 283-4359

February 8, 1981

Senator V. Fischer
Chairman
Senate State Affairs Committee
Pouch V
Juneau, Ak. 99811

Dear Mr. Chairman,

In listening to the testimony on SB 90, February 5, 1981 via Teleconference, we were struck by the similarity of frustration levels to our own experience. Enclosed are copies of correspondence with:

Department of Health & Social Services.....A. Holmburg, Director March 12/79

At the time of the letter to Mr. Holmburg the Judith Group was involved with the Alaskan Family Violence Project, Grant #78-DF-AX-0107 from Law Enforcement Assistance Association awarded to the Alaska Department of Health & Social Services/Ak. Family Violence Program/Judith Group. Portion of the Grant Objectives as they involved the Judith Group included.

Mr. Holmburgs reply.....April 3/79

Response to Mr. Tom Janadlo telephone request (this request stressed need for immediate response on agency knowledge of incest. Not to include Judith Groups stats) We as yet have to have a response from anyone at Division of Social Services on our letter.....April 4/79

Individual testimony of my own to the White House Conference on Families, Ak. From it is apparent that until the Legislative Auditor, Mr. Wilkinson published there was no way the Judith Group was able to secure any information, stats, whatever. The HSS Statistical report is not comprehensive enough.

All of the questions addressed to Mr. Holmburg should have been answered. According to our understanding the answers were mandated by law; Federal or State. This information should have been available. Unfortunately, Mr. Wilkersons report are mandated only every 3rd. year. The question of due process are very interesting.

Thank you,

Jean Bennett Schrader
Jean Bennett Schrader, Secretary
The Judith Group, Inc.

cc: Sen. C. Parr Sponsor
B. Bradley
R. Eliason
T. Stimson
M. Colletta

LOCALE

OBJECTIVES

DATA COLLECTED

MEASURES OF SUCCESS

Kenai/
Women's Resource
Center

- number and case histories of post-crisis assistance
- number of victims transported to Anchorage AWAIC
- follow up evaluation of victims who remain in Kenai

Kenai/
Judith Group

To provide intra-family violence victim assistance, public information, and education.

To research, analyze and document the incidence of incest in one Alaskan community and to collect, develop, and distribute information and materials on incest throughout the state.

- number of volunteer hours
- report on incidence of incest in Kenai Peninsula including:
 - number reported to police
 - number reported to hospitals
 - number reported to social service agencies
- number which come to attention of Women's Resource Center
- comparison to available national statistics
- actions taken in response to reports
- profiles of victims and offenders
- random surveys of public opinion to measure awareness, concerns, and attitudes regarding incest
- process for collecting and analyzing data concerning repeat rates of known offenders, relation to other crimes, and relation to alcohol will be developed

- documentation that incest is a problem which may be used in program planning
- an increase in public awareness of incest, consequences, and services available for victims and offender

March 12, 1979
Box 2334
Soldotna, Alaska 99669

Mr. Arthur C. Holmburg, Director
Department of Health and Social Services
Pouch H O 5
Juneau, Alaska 99811

Dear Mr. Holmburg,

On the 7th of March The Judith Group spoke with Ms. Faye Guthrie, Regional Office Manager, Department of Health and Social Services, in her Anchorage Office. As a result of that meeting we realize that there are many needs we, as a group have.

The most crucial need is to know what is the disposition of those children who are the victims of incest. When we report a case to your office (thru our local workers) it is as if these children no longer exist for us. Now, we understand the need for confidential records, but, there must be some method of finding out what care is taken of these children.

Are there case plans for these children, whether they remain in their homes or are placed out of their homes?

Is there regular follow-up?

Are there preventative services available to the family on a monitored basis?

What reviews are mandated; how regular?

Can the Judith Group expect to gain the following information from your data system?

Date of birth, sex, age, race and religion.

Family structure, including nuclear and extended family.....and here we view it as critical to know the length of time a step-parent or guardian relationship has existed.

Any handicapped condition, physical, emotional, educational, has the child been evaluated and what free, special services have been provided.

Has the child entered care (court order or voluntary placement) and the nature of the custody agreement. Was the victim of incest or sexual abuse provided with a attorney to ensure compliance with their right to the same interest the child in a divorce case would have. The nature of the custody agreement. Is there monitoring, on a continual basis, of the offender, if the offender remains in the home with the child.

Geographic locations upon entry into care.

How placement is funded. Where placement (in the child's home area)

Reason for placement (here we would need to know--if incest or sexual abuse has occurred, what "acting out" the child has done.

Date and type of initial placement

Services provided to child and family prior to placement.

during Services provided to child and family (whether foster family, guardian, etc) ~~prior to~~ placement. Here we want to be able to pick up on the incidence of incest as it is defined in the Alaska Revised Criminal Code Commentarty, Section 11.41.450 INCEST and also Section 11.41.430, subsection (a) (1). Section 11.41.410 Subsection (a) (4).

Placement status of sibling.

Dispositional goal for the child and time by which the goal should be attained.

Other agencies providing to or having responsibility for the child and the family....what monitoring is done on these agencies; ex: if the therapy of the child and the offender is carried on by a Freudian analyst.

Do the records of case transactions include:

dates and changes in legal status.

date, type and location of subsequent placements. Reason for change.

dates of case reviews.

dates and description of outcomes of dispositional reviews.

dates and description of services provided to the child and family by the responsible agency and other agencies with which the child and family has contact. In this area include foster or guardian.

dates of visits between agency and child, agency and natural parents, (and here it would be helpful to know if the natural parents are seperated (living apart) is the other parent informed of the issue and the childs placement) agency and foster parents, and child and natural parents, extended family in the case of no natural parents available.

date and termination of parental rights.

barriers to adoption when parental rights are terminated (here again did the child have a attorney to protect his/her rights.....property-wise as well as otherwise).

date of discharge, and discharge status (e.g. with natural parents or relatives, adoptive placement, transferred to another agency; has reached majority, death, marriage, other (here: what is other)

whether child was adopted with the assistance of a subsidy and by whom (foster parents, relatives, others, were relatives informed of the adoption prior if foster parents are the party who does adopt).

dates child enters placement thru any agency.

when the offender is involved with the court system as a offender.

what avenues of complaints does the child have? The family have?

