ALASKA LEGISLATURE COMMITTEE FILES, 1989-1990 8672
6123 HOUSE STATE AFFAIRS

527

Delete "Sec. 44.99.030"

Insert "Sec. 44.99.050"

6-1782Hc
Bannister

A M E N D M E N T

OFFERED IN THE HOUSE BY REP. BROWN

TO: CSHB 405 (State Affairs)

Page 4, line 1:

Delete "(a)"

Insert "(b)"

Page 4, line 2:

Delete "an electronic file or data base"

Insert "a public record in the electronic form kept by a public agency"

2/5/90

AMENDMENT

OFFERED IN THE HOUSE BY REP. BROWN

TO: CSHB 405 (State Affairs)

Page 2, line 16, following "copying":

Insert "public"

Page 4, line 17:

Delete "shall also"

Insert "also shall"

Following "charge":

Delete ","

b. **Example / Checklist Contact Sheet**

LEGISLATIVE SPONSOR: House State Affairs

TC DATE/DAY: Thurs, Feb 1

(Pub. Hear) Work Ses. Inv. Hear

TIME: 8:30A - 10AM

LEGISLATIVE REFERENCE: HB 405

JUNEAU ROOM: Cap 102

SUBJECT: Public Access to EDP Info

BRIDGE:

OF PORTS:

CONTACT: Ann PH: 4937

DATE TAKEN/BY: 1/29 Peg

****

TELECONFERENCE SITES:

LIO'S

(Anchorage)
Barrow *
Bethel
Delta Junction *
Dillingham *
Fairbanks
Glennallen *
(Juneau)
Ketchikan
Kodiak
Kotzebue
Mat-Su
Nome
Petersburg *
Sitka
Soldotna
Valdez *

LTC'S

Homer
Wrangell

ALL LIO'S

OTHER SITES WELCOME WITH PRIOR NOTIFICATION

VTS'S

See List on Reverse Side

OFFNETS: Ed Levine 904-255-4471 Florida

Hugh Archer 502-223-1501 Kentucky

CHAIRING SITE: Juneau

CHAIRPERSON: Boucher

[ ] CONFORMS TO LEGISLATIVE COUNCIL POLICY 4/85

SIGNATURE OF SPONSOR/CONTACT PERSON DATE

****

SPECIAL INSTRUCTIONS

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CONSULTATION ON ELECTRONIC INFORMATION AND THE PUBLIC'S RIGHT TO KNOW

Agenda

Opening Session: October 23, 1989

8:30 am	Coffee
9:00 am	Welcome
9:10 am	Address: Senator Patrick Leahy "New Technology and Democratic Values"
9:40 am	Public Access to and Dissemination of Electronic Public Information: An overview of the policy debate regarding public access to and dissemination of electronic government information and the consultation agenda (Focus Paper 1)
10:00 am	The Freedom of Information Act: How courts and federal agencies have interpreted the FOIA to mandate access to public information in electronic form (Focus Papers 2 and 3)
11:00 am	Break
11:15 am	Resolving FOIA Electronic Information Disputes and Applying "Agency Record" Under the FOIA to New Forms of Electronic Records (Focus Paper 4)
12:30 pm	Lunch Break (lunch will be provided)
1:30 pm	Resolving Electronic FOIA Issues Continued: What is a reasonable search under FOIA? (Focus Paper 5)
2:15 pm	Litigating Over Redaction and Segregable Portions
2:45 pm	Requesting Information in Particular Formats
3:15 pm	Determining Costs and Granting Fee Waivers for Electronic FOIA Requests
3:45 pm	Break
4:00 pm	Expanding Access in the Electronic Age: The need for legislation (Focus Paper 6)
4:45 pm	Oversight and Compliance of the FOIA in the Electronic Age
5:30 pm	Reception

Rep Boucher FYI

Second Day: October 24, 1989

Federal Electronic Information Dissemination Next Steps
Policy Goals, Institutional Roles, and Policy Choices

9:00 am	Opening Remarks
9:10 am	Address: Representative Bob Wise "Expanding Federal Government Information Dissemination in the Electronic Era: The goal of public policy"
9:30 am	The Principles of Federal Electronic Dissemination Policy: Is there a new consensus? (Focus Papers 7 and 8)
10:15 am	**Summary/Break**
10:30 am	The "Affirmative" Government Role in Electronic Dissemination (Focus Papers 9 and 10)
11:20 am	**Summary/Break**
11:30 am	The Role of the Private Sector in Delivering Federal Electronic Public Information (Focus Paper 11)
12:20 pm	**Summary/Break**
12:30 pm	**Lunch**
1:30 pm	The Role of Libraries in Disseminating Electronic Public Information (Focus Paper 12)
1:45 pm	**Break**
2:30 pm	Implementing Federal Information Dissemination Policy (Focus Paper 13)
3:20 pm	**Break**
3:30 pm	A Hypothetical Case Study: The executive calendar (Focus Paper 14)
4:30 pm	Technology and Institutional Roles (Focus Paper 15)
5:00 pm	**Summary**
5:30 pm	**Adjourn**

FOCUS PAPER 4

A SYNOPSIS OF THE "PROFS" CASE

BY
KATHERINE A. MEYER
PUBLIC CITIZEN LITIGATION GROUP

BENTON FOUNDATION
Electronic Information Conference
(October, 1989)

Armstrong v. Bush: A Synopsis of the "PROFS" Case
By Katherine A. Meyer, Public Citizen Litigation Group

This case challenges the way in which the Executive Office of the President, in general, and the National Security Council, in particular, treat information generated over the IBM Professional Office System, or "PROFS." The system is often referred to as "electronic mail," because it allows agency personnel to communicate with one another through the computer system. This is the same system that was used by Lt. Colonel Oliver North to communicate the details of the Iran-Contra arms deal to National Security Advisors Robert McFarlane and John Poindexter. In fact, had the Congressional investigators looking into that matter not been able to resuscitate North's PROFS messages from the system, neither Congress nor the Independent Counsel (nor, for that matter, the public) would have been able to unravel crucial facts concerning this important chapter of recent American history. The case has extremely broad implications for the future treatment of vast amounts of government information, since, according to a recent study by the General Accounting Office, more than half of all federal agencies and departments use an electronic mail system.

The PROFS system has been in operation since November 1986 and is widely used by White House personnel. However, except in very rare instances, the White House does not consider the information transmitted over the system to constitute "records."

Consequently, it allows its employees to delete their PROFS notes on a routine basis, and it also routinely destroys the back-up tapes that are made of the system.

On January 18, 1989, the National Security Archive learned that the White House had circulated a memorandum to its employees instructing them to delete any remaining information on the PROFS system so that the new Administration could begin working with a clean system. Concerned that this procedure would result in destroying, for all time, important information pertaining to the conduct of foreign and domestic government business, the Archive went to federal district court in the District of Columbia and obtained a temporary restraining order prohibiting the White House from destroying the PROFS information that was left on the system. On the same day, the Archive also submitted a Freedom of Information Act request for access to the data. The White House subsequently agreed to preserve, on magnetic tape, all of the information at issue, pending resolution of the merits of the dispute as to whether such information must be preserved and eventually disclosed to the public.

There are several additional plaintiffs involved in the case, including the ACLU's Center for National Security Studies, the American Historical Association, the American Library Association, and individual researchers for some of those organizations. The case raises some very interesting and important questions under the various federal records laws. Those issues and the consequences of their resolution can be

summarized as follows:

(1) does information generated over the PROFS system constitute either "Presidential records" subject to the Presidential Records Act, or "agency records" subject to the Disposal of Records Act and the Freedom of Information Act;

(2) if PROFS material constitutes "Presidential records," then the President may not allow its destruction without first consulting the Archivist of the United States and giving Congress the opportunity to stop the destruction, and such material must ultimately be sent to the National Archives for preservation and eventually made available to the public, historians, researchers;

(3) if the PROFS material constitutes "agency records," then it must be disclosed under the Freedom of Information Act unless it falls under one of the nine exemptions to the Act;

(4) if the PROFS materials are exempt agency records, and are no longer being used by the White House or NSC, then they must be transferred to the National Archives for preservation, unless the Archivist approves their destruction.

The defendants in the case include the President, the National Security Council, and Don Wilson -- the Archivist of the United States. They take the position that since the PROFS system is analogous to a telephone, the information cannot be considered "records" that must either be disclosed or preserved. Consequently, the Archivist has never reviewed PROFS material, nor required any component of the White House to account for the wholesale destruction of the material on a routine basis. Plaintiffs contend that much of the PROFS data are "records" either under the Presidential Records Act or under the other federal records laws, and that the determination that they are not is unlawful. The Presidential Records Act broadly defines

"Presidential records" as:

> documentary materials . . . created or received by the President, his immediate staff, or a unit or individual of the Executive Office of the President whose function is to advise and assist the President, in the course of conducting activities which relate to or have an effect upon the carrying out of the constitutional, statutory, or other official or ceremonial duties of the President.

