

ALASKA LEGISLATURE COMMITTEES 1981-1982 86/2

2059 SSA SB 90

2059

records are protected, and to prevent interference with the day to day work activities of the office. It further states that if a certified copy of the record is requested that the copy furnished by the custodian would in all cases be evidence of the original.

(c) This section states that copies of the records may be requested by telephone, electronic communication, and by mail. It further states that these requests shall be treated in the same way as requests made in person.

(d) This section states that the commissioner of the Department of Administration shall prescribe a uniform schedule of fees. The payment of fees shall be limited to the reasonable standard charge for document duplication, and only the direct cost of duplication will be charged. (There is no charge for searching for the documents.)

(e) Provides seventeen specific exemptions for not disclosing public documents. *These are self-explanatory*

(f) States that all records become public documents after they are twenty years old unless they are specifically exempted from disclosure by statute.

(g) States that information contained in records exempted from disclosure under the seventeen exemptions may be released for valid statistical or other information-gathering purposes if: (1.) any of the information which would tend to identify the person would be deleted and (2.) disclosure would be made in a manner which would not compromise or defeat the purposes of any statute designed to maintain the confidentiality of the

information.

(h) This part allows exempted information to be subpoenaed during the course of an investigation of a state or municipal agency.

(i) This part allows all personnel records including salaries and information regarding job performance and abilities to carry out the duties and responsibilities of the job to be made available for inspection. It specifically states that this accessibility to the public is not an infringement of a person's right to privacy.

(j) This part outlines what information is public with regard to the commission of a crime. It specifically exempts the release of the victim's name in a criminal sexual assault case *or the release of the name of a minor charged with a crime.*

AS 40.25.020

(a) This part states that upon request each governmental unit shall produce the records immediately or, if the record is currently being used or is in storage and not available at the time of the request, the custodian shall notify the applicant in writing and the applicant may then set a date and an hour at which time the record can be inspected.

(b) This part covers the area of exhaustion of administrative remedies. This means that if a governmental unit fails to comply with a person's request for documents, that person is considered to have exhausted his or her administrative remedies and can then go directly to court to force the governmental unit to comply. When the court action is filed, if the governmental unit can show that exceptional circumstances exist, the court can grant the governmental unit additional time to find or review the record.

(c) This part deals with the procedures the custodian of the record must follow when he determines that the contents of the record are exempt under the seventeen provisions. It states that if the custodian finds exempt provisions, the custodian must delete these provisions and release the record with a note stating that exempt material has been removed. It also states that if the custodian determines that the record or a portion of it is not open to inspection, he shall inform the person making the request in certified writing of this determination and of that part of the exempt provisions that he

is relying on. The custodian, in the certified writing, must also state that a lawsuit may be brought to compel production of records which are improperly withheld.

(d) In the certified writing of the denial of request under the previous section the names and titles of positions of each person responsible for the denial of the request must be noted.

AS 40.25.025

(a) This part states that a custodian of the record or an accomplice may be enjoined by the Superior Court from obstructing or attempting to obstruct the lawful inspection of records.

(b) This part states that the court may not charge a filing fee or the Department of Public Safety may not charge for service of process for an applicant seeking injunctive relief under this section. This section also states that the court may not require a security bond, which is usually required in a suit for injunctive relief. If the applicant is granted injunctive relief he shall be entitled to recover costs and reasonable attorney's fees, as stated in Rule 82 of the Civil Rules of Procedure, from the governmental unit.

(c) States that the Superior Court shall provide forms which allow for an applicant to file for injunctive relief without a lawyer. These forms are simplified to include only the identification of the applicant, the name of the custodian

who is allegedly improperly withholding the record, and a simple explanation of the record sought. This is done to do away with needing an attorney to file the suit.

(d) This part states that the court may compel the reproduction of records improperly withheld. It also allows the court to examine withheld documents en camera (which means the judge may do this in his chambers) to determine whether or not the record or portions of the record have been improperly withheld. The burden is put on the agency to prove its reason for withholding the requested document.

AS 40.25.035 Civil Action for Obstruction of Access to Records.

(a) This part allows a person who has been wrongfully denied access to records to file a civil action in court against the person responsible for the violation. The applicant, if he prevails in the suit, is entitled to recover actual damages and reasonable attorney's fees and other reasonable costs of litigation.

(b) This part states that a good faith reliance upon the provisions in the exemption is a defense to a civil action brought under this section.

AS 40.25.040 Definitions

There are five categories of definitions which are self-explanatory. Definitions are provided for "attorney work products", "custodian", "governmental unit", "personal information", and "record".

Section 2 of the bill amends AS 44.62.310, which is entitled "Agency Meetings: Public" by adding a new section which allows

the holding of conferences between two or more public bodies or their representatives. It further states that these conferences are subject to the same regulations which are outlined in AS 44.62.310 for holding executive or closed sessions.

Section 3 amends AS 44.62.310 (c) (3) to read "Matters which by state statute LAW, MUNICIPAL CHARTER, OR ORDINANCE are required to be confidential." This section would stop any governmental unit or political subdivision from drafting their own laws with regards to confidential matters to be discussed in executive session.

Section 4 amends AS 11.56.820 entitled "Tampering with Public Records". This section adds a new clause which states that a good faith reliance upon the provisions outlined in this chapter is an affirmative defense to criminal prosecution. Tampering with public records under current statute is a Class A misdemeanor.

Section 5. This section has the effect of changing Rule 65 of the Alaska Supreme Court Rules of Civil Procedure relating to the security deposits required in civil actions.

Section 6 repeals AS 9.25.110 entitled "Inspection and Copying of Public Records". Repeals AS 9.25.120 entitled "Inspection and Copying of Public Records" and AS 9.25.125 entitled "Enforcement: Injunctive Relief".

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PROPOSED COMMITTEE SUBSTITUTE

SENATE BILL NO. 90

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWELFTH LEGISLATURE - FIRST SESSION

A BILL

For an Act 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."

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

* Section 1. AS 40 is amended by adding a new chapter to read:

CHAPTER 25. PRIVACY AND PUBLIC INFORMATION.

Sec. 40.25.010. STATE POLICY. It is the policy of the state that

- (1) all governmental units exist to aid in the conduct of the people's business;
- (2) the people of this state do not yield their sovereignty to the agencies which serve them;
- (3) the people, in delegating authority, do not give their public servant the right to decide what is best for the people to know and what is best for them not to know;
- (4) the people's right to remain informed shall be protected so that they may retain control over the instruments they have created;
- (5) the people's right to privacy as provided by the constitution is recognized and shall not be infringed;
- (6) the records of governmental units shall be open for public inspection unless the inspection infringes on a person's right to privacy or is otherwise prohibited by statute.

Sec. 40.25.015. RECORDS TO BE OPEN TO INSPECTION. (a) Except as otherwise specifically provided by statute, all records are open to

inspection and copying by any person during the regular office hours of the lawful custodian of the records or his designee. The custodian of the records shall take all necessary precautions for their preservation and safekeeping.

(b) Every custodian of records shall make them available for public inspection and shall give a copy of the record on request and

duty to search - comments
 A custodian shall permit memoranda, transcripts, and copies of the public writings and records in his office to be reproduced in any reasonable manner. In addition, a custodian shall furnish proper and reasonably accessible facilities for inspection of records, subject to reasonable restrictions as are necessary for the protection of the writings and records and to prevent interference with the regular discharge of the duties of the custodian and his employees. If a certified copy is requested, that copy is in all cases evidence of the original.

(c) Copies of records may be requested *in person or verbally or in writing* by telephone, electronic communication, or by mail. These requests shall be treated in accordance with the provisions of (a) and (b) of this section.

(d) The commissioner of administration shall prescribe a uniform schedule of fees to be limited to reasonable standard charges for document duplication, and provide for recovery of only the direct costs of the duplication. The commissioner may reduce or waive the payment of fees if a reduction or waiver would be in the public interest. *in urgent* A person can obtain 20 pages of a record copied without charge within any 24-hour period.

Sec. 40.25.020. DUTIES OF GOVERNMENTAL UNIT. (a) Promptly, but no later than 10 days after receiving a request for a public record, the custodian of the record shall

(1) make the record available;

1 (2) inform the requester that unusual circumstances, as
2 defined in (d) of this section, have delayed or impaired the handling
3 of the request and specify in writing the earliest time and date, not
4 later than ~~30 days~~ after receipt of the request, when the record will
5 be available;

6 (3) inform the requester that the governmental unit does not
7 maintain the record, and provide, if known, the name and location of
8 the governmental unit maintaining the record; or

9 (4) deny the request.

10 (b) If a request for access to a public record is denied, in
11 whole or part, the governmental unit shall in writing notify the
12 requester of the specific reasons for the denial, and identify by name
13 and position or title of the person responsible for the denial. In
14 addition, the governmental unit shall inform the requester that review
15 of the denial may be sought from the head of the governmental unit and
16 that a request for review must be filed within 30 days after notification
17 of the denial. The head of the governmental unit within 30 days after
18 a request for review is filed, shall decide whether to uphold the
19 denial of access. If the decision is to disclose, the governmental
20 unit shall immediately notify the requester and make the record avail-
21 able. If the denial of access is upheld, in whole or in part, the head
22 of the governmental unit in writing shall notify the requester of the
23 decision, the specific reasons for the decision, and of the right to
24 bring a judicial action under AS 40.25.070.

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*Department of Administration
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25 (c) When the governmental unit determines that contents of a
26 record exempt it under the provisions of AS 42.25.030, it shall also
27 determine whether a deletion of the exempt parts of the record will
28 make the record suitable for release, and, if so, the deletion shall be
29 made and the record released, with the notation that exempt material

1 has been removed. If the governmental unit determines that the record,
 2 or a portion of the record, is not open to inspection, it shall, in a
 3 certified writing, inform the person requesting the records of its
 4 determination, of the statutory basis for this decision, and that under
 5 AS 40.25.070 a suit may be brought to compel production of records that
 6 are improperly withheld.

7 (d) As used in (a) of this section, "unusual circumstances"
 8 means, but only to the extent reasonably necessary to the proper pro-
 9 cessing of the particular request,

10 (1) the need to search for and collect the requested records
 11 from field facilities or other establishments that are separate from
 12 the office processing the request;

13 (2) the need to search for, collect, and appropriately
 14 examine a voluminous amount ^{or variety} of separate and distinct records which are
 15 demanded in a single request;

16 *Redraft* (3) the need for consultation, which shall ^{be} *tighten up* conducted with
 17 all practicable speed, with another governmental unit or among two or
 18 more components of the governmental unit having a substantial interest
 19 in the determination of the request; or

20 (4) the need to notify a person and afford him an oppor-
 21 tunity to be heard pursuant to AS 40.25.030(c).

