

ALASKA LEGISLATURE COMMITTEE FILES, 1989-1990 8672
6122 HOUSE STATE AFFAIRS

526

Donald D. O'Dowd
President

UNIVERSITY OF ALASKA STATEWIDE SYSTEM

202 BUTROVICH BLDG
FAIRBANKS, ALASKA 99775-5560
PHONE 474-7311
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RECEIVED

MAR 8 1990

March 5, 1990

Representative Kay Brown
Representative Red Boucher
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Dear Representatives Brown and Boucher:

Thank you for communicating with me in late December of 1989 concerning legislation that would establish a Center for Information Technology at the University of Alaska.

As soon as possible after receiving the material, I shared it with the Chancellors of our three universities and obtained their thoughts on how this legislation would serve the University as well as the State. Chancellor O'Rourke was designated to take responsibility for reviewing the legislation with representatives from the communications and information faculty on our several campuses and to suggest possible changes in the legislation. A meeting was held by that group in February and the results have been communicated to you in a memorandum from Chancellor O'Rourke dated February 20.

The effort of the group was to honor the spirit of the legislation and at the same time find ways of adapting it so that it would complement ongoing programs as well as add a new dimension of coordination and organization that would speed our ability to make contributions in the information technology fields.

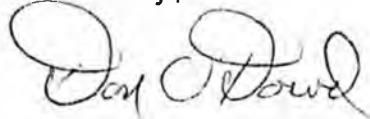
UNIVERSITY OF ALASKA

I hope that these suggestions are helpful and indicate ways in which the legislation could be adapted more closely to specific features already in place in the University. As you know, we have a relatively sizeable investment in information technology education and research at this time and it is certainly not in our interest to downplay that effort while establishing a new coordinating entity. I believe that all of the values that you incorporated in your draft legislation are preserved in the context of the suggested changes and that this amended version, if the changes can be included, would strengthen the concept and benefit the University's ongoing enterprise.

Best wishes for every success in advancing this proposal for legislative approval. Please let me know if there is any way that we can assist in the process or further refine the legislation.

Thank you for your interest in the University and your willingness to spend time, energy and political capital advancing one important aspect of its program.

Sincerely,



Donald D. O'Dowd
President

DDO:drn

cc: Pat O'Rourke
Wendy Redman

Chapter 25. Miscellaneous Provisions.

Section

10. Unexpended balances of one-year appropriations

Section

20. Unexpended balances of appropriation for capital projects

Opinions of attorney general. — The provisions of AS 37.25.010 and 37.25.020 regarding unexpended balances of appropriations are applicable to the University of Alaska. February 28, 1977 Op. Att'y Gen.

There is no constitutional obstacle to making the University of Alaska subject to the provisions contained in this title. February 28, 1977 Op. Att'y Gen.

Sec. 37.25.010. Unexpended balances of one-year appropriations. (a) The unexpended balance of a one-year appropriation authorized in an appropriation bill lapses on June 30 of the fiscal year for which appropriated. However, a valid obligation (encumbrance) existing on June 30 is automatically reappropriated for the fiscal year beginning on the succeeding July 1 if it is recorded with the Department of Administration by August 31 of the succeeding fiscal year.

(b) An indebtedness arising from a prior year for which the appropriation has lapsed shall be paid from the current year's appropriations, if (1) this expenditure does not exceed the balance lapsed; and (2) the original obligation date is not more than two years from the requested date of disbursement.

(c) University receipts received on or before June 30 of a fiscal year in excess of the amount expended for that year may be expended in the succeeding fiscal year if an appropriation of university receipts has been made for the succeeding fiscal year. The amount of university receipts expended in a fiscal year may not exceed the amount of university receipts appropriated for that year.

(d) The University of Alaska shall report the amount of university receipts received in one year and expended in the succeeding fiscal year to the Department of Administration and the Legislative Budget and Audit Committee by September 30 of the succeeding fiscal year.

(e) In this section, "university receipts" has the meaning given in AS 14.40.491. (§ 1 ch 113 SLA 1962; am § 8 ch 143 SLA 1986)

Effect of amendments. — The 1986 amendment added subsections (c) — (e).

Sec. 37.25.020. Unexpended balances of appropriation for capital projects. An appropriation made for a capital project is valid for the life of the project and the unexpended balance shall be carried forward to subsequent fiscal years. Between July 1 and August 31 of each fiscal year, a statement supporting the amount of the unex-

Title 36
Public Contracts

Title 37
Public Finance

HB

403

HOUSE COMMITTEE ON STATE AFFAIRS

RECAP OF
HB 403

Approp: Applied Telecommunications Center

Received January 8, 1990
by Rep. Boucher, Brown, Ellis

Heard February 8, 1990
Heard March 1, 1990

CSHB 402 (SA) Adopted March 1, 1990

Passed Out of Committee March 1, 1990
3 Do Pass
1 No Recommendation

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HB 403: Approp: Applied Telecommunications Cntr

- Item 1:** HB 403 by Rep. Boucher, Brown, Ellis
CSHB 402 (SA)
- Item 2:** Review and Comments on HB 403

HOUSE COMMITTEE REPORT

(7)

Date Referred: January 8, 1990

FURTHER REFERRALS: HESS

FINANCE

Date of Committee Action: _____

The STATE AFFAIRS Committee considered:

HB 403

HOUSE BILL NO. 403

APPROP: APPLIED TELECOMMUNICATIONS CNTR

"An Act making a special appropriation to the University of Alaska for the Center for Information Technology; and providing for an effective date."

RECOMMENDATIONS:

- be replaced with CS HB 403(SA) the same title
 a new title
 have attached amendment(s)
 do pass
 do not pass
 no recommendation
 individual recommendations
 additional referral to the _____ Committee

ADOPTS: _____ letter of intent

ATTACHES NEW FISCAL NOTE(S):
(Dept)

APPROVES PREVIOUS:

(Date/Dept)

- fiscal impact _____
 zero fiscal note _____
 zero with analysis _____

- fiscal note(s) _____
 zero fiscal note(s) _____
 zero fn/analysis _____

SIGNING DO PASS:

[Handwritten signatures]

SIGNING:

(Check approp. column)

	Do Not Pass	No Rec	Amend
<i>[Signature]</i>		<input checked="" type="checkbox"/>	

[Handwritten signature]

Chairman's Signature

REVIEW AND COMMENTS ON HB403

AN ACT MAKING AN APPROPRIATION TO THE UNIVERSITY OF ALASKA FOR A CENTER FOR INFORMATION TECHNOLOGY

Regarding HB403, Section 2, beginning on Line 13 of the bill, this causes the committee some concern. It states that the appropriation lapses into the general fund effective June 30, 1991 which raises the question as to whether or not there would be continuation of general fund support for the center. It is the view of the committee that the center can only effectively function if there is a continuing general fund appropriation over and above anything currently contained within the budgets of UAA or UAF. It seems to us that this section of the bill should be deleted so that the original appropriation rolls forward. Additionally, we are concerned that the portions of the appropriation directed to the GIS faculty in the various departments be imbedded as part of those departmental budgets and not as a part of the center. Thus, there needs to be flexibility so that this portion of the funds could appropriately be lodged in the Department of Architecture and Engineering Technology at UAA and in the Department of Land Resources at UAF.

One additional concern that we have with this bill is not so much with the language of the bill itself but in the back-up budgetary information which led to the \$940,300 figure. Attached you will find a revised budget proposal for Year 1 and then a revised and continuing budget proposal for Year 2 and thereafter. The difference between the two is to allow for important equipment acquisitions in Year 1 and to allow a sum of money for sponsoring research to continue throughout the future years of the center.

In general, we are all concerned about other Board of Regents priorities within the University of Alaska System budget request for FY91. Lin Bauer from the University of Alaska Anchorage indicates that he has an important request for equipment for his programs contained within that request, and it is his desire that that request be dealt with as well. It is our belief that this proposal should be dealt with aside from the regular budgetary process and, therefore, not interfere with Board of Regents priority requests.

HB403 BUDGETS

<u>ITEM</u>	<u>YEAR 1</u>	<u>YEAR 2 & THEREAFTER</u>
A. Center Staff (UAA)		
Director	85.0	85.0
Administrative Assistant	36.0	36.0
Info. Resources Manager	50.0	50.0
Secretary	24.0	24.0
B. Research Fellows		
Visiting Research Fellow	55.8	70.0
Jr. Research Fellows	-0-	60.0
Student Assistants	-0-	4.3
Interviewers for Special Projects	-0-	25.0
C. Equipment		
Office Equipment	150.0	-0-
9 Station LAN System	13.5	-0-
Remote CAD/GIS Workstation	25.0	-0-
D. Maintenance		
Computer Equip. Maintenance	15.0	15.0
E. Contract Research		
Funds to target specific studies	-0-	100.0
F. Commodities	33.0	33.0
G. Travel	25.0	25.0
H. Space Rental	48.0	48.0
I. Software Development/Equipment	<u>95.0</u>	<u>40.0</u>
 Subtotal CIT (UAA)	 655.3	 705.3

NOU TRACY - 3 positions, 40% TEN

<u>GIS(UAF)</u>	<u>YEAR 1</u>	<u>YEAR 2 & THEREAFTER</u>
1 Faculty	66.0	66.0
1/2 Time Technician	15.0	15.0
Equipment Maintenance	10.0	10.0
Start-up GIS Equipment (2 GIS workstations)	-	-
Commodities	<u>5.0</u>	<u>5.0</u>
Subtotal GIS--UAF	146.0	96.0
 <u>GIS(UAA)</u>		
1 Faculty/Analyst	59.0	59.0
Faculty Support Staff	50.0	50.0
Equipment Maintenance	25.0	25.0
Commodities	<u>5.0</u>	<u>5.0</u>
Subtotal GIS--UAA	139.0	139.0
 TOTAL	 940.3	 940.3

Tech (student) support

GIS components for both UAF and UAA will be transferred into and accounted for as part of departmental budgets and not as part of the continuing center operations.

UNION - not eligible?

HB

405

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

POUCH Y STATE CAPITOL
JUNEAU ALASKA 99811
907 465-2800

MEMORANDUM

February 27, 1990

SUBJECT: Sectional summary of CSHB 405 (Finance)
TO: Representative Kay Brown
FROM: Theresa L. Bannister *TB*
Legislative Counsel

You have requested a sectional summary of the above described bill.

As a preliminary matter, note that a sectional summary of a bill should not be considered an authoritative interpretation of the bill and the bill itself is the best statement of its contents. If you would like an interpretation of the bill as it may apply to a particular set of circumstances, please advise.

Section 1 provides findings and intent for the bill.

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

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

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

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

Sec. 09.25.110(e) authorizes the Bureau of Vital Statistics, the library archives, and the Division of Banking, Securities, and Corporations to continue charging the same fees for performing record searches.

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

Section 4. Sec. 09.25.115(a) authorizes a public agency, upon request and fee payment, to provide electronic services and products involving public records to members of the public. Encourages public agencies to make information available in usable electronic formats to the greatest extent feasible.

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

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

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

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

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

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

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

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

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

Section 6. Sec. 09.25.123(a) directs the TIC to supervise and adopt regulations for the implementation of AS 09.25.-110 - 09.25.140 by public agencies in the executive branch.

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

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

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

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

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

Section 7 authorizes a person to seek injunctive relief under AS 09.25.125 without exhausting the person's administrative remedies under AS 09.25.123 - 09.25.124.

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

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

Section 10 requires each state agency to notify the state library of the creation of certain data, including automated data bases, and provide for their accessibility through the library, except in certain circumstances.

Section 11 makes certain information of the Department of Fish and Game confidential and establishes a specific period of confidentiality for some of the information.

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

Section 13 authorizes a municipality to copyright software and to enforce its copyright rights.

Section 14 makes a technical change to conform to other changes in the bill.

Section 15 adds four new sections.

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

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

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

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

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

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

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

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

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

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

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

Representative Kay Brown
Page 6
February 27, 1990

Section 16 states that requests for personal information made by a state agency on or after the effective date of the bill are covered by sec. 44.99.020.

TLB:pl
WKP2/097

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY
LEGISLATIVE REFERENCE LIBRARY

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

Copies of minutes listed below were originally included in this file. The minutes are available on the STAIRS database CMFR. In order to save space copies of minutes have not been left in the files.

Mary Van Nimwegen

HB 405

House State Affairs 1/23/90

HOUSE COMMITTEE ON STATE AFFAIRS

RECAP OF
HB 405

Public Access to EDP Information

Received January 8, 1990
by Reps. Brown, Boucher, Goll

Heard January 23, 1990
Heard February 1, 1990
Heard February 6, 1990

Adopted CSHB 405 (SA) February 6, 1990

Passed Out of Committee February 6, 1990
3 Do Pass
2 No Recommendation

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HB 405: Public Access to EDP Information

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- Item 3:** Backup Information Provided by Rep. Brown,
January 22, 1990
- Item 4:** Position Paper from Dept. of Environmental
Conservation, January 22, 1990
- Item 5:** Memorandum from Rep. Brown re: Proposed
CSHB 405, January 30, 1990
- Item 6:** Amendments Offered February 6, 1990

HOUSE COMMITTEE REPORT

(7)

Date Referred: January 8, 1990

FURTHER REFERRALS: FINANCE

Date of Committee Action: _____

The STATE AFFAIRS Committee considered:

HB 405

HOUSE BILL NO. 405

PUBLIC ACCESS TO EDP INFORMATION

"An Act relating to public access to the information of the state."