The term "documentary materials" is defined as including "electronic or mechanical recordations." The Act prohibits the President from destroying any Presidential records that have "administrative, historical, informational, or evidentiary value."

Under the Disposal of Records Act, agency "records" are defined as:

> all books, papers, maps, photographs, machine readable materials, or other documentary materials, regardless of physical form or characteristics, made or received by an agency of the United States . . . and preserved or appropriate for preservation by that agency . . . as evidence of the organization, functions, policies, decisions, procedures, operations, or other activities of the Government or because of the informational value of data in them.

Under that statute, agency records may not be destroyed unless they lack "sufficient administrative, legal research, or other value to warrant their continued preservation by the Government."

The lawsuit is currently pending in federal district court. On September 15, 1989, Judge Charles Richey issued the first major ruling in the case, which allowed the plaintiffs to pursue their claims against the President. He denied the government's motion to dismiss the action on several justiciability grounds, including the government's argument that the Court would violate

the Constitutional doctrine of separation of powers by entertaining jurisdiction over the suit. The government had contended that the President has complete, unreviewable authority to decide what is a "record" (and what is not) under both the Presidential Records Act and the laws governing agency records.

Judge Richey disagreed, and held that plaintiffs could challenge the President's determination that the PROFS information need not be preserved. Although he did not issue a final ruling on the merits of plaintiffs claims -- i.e., as to whether the President has violated the law by permitting the routine destruction of PROFS material -- he did express his preliminary views that the government's fundamental premise for exempting PROFS information from the records preservation requirements is faulty. Thus, Judge Richey explained that

> a reasonable person might quarrel with the rationality of the assumption . . . that most PROFS communications are analogous to telephone messages, and thus need not be retained. It is true that telephone communications in and of themselves do not rise to the level of Presidential or agency records, unless they result in the creation of "documentary material" . . . This derives from the transitory nature of the medium by which the communication occurs; it does not suggest that the substance of a telephone communication is inherently insubstantial. Quite the contrary, were telephone conversations in the Executive Branch routinely taped, or otherwise reduced to "documentary material," a good portion would undoubtedly qualify as Presidential or agency records.

Having ruled that the plaintiffs may proceed with the litigation, Judge Richey gave them 90 days to complete any discovery they might need to demonstrate that the PROFS information constitutes "records" that must be preserved, and he

directed the parties to submit a joint memorandum to the Court by January 2, 1990, suggesting further procedures for resolving the case.

On September 27, 1989, the Department of Justice asked Judge Richey to certify his opinion for immediate appeal to the U.S. Court of Appeals. It argued that the case must be reviewed expeditiously by the Court of Appeals because the consequences of Judge Richey's holdings "are of extreme significance to the President's ability to carry out his Article II responsibilities." In addition, it argued that "because all government agencies rely on computer technology and many utilize electronic mail systems like those used by the EOP and the National Security Council, the Court's decision has far-reaching impact for the government at a whole."*

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* The Department's request for certification for immediate appeal is an extremely unusual procedure, and this aspect of the case will certainly be resolved by the time this Conference convenes.

FOCUS PAPER 5

HISTORY OF THE FREEDOM OF INFORMATION ACT REQUEST FILED BY THE NATIONAL SECURITY ARCHIVE WITH THE DEPARTMENT OF ENERGY'S OFFICE OF SCIENTIFIC AND TECHNICAL INFORMATION (OSTI), OAK RIDGE, TENNESSEE

BY
QUIN SHEA
NATIONAL SECURITY ARCHIVE

HISTORY OF THE FREEDOM OF INFORMATION ACT REQUEST FILED BY THE NATIONAL SECURITY ARCHIVE WITH THE DEPARTMENT OF ENERGY'S OFFICE OF SCIENTIFIC AND TECHNICAL INFORMATION (OSTI), OAK RIDGE, TENNESSEE

BACKGROUND. On August 4, 1987, OSTI's Technical Information Division sent a memorandum to "Recipients of DOE Microfiche", including numerous university libraries. The subject of the memorandum was "Distribution of Limited Reports in Microfiche". Each recipient was informed that it was eligible to receive limited reports with various audience (user) restrictions as indicated. The memorandum included the following language: "By electing to receive this material, you are agreeing to limit access to the microfiche to only those persons and organizations authorized to receive them." Academic libraries are always eager to receive research materials of value, but are historically very reluctant to accept materials to which access must be limited. Several recipients of the OSTI memorandum requested the National Security Archive to challenge the restrictions on access that were being imposed on them.

THE FOIA REQUEST. The Archive filed an FOIA request with OSTI, seeking: (1) a list of the limited reports covered by the August 4 memorandum, (2) copies of any other OSTI notices regarding limited reports and a list of the reports covered by each such notice, (3) copies of all documents explaining or defining the limited reports program, or which show how it in fact has operated, and (4) reading room access in Washington, D.C., to all limited reports identified as a result of parts (1) and (2) of the request.

THE INITIAL RESPONSE. Three DOE Orders identified as responsive to part (3) of the request were released in full. The Archive was informed that no list existed of the limited reports covered by the August 4 notice, that the agency was not required to create such a list for purposes of complying with the FOIA, and that the agency declined to do so as a matter of discretion. The Archive was also informed that there were no other notices regarding limited reports. As no lists of limited reports were identified pursuant to parts (1) and (2) of the request, no such lists were made available. As a final point, the Archive was informed that copies of limited reports were maintained by OSTI in Oak Ridge, where they were made available to organizations and individuals authorized to have access to them.

THE ADMINISTRATIVE APPEAL. The Archive's appeal was filed with the Department of Energy's Office of Hearings and Appeals (OHA), which decides appeals from many different kinds of administrative decisions rendered within DOE. The Archive contended that some list of the limited reports must exist, because otherwise OSTI personnel would not know what reports to supply if they were requested pursuant to the August 4 notice by a party authorized to receive them. Accordingly, the Archive asked that the matter be remanded to OSTI, with instructions, for a new search.

In processing the appeal, OHA contacted OSTI and was told that OSTI receives and processes over 1,000 limited reports per year. Information pertaining to them is maintained in a computerized database. If an authorized party requests access to all or some of the limited reports it is entitled to receive, the "profile" of that requester is entered into the computer, which produces a list of the reports available to that particular party. It was claimed that processing the Archive's request would involve programming the computer, the functional equivalent of creating a new record and not required by the FOIA.

THE APPEAL DECISION. Generally citing NLRB v Sears and Yeager v DEA, OHA held that the mere retrieval of information already existing in a data base, even if the computer must be programmed to select specific types of data, does not constitute the creation of a new record. It was viewed as more in the nature of selecting from paper records the specific content within the scope of a particular request. The case was remanded to OSTI for "a new and thorough search for responsive documents" and OSTI was directed to consult with the National Security Archive as to any questions OSTI might have as to the scope of the request.

THE REQUEST FOR RECONSIDERATION. OSTI challenged various aspects of the OHA decision as overbroad and inconsistent with FOIA requirements. It presented a detailed statement of how its existing software would have to be manipulated by its resident computer expert in order to process the Archive's request.

EXCERPTS FROM THE FINAL OHA DECISION.

"While the processes may be different, many computer searches are in substance essentially the same as manual searches and involve comparable methods and skills. For example, to search paper records a methodology must be developed and the relevant files or file drawers manually searched for the requested information. Similar methodologies must be developed and used when a computer is instructed to perform the search. A computer search may be electronic in nature, but it is not necessarily any different in essence. It merely uses different tools--the computer and its software--to conduct the search." Page 4.

"We believe, however, that to the extent that OSTI maintains records in a database and already has software that is capable of searching the database, the FOIA requires OSTI to use that software to search the database for the requested records. This is true even if the type of search that must be performed is different from the type normally performed by OSTI. A search of this nature is not, in substance, significantly different from a search of a file cabinet for paper records that are responsive to a request. If the FOIA required anything less it would allow agencies to conceal information from public scrutiny by placing it in computerized form. This would be inconsistent with the FOIA's policy of the fullest possible disclosure." Page 5.

"A more difficult issue arises where OSTI does not already possess the software necessary to comply with an FOIA request, and therefore must write or modify a program (but not manipulate data) in order to perform the search necessary to retrieve the requested data. In our view, 'programming' a computer may involve a simple procedure that can be done in a few minutes, such as changing a few lines in an existing program. It may, on the other hand, require many man-hours to write a complex program. Moreover, the distinction between writing a new program and using existing software is not always clear." Page 6.