22 Sec. 40.25.030. EXEMPTIONS. (a) The following records are ex-
 23 cluded from the provision of AS 40.25.015 -- 40.25.020:

24 (1) records that are exempted from disclosure by state
 25 statute, ~~federal law or regulation, or court rule~~

26 (2) any tax or information return, or record or report
 27 relating to that return, which is required to be filed in accordance
 28 with the provisions of AS 43 or municipal ordinance;

29 (3) archival materials donated by individuals to the extent

1 of any written limitations placed on them as a condition of of the
2 contribution; however, all archival materials become public information
3 after not more than 50 years and any statement of limitations must be
4 produced upon denial of access;

5 (4) circulation records maintained by public libraries,
6 public school libraries, and University of Alaska libraries showing
7 personal transactions by those borrowing from them;

8 *3 who determines* (5) trade secrets and confidential commercial, financial,
9 geological, or geophysical data that is furnished to a governmental
10 unit ~~or developed by a governmental unit.~~ *?*

11 (6) materials used to administer a licensing, employment, or
12 academic examination if disclosure would compromise the fairness or
13 objectivity of the examination process;

14 (7) investigatory, intelligence, and original entry records *?*
15 compiled for law enforcement purposes, but only to the extent that
16 production of the records would

17 (A) interfere with enforcement proceedings;

18 (B) deprive a person of a right to a fair trial or an
19 impartial adjudication;

20 *Identical to 2030* (C) constitute an unwarranted invasion of personal
21 privacy;

22 (D) disclose the identity of a confidential source and,
23 in case of a record compiled by a criminal law enforcement
24 authority in the course of a criminal investigation, confidential
25 information furnished only by the confidential source;

26 (E) disclose investigative techniques and procedures;
27 or

28 (F) endanger the life, property, or physical safety of
29 a person; *→*

30 (8) records of security systems and procedures established

for the purpose of the protection of persons or property, or securing a penal institution or place of detention of persons accused or convicted of a crime or persons under the jurisdiction of the court under AS 47.10, but only to the extent that disclosure would compromise the effectiveness of the system;

(9) attorney work product in the possession of a governmental unit;

(10) any notes, memoranda, draft decisions, opinions, or other similar documents prepared by a justice or a judge, or a person working under ~~his~~ ^{their} supervision, in the process of deciding any legal issue;

(11) records related solely to the internal practices of a governmental unit where the effect of disclosure would be to enable law violators to escape detection; and

(12) records, the disclosure of which would constitute an unwarranted invasion of personal privacy. *unjustifiable into a person's rt. of privacy covers 3 thru 8*

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(b) ~~In applying the exemption specified in (a) (12) of this section,~~ the governmental unit shall determine whether the public interest in disclosure outweighs the privacy interest of the person to whom the record pertains. ~~In making this determination, the governmental unit shall consider:~~

(1) whether the record is of a personal nature, including records concerning

(A) the person's personal relationship with any person related to him by blood or marriage;

(B) the person's religious beliefs or practices;

(C) non-criminal sexual matters;

(D) the person's political affiliation or philosophy;

(E) medical, psychiatric, or psychological history,

financial info

1 diagnosis, condition, treatment or evaluation;

2 (2) whether the person could reasonably assert an option to
3 withhold information contained in the record from the public because
4 of its intimacy or its possible adverse effects upon himself or his
5 family;

6 (3) the extent to which disclosure furthers the public ^{? what}
7 interest in the disclosure of information concerning the conduct of
8 governmental affairs as opposed to the requester's private interests;

9 (4) whether the information in the record was voluntarily
10 provided by the person to whom the record pertains or whether he was ^{what}
11 compelled to provide the information;

12 (5) whether the information in the record was supplied by
13 the person in an attempt to obtain a valuable governmental benefit,
14 other than basic social services or assistance;

15 (6) whether the information in the record is readily a-
16 vailable from other than governmental sources;

17 (7) whether the person was notified or reasonably could have
18 concluded at the time he provided the information that the record would
19 be available for public inspection;

20 (8) whether the information in the record consists of
21 verified or undisputed information about a person or is rumor, con-
22 jecture, or uncorroborated hearsay; and

23 (9) whether the information in the record was collected or
24 maintained for the purpose of making information available to the
25 general public.

26 (c) If a governmental unit initially decides to disclose a
27 record to which the exemptions specified in ^{unwarranted invasion of privacy} (a) (7) (C) or (a) (13) ^{cites} of
28 this section may apply, and to the extent that it concludes that there
29 is a substantial probability that a person to whom the record pertains

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interview

would object to disclosure, it shall make reasonable efforts to notify that person and provide him with an opportunity to argue against disclosure. If the governmental unit decides to grant disclosure over objection, it shall notify the objector of its decision. If the governmental unit decides not to grant disclosure, and an action is subsequently brought pursuant to AS 40.25.070 to compel disclosure, it shall make reasonable efforts to inform the objector of the suit.

(d) Unless specifically exempted from disclosure by state statute, ~~federal law or regulation, or court rule~~, all records become public after they are ~~75~~⁵⁰ years old. *medical records*

(e) Information contained in records exempted from disclosure under (a) of this section may be released for valid statistical or other information-gathering purposes if

(1) any information which would tend to identify the person to whom the record pertains is deleted; and

disclosure is made in a manner which would not compromise or ~~at~~ the purposes of any state statute, federal law or regulation ~~court rule~~ designed to maintain the confidentiality of the information.

(f) The exemptions from public disclosure provided in this section, or by other state law pertaining to the confidentiality of records, do not preclude the release or production of subpoenaed records or information to a state or municipal agency during the course of an investigation.

(g) All information in personnel records of public employees showing salary or compensation, job description, education and training background, previous work experience, *current evaluation* and the status of any formal charges against the employee and disciplinary action taken is a matter of public information and record.

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Personnel Rule 4.07.0.

Except for examination materials, performance evaluations, personal history or other confidential materials so designated by the Dir., employee records shall be public records.

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(h) The fact that a crime has been committed, the name of the crime, the time of commission and location, and the name of any person who is charged with a crime is a matter of public information and record, except as provided in AS 47.10.090.

Sec. 40.25.040. ACCESS TO RECORDS BY RECORD SUBJECT. (a) Except as provided in (b) of this section, an individual or his duly authorized representative may examine or copy during the regular business hours of the governmental unit, any ~~accessible~~ record that pertains to him. In implementing this section, the governmental unit shall follow the procedures established in AS 40.25.015 -- 40.25.020.

(b) A governmental unit is not required under (a) of this section to disclose:

(1) information that may be withheld pursuant to AS 40.-25.030(a)(1) -- 40.25.030(a)(11), except to the extent that the information was submitted by the requester; however, for purposes of information that may be withheld pursuant to AS 40.25.030(a)(6), under appropriate safeguards designed to protect the integrity of the examination process, an individual may examine, ~~his own~~ his own test questions and answers in any examination used for licensing or employment;

(2) information that may be withheld pursuant to AS 40.-25.030(a)(12) that does not relate directly to the requester, and which if disclosed, would constitute an unwarranted invasion of another person's personal privacy; or

(3) information collected and used solely to evaluate the character and fitness of persons, but only to the extent that disclosure would identify the source of the information.

(c) This section does not abridge any state statute, ~~federal law~~ or regulation, or court rule that authorizes an agency to withhold information from the parent or legal guardian of a child.

1 (d) If an individual requests an ~~accessible~~ record containing
2 information the governmental unit is not required to disclose under (b)
3 or (c) of this section, the agency shall provide any reasonably segre-
4 gable portion of the record to the requester after deleting the un-
5 disclosable material.

6 Sec. 40.25.060. CORRECTION AND AMENDMENT OF RECORDS. (a) An
7 individual may request a governmental unit to correct or amend any
8 incomplete or inaccurate information pertaining to him if it is con-
9 tained in a record available under AS 40.25.050.

10 (b) Not later than twenty days after receiving a request from an
11 individual to correct or amend an accessible record pertaining to him,
12 the governmental unit shall

13 (1) make the requested correction or amendment and inform
14 the individual of the action;

15 (2) inform the individual that the governmental unit does
16 not maintain the record and, if it knows, provide the name and location
17 of the governmental unit maintaining it; or

18 (3) inform the individual in writing of its refusal to
19 correct or amend the record as requested and the reason for the re-
20 fusals. If the governmental unit refuses to correct or amend the
21 record, it shall

22 (A) permit the individual to file with the record a
23 concise statement of his reasons for the requested correction or
24 amendment and his reasons for disagreement with the refusal by the
25 governmental unit; and

26 (B) notify the individual of his right to bring an
27 action pursuant to AS 40.25.070.

28 (c) Whenever a governmental unit discloses information to a third
29 party about which an individual has filed a statement pursuant to

1 (b) (3) (A) of this section, the governmental unit shall

- 2 (1) clearly identify the disputed portion of the informa-
3 tion;
- 4 (2) furnish a copy of the individual's statement; and
- 5 (3) furnish a concise statement of the governmental unit's
6 current position with respect to the request for correction or amend-
7 ment and transmit a copy of this statement to the last known address of
8 the individual whose record is disclosed.

9 Sec. 40.25.070. ENFORCEMENT: INJUNCTIVE RELIEF. (a) A person
10 having custody or control of a record, or a person not having custody
11 or control who aids or abets a person having custody, may be enjoined
12 in superior court from

13 (1) obstructing or attempting to obstruct the inspection of
14 a record subject to inspection under this chapter;

15 (2) failing to correct or amend a record pursuant to AS 40.-
16 25.060.

17 (b) The court may charge no filing fee, and the Department of
18 Public Safety may charge no fee for service of process, from an appli-
19 cant seeking an injunction under this section. No security may be
20 required by the court from an applicant seeking an injunction under
21 this section. If the applicant is granted the injunction, he shall be
22 entitled to recover costs and ^{actual} ~~reasonable~~ attorney fees from the govern-
23 mental unit.

24 (c) The superior court shall make available to an applicant, free
25 of charge, a simplified form for proceeding without counsel under this
26 section. The form shall require only identification of the applicant
27 and the name of the custodian alleged to be acting improperly, and a
28 simple explanation of the records sought or the correction or amendment
29 requested.

(d) In a suit brought under this section, the court may enjoin withholding of the records and order the production to the complainant of records improperly withheld or order that the correction or amendment be made. The court shall determine the matter de novo, and may examine the contents of any records in camera to determine whether the records or any portion of them may be withheld under any of the exemption specified in AS 40.25.030 or not corrected or amended under AS 40.25.060. The burden is on the agency to sustain its action.

Sec. 40.25.080. CIVIL ACTION FOR OBSTRUCTION OF ACCESS TO RECORDS. (a) A person who has been wrongfully denied access to a record under this chapter has a civil cause of action against the person responsible for the violation and is entitled to recover actual damages and ~~reasonable~~ ^{punitive} attorney fees and other ~~reasonable~~ ^{actual} litigation costs.

(b) A good faith reliance upon the provisions of this chapter or of applicable law governing the confidentiality of public records is a defense to a civil action brought under this section.

Sec. 40.25.090. DEFINITIONS. In this chapter, unless the context otherwise requires,

(1) "accessible record" means any item or collection of information in a record that refers to a particular individual that is

(A) maintained according to an established retrieval scheme or indexing structure on the basis of the identity of, or so as to identify, individuals; or

(B) otherwise retrievable because a governmental unit is able to locate the record through the use of information provided by a requester without an unreasonable expenditure of time, effort, money, or other resources;

(2) "attorney work product" means documents and tangible

*see Barry
Public
Contract*

1 things prepared by or for a governmental unit in anticipation of or
2 during litigation;

3 (3) "custodian" means the head of any governmental unit or
4 his designee;

5 (4) "governmental unit" means an agency, political sub-
6 division, legislative body, board of regents, or an administrative
7 body, board, commission, committee, subcommittee, authority, council,
8 agency, or other organization, including subordinate units of the above
9 groups, of the state or any of its political subdivisions, including
10 but not limited to municipalities, boroughs, school boards, and all
11 other boards, agencies assemblies, councils, departments, divisions,
12 bureaus, commissions or organizations, advisory or otherwise, of the
13 state or local government supported in whole or in part by public money
14 or authorized to spend public money;

*if creatures
of the state*

*See
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~~REDA~~
*public corp. CFA's contract
pg. 9 where used*

15 (5) "individual" means a natural person;

16 (6) "record" means any document, paper, memoranda, book,
17 letter, drawing, map, plat, photo, photographic file, motion picture,
18 film, microfilm, microphotograph, exhibit, magnetic or paper tape,
19 punched card, ^{under FOIA} or other document of any other material, regardless of
20 physical form or characteristic, developed or received under law or in
21 connection with the transaction of official business and preserved or
22 appropriate for preservation by a governmental unit as evidence of the
23 organization, function, policies, decisions, procedures, operations or
24 other activities of the state or political subdivision or because of
25 the informational value in them; it also includes staff manuals and
26 instructions to staff that directly or indirectly affect the public.

27 * Sec. 2. AS 44.62.310 is amended by adding a new subsection to read:

28 (g) Nothing in this section may be construed to prevent the
29 holding of conferences between two or more public bodies, or their

1 representatives, but these conferences are subject to the same regu-
2 lations for holding executive or closed sessions as are applicable to
3 any other public body.

4 * Sec. 3. AS 44.62.310(c) (3) is amended to read:

5 (3) matters which by state statute [LAW, MUNICIPAL CHARTER,
6 OR ORDINANCE] are required to be confidential.

7 * Sec. 4. In sec. 1 of this Act, AS 40.25.025(b) has the effect of
8 changing Rule 65 of the Alaska Supreme Court Rules of Civil Procedure re-
9 lating to security deposits required in civil actions.