We are attempting to work up a reporting sheet for police, physician, crisis workers, etc. and we must have some idea of what your data will reveal to mesh these reporting sheets with your records.

Was the offender thru the court system or involved only in therapy, ^{what} monitoring?
and What monitoring is done on out-of-state placement or adoption.

Thank you very much for your time and effort on this matter. It is important to The Judith Group that we have this information. There was a meeting of the various law enforcement agencies in Juneau in February and we have requested copies of that meeting. They have not arrived as yet but we will wait patiently, I guess. What else is new.

Anyway, thank you in advance. Hopefully everything we have asked you about is already either in your data system or is being programmed in.

Next, how do we go about receiving this data?

Sincerely,

Jean Bennett Schrader
Joan Bennett Schrader, Sec.
The Judith Group

cc; Faye Guthrie
Dr. McGinnis
Kenai-Soldotna WRC
Kenai Social Service Office
Alaska Family Violence Program; S. Lederman
URSA
All Advocates
Richard C. Hacker
Commissioner H. Beirne

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPT. OF HEALTH AND SOCIAL SERVICES

DIVISION OF SOCIAL SERVICES

Pouch H-05
Juneau, Alaska 99811

April 3, 1979

Ms. Joan Bennett Schrader
Secretary
The Judith Group
Box 2334
Soldotna, Alaska 99669

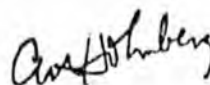
Dear Ms. Schrader:

We appreciate your concern for victims of incest who are referred to the Division of Social Services. The primary concern of all social service workers within the Division is to protect any child who is in danger of harm in his living situation. Therefore, when referral is received the social service worker investigates as is needed to assess the immediate danger to the child. If a child is found to be in need of removal from his home, he will be placed in a foster family. The worker develops a specific case plan, given the facts of the situation, which is based at efforts to rehabilitate and reunite the family. Workers provide services to children in foster care as well as to the families of the children.

In cases where removal of a child from his home is not required but there is need for protective intervention, the worker's efforts will be focused at working with the family to improve the situation which brought them to the agency's attention. Case reviews occur every three months to insure that all needed services are being brought to bear to remediate the situation.

For reasons of confidentiality, we cannot provide specific details on cases handled by our workers. Information can only be shared on an aggregate basis, as through the Monthly Statistical Report produced by the Division of Social Services. As requested, we are enclosing a copy of the latest Monthly Statistical Report and will be happy to add you to the mailing list for future copies.

Sincerely,



Art Holmberg
Director

Enclosure

rec'd 4/18/79
jhs

March 18, 1980 Soldotna Hearing on the
White House Conference on Families.

I am Joan Bennett Schrader and I am testifying on my own behalf.

As a member of this community I have grave concern over the follow-thru on the care our youngsters in the Corrections Institutions and Foster Homes receive.

To secure any information on what happens to them is extremely difficult. The reports made available by the DOC are not as comprehensive as I should like to see.

My first recommendation is to have

Easily accessible information on the placement of these young people. I am not advocating identifiable information but, rather the knowledge communities should have on ~~should~~ the placement be in foster-care, that a worker has formatted a caseplan, that the worker is in contact on a monthly basis with the young person. Further-more, that monthly personal reports, where possible, be made to the family of the young person by the same worker or in the case where one worker cannot handle this that the DOC workers are able to assure the family of some worker in the DOC has seen and spoken with the young person. That the worker be identified by name, and a phone number or address be made available to the family.

In the Performance Review of the Department of Health & Social Services, Juvenile Confinement Programs, dated September 28, 1980 and signed by Gerald Wilkerson, CPA. ~~written~~ on behalf of the Legislative Auditor, Division of Legislative Audit, page 10, listed under

D. Juvenile Treatment Plan

"60% of the Department and child care facilities juvenile files ~~did not~~ did not contain a detailed treatment plan for the juveniles.

In order to assure that juvenile needs are met while in institutional care, a thorough evaluation of needs and a method of meeting these needs should be prepared by either the Departments caseworker or the institutions staff. If the plan is ~~developed~~ developed by the institution, it should be subject to review by the Departments caseworker."

Page 11

"Although DOC has a formal decision process for placing juveniles in child care facilities, 57% of the DOC files tested did not indicate how the placement decision was reached. AT DSS 54% of the tested files did not indicate the basis for the placement decision.

Although consideration of all alternative placements is necessary to assure the best possible care by the juveniles. The alternatives considered and the reasons for the final selection should be documented to ensure juveniles receive due process."

F. Caseworker contact with the juvenile

~~67%~~
"67% of the Department and child care facility files tested indicated the Department's caseworker had very limited, if any, contact with juveniles after placement. Also, DOC practice precludes probation officer involvement with juveniles placed at McLaughlin Youth Center."

G. Evaluation of the juveniles' progress

"Half of the DOC and 30% of the DSS files tested did not contain any institutional evaluation of the juvenile. Additionally, 75% and 37% of the DOC and DSS files, respectively, did not contain an evaluation of the juvenile by the Department's caseworker. Testing of the institutions files indicated 18% of the juveniles had not been evaluated. Another 44% ~~remained~~ of the files contained evaluations which did not address the progress of the juvenile. Most of those only addressed the juvenile's status without relating the status to any identifiable problems."

Page 12

"Our testing found that 76% of the cases reviewed did not indicate regular progress reports were sent to parents. The Department should forward copies of all evaluations to the juveniles' parents including any necessary explanations or comments."