RECOMMENDATIONS:

- be replaced with CS HB 405 (SA) the same title
- a new title a new title
- have attached amendment(s)
- do pass
- do not pass
- no recommendation
- individual recommendations
- additional referral to the _____ Committee

ADOPTS: _____ letter of intent

ATTACHES NEW FISCAL NOTE(s):
(Dept)

APPROVES PREVIOUS:
(Date/Dept)

- fiscal impact _____
- zero fiscal note _____
- zero with analysis DPS/DNA
- fiscal note(s) _____
- zero fiscal note(s) _____
- zero fn/analysis _____

SIGNING DO PASS:

SIGNING:
(Check approp. column)

[Handwritten signatures]

	Do Not Pass	No Rec	Amend
<i>[Signature]</i>		<input checked="" type="checkbox"/>	
<i>[Signature]</i>		<input checked="" type="checkbox"/>	

[Handwritten Signature]
Chairman's Signature

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: Public Access to EPD Information

Agency Affected: Administration
BRU: Information Services

Sponsor: Rep. Brown
Requestor: State Affairs

Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

FUNDING: (Thousands of Dollars)

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

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

See attached.

Prepared by: Paul Monette, Director
Division: Information Services

Phone: 465-2220
Date: 01/22/90

Approved by Commissioner: Frank S. Baxter
Agency: Administration

Date: _____

Distribution (by preparer) :

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

1/22/90

Department of Administration
Division of Information Services

HB 405 - - FISCAL NOTE

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

HB 405 would produce no fiscal impact on the Division of Information Services, either during FY 90 or in succeeding fiscal years.

FISCAL NOTE

REQUEST:

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

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

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

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

CAPITAL	0	0	0	0	0	0
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REVENUE	0	0	0	0	0	0
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FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

ANALYSIS: (Attach a separate page if necessary)

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

JNR
1/19/90

Prepared by: KES Ken Bischoff
Division: Administrative Services

Phone: 465-4336
Date: 01/19/90

Approved by Commissioner: Arthur English
Agency: Department of Public Safety

Date: 1-19-90
Page 1 of 1

STATE OF ALASKA
1990 LEGISLATIVE SESSION

BILL VERSION : HB 405
 PUBLISH DATE : _____

FISCAL NOTE

REQUEST:

Revision Date: 21-Feb-90
 Title: An Act relating to Public Access
& changes to information
 Sponsor: Brown, Boucher, Gøil
 Requestor: Brown

Agency Affected: Natural Resources
 BRU: Management & Administration
 Components: Information Resource
Management

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

FUNDING: (Thousands of Dollars)

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

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

See Attached

Prepared by: Dianne M. Lyles Phone: 762-2384
 Division: Management and Administration Date: 21-Feb-90
 Approved by Commissioner: [Signature] Lennie Gorsuch Date: 21-Feb-90
 Agency: Department of Natural Resources

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

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

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

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

Rep. Kay Brown
1/22/90

By Brown, Boucher, Goll

HB 405
An Act Relating to Public Access to the Information
of the State

Why legislation is needed:

- * Computers and electronic data bases have proliferated throughout government, raising issues regarding access to electronic information that are not addressed in present law.
- * Increased electronic access to the state's information systems, particularly for the more isolated communities of the state, would enhance the delivery of state services and the availability of information throughout the state.
- * Public access to the state's information systems will be enhanced by establishing user fees for electronic services and products that are calculated to recover a reasonable portion of the costs associated with building and maintaining a public information system.

What the bill does:

■ defines public records (page 5, lines 17-23; page 3, lines 6-13; page 1, line 27 through page 2, line 9)

Public records include all information (books, papers, files, accounts, writings, including drafts and memorializations of conversations, and other items, regardless of format or physical characteristics) that is developed or received by a public agency and preserved for its informational value or as evidence of the organization or operation of the agency. A software program is not a "public record."

Public records are available for public inspection and copying, except as otherwise provided by law.

Electronic information disclosed in printed form must be made available without codes or symbols, unless accompanied by an explanation of the codes or symbols.

■ defines electronic services and products (page 4, lines 2-22)

Electronic services and products include

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

- * duplicating or providing periodic updates of an electronic file or database;

- * providing on-line access to an electronic file or database;

- * providing information that cannot be retrieved or generated based upon existing computer programs; and

- * providing functional access to a public information system. Functional access includes the capability for alphanumeric query and printing; graphic query and plotting; nongraphic data input and analysis; and graphic data input and analysis.

■ Establishes fee structure (Page 2, lines 3-6 and 15-19)

Fees charged for obtaining a "public record" shall not exceed the costs of search and copying.

Agencies may establish fees for "electronic services and products" in order to recover 1) the actual, incremental costs of providing the service or product, and 2) a reasonable portion of the costs associated with building and maintaining the public information system.

■ Addresses agency management (Page 2, lines 6-7, 11-14, 19-29; page 3, lines 1-4)

The fee for obtaining a public record may be reduced or waived by an agency.

An agency is not obligated to provide electronic products or services.

The fee for obtaining an electronic service or product may be reduced or waived by an agency for a public purpose, including statutory program support, nonprofit use, journalistic use, and academic research.

When providing electronic services and products, agencies shall adopt access terms and conditions to protect system security and integrity, and to limit liability.

An agency may use program receipts accounting for fees.

Who is covered?

Executive branch agencies, the University, the Legislature,
the Judiciary, municipalities

Proposed amendments:

1. Page 1, line 23, after "establishing" insert "user fees for"; delete "user fees" after the word "products".
Clarification.

2. Page 2, line 14, insert after "public.": "An agency or department is encouraged to make information available in useable electronic formats to the greatest extent feasible."

3. Page 2, line 26, after "department" insert "or of a central computer system maintained by another agency".
Clarification.

Geographic Information Systems: Issues Arising from the Proliferation of Information

Phillip Parent

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

Abstract: Geographic information is proliferating at an unprecedented rate due to the use of computer technology in mapping and spatial analysis applications. Three basic issues must be addressed in order to ensure the effective management of this flood of information: accuracy, access, and applicability. Accuracy, which is inversely proportional to uncertainty, can be compromised in a spatial database in three ways: data capture, analysis, and compatibility. Each of these operations can introduce error and skew results. Access and privacy is another issue arising from this proliferation of information. Data accessibility should balance the public's right to know with the individual's right to privacy. Public agencies are obligated to release raw data but not processed information on request. Integrated databases compiled by public agencies can be viewed as resources that can be marketed to the commercial sector. Applicability of information leads to effective decision-making, the satisfaction of end-users and, for public agencies, equitable access in the sense that the public can have the same information on which decision-makers base their decisions. Databases generated and maintained at the application (end-user) level are generally more productive initially than large-scale corporate systems. However, such databases are sometimes only effective in applications where the data are compatible with the original intended use. Thus there is a trade-off between application (single purpose) databases and corporate (multi-purpose) databases. Consensus among users on data compatibility and goals in the initial stages of implementation will increase long-term effectiveness. Databases must be designed with the flexibility to shift as applications mature.

With the advent of modern computer technology, it is possible to generate an overwhelming amount of output with very little effort. In fact, automation can reduce not only the effort but also reduce the amount of thought required in the production of reports, maps, and in data analysis. Data, initially unedited observations of physical phenomena that have been effectively captured, stored, processed, analyzed, and presented in a timely and comprehensible way, are an asset. These data can be classified as

information, which has been defined as the antidote to uncertainty (Epstein 1987). Data that don't meet these standards are useless as they tend to obscure relevant information. Specific issues arise as more private and public agencies amass large databases. Most of the research in the field of geographic information and analysis has been focused on the technical aspects of developing and operating geographic information systems (GIS). Little has been written on the manage-

ment of the information generated in respect to GIS. However, as more systems come online and mature, the issues arising from the proliferation of information will gradually make their way to the forefront of social science research.

This paper will identify and discuss three major areas that need to be fully explored: (1) accuracy; (2) access and privacy; and (3) applicability, which impacts the long-term effectiveness of a system. These are by no means the only issues

tance that compatibility should not only be considered for questions of scale and resolution, but also for the original purpose of the data gathering. This problem of incompatible applications for the same data could be another stumbling block for shared databases.

Accuracy, then, can be distilled into three basic areas: data capture, analysis, and compatibility. Although resolution and documentation play an important role, these issues in and of themselves are not the deciding factors. High resolution and documentation do not guarantee accuracy and reduce uncertainty. What will ensure accuracy is care on all levels that the data are handled in an appropriate and responsible way by competent professionals well-schooled in the intricacies of GIS.

Access and Privacy

The dilemma of the public's right to know versus the individual's right to privacy is an issue that will receive increasing scrutiny as individual databases become part of an integrated whole. The relationship between data and information is the basis for any investigation of access and privacy. In accordance with the federal Freedom of Information Act of 1966, data that are publicly held should, with the exception of proprietary records such as geophysical exploration records that must be filed for mineral claims and the like, be available to the general public. Generally speaking, agencies are required to disclose information in the format in which it is held.

However, once the data are processed and analyzed, the public's right to access is diminished. For instance, agencies are not required to create new reports or formats in response to requests. Indeed, agencies do not even have to provide data in a readable form. As a rule, agencies may only recover their costs for reproducing the data, not the costs of producing them. Other factors that enter into the question of access are staff time to handle information requests and the re-use of data and the motives behind the request (Roitman 1986).

A different issue is the problem of private companies—credit bureaus, for example—that hold extensive databases on individuals. Should this information be regulated? Should it be public domain? With the ease of building and maintaining electronic databases, these issues eventually will have to be addressed. (Indeed, during the recent Bork hearing for the Supreme Court, eyebrows in Washington, D.C. were raised when a video store released the record of the movies Judge Bork rented. Although no embarrassing titles were found, the potential for abuse caused lawmakers to think about the possible ramifications of an information society gone wild.) Although there has been some excellent research on the privacy issue (Roitman 1987), there is certainly room for further study as it is an issue that will only become more important as GISs become more popular.

A public agency such as a planning department can build a sizable database consisting of tax assessment data, cable TV hookups, zoning designations, noise levels, water use and so on. Other agencies with their own data layers, such as police departments with crime-type and frequency maps, health agencies with violation maps, or school districts with bus route maps, could integrate their data and process the information. Indeed, private companies that specialize in the gathering, repackaging, and selling of information can reap huge profits. By spatially addressing this information, entire new approaches to marketing can be created. The applications for such a comprehensive database for private enterprises are substantial. Real estate firms, pollsters, direct marketing companies, and political groups among others could utilize these databases for targeting select market segments. However, few public agencies are in the business of data dissemination. They are service oriented and have acquired this data to support their mandated public duties, not as a marketable asset. An agency with such an integrated database might not have the extra staff to make this data available and is under no obligation to re-format, tabulate, or process the data for the public.

Two major groups are affected by the issue of data access: Public agencies that control the databases but are not in a position to process or market them due to economic and

political constraints, and private entities that would like to utilize the data. There are two approaches they could take. First, the private companies could request the individual raw data layers from each agency and format, process, and tabulate the resultant information themselves. This would effectively limit access to individuals and companies that have the economic or technical resources to undertake such a project. The other approach would be for the public agency involved to set up a semi-private entity to archive, format, process, tabulate, and market the databases. The entity could be non-profit or for-profit and services could range from simply gathering and re-formatting data to developing analytical software to improve the information content.

An advantage of the second approach is that the integrity of the databases could be preserved, an important consideration if the available data are generated from many different sources. Privacy could be guaranteed by having restricted databases reside in the generating agency. A single chartered entity controlling the access and distribution of data would ensure compatible formats, consistent documentation, similar scales and cartographic conventions, and the avoidance of unnecessary duplication. It would also ensure equal access to a diverse set of users. This is the way that Japan is developing its centralized GIS under the aegis of the Ministry of Construction (Okabe 1988).

Of course, this is a long-term solution that requires

political sponsorship, start-up funding, and the support of the private sector. However, cooperation between the private and public sectors on the local level is increasing. If public databases and the information that results from data processing are readily available to all segments of society at a reasonable cost, the issue of access will not be a controversial subject. If the data are carefully gathered and private information shielded, the "big brother" concerns of some social critics can be avoided. However, there are no guarantees that this will be the case.

Applicability of a GIS System

The applicability of a system and the information contained within it directly impact the effectiveness of that system as a management tool. A fundamental question of all managers trying to implement a system is how can an agency measure the effectiveness of an integrated geographic information-processing system. Effectiveness, defined as the value of enhanced decision-making from increased analysis capabilities, and improved information availability attributable to the information system (Prisley and Mead 1987), can be interpreted at two levels. At the first level, it can be an improvement of end-user and over-all organizational productivity due to system application (Nunamaker and Konsynski 1986). By taking a larger view, effectiveness can be viewed as the balance between equality (the doctrine of

equal rights) and equity (the concept of fairness) (Chrisman 1987). The narrower definition is based on internal productivity at the agency level while the broader definition deals with the impact of the system on the public at large. This impact, although hard to quantify, is intangible benefit that should be taken into account in a cost/benefit analysis (Prisley and Mead 1987).

Measuring an increase in internal productivity, necessary for the first definition of effectiveness, is an ongoing process starting at the earliest stages of conceptual planning. Initial productivity measures range from profits and operating expenditures to customers served to maps produced and so on (Schmidt 1979). Production goals must be decided upon before undertaking an implementation project. By comparing the impact of a GIS to the stated goal of the GIS effectiveness can be ascertained.

This traditional approach to effectiveness is being altered by changing technology. Distributed processing is becoming an attractive alternative to centralized data management. Networking capabilities are being upgraded and stand-alone workstations are becoming less expensive. In addition, users are becoming more computer literate. Every planning department now has people who feel more comfortable behind a CRT screen than a drafting

THE GOVERNMENT PULSE

AGENCIES

Ending the Government's Paper Chase

By Judith Havemann
Washington Post Staff Writer

In a nondescript building in Washington, D.C., Federal Maritime Commission clerks manually insert changes in 800,000 pages of shipping rates in 5,000 green binders each year, using horse-and-buggy technology to regulate the commerce of the space age.

By 1991, these records will be computerized and made instantly available to anybody who wants to know how much it costs to ship anything by ocean around the world.

The transformation of the commission's records is an example of a process that will become increasingly common as the government moves toward "paperless" agencies by the year 2000.