10 * Sec. 5. AS 09.25.110, 09.25.120, and 09.25.125 are repealed.

11 * Sec. 6. This Act takes effect July 1, 1987.

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13 *Good faith defense*
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PROPOSED COMMITTEE SUBSTITUTE

SENATE BILL NO. 90

IN THE LEGISLATURE OF THE STATE OF ALASKA

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- (4) the people's right to remain informed shall be protected so that they may retain control over the instruments they have created;
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4 and safekeeping.

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6 public inspection and shall give a copy of the record on request and
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25 24-hour period.

26 Sec. 40.25.020. DUTIES OF GOVERNMENTAL UNIT. (a) Promptly, but
27 no later than 10 days after receiving a request for a public record,
28 the custodian of the record shall

- (1) make the record available;

1 (2) inform the requester that unusual circumstances, as
2 defined in (d) of this section, have delayed or impaired the handling
3 of the request and specify in writing the earliest time and date, not
4 later than 20 days after receipt of the request, when the record will
5 be available;

6 (3) inform the requester that the governmental unit does not
7 maintain the record, and provide, if known, the name and location of
8 the governmental unit maintaining the record; or

9 (4) deny the request.

10 (b) If a request for access to a public record is denied, in
11 whole or part, the governmental unit shall in writing notify the
12 requester of the specific reasons for the denial, and identify by name
13 and position or title of the person responsible for the denial. In
14 addition, the governmental unit shall inform the requester that review
15 of the denial may be sought from the head of the governmental unit and
16 that a request for review must be filed within 30 days after notification
17 of the denial. The head of the governmental unit within 30 days after
18 a request for review is filed, shall decide whether to uphold the
19 denial of access. If the decision is to disclose, the governmental
20 unit shall immediately notify the requester and make the record avail-
21 able. If the denial of access is upheld, in whole or in part, the head
22 of the governmental unit in writing shall notify the requester of the
23 decision, the specific reasons for the decision, and of the right to
24 bring a judicial action under AS 40.25.070.

25 (c) When the governmental unit determines that contents of a
26 record exempt it under the provisions of AS 42.25.030, it shall also
27 determine whether a deletion of the exempt parts of the record will
28 make the record suitable for release, and, if so, the deletion shall be
29 made and the record released, with the notation that exempt material

1 has been removed. If the governmental unit determines that the record,
 2 or a portion of the record, is not open to inspection, it shall, in a
 3 certified writing, inform the person requesting the records of its
 4 determination, of the statutory basis for this decision, and that under
 5 AS 40.25.070 a suit may be brought to compel production of records that
 6 are improperly withheld.

7 (d) As used in (a) of this section, "unusual circumstances"
 8 means, but only to the extent reasonably necessary to the proper pro-
 9 cessing of the particular request,

10 (1) the need to search for and collect the requested records
 11 from field facilities or other establishments that are separate from
 12 the office processing the request;

13 (2) the need to search for, collect, and appropriately
 14 examine a voluminous amount ^{or variety} of separate and distinct records which are
 15 demanded in a single request;

16 (3) the need for consultation, which shall be conducted with
 17 all practicable speed, with another governmental unit or among two or
 18 more components of the governmental unit having a substantial interest
 19 in the determination of the request; or

20 (4) the need to notify a person and afford him an oppor-
 21 tunity to be heard pursuant to AS 40.25.030(c).

22 Sec. 40.25.030. EXEMPTIONS. (a) The following records are ex-
 23 cluded from the provision of AS 40.25.015 -- 40.25.020:

24 (1) records that are exempted from disclosure by state
 25 statute, federal law or regulation, or court rule;

26 (2) any tax or information return, or record or report
 27 relating to that return, which is required to be filed in accordance
 28 with the provisions of AS 43 or municipal ordinance;

29 (3) archival materials donated by individuals to the extent

1 of any written limitations placed on them as a condition of of the
 2 contribution; however, all archival materials become public information
 3 after not more than 50 years and any statement of limitations must be
 4 produced upon denial of access;

5 (4) circulation records maintained by public libraries,
 6 public school libraries, and University of Alaska libraries showing
 7 personal transactions by those borrowing from them;

8 (5) trade secrets and confidential commercial, financial,
 9 geological, or geophysical data that is furnished to a governmental
 10 unit^{or} developed by a governmental unit;] *delete*

11 *up* (6) materials used to administer a licensing, employment, or
 12 academic examination if disclosure would compromise the fairness or
 13 objectivity of the examination process;

14 (7) investigatory, intelligence, and original entry records
 15 compiled for law enforcement purposes, but only to the extent that
 16 production of the records would

17 (A) interfere with enforcement proceedings;

18 (B) deprive a person of a right to a fair trial or an
 19 impartial adjudication;

20 (C) constitute an unwarranted invasion of personal
 21 privacy;

22 (D) disclose the identity of a confidential source and,
 23 in case of a record compiled by a criminal law enforcement
 24 authority in the course of a criminal investigation, confidential
 25 information furnished only by the confidential source;

26 (E) disclose investigative techniques and procedures;

27 or

28 (F) endanger the life, property, or physical safety of
 29 a person;

30 (8) records of security systems and procedures established

1 for the purpose of the protection of persons or property, or securing
2 a penal institution or place of detention of persons accused or con-
3 victed of a crime or persons under the jurisdiction of the court under
4 AS 47.10, but only to the extent that disclosure would compromise the
5 effectiveness of the system;

6 (9) attorney work product in the possession of a govern-
7 mental unit;

8 (10) any notes, memoranda, draft decisions, opinions, or
9 other similar documents prepared by a justice or a judge, or a person
10 working under his supervision, in the process of deciding any legal
11 issue;

12 (11) records related solely to the internal practices of a
13 governmental unit where the effect of disclosure would be to enable law
14 violators to escape detection; and

15 (12) records, the disclosure of which would constitute an
16 unwarranted invasion of personal privacy.

17 (b) In applying the exemption specified in (a)(12) of this
18 section, the governmental unit shall determine whether the public
19 interest in disclosure outweighs the privacy interest of the person to
20 whom the record pertains. ~~In~~ ^{Delete} making this determination, the govern-
21 mental unit shall consider: S.F. Finds these raise more questions
22 than it resolves

23 (1) whether the record is of a personal nature, including
24 records concerning

25 (A) the person's personal relationship with any person
26 related to him by blood or marriage;

27 (B) the person's religious beliefs or practices;

28 (C) non-criminal sexual matters;

29 (D) the person's political affiliation or philosophy;

30 (E) medical, psychiatric, or psychological history,

*This goes
p. 2 l. 1-25*

1 diagnosis, condition, treatment or evaluation.

2 (2) whether the person could reasonably assert an option to
3 withhold information contained in the record from the public because
4 of its intimacy or its possible adverse effects upon himself or his
5 family;

6 (3) the extent to which disclosure furthers the public
7 interest in the disclosure of information concerning the conduct of
8 governmental affairs as opposed to the requester's private interests;

9 (4) whether the information in the record was voluntarily
10 provided by the person to whom the record pertains or whether he was
11 compelled to provide the information;

12 (5) whether the information in the record was supplied by
13 the person in an attempt to obtain a valuable governmental benefit,
14 other than basic social services or assistance;

15 (6) whether the information in the record is readily a-
16 vailable from other than governmental sources;

17 (7) whether the person was notified or reasonably could have
18 concluded at the time he provided the information that the record would
19 be available for public inspection;

20 (8) whether the information in the record consists of
21 verified or undisputed information about a person or is rumor, con-
22 jecture, or uncorroborated hearsay; and

23 (9) whether the information in the record was collected or
24 maintained for the purpose of making information available to the
25 general public.

26 (c) If a governmental unit initially decides to disclose a
27 record to which the exemptions specified in (a)(7)(C) or (a)(13) of
28 this section may apply, and to the extent that it concludes that there
29 is a substantial probability that a person to whom the record pertains

1 would object to disclosure, it shall make reasonable efforts to notify
 2 that person and provide him with an opportunity to argue against dis-
 3 closure. If the governmental unit decides to grant disclosure over
 4 objection, it shall notify the objector of its decision. If the govern-
 5 mental unit decides not to grant disclosure, and an action is subse-
 6 quently brought pursuant to AS 40.25.070 to compel disclosure, it shall
 7 make reasonable efforts to inform the objector of the suit.

8 (d) Unless specifically exempted from disclosure by state sta-
 9 tute, ~~federal law or regulation, or court rule~~, all records become
 10 public after they are ⁵⁰ 40 years old. (Medical records, etc. may be exempted
 by other statute)

11 (e) Information contained in records exempted from disclosure
 12 under (a) of this section may be released for valid statistical or
 13 other information-gathering purposes if

14 (1) any information which would tend to identify the person
 15 to whom the record pertains is deleted; and

16 (2) disclosure is made in a manner which would not com-
 17 promise or defeat the purposes of any state statute, federal law or
 18 regulation, or court rule designed to maintain the confidentiality of
 19 the information.

20 (f) The exemptions from public disclosure provided in this sec-
 21 tion, or by other state law pertaining to the confidentiality of
 22 records, do not preclude the release or production of subpoenaed
 23 records or information to a state or municipal agency during the course
 24 of an investigation.

25 (g) All information in personnel records of public employees
 26 showing salary or compensation, job description, education and training
 27 background, previous work experience, ^{current performance evaluation} and the status of any formal
 28 charges against the employee and disciplinary action taken is a matter
 29 of public information and record.

1 (h) The fact that a crime has been committed, the name of the
2 crime, the time of commission and location, and the name of any person
3 who is charged with a crime is a matter of public information and
4 record, except as provided in AS 47.10.090.

5 Sec. 40.25.040. ACCESS TO RECORDS BY RECORD SUBJECT. (a)
6 Except as provided in (b) of this section, an individual or his duly
7 authorized representative may examine or copy during the regular
8 business hours of the governmental unit, any ~~accessible~~ record that
9 pertains to him. In implementing this section, the governmental unit
10 shall follow the procedures established in AS 40.25.015 -- 40.25.020.

11 (b) A governmental unit is not required under (a) of this section
12 to disclose:

13 (1) information that may be withheld pursuant to AS 40.-
14 25.030(a)(1) -- 40.25.030(a)(1), except to the extent that the in-
15 formation was submitted by the requester; however, for purposes of
16 information that may be withheld pursuant to AS 40.25.030(a)(6),
17 under appropriate safeguards designed to protect the integrity of the
18 examination process, an individual may examine ~~but not copy~~ his own
19 test questions and answers in any examination used for licensing or
20 employment;

21 (2) information that may be withheld pursuant to AS 40.-
22 25.030(a)(12) that does not relate directly to the requester, and
23 which if disclosed, would constitute an unwarranted invasion of
24 another person's personal privacy; or

25 ~~(3) information collected and used solely to evaluate the~~
26 ~~character and fitness of persons, but only to the extent that dis-~~
27 ~~closure would identify the source of the information.~~

28 (c) This section does not abridge any state statute, federal law
29 or regulation, or court rule that authorizes an agency to withhold infor-
mation from the parent or legal guardian of a child. ? About
Fed. Statute

1 (d) If an individual requests an accessible record containing
2 information the governmental unit is not required to disclose under (b)
3 or (c) of this section, the agency shall provide any reasonably segre-
4 gable portion of the record to the requester after deleting the un-
5 disclosable material.

6 Sec. 40.25.060. CORRECTION AND AMENDMENT OF RECORDS. (a) An
7 individual may request a governmental unit to correct or amend any
8 incomplete or inaccurate information pertaining to him if it is con-
9 tained in a record available under AS 40.25.050.

10 (b) Not later than twenty days after receiving a request from an
11 individual to correct or amend an accessible record pertaining to him,
12 the governmental unit shall

13 (1) make the requested correction or amendment and inform
14 the individual of the action;

15 (2) inform the individual that the governmental unit does
16 not maintain the record and, if it knows, provide the name and location
17 of the governmental unit maintaining it; or

18 (3) inform the individual in writing of its refusal to
19 correct or amend the record as requested and the reason for the re-
20 fusals. If the governmental unit refuses to correct or amend the
21 record, it shall

22 (A) permit the individual to file with the record a
23 concise statement of his reasons for the requested correction or
24 amendment and his reasons for disagreement with the refusal by the
25 governmental unit; and

26 (B) notify the individual of his right to bring an
27 action pursuant to AS 40.25.070.