"Based upon our understanding of OSTI's computer system and the facts presented to us, we concluded in our December 18, 1987 Decision that OSTI had software capable of searching its database in a manner that would provide the NSA with the requested list. We know of no basis for modifying that case-specific determination. Nor do we believe it appropriate at the present juncture to specify the extent, if any, to which an agency is required to write or modify a program in order to retrieve computerized information. We shall consider this matter in the future on a case-by-case basis." Page 6.

"We wish to point out that even if the FOIA might not in a particular case require an agency to 'search' a database, the entire database nevertheless would be subject to the FOIA. Thus, an agency, even where not required to reprogram its computer, would still be required to identify and provide a copy of the entire database, except for those portions falling within one of the exemptions to mandatory disclosure (or beyond the scope of the request), either in paper or computerized form (allowing the requester to perform its own search)." Page 7.

"Finally, as pointed out in our December 18 Decision, before OSTI could properly deny a request on the ground that it would require extensive reprogramming of its computer, it should consult with the requester in an effort to reformulate the request in a manner that would not require reprogramming." Page 7.

"In sum, the issues involved in the application of the FOIA to computerized records involve a relatively new and unsettled area of the law. While it is clear that the FOIA does not require agencies to use their computer capabilities to manipulate or reformulate data in response to an FOIA request, computerized records are nevertheless subject to the FOIA and agencies must use their existing software and computer facilities to retrieve such records pursuant to an appropriate request. We take no position at the present time on the extent to which agencies must reprogram their computers in order to respond to an FOIA request. We will address this issue in the future on a case-by-case basis." Pages 7-8.

THE RESULTS. From initial request until final decision took some eighteen months. OSTI produced a list of the limited reports covered by the August 4, 1987 memorandum. The National Security Archive selected a group of reports for substantive processing. Almost all of this material was found not to be exempt from mandatory disclosure under the FOIA. Access to the reports was provided in the Department of Energy FOIA Reading Room, in Washington, D.C.

FOCUS PAPER 6

A TWENTY-FIRST CENTURY FREEDOM OF INFORMATION ACT: WORKING FROM FIRST PRINCIPALS

BY
JOHN PODESTA
PODESTA ASSOCIATES

A Twenty-first Century
Freedom of Information Act:
Working from First Principles

October 13, 1989

Before Jerry Berman hands us our boarding passes to the Star Ship Enterprise for a glimpse of the Freedom of Information Act in the Electronic Information Age, it's worth reflecting back on the origins of the FOIA and the principles it embodies.

The Freedom of Information Act was enacted to replace Section 3, the public disclosure section, of the Administrative Procedure Act. Section 3, as originally enacted in 1946, provided the first general statutory directive to Executive branch agencies to publicly disclose agency rules, opinions, orders and public records.

As originally enacted, Section 3 was riddled with loopholes. It provided in part: "Except to the extent that there is involved any function of the United States requiring secrecy in the public interest...matters of official record shall in accordance with published rule be made available to persons properly and directly concerned, except information held confidential for good cause found."

The statute gave unbridled discretion to Executive branch agencies to determine that 1) whole systems of records could not be disclosed because they involved functions requiring secrecy in the public interest; (2) that certain records were not "official records" within the meaning of the Act and were thus not subject to disclosure; (3) that certain individuals requesting documents were not "properly and directly concerned with the subject matter of the record"; and (4) that there was "good cause" to deny release. Furthermore, the act failed to provide a judicial remedy for wrongfully failing to disclose information.

The Freedom of Information Act was intended to reign in such broad Executive discretion and was based on the following principles:

> Any person has a right to request records. No longer could an agency deny information because a person was not directly and properly concerned with the matter.
>
> Every record is subject to disclosure, unless it falls within the enumerated exemptions. No more could agencies rely on the distinction between "official" records and "unofficial" records.
>
> Every agency, including defense, foreign policy and law enforcement agencies, were subject to disclosure requirements. No longer could systems of records or, indeed whole agencies, be put off limits to the public.
>
> Disclosure would be the general rule, not the exception; the government has the burden of justifying withholding information.
>
> Individuals denied access have a strong right to seek judicial redress; De novo review provides an effective check on an agency's failure to comply with the act.

The Act was substantially strengthened in 1974 to give practical meaning to these principles. And with the notable exception of the bill passed in 1984 excluding CIA operational files from the reach of FOIA, those principles have remained in tact, despite the best efforts of a string of hostile administrations.

Enter the Electronic Information Age. Again, individuals inside of government are attempting to utilize certain cramped interpretations to suggest that the language of the FOIA did not envision access to electronically stored information. Questions have been raised about whether information stored in data bases constitute "records" within the meaning of the Act; whether retrieving certain bits of information from a data base constitutes the creation of a new record which is not required of the agency by FOIA; whether minor reprogramming to retrieve information in response to a request constitutes a "search" within the meaning of the Act; and whether the Act gives citizens the right to request information in the most useful format, be it electronic or paper.

Frankly, the FOIA principles outlined above so strongly underlie the Act that it is likely the courts will ultimately resolve these questions in favor of access and disclosure. Thus, it seems that it will be unnecessary for FOIA advocates to resort to legislative amendment of the Act to cure these interpretations. Of course, if that prediction proves to be incorrect, our first priority must be to provide and protect citizens' rights to access electronically stored information. While our first priority must be to protect the right of access, the new information age also provides us with the opportunity to broaden the meaning of the public's right to know; to help citizens utilize the information gathered, analyzed and stored by the government; to require broader dissemination of government information; and to preserve an accurate and an accessible record of government decision making.

To arm citizens with the power that government information can provide, to paraphrase Madison, will require an affirmative agenda for changes to the FOIA.

I offer the following, hopefully provocative, list of proposals:

(1) Require every agency to produce and publish in the Federal Register a freedom of information assessment of information currently stored electronically by the agency. Require the agency to assess whether the current systems are FOIA friendly and whether public access was considered when designing databases. Agencies should make indexes available to the public and explain the search capacity of data systems. Is the database management software usable on personal computers? Is information stored on the personal computers of government officials regularly searched in response to FOIA requests? Are E-Mail systems backed up and preserved? etc.

(2) Require a FOIA impact statement of all new major data bases developed by the government. Agencies should be required in developing new data bases to design features which will improve performance under the FOIA. Proper design can make the segregation of exempt information, and consequently the release of nonexempt information easier; can enhance the ability to locate information relevant to a particular request; and can vastly improve the timeliness with which agencies respond to requests.

(3) Require that information which must be published pursuant to section 552(a)(1) and made publicly available pursuant to section 552(a)(2) be stored electronically and made available on-line. Such a requirement would provide citizens, even in the most remote locations, with access not only to Federal

Register and CFR information, but final opinions and orders from agencies ranging from the FTC to the INS. In addition, citizens would have practical access to agency practice manuals and statements of policy. Such information and access should be provided at the marginal cost of providing the on-line service.

(4) Require that agencies provide information that is electronically stored in usable electronic formats. A citizen's unbridled right to a format of choice may be unreasonable, but requests that information be provided in a standard electronic format should be complied with. Agencies should be encouraged to provide more large data base products on CD-ROM.

(5) The concept of reasonable search should be expanded to include the concept of reasonable data processing within the capacity of existing government programs. The current interpretation of the Act prevents agencies from being forced to create new documents in response to a FOIA request. That theory could permit agencies to deny requests of reasonable, even rudimentary, processing of electronically stored information. While some limits need to be placed on a right to "reasonable processing," there is no greater, indeed there is probably less of a burden on agencies to provide reasonable analysis of information than in searching a series of file cabinets for relevant documents.

(6) Documents and information released under FOIA, at least those of general public concern, should be entered into a FOIA database for inspection and access by other persons. The Senate version of the 1974 amendments to the FOIA contained a requirement that released documents "of general public concern" be made available for public inspection. This requirement was dropped in Conference. The Conference Report clearly states that all agencies should effect this policy through regulation. To date, few if any have done so. Electronic storage in retrievable form makes this requirement more reasonable and feasible.

(7) Experiments in an all-electronic FOIA should be authorized and funded for certain agencies. Agencies should experiment with systems that would permit requesters to electronically file requests and permit the agency to process and respond to the request electronically. Candidates for such an experiment might include the FDA, NHSTA and perhaps even the FBI.

(8) Agencies that store information electronically should be required to maintain backup systems that ensure important and historic documents are not lost. This proposal would not only aid citizens seeking information from an agency, but would protect the agency, itself, from losing important records and documents.

Moving an affirmative citizen empowerment agenda for the FOIA is not without risk. Opening the Act to Amendment, raises the specter of further restriction on access to national security, law enforcement and business records. But, given the potential for improvements in citizen's access and use of government information this is a risk worth exploring.