But as records change from sheets of paper into electronic blips, widespread confusion prevails as to whether records like those of the Maritime Commission should be made easily accessible to the public, in what form and at what cost, and whether the government should release the information itself or turn it over to the private sector.

"The laws and policies that spell out citizen access rights to government information in the age of electronic government are woefully out of date," the American Civil Liberties Union (ACLU) has said.

Congress will take up legislation to update the government's "information dissemination policy" when it reconvenes this year.

The bill is called the Paperwork Reduction Act, and, in addition to continuing a long-standing effort to cut down on the forms the government requires citizens to fill out, it seeks to commit federal agencies to a policy of openness and disclosure when it comes to government information.

For the first time, a bipartisan House bill marries the word "electronic" to its informa-

But computerized records pose a host of new questions

tion-policy language, telling the government to release, "to the greatest extent practicable," information maintained on computers in "usable electronic formats."

Although information policy sounds as controversial as motherhood and apple pie, it has been a contentious issue in recent years while the Office of Management and Budget established policies favoring the private sector over the government.

The Reagan administration's Office of Information and Regulatory Affairs at OMB required that federal agencies place "maximum feasible reliance on the private sector for dissemination of [information] products and services."

The policy has been dramatically modified in favor of public access under President Bush, but Congress has not been satisfied.

"We want to bring organization to dissemination anarchy," says Democratic Rep. Robert E. Wise Jr. of West Virginia, whose subcommittee on government information, justice and agriculture worked out the information dissemination language in legislation introduced in the House by the chairman and ranking minority member of the House Government Operations Committee.

Under the bill, a government agency would no longer have to step aside if a private firm was interested in selling its information. Instead, federal agencies would have to consider whether an equivalent product or service was available and "reasonably achieves the dissemination objectives of the agency product or service" the agency was about to offer.

The issue grows in importance as more and more information is stored in government computers. The Securities and Exchange Commission is developing an Electronic Data Gathering System (EDGAR) that will handle 5 million pages of security filings per year,

the Patent Office is creating an Automated Trademark System, and the Transportation Department is developing an electronic system for international tariff filings.

So far, most of the new data systems are in agencies that regulate businesses, says Jerry Berman, director of the Information Technology Project for the ACLU.

But, he says, "the benefits of electronic information systems are not being equitably or widely shared by the public at large."

Although the Environmental Protection Agency recently began offering an electronic service that tells the public what toxic chemicals are being released throughout the country, "there are no large-scale dissemination projects underway at agencies such as Justice, Health and Human Services or HUD," Berman says.

Berman says more than 440 government data bases exist without a government index system detailing where they are or how to use them.

In the case of the Federal Maritime Commission, electronic versions of some or all of its records have been compiled for about five years at private expense and sold to customers.

When the commission proposed converting its records to electronic format, the private firms that had been key-punching records into computers and selling the information to steamship companies and others questioned whether the agency should "reinvent the wheel."

After a long battle, Congress allowed the agency to provide electronic information directly to the public, but in a relatively raw form—leaving the door open for private firms

to "crunch" the numbers into more usable formats for customers.

Today, "everybody supports the Federal Maritime Commission modernization," says Ronald Plesser, an attorney for the private providers of information.

Republican Rep. Frank Horton of New York, ranking minority member on the Government Operations Committee, predicts that the paperwork bill will sail through the House on the noncontroversial calendar of measures.

It has the support of most industry and public-interest groups, except one big one—the American Library Association.

The association opposes the Wise provisions because of its suspicion of the Office of Management and Budget.

Under the bill, the OMB director would be required to "guide" agency information policy, following the guidelines laid out in the law.

"As librarians we know that information is power and if this goes through it will give OMB a lot of power over information," says Anne A. Heanue, an official of the Library Association's legislation committee.

"We have seen OMB in operation," says Patricia Schuman, chairman of legislation for the association. Its role would have a "chilling effect" on agencies releasing information, she says.

But the Information Industry Association, a group of 850 information companies, sees little problem with the legislation.

"We don't believe it gives OMB any more power than it has now. . . . This is the first statute setting out the right of access. Where we once argued against government competition we now believe the best way to get information to citizens is sometimes government and sometimes private."

Gary Bass, head of the citizen organization OMB Watch, says the measure "goes a long way toward advocating greater accountability for both OMB and the entire government." ■

STATE FREEDOM OF INFORMATION ACTS

Chart IV-A
4/87

States with FOIAs which specifically cover access to public records in computer, electronic or magnetic tape form or records regardless of physical form or characteristics

Charging policy for copies of public records

ALABAMA		
ALASKA		
ARIZONA	x	Cost of providing copies plus value of reproduction on commercial market
ARKANSAS	x	No express charging policy
CALIFORNIA	x*	Cost of duplication or statutory fee
COLORADO	x	Reasonable fee for actual costs or statutory fee
CONNECTICUT	x	Cost to public agency
DELAWARE		
FLORIDA	x	Statutory fee or actual cost of duplication (cost of material and supplies, not labor or overhead)
GEORGIA	x	Compensation for reproduction at rate agreed to by custodian and requestor
HAWAII		
IDAHO		
ILLINOIS	x	Actual cost of reproducing and certifying and for use of reproduction equipment
INDIANA	x	Computer tape or disk produced by legislative services agency: fee must not exceed sum of 1) direct cost of supplying information in that form, 2) standard cost of selling same information in publication form, 3) percentage of direct cost of maintaining information system (3 may not exceed 1 and 2).
IOWA	x	Reasonable fee not to exceed cost of providing service
KANSAS	x	Statutory fee or for records maintained in computer facilities, cost of computer services including staff time
KENTUCKY	x	Reasonable fee which does not exceed actual cost (not staff required)
LOUISIANA	x	Reasonable fees
MAINE	x	When inspection can't be accomplished without translation of electronic data, may charge for cost of translation
MARYLAND		Reasonable fee or statutory fee
MASSACHUSETTS	**	
MICHIGAN	x	Mailing costs, actual cost of duplication or or publication (labor, cost of search, examination, review, deletion and separation of exempt material)
MINNESOTA	x	Actual cost of making, certifying and compiling copies plus an additional reasonable fee (related to development costs of information), if data base has a commercial value
MISSISSIPPI	x	Actual cost of searching, reviewing, duplicating and mailing
MISSOURI	x	Reasonable fee

* Records maintained by Legislative Counsel are not subject to FOIA.

** FOIA may not apply to legislature.

***Not required to supply computer tapes if data is promptly published and offered for sale

States with FOIAs which specifically cover access to public records in computer, electronic or magnetic tape form or records regardless of physical form or characteristics

Charging policy for copies of public records

MONTANA		
NEBRASKA	x	No express charging policy
NEVADA		
NEW HAMPSHIRE		
NEW JERSEY		
NEW MEXICO		
NEW YORK	x	Statutory fee or actual cost of reproducing record
NORTH CAROLINA	x	Statutory fee
NORTH DAKOTA		
OHIO		
OKLAHOMA		Cost of reproducing copy, and if request is for commercial purpose or would cause excessive disruption of public body's functions, reasonable fee for direct cost of document search
OREGON	x	Actual cost in making records available
PENNSYLVANIA	**	
RHODE ISLAND	x	Reasonable expense in retrieval and/or copying
SOUTH CAROLINA	x	Actual cost of searching for or making copies of records and may charge reasonable hourly rate for making records available
SOUTH DAKOTA		
TENNESSEE	x	No express charging policy
TEXAS		
UTAH	x	Reasonable fees
VERMONT		
VIRGINIA	x	Actual cost (copying and search time)
WASHINGTON		
WEST VIRGINIA	x	Actual cost of making reproductions
WISCONSIN	x***	Statutory fee or actual, necessary and direct cost of reproduction and transcription
WYOMING	x	Reasonable fee

* Records maintained by Legislative Counsel are not subject to FOIA.

** FOIA may not apply to legislature.

***Not required to supply computer tapes if data is promptly published and offered for sale or distribution.

**COMMISSION OF THE
EUROPEAN COMMUNITIES**

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

Directorate-General
for Telecommunications,
Information Industries and
Innovation

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FOREWORD

Information is considered more and more as a motor for the industrial development of the Community within a highly competitive world market. The setting up of an information services market as decided by Council on 26 July 1988¹ is a major aim in the Community's overall strategy.

It is recognized that a strong and healthy information market in the European Community can only be achieved through the work of a wide range of participants. As is recognized in the plan of priority actions for the setting up of an information services market, the public sector has an important role to play, as a major producer of basic data and information, as a provider of information goods and services and as a major consumer. According to the way it functions, it can either encourage or hinder initiatives leading to the development of a strong European information industry.

To promote optimal synergy between public sector support and private sector initiatives, the Commission undertook a series of consultations and discussions with representatives of the public and private sectors of the European information market in all Member States. As a result, the Commission has now produced 'Guidelines for improving the synergy between the public and private sectors in the information market', which have been endorsed by the representatives of the

¹ OJ L 285 p 39 88/524/CEC

Member States meeting within the Senior Officials Advisory Committee (SOAC).

Guidelines are considered essential in order to help the public sector in decision-making related to making information available for external use and supporting the development of the information market; and to establish certain ground rules for avoiding possible unfair competition.

The guidelines, which are advisory only, are aimed at providing a basic set of generally agreed principles and recommendations which can be used in the development of national guidelines in individual Member States. They are in no sense directives, but it is hoped that they will, by virtue of their production at the Community level, support national initiatives designed to promote the growth of the European information industry.

C. JANSEN VAN ROSENDAAL

INTRODUCTION

Governments and public sector bodies collect large amounts of data and information, as part of their routine functions, which could be made available to the private sector for the construction and marketing of electronic database services. The private sector is well placed to combine information from a variety of government sources, and its prime function is to produce and distribute information products oriented to the needs of the market. In order to develop and strengthen the information industry, a positive initiative is required from governments, to encourage the use and exploitation of public sector data and information. However, there are few convergent policies or guidelines within Member States relating to the role of the public sector in this area. In addition, if there are different policies operating in the different Member States, then it will be very difficult to develop the market. It is therefore desirable that national policies, as far as they exist, be coordinated at the Community level in order to allow the majority of the EC countries not yet having such a policy to follow these orientations on a national level.

In the following text, the guidelines are numbered, and explanatory material is printed in italic.

GUIDELINES FOR IMPROVING THE SYNERGY BETWEEN THE PUBLIC AND PRIVATE SECTORS IN THE INFORMATION MARKET

THE PUBLIC SECTOR AS A PRODUCER OF BASIC DATA AND INFORMATION

Following the general principles used in the European System of Integrated Economic Accounts (ESA) (Sector 60, general government), the public sector includes central and local public administrations, which administer and finance a group of activities, principally of a non-market nature, intended for the benefit of the community, and institutions whose principal resources are derived from public funds. Organizations wholly or partly owned by the public sector and operating under the normal rules of the market are considered for the purpose of these guidelines as being in the private sector.

In the following guidelines, "exploitation" may include some or all of the activities involved in the instruction, manufacture and distribution of value-added information services. Electronic information services include all products and services originating from binary storage in a computer.

1. Public administrations regularly and systematically collect basic data and information in the performance of their governmental functions. These collections have value beyond their use by governments, and their wider availability would be beneficial both to the public sector and to private industry. Public organizations should, as far as is practicable and when access is not restricted for the protection of legitimate public or private interests, allow these basic information materials to be used by the private sector and exploited by the information industry through electronic information services.

Information to which access would be likely to be restricted includes material relating to national security, external relations, the safety of the State and public security, matters sub judice.

personal privacy and personal data, commercial and industrial confidentiality, and in general any material required by law to be held in confidence. When availability of data or information for use or exploitation is denied to the private sector, an explanation of the reason for non-availability should be given.

2. Member States should compile and publicize guidelines delining the conditions of release, use and exploitation of public sector data and information.

National or regional guidelines of greater specificity, developed by consultation with the appropriate bodies, are required to take account of the different conditions prevailing in the individual Member States.

3. Basic data and information collected by the public sector should be regularly reviewed, with regard to the possibility of their further use, and exploitation.

If consideration is being given to the harmonization of public sector data and handling procedures in the interests of greater efficiency, regard should also be paid to the possibilities for easier use and exploitation of the information by the private sector. If circumstances permit, it may be advantageous to involve the private sector in the review process.

4. The availability of basic data and information should be publicized to the private sector, and the procedures by which it can be obtained and used or exploited should be made clear. Negotiation procedures and pricing principles should as far as practicable, having regard to the characteristics of the data or information, be harmonized across public administrations.

The establishment of an advisory body, able to coordinate and share among administrative bodies experience of negotiations with the private sector of the information industry, and the development of model contracts, are measures likely to promote uniformity of procedures.

Pricing policies may vary depending on the nature of the information. A price should be established which reflects the costs of preparing and passing it to the private sector, but which does not necessarily include the full cost of collecting and handling it in the course of routine administration. The price may be reduced if provision of the resulting information service is deemed to be necessary in the public interest. Public sector accounting procedures should not impede receipt of payment for information or services sold.

5. When public sector information or data is released for exploitation by the private sector, restrictions should not normally be placed on the types of customer or the territories to which the resulting service may be made available.

The general principle is that no unnecessary barriers to the flow of information across borders should be imposed.

6. Contracts or other arrangements with private sector database providers or host services should not grant exclusive rights if they lead to distortion of competition. If, for reasons such as the penetration of a new market or provision of a service in the public interest, an exclusive right is deemed necessary, it should be subject to regular review.

THE PUBLIC SECTOR AS A PROVIDER OF ELECTRONIC INFORMATION SERVICES

7. The public sector should adopt policies and procedures which encourage investment by the private sector in the development of information services based on public data.

The database industry is characterized by low levels of investment and risk aversion among the traditional publishing or manufacturing groups which have entered the market. Use of public sector data and information presents an opportunity to encourage

the private sector in the provision of electronic information services.