28 (c) Whenever a governmental unit discloses information to a third
29 party about which an individual has filed a statement pursuant to

1 (b) (3) (A) of this section, the governmental unit shall

- 2 (1) clearly identify the disputed portion of the informa-
3 tion;
- 4 (2) furnish a copy of the individual's statement; and
- 5 (3) furnish a concise statement of the governmental unit's
6 current position with respect to the request for correction or amend-
7 ment and transmit a copy of this statement to the last known address of
8 the individual whose record is disclosed.

9 Sec. 40.25.070. ENFORCEMENT: INJUNCTIVE RELIEF. (a) A person
10 having custody or control of a record, or a person not having custody
11 or control who aids or abets a person having custody, may be enjoined
12 in superior court from

13 (1) obstructing or attempting to obstruct the inspection of
14 a record subject to inspection under this chapter;

15 (2) failing to correct or amend a record pursuant to AS 40.-
16 25.060.

17 (b) The court may charge no filing fee, and the Department of
18 Public Safety may charge no fee for service of process, from an appli-
19 cant seeking an injunction under this section. No security may be
20 required by the court from an applicant seeking an injunction under
21 this section. If the applicant is granted the injunction, he shall be
22 entitled to recover costs and reasonable attorney fees from the govern-
23 mental unit.

24 (c) The superior court shall make available to an applicant, free
25 of charge, a simplified form for proceeding without counsel under this
26 section. The form shall require only identification of the applicant
27 and the name of the custodian alleged to be acting improperly, and a
28 simple explanation of the records sought or the correction or amendment
29 requested.

(d) In a suit brought under this section, the court may enjoin withholding of the records and order the production to the complainant of records improperly withheld or order that the correction or amendment be made. The court shall determine the matter de novo, and may examine the contents of any records in camera to determine whether the records or any portion of them may be withheld under any of the exemption specified in AS 40.25.030 or not corrected or amended under AS 40.25.060. The burden is on the agency to sustain its action.

Sec. 40.25.080. CIVIL ACTION FOR OBSTRUCTION OF ACCESS TO RECORDS. (a) A person who has been wrongfully denied access to a record under this chapter has a civil cause of action against the person responsible for the violation and is entitled to recover actual damages and reasonable attorney fees and other reasonable litigation costs.

(b) A good faith reliance upon the provisions of this chapter or of applicable law governing the confidentiality of public records is a defense to a civil action brought under this section.

Sec. 40.25.090. DEFINITIONS. In this chapter, unless the context otherwise requires,

~~(1) "accessible record" means any item or collection of information in a record that refers to a particular individual that is (A) maintained according to an established retrieval scheme or indexing structure on the basis of the identity of, or so as to identify, individuals; or (B) otherwise retrievable because a governmental unit is able to locate the record through the use of information provided by a requester without an unreasonable expenditure of time, effort, money, or other resources;~~

(2) "attorney work product" means documents and tangible

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things prepared by or for a governmental unit in anticipation of or during litigation;

(3) "custodian" means the head of any governmental unit or his designee;

(4) "governmental unit" means an agency, political subdivision, legislative body, board of regents, or an administrative body, board, commission, committee, subcommittee, authority, council, agency, or other organization, including subordinate units of the above groups, of the state or any of its political subdivisions, including but not limited to municipalities, boroughs, school boards, and all other boards, agencies, assemblies, councils, departments, divisions, bureau, commissions or organizations, advisory or otherwise, of the state or local government supported in whole or in part by public money or authorized to spend public money;

*ask State
donor to
submit money by
promote
the program
activities*

(5) "individual" means a natural person;

(6) "record" means any document, paper, memoranda, book, letter, drawing, map, plat, photo, photographic file, motion picture, film, microfilm, microphotograph, exhibit, magnetic or paper tape, punched card, or other document of any other material, regardless of physical form or characteristic, developed or received under law or in connection with the transaction of official business and preserved or appropriate for preservation by a governmental unit as evidence of the organization, function, policies, decisions, procedures, operations or other activities of the state or political subdivision or because of the informational value in them; it also includes staff manuals and instructions to staff that directly or indirectly affect the public.

computer tape, print out computer maintained records or computer stored info

* Sec. 2. AS 44.62.310 is amended by adding a new subsection to read:

(g) Nothing in this section may be construed to prevent the holding of conferences between two or more public bodies, or their

1 representatives, but these conferences are subject to the same regu-
2 lations for holding executive or closed sessions as are applicable to
3 any other public body.

4 * Sec. 3. AS 44.62.310(c) (3) is amended to read:

5 (3) matters which by state statute [LAW, MUNICIPAL CHARTER,
6 OR ORDINANCE] are required to be confidential.

7 * Sec. 4. In sec. 1 of this Act, AS 40.25.025(b) has the effect of
8 changing Rule 65 of the Alaska Supreme Court Rules of Civil Procedure re-
9 lating to security deposits required in civil actions.

10 * Sec. 5. AS 09.25.110, 09.25.120, and 09.25.125 are repealed.

11 * Sec. 6. This Act takes effect July 1, 1981.

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13 *Not 1982*
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PROPOSED COMMITTEE SUBSTITUTE

SENATE BILL NO. 90

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWELFTH LEGISLATURE - FIRST SESSION

A BILL

For an Act 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."

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

* Section 1. AS 40 is amended by adding a new chapter to read:

CHAPTER 25. PRIVACY AND PUBLIC INFORMATION.

Sec. 40.25.010. STATE POLICY. It is the policy of the state that

- (1) all governmental units exist to aid in the conduct of the people's business;
- (2) the people of this state do not yield their sovereignty to the agencies which serve them;
- (3) the people, in delegating authority, do not give their public servants the right to decide what is best for the people to know and what is best for them not to know;
- (4) the people's right to remain informed shall be protected so that they may retain control over the instruments they have created;
- (5) the people's right to privacy as provided by the constitution is recognized and shall not be infringed;
- (6) the records of governmental units shall be open for public inspection unless the inspection infringes on a person's right to privacy or is otherwise prohibited by statute.

Sec. 40.25.015. RECORDS TO BE OPEN TO INSPECTION. (a) Except as otherwise specifically provided by statute, all records are open to

inspection and copying by any person during the regular office hours of the lawful custodian of the records or his designee. The custodian of the records shall take all necessary precautions for their preservation and safekeeping.

(b) Every custodian of records shall make them available for public inspection and shall give a copy of the record on request and payment of fees, if any. A custodian shall permit memoranda, transcripts, and copies of the public writings and records in his office to be reproduced in any reasonable manner. In addition, a custodian shall furnish proper and reasonably accessible facilities for inspection of records, subject to reasonable restrictions as are necessary for the protection of the writings and records and to prevent interference with the regular discharge of the duties of the custodian and his employees. If a certified copy is requested, that copy is in all cases evidence of the original.

(c) Copies of records may be requested by telephone, electronic communication, or by mail. These requests shall be treated in accordance with the provisions of (a) and (b) of this section.

(d) The commissioner of administration shall prescribe a uniform schedule of fees to be limited to reasonable standard charges for document duplication, and provide for recovery of only the direct costs of the duplication. The commissioner may reduce or waive the payment of fees if a reduction or waiver would be in the public interest. A person can obtain 20 pages of a record copied without charge within any 24-hour period.

Sec. 40.25.020. DUTIES OF GOVERNMENTAL UNIT. ~~promptly, but~~

(a) Immediately ~~within 10 days~~ after receiving a request for a public record, the custodian of the record shall

(1) make the record available;

immediately available

(2) inform the requester that unusual circumstances, as defined in (a) of this section, have delayed or impaired the handling of the request and specify in writing the earliest time and date, not later than ⁵ ~~30~~ days after receipt of the request, when the record will be available;

(3) inform the requester that the governmental unit does not maintain the record, and provide, if known, the name and location of the governmental unit maintaining the record; or

~~(4) deny the request.~~

(b) If a request for access to a public record is denied, in whole or part, the governmental unit shall in writing notify the requester of the specific reasons for the denial, and identify by name and position or title of the person responsible for the denial. In

~~addition, the governmental unit shall inform the requester that review of the denial may be sought from the head of the governmental unit and that a request for review must be filed within 30 days after notification of the denial. The head of the governmental unit within 30 days after a request for review is filed, shall decide whether to uphold the denial of access. If the decision is to disclose, the governmental unit shall immediately notify the requester and make the record available. If the denial of access is upheld, in whole or in part, the head of the governmental unit in writing shall notify the requester of the decision, the specific reasons for the decision, and of the right to bring a judicial action under AS 40.25.070.~~

(c) When the governmental unit determines that contents of a record exempt it under the provisions of AS 42.25.030, it shall also determine whether a deletion of the exempt parts of the record will make the record suitable for release, and, if so, the deletion shall be made and the record released, with the notation that exempt material

1 has been removed. If the governmental unit determines that the record
2 or a portion of the record, is not open to inspection, it shall, in a
3 certified writing, inform the person requesting the records of its
4 determination, of the statutory basis for this decision, and that under
5 AS 40.25.070 a suit may be brought to compel production of records that
6 are improperly withheld.

7 ~~As used in (b) of this section, "unusual circumstances"~~ ^{add subsection (d)}
8 means, but only to the extent reasonably necessary to the proper pro-
9 cessing of the particular request,

10 (1) the need to search for and collect the requested records
11 from field facilities or other establishments that are separate from
12 the office processing the request;

13 (2) the need to search for, collect, and appropriately
14 examine a voluminous amount of separate and distinct records which are
15 demanded in a single request; ^{or variety}

16 (3) the need for consultation, which shall be conducted with
17 all practicable speed, with another governmental unit ~~or among two or~~
18 ~~more components of the governmental unit~~ having a substantial interest
19 in the determination of the request; or,
20 ^{(4) the need to notify a person and afford him an opportunity to be heard pursuant to AS 40.25.030(c).}
21 ~~the need to notify a person and afford him an opportunity to be heard pursuant to AS 40.25.030(c).~~

22 Sec. 40.25.030. EXEMPTIONS. (a) The following records are ex-
23 cluded from the provision of AS 40.25.015 -- ~~40.25.020~~

24 (1) records that are exempted from disclosure by state
25 statute; ~~federal law or regulation, or court rule;~~

26 (2) any tax or information return, or record or report
27 relating to that return, which is required to be filed in accordance
28 with the provisions of AS 43 or municipal ordinance;

29 (3) archival materials donated by individuals to the extent

→ denies the request or fails to
comply with (a)(1)-(3) of
this section

(e) A person making a request to a governmental unit
for records under ~~MS 40.25.015~~ ~~40.25.020~~ is considered to have
exhausted his administrative remedies with respect to the request if
the governmental unit fails to

→ continue to

comply with this section. If the governmental unit can show that
~~unusual~~ exceptional circumstances exist and that it is exercising due diligence
in responding to the request, ~~the~~ ^{the} court may retain jurisdiction and
allow the governmental unit additional time to complete its review of
the records. Upon a determination by a governmental unit to comply
with a request for records, the records shall be made promptly available
to the person making the request.