The above are only some of the problems with DSS and DOC. I believe that communities should be informed on what the DOC and DSS are doing with children and young people.

*end of quotes
from evaluation*

We do have a right to information from them and it should not take a copy of the auditors report to finally enable us to put our finger on what is happening to these children.

Last year a request was placed before the DSS, Juneau, for information on what happens to children who are within the child care system.

They were asked.....

Are there case plans for these children, whether they remain in their homes or are placed out of their homes?

Is there regular follow-up?

Are there preventative services available to the family on a monitored basis? (This is the case of child abuse/neglect)

What reviews are mandated? How regular?

Can the following information be gained from your ~~firm~~ data system.....

Date of birth, sex, age, race religion.

~~Family structure and including~~ Family structure, including nuclear and extended family; length

of time a step-parent or guardianship relation has existed?

Any handicapped condition, physical, emotional, educational.

Has the child been evaluated and what free, special services have been provided?

Has the child enter Care (court order or voluntary placement) and the nature of the custody agreement. Was the victim of incest or sexual abuse provided with a attorney to insure compliance with their right to the same interest the child in a divorce case would have? The nature of the custody agreement. Is there monitoring? On a continual basis? Of the offender if the offender remains within the home with the child?

How placement is funded. Where placement (foster care) in the childs home area.

Reason for placement of child. If incest or sexual abuse has occ what acting out the child has done.

Date and type of initial placement.

Services provided to the child and family prior to the placement

Services provided to the child and family (whether foster family, guardian, etc.) during placement. Placement status of siblings.

Dispositional goal of child and date by which the goal should be attained.

Other agencies provided to or having responsibility for the child and family, what monitoring is done on these agencies?

Do the records of case transactions include:

dates and changes in legal status.

date, type and location of subsequent placements. Reason for the change.

Dates of case reviews.

Dates and ~~XXXXXXXXXXXX~~ description of outcomes of disposition reviews.

Dates of visits between child and agency, natural parents and agency. Here it would be helpful to know if the natural parents are seperated, (living apart) is the other parent informed of the issue and the childs placement? Visits between foster parent and agency. Between child and natural parents, child and extended family in the case no natural parents are available.

Date of termination of parental rights.

Barriers to adoption when parental rights are terminated, did an attorney protect the childs rights, property-wise as well as other-wise?

Page four

Date of discharge and discharge status. With whom? Natural parents, foster parents, relatives, adoption placement, transferred to another agency, reached majority, death, marriage, other, what is other?

Whether child was adopted with assistance of subsidy? By whom? (foster, relatives, others?) Were relatives informed of the adoption prior if foster parents or others are the party who don adopt.

Dates child enters placement thru any agency.

Is the offender in cases of child abuse, sexual abuse, involved with the court? As an offender? How?

What avenues of complaint does the child have? The family have?

If the offender is involved in the court system is it by therapy, monitoring done....what and by whom?

What monitoring is done in out of state placement?

These were questions placed before the DSS a year ago and for reasons of confidentiality they were not answered. I believe we have a right to this information. On a ~~agency~~ basis only, not on individual cases. Everything asked should have been available to any person. It was not then, and after reading the Auditors report, I can understand why.

In order for community members to support a reasonable and useful program for aid to children and families, records must be kept.

My recommendation would be for the DSS and DCC to be directed to keep them and to make their data system have spaces for the questions they were asked.

Thank you for listening.

Respectfully submitted,

Jaon Bennett Schrader
Jaon Bennett Schrader
P.O. Box 1264
Kenai, Alaska 99611

The Judith Group, Inc.
Box 2334
Soldotna, Alaska 99609
April 4, 1979

Division of Social Service
400 Gambell
Anchorage, Alaska 99501

Attention: Tom Janidlo.

Dear Mr. Janidlo,

The following are the population resolutions from the Kenai Peninsula Borough for this area of the Borough.

The City of Kenai	4374
The City of Soldotna	2368
Sterling	1374
Ninilchik	470

Because of the scarcity of time statistics for the Homer and Seward areas, with one exception, are not included. The term Minor used here includes all up to 18 yrs.

From the Soldotna Police	(1977-78)	No involvement of Minors in any crime of a sexual nature. (as victim)
Alaska State Police (Kenai-Soldotna area)	(1978)	No involvement of a Minor in any crime of a sexual nature. (as victim)
Kenai City Police	(1977-78)	Four (4) to six (6) separate incidents during 1977 - 78. There are no figures for how many children were involved in each incident. To secure more stats on this would necessitate a "hard search" of over eight (8) thousand cases. The Kenai Police do not have the staff needed for such a process. The 4-6 cases were Child Molestation.
Seward City Police	(1978)	One (1) case of incest (Female) that resulted in Court Action, not on the incest related area, but on a "Contributing To The Delinquency of a Minor" by others. This matter was reported as required by Law, to the Social Service.

District Attorney Office (Kenai)	1977-78 to end of March	Cases reaching formal stage Lewd & Lascivious Three (3) Statutory Rape Two (2) Rape (possible Minor Invol no way to tell from Four (4) Contrib. Del. of a Minor Three (3) Felony (Defi: Ten (10) Misdemeanor (no way to know if th were sex involvement Office Contacts Two (2) sexual involv (alleged
Social Service Kenai Office	1977-78	Seventeen (17) alleged incest cases, Female One (1) sent Prosecutors Office.

Tom, you will appreciate the hurry that this involved and that had we more time we (The Judith Group) would have had all of these reports much more comprehensive.

Hope this will assist you and let us know what happens.