8. When a public administration provides electronic information services directly, it should avoid any practice which leads to the distortion of competition. Before establishing a new electronic service or continuing an existing one, public administrations should consider whether an existing private sector service can be used or adapted to meet their requirements.

Reasons for which the public sector might develop and support electronic information services could include, amongst others, the following examples:

- (i) *where the service is deemed to be essential to the public interest, but the private sector is unwilling or unable to offer it on reasonable terms;*
- (ii) *where it is an inseparable part of public sector tasks;*
- (iii) *where a visibly neutral service, independent of the private information industry, is required.*

9. Electronic information services directly supplied by the public sector should be regularly reviewed, with a view to deciding whether their provision by the public or private sector is most appropriate, or whether the involvement of the private sector in their production or distribution, or their replacement by appropriate commercial services is desirable.

The public sector could, for example, develop databases and then consider offering them to the private sector, or could offer the distribution rights of public sector databases to the private sector. In order that the taxpayer may share in the rewards of success when databases which have reached commercial viability are transferred, a royalty payment in addition to the negotiated price may be considered appropriate.

10. Electronic information service entrepreneurs in European Community countries should be treated on an equal footing irrespective of their country of origin within the European Community.

The offer of, for example, rights of exploitation of public sector data or information should be made on an equal footing to all EC hosts, no special advantage being given to national hosts.

PUBLIC SECTOR SUPPORT OF INFORMATION SERVICES

While as yet no common procedures for public support have been established, in this relatively new sector certain ground rules ought to be observed.

11. Support from the public sector may only be given in accordance with the European Community rules on competition, as expressed in Articles 92 and 93 of the Treaty, on aids granted by States.

12. Subject to the provisions of Guideline 11 above, direct or indirect financial support from the public sector may be provided to encourage pre-competitive research and development, and to encourage the emergence of new market sectors.

Public support can be given provided that reasonable and non-discriminatory procedures are set up to transfer the R&D results to interested organizations within the Community who wish to exploit them commercially. Public support should cover only part of the investment costs during development and start-up phases, and not ongoing operating costs of services, and such support, limited in time, should not generate unfair competition for existing services.

13. Public assistance may also be provided to develop and maintain information services which cannot become viable on a commercial basis but which are necessary in the public interest. Public assistance may also involve reducing linguistic barriers to the use of existing databases of European origin, by making them accessible in other languages.

14. As part of the process of stimulating the development of the information market, consideration should be given to the establishment of joint ventures between the public and private sectors.

Support can also be given by the public sector to the establishment of new electronic information services in the marketplace, by acting as a 'launch customer' and guaranteeing the purchase of an agreed amount of appropriate service provision.

15. Conditions governing application of public support to users of European electronic information services should not discriminate against these services on the basis of their European Community country of origin.
16. Public sector accounting and budgetary procedures and exchange controls should not prevent access by interested public departments to electronic information services throughout the Community.

LEGAL AND STATUTORY RESPONSIBILITIES

17. The public sector should strive to eliminate unjustified legal or other obstacles to the use of public information by the private sector and its exploitation by the information industry, while ensuring that commercial and other confidentiality considerations and civil and criminal liability are respected (see Guideline 1).

Public administrations should, for example, be clear in the applications of rules for classification of information.

18. The public sector should, to the highest extent possible, make use of the discretion given under Article 2 (4) of the Berne Convention to exempt from copyright texts of a legislative, administrative or legal nature and official translations of such texts. In the case of texts falling under the copyright convention, the public sector ought not to award exclusive right of reproduction to a single organization as this might hinder value enhancement by other users.

Article 2 (4), as revised at the Stockholm Copyright Convention, 1967, states that 'It shall be a matter for legislation in the countries of the Union to determine the protection to be granted to official texts of a legislative, administrative and legal nature,

and to official translations of such texts'. The aim is to adopt the most favourable interpretation of the Convention in order to encourage the private sector to create advanced information services.

19. When public sector information or data is made available for private sector use or exploitation, any pre-existing citizens' rights of access to the original information as determined by legislation must be preserved.

The individual should continue to be able to have access to such information on the same terms as obtained before its release to the private sector.

European Communities — Commission

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Kay Brown

Alaska State Legislature House of Representatives

November 27, 1989

Rep. Red Boucher, Chairman
House State Affairs Committee
Alaska State Legislature
3111 C Street
Anchorage, AK 99503

Dear Rep. Boucher,

Since I was out of town when the House State Affairs Committee met recently to discuss state information services, I wanted to share some of my thoughts in writing.

As you know, when the Legislature is not in session I work as an analyst for PlanGraphics, Inc., a Kentucky-based firm that specializes in the design and implementation of geographic information systems (GIS). In that context I have had the opportunity to do research and become familiar with public access and computer technology issues. While the discussion below mostly addresses issues affecting GIS development, these concepts also are applicable to other information systems.

Public access to government information is a fundamental right that operates to check and balance the actions of elected and appointed officials. The courts have established a clear connection between the "right to know" and governmental accountability. When tax dollars are spent, or government takes action, citizens can review the information on which the decision was based. The right to know the basis for government's actions and decisions provides a deterrent to abuse of government authority, but this general concept does not address a myriad of emerging information access issues.

In the context of GIS development, I have become convinced that the public interest will be best served by implementing the concept of "information utilitarianism" -- the goal of which is to provide the greatest access to information for the greatest number.

The technical and institutional issues imposed on a GIS custodial agency are complex. Regulations (6 AAC 95) specify access procedures applicable to custodians of government records, but Alaska law does not address the expanded roles of the agencies, made possible by GIS and other technological improvements, as information disseminators and integrators.

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The evolution of GIS into an "information utility" that provides information products and services for standard rates raises significant policy issues concerning the economics of information and expanded government authority to provide information services. This critical debate likely will result in division of control over the "value of information," as well as the analytical and integration capacities of the technology, among various contenders. Government will remain the collector of information, controlling the updates to the most extensive and useful data bases, and thus is the initial "owner" of the value of a significant portion of source information.

The information processing capabilities of GIS make it reasonable to anticipate an unprecedented number and variety of access requests coming from sister agencies, commercial vendors, and the general public as the system applications expand and outsiders become aware of the resource. Most multilayered GISs will have the capacity and ability to produce a much more complex set of information and information products than was contemplated when the public records policies were set. Open records laws deal quite adequately with the three or four requests a year made to a typical government agency, but have a different impact when applied to several hundred requests a month, including requests such as on-line access and complete data base updates.

The utility of GIS for managing government's information is such that outside requests can predictably reach a level that could severely limit any control over staff time and the agency's budget. Another concern is the ever increasing cost to the state to meet the rising costs of increasing access.

Literal application of the current regulations causes more potential restriction of information access than it promotes in the GIS environment. Rules that adequately protect the public's right to know in the world of paper records can prove counterproductive in the world of information management through computer technology. The map can now be managed as a database and not as a picture. If a map was used to make a leasing decision, a copy of the map should be available under the open records law. But is there any public policy basis for providing access relatively free for the commercial use of a map if it did not exist before the request? Information in a GIS data base can be analyzed and manipulated in an almost infinite number of ways to produce new information that did not previously exist.

Based on two basic and quite diverse policy approaches visible today in different jurisdictions, policy makers are

trying to meet the requirements of the applicable state open records law. An agency faced with dealing with open record requests at its own expense (in terms of management of staff time, capital investment in the system, and especially operation and maintenance costs) has little incentive to operate as a utilitarian information processor.

In the absence of cost recovery options, GIS managers may perceive it to be in their interests to refuse as many requests as possible by distinguishing the requested material from "records" or inventing some other basis to deny access. These might include, "...the information is not final, the information requires proprietary software, the information is not available in the form requested, the request is not specific enough to identify the record," and so on.

Most GIS managers probably would like to grant broader access to information, but they must be able to afford the exercise. The more successful the agency is in limiting access, the less expense that must be covered by increased appropriations from the legislature.

The most easily defended policy at this time is to 1) grant all requests for traditional text material in printout form, 2) deliver a copy of the database in the form of a tape when asked, 3) absorb the real costs of the exercise, and 4) turn down all requests that don't fit that mold.

If the access request is analyzed exclusively under the open records law, and an exception category fits well enough to refuse access, the exception will not allow for subsequent sale or distribution of the particular information or different information to satisfy a similar future request. If the access request is met merely because no open record exception applies, then no subsequent control is retained for similar requests in the future, no matter how burdensome or expensive they might prove to be.

For two kinds of financial reasons, GIS custodians are choosing to pursue an active policy of providing and selling information. The first reason is to obtain reasonable purse-string control over access necessary to limit frivolous requests and to avoid the unpredictable expense of meeting the potential demand. The second reason is to establish a method for offsetting the costs of establishing, operating, and maintaining the system.

Under present Alaska regulations it is not possible for an agency to charge fees for GIS products and services beyond the cost of searching and copying.

In order to move toward the concept of information utilitarianism, and promote broad public access to

information kept by state agencies, I believe we should amend the statute to make a distinction between "records" and "products and services." This solution would uphold the underlying principles of the Freedom of Information Act to keep government accountable for its actions and expenditures while simultaneously promoting utilitarian access to state information.

This strategy envisions proprietary government action to make information *products and services* available for a price calculated to produce a balance between revenues and expenditures. Information that is used to form public policy would continue to be treated as a *record* and made available to any member of the public for a nominal cost.

A reasonable distinction between information that constitutes a *record*, and information that constitutes a *product, publication, custom report, custom map, or a service*, will enable an agency to enhance access for the general public and recover a portion of the system's cost from commercial and other large users. This will help maintain the long-term viability of the state's GIS systems.

The system of public access I envision would establish user fees for various levels of access to an agency GIS. Users could be offered "access packages," each sufficient to produce a range of products or services within the full range of system capabilities. The GIS agency could offer access to the system at one of several functional levels, within which any process or product can be located. Basically, functionality equates to software capability, so it is access to software that distinguishes the levels in this proposed access scheme. For example, functionality levels could include:

- Plotting, printing, and reproduction of standard products only;
- All above, plus alphanumeric query and printing capability;
- All above, plus graphic query and plotting capability;
- All above, plus nongraphic data input and analysis capability; and
- All above, plus graphic data input and analysis capability.

Again, any information used to make a decision or form public policy would be defined as a *record* and would continue to be available to any member of the public for the nominal cost of searching and copying.

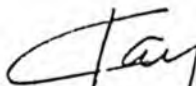
Thank you for the opportunity to comment. I am working on legislation on this topic and other related issues, including privacy concerns, that I plan to introduce next

Rep. Red Boucher

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session. I look forward to discussing this with the State
Affairs Committee.

Sincerely,

A handwritten signature in cursive script, appearing to read "Kay", with a long vertical line extending downwards from the end of the signature.

Rep. Kay Brown

Policies for the Electronic Information Age

Now that computers have taken over, states need to update the rules for managing their information resources.

Edwin Levine

Information – the lifeblood of government – is getting more complicated to manage.

Like everyone else, states have become totally dependent on computers and software, networks and telephones, for stor-

Edwin Levine is staff director of the Florida Legislature's Joint Committee on Information Technology Resources.

ing, sorting and providing access to their information. Managing this electronic data and the technological structure that supports it will become the challenge of the '90s.

Statutes dealing with government information and the public's right to know have become outdated. Lawmakers are finding themselves embroiled in complex debates over information dissemination

and the costs of access to computerized government information, copyright, computer security, optical storage and computer privacy.

The need for redefinition is based on the increased value of the information being produced, created and stored by government today. It was valuable as "marks on paper," but the costs of finding, sorting, combining and analyzing paper files were prohibitively high. Computerizing the information has reduced costs, improved the ease of use and provided capabilities for information management that were impractical with paper records.

Today it is possible to use technology to manage information, rather than having to manage the technology itself. For state legislatures this is a critical distinction. If we separate the information from the technology that stores and processes it, the underlying policy issues are much clearer. These issues are the meat and potatoes of state legislatures: How will scarce resources be allocated? What are the equity concerns? What is the public interest?

Information is an asset. But does the information belong to the individual who provided it to the motor vehicle registration bureau? Or to the bureau, which wants to sell it to a company that markets mailing lists? Or is it now "public information," which must be provided to any person who asks for it, including the child support enforcement unit that wants to find recalcitrant parents?

Legislative responses to these questions are eclectic. Some states restrict the release of "personally identifiable information," while others limit only distribution of "confidential" information. At the federal level, Congress passed the Computer Matching and Privacy Protection



Act last October. It establishes stringent controls on matching computerized information about individuals.

Studying the problems raised by the growth of computerized government, the Florida Legislature's Joint Committee on Information Technology Resources identified four major groups of issues that lawmakers are going to have to deal with — control of information, its dissemination, its security and its preservation.

One of the problems of controlling information is the question of privacy, allowing people to know what personal information is being collected about them, why it was collected, where it came from, how it will be used, who has access to it. The common concern is the individual's lack of control over information about himself once it is computerized.

The second set of issues raises fundamental questions about government's responsibility for providing access to public information. It brings up such questions as whether government can copyright its information, whether software written by government employees should be sold, who should be allowed and who prevented from disseminating government information, whether government will provide only what the private sector won't, whether information will be available to everyone or only to those with a computer, whether it's fair to provide a computer printout to some and a diskette or tape to others.

The debate over who will profit from the use of information is fierce. Many public agencies would like to offset the tax burden with profits from their investment, but should taxpayers have to pay again for what they have already funded? Minnesota allows its counties to copyright and sell their software. Is it in the public interest to have government compete with private business? Should private software companies be taxed if the receipts are to be used to fund the marketing of software developed by public employees?

Is it fair for government to charge for the examination of its actions? Is it appropriate to require that examination of the public record be based on fees or the ability to pay, or should citizens have free access to this material?