→ as defined in (c) of this section

→ under MS 40.25.070

1 of any written limitations placed on them as a condition of of the
2 contribution; however, all archival materials become public information
3 after not more than 50 years and any statement of limitations must be
4 produced upon denial of access;

5 (4) circulation records maintained by public libraries,
6 public school libraries, and University of Alaska libraries showing
7 personal transactions by those borrowing from them;

8 (5) trade secrets and confidential commercial, financial,
9 geological, or geophysical data that is furnished to a governmental
10 unit, ~~or developed by a governmental unit;~~

11 (6) materials used to administer a licensing, employment, or
12 academic examination if disclosure would compromise the fairness or
13 objectivity of the examination process;

14 (7) investigatory, intelligence, and original entry records
15 compiled for law enforcement purposes, but only to the extent that
16 production of the records would

17 (A) interfere with enforcement proceedings;

18 (B) deprive a person of a right to a fair trial or an
19 impartial adjudication;

20 (C) constitute an unwarranted invasion of personal
21 privacy;

22 (D) disclose the identity of a confidential source and,
23 in case of a record compiled by a criminal law enforcement
24 authority in the course of a criminal investigation, confidential
25 information furnished only by the confidential source;

26 (E) disclose investigative techniques and procedures;

27 or

28 (F) endanger the life, property, or physical safety of
29 a person; LUF

30 (8) records of security systems and procedures established

→ however, once the legal issue has been decided, all ~~notes~~ notes, memoranda, draft decisions, opinions, or similar documents become public records under rules established by the supreme court

for the purpose of the protection of persons or property, or securing a penal institution or place of detention of persons accused or convicted of a crime or persons under the jurisdiction of the court under AS 47.10, but only to the extent that disclosure would compromise the effectiveness of the system;

~~(9)~~ (9) attorney work product in the possession of a governmental unit; *however, since the litigation has been terminated, attorney work product that does not include litigation strategy, mental impressions, or opinions of an attorney, or a person working under his direction, are open to public*

(10) any notes, memoranda, draft decisions, *opinions, or other similar documents prepared by a justice or a judge, or a person working under their supervision, in the process of deciding any legal issue;* *become public records;* ~~go back to chapter~~

Attorneys (11) records related solely to the internal practices of a governmental unit where the effect of disclosure would be to enable law violators to escape detection; and *in applying this exemption, the governmental unit shall determine whether the public interest in disclosure outweighs the privacy interest of the person to whom the record pertains.*

(12) records, the disclosure of which would constitute an *unjustifiable* ~~unwarranted~~ invasion of personal privacy. *the privacy interest of the person to whom the record pertains*

~~(b) In applying the exemption specified in (a)(12) of this section, the governmental unit shall determine whether the public interest in disclosure outweighs the privacy interest of the person to whom the record pertains. In making this determination, the governmental unit shall consider:~~

- (1) whether the record is of a personal nature, including records concerning
 - (A) the person's personal relationship with any person related to him by blood or marriage;
 - (B) the person's religious beliefs or practices;
 - (C) non-criminal sexual matters;
 - (D) the person's political affiliation or philosophy;
 - (E) medical, psychiatric, or psychological history;

diagnosis, condition, treatment or evaluation;

(2) whether the person could reasonably assert an option to withhold information contained in the record from the public because of its intimacy or its possible adverse effects upon himself or his family;

(3) the extent to which disclosure furthers the public interest in the disclosure of information concerning the conduct of governmental affairs as opposed to the requester's private interests;

(4) whether the information in the record was voluntarily provided by the person to whom the record pertains or whether he was compelled to provide the information;

(5) whether the information in the record was supplied by the person in an attempt to obtain a valuable governmental benefit, other than basic social services or assistance;

(6) whether the information in the record is readily available from other than governmental sources;

(7) whether the person was notified or reasonably could have concluded at the time he provided the information that the record would be available for public inspection;

(8) whether the information in the record consists of verified or undisputed information about a person or is rumor, conjecture, or uncorroborated hearsay; and

(9) whether the information in the record was collected or maintained for the purpose of making information available to the general public.

(c) If a governmental unit initially decides to disclose a record to which the exemptions specified in (a) (7) (C) or (a) (12) of this section may apply, and to the extent that it concludes that there is a substantial probability that a person to whom the record pertains

employees current

The duties and responsibilities of ~~the~~ their job, shall be open ~~to~~ for public inspection. Applications ~~sent~~ for public employment submitted by ~~the~~ finalists for employment are also open to public inspection, ~~provided~~ but ~~the~~ finalists shall be notified of this fact and of their right to ^{potential} withdraw their application prior to public inspection. As

~~used in this section, "finalist" means the final three percent of the original applications originally submitted to the governmental unit that remains under consideration after~~

~~of applicants~~
~~whose applications~~
~~for employment are~~
~~remain in the~~

under consideration for employment or those applicants

~~used in this section, "finalist" means ~~the final three percent of applicants for employment who remain under consideration for employment after ninety percent of the applicants have been ~~re~~ eliminated from~~~~

Original

consideration by the governmental unit, whatever is ~~greater~~

1 (h) The fact that a crime has been committed, the name of the
2 crime, the time of commission and location, and the name of any person
3 who is charged with a crime is a matter of public information and
4 record, except as provided in AS 47.10.090.

5 Sec. 40.25.040. ACCESS TO RECORDS BY RECORD SUBJECT. (a)
6 Except as provided in (b) of this section, an individual or his duly
7 authorized representative may examine or copy during the regular
8 business hours of the governmental unit, any ~~accessible~~ record that
9 pertains to him. In implementing this section, the governmental unit
10 shall follow the procedures established in AS 40.25.015 -- 40.25.020.

11 (b) A governmental unit is not required under (a) of this section
12 to disclose:

exempt from disclosure

13 (1) information that ~~may be withheld pursuant to AS 40.-~~
14 25.030(a)(1) -- 40.25.030(a)(11), except to the extent that the in-
15 formation was submitted by the requester; however, for purposes of
16 information that may be withheld pursuant to AS 40.25.030(a)(6),
17 under appropriate safeguards designed to protect the integrity of the
18 examination process, an individual may examine, ~~but not copy~~, his own
19 test questions and answers in any examination used for licensing or
20 employment; ~~for~~

21 (2) information that may be withheld pursuant to AS 40.-
22 25.030(a)(12) that does not relate directly to the requester, and
23 which if disclosed, would constitute an ~~unwarranted~~ *unjustifiable* invasion of
24 another person's personal privacy; ~~or~~ *or*

25 (3) ~~information collected and used solely to evaluate the~~
26 character and fitness of persons, but only to the extent that dis-
27 closure would identify the source of the information.

28 (c) This section does not abridge any state statute, ~~federal law~~
29 ~~or regulation or court rule~~ that authorizes an agency to withhold infor-
30 mation from the parent or legal guardian of a child.

Access to this information is governed by the law

1 (d) If an individual requests ^a ~~an accessible~~ record containing
2 information the governmental unit is not required to disclose under (b)
3 or (c) of this section, the agency shall provide any reasonably segre-
4 gable portion of the record to the requester after deleting the un-
5 disclosable material.

6 Sec. 40.25.060. CORRECTION AND AMENDMENT OF RECORDS. (a) An
7 individual may request a governmental unit to correct or amend any
8 incomplete or inaccurate information pertaining to him if it is con-
9 tained in a record available under AS ~~40.25.050~~.

10 (b) Not later than twenty days after receiving a request from an
11 individual to correct or amend an ~~accessible~~ record pertaining to him,
12 the governmental unit shall

13 (1) make the requested correction or amendment and inform
14 the individual of the action;

15 (2) inform the individual that the governmental unit does
16 not maintain the record and, if it knows, provide the name and location
17 of the governmental unit maintaining it; or

18 (3) inform the individual in writing of its refusal to
19 correct or amend the record as requested and the reason for the re-
20 fusals. If the governmental unit refuses to correct or amend the
21 record, it shall

22 (A) permit the individual to file with the record a
23 concise statement of his reasons for the requested correction or
24 amendment and his reasons for disagreement with the refusal by the
25 governmental unit; and

26 (B) notify the individual of his right to bring an
27 action pursuant to AS 40.25.070.

28 (c) Whenever a governmental unit discloses information to a third
29 party about which an individual has filed a statement pursuant to

(b) (3) (A) of this section, the governmental unit shall

- (1) clearly identify the disputed portion of the information;
- (2) furnish a copy of the individual's statement; and
- (3) furnish a concise statement of the governmental unit's current position with respect to the request for correction or amendment and transmit a copy of this statement to the last known address of the individual whose record is disclosed.

Sec. 40.25.070. ENFORCEMENT: INJUNCTIVE RELIEF. (a) A person having custody or control of a record, or a person not having custody or control who aids or abets a person having custody, may be enjoined in superior court from

- (1) obstructing or attempting to obstruct the inspection of a record subject to inspection under this chapter;
- (2) failing to correct or amend a record pursuant to AS 40.25.060.

(b) The court may charge no filing fee, and the Department of Public Safety may charge no fee for service of process, from an applicant seeking an injunction under this section. No security may be required by the court from an applicant seeking an injunction under this section. If the applicant is granted the injunction, he shall be entitled to recover costs and reasonable attorney fees from the governmental unit.

(c) The superior court shall make available to an applicant, free of charge, a simplified form for proceeding without counsel under this section. The form shall require only identification of the applicant and the name of the custodian alleged to be acting improperly, and a simple explanation of the records sought or the correction or amendment requested.

(d) In a suit brought under this section, the court may enjoin withholding of the records and order the production to the complainant of records improperly withheld or order that the correction or amendment be made. The court shall determine the matter de novo, and may examine the contents of any records in camera to determine whether the records or any portion of them may be withheld under any of the exemption specified in AS 40.25.030 or not corrected or amended under AS 40.25.060. The burden is on the agency to sustain its action.

Sec. 40.25.080. CIVIL ACTION FOR OBSTRUCTION OF ACCESS TO RECORDS. (a) A person who has been wrongfully denied access to a record under this chapter has a civil cause of action against the person responsible for the violation and is entitled to recover actual damages and reasonable attorney fees and other reasonable litigation costs.

(b) A good faith reliance upon the provisions of this chapter or of applicable law governing the confidentiality of public records is a defense to a civil action brought under this section.

Sec. 40.25.090. DEFINITIONS. In this chapter, unless the context otherwise requires,

(1) "accessible record" means any item or collection of information in a record that refers to a particular individual that is

(A) maintained according to an established retrieval scheme or indexing structure on the basis of the identity of, or so as to identify, individuals; or

(B) otherwise retrievable because a governmental unit is able to locate the record through the use of information provided by a requester without an unreasonable expenditure of time, effort, money, or other resources;

(2) "attorney work product" ^{means documents and tangible} ~~means documents and tangible~~

things prepared by or for a governmental unit in anticipation of or during litigation. *or legal issue decided or terminated litigation*

(3) "custodian" means the head of any governmental unit or his designee;

(4) "governmental unit" means an agency, political subdivision, legislative body, board of regents, or an administrative body, board, commission, committee, subcommittee, authority, council, agency, or other organization, including subordinate units of the above groups, of the state or any of its political subdivisions, including but not limited to municipalities, *boroughs*, school boards, and all other boards, agencies, assemblies, councils, departments, divisions, bureaus, commissions or organizations, advisory or otherwise, of the state or local government supported in whole or in part by public money or authorized to spend public money;

(5) "individual" means a natural person;

(6) "record" means any document, paper, memoranda, book, letter, drawing, map, plat, photo, photographic file, motion picture, film, microfilm, microphotograph, exhibit, magnetic or paper tape, punched card, *computer tape or information stored in a computer system*, or other document of any other material, regardless of physical form or characteristic, developed or received under law or in connection with the transaction of official business and preserved or appropriate for preservation by a governmental unit as evidence of the organization, function, policies, decisions, procedures, operations or other activities of the state or political subdivision or because of the informational value in them; it also includes staff manuals and instructions to staff that directly or indirectly affect the public.

* Sec. 2. AS 44.62.310 is amended by adding a new subsection to read:

(g) Nothing in this section may be construed to prevent the holding of conferences between two or more public bodies, or their

THE LEGISLATURE OF THE STATE OF ALASKA
TWELFTH LEGISLATURE

FISCAL NOTE

I. REQUEST

Bill/Resolution No. SB 90

Title "An Act relating to privacy and public information: and changing Rule 6

Requested by Sen. Fischer Date _____
of the Alaska Supreme Court Rules of Civil Procedure."

II. FISCAL DETAIL

Agency Affected Department of Law

Program Category Affected General Government

BRU, Program, or Subprogram(s) Affected Legal Services

(Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 81	FY 82	FY 83	FY 84	FY 85	FY 86
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL	0	0	0	0	0	0

FUNDING (Thousands of Dollars)

	FY 81	FY 82	FY 83	FY 84	FY 85	FY 86
GENERAL FUND	0	0	0	0	0	0
FEDERAL FUNDS						
OTHER (Specify Fund Source)						

POSITIONS

	FY 81	FY 82	FY 83	FY 84	FY 85	FY 86
FULL TIME	0	0	0	0	0	0
PART TIME						
TEMPORARY						

III. ANALYSIS (See Fiscal Note Preparation Instructions, Section III)

None of the Department of Law's BRU's, Legal Services, Prosecution and Consumer Protection, expect that any significant fiscal impact would result from the passage and implementation of SB 90.