Sincerely,

Joan Bennett Schrader, Sec.
The Judith Group

cc; Juv. Intake Officer (Kenai)	Alaska State Police (Soldotna)
Social Service (Kenai)	Soldotna Police
Seward Police	Division of Corrections (Kenai)
Kenai Police	Central Peninsula Mental Health
Kenai Care Center	Kenai Peninsula School District (B. Taeschner)
District Attorney (Kenai)	Alaska Court System (Kenai)

alaska
state
hospital
association

319 Seward St., Juneau, Alaska 99801 (907) 586-1790

REPRESENTING ACUTE LONG TERM AND OUTPATIENT FACILITIES

President
Sister Barbara Haase
Ketchikan General Hospital
Ketchikan

February 17, 1981

President Elect
Tom Minger
Fairbanks Memorial Hospital
Fairbanks

Secretary/Treasurer
Ron Pavellas
Alaska Hospital's Medical
Center
Anchorage

The Honorable Charlie Parr
Alaska State Senate
Pouch V, State Capitol Building
Juneau, Alaska 99811

Immediate Past President
- J. Camosson
Providence Hospital
Anchorage

Dear Senator Parr:

Executive Director
Dennis L. DeWitt
Juneau

The Alaska State Hospital Association has reviewed Senate Bill 90 and recommends that the following amendments be adopted.

1. Page 3 Lines 13-18

The exemption found in Subsection (6) should include patient financial information and the reference to autopsy reports ought to be moved from this section to a separate section.

Rational: a) Patient financial data while not part of a medical record, remains personal data about a patient, not the facility and as such should be protected.

b) Autopsy reports should be accessible when a court has determined the need for an inquest pursuant to AS 12.65.020. A requirement that autopsy reports should be public records simply because the person had not recently seen a physician, seems to serve no apparent public good.

2. Page 5 Lines 19-20

Subsection (f) should include an exemption for medical records and read as follows:

(f) Unless specifically exempted from disclosure by statute, all records except those specified under (c) of this section, become public after they are 20 years old.

February 17, 1981
The Honorable Charlie Parr
Page two

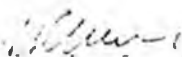
Rational: Patient medical records are private and ought to be disclosed only at the direction of the person subject to the record.

3. Page 6 Lines 3-7
Subsection (i) ought to be rewritten to include only managerial positions where the person has discretionary power over the operation of the entity and the reference to job performance and ability to perform the job ought to be struck.

Rational: Governmental employees ought not be treated differently than non-governmental employees unless there is a specific public good to be served. We can see no good and potential exposure to harassment by the disclosure of the compensation of a cook, janitor, clerk, nurse or other non-management personnel. The references to job review and ability to perform is a type of information exempted under (3)-(8) of Section .015 and as such ought to be protected for public employees as well.

Thank you for your consideration of these items. We will be happy to respond to any questions you may have.

Sincerely,


Dennis L. DeWitt
Executive Director

DLD/b

cc: Senator Vic Fischer

MEMORANDUM

TO: Sen. Vic Fischer, Chairman
Senate State Affairs Committee

FROM: Joe La Rocca

SUBJECT: Written Testimony on SB 90 (Relating to privacy and public information).

This is primarily to note my strong disagreement with what was the virtually unanimous opposition among my fellow journalists to Section 1, sub-section 13 (Page 4, line 11) dealing with intelligence, investigatory and original entry records. Firstly, the section is lifted almost verbatim from the federal Freedom of Information Act of 1966, as amended and has, in general, withstood the tests of time and experience in that context. Secondly, I believe that opponents of this section either have not read it in tandem with, or fail to apprehend its connection with sub-section (j) (Page 5, line 2). Thirdly, it's incomprehensible to me that anyone, even news journalists, could object to the withholding of information which, if disclosed, would (1) interfere with enforcement proceedings; (2) deprive a person of a right to a fair trial or an impartial adjudication; (3) constitute an unjustifiable intrusion into a person's right of privacy (here I prefer the federal act's language "an unwarranted invasion of the right to privacy" largely because it's a term of art for which juridical standards have already been established in case law); (4) disclose the identity of a confidential source (Mark how journalists themselves squeal when ordered to disclose the identity of a confidential source); (5) disclose investigative techniques and procedures (On-the-job training for budding investigative journalists?); endanger the life, property or physical safety of a person (Let it be the life, property or physical safety of a news journalist, and watch the opposition shrivel), or identify a victim of a criminal sexual assault. (If it were their wife, sister or mother, would they be so anxious to run it into print?): particularly when these highly sensitive withholdings are subject to prompt and costless judicial review. I hope the committee will resist pressures to remove or substantially alter sub-section 13.


Joe La Rocca

February 19, 1981

Mr. Stanlord J. Grayson
Professional Accountancy Coordinators
P. O. Box 16780, Plantation Branch
Fort Lauderdale, Florida 33318

Dear Mr. Grayson:

Thank you for sending the materials concerning SB 90.

The bill is under consideration by the Senate State Affairs Committee and I am forwarding the materials you sent to the Chairman of that Committee for his possible use. Also, I will see that the material goes to the Chairman of the Judiciary Committee.

Sincerely,

Charles H. Parr

CHP:vc

cc: Senator Vic Fischer ✓
Chairman
State Affairs Committee

Senator Pat Rodey
Chairman
Judiciary Committee

PROFESSIONAL ACCOUNTANCY COORDINATORS

TELEPHONE: 741-1403 AREA CODE 305

P.O. BOX 16780 PLANTATION BRANCH
FT. LAUDERDALE, FLORIDA 33318

February 11, 1981

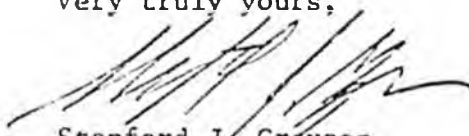
Senator Parr
The Senate
Pouch "V"
Juneau, Alaska 99811

Dear Senator Parr:

It was pleasant speaking to you by telephone today and we are certain that the educational organizations would appreciate and need the enclosed amendment to S90. Various other materials are enclosed. The furtherance of education is of course in the public interest.