FOCUS PAPER 9

GOVERNMENT'S AFFIRMATIVE ROLE IN ELECTRONIC PUBLISHING

BY
HENRY H. PERRITT, JR.
PROFESSOR OF LAW
VILLANOVA UNIVERSITY

Government's Affirmative Role in

Electronic Publishing

by Henry H. Perritt, Jr.
Professor of Law
Villanova Law School

A. Principles

1. The best public policy is one that promotes a diversity of product offerings--especially in a situation, as the present, where technologies are changing rapidly, and consumer preferences are not well understood.

2. Government should not stifle innovation by withholding the fruits of its own internal automation efforts. Neither should it indirectly protect the positions of established information companies by preserving economic barriers to entry that would fall with availability of agency information in electronic form.

3. Applying the FOIA to encourage the release of wholesale electronic information is key to creating a robust private market for electronic information.

4. The government should not limit its role to wholesaling; rather it should consider retailing at one of two levels: manufacturing an electronic information product and distributing it. Manufacturing refers to structuring the information in a database so that it is accessible-providing indexes, menus, and other mechanisms that make it easy for an unsophisticated user to retrieve information. Distribution refers to providing the telecommunications capability necessary for dialup access or to duplicating and selling optical disks. In many instances, it is appropriate for the government to manufacture electronic information, but to rely on the private sector to distribute it.

B. Rules of Thumb

1. Inventory the existing reports and documents made available to the public and the kind of individuals and groups that use them.

2. Evaluate the potential for providing the same content in electronic form. The costs of creating new retrieval systems and updating or otherwise revising software should be weighed against benefits, such as the savings from eliminating paper products, improved retrieval speed, and wider availability of

information to the public. An agency should not offer an electronic information product unless the cost-benefit analysis demonstrates that the electronic alternative analyzed is likely to be superior to existing means. Cost and benefit assessment should consider at least the categories identified in Paragraph E of ACUS Recommendation 88-10, 54 FED.REG. 5207(Feb. 2, 1989), to be codified at 1 C.F.R. § 305,88-10..

a. When a statute mandates public reference room disclosure, or paper products presently are made available through a public reference room, agencies should provide electronic disclosure in public reference rooms of information already in electronic form. Such agencies should consider the costs and benefits of upgrading from electronic disclosure to electronic publishing. Agencies should also make information disclosed electronically available to any requester in an electronic form that would be easily usable by information resellers.

b. When a statute or agency policy mandates the publishing of information, the agency should itself electronically publish the information or facilitate its electronic publication by others, unless the cost-benefit analysis suggests the desirability of restricting publishing to the paper medium, possibly accompanied by a lower level of electronic release.

c. If the agency publishes the information only on paper, it should consider electronic publication of the availability of the paper information products. Where an agency publishes information electronically, it should consider the feasibility of providing dial-up access.

d. In those instances where an agency maintaining information in electronic form has no mandate to release information other than in response to FOIA requests, the agency should consider upgrading release of appropriate parts of this information to electronic disclosure through public reference rooms and wholesaling in electronic bulk form to private sector requesters.

3. Define the most desirable public and private sector roles in providing that information and related products (including telecommunications facilities, indexes and retrieval software as well as raw data), explicitly considering cost effectiveness, product diversity, and resources for expansion. When an agency decides an electronic information product is desirable, it should then look at what is available in the private sector, and weigh the costs and benefits of public versus private dissemination, including dissemination through depository libraries. Deciding to "promote" electronic publishing does not necessarily mean a direct, retail, electronic publishing and

distribution role for the government, if private sector electronic publishing activities and commitments are more cost effective.

a. When private electronic publishers are well established and their prices are not a lot higher than the government's costs for undertaking electronic publishing itself, the government should stay out of electronic publishing. WESTLAW and LEXIS are the best examples.

b. When there is no apparent retail market for the information, and officials believe that electronic publishing will serve the public interest, the government should fill the gap.

c. Whenever electronic publishing seems desirable, agencies should explore placing the data with existing electronic publishers who sell many different kinds of information and, therefore, risk little by adding another governmental database--even if there is no obvious market for it.

d. Whenever possible, agencies should use public data networks rather than developing their own communications links for public filers or consumers.

e. An agency should not approve arrangements for electronic dissemination unless the agency information will be available on at least two multi-serve "one-stop shopping" services, such as Compuserve, WESTLAW, or LEXIS.

4. Regardless of whether agencies publish at the retail level, they should disclose wholesale electronic information so that other vendors with new ideas for providing an even better electronic information service can offer the public the benefits of public investment in electronic information.

a. an agency should determine whether private sector providers are willing to supply electronic products having features (e.g., user-friendly menus) that will give the public greater benefits or lower costs than would electronic publishing by the agency.

b. When an agency relies on the private sector for electronic publishing of agency information, the agency should seek to establish by contract the nature of the products to be provided. It may be appropriate for the government to induce a private company to enter the electronic retailing market by providing incentives, such as donated software or subsidies.

5. When an agency determines that its mission warrants new electronic means of acquisition or release of information and the private sector will not commit to provide them at ~appropriate prices, the agency should provide them, if clearly identified non-economic and economic benefits outweigh the capital and marginal costs. Agencies should recognize, however, that there may be circumstances where the costs to an agency would suggest the wisdom of creating incentives for the private provision of the desired electronic information product-for example, the free use of agency-developed software.

a. If the agency concludes that a new government product should be offered, it should negotiate with private-sector providers to determine if they are willing to provide it in a form and at a price that will encourage wide use, in exchange for the agency's limiting its role. For example, the Department of Transportation contempla[illegible] requiring airlines to provide public electronic access to tariffs filed with the Department rather than constructing its own dialup electronic system.

b. An agency generally should not grant a private party exclusive control of its electronic information or of the acquisition or release thereof. Nor should the agency itself as a general matter maintain such control in the absence of a compelling public purpose. Where an agency has, and wishes to exercise, authority to enter into an exclusive arrangement providing a private sector vendor with a preferential right to electronic information, the agency should first consider if efficiencies can be achieved through such an arrangement. The agency should also guard against the possibility that the arrangement may be inconsistent with its responsibilities under the FOIA or may impair the ability of the agency and the public to benefit from subsequent technological developments.

6. Agencies should rely on public data networks to manage dialup telephone access. Much of the manufacturing activity already has taken place: an agency needs data structures, indexes, and retrieval menus for internal use. But [illegible]encies do not need huge dialup telephone interfaces or large scale optical disk distribution facilities for their internal use of information. Such distribution mechanisms are expensive and managing them diverts agency attention from agency missions.

7. Agencies should use existing standards. Agencies should seek to base electronic information formats on existing standards efforts such as American National Standards Institute standards on Electronic Business Data Interchange before developing their own distinctive format definitions.

8. Agencies should be aggressive in providing for electronic participation in administrative proceedings. Agencies should experiment with electronic means of providing public participation in rulemaking, adjudication and other administrative proceedings, while retaining a means of effective participation for persons who lack the means to access the electronic information system.

FOCUS PAPER 12

THE ROLE OF LIBRARIES IN DISSEMINATING ELECTRONIC PUBLIC INFORMATION

BY
NANCY KRANICH
COALITION ON GOVERNMENT INFORMATION AND
NEW YORK UNIVERSITY LIBRARY

THE ROLE OF LIBRARIES IN DISSEMINATING ELECTRONIC PUBLIC INFORMATION

by

Nancy Kranich
Fall 1989

A longstanding partnership between libraries and the federal government has assured the nation's citizens ready and equal access to government information. As the information age emerges and new technologies replace the printing press for disseminating information, this partnership can continue to serve the public in even more effective ways. While the ideals of public access to government information are espoused by many, few are aware of the fragility of the public's right to know. Librarians, as information professionals, are highly sensitive to the barriers that can limit public access. Without continued vigilance, the slightest modifications in the information chain can result in huge disparities in information justice.

Librarians have a long history of managing information. Beyond the books and periodicals traditionally acquired, organized, and disseminated, they have extensive experience with providing information in numerous formats ranging from electronic databases to video, audio, and film. They have also utilized new technologies to enhance access to all formats of information through the development and utilization of standards, participation in consortia and other cooperative systems, and the utilization of telecommunications networks. Librarians have standardized the format for cataloging, describing and communicating bibliographic information nationwide which allows for the integrated cataloging of all types of information formats ranging from computer files to videorecordings, from visual materials to books and serials. Libraries were among the first institutions to adopt the international telecommunications standards for open systems interconnections (ISO/OSI standards), and have played a leadership role in urging standardization and networking among libraries, educational institutions, and scientific organizations involved with the development of the National Science Foundation network (NSFNET).