The third and fourth sets of issues that legislatures must address are those of security and preservation. Security is vital to ensure that data is neither altered nor destroyed and that confidential information is not released. Other security issues have to do with disaster recovery, access controls, security plans and protection of functions such as electronic voting systems where the integrity of the process must receive extraordinary attention.

Preservation problems have to do with saving and managing public records that are stored on non-paper media such as magnetic tape or optical disk. Questions that have to be answered include what is the status of non-paper records as evidence, whether a document is a copy or the original, how to manage access and destruction of computer records and the software used to search them, and how to determine what records to preserve given the glut of useless information that can now be cheaply stored electronically. Then there is new technology such as electronic mail that never creates a paper document at all.

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

New York has completed a plan to manage and preserve electronic records. The Uniform Commercial Code is being reviewed to determine how electronic records will affect current law.

State legislatures have dealt with broad societal changes in the past, but the information age is speeding toward us a lot faster than anything we've ever dealt with before. The adoption of information technology may be virtually complete by the turn of the century. Will lawmakers have enough time to determine the public interest in these issues?

The treatment of government's own information will be most troublesome. Who will control this information, who will disseminate it, how will it be secured and how will it be preserved? The information age will force every legislature to re-examine old and settled issues from a new perspective.



Which manufacturer outfitted the 1987 America's Cup Winner with a secure communications system?

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Informing the Nation: Federal Information Dissemination in an Electronic Age

The government today stands at a major crossroads with respect to the future of Federal information dissemination. Technical advances are creating opportunities for productivity improvement in Federal information dissemination that OTA estimates, conservatively, at hundreds of millions of dollars per year. Technological advances have opened up many new and potentially cost-effective ways to disseminate Federal information, especially those types of information (such as bibliographic, reference, statistical, and scientific and technical) that are particularly well-suited to electronic formats. For example, an entire year's worth of the *Congressional Record* or *Federal Register*, or several Bureau of the Census statistical series on employment and demographic trends, can be placed on one compact disk that can be easily read with a low-cost reader and basic microcomputer. Press releases, weather and crop bulletins, and economic or trade indices can be disseminated immediately via electronic bulletin boards or online information systems.

OTA expects important underlying technical advances in microcomputers, printers, scanners, electronic publishing systems, optical disks, and a host of online networks to continue unabated for at least the next 3 to 5 years and 10 years or more in many cases.

On the demand side, OTA's 3- to 5-year outlook indicates that overall demand for Federal information in paper formats will decline modestly and the demand for microfiche will drop rather markedly (except for document storage and archival purposes), while the demand for electronic formats will continue to increase dramatically. The results of surveys conducted by the General Accounting Office indicate, for example, that civilian agencies disseminated electronically over 7,500 information products in fiscal year 1987, which is more than triple that of 4 years earlier.

Information is the lifeblood of many Federal Government programs and activities and is essential to the implementation of agency missions and to informed public debate. The advent of electronic dissemination has generated serious conflicts over how to maintain and strengthen public access to government information and balance the roles of the Federal Government and the private sector. Congress has enacted numer-

ous laws that emphasize the importance of broad public access to Federal information and assign various information dissemination functions to individual Federal agencies and governmentwide clearinghouses. But the existing statutory and institutional framework was established by Congress largely during the pre-electronic era, and technological advances are creating a number of problems and challenges.

- At a fundamental level, electronic technology is changing or even eliminating many distinctions between reports, publications, databases, records, and the like, in ways not anticipated by existing statutes and policies. A rapidly growing percentage of Federal information exists in an electronic form on a computerized system as part of a "seamless web" of information activities.
- Electronic technology is eroding the institutional roles of governmentwide information dissemination agencies. While many individual Federal agencies disseminate at least some of their information in electronic formats, the central governmentwide dissemination mechanisms (primarily the Superintendent of Documents sales program at the U.S. Government Printing Office, Depository Library Program administered by GPO, and National Technical Information Service) are presently limited largely to paper or paper and microfiche formats and thus disseminate a declining portion of Federal information.
- Technology has outpaced the major governmentwide statutes that apply to Federal information dissemination. The Printing Act of 1895, Depository Library Act of 1962, and Freedom of Information Act of 1966 predate the era of electronic dissemination. The Paperwork Reduction Act of 1980 was amended in 1986 to include information dissemination within its scope, but substantive statutory guidance on electronic information dissemination per se is minimal.
- The advent of electronic dissemination raises new equity concerns since, to the extent electronic formats have distinct advantages (e.g., in terms of timeliness, searchability), those without electronic access are disadvantaged. In general, library, research, media, consumer, and related groups

argue that the Federal Government has a responsibility to assure equity of access to Federal information in paper and electronic formats.

- Technological advances complicate the Federal Government's relationships with the commercial information industry. While those companies that market repackaged or value-added Federal information (e.g., with additional indexing or analysis) benefit from access to electronic formats, some of these firms are concerned about possible adverse effects of government competition and oppose government dissemination of "value-added" information. This conflicts with the long-established government role in producing and disseminating value-added information products in paper format and its logical extension to electronic formats.

OTA concludes that congressional action is urgently needed to resolve Federal information dissemination issues and to set the direction of Federal activities for years to come. Congress needs to provide direction to existing agencies and institutions with respect to electronic information dissemination. Key policy alternatives are listed in the box below.

Copies of the OTA report, "Informing the Nation: Federal Information Dissemination in an Electronic Age," are available from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402-9325. (202) 783-3238. The GPO stock number is 052-003-01130-1; the price is \$14.00. Copies of the report for congressional use are available by calling 4-8996. Summaries of reports are available at no charge from the Office of Technology Assessment.

Key Policy Alternatives

Options for the Government Printing Office

- strengthen the GPO role in standards-setting, training, and innovation relevant to electronic publishing.
- include selected electronic information formats and products in the Superintendent of Documents sales program (while preserving the prerogatives of agencies to disseminate electronic information themselves and of private vendors to further enhance and resell electronic information).
- improve traditional GPO printing services through more competitive pricing and delivery, itemized estimating and billing practices, surveys of customer needs and problems, and revised and strengthened GPO advisory groups.
- accelerate the introduction and use of electronic formats for the *Congressional Record*, *Federal Register*, and other key governmental process information products.

Options for the National Technical Information Service

- decide where NTIS should be located within the Federal Government and how it should relate to other Federal agencies, including what materials agencies should submit to NTIS.
- develop and implement an electronic document system, using a range of electronic publishing technologies.
- increase the cooperation with the Superintendent of Documents in regard to indexing, marketing, and international exchange of Federal information.

Options for the Depository Library Program

- offer electronic formats and products for distribution to depository libraries.
- conduct pilot projects, demonstrations, and tests involving various electronic technologies, financial arrangements, and delivery mechanisms (including possible involvement of the private sector).
- consider a reorganization or restructuring of the Depository Library Program in light of both electronic options and the evolving nature of libraries and the telecommunication infrastructure.

Options for Technical/Management Improvement

- establish governmentwide technical standards on text markup, page document description, optical disks, and other areas important to electronic information dissemination.
- establish governmentwide information index to major Federal information products, regardless of format.
- establish agency innovation centers to exchange learning and experience about technological innovations and user needs relevant to electronic information dissemination.
- revise the information resources management program to give information dissemination a stronger role.
- establish an electronic press release service for dissemination of time-sensitive Federal information directly to the press, via private electronic news and wire services, and to the Depository Library Program taking care that the needs of smaller, less affluent or technically sophisticated, and/or out-of-town news organizations are met.

Options for Statutory Change

- amend the Printing Act, Depository Library Act, and/or Paperwork Reduction Act to provide statutory direction for specific institutional and technical/management alternatives as well as to provide general philosophical guidance on electronic information dissemination.
- legislate a renewed congressional commitment to public access to Federal information in an electronic age.
- legislate a governmentwide electronic information dissemination policy, including more specific guidance on the role of the private sector, contracting out of Federal information dissemination, user charges, and provision of value-added information products.
- amend the Freedom of Information Act to bring electronic formats clearly within the statutory purview, and define the scope, fees, and procedures for FOIA requests and searches in an electronic environment.
- amend FOIA to function more broadly as an "access to information" statute rather than "access to records" statute.

Options within the legislative branch

- establish a strategic direction for electronic dissemination of legislative branch information.
- determine how to ensure that electronic congressional information is available to the public, and how that information should be made available (by GPO, congressional offices, depository libraries, and private vendors).
- establish a coordinating mechanism of House, Senate, and support offices involved with the dissemination of congressional information, to maximize the exchange of learning, minimize potential overlap, and take advantage of opportunities for technologically enhanced access.



ALASKA STATE LEGISLATURE
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April 20, 1989

MEMORANDUM

TO: Representative Kay Brown

FROM: Maria Gladyszewski *M. Gladyszewski*
Legislative Analyst

RE: The Impacts of Technology on Public Access to Information, Computer Crimes and Employee Surveillance
Research Request 89.268

You asked us to conduct research on several aspects of advancing information technology. Specifically, you were interested in three areas: 1) public access to information, 2) computer crime, and 3) employee monitoring. I will discuss each area in detail after the following brief summary of findings.

SUMMARY

- All fifty states operate under Freedom of Information (FOI) provisions, either from state constitutional or statutory authority. The federal Freedom of Information Act (FOIA), passed in 1966, established for the first time a statutory right of access to federal government information.
- Federal and state laws regarding public access to information were written with paper records in mind, and most observers have concluded that current laws do not adequately address information dissemination in the computer age.
- The director of the National Center for Computer Crime Data stated that computer crime legislation needs constant revision to outpace new technologies. Legislation must prohibit alteration, damage, and destruction of data, as well as disruption and denial of services.
- Dean Guaneli, assistant attorney general, knows of no cases of computer crime prosecuted in Alaska. Several sections in the criminal statute could be used to prosecute unauthorized access to computers. Mr. Guaneli stated that having all sections dealing with potential computer crimes in one place in the statutes would be useful.

Representative Brown
April 20, 1989
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- Because of the increased number of computers in the workplace and the resultant increased ability to monitor employees, electronic monitoring has recently become a topic of public policy debate.
- Intrusive monitoring can conflict with traditional expectations of what is fair on the job. Monitoring without warning can make employees feel like they are being spied upon and may violate personal privacy of both employees and customers.
- Electronic monitoring is a topic that especially affects women and minorities because they comprise the majority of the clerical work force likely to be monitored (routine computer programmers, word processing clerks, telephone operators, airline reservation agents, etc.)

PUBLIC ACCESS/FREEDOM OF INFORMATION

You requested information relating to rights of the public to access governmental information and mentioned concerns about invasion of privacy. You asked that the public access research attempt to 1) define "public access," 2) determine what other states are doing regarding public access to information and 3) determine the status of current Alaska laws in this area. A brief review of federal and state legislation on access to information and privacy issues is offered below as an attempt at defining "public access." Also included is a discussion of access to information in relation to computerized databases.

"Public Access" to Information

Information has long been recognized as playing an essential role in a democratic political system. Rapid advances in information technology have raised new economic and policy issues to be addressed by Congress, the courts, and state legislatures. The technology makes it possible for agencies to acquire information electronically (via magnetic tape, cassettes, disks, optical disks, or transmission over telephone links) and to release information electronically (via the same media and by satellite transmission). The new technologies can improve public access to information. They can also, however, be very costly and can threaten the position of established electronic information suppliers. Additional questions arise depending upon whether one considers access obligations under freedom of information laws or whether one considers more active information dissemination initiatives (through some form of electronic publishing). "Public" access to information released electronically really means access by a relatively small portion of the population with access to microcomputers. Until every citizen has a microcomputer, the concept of "public" availability really means "direct availability to certain technologically sophisticated constituencies, such as investors, inventors and

patent attorneys, tariff filers or medical researchers, or indirect availability to members of the general public using agency public reference rooms or public libraries."¹

Federal Legislation Relating to Access to Information

Public access to information held by federal agencies is addressed in three federal acts.² The Administrative Procedure Act (APA) of 1946 requires agencies to publish information about agency procedures and rules in the Federal Register. The APA was "drawn upon the theory that administrative operations and procedures are public property which the general public, rather than a few specialists or lobbyists, is entitled to know..."³

The Freedom of Information Act (FOIA) of 1966 revised the public information disclosure section of the APA. The APA generally had been recognized as falling short of its disclosure goals and "came to be looked upon as more a withholding statute than a disclosure statute."⁴ The FOIA established for the first time a statutory right of access to federal government information. Underlying principles of the FOIA, however, are inherent to the democratic ideal: "The basic purpose of FOIA is to ensure that an informed citizenry, vital to the functioning of a democratic society, needed to check against corruption and to hold the governors accountable to the governed."⁵ In an effort to clarify and extend the disclosure requirements of the FOIA, and also as a reaction to the abuses of the Watergate era, the FOIA was substantially amended in 1974. These amendments significantly narrowed the ability of

¹Henry H. Perritt, Jr., Electronic Acquisition and Release of Federal Agency Information, (The Administrative Conference of the United States, 1988), p. 18.

²The Administrative Procedure Act of 1946 (5 USC §1002), the Freedom of Information Act of 1966 (5 USC §552), and the Privacy Act of 1974 (5 USC §552a).

³Lotte E. Feinberg, "Managing the Freedom of Information Act and Federal Information Policy," Public Administration Review, November/December 1986, p. 616.

⁴Guidebook to the Freedom of Information and Privacy Acts, pp. 1-10.

⁵NLRB v. Robbins Tire & Rubber Co., 437 U.S. 214, 242 (1978) cited in Guidebook to the Freedom of Information and Privacy Acts, compiled and edited by Justin D. Franklin and Robert F. Bouchard (1986).

agencies to withhold records.⁶ The Act contains nine exemptions which protect the following types of records from access, disclosure, or dissemination: 1) national security, 2) agency personnel matters, 3) matters specifically exempted from access by another statute, 4) commercial secrets, 5) agency deliberations, 6) private personal matters, 7) law enforcement investigations, 8) financial institution investigations and 9) geological surveys. The Federal FOIA applies only to "records" maintained by "agencies" of the Executive Branch of the federal government (including the Executive Office of the President and independent regulatory agencies). The FOIA does not apply to records maintained by the courts, by Congress, or by state governments.