Assuring you of our interest and cooperation at all times, I remain

Very truly yours,



Stanford J. Grayson

SJG:ng

Amendment to S90

Nothing in this act shall prohibit the release of only names and addresses of persons applying for or possessing licenses to engage in professional occupations, for the purpose of providing such persons with informational materials relating to available professional educational materials and courses.

DONNA J. CARLSON
447 WEST HILLYVIEW CIRCLE
MESA, ARIZONA 85201
CAPITOL: 253-4002

DISTRICT 29



Arizona House of Representatives
Phoenix, Arizona 85007

THIRTY-FOURTH LEGISLATURE

1979-1980

COMMITTEES:

COUNTIES & MUNICIPALITIES
CHAIRMAN
COMMERCE
HUMAN RESOURCES
JUDICIARY

NATIONAL CHAIRMAN
AMERICAN LEGISLATIVE
EXCHANGE COUNCIL

December 28, 1979

Dear Colleague:

Re: "Professional and Occupational Freedom of Information Act"

Soon you will be receiving the "Source Book for State Legislators" (formerly entitled Suggested State Legislation) published by the American Legislative Exchange Council (ALEC). The 1980 edition compiled by a geographically selected committee, contains many fine innovative legislative proposals.

Hearings were held in Washington, D. C. in June and the committee selected 20 bills, some are updates from earlier editions and some are new concepts. As usual, we had more good bills than time and space would allow us to handle. We also received several excellent bills after the hearings were held. One such bill is the reason I am writing you.

The bill, which is enclosed, is called the "Professional and Occupational Freedom of Information Act", and at the request of a majority of the ALEC Suggested State Legislation Committee, I am submitting the bill for your consideration in hopes that you will review it's applicability to your particular state.

If you are interested in introducing the legislation, a complete file of research information will be available through my office.

Sincerely,

A handwritten signature in cursive script that reads "Donna Carlson".

DONNA J. CARLSON
Chairman ALEC

DJC:md
Enclosures

PROFESSIONAL AND OCCUPATIONAL FREEDOM OF INFORMATION ACT

Section 1. Title

This act shall be known as the "Professional and Occupational Freedom of Information Act".

Sec. 2. Findings; purpose

The legislature finds that:

1. State privacy acts enacted to protect individuals from having personal information contained in their applications for licenses released for public consumption has barred such applicants from receiving valuable information from bona fide professional and occupational services and educational organizations which are on occasion necessary for the applicant or licensee to meet state requirements for initial qualifications, renewal of license or continuing education required or encouraged by statutes or rules and regulations. This result is unintended and is not in the public interest.

2. The purpose of this act is, in furtherance of the public interest, to make available to professional and occupational services and educational organizations lists of applicants and licensees of related professions and occupations to aid in the receipt of informational materials relating to available current professional or occupational educational materials or courses for compliance with licensing requirements and for continuing education..

Sec. 3. Definitions

1. "Information" means any recorded data maintained by an occupational licensing agency regardless of its form relating to a person's name, title, current address, whether a person is an applicant or licensee.

2. "Maintain" means hold, possess, preserve, retain, store or exercise administrative control over.

3. "Occupational licensing agency" means any unit of government of this state or political subdivision of this state with the authority to grant, deny, suspend or revoke a license or other authorization to practice any profession or occupation in this state.

4. "Professional or occupational service or educational organization" means any person, business, group or institution, public or private, organized to provide formal or informal educational materials or courses to persons seeking initial qualification, licensure, license renewal or continuing education for any profession or occupation.

Sec. 4. Access to information

Notwithstanding any other provision of the law of this state, an occupational licensing agency shall provide access to information maintained by such agency for purposes of inspection or copying to any professional or occupational service or educational organization which request such information for the sole purpose of such organization providing applicants for licenses or licensees with informational materials relating to available current professional or occupational educational materials or courses.

Sec. 5. Exemptions

1. Nothing in this Act shall be construed to require disclosure of the following:

(a) Investigative information compiled for law enforcement purposes if disclosure would:

(i) Interfere with an ongoing investigation or law enforcement proceeding.

(ii) Disclose the identity of a confidential source.

(iii) Disclose confidential investigative techniques and procedures not known to the general public.

(iv) Endanger the life or physical safety of any individual.

(b) Testing or examination material used solely to determine individual skills or qualifications, if disclosure would compromise the objectivity or fairness of the testing or examination process.

2. If a person requests information containing material that is exempt under this section, the agency shall delete the exempt portions of the record and provide any reasonably segregable portion of the remainder of the record to the person requesting it.

Sec. 6. Judicial review; penalty

1. Any professional or occupational service or educational organization whose request for access to information has been denied may bring an action to compel the production of records alleged to have been improperly withheld. The court in the district in which the information is maintained has jurisdiction over an action under this section. The burden of proof is on the agency to sustain a claim of exemption.

2. If the complainant prevails in any action brought under this section, the court shall assess against the occupational licensing agency reasonable attorneys' fees and reasonably incurred litigation costs.

SUMMARY SHEET

Numerous states have adopted, considered or will consider "privacy acts" barring public access to governmental information regarding private citizens, including applications for licenses and licensee records maintained by State and local professional and occupational licensing agencies. Some have recognized the need to continue the flow of educational materials to applicants for licenses and licensees by commercial and non-profit organizations, and have accordingly provided a statutory exemption for this purpose, e.g., California, Florida, Massachusetts, Montana, Virginia and Washington.* While 23 Attorneys General opinions and the courts of Colorado, Connecticut, Georgia, Indiana, Massachusetts, New Jersey, Pennsylvania, Tennessee and Utah have determined that the release of the names and addresses of applicants and licensees for educational purposes "is in the public interest", enactment of a privacy act without a statutory exemption could forbid access where the interest is valid and proper. (Attorneys General opinions have been issued in Arkansas, California, Delaware, District of Columbia, Florida, Georgia, Idaho, Kansas, Kentucky, Louisiana, Massachusetts, Minnesota, Missouri, Nebraska, New Hampshire, Ohio, Oklahoma, Pennsylvania, Puerto Rico, South Dakota, Texas, Virginia and Washington.)