Richard I. Pegues

IV. DATE January 21, 1981 PREPARED BY Richard I. Pegues
AGENCY Department of Law
PHONE 465-3695

Original: Legislative Finance
cc: Budget and Management
Prime Sponsor (First Legislator Named)

STATE OF ALASKA
THE LEGISLATURE

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

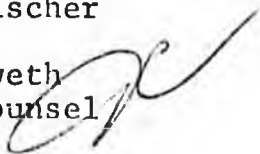
LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

February 23, 1981

SUBJECT: Definition of "Governmental Unit"
in SB 90

TO: Senator Vic Fischer

FROM: John B. Chenoweth
Legislative Counsel 

You have asked whether the definition of "governmental unit" appearing in SB 90 is sufficient to cover the records of the Commercial Fisheries and Agriculture Bank, the Capital City Development Corporation, and related entities which have in common a designation as a "public corporation" or "government instrumentality" of the state.

SB 90 defines "governmental unit" to include

"an agency, political subdivision, legislative body, board of regents, or an administrative body, board, commission, committee, subcommittee, authority, council, agency, or other organization, including subordinate units of the above groups, of the state or any of its political subdivisions, including but not limited to municipalities, boroughs, school boards, and all other boards, agencies, assemblies, councils, departments, divisions, bureaus, commissions or organizations, advisory or otherwise, of the state or local government supported in whole or in part by public money or authorized to spend public money."

The definition of "governmental unit" in SB 90 is lifted virtually verbatim from AS 44.62.310(a). The lifting appears to be deliberate.

It is a general rule of statutory interpretation that statutes relating to the same subject matter may be considered in pari materia as an aid to ascertaining the

intended effect of an ambiguous statute. D. Sands, Sutherland Statutory Construction, Sec. 51.03 (4th Ed. 1972). In the present inquiry, AS 44.62.310 and the subject matter of SB 90 both concern the manner of conducting public affairs by agencies of state and local government. There is a relationship sufficiently close to permit an interpretation applicable to AS 44.62.310 to apply also to a like term in AS 40.25, added by SB 90.

There is no definition of the the term "agency" provided in SB 90. The term is defined for purposes of AS 44.62.310(a) at AS 44.62.640(a):

In AS 44.62.010 -- 44.62.320, unless the context otherwise requires,

* * *

(4) "state agency" means a department, office, agency, or other organizational unit of the executive branch, except one expressly excluded by law, but does not include an agency in the judicial or legislative branches of the state government.

Under this interpretation, an entity which is identified as a public corporation of the state shall comply with the provisions of SB 90 if

(1) the entity is assigned to a department with the executive branch; and

(2) the entity is supported in whole or in part by public money or authorized to spend public money.

Both the bank and the capital city corporation are specifically designated "public corporations and government instrumentalities . . . [having] legal existence independent of and separate from the state." AS 44.07.010; AS 44.81.-010. This artful bit of legislative drafting leaves unanswered the question of whether each is intended to be within, or apart from, the executive branch of state government. However, as to the Capital City Development Corporation, it is certain that the entity cannot operate without the appropriation to it of "public money," for the chief source of its operating revenue is the state's capital

Senator Vic Fischer

Page 3

February 23, 1981

city revolving loan fund, AS 44.07.160. As an entity expending public money -- or at least money derived from the public purse -- the Capital City Development Corporation is an agency of the state supported in part by public money, and therefore subject to the provisions of AS 40.25 added by SB 90.

The situation with respect to the bank is little different, at least at the current time. The bank was started with the assistance of a state general fund appropriation (sec. 13, Chapter 113, SLA 1978), and several subsequent general fund appropriations have allowed the bank to continue its work (sec. 25, Chapter 80, SLA 1979; sec. 3, Chapter 33, SLA 1980). While the bank operates with "public money", it remains subject to the provisions of AS 40.25. There is provision in law for the bank to terminate operation under the charter granted by legislation and operate as a private cooperative without connection to a state department. At that point, presumably, the provisions added by SB 90 would not longer apply.

Your question concerned only the specific entities mentioned. Other state corporations would be subject to the same analysis. In addition, SB 90 would not apply where other provisions of law specifically exempt the public corporation from disclosure of the information contained within particular kinds of documents and records.

JBC:blg

JUNEAU EMPIRE

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Speak for yourself

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

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

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

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

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

Get

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GRAND
DESER
NER



Repeat on the local level.

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

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

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

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

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

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

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

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

CHECKLIST
1. Knock on
WOOD.

Black

A black child still lacks and contribute in America

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

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

— Blacks are 10 years less of life, twice as likely times as likely to be unemployed.

— One out of every two children never seen a dentist and one out of five are not immunized against

This pathology is completely an assumption that the gap in America was closed during

"Millions of black children's distress began in the 1960s and says Marian Wright Edelman, Defense Fund. "Unless immediate meet black children's needs.

President of re

By DONALD
AP P.

WASHINGTON (AP) — Ronald Reagan's inauguration was a rush of visual and verbal images. There was the new president's Cabinet, welcoming the freed his first news conference. At firming the nation's military

The opening scenes were now, though, comes the first test of the credibility's problems — and how fighting the good fight again.

Reagan began his term with an inauguration Day. For a week used the White House ceremony "swift and effective retribution

At his first news conference plagued him during the president's "trigger happy."

Now that the hostages are revenge for their long ordeal. Reagan was the voice of restraint. "I don't think revenge is warranted toward Iran. F

JUNEAU EMPIRE

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THE LEGISLATURE OF THE STATE OF ALASKA
TWELFTH LEGISLATURE

FISCAL NOTE

I. REQUEST

Bill/Resolution No. SB 90
 Title "An Act relating to privacy and public information; and changing Rule 65
 Requested by Sen. Fischer Date _____
of the Alaska Supreme Court Rules of Civil Procedure."

II. FISCAL DETAIL

Agency Affected Department of Law
 Program Category Affected General Government
 BRU, Program, or Subprogram(s) Affected Legal Services
 (Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 81	FY 82	FY 83	FY 84	FY 85	FY 86
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL	0	0	0	0	0	0

FUNDING (Thousands of Dollars)

GENERAL FUND	0	0	0	0	0	0
FEDERAL FUNDS						
OTHER (Specify Fund Source)						

POSITIONS

FULL TIME	0	0	0	0	0	0
PART TIME						
TEMPORARY						

III. ANALYSIS (See Fiscal Note Preparation Instructions, Section III)

None of the Department of Law's BRU's, Legal Services, Prosecution and Consumer Protection, expect that any significant fiscal impact would result from the passage and implementation of SB 90.

IV. DATE January 21, 1981 PREPARED BY Richard I. Pegues
 AGENCY Department of Law
 Original: Legislative Finance PHONE 465-3695
 cc: Budget and Management
 Prime Sponsor (First Legislator Named)

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 1956, 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 8). 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 (Think how journalists themselves squabble 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 ⁽⁶⁾ identify a victim of a criminal sexual assault. (If it were their wife, sister or mother, would they be so anxious to see it into print?); particularly when these highly sensitive withholdings are subject to prompt and castless judicial review. I hope the committee will resist pressures to remove or substantially alter sub-section 13.


Joe La Rocca

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

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

Society of Professional Journalists

Farthest North Chapter
Box 74573
Fairbanks, Ak. 99707

Sign: 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 publicized is of a kind the (1) would be highly offensive to a reasonable person and (2) is not of legitimate concern to the public.

We believe the exclusion listed in Sec. 40.25.015 (c)(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 11.56.620.

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 moneys. 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. Goltebrer
Chairman
Alaska Freedom of Information Task Force



ALASKA PUBLIC EMPLOYEES ASSOCIATION

 State Headquarters: 340 North Franklin Street, Juneau, Alaska 99801 • Tel: (907) 586-2334

TO: The Members of the Senate State Affairs Committee

FROM: Cherie Shelley *CS*
 Executive Director, APEA

CONCERNING: Aspects of Senate Bill NO. 90

SENATE BILL NO. 90

This is an act, relating, in part, to privacy and public information. Under Section 1 (i), it states that all personnel records showing salary or compensation or that which concerns the employee's current performance or ability to perform the duties and responsibilities of his job, shall be open for public inspection.

APEA readily recognizes the validity of public inspection of salaries or compensation. APEA concurs that an employee's record showing that he/she met the minimum qualifications required for the position held, should be available for public scrutiny

However, APEA vigorously opposes public access to an employee's record of current performance or ability on the job. This aspect presents a real and threatening infringement of a person's right to privacy. Evaluations, reprimands and consubstantial records are, and should be treated as confidential reports.

To open these records to the public will be to open a flood-gate of additional paperwork for individual departments and the Division of Personnel and in all probability to necessitate the hiring of employees to process the paperwork.

Public employees will be subjected to unsubstantiated public criticism, media castigation, personal grudge retribution and an assortment of besetting conditions.

Unauthorized, hap-hazard perusal of the records will undermine the credibility and question the judgment of the supervisory employer. An employee is retained because the employer has evaluated that employee as capable, progressive and responsible.. Accessibility to a confidential evaluation for the purpose of public debate, 'watch-dogging' or reversal, will disparage and minimize the role of the employer.

SENATE STATE AFFAIRS
COMMITTEE MEETING SCHEDULE

TUESDAY

Feb. 3
1:30 p.m.

EXEC. ORDER #48

Relating to the transfer of the Alaska Council on Science and Technology from the Department of Environmental Conservation to the Department of Administration.

Hearing

SENATE BILL 54

"An Act relating to the Alaska National Guard and Naval Militia; and providing for an effective date. "

Hearing

SENATE BILL 72

"An Act relating to veterans and public records. "

Hearing

THURSDAY

Feb. 5
1:30 p.m.

SENATE BILL 90

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

All-sites teleconference hearing

ALL HEARINGS WILL BE CONDUCTED IN THE SENATE STATE AFFAIRS COMMITTEE ROOM, BEHRENS BLDG., FIRST FLOOR. IF YOU HAVE ANY QUESTIONS, PLEASE CONTACT SEN. FISCHER'S OFFICE (465-4954,4955).

Vic,

I don't believe I can keep these constituents
from out of town waiting any longer. Since
we will have another shot at this
controversial bill later, I feel I must go.

Brad

1 PROPOSED AMENDMENTS TO SENATE BILL NO. 90

2 January 29, 1981

Proposed by:
Bruce Horowitz, Supervising Attorney
Alaska Legal Services Corporation
419 6th Street, Suite 322
Juneau, Alaska 99801
(907)586-6425

3
4
5
6 * § 40.25.015(d) should be amended, as follows: [p. 2]

7 (d) The commissioner of administration shall
8 prescribe a uniform schedule of fees to be limited to
9 reasonable standard charges for document duplication, and
10 provide for recovery of [ONLY] the direct cost of the
11 duplication only when more than one hundred copies per
12 request are made. The commissioner of administration shall
13 by regulation, provide a method by which indigent persons
14 may secure information with ^{out} payment of fees. ↘ ?

15
16
17 * § 40.25.015(e)(7) should be amended, as follows: [p. 3]

18 (7) personal information in files maintained
19 on applicants for, or recipients of, social services
20 or public benefits, except that access may not be
21 denied to the person who is the subject of the records,
22 or his designee;

23
24 * § 40.25.020(b) should be amended by adding to the last
25 sentence, as follows: [p. 6, beginning line 27]

26 ... Upon a determination by a governmental unit to
27 comply with a request for records, the records shall
28 be made [PROMPTLY] available to the person making the
29 request within ten days of the receipt of the request.
30
31
32

1
2 * § 40.25.020(c), should be amended, as follows: [p.7]

3 (c) When the lawful custodian of the record
4 determines that contents of a record exempt it under
5 the provisions of AS 42.05.015, he shall delete the
6 exempt contents and release the remaining contents of
7 the record [ALSO DETERMINE WHETHER A DELETION OF THE
8 EXEMPT PARTS OF THE RECORD WILL MAKE THE RECORD
9 SUITABLE FOR RELEASE, AND, IF SO, THE DELETION SHALL
10 BE MADE AND THE RECORD RELEASED], with the notation
11 that exempt material has been removed. If the cus-
12 todian determines that the record, or a portion of the
13 record, is not open to inspection, he shall, in a
14 certified writing, inform the person requesting the
15 records of his determination, of the statutory basis
16 for this decision, and that under AS ~~40.25.025~~ a suit
17 may be brought to compel production of records that are
18 improperly withheld.