The Privacy Act of 1974 responded to concerns about government use and possible misuse of personal information. Although the government had gathered information about citizens for decades, public concern was heightened at the time for several reasons. Among these were the abuses of Watergate (illegal wiretapping and surveillance of private citizens by federal agencies) and the technological capability to collect vast amounts of information on individuals. While information had previously been stored in manual files, advances in technology made it easier than ever for the government to compile, retrieve, analyze and disseminate data.

The Privacy Act states that "any citizen of the United States or an alien lawfully admitted for permanent residence" can use the Act and is entitled to its protection. The scope is more narrow than that of the Federal Freedom of Information Act, which allows use by "any person." The Privacy Act applies to records in a "system of records" and can be documents, regardless of physical form, which contain an "identifying particular" that could be used to identify someone (social security number, draft registration number, fingerprint, etc.) The Privacy Act adopts the definition of "agency" in the FOIA and also does not apply to records compiled by Congress, by the courts, or by state governments.

The Freedom of Information Act does contain provisions addressing potential conflicts between privacy interests and pro-disclosure policies. The FOIA attempts to resolve the conflict between public access to agency records and individual privacy by permitting agencies to delete private or proprietary information from records made available to the public. The Act states that "[a]ny reasonable segregable portion of a record shall be provided to any person requesting such record after deletion of the portions which are exempt..."

⁶In 1976 Congress again narrowed what could be withheld from disclosure and in 1978 made some technical changes to the FOIA. Congressional hearings held in 1981 demonstrated that, after several years of administrative experience with the FOIA, the Act was "in need of both substantive and procedural reform." The most recent FOIA amendments passed through Congress in 1986.

States' Action Relating to Freedom of Information

All fifty states operate under Freedom of Information provisions, either from state constitutional or statutory authority. According to the Council of State Governments (CSG), some states operate under restrictive open records provisions that classify as public records only those documents required to be kept by law or those made pursuant to law.⁷ Less restrictive laws usually provide that "all records in the possession of a public agency" are public unless otherwise specified in statute or regulation. Thirty-six states, including Alaska, have laws of this type.⁸

Attachment B, a chart prepared by the National Conference of State Legislators (NCSL), lists states with FOIAs which specifically cover access to public records regardless of the physical characteristics of the records. Thirty-one states have laws that specifically include computerized public records.

All states provide exemptions to open records laws and the same categories of exemptions can be found in all states. Exemptions to state open records laws are of six types: 1) information classified as confidential by state law; 2) law enforcement and investigatory information (e.g., criminal history records, child abuse records); 3) trade secrets and commercial information, 4) preliminary department memoranda (e.g., working papers and correspondence of the governor and legislators, intra-agency memorandums); 5) personal privacy information; and 6) information relating to litigation against a public body (e.g., legislative research documents, bill drafting services).⁹ Table 2 lists information classified as confidential in Alaska statute.

In March 1989, The Reporters Committee for Freedom of the Press, a nonprofit organization based in Washington, D.C., completed fifty-one guides to open meetings and open records laws entitled Tapping Officials' Secrets. The guides include analyses of statutes, exemptions, and other legal limitations. The open records chapter in each guide includes a section addressing the law on specific categories of records (e.g., bank records, hospital records, public utility records, etc.) The guides explain the foundations for state open government in common law, in the first state laws after independence, and in territorial⁷ laws in western states. A compendium of guides to all states is available for \$200, or they are available individually for \$5 per state. A copy of the guide for Alaska has been requested and will be forwarded to your office upon receipt.

⁷See Attachment A, a memorandum issued in December 1988 by the Council of State Governments, for more information on state public record laws.

⁸North Dakota Legislative Council, Open Records Laws, October 1986, p. 8, as cited in CSG Backgrounder No. 128801 (Attachment A).

⁹Braverman and Hepler, "A Practical Review of State Open Records Laws," 49 Geo. Wash. Law Rev., 1981, p. 739.

Access to Information in Alaska

The Alaska legislature has not passed legislation entitled Alaska's "Freedom of Information Act." Rather than one "open records" or "freedom of information" section in statute, provisions relating to access to information are found in many sections of Alaska statutes. The definition of "public record" was not added to statute until 1978.¹⁰ The sections considered to be Alaska's FOIA, were passed by the legislature in 1962.¹¹ These provisions pertaining to public records are relatively general as compared with some states' provisions. Whereas some states have passed specific laws and list many exceptions to open records provisions in their FOI laws, the principal part of Alaska's FOI statute lists as confidential only "(1) records of vital statistics and adoption proceedings; (2) records pertaining to juveniles; (3) medical and related public health records; (4) records required to be kept confidential by federal law or regulation or by state law..." The sections of the Alaska Administrative Code regarding public information became effective in 1982.

We have prepared Tables 1, 2, 3, and 4 in an effort to determine the status of current Alaska laws relating to public access. Table 1 lists statutes specifying records as public, Table 2 lists statutes specifying records as confidential, Table 3 lists other statutes relating to public access to information, and Table 4 lists the titles of interpretations of Alaska law issued by the Office of the Attorney General.

According to Assistant Attorney General James L. Baldwin, determining which records are confidential and which are public has not been predictable: "we buy a lawsuit every time we deal with it." Mr. Baldwin also stated that because of the "skeletal" nature of Alaska's public records statutes, difficulty arises when attempting to sort out what information is exempt from public disclosure.

¹⁰AS 11.81.900.

¹¹See Attachment C, AS 9.25.100-125 and 6 AAC 95, Alaska statutes and regulations regarding public information.

TABLE 1
ALASKA STATUTES MANDATING A RECORD AS PUBLIC

09.25.110	"Unless specifically provided otherwise the books, records, papers, files, accounts, writings, and transactions of all agencies and departments are public records and are open to inspection by the public..." (Section 3.22 ch 101 SLA 1962)
09.25.120	"Every person has a right to inspect a public writing or record in the state, including public writings and records in recorders' offices except (1) records of vital statistics and adoption proceedings...; (2) records pertaining to juveniles; (3) medical and related public health records; (4) records required to be kept confidential by federal law or regulation or by state law..." (Section 3.23 ch 101 SLA 1962)
11.81.900	"'Public record' means a document, paper, book, letter, drawing, map, plat, photo, photographic file, motion picture, film, microfilm, microphotograph, exhibit, magnetic or paper tape, punched card or other document of any other material, regardless of physical form or characteristic, developed or received under law...and preserved...by any agency, municipality, or any body subject to the open meeting provision of AS 44.62.310, as evidence of the...activities of the state or municipality or because of the informational value in it; it also includes staff manuals and instructions to staff that affect the public...." (Section 10 ch 166 SLA 1978)

STATUTE	TYPE OF RECORD
34.45.310	Abandoned property, lists of
24.45.370	Abandoned property, record of proceeds from the sale of
44.62.500	Administrative adjudication, copies of proposed decisions
18.26.040	Alaska Medical Facility Authority, minutes of board meetings
37.13.110	Alaska Permanent Fund, conflict of interest of board members of
37.13.200	Alaska Permanent Fund, information in the possession of, with exceptions
42.06.260	Alaska Public Utilities Commission, applications for certificates of public convenience and necessity
42.05.671	Alaska Public Utilities Commission, records in the possession of, with exceptions
42.06.445	Alaska Public Utilities Commission, records in the possession of, with exceptions
42.06.210	Alaska Public Utilities Commission, reports regarding oil and gas pipeline facilities
37.12.120	Alaska Resources Corporation, information in the possession of, with exceptions
08.13.050	Barbers and hairdressers, licensing records of
39.52.220	Boards and Commissions members, declaration of potential ethics violations
45.55.250	Broker-dealers/investment advisors, applications for registration and revocation orders
06.20.190	Business licensees, annual report
08.18.021	Construction contractors, applications for registration
08.18.081	Construction contractors, claims against
10.15.240	Cooperative corporations, name of each party to the contract
23.20.105	Employing units, records of, containing information prescribed by the Department of Labor
46.15.020	Environmental conservation, applications for permits and other documents in the Commissioner's office
39.52.210	Executive branch officials, declaration of potential ethics violations
39.52.130	Executive branch officials, some gifts received by, with a value of \$50 or more
16.10.410	Fish hatcheries, public meetings regarding issuance of licenses for
16.10.290	Fish processor/primary buyer, records of suits against
46.03.311	Hazardous waste, permit applications/reports of persons who generate, with exceptions
23.05.020	Labor, records of all proceedings of the Department of
24.05.135	Legislative floor sessions
24.23.060	Legislative professional service contracts
24.20.120	Legislative council, reports released by
24.10.120	Legislators, report of compensation to
24.60.100	Legislators, disclosure of representation for compensation by
24.60.050	Legislators, records of receipt of state loans or participation in state programs by, with exceptions
24.60.110	Legislators, conflict of interest
24.60.080	Legislators, gifts received by, with a value of \$100 or more
24.60.070	Legislators/public officials, some close economic associations of
44.47.571	Local boundary commission, minutes of all meetings and hearings
25.05.191	Marriage license docket
40.05.010-030	Mining claims, some information on the status of
45.30.018	Mobile homes, attorney general actions regarding claims against manufacturers of
08.71.055	Opticians, names of applicants and licenses
06.40.100	Premium finance licensees, annual report
36.30.530	Procurement, information regarding state contracts, "except as otherwise provided by state law"
39.35.040	Public Employees Retirement Board, record of proceedings of
39.45.025	Public Employees Retirement Board, record of proceedings of, deferred compensation
39.30.155	Public Employees Retirement Board, record of proceedings of, supplemental benefits
40.21.010-150	Public records, management and preservation of
40.17.010	Real property
43.05.010	Revenue, Commissioner of, record of each order, process and certificate issued
27.21.100	Surface coal mining, applications for permits for
45.50.130	Trademarks registered
14.40.160	University of Alaska Board of Regents, board meeting records

TABLE 2
ALASKA STATUTES WHICH MANDATE A RECORD AS CONFIDENTIAL

STATUTE TYPE OF RECORD

PROPRIETARY INFORMATION (TRADE SECRETS, MARKETING INFORMATION, ETC.)

46.03.180 Air contaminant sources, production figures or techniques of an operator of
44.88.340 Alaska Industrial Development Authority, commercially sensitive information of exporters obtained by
37.13.200 Alaska Permanent Fund, information which discloses the particulars of the business or affairs of a private enterprise
42.06.445 Alaska Public Utilities Commission, certain information regarding pipeline carriers
42.05.671 Alaska Public Utilities Commission, some records can be deemed privileged records, a person may make written objection to disclosure
38.06.060 Alaska Royalty Oil and Gas Development Authority, records relating to business or marketing information of producers
43.80.065 Commercial fish processors, information from reports used to identify individuals
44.81.260 Commercial Fishing and Agriculture Bank, information regarding the business records of, with exceptions
16.05.815 Commercial fishing, records which identify individual fishermen, buyers or processors
10.06.820 Corporations, information obtained by DCED from interrogatories
46.03.020 Environmental compliance, secret processes or methods of manufacture discovered by DEC during investigations regarding
08.54.230 Guided hunts, records maintained by DCED regarding
46.03.311 Hazardous waste, information that would divulge products or processes entitled to protection as trade secrets
27.20.041 Mine operation, all reports/information required to be filed regarding
27.25.090 Mineral assays, information pertaining to the results of, (for 2 years)
27.29.030 Mining loans, information supplied by applicants for
18.60.099 Occupational safety inspections, information that may reveal trade secrets obtained by the Department of Labor during
38.05.036 Oil and gas contracts, some information made available to Revenue during audits of royalty and net profit payments
38.05.035 Oil and gas leasing, some information received by DNR regarding
31.05.035 Oil and gas, reports filed by holders of permits to drill, with exceptions
46.04.025 Oil pollution control, proprietary technical information regarding
36.30.360 Procurement contracts, some information furnished by a bidder for
36.30.040 Procurement contracts, technical data and trade secrets submitted by bidders for
36.60.230 Procurement contracts, trade secrets and other proprietary information contained in proposal documents for
36.30.140 Procurement contracts, trade secrets and other proprietary information disclosed during bidding for
37.17.090 Science and Technology Foundation grant recipients, some information generated by (if agreed upon before grant is issued)
27.21.200 Surface coal mining exploration permit, information that is a trade secret or privileged competitive right of an applicant for
27.21.100 Surface coal mining, certain information relating to the competitive rights of a permit applicant

REGARDING COMMERCE

37.12.120 Alaska Resources Corporation, information which discloses the particulars of the business or affairs of a private enterprise
06.05.175 Bank records pertaining to depositors and customers, with exceptions
08.24.250 Collection agencies, some reports filed by
21.27.350 Insurance agents, brokers, and adjusters, records in the possession of the Division of Transactions of
21.36.400 Insurance claim investigations, information received by the Division of Insurance regarding
21.22.120 Insurance holding companies, examinations of
21.39.120 Insurance rating organizations, examinations of, until approved by the director of insurance
36.10.190 Public contracts, information regarding specific employees of holders of
06.30.120 Savings and loan records, with exceptions
06.30.655 Savings and loans, information obtained by DCED regarding
21.34.090 Surplus lines insurance, records of examinations of
21.34.080 Surplus lines insurance, report submitted to the Director regarding
43.19.010 Tax compacts, information obtained during audits of multistate
43.05.230 Tax returns, particulars set out or disclosed in, with exceptions
09.25.100 Taxation, information which discloses the particulars of the business or affairs of a taxpayer
44.33.020 Tourism-related businesses, information obtained by DCED that discloses the particulars of an individual business