* Additionally, two states (Illinois and Michigan) have limited exemptions.

CPA candidates rely upon our professional and graduate levels of instruction. The CPA Examinations are so extremely difficult today *** that only 15% to 25% pass of those who do not attend a CPA review school. Most CPA candidates sit for CPA Examinations approximately three years after leaving college and in most cases our instruction is extremely necessary for them, due to the difficulty of the examinations. There is no other effective reasonable means of reaching these CPA candidates of our course offerings, other than through use of the list below. In our profession there is a desperate need for more CPA's, not less.

It is so important to permit the copying of CPA registrants' names and addresses because it is considered to be in the public interest to such an extent that it is specifically mentioned in various states' accountancy statutes. For example, note attached Illinois and Florida statutes which state that it is in the public interest and not an invasion of privacy that the names and addresses of registrants for CPA Examinations are public records and should be revealed as public information. Even of more significance is the rest of the paragraph in these Acts, which shows the desire of these CPA Boards and their Legislatures to keep all the other information about an applicant confidential, but they have particularly gone out of the way to state and recognize into law this one very important exception. What better proof is there than the fact that CPA Boards feel that candidates' names and addresses are a public record which can be revealed and should be revealed in the public interest for accounting education purposes. Why would they specifically and purposefully insert this into the Law? Why didn't these statutes just state all information about a candidate should be secretive? These statutes contain this important exception because they favor education similar to practically all the other states, and decided that candidates' names and addresses should be available to all educational organizations.

49 States have agreed and are presently furnishing us with similar inspections. Therefore it is clear that the overwhelming majority of the states agree with our request, and it has been proven to be in the public interest for many reasons. The major obvious reasons are:

- 1) Professional education is in the public interest and these persons should possess the highest technical proficiency attainable. Their high competence is necessary because the state licenses them to serve the general public. The exemption is not for a specific profession but rather for the entire general professional field. This long standing practice of continuing education is needed for all professions and should be continued similar to past years. Other states' Committees have also recognized this fact and have included similar exemptions in their Freedom of Information bills.
- 2) The furtherance and availability of accountancy and other professional education.
- 3) It is the easiest method for CPA and other professional registrants to know of the availability of all of these educational courses to choose from with the least effort.
- 4) Serves as an informative circular to remind them of the detailed contents and starting dates, etc. of these courses.
- 5) Reduces the cost of these courses to the candidates because the mail offerings are the most practical for the course management; these specialized courses cannot be advertised in any mass media because accounting candidates are a tiny percentage of the general population, and we cannot advertise for example in our professional magazine effectively (although we have tried this but it hardly reaches these candidates) because

these registrants are not members of the professional societies and therefore do not receive a professional magazine. Solicitations in colleges are ineffective because most CPA candidates sit for the Examinations a few years after graduating from college.

In making this information available to educational organizations, it is not an invasion of a person's privacy by merely mailing him our course offerings. These educational course offering circulars describe us, not the recipient. It is inconceivable the mere receiving of an educational course offering in the mail that is printed (no personal letter to the recipient included) be an unwarranted invasion of privacy and against the public interest. On balance, greater weight should be given to the furtherance of professional accountancy education rather than secrecy of these records. It is unreasonable to conclude that recipients (and especially knowledgeable professionals who are intelligent sufficiently and can distinguish between various offerings) are so supersensitive that their privacy is ruined by the mere receipt of an informative educational circular. The purpose of the present Bill is for greater dissemination of information and against secrecy, and for the protection of a person's confidential background. We are not interested in the personal detailed data concerning a registrant's background and history, but only the impersonal names and addresses of all professional licensee registrants. Surely the mere copying of names and addresses for professional educational purposes only, should be allowed because it is not against the public interest. We certainly need more and better educated professional candidates.

***All CPA review schools raise passing percentages from 25% to 70% on the average, because of their intensive review courses.

ARTICLE 0 - FREEDOM OF INFORMATION LAW (NEW)

Sec.

84. Legislative declaration.
 85. Short title.
 86. Definitions.
 87. Access to agency records.
 88. Access to state legislative records.
 89. General provisions relating to access to records; certain cases.
 90. Severability.

Former Art. 6. Renumbered 7.

§ 84. Legislative declaration

The legislature hereby finds that a free society is maintained when government is responsive and responsible to the public, and when the public is aware of governmental actions. The more open a government is with its citizenry, the greater the understanding and participation of the public in government.

As state and local government services increase and public problems become more sophisticated and complex and therefore harder to solve, and with the resultant increase in revenues and expenditures, it is incumbent upon the state and its localities to extend public accountability wherever and wherever feasible.

The people's right to know the process of governmental decision-making and to review the documents and statistics leading to determinations is basic to our society. Access to such information should not be thwarted by shrouding it with the cloak of secrecy or confidentiality.

The legislature therefore declares that government is the public's business and that the public, individually and collectively and represented by a free press, should have access to the records of government in accordance with the provisions of this article.

Added L.1977, c. 933, § 1.

Derivation. Former section 85, added L.1974, c. 578, § 2; amended L.1974, c. 579, § 1; repealed by L.1977, c. 933, § 1.

Effective Date. Section effective Jan. 1, 1978, pursuant to L.1977, c. 933, § 8.

§ 85. Short title

This article shall be known and may be cited as the "Freedom of Information Law."

Added L.1977, c. 933, § 1.

Derivation. Former section 80, added L.1974, c. 578, § 2; repealed by L.1977, c. 933, § 1.

Effective Date. Section effective Jan. 1, 1978, pursuant to L.1977, c. 933, § 8.

§ 86. Definitions

As used in this article, unless the context requires otherwise:

- "Judiciary" means the courts of the state, including any municipal or district court, whether or not of record.
- "State legislature" means the legislature of the state of New York, including any committee, subcommittee, joint committee, select committee, or commission thereof.