NYU's libraries offer a good illustration of the role libraries are playing in managing and promoting the use of new information technologies. The libraries at NYU were among the first in the country to offer computerized circulation services and a public computerized catalog with 100 terminals around the campus and free dial-up access for anyone with a computer and modem. NYU is in the midst of implementing the International Standards Organization/Open Systems Interconnection (ISO/OSI) telecommunications protocols which will allow for computer-to-computer communication between the library's local system and any other system using OSI protocols. This will allow library users to search any database using the commands of their local system rather than learning and executing the disparate commands and protocols used by thousands of commercial or similar systems elsewhere.

In addition to designing innovative applications of local systems, the library has worked to integrate its computerized services with other academic information initiatives at the University. Connectivity with various campus computer systems and gateways to infinite resources outside New York University has been assured through a campus network with links to national networks such as the NSFNET, ARPANET, NYSERNET, and GTE/Telenet. The Academic Computing Facility's machine-readable data files, including many government resources acquired through the Interuniversity Consortium for Political and Social Research (ICPSR), are listed in the library's catalog and available from any terminal connected to or dialed into the campus network. Librarians teach courses in the use and analysis of machine-readable data and how to directly query bibliographic and textual databases. Electronic bulletin boards and electronic mail networks are readily available and a campus video and satellite dish teleconferencing service is coordinated through the library's state-of-the-art media center. A host of computerized information services are available through the library including easy-to-use CD-ROM indexes, online interactive database services that provide access to bibliographic, numeric, and full-text files, menu-driven versions of online databases for direct user searching, and library catalogs and scholarly databases. Like many other libraries, NYU also provides students, faculty, and the general public access to locally-created databases of community, business, labor, and other resource information.

Not only have libraries such as NYU'S forged ahead in the utilization of new information technologies, they have also served as a partner with the government in disseminating federal information. Through the Depository Library Program (DLP) which was launched in the 19th century, nearly 1400 university, public, government, law and special libraries have served as host institutions for distributing government information in every Congressional district. The Depository Library Program serves as a principle mechanism for disseminating federal agency information to the American public. In return for receiving nearly 20 million free copies of some 40,000 government publications annually, depository libraries house, organize and assist with the use of the government's information resources, expending 10 times the government's outlays for this service. They are used by at least 167,000 citizens each week through the DLP program administe[illegible] by the Government Printing Office under the guidance of Congressional Joint Committee on Printing.

Until now, most of the publications provided through the Government Printing Office have been in print format. But more and more, these same publications are available in electronic format only. Many libraries are already equipped and prepared to disseminate government information regardless of format and are eager to receive and service this information, just as they have print materials in earlier years.

As agencies make increasing use of electronic formats, the public

can benefit if government data is disseminated through depository and other libraries. The Joint Committee on Printing and other Congressional committees have interpreted the DLP statutory authority as extending to government information in all formats. In the fall of 1988, the GPO began a series of electronic dissemination pilot projects in libraries in order to assess this mode of delivery in terms of public access, cost and manageability. Already users at depository libraries are taking advantage of access to CD-Rom discs from the Census Bureau and online access to the Commerce Department's Electronic Bulletin Board. While many depositories may not wish to provide access to government products and services outside their collecting scope, most are eager to offer computerized versions of such documents as the Congressional Record and Federal Register as well as key Federal statistical series. Libraries that are not designated as depositories also acquire and disseminate government information and are equally interested in serving as access points for electronic resources.

The Advantages of Providing Electronic Government Information Through Libraries

Libraries are ideal institutions for providing access to electronic government information. Among their advantages are:

Libraries are available in every community. There are more public library outlets than MacDonald's. They have long hours and exclude no one from use.

Libraries are non-profit institutions. Their collections are broad-based and represent all points of view.

Libraries include older materials and contemporary publications, and they continuously add new items to their holdings.

Librarians excel at identifying, acquiring, organizing, housing, preserving, and assisting in the use of information.

Libraries already provide an extensive array of automated services. Databases offered by libraries include many disseminated by the government. Their staff are well trained in delivering computerized services.

Libraries provide access to numerous related materials which can be useful in understanding or interpreting the information gathered through a government database. Because they tend to build upon their strengths, those with government depository collections are likely to acquire extensive complimentary materials such as commercial services like the CIS's American Statistics Index collections and the Congressional Information Service index collections.

Librarians are often specialists in particular subject fields or genres of information. For example, a subject specialist in economics can assist patrons with related concerns or a functional specialist with government documents can adeptly determine the appropriate sources for tracking down needed da..

Libraries maintain bibliographic and other indices that can assist users in identifying and locating specific items. They also have numerous resources that can be used to refer researchers to more appropriate repositories. They can also point people toward far more relevant though unfamiliar sources.

Libraries offer the hardware and software needed to access and reproduce a host of formats ranging from CD-Rom to 5 1/4" floppy disc, from microfiche to videotape.

Libraries have extensive experience working with community groups in providing essential local information and promoting the public's right to know. Currently, with funding from the Benton Foundation, the American Library Association is commencing a right-to-know media campaign, encouraging the public to use their libraries to locate information about the environment in general and about toxic wastes through the EPA's Toxic Release Inventory database in particular.

Access to Government Information Products and Services

It is estimated that more than 7,500 electronic databases are currently disseminated annually by the federal government. Librarians who assist the public with identifying and utilizing these vital resources have concluded that the government is best suited to assume responsibility for disseminating its information because:

- Bibliographic control, already amply provided by the Government Printing Office through its Monthly Catalog and by the National Technical Information Service through its Government Reports Announcements and Index, can be extended to cover non-print formats. If citizens are to utilize databases, they must be able to identify them through widely-disseminated, standardized, comprehensive, up-to-date bibliographic tools, only available through the government.

Physical access, facilitated by the extensive GPO sales, depository library, and NTIS program, can be extended effectively and efficiently to additional government-produced electronic databases.

Standards development and implementation, a responsibility of several governmental agencies, can benefit information

dissemination efforts by facilitating the coordination of government-wide efforts, encouraging compatibility, lowering overall costs, and reducing user confusion.

Fees can be limited to marginal costs or less, and charged on equitable terms.

Cooperative efforts with other sectors of the economy are ongoing and have proven beneficial for numerous publishing projects in the past.

Market potential for most government data is very limited. While users may be few, importance is considerable.

Restrictions on redistribution of government data are limited.

Censorship is unlikely to be imposed.

Expert assistance is readily available from agency personnel who help guide users to the actual information sources cited; provide the documents listed in their databases; provide additional materials; and offer suggestions and referrals to other sources.

Continuous publication is more probable when authorized by statute rather than dependent upon market forces.

Cumulating, archiving and preserving data is more likely through agencies charged to assure the long-term retention of records.

Multiple formats can be provided to satisfy the varying needs of users.

User feedback is encouraged from interest groups already working with agency programs.

Conclusion

Government information is of inestimable value to the American public and therefore requires a democratic caretaker no smaller than the government itself. Libraries are well-suited to assist the government in communicating with citizens. Having emerged as technologically sophisticated institutions, they can extend their role in disseminating government publications by providing users electronic as well as print access to vital public information. Federal information is used by all sectors of society, as are libraries. The longstanding partnership between libraries and the federal government must continue if the nation's citizens are to be assured ready and equal access to government information.

FOCUS PAPER 14

THE EXECUTIVE CALENDAR

BY
BOB GELLMAN
HOUSE COMMITTEE ON GOVERNMENT OPERATIONS
SUBCOMMITTEE ON GOVERNMENT INFORMATION

PRESS RELEASE

The General Services Administration today announced plans to begin a daily Executive Calendar of government activities for use by federal executives. The Executive Calendar was created at the direction of the President of the United States.

In ordering the start of the Executive Calendar service, the President cited the need for the White House and the Executive Branch to coordinate its own schedules and activities. There is no existing mechanism that permits the agencies to exchange information about daily schedules and activities.

The Executive Calendar will include the following:

-- Daily Schedule of the President and Vice President

-- Daily Schedule of Cabinet Secretaries

-- House and Senate Floor Schedules

-- House and Senate Committee Schedules

-- Supreme Court Argument Schedule

-- Meeting Agendas of Regulatory Agencies

-- Listing of Major Federal Register Notices

-- Advance Schedules for Major Federal Officials

-- List of Major New Federal Publications and Reports

-- List of Major Federal Contracts Awarded

-- Selected Federal Budget information

-- Selected Federal Statistical and Economic Information

Additional information may be added in the future.

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A Hypothetical Press Release
Prepared for the Benton Foundation/Bauman Family Foundation
Consultation on Electronic Public Information

The Executive Calendar will be produced each weekday by GSA using a desktop publishing system and a laser printer. A copy will be hand delivered to the head of each major federal department and agency.