19 * § 40.25.025 (b) should be amended in its last sentence,
20 as follows: [p. 7, beginning line 26]

21 ... If the applicant is granted the
22 injunction, he shall be entitled to recover costs and
23 [REASONABLE] actual attorney fees from the governmental
24 unit.

25
26 * § 40.25.025 (d) should be amended in part, as
27 follows: [p. 8, beginning line 7]

28 ... In such a case the court, as a priority
29 matter, shall determine the matter de novo, and may
30 examine the contents of any records in camera to deter-
31 mine whether any of the exceptions set out in AS 40.25.
32 015, and the burden is on the agency to sustain its action

3 * § 40.25.035(a) should be amended, as follows: [p. 8]

4 (a) A person who has been wrongfully denied access
5 to a record under this chapter has a civil cause of action
6 against the person responsible for the violation and is
7 entitled to recover actual damages and [REASONABLE]
8 attorney fees, and other reasonable litigation costs.



ombudsman

Frank Flavin

State of Alaska

January 29, 1981

Senator Victor Fischer
and Members
Senate State Affairs Committee
Pouch V
Juneau, Ak. 99811

RE: SB 90

Dear Senator Fischer:

Since investigation is a basic function of the Ombudsman, enabling legislation typically gives him broad authority to make inquiries, obtain relevant information, and compel information and testimony.

In an investigation, the Alaska Ombudsman is empowered (in AS 24.55.160 (a) (1 - 3)) to "make inquiries and obtain information he considers necessary; enter without notice to inspect the premises of an agency . . . and hold private hearings."

AS 24.55.170 (a) (1) authorizes the Ombudsman to "compel by subpoena . . . the appearance and sworn testimony of a person who the ombudsman reasonably believes may be able to give information relating to a matter under investigation." Subsection (2) similarly authorizes subpoenas for production of "documents, papers or objects."

In AS 24.55.100, the Ombudsman is required to investigate complaints within his jurisdiction unless specific exemptions apply. YET THERE ARE NUMEROUS COMPLAINTS, THE INVESTIGATION OF WHICH IS IMPOSSIBLE WITHOUT OMBUDSMAN ACCESS TO ALL RELEVANT DOCUMENTS, EVEN THOSE DETERMINED TO BE CONFIDENTIAL.

Examples abound:

- child in need of aid
- foster parents
- Trooper investigations
- vocational rehabilitation
- certification and licensing of nursing homes
- fish ticket information used by limited entry

Reply to:

- 840 K Street, Room 203
Anchorage, Alaska 99501
(907) 276-4011
- Pouch WD
Juneau, Alaska 99811
(907) 465-4970
- P.O. Box 74358
Fairbanks, Alaska 99707
(907) 452-4001

business license information
public assistance
juvenile corrections
personnel files
testing materials
tax payments
driving records
unemployment insurance

Although it is sometimes possible for Ombudsman staff to gain access to required documents by obtaining the signed release of the complainant, often an investigation requires examination of more than just the complainant's file. For example, a person may allege that although similarly situated, she received different treatment than another. Investigation of such a complaint would require review of numerous files to determine if equity in administration of a program had occurred.

Access to child in need of aid files is also a continuing problem. From whom must we obtain a release to gain access -- the child, the parent, the guardian, a court, or some combination?

We believe that the Ombudsman Act currently authorizes access to confidential documents. Unfortunately some agencies disagree.

We have attempted through regulation and formal agreements with agencies to further assure (in addition to AS 24.55.160 (b)) that the Office will afford records the same degree of confidentiality as required of the providing agency. Ad hoc arrangements with some agencies have been negotiated, but the possibility to delay or halt an investigation looms. The problem remains, as the attached Attorney General opinions demonstrate.

To remedy this situation, we urge the adoption of the following amendment:

page 5 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).

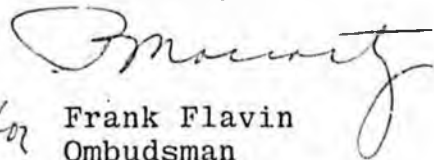
Senator Victor Fischer

-3-

January 29, 1981

We appreciate the opportunity to offer comments on this proposed legislation. If we can provide additional information, please do not hesitate to ask.

Sincerely,



for

Frank Flavin
Ombudsman

PM:ss

Attachments

STATE OF ALASKA

JAY S. HALMOND, GOVERNOR

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

POUCH K-STATE CAPITOL
JUNEAU, ALASKA 99811

May 7, 1979

Duncan C. Fowler
Regional Representative
Ombudsman
Pouch WO
Juneau, Alaska 99811

Re: Confidentiality of Records
Relating to Nursing Home
Licensure
Our File No. J-66-804-78

Dear Duncan:

This letter is intended to follow up on our recent conversations regarding the ability of your office to inspect records maintained by the Department of Health and Social Services which relate to the licensure of individual nursing homes.

As I have pointed out, AS 18.20.090 provides that "[t]he department may not publicly disclose information received by it in a manner identifying an individual or hospital except in a proceeding involving the question of licensing." In the licensure context, of course, the term "hospital" includes a nursing home. See, AS 18.20.130. On the basis of these provisions I have advised the Department of Health and Social Services to deny your office general access to the records it maintains in this limited area.

I understand, however, you have reviewed other records maintained by the Department of Health and Social Services and have obtained the information you desired. Those records, generated pursuant to Section 1864 of the Social Security Act, are subject to public inspection in accordance with provisions of federal law with which I assume you are now relatively familiar.

RECEIVED
MAY 9 1979

JUNEAU
OFFICE OF THE OMBUDSMAN

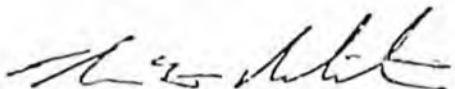
May 7, 1979

I would appreciate it if you would let me know whether you have any remaining problems in this regard. I would like, specifically, to repeat my oral invitation for you to inform the Department of Health and Social Services of any facts which might bear on the continued licensure of particular nursing homes.

Your cooperation in this matter has been greatly appreciated. I will proceed to close my file if I do not hear further from you in the next day or so.

Very truly yours,

AVRUM M. GROSS
ATTORNEY GENERAL

By: 
Thomas H. Robertson
Assistant Attorney General

THR:jrb

cc: Portia Kaufman
Dept. of Health and Social Services

MEMORANDUM

Hon. B. B. Allen
Commissioner
Dept. of Administration

DATE: March 15, 1978

FILE NO

TELEPHONE NO

G. Thomas Koester
Assistant Attorney General

SUBJECT

Ombudsman access to
personnel files; our
file J-66-359-78

Communications from Ken Kareen of your office and Michael G. Harper of the Office of the Governor have indicated a desire for information regarding the power of the Ombudsman and various state auditors to have access to employee personnel files.

It is our opinion that the Ombudsman and the legislative auditor have virtually unlimited access to state employee personnel files.

"The legislative Budget and Audit Committee has the power to: . . . (3) require all state officials and agencies of state government to give full cooperation to the committee or its staff in assembling and furnishing requested information; . . ." AS 24.22.010(a). "The legislative audit division shall . . . (5) require the assistance and cooperation of all state officials and other state employees in the inspection, examination and audit of state agency books and accounts; (6) have access at all times to the books, accounts, reports or other records, whether confidential or not, of every state agency; . . ." AS 24.22.271. These provisions appear to grant virtually blanket authority to the legislative auditor to have access to state employee personnel files.

"In an investigation, the Ombudsman may (1) make inquiries and obtain information as he considers necessary; (2) enter without notice to inspect the premises of an agency, but only when agency personnel are present; . . ." AS 24.55.160(a). Under AS 24.55.170, the Ombudsman has the power to subpoena any files which he reasonably believes may relate to a matter under investigation; this would include state employee personnel files. While the statute giving the Ombudsman power does not make it clear that the Ombudsman's authority is as broad as that afforded the legislative auditor, we believe it is virtually equivalent. AS 24.55.160 gives the Ombudsman power to inspect the premises of an agency at any time as long as agency personnel are present. We believe the power to inspect the premises of an agency includes the power to inspect a state employee's personnel file possessed by the agency. In the alternative, AS 24.55.- gives the Ombudsman the power to compel the production

B. Allen
i 15, 1978

f Al se 2

of that personnel file at a time and place specified by the Ombudsman.

In conclusion, we do not believe that there are any restrictions on the power of the legislative auditor or the Ombudsman to inspect state employee personnel files. Particularly when their powers of investigation are linked with AS 39.25.030 (providing that state personnel records are public records and open to public inspection), we believe there is absolutely no question that they may have access to state employee personnel files.

We hope this answers your questions.

GTK:chp

cc: Michael G. Harper, Administrative Ass't.
Office of the Governor

Sue Greene, Special Assistant
Office of the Governor

Carl Gonder, Deputy Commissioner
Dept. of Community & Regional Affairs

10. [Don Candey
Administrative Officer
Support Services
Central Region
DOT/PF

DATE: February 20, 1980

FILE NO. A66-281-80

TELEPHONE NO.

FROM: Avrum M. Gross
Attorney General
BY: Martha T. Mills *MTM*
Assistant Attorney General

SUBJECT: Ombudsman's Access to
Personnel Records

You inquired whether the Ombudsman's Office has unlimited access to personnel records of the Department of Transportation and Public Facilities. The Ombudsman may have access only to the information in personnel files which is generally available to the public. However, if regulations are adopted whereby the Ombudsman must maintain the same confidentiality for personnel records as required by State law, then the Ombudsman may have access to confidential information in personnel files. A similar approach has been taken with respect to the legislative auditor, who has adopted confidentiality procedures. This memorandum supercedes a prior memorandum of advice to B. B. Allen by G. Thomas Koester dated March 5, 1978.

Employee personnel records are protected by the laws of Alaska. Article I, Section 22 of the Alaska Constitution provides:

"Right of Privacy". The right of the people to privacy is recognized and shall not be infringed. The legislature shall implement this section."

Alaska Statute 39.25.080 provides:

"Public Records". The state personnel records, except those records which the rules require to be held confidential for reasons of public policy, are public records and are open to public inspection, subject to reasonable regulations as to the time and manner of inspection."

The "rules" referred to by the statute are the personnel rules. Personnel Rule 14.07.0 entitled "Public Records", provides:

"Except for examination materials, performance evaluations, personal history, or other confidential materials so designated by the Director, employee records shall be public records. Such

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records shall be available for inspection in the presence of authorized personnel by the public during regular office hours in accordance with such procedure as the Director may establish."

On April 14, 1970, the attached memorandum on employee records policy and procedure was issued by the Director, Department of Administration, Division of Personnel. The memorandum sets out public policy pursuant to AS 39.25.080, providing that whereas information such as employee name, class title, salary, length of State employment, name of immediate supervisor, office address, office phone number, and (in some instances) home phone number, mailing address, and residence address are available to the public, all other more personal information is confidential.

As evidenced by the April 14, 1970 memorandum, most of the confidential information is available to the state employee and the people employed in the personnel office. Other information, such as background investigations, grievances, appeals, and letters and reports of personnel reference, are unavailable even to the employee. Matters such as applications, personnel actions, educational background, medical reports, performance evaluations, test scores and disciplinary letters or memoranda are confidential. Of course, the employee could waive the right to keep the information available to him or her confidential.

The Ombudsman has broad investigative powers. AS 24.55.160(a) provides:

"In an investigation, the ombudsman may (1) make inquiries and obtain information as he considers necessary; (2) enter without notice to inspect the premises of an agency, but only when agency personnel are present;"

Under AS 24.55.170, the Ombudsman has the power to subpoena any person or documents which he reasonably believes may provide information relating to the matter under investigation. The statutes relating to the Ombudsman do not specifically state that he has access to confidential personnel records, but the authority of the Ombudsman to investigate is very broad.