Library References

Records 214.

C.J.S. Records § 35 et seq.

Law Review Commentaries

The New York Freedom of Information Law, 43 Fordham L.Rev. 83 (1974).

Former Section 85. Section, which related to legislative intent, was added L.1974, c. 578, § 2; amended L.1974, c. 579, § 1; repealed by L.1977, c. 933, § 1; and is now covered by section 84, § 1.

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.

4. "Record" means any information kept, held, filed, produced or reproduced by, with or for an agency or the state legislature, in any physical form whatsoever including, but not limited to, reports, statements, examinations, memoranda, opinions, folders, files, books, manuals, pamphlets, forms, papers, designs, drawings, maps, photos, letters, microfilm, computer tapes, or discs, rules, regulations or codes.
 Added L.1977, c. 933, § 1.

Derivation. Former section 87, added L.1974, c. 578, § 2, and repealed by L.1977, c. 933, § 1.

Effective Date. Section effective Jan. 1, 1978, pursuant to L.1977, c. 933, § 8.

Former Section 86. Section, which related to short title, was added L.1974, c. 578, § 2; repealed by L.1977, c. 933, § 1; and is now covered by section 87.

Effective Date. L.1974, c. 578, § 2, provided that this section shall take effect Sept. 1, 1974.

1. Agency

Under the definition of "agency," the Division of the Budget came within application of this article. *Dunlea v. Goldmark*, 1976, 85 Misc.2d 198, 380 N.Y.S.2d 400, modified on other grounds 64 A.D. 140, 380 N.Y.S.2d 423.

§ 87. Access to agency records

1. (a) Within sixty days after the effective date of this article, the governing body of each public corporation shall promulgate uniform rules and regulations for all agencies in such public corporation pursuant to such general rules and regulations as may be promulgated by the committee on public access to records in conformity with the provisions of this article, pertaining to the administration of this article.

(b) Each agency shall promulgate rules and regulations in conformity with this article and applicable rules and regulations promulgated pursuant to the provisions of paragraph (a) of this subdivision, and pursuant to such general rules and regulations as may be promulgated by the committee on public access to records in conformity with the provisions of this article, pertaining to the availability of records and procedures to be followed, including, but not limited to:

- the times and places such records are available;
- the persons from whom such records may be obtained, and
- the fees for copies of records which shall not exceed twenty-five cents per photocopy not in excess of nine inches by fourteen inches, or the actual cost of reproducing another record, except when a different fee is otherwise prescribed by law.

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:

- are specifically exempted from disclosure by state or federal statute;
- if disclosed would constitute an unwarranted invasion of personal privacy under the provisions of subdivision two of section eighty-nine of this article;
- if disclosed would impair present or imminent contract awards or collective bargaining negotiations;
- are trade secrets or are maintained for the regulation of commercial enterprise which if disclosed would cause substantial injury to the competitive position of the subject enterprise;
- are compiled for law enforcement purposes and which, if disclosed, would:
 - interfere with law enforcement investigations or judicial proceedings;

- ii. deprive a person of a right to a fair trial or impartial adjudication;
 - iii. identify a confidential source or disclose confidential information relating to a criminal investigation; or
 - iv. reveal criminal investigative techniques or procedures, except routine techniques and procedures;
- (f) if disclosed would endanger the life or safety of any person;
 - (g) are inter-agency or intra-agency materials which are not:
 - i. statistical or factual tabulations or data;
 - ii. instructions to staff that affect the public; or
 - iii. final agency policy or determinations; or
 - (h) are examination questions or answers which are requested prior to the final administration of such questions.

3. Each agency shall maintain:

- (a) a record of the final vote of each member in every agency proceeding in which the member votes;
- (b) a record setting forth the name, public office address, title and salary of every officer or employee of the agency; and
- (c) a reasonably detailed current list by subject matter, of all records in the possession of the agency, whether or not available under this article.

Added L.1977, c. 933, § 1.

Derivation. Former section 88, in part, added L.1974, c. 578, § 2; amended L.1974, c. 570, §§ 2 to 4; L. 1974, c. 580, § 1; repealed by L.1977, c. 933, § 1.

Effective Date. Section effective Jan. 1, 1978, pursuant to L.1977, c. 933, § 8.

Former Section 87. Section, which related to definitions, was added L. 1974, c. 578, § 2; repealed by L.1977, c. 933, § 1; and is now covered by section 80.

§ 88. Access to state legislative records

1. The temporary president of the senate and the speaker of the assembly shall promulgate rules and regulations for their respective houses in conformity with the provisions of this article, pertaining to the availability, location and nature of records, including, but not limited to:
- (a) the times and places such records are available;
 - (b) the persons from whom such records may be obtained;
 - (c) the fees for copies of such records, which shall not exceed twenty-five cents per photocopy not in excess of nine inches by fourteen inches, or the actual cost of reproducing any other record, except when a different fee is otherwise prescribed by law.
2. The state legislature shall, in accordance with its published rules, make available for public inspection and copying:
- (a) bills and amendments thereto, fiscal notes, introducers' bill memoranda, resolutions and amendments thereto, and index records;
 - (b) messages received from the governor or the other house of the legislature, and home rule messages;
 - (c) legislative notification of the proposed adoption of rules by an agency;
 - (d) members' code of ethics statements;
 - (e) transcripts or minutes, if prepared, and journal records of public sessions including meetings of committees and subcommittees and public hearings, with the records of attendance of members thereat and records of any votes taken;
 - (f) internal or external audits and statistical or factual tabulations of, or with respect to, material otherwise available for public inspection and copying pursuant to this section or any other applicable provision of law;
 - (g) administrative staff manuals and instructions to staff that affect members of the public;
 - (h) final reports and formal opinions submitted to the legislature;

- (i) final reports or recommendations and minority or dissenting reports and opinions of members of committees, subcommittees, or commissions of the legislature;
- (j) any other files, records, papers or documents required by law to be made available for public inspection and copying.