GSA will also make the same information available through the Executive Calendar Electronic Bulletin Board. The bulletin board, which will be accessible to anyone using a microcomputer and a modem, will include Executive Calendars for the past year.

Information on the bulletin board will be retrievable using key words such as agency name, subject, and names of Executive Branch officials. Other electronic search tools and finding aids will also be available.

The bulletin board service will have 10 ports and will be available at no charge to federal agencies. Five of the ports will be reserved for exclusive use by federal agencies. The remaining five ports will be accessible by any person. The charge for the service will be $100 per hour of connect time.

The information contained in the Executive Calendar will be obtained from a variety of sources. Some will be collected directly from the agencies by GAS. Some of the legislative information included in the Executive Calendar will be obtained under a contract with the Democratic Study Group. Additional legislative information will be obtained from Congressional Quarterly, publishers of the daily Congressional Monitor.

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A Hypothetical Press Release
Prepared for the Benton Foundation/Bauman Family Foundation
Consultation on Electronic Public Information

The bulletin board will be operated by the Federal Calendar Service Company, a joint venture of Congressional Quarterly, Mead Data and Arthur Anderson, under contract with GSA. The Service Company will receive a share of the revenues from public use of the bulletin board system. The Service Company will receive no federal funds. A portion of the connect charges will be shared with the information providers.

Information obtained by GSA pursuant to contract with non-governmental organizations is copyrighted by the providers and is not available to be downloaded. Other information is not copyrighted and will be available to be downloaded on a monthly basis. There will be no additional charge to the public for downloading other than standard connect charges.

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A Hypothetical Press Release
Prepared for the Benton Foundation/Bauman Family Foundation
Consultation on Electronic Public Information

STATE OF ALASKA

DEPARTMENT OF ADMINISTRATION

DIVISION OF INFORMATION SERVICES

STEVE COWPER, GOVERNOR

P.O. BOX C
JUNEAU, ALASKA 99811-0206
PHONE: (907) 465-2220

RECEIVED
JAN 18 1990

Honorable Kay Brown
Representative
Alaska House of Representatives
State of Alaska
Pouch Y
Juneau, Alaska 99811

January 17, 1990

Dear Representative Brown:

Below are some comments on House Bill 405 (HB 405), regarding public access to the information of the State, as requested by you. Please note that these comments are preliminary in nature, as the Department has not yet formulated its position on the bill. Nevertheless, I hope that the comments will help provide you with the kind of substantive and constructive feedback that this important subject deserves.

<u>OVERALL COMMENTS:</u>

o Overall, HB 405 may be premature because it addresses a large and complex set of issues that have not yet received much analysis or focused discussion in Alaska state government. There is little question that public access to government information is necessary and desirable, and that the issue warrants timely attention by the State of Alaska; but the process of structuring that access and integrating it with state agency operations without major disruptions is likely to be far from a simple one. Even the somewhat limited discussions of the topic to date by the Telecommunications Information Council (TIC), its Public Access Task Force and the interagency Information Systems Committee indicate the breadth and complexity of the issues involved, as well as the diversity of opinions regarding them. Given that the State is just now at the stage of identifying for the first time the kinds of electronic information and databases that it employs, and that no estimates yet exist of the nature or magnitude either of public needs or agency impacts, a more staged approach involving analysis and formal discussion of public access issues (e.g., by TIC) would seem to be a desirable prerequisite to adopting legislation. If part of the intent of HB 405 is to accelerate discussion and treatment of these issues, however, the comments below address the bill substantively.

- The bill repeatedly refers to "agencies and departments", but does not clearly state whether its provisions apply only to the executive branch, or to all branches and entities of the State of Alaska.

- Given the unknown but presumably large amount of potential public demand for public information and electronic information services, there is likely to be a significant fiscal and operational impact on agencies and the Department of Administration resulting from the administrative support and financial reporting requirements of the bill.

- The definition of "public records" (page 5, lines 17-23) deserves much attention, particularly in view of the diversity of opinions regarding the status or intent of written drafts and "memorializations of conversations". Also, it is not clear whether (e.g.) the Department of Administration should or would have the right to allow public access to centralized computer files that it maintains on behalf of agencies and departments. In short, it is not clear in the bill how its definition of "public records" relates to prevailing laws, regulations or concepts regarding the rights to privacy.

- Sections 2-3 of the bill call for the establishment of fees, implicitly leaving the determination of fee schedules to individual departments and agencies. It might be preferable in the bill to stipulate that fee schedules will be determined, or at least approved, by the Telecommunications Information Council, to ensure some level of consistency and standardization.

- For cases of fee waiver, it should be kept in mind that agencies will still be charged for any computer services involved that entail the use of Department of Administration mainframe computers. It might help, therefore, if the bill stipulated some kind of record-keeping on fee waivers, so that the aggregate and cumulative cost of such fee waivers would be known to policy makers.

- If adopted, the bill will require the institutionalization of new and additional forms of mainframe computer security for the Department of Administration (DOA), as many agencies using DOA's mainframe computers have elected not to secure their data files (security for agency data files is an agency's responsibility). Thus, at present, if a member of the public is granted on-line access to a particular data file, he or she would be able to access many other data files without restriction. The danger, here, is at least as much a risk of data files being unintentionally corrupted as it is of them being intentionally corrupted. Security is therefore a major issue that needs to be addressed comprehensively (e.g., by TIC) prior to public access being implemented.

TECHNICAL COMMENTS:

p.1, l. 23: Has text been dropped between the words "products" and "user"?

p.2, l. 7 Savs "where appropriate"; might add "as defined in AS 09.25.115(b)", which defines where fee waiver is appropriate

p.2, l. 18 It is not clear what is intended as a "reasonable" portion of the associated costs

p.2, l. 19 It is not clear whether the phrase "information system of the agency or department" refers only to the system employed in providing the electronic service or product, or to the overall information system or set of systems operated by the agency or department.

p.3, ll. 17-18 The bill stipulates that copies provided by public officers "shall in all cases be evidence of the original." Can this evidentiary standing (without notarization) be granted by statute?

p. 3, ll. 22 Not sure how or why recorders can or should make public records available for the purpose of "guaranteeing or insuring the titles of the real estate...."

p.5, ll. 20-22 There would be no need to even raise the issue of preservation (or destruction) of records if the phrase "...and that are preserved for their informational value or as evidence of the organization or operation of the agency or department..." were deleted.

I hope that these comments are useful to you in assessing the provisions of HB 405. Please don't hesitate to contact me if you have any questions, or if you would like additional information.

Sincerely,

Paul Monette
Director

cc: Gary Bader
Deputy Commissioner
Department of Administration

bcc: Commissioner Baxter
Department of Administration

Bob Evans, Legislative Liaison
Office of the Governor

The Honorable 'Red' Boucher
Alaska State Legislature

The Honorable Peter Goll
Alaska State Legislature

Joan Kasson, OMB
Office of the Governor

Jack Fargnoli, Deputy Director
Division of Information Services

TO: Terry Bannister
FROM: Rep. Brown
DATE: 1/25/90
SUBJECT: Proposed amendments to HB 405

Terry, here are the amendments I discussed briefly with you. I would appreciate receiving a new draft blank CS by Monday, if possible.

■ Add to Section 3
(e) Each state agency and department shall notify the State Library Distribution and Data Access Center of electronic services and products offered to the public, including a summary of format options and fees.

■ Amend AS 14.56.120 (b):
(b) Each state agency shall notify the center of the creation of all data published or compiled by or for it at public expense, including automated data bases, and provide for its accessibility through the center, unless the data is protected by the constitutional right to privacy or is of a type stated by law to be confidential or the agency is otherwise prohibited by law from doing so.

■ Add to Sec. 5, definition (1) at line 23:
(F) providing non-proprietary software developed by an agency or department, or developed by a private contractor for an agency or department.

■ On page 5, lines 17-23, amend definition:
(5) "public records" means books, papers, files, accounts, writings, including drafts and memorializations of conversations, and other items regardless of format or physical characteristics, that are developed or received by an agency or department, or by a private contractor for an agency or department, and that are preserved for their informational value or as evidence of the organization or operation of the agency or department; "public records" does not include proprietary software programs;

■ Page 2, line 6 (fee waiver for public records): make provision conform to current fee waivers in the regulations for journalists (and any others).

■ page 2, line 6 and page 2, lines 19-23: provide that fee waivers will not be discriminatorily applied (or state positively, they will be uniformly applied to people and groups similarly situated)

■ Add general provision that nothing in this bill is intended to erode current public access rights, except as expressly provided, and any ambiguity should be construed in favor of openness.