The only mention of confidentiality in the Ombudsman enabling statutes is in AS 24.55.160(b), which states:

Memo to Don Candey
Page 3
February 20, 1980

"The ombudsman shall maintain confidentiality with respect to all matters and the identities of the complainants or witnesses coming before him except insofar as disclosures may be necessary to enable him to carry out his duties and to support his recommendations."

The section does not require the Ombudsman to maintain the confidentiality of personnel records and it is within his discretion to decide what disclosures may be necessary to carry out his duties and support his recommendations.

In Falcon v. Alaska Public Offices Commission, 570 P.2d 469 (Alaska 1977), the Alaska Supreme Court balanced the constitutional provision guaranteeing the right of privacy with the public disclosure of income requirements of the Alaska conflict of interest law for public officials. In physician-patient situations where disclosure of the patient's identity might reveal the nature of the treatment, the court held that:

"In these situations, at least, we find that the extent to which the governmental interest in promoting fair and honest government would be impeded, does not outweigh the individual's privacy interest in protecting sensitive personnel information from public disclosure." Id. at page 480.

The court went on to hold that regulations exempting certain classes of patients, physicians, or others from disclosure would be appropriate.

Given the Falcon decision, if the Ombudsman promulgates regulations which would assure the same confidentiality for personnel records as state law requires, then access to those records would be appropriate.

AMG/MTM/sls

cc: Ombudsman

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF REVENUE

OFFICE OF THE COMMISSIONER

RECEIVED
JUN 14 1979

June 12, 1979

Francis M. Flavin
Ombudsman
840 K Street, Room 203
Anchorage, Alaska 99501

ANCHORAGE
OFFICE OF THE OMBUDSMAN

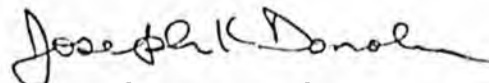
Attention: Rolfe Buzzell

Dear Mr. Flavin:

I regret to inform you that the Department of Revenue will not be able to execute the inter-agency agreement which was proposed to allow your staff investigators to review confidential Department of Revenue materials. The Department of Law's opinion on this subject is attached.

The Department of Revenue, of course, will continue its present policy of full cooperation with your office's investigations to the maximum extent permitted by law.

Sincerely,



Joseph K. Donohue
Deputy Commissioner

Attachments

~~CONFIDENTIAL~~

TO: Joseph K. Donohue
Deputy Commissioner
Department of Revenue

DATE

June 7, 1979

RENO.

REPLY NO.

FROM: AVRUM M. GROSS
ATTORNEY GENERAL

SUBJECT

Proposed Agreement
of Ombudsman's Office

By:

Teo C. Spengler
Assistant Attorney General

You have requested that this department review the agreement proposed by the Ombudsman's Office which would permit the Department of Revenue to disclose information on tax forms which would otherwise be confidential. It is our opinion that there are serious statutory problems with the agreement:

AS 43.05.230 prohibits disclosure of tax returns and reports, except in certain circumstances. That statute provides, in pertinent part:

Except in connection with official investigations or proceedings of the department, whether judicial or administrative, involving taxes due under this title, except in connection with official investigations or proceedings of the Child Support Enforcement Agency, whether judicial or administrative, involving child-support obligations imposed or imposable under AS 25 or AS 47, and except as otherwise provided in this section, it is unlawful for an officer, employee or agent of the state to divulge the amount of income or the particulars set out or disclosed in a report or return made under this title.

In fact, AS 43.05.230(f) makes a willful violation of the provisions of that section punishable by a fine or imprisonment.

Joseph K. Donohue
Commissioner
Department of Revenue

June 7, 1979
Page 2

Additionally, AS 09.25.100 requires that the particulars of the business or affairs of the taxpayer be kept confidential. That statute specifies that tax information is not a matter of public record.

The powers and duties of the Ombudsman are set out in AS 24.55.010-.340. While the Ombudsman has the authority to investigate agency action, there is nothing in the statute which specifically exempts his investigations from the disclosure prohibitions of AS 43.05.230. As AS 43.05.230 was enacted after the ombudsman statutes (2 ch 166 SLA 1976; am § 32 ch 126 SLA 1977, as compared to 1 ch 32 SLA 1975), any provisions in the latter found to conflict with the disclosure prohibition will be held impliedly repealed. See Peter v. State, 531 P.2d 1263 (Alaska 1975).

Thus, the Department of Revenue is prohibited from disclosing particulars set out in a return or report, and nothing in the Ombudsman's provisions dictates otherwise. While a case may arise where disclosure of tax information to the Ombudsman might be permissible, (i.e., disclosure of a taxpayer's forms pursuant to written permission and waiver by the particular taxpayer) it certainly would not be true in most cases. Therefore, we cannot recommend that the standardized agreement regarding disclosure be signed.

TCS/lm

Sharon Andrew, Director
Division of Occupational Licensing
Department of Commerce

April 5, 1977

AVRUM M. CROSS
ATTORNEY GENERAL

Public Access to Occupational
Licensing Investigatory
Files
Our File: J-66-491-77

By: *E.K.*
G. Thomas Koester
Assistant Attorney General

You requested an opinion regarding the requirements of AS 09.25.110, the current open records law, as it applies to open investigative files of the Division of Occupational Licensing.

We believe your March 11, 1977 response to Mr. Frank Flavin, State Ombudsman, regarding this issue was absolutely correct. We also agree with the two basic reasons for maintaining confidentiality of investigatory files which you advanced in your response to Mr. Flavin.

As you note, the state is obligated to protect the rights of its citizens. In Title 3 of the Alaska Statutes, the Department of Commerce is charged with providing support services to the various professional licensing boards established in it. To successfully discharge its duty of ensuring that only qualified professionals serve citizens of Alaska, a certain degree of confidentiality for records generated during the course of investigations must be maintained while that investigation is still in progress. If it has not already done so, we suggest that the Department adopt regulations regarding the confidentiality of investigatory files under the authority granted it in AS 08.01.030.

We believe the second reason you state in your letter to Mr. Flavin is a much stronger reason for not disclosing records relating to an investigation in progress, and it certainly provides much stronger legal justification for not providing those records. Article I, section 22 of the Alaska Constitution established a constitutional right of privacy. While the legislature has not implemented this constitutional provision, we believe it certainly extends to

April 6, 1977

unsubstantiated allegations of professional misconduct such as those giving rise to an investigation. Until the investigation is concluded and the relevant facts are presented at a public hearing, they are no more than unsubstantiated allegations. The subject of those allegations, we believe, has a constitutional right not to have that material made public, and the state arguably would be violating the subject's constitutional right to privacy by making them public.

Under AS 09.25.125, a person seeking those records may apply to the courts for an injunction compelling their release. If Mr. Flavin or the complainant who prompted his letter brings such an injunctive action, we would seek to have the subject of the investigation made a party to that action in order to protect his own constitutional right to privacy. In the meantime, however, we believe that the release of records relating to an investigation of that individual by a board or commission arguably would constitute a violation of the individual's constitutional right to privacy, and you have no choice but to refuse to disclose such records.

We hope this answers your questions.

GTK:jec



Ombudsman

Frank Flavin

January 28, 1981

Senator Victor Fischer
and Members
Senate State Affairs Committee
Pouch V
Juneau, AK. 99811

Subject: SB 90

Dear Senator Fischer:

In his Third, and again in his Sixth Annual Report to the Hawaii Legislature, Ombudsman Doi has noted increased interest and involvement of people in their government. Citizens have encountered two primary areas of difficulty in their attempts to learn about the workings of government through the inspection of records and files: 1. access to some records is denied, and 2. excessive delays occur before the records are released. The experience of the Alaska Ombudsman office has been similar.

Mr. Doi points out that "the less information is shared, the more power those that possess such information retain for themselves." He takes the position, as does the Policy section of SB 90, that "democratic institutions are founded on the premise that information should be shared among the citizenry and their representatives for decision-making purposes." In arguing for freedom of information legislation, Ombudsman Doi urges

- that governmental records and materials be open to the fullest extent possible,
- that exclusions be limited, be specifically listed and strictly defined, and be legislatively authorized,
- that strict time limits be established within which agencies either provide requested records or formally deny a request,
- that prompt and convenient appeal procedures be available,
- and that fair and uniform fees for reproduction of written documents be charged.

We agree with these guidelines and support SB 90 in its attempt to strengthen the people's right to information about their government.

Freedom of information complaints to the Alaska Ombudsman office include:

State of Alaska

Reply to:

- 840 K Street Room 203
Anchorage, Alaska 99501
(907) 276-4011
- Pouch W0
Juneau, Alaska 99811
(907) 465-4970
- P.O. Box 74358
Fairbanks, Alaska 99707
(907) 452-4001

- Veterans Affairs' denial of the request of a son, with his father's general power of attorney, to inspect the father's loan payment history
- Motor Vehicles' charging of \$2 for the name and address of the registered owner of a vehicle, when the complainant didn't want a copy of any document
- Administration Personnel's denial of copies of preliminary studies leading to a position reclassification
- ASHA's refusal to give a resident a copy of an incident report concerning an altercation she had been involved in
- Division of Social Services' refusal to permit prospective foster parents viewing of personal references written about them
- DOT's refusal to provide a citizen with a copy of the tape of a public meeting for use on a radio broadcast (they would provide a transcript)

Although some of these complaints have been found to be justified, and others unsupported, they serve to exemplify the spectrum of types of information sought and the number of different agencies involved.

With regard to SB 90, the following specific suggestions and questions are offered for your consideration:

page 2 line 25

(1) those exempted from disclosure by state statute (;), federal law or regulation

this language is closer to the current AS 09.25.120 (4) and should preclude conflicts between federal and state laws.

page 4 lines 5 and 6

Who decides what are "trade secrets, privileged information, and confidential commercial, financial, geological or geophysical data?"

page 4 lines 9 and 10

The current drivers manual contains sample questions which are, in some cases, actual questions on drivers license tests.

page 8 lines 25 through 29 and page 9 lines 1 through 7

Who is the "head" of a governmental unit? What is an "agency?" If an agency is a department, the commissioner would be the "head;" if agency means a division, the director would be its "head."

Who is the "head" of, for example, the Human Rights Commission -- the Executive Director or the Chair?

Should it be required that there be "designees" in each office location, or will, for example, an employee in the Fairbanks Natural Resources

office need to contact a designated custodian in Anchorage before releasing a record?

In the definition of "governmental unit" perhaps "governmental instrumentality," "public corporation," and "REAA" should be specifically included.

page 9 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?

7 | More generally, you may wish to include an administrative appeal prior to filing an action in court to compel the release of records. Such an appeal would require a different decision maker and strict adherence to reasonable time frames.

| Also, the legislative adoption of a uniform fee schedule similar to that proposed by the Governor might be advisable. This proposed regulation provides for the copying of 20 pages free within a 24 hour period, and a fee of 10¢ for each additional page.

Our most pressing concern, however, is the repeated use of "right to privacy" in this proposed legislation. Absent any attempt at definition or case law clarifying this Constitutional protection, we are left only with case by case interpretation. The diversity of opinion is particularly evident in responses from the Attorney General's Office on cases arising from Ombudsman complaints.

In opinions issued on April 17, 1979 (concerning release of mailing lists of those receiving senior citizen property tax exemptions to a senior citizen organization) and on February 21, 1980 (concerning the release to Legislators of the names of those receiving Longevity Bonus payments) an Assistant Attorney General advised that the former be denied, while there was no privacy issue in the latter. He argued that there would be no anxiety or embarrassment caused to Longevity Bonus recipients if their names were to be released to members of the Legislature, whereas it would violate the privacy of senior citizens claiming property tax exemptions if a list of their names and address were released. When in doubt, this opinion states, it is better to err on the side of non-disclosure. A factor in the senior citizen decision was the possible use of the list by vendors.

On a similar issue, and on the basis of the same legal advice, the Division of Retirement and Benefits has refused to release a list of TRS retirees to a retired teacher organization. The division explains that although this group might not "misuse" the list, if it were released to one organization, how could the division refuse to provide it to another which might put it to questionable use.

In another opinion issued July 31, 1978 on the release of the name and address of the registered owner of a motor vehicle (attached), the