3. Each house shall maintain and make available for public inspection and copying: (a) a record of votes of each member in every session and every committee and subcommittee meeting in which the member votes;

- (b) a record setting forth the name, public office address, title, and salary of every officer or employee; and

- (c) a current list, reasonably detailed, by subject matter of any records required to be made available for public inspection and copying pursuant to this section.

Added L.1977, c. 933, § 1.

Derivation. Former section 88, in part. For history, see note under section 87.

Effective Date. Section effective Jan. 1, 1978, pursuant to L.1977, c. 933, § 8.

§ 89. General provisions relating to access to records; certain cases

The provisions of this section apply to access to all records, except as hereinafter specified:

1. (a) The committee on public access to records is continued and shall consist of the lieutenant governor or the delegate of such officer, the secretary of state or the delegate of such officer, whose office shall act as secretariat for the committee, the commissioner of the office of general services or the delegate of such officer, the director of the budget or the delegate of such officer, and six other persons, none of whom shall hold any other state or local public office, to be appointed as follows: four by the governor, at least two of whom are or have been representatives of the news media, one by the temporary president of the senate, and one by the speaker of the assembly. The persons appointed by the temporary president of the senate and the speaker of the assembly shall be appointed to serve, respectively, until the expiration of the terms of office of the temporary president and the speaker to which the temporary president and speaker were elected. The four persons presently serving by appointment of the governor for fixed terms shall continue to serve until the expiration of their respective terms. Thereafter, their respective successors shall be appointed for terms of four years. The committee shall hold no less than four meetings annually. The members of the committee shall be entitled to reimbursement for actual expenses incurred in the discharge of their duties.

(b) The committee shall:

- i. furnish to any agency advisory guidelines, opinions or other appropriate information regarding this article;
- ii. furnish to any person advisory opinions or other appropriate information regarding this article;
- iii. promulgate rules and regulations with respect to the implementation of subdivision one and paragraph (c) of subdivision three of section eighty-seven of this article;
- iv. request from any agency such assistance, services and information as will enable the committee to effectively carry out its powers and duties; and
- v. report on its activities and findings, including recommendations for changes in the law, to the governor and the legislature annually, on or before December fifteenth.

2. (a) The committee on public access to records may promulgate guidelines regarding deletion of identifying details or withholding of records otherwise available under this article to prevent unwarranted invasions of personal privacy. In the absence of such guidelines, an agency may delete identifying details when it makes records available.

(b) An unwarranted invasion of personal privacy includes, but shall not be limited to:

- i. disclosure of employment, medical or credit histories or personal references of applicants for employment;
- ii. disclosure of items involving the medical or personal records of a client or patient in a medical facility;
- iii. sale or release of lists of names and addresses if such lists would be used for commercial or fund-raising purposes;
- iv. disclosure of information of a personal nature when disclosure would result in economic or personal hardship to the subject party and such information is not relevant to the work of the agency requesting or maintaining it; or
- v. disclosure of information of a personal nature reported in confidence to an agency and not relevant to the ordinary work of such agency.

(c) Unless otherwise provided by this article, disclosure shall not be construed to constitute an unwarranted invasion of personal privacy pursuant to paragraphs (a) and (b) of this subdivision:

- i. when identifying details are deleted;
- ii. when the person to whom a record pertains consents in writing to disclosure;
- iii. when upon presenting reasonable proof of identity, a person seeks access to records pertaining to him.

3. Each entity subject to the provisions of this article, within five business days of the receipt of a written request for a record reasonably described, shall make such record available to the person requesting it, deny such request in writing or furnish a written acknowledgement of the receipt of such request and a statement of the approximate date when such request will be granted or denied. Upon payment of, or offer to pay, the fee prescribed therefor, the entity shall provide a copy of such record and certify to the correctness of such copy if so requested, or as the case may be, shall certify that it does not have possession of such record or that such record cannot be found after diligent search. Nothing in this article shall be construed to require any entity to prepare any record not possessed or maintained by such entity except the records specified in subdivision three of section eighty-seven and subdivision three of section eighty-eight.

4. (a) Any person denied access to a record may within thirty days appeal in writing such denial to the head, chief executive or governing body of the entity, or the person therefor designated by such head, chief executive, or governing body, who shall within seven business days of the receipt of such appeal fully explain in writing to the person requesting the record the reasons for further denial, or provide access to the record sought. In addition, each agency shall immediately forward to the committee on public access to records a copy of such appeal and the determination thereon.

(b) Any person denied access to a record in an appeal determination under the provisions of paragraph (a) of this subdivision may bring a proceeding for review of such denial pursuant to article seventy-eight of the civil practice law and rules. In the event that access to any record is denied pursuant to the provisions of subdivision two of section eighty-seven of this article, the agency involved shall have the burden of proving that such record falls within the provisions of such subdivision two.

5. Nothing in this article shall be construed to limit or abridge any otherwise available right of access at law or in equity of any party to records.

Added L.1977, c. 933, § 1.

Derivation. Former section 88, in part. For history, see note under section 87.

Effective Date. Section effective Jan. 1, 1978, pursuant to L.1977, c. 933, § 8.

Former Section 89. Section, which related to severability, was added L. 1974, c. 578, § 2; repealed by L.1977, c. 933, § 1, and is now covered by section 100.

§ 90. Severability

If any provision of this article or the application thereof to any person or circumstance is adjudged invalid by a court of competent jurisdiction, such judgment shall not affect or impair the validity of the other provisions of the article or the application thereof to other persons and circumstances.

Added L.1977, c. 933, § 1.

Derivation. Former section 89, added L.1974, c. 578, § 2, and repealed by L.1977, c. 933, § 1.

Effective Date. Section effective Jan. 1, 1978, pursuant to L.1977, c. 933, § 8.