■ Add new subsection to Sec. 3
(f) When offering on-line access to an electronic file or data base, an agency or department also shall provide, without charge to the public, on-line access to the electronic file or data base through a public terminal or terminals.

■ Page 4, lines 10-11, delete "(B) duplicating or providing periodic updates of an electronic file or data base;"

■ Sec. 2 of bill: Add language which makes it clear that a member of the public is entitled to a copy of an electronic file or d.b. in the format kept by agency, for nominal cost. (the agency isn't obligated to change the format, but must provide information in the form it is kept by the agency. If information is kept in electronic format, the public can get a copy of those files.)

■ Section 1, add finding re: privacy (see Florida bill)

■ Add provision requiring that every state form on which citizens submit information to the state contains language stating that the information being provided is public and may be disclosed. (see language in Florida bill)

(already drafted)

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

■ 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."

■ Page 2, line 26, after "department" insert "or of a central computer system maintained by another agency". Clarification. (Terry, see alternate language suggested by the Department of Adm., Div. of Information Services, attached)

OTHER PROPOSED AMMENDMENTS

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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.

Public Access to Geographic Information Systems: An Emerging Legal Issue

Hugh Archer and *Peter L. Croswell*
PlanGraphics, Inc., 202 West Main Street, Suite 200, Frankfort, KY 40601-1806

NA_URAL RESOURCES MANAGEMENT

ABSTRACT: Institutional issues will dominate technical issues as GIS technology becomes integrated with the information management operations of public organizations. Analysis of the legal setting in which a particular GIS is established is now recommended as part of the planning and design process, particularly as it impacts public access to the system. The form and content of information provided to the public and private user community through GIS technology demands a new and more discriminating vocabulary to avoid unintended pitfalls from traditional laws developed before an information management tool of this utility was available to government. The evolution of access policy for geographic information systems will establish a course of conduct today that could determine the control of a multi-billion dollar industry. The debate over which sector of government or industry will provide extremely valuable information products in the future has begun. Establishing institutional policy to deal with GIS technology focuses many of the most significant legal issues that should prove determinative in the debate over who controls the value of information.

THE ROLES OF GIS IN PUBLIC ORGANIZATIONS

OVER THE PAST DECADE, government agencies at all levels have become extremely cognizant of the importance of maps and geographically referenced data to support routine operations and long-term planning activities. These agencies have been turning, in increasing numbers, to GIS technology to provide the necessary capabilities to process maps and geographic data. This trend toward the implementation of geographic information systems is evidenced in a recent survey of GIS installations which shows an increase by a factor of ten, in the number of new system start-ups, each year from 1979 to 1988 (Croswell and Clark, 1989).

Over the past five years, GIS technology has matured tremendously and offers powerful capabilities for organizations which are dependent on maps and geographic data (Croswell and Clark, 1988; Dangermond, 1987). Kindleberger (1988) describes many of the challenges and opportunities facing government agencies in the use of GIS and related technologies. As the application of the technology in organizations increases, the definition of GIS itself is evolving. Two related trends are evident that will have a profound influence on GIS installations in the near future: (1) the distribution of processing power and data, and (2) the integration of diverse types and formats of geographic information.

System distribution, along with a significant decrease in hardware costs, offers the opportunity for a broad spectrum of users to gain access to GIS data and to conduct analysis and generate products. Data integration trends promise to expand the concept of a GIS to a point where it becomes a focal point to easily access and process information in traditional map and database form, as well as raster images, scanned documents, engineering drawings, and the like that are important in geographic analysis (see Figure 1).

The technology is available now to respond to a host of mapping and geoprocessing tasks that government agencies demand; and, because of the great user demand, it is improving and becoming less expensive. The greater sophistication in technology and wider options for users, however, introduce more complex institutional issues in the implementation and operation of GISs. There is a strong tendency for organizations that are initiating GIS development to overemphasize the technical aspects of the implementation process. This emphasis on the technology when it is not matched with even greater attention to the institutional factors impacting system development can lead, and too often has led, to failures or significant problems in effective use of the system (Croswell, 1989). The promise of GIS technology is great. Online access to GIS data and the many potential products of GIS spatial analysis present a broad range of unresolved public policy issues that match the broad commercial utility of this resource. This paper discusses an important institutional topic impacting the use of geographic information systems—public access policy.

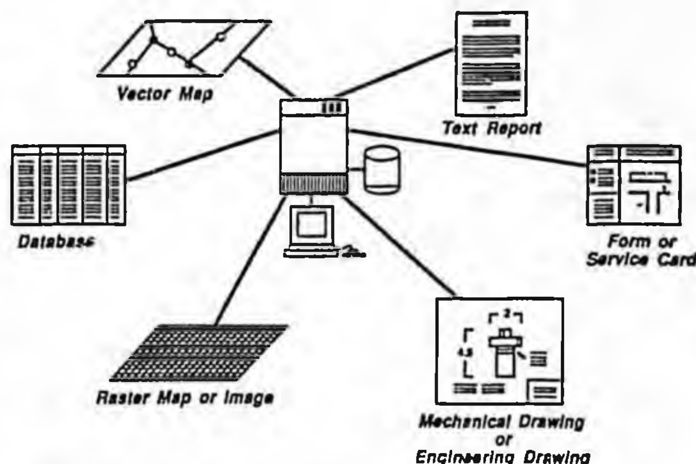

FIG. 1. Integration of different forms of geographic data and records.

IS THERE AN INSTITUTIONAL PROBLEM?

The distributed configurations of today's geographic information systems do not allow for the definition of a "typical" institutional setting. However, the examination of a hypothetical GIS with a defined institutional structure can reveal legal issues that are becoming standard problems for many GIS custodians. Information management facilities of the future will likely be government managed utilities just like the sewer, water, and power utilities of today. Refining the possible institutional options for this new technology will allow a more efficient progression from the initial efforts today to the information utility of tomorrow.

Imagine you are the manager of a county-wide GIS, which is a cooperative effort between the utility board and county government. The technical development of the system was well planned and data conversion is being completed for a large-scale GIS database consisting of the following layers:

PHOTOGRAMMETRIC ENGINEERING AND REMOTE SENSING,
Vol. 55, No. 11, November 1989, pp. 1575–1581.

0099-1112/89/5511–1575$02.25/0
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and Remote Sensing

- Survey control monuments
- Detailed man-made and natural planimetry derived through photogrammetric compilation
- Digital elevation data and derived contours
- Land parcels and easements
- Water system facilities
- Sanitary sewer facilities
- Political and administrative units
- Street and highway centerlines with block address ranges.

Work is well underway in the completion of a comprehensive attribute database and the development of database linkages with the County's mainframe computer. The GIS has been designed to support a wide range of mapping tasks, as well as spatial queries and more complex geographics analysis work.

The independent water district and the county assessor declined the opportunity to participate in the funding for initial system development. The county provided funding with an $8 million bond issue, and the utility board enters into a lease arrangement for five years, agreeing to pay 30 percent of the actual annual costs for the system. County government agrees that the GIS will provide efficiency increases sufficient to merit the capital investment, but would like you to propose a way to take advantage of the utility of GIS to finance the operation, maintenance, and continuing upgrade costs of the undertaking, once the original bond money is exhausted.

System development is nearly completed, but the original development funds allocated will soon be depleted. The assessor now requests access to the system and would like your staff to develop an interface to his new computer assisted mass appraisal (CAMA) software to the database and provide regular reports to his office. The water district has purchased $500,000 worth of hardware and software and would like a complete dump of data, with periodic updates. The School of Engineering at the local university has requested on-line access using their own workstations through remote communication lines.

You ask the county attorney and a consultant for help. Your attorney responds that the universe of information collected and maintained by the county agencies are defined as "records," and the state open records law does not allow charges for anything but the cost of materials to reproduce the record (e.g., $40 for a tape, $0.20 a page for paper, and $3 for a mylar map copy). Further, the open records law does not allow the custodian to stall these requests, and a written response is due to every request for access in three days or you could go to court and face personal liability for obstruction. Your consultant suggests that the definition of "records" does not include all possible information that this technology could produce, and recommends that fees for access be established by regulation. Three months later the word is out, and several local realtors, two engineering firms, an architect, and a garage industry value-added vendor planning to sell custom maps are joining the first round of access requests.

In an attempt to deal with these requests, the attorney comes up with three types of exceptions to the open records statute that are intended to protect privacy, but can be stretched to include the GIS data, allowing you to turn down the requests from the non-government requestors. Your consultant warns that turning them down by characterizing the data as exempt records will mean you can't sell the access either, and your operational budget is due.