TABLE 2 (Continued)
 ALASKA STATUTES WHICH MANDATE A RECORD AS CONFIDENTIAL

STATUTE TYPE OF RECORD

LAW ENFORCEMENT AND INVESTIGATORY INFORMATION

47.17.040 Child protection, investigation reports and reports of harm
 12.62.015 Criminal justice information
 28.35.032 Driving while intoxicated, information supplied to the court system by providers of treatment programs for persons convicted of
 28.35.030 Driving while intoxicated, information supplied to the court system by providers of treatment programs for persons convicted of
 47.37.170 Intoxicated persons, record of protective custody for
 33.16.170 Parole, preparole reports and other information obtained by the parole board
 33.20.211 Prisoners, certain documents regarding

REGARDING PUBLIC EMPLOYEES

22.30.011 Judicial conduct commission, private reprimand of a judge by
 22.30.060 Judicial conduct commission, proceedings of
 24.60.160 Legislative ethics committee, advisory opinions of
 24.60.170 Legislative ethics committee, investigations of complaints submitted to
 39.25.080 Personnel records of state employees
 39.52.340 Public employees, information obtained during ethics investigations of, while on-going
 39.52.320 Public employee, attorney general's report declaring no probable cause to believe an ethical violation was committed by
 39.52.240 Public employee, request for advice of the attorney general regarding an ethics violation of
 39.52.260 Public employee, supervisor's report of a potential violation by, unless formal proceedings are initiated
 37.10.071 Public fund investment records, if records contain information that discloses the particulars of the business or affairs of a person
 09.25.150 Public officials or reporters, sources of information obtained in duty as

REGARDING THE LEGISLATURE

24.20.301 Legislative budget and audit committee, reports and records of, until released
 24.60.050 Legislative budget and audit division, report to the committee prepared by, until released
 24.20.100 Legislators, research and bill drafting services for
 24.55.160 Ombudsman investigations, identities of complainants or witnesses

TABLE 2 (Continued)

ALASKA STATUTES WHICH MANDATE A RECORD AS CONFIDENTIAL

STATUTE	TYPE OF RECORD
REGARDING HEALTH AND SOCIAL SERVICES	
25.23.150	Adoption, all papers and records pertaining to, unless the court and all interested parties consent
47.37.210	Alcoholics/intoxicated persons, records of treatment facilities for
08.95.900	Clinical social workers, information about clients of
18.20.090	Hospital, information received by DHSS regarding an individual or a
09.25.120	Medical
18.23.030	Medical review organizations, all data/records, with exceptions
47.30.845	Mentally ill patients, information obtained in the course of evaluation, examination or treatment of
47.30.590	Mentally ill persons, information obtained by DHSS regarding
47.30.840	Mentally ill persons, photographs taken of
44.21.235	Older Alaskans Commission, records obtained by the office of the long-term care ombudsman
18.05.046	Persons with impairments, registry maintained by DHSS of
17.30.155	Pharmacy board, medical practitioners not required to furnish names of patients or research subjects to
08.86.200	Psychologists, information about clients of
47.05.020	Public assistance, information concerning persons applying for or receiving assistance
09.25.120	Public health
18.23.010	Reviews of health care services, physician-patient confidentiality cannot be used to withhold info during
47.10.340	Runaway minors, records of licensed programs for
47.35.060	Social service institutions, records regarding individuals placed for care in
23.15.190	Vocational rehabilitation, information concerning persons applying for or receiving
OTHER	
18.60.087	Accident and health hazards, comments and names of employees reporting
08.48.071	Architects, engineers and land surveyors, some records of the Board of Registration of
18.80.220	Civil rights, data on age, sex and race required to administer laws regarding
13.26.013	Decedents estates, guardianships and trusts, court records of proceedings regarding
13.26.109	Decedents estates, guardianships and trusts, statements made by respondents during the course of examinations of
47.24.050	Elderly, investigative reports and reports of harm received by DHSS regarding
09.25.120	Juveniles
09.25.140	Library, personal identifying information of people who have used library materials
14.43.910	Loan applications for postsecondary education
28.15.151	Motor vehicles, some information maintained by the Department of
18.60.475	Radiation sources, data obtained as a result of registration or investigation of
45.50.521	Unfair trade practices/consumer protection, records of an attorney general investigation regarding
09.25.120	Vital statistics, records of birth, death, marriage, divorce, adoption and related data, with exceptions
13.11.315	Wills deposited with a superior court for safekeeping
23.20.110	Workers' compensation, information obtained by the Department of Labor

Prepared by the House Research Agency, April 1989 (89.268B).

TABLE 3
ALASKA STATUTES RELATING TO ACCESS TO INFORMATION

- § 25.25.150 Access to confidential information, child support enforcement (allows access to confidential information for the purposes of child support enforcement)
- § 44.19.448 Access to confidential information, equal Employment Opportunity (allows the state EEO office access to confidential records necessary to carry out its functions; the office may not make public information designated as confidential under AS 39.25.080)
- § 24.20.271 Access to confidential information, legislative budget and audit (authorizes access to the confidential information of every state agency)
- § 39.90.010 Access to public information (a public employee may not be subject to disciplinary action for communicating information under AS 09.25.110 and AS 09.25.120)
- § 09.25.125 Access to public records (a person having control of a public record who obstructs the inspection of a public record subject to inspection under AS 09.25.110 or 09.25.120 may be enjoined by the superior court from obstructing the inspection of public records)
- § 12.40.060 Access to public records by the grand jury (the grand jury is entitled to access all public records)
- § 11.46.740 Criminal use of a computer (a person commits a crime if, having no right to do so, the person knowingly accesses a computer and as a result of that access obtains information concerning a person or introduces false information into a computer with the intent to damage or enhance the data record of a person)
- § 14.30.272 Education (allows parents/guardians of an exceptional child the right to review the child's records)
- § 24.60.060 Legislators, improper disclosure of information by (it is a conflict of interest if legislators willfully disclose or knowingly use information that by law is not available to the public and that they acquired in the course of official duties)
- § 39.52.140 Public officers, improper disclosure of information by (public officers may not disclose or use information acquired in the course of official duties that is confidential by law)
- § 11.56.860 Public officers, misuse of confidential information by (public servants commit a crime if they use confidential information learned through employment as public servants for personal gain)
- § 11.56.815-820 Tampering with public records (a person commits a crime if the person makes false entry in, falsely alters, destroys, mutilates, suppresses, conceals, removes, or otherwise impairs the verity, legibility, or availability of a public record; make a false entry means to change or create a public record by means of erasure, obliteration, deletion, insertion of new matter, transposition of matter, or by any other means so that the changed record states or implies a fact that the maker knows is not true)

TABLE 4
 SOME OPINIONS ISSUED BY THE OFFICE OF THE ATTORNEY GENERAL
 REGARDING OPEN RECORDS LAW IN ALASKA

DATE ISSUED	SUBJECT
10/9/86	Appendix TT to the civil manual contains a 64-page discussion about public records (found in special binder at Juneau AGO)
10/9/86	Appendix TT to the civil manual contains a lengthy discussion of the "executive" or "deliberative process" privilege (found in special binder at Juneau AGO)
4/24/85	IRS computer access to confidential Employment Services Division files is not permitted under AS 23.20.110
10/3/84	Judicial council must consider constitutional right to privacy and deliberation process in deciding if particular records are confidential
10/3/84	Judicial council has authority to adopt regulations regarding confidentiality, consistent with public disclosure statutes
6/25/84	Common law privileges are state laws that may require public records to be kept confidential under AS 09.25.120
6/25/84	The "executive" or "deliberative process" privilege is meant to encourage the free flow of advice and opinions to the decision maker in state government
5/19/83	Summary of AG opinions dealing with open meetings and public records issued between 1975 and 1983
9/30/82	Providing certain information by computer to a state agency is not a release of information under confidentiality statutes
4/12/82	Under AS 09.25.110-120, an agency need not divert scarce resources, to the detriment of its public mission, to find and provide a record
4/12/82	Commentary on and administrative intent of 6 AAC 95 (public information regulations)
4/12/82	AS 09.25.110-AS 09.25.120 do not extinguish various constitutional and common law rights, principles, privileges and exemptions
4/12/82	Statutory command to disclose government records cannot be heeded when it would invade property privacy or governmental rights
4/12/82	Statutory command to disclose government records cannot be heeded where it would intrude into governor's judicial appointment power

TABLE 4 (Continued)
 SOME OPINIONS ISSUED BY THE OFFICE OF THE ATTORNEY GENERAL
 REGARDING OPEN RECORDS LAW IN ALASKA

DATE ISSUED	SUBJECT
11/24/80	A federal confidentiality law or regulation must specifically include a state official before confidentiality applies
11/24/80	Federal freedom of information act exemptions do not apply to state records
11/24/80	The constitution is a state law for the state freedom of information act exemptions
11/24/80	Interest in privacy not absolute is balanced against public interest in disclosure
11/24/80	"Public records" is to be given a broad meaning
11/24/80	"Reasonable basis test" applies to agency determination on right of privacy and confidentiality
7/3/79	Agency has burden of proof identifying federal law or regulation or state law which makes record confidential
11/10/77	Records can be kept confidential when necessary to protect important public interest
6/4/76	Federal freedom of information act does not bind state
6/4/76	Privately prepared material is probably a public record if it is a part of the states' records and files
10/27/65	Voter registration list, but not the computer tape, is available for public use and reproduction

Note: More than 200 opinions are filed under the subject "public information" in the computer index of Attorney General Opinions. Those listed above are some of the general opinions and those that specifically mention computers in the heading. The above list includes Memoranda of Advice (informal opinions that are general interpretations of law), and Opinions (formal opinions interpreting more significant or complex issues of law).

Source: Index to Attorney General Opinions

Prepared by the House Research Agency, April 1989 (89.268D).

Access to Information in the Computer Age

The laws passed by Congress and state legislatures regarding access to information were written with paper records in mind; most do not adequately address the impact of computer technology on public access to information.¹² The Federal FOIA applies only to "records" maintained by "agencies" of the federal government. The statute does not distinguish information stored in computers from information on paper, but some agencies have contended that the Act does not apply to electronic records. Although federal agencies are not always consistent in interpreting whether computer data should be disclosed under the FOIA, and Congress has not amended the law to specifically include changes in technology, federal courts have ruled that electronic records, like paper records, are public under the FOIA.¹³

Significant unresolved issues remain, however, regarding access to information in an electronic age. Case law as applied to paper records under the federal FOIA establishes that agencies are not required to create new records in fulfilling requests. Electronic information technologies, however, obscure the boundaries between records and nonrecords (for example, databases resemble information "pools" rather than discrete records--does an agency "create" a record when sorting an information pool). New technologies also can change the definition of what is a "reasonable" search.

The Public Records Division of the Office of the Massachusetts Secretary of State sponsored the first national conference on issues concerning computerized public records in January 1987. Massachusetts officials organized the conference to address several problems arising from requests for access to computerized records. First, as mentioned above, it is difficult for those who maintain records to translate existing access principles into computer access principles. Second, the increased availability to gather and manipulate vast amounts of information on individuals is still a concern and may not be

¹²Several recent reports address public access to electronic information. The following reports can be seen at this office: U.S. Congress, Office of Technology Assessment, Informing the Nation: Federal Information Dissemination in an Electronic Age (October 1988, 333 pages); Administrative Conference of the United States, Electronic Acquisition and Release of Federal Agency Information (October 1988, 135 pages) and Federal Agency Use of Computers in Acquiring and Releasing Information (Recommendation No. 88-10, December 1988, 14 pages); Office of the Massachusetts Secretary of State, Report of the First National Conference on Issues Concerning Computerized Public Records (1987); U.S. House of Representatives, Committee on Government Operations, Electronic Collection and Dissemination of Information by Federal Agencies: A Policy Overview (April 1986, 70 pages).

¹³Long v IRS, 596 F.2d 362, 365 (9th Cir 1979), cert denied, 446 U.S. 917, 100 S. Ct. 1861, 64 L.Ed.2d 271 (1980), as cited in Electronic Acquisition and Release of Federal Agency Information, p.103.

adequately addressed by existing privacy laws.¹⁴ Thirdly, the commercial value of information can be much greater than what custodians may charge under existing laws.

A 1986 nationwide survey conducted by the Public Records Division of the Massachusetts Secretary of State found that the two areas of greatest concern to state freedom of information administrators are 1) "the best method for transposing existing FOIA provisions into a form which is adaptable to computer records" and 2) "the policing of the use of the vast amounts of personal data which can now be obtained in large quantities through requests for copies of computer tapes and disks."¹⁵

One issue already mentioned concerns whether an agency creates a new record by compiling information from a database in response to a FOIA request. The federal FOIA and state freedom of information laws obligate agencies to allow examination of existing records. Agencies are not required to interpret information or create new records. According to the Reporters Committee for Freedom of the Press, the Justice Department (which provides FOIA guidance to all federal agencies) contends that agencies are not required to program their computers to respond to information requests.¹⁶ In December 1980, however, the Administrative Conference of the United States (an independent federal agency established to improve the procedures of federal agencies) issued recommendations stating that "agencies using electronic databases rather than paper records should not deny access to the electronic data on the grounds that the electronic data are not "records," that retrieval of the electronic information is equivalent to the creation of a "new" record, or that programming is required for retrieval."¹⁷

In general, states have followed the federal practice of allowing FOI requests to seek the disclosure only of existing, identifiable records within an agency's possession and have held that agencies are not required to create or acquire records in response to a disclosure request.¹⁸

¹⁴Electronic Record Systems and Individual Privacy, a report issued in June 1986 by the Office of Technology Assessment, addresses this issue.

¹⁵Public Records Division, Office of the Massachusetts Secretary of State, Report of the First National Conference on Issues Concerning Computerized Public Records, 1987, Vol. 1.

¹⁶"Computer Data Access is Problem," The News Media and the Law (Winter 1989), p. 4.

¹⁷Recommendation 88-10, see note 12.

¹⁸B.A. Braverman and F.J. Chetwynd, Information Law: Freedom of Information, Privacy, Open Meetings, and Other Access Laws, 1985, p. 912.

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The Office of Technology Assessment (OTA) recently issued a report that urged Congress to amend the federal FOIA to maintain the Act's "integrity in an electronic environment."¹⁹ Fred Wood, project director of the OTA study, told me that while technology has made it possible to make available many types of information, national and state policies on access to information established in a pre-electronic era are unable to adequately deal with the electronic advances. We now have increased options for accessing and disseminating information (data can be retrieved more quickly; databases can be searched for subsets of data) but we still operate with an outdated policy framework. Mr. Wood stated that Congress and state legislatures need to clarify the gray areas still unresolved in their open records laws by updating policies to reflect technological advances.

Although Alaska statute does not specifically mention computerized records, James L. Baldwin, assistant attorney general, stated that the definition of a public record is broad enough that the form of a record is not relevant to whether a record is considered public (computerized records would be considered public records). He also stated, however, that agencies would not be obligated to "create" a record in response to a request for information. Alaska laws regarding access to computerized information are no more clear than federal law. Issues concerning access to computerized records--what in a database must be disclosed, how much effort an agency must expend to sort public data within a confidential database, must an agency provide data in a format convenient for the requester, etc.--have not been adequately addressed.

COMPUTER CRIME

You requested information on several state computer crime laws; copies are included as Attachment D.²⁰ You also requested copies of specific computer crime legislation (Attachment E)²¹ and model computer crime legislation (Attachment F).

The Computer Crime Law Reporter lists 48 states as having criminal provisions relating to computer crimes (Attachment G). The Alaska provision (AS 11.46.74) states that a person commits the crime of criminal use of a computer if "having no right to do so...the person knowingly accesses...a computer...and as a

¹⁹Office of Technology Assessment, Informing the Nation.

²⁰Computer crime laws from the states of Arkansas, California, Illinois, Minnesota, Missouri, New Jersey, Washington and Wisconsin are included.

²¹Federal legislation includes the Computer Fraud and Abuse Act of 1986 amends section 1030 of title 18, United States Code (the amended version of 18 USC 1030 is attached along with the text of PL 99-474, 100 Stat 1213); the Electronic Communications Privacy Act of 1986 (PL 99-508, 100 Stat 1848); and the Computer Security Act of 1987 (PL 100-235, 101 Stat 1724).

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result of that access...obtains information concerning a person or...introduces false information into a computer...with the intent to damage or enhance the data record of a person..."

J.J. BloomBecker, director of the National Center for Computer Crime Data, states that legislation needs constant revision to outpace new technologies. "Computer crime confounds the legislator because it requires aiming at a moving target. It can be safely predicted that as long as our computer and communications technologies continue to advance at their current breakneck pace, criminals will continue to come up with new ways to exploit them."²² Mr. BloomBecker contends that computer crime legislation must prohibit alteration, damage, and destruction of data, as well as disruption and denial of services.

Mr. BloomBecker said that the legislation drafted by the Data Processing Management Association (Attachment F) is the most current model legislation written. He also said that a few states, such as Pennsylvania, have adopted legislation similar to the Federal Computer Security Act of 1987 (included in Attachment E).

Dean Guaneli, assistant attorney general, knows of no cases of computer crime prosecuted in Alaska. Several sections in the criminal code, in addition to the section that prohibits criminal use of a computer, could be used to prosecute unauthorized access to computers. When asked about instances of "hackers" accessing computer records, Mr. Guaneli told me that a prosecutor would need to jump around a bit to find the relevant statute.²³ He stated that it would be useful to have all sections dealing with potential computer conflicts in one place in the statutes.

²²See Attachment H, "Cracking Down on Computer Crime," State Legislatures, August 1988, for more information on state computer crime legislation and a chart listing acts forbidden under current computer crime laws.

²³AS 11.46.740 (prohibits the criminal use of a computer), AS 11.46.200 (prohibits theft of services), AS 11.46.480-484 (prohibits criminal mischief), AS 11.46.490 (defines "tamper"), and AS 11.56.815-820 (prohibits tampering with public records).

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COMPUTER SURVEILLANCE AND EMPLOYEE MONITORING

You asked us to provide information about computer surveillance and employee monitoring by employers. You also requested copies of two bills relating to employee monitoring; they are included as Attachment I.²⁴

Supervisors have always monitored employees. Technological advances, however, now make constant monitoring possible--counting keystrokes of employees working on computers, listening in on telephone calls of airline reservation agents, recording vehicle speed, shifting, idling and the duration of truck drivers' lunch stops. Those monitored include word processing and data entry clerks, telephone operators, customer service representatives, mail clerks, airline reservation representatives, and truck drivers.

Some aspects of employee monitoring, such as telephone monitoring, have been around for many years. Because of the increased number of computers in the workplace and the resultant ability to monitor more employees, however, the issue has become a topic of public policy debate.

Intrusive monitoring can conflict with traditional expectations of what is fair on the job. A 1987 OTA report states that monitoring, "when done without notice or warning, can contribute to a feeling of being spied upon, and may have implications for the privacy of customers as well as employees."²⁵ The report also states that the new information technology "might give employers power of surveillance and control in the workplace that might be abused--used simply for the sake of control, beyond what is necessary to organize the work process."

According to the OTA report, women and minorities are most likely to be monitored electronically because "the clerical work force is predominantly female, and the low-skill end of the clerical work force has a disproportionate number of minority women. Similarly, women are more likely to be employed...[- in jobs such as] routine computer programming...Because monitoring is most likely to be applied to precisely these lower level jobs, work monitoring is a topic that especially affects women and minorities."

²⁴You requested copies of a bill in the 100th Congress endorsed by the Communications Workers of America (HR 1950/S 1124--to amend title 18 of the U.S. Code to require that telephone monitoring by employers be accompanied by a regular audible warning tone) and a worker advocate bill in Massachusetts that would limit the amount of employee monitoring (Massachusetts House Bill 4383--"An Act to Prevent Potential Abuses of Electronic Monitoring in the Workplace").

²⁵U.S. Congress, Office of Technology Assessment, The Electronic Supervisor: New Technologies, New Tensions, September 1987.

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According to Leslie Lople of the Communications Workers of America (CWA), legislation introduced in the 100th Congress requiring that telephone monitoring by employers be accompanied by a regular audible warning tone (HR 1950 and S 1124) received more than 170 co-sponsors in the House and 13 co-sponsors in the Senate. Because of the rapid favorable response on the issue, CWA began lobbying for an expanded version of the legislation. Ms. Lople expects a revised version of the bill to be introduced in Congress within the next few weeks by Representatives Don Edwards (CA) and Bill Clay (MO). The revised version resembles the Massachusetts legislation (included as Attachment I) and mandates employees' "right to know" that they are being monitored.

The government relations division of the Communications Workers of America reports that no state has passed comprehensive employee monitoring legislation. Ms. Lople stated that the Massachusetts legislature is still considering its employee monitoring bill originally introduced in 1987. Minnesota legislators are also working on an employee monitoring bill this session. Representative Tom Hayden introduced legislation in California in 1987 that prohibited employers from any type of electronic monitoring of employees without providing notice to workers; the bill, amended to prohibit only "subliminal message programs which carry messages by suggestion of self-hypnosis on a worker without the consent of the worker," passed the Assembly and the Senate but was vetoed by Governor Deukmejian.

* * * *

I hope this information is useful. Please contact me if you have additional questions.

Attachments

STATE OF ALASKA

DEPT. OF ENVIRONMENTAL CONSERVATION

Itemy
STEVE COWPER, GOVERNOR

OFFICE OF THE COMMISSIONER
PO BOX 0, JUNEAU, ALASKA 99811-1800

(907) 465-2600

January 22, 1990

POSITION PAPER

House Bill No. 405

"An act relating to public access to the information of the state"

Department Position

The Department supports the purposes of this bill. We are working in conjunction with the Department of Administration to fully determine its impacts.

We support the amendment of state law to allow for waiver of reproduction fees for public documents in certain cases. We believe that the cases should be spelled out in the statute. We receive many requests from non-profit organizations with very limited budgets. We support statutory language to allow us to provide copies to such groups without cost, within a reasonable limit.

We also support a statute change to ensure public access to information stored electronically. This policy must be crafted to ensure the security of computer systems. Allowing a member of the public on-line access to data files may only be allowed when the security of the underlying system can be ensured. Some computer systems are designed to allow this without security problems; others are not. Many systems allow open access and provide capability to change or destroy records once an initial password is entered. We cannot allow direct on-line access to our networked computer system and ensure the integrity of the underlying data. This is an issue that needs to be addressed in a comprehensive manner.

Item 5

M E M O R A N D U M

TO: Interested Parties
FROM: Rep. Kay Brown
DATE: Jan. 30, 1998
SUBJECT: Proposed Committee Substitute for HB 405

Thank you for your comments on HB 405, an act relating to public access to the information of the state. Attached please find a proposed Committee Substitute that incorporates a number of your suggestions.

The House State Affairs Committee will hold a public hearing on the proposed Committee Substitute at 8:30 a.m., Thursday, Feb. 1. The hearing will be teleconferenced to Anchorage, and you can testify there from the Legislative Information Office (3111 C Street).

Major changes from the original HB 405 are outlined below. The proposed CS:

- Adds a finding on privacy and intent language that any ambiguity be construed in favor of disclosure. (Section 1)
- Incorporates specific provisions from the current regulations (6 AAC 95) regarding access to public records, including
 - * the fee to obtain a public record may not exceed the cost of copying (duplication), except for very large requests. [Section 3, (b)]
 - * the fee for obtaining public records shall include the personnel costs of the search for the records and copying tasks if the production of records for one requestor exceeds 10 person-hours in a month. News organizations are not subject to this additional fee unless the requests are unreasonable, made in bad faith, or require extraordinary expenditure of state resources. [Section 3, (c)]
- Provides that fee reduction and waivers for public records [Section 3, (d)] and electronic services and products [Section 4, (b)] shall be uniformly applied among persons similarly situated.

- Provides that the fee for duplicating an electronic file or data base may not exceed the actual incremental costs of the agency. [Section 4, (c)]
- Requires agencies to notify the State Library Distribution and Data Access Center of electronic services and products offered to the public. [Section 4, (e)]
- Provides that when offering on-line access to an electronic file or data base, an agency shall also provide, without charge, on-line access through one or more public terminals. [Section 4, (f)]
- Provides that the Telecommunications Information Council (TIC) shall supervise and adopt regulations for the implementation and operation of the section by public agencies other than municipalities. [Section 4, (g)]
- Provides that each public agency shall establish the fees for electronic services and products. The TIC may cancel the fees established by a public agency other than a municipality if the council determines the fees are not reasonable. [Section 4, (h)]
- Requires the TIC to adopt regulations providing for an appeal procedure for a denial of a request to inspect or copy a public record. Provides that a person who appeals a final administrative order to the superior court may not be required to post a bond for costs on appeal. This section does not cover municipalities. [Section 6]
- Provides that a person may seek injunctive relief without exhausting administrative remedies. A person who seeks such injunctive relief may not be required to post a bond in order to begin an action for injunctive relief. [Section 7]
- Adds additional categories of "electronic services and products":
 - * providing software developed by an agency or by a private contractor for an agency;
 - * providing maps or other standard or customized products from an electronic geographic information system. [Section 8, (1)(F) and (G)]
- Adds a definition of "public agency." Public agencies include all administrative entities of the executive, judicial, and legislative branches of state government and municipalities; the University of Alaska, the Alaska State Housing Authority, and the Alaska Railroad. [Section 8, (5)]
- Modifies the definition of "public records" to include items developed or received by a private contractor for an agency. [Section 8, (6)]

- Provides that proprietary software programs are not "public records." [Section 8, (6)]
- Requires state agencies to inform individuals if personal information about them will be subject to public disclosure. This section does not apply to municipalities. [Section 13]
- Provides that a state agency (or municipality) may hold copyright for software created by it or developed for it by a private contractor. [Sections 11 and 13]
- Makes other minor and conforming amendments.

Thank you again for your help and interest. If you are unable to participate at the public hearing Feb. 1, please feel free to phone me or Mary Core of my staff with your comments (465-4998). Written comments may be submitted to Rep. Boucher, chair of the State Affairs Committee, or to me at P.O. Box V, Juneau, AK 99811.

Item 6

6-1782Hb
Bannister

2/5/90

A M E N D M E N T

OFFERED IN THE HOUSE

BY REP. BROWN

TO: CSHB 405 (State Affairs)

Page 1, line 6, following "access":

Insert "and changes"

Page 1, following line 22:

Insert a new paragraph to read:

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

Renumber the following paragraphs accordingly.

Page 11, following line 6:

Insert "ARTICLE 1A. PERSONAL INFORMATION IN PUBLIC RECORDS."

Page 12, lines 13 through 18:

Delete all material.

Insert the following sections to read:

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

personal information.

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

- (1) a description of the challenged personal information;
- (2) the changes necessary to make the personal information accurate or complete; and
- (3) the person's name and the address where the department may contact the person.

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

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

- (1) change the personal information according to the request and notify the person in writing of the change; or
- (2) deny the request and notify the person in writing of the reasons for the decision and the name, title, and business address of the person who denied the request.

(e) If a request is denied under (d) of this section, the person may provide to the state agency a concise written statement that states the person's reasons for disagreeing with the decision. The state agency shall maintain in its records the request made under (b) of this section and the statement provided by the person under this

subsection. On all of the state agency's records that contain the disputed information, the state agency shall clearly note which portions of the records are disputed. If the record is in electronic form, the state agency may note the dispute in one field of the electronic form and maintain the other information about the dispute in paper form.

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

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

(1) "person" means an individual;

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

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

ARTICLE 1B. COPYRIGHTS BY STATE AGENCIES."