The county administrators direct the attorney to work with you on some acceptable solution, and you propose a fee structure for GIS access. You inform the attorney that you will need to copyright the information to protect the integrity of the official data, and to limit market competition. You learn that state government has never exercised copyright protection, and the use of copyright to protect a database is problematic. The attorney next learns that if you do sell the requested information products and services, governmental immunity is not assured, and the liability exposure is difficult to define. He also believes that "equal protection" requires you to offer to all requestors the same arrangement established with the utility board, but the big annual expenses are now paid, and annual costs are a fraction of what the utility board has invested so far. The utility board wants a rebate, and the local private mapping firm is considering an anti-trust action to prevent government from selling maps. The county administrators are considering turning over the database to a private company and becoming one of the clients rather than become a service bureau for the entire community.

This hypothetical scenario tracks a combination of several of the questions GIS managers are finding difficult to answer today. There *is* a problem with the institutional setting in which we are building our GISs. The legal setting in which we are building GISs with large investments of tax dollars does not allow for the requisite control or cost recovery that is specified for a typical public facility or utility. This is because GIS is tied up with more than building parking lots or the management of services like water and garbage disposal. GIS technology is about information, and information has not been traditionally treated as a commodity, especially when government is the source. When do raw data become information and what are their value? When does information become a record subject to the provisions of the open records act? The economics of information, defining information products and services, and defining problems presented by the limited vocabulary that currently dominates our statutes when implementing GIS are all issues to be actively addressed *before* the system matures and the access requests begin.

GIS ACCESS POLICY AND THE BIG PICTURE

The world economy of the next century is being shaped by a set of current decisions mostly having to do with information systems, and public agencies will continue to expand their use of GIS technology (Naisbitt, 1982). What standards in law and policy will help integrate and appropriately apply the information technologies that have emerged to date? The many legal and economic issues presented by efforts to manage the access to GIS will significantly impact the bigger questions about who owns and controls the value of information in the electronic age. The front-end development costs and database source material most often require GIS sponsorship by government institutions. Federal agencies, state governments, special districts and authorities, and local governments are the custodians of a majority of the country's maturing GISs (Croswell and Clark, 1989). These government institutions can be characterized as "creatures of statute" established before the electronic age was upon us. This application of old rules to new technology leads to inappropriate literal applications, or an open field for creative interpretations.

As one of the fastest growing information technologies, GIS is setting new precedents for breaking down traditional "islands of information" and promoting the sharing of information among all levels of government. The spatial analysis capabilities of GIS provide us with an ever increasing list of applications that depend on the creation of one of the most extensive collections of databases ever undertaken and financed by government. With the accelerating advancements in hardware, software, and optical storage, the potential commercial value of these databases will increase exponentially. Recognition of the resource is already growing among government agencies that may not have contributed to the initial cost of establishing a local GIS, and among the private sector users for both direct application to their businesses and for value-added purposes.

Construction of GIS databases represents a massive investment of tax dollars. This public capital investment potentially

represents a very low overhead source of information to the private sector "value-added" information brokers. If GIS custodial agencies take an active role in development of GIS access policy today, there is an opportunity for a smooth transition to an "information utility" built around GIS technology (Archer, 1988). Without the development of new concepts in the areas of open records law, information products/services definitions, proprietary authority, copyright law, commercial law, and government liability concepts, the current legal setting tends to promote the subsidy of a small sector of the private information industry with the taxpayer's investment.

The Information Industry Association, a national lobbying organization, has estimated that revenues to "on-line databases" were $12.5 billion in 1983, and should triple by 1990 (Bellin, 1988). Peter Marx, an IIA Director, testified to Congress in 1985 that there were over 400 "information service organizations" in the private sector that repackage raw government information (Marx, 1985). The large corporations involved in this industry would prefer government dissemination of information in the form of raw electronic data without searching aids or software enhancements, and oppose government dissemination of enhanced or value-added information (Office of Technology Assessment, 1988). This preserves their advantage and their market.

On the other side of the issue, we find the straightforward view that information collected and managed by government should be available for free, or for the nominal costs associated with copying records. The system was purchased with tax dollars, and the GIS should be treated the same as an electronic filing cabinet filled with digital records. The access issues should be no different than access to paper format record under the Freedom of Information Act or state open records laws.

Neither of these positions establishes a good policy basis for getting the greatest access to information to the most people. Information utilitarianism can only be achieved by allowing for the differences between today's information management technology and dissemination of information in paper format. The U.S. Office of Technology Assessment (OTA) has concluded that congressional action is urgently needed to resolve Federal information dissemination issues and to set the direction of Federal activities for years to come. The government is at a crucial point where opportunities presented by the information technologies, such as productivity and cost-effectiveness improvements, are substantial. However, the stakes, including preservation and/or enhancement of public access to government information plus maintenance of the fiscal and administrative responsibilities of the agencies, are high and need to be carefully balanced by Congress." (Office of Technology Assessment, 1988, p.3). At the state and local level, the need for action is even more urgent as more GISs mature, and the variety and volume of access requests increase.

The information dissemination roles and legal issues are not the same at the national and local levels. The Federal Government spends, conservatively, $6 billion per year on information dissemination (not including the cost of collection, processing, or a prorated share of agency automation)(Office of Technology Assessment, 1988). Congress has enacted hundreds of specific laws that assign information dissemination and related functions to Federal agencies. Federal copyright law (Public Law 94-553) expressly prohibits application of copyright protection for federal government publications, and agency rules expressly limit the charges for government publications. The traditional role for the national government agencies has been to subsidize the dissemination of information for the common good.

In contrast to this traditional federal approach, there has been a trend toward the application of user fees as a major funding source at the local government level. Local government user fees have tripled since the mid 1970s, from $30 billion in 1976, to $98 billion in 1987, or as a portion of the total revenues of local governments, including state and federal payments, they went from 17 percent to 21 percent. Nearly three-fourths of all local jurisdictions have user fees in some form or other, and they are being applied to a rapidly expanding number of public services and facilities (Lemov, 1989). The role of providing and subsidizing information distribution as a public resource decreases as government becomes more local. The tendency to consider public services optional, and to charge for services if provided, increases as we move through the progression from federal to state to local government.

The ratio of benefits to costs improves with increased distribution of GIS use when the cost of automation is contrasted to the cost of manual mapping. However, the institutional issues get more complex in direct proportion to the distributed nature of a particular system. More laws, charters, preexisting procedures, centralization of standards, interagency agreements, etc., come into play. Much of the real costs of GIS implementation can be avoided by a complete review of the institutional issues before they become advocate situations. The analysis of the legal setting is closely tied to the complexity of the institutional setting, and the job becomes exponentially more complex with the number of "players" involved. The increased commercial utility of GIS over all previous forms of government information resources is upsetting the public policy balance that has sufficed historically to deal with public access to government information.

The costs for the entire community of decision makers, public and private, may be less when the data and information are gathered, analyzed, and made compatible in anticipation of need, rather than left to actions at the time of decision making (Epstein, 1988). But this does not automatically mean that private industry should be subsidized by tax dollars in order to promote broad use of the system. Who controls the access to and, therefore, the value of information? What interpretations or changes of current laws impacting public access policy to GIS will promote cost-effective utilization of our recently available technical abilities to manage information?

The major concerns that GIS managers and custodial agencies must address in order to effectively use GIS technologies are summarized below:

- GIS applications are becoming integrated with overall information management operations of government agencies, and this trend will continue for the foreseeable future;
- After initial GIS development funding has been allocated, agencies must develop approaches for the continued operation, maintenance, and upgrade of the system;
- There is a large potential market for GIS products which is only beginning to be realized;
- Current laws, regulations, and public policies are out-of-date and are not sufficient to support an institutional framework that will meet the projected demand for GIS products and services; and
- Issues regarding cost allocation, cooperative funding, and user fees and their relationships to GIS development and operational costs must be examined.

DISTINGUISHING RECORDS FROM INFORMATION PRODUCTS

The law does not change quickly by design, and often fails to keep up with the dramatic changes modern technology brings to our society. This is very evident in a review of open records laws and their impact on issues of access to computer managed information. The most significant impact on policy in the area of GIS access issues is embodied in the state and federal freedom of information statutes and case law. Traditional rulings, statutory formulations, and current trends in this area are dominated by a balance of privacy versus right to know. The legal

precedents direct custodial agencies to release or withhold records on consideration of this balance. The limited decisions that have examined the universe of information encompassed by statutory definitions of "public records" do not provide adequate guidance to assure a smooth transition to "information utilitarianism."

Despite their ineffectiveness in addressing GIS concerns, the impact of dated laws and regulations cannot be ignored. If distinctions between "records" and "products" are necessary, the burden of showing the proper distinctions will fall on the custodial agency. "The basic premise is that a true GIS can be distinguished from other systems through its capacity to conduct spatial searches and overlays that actually generate new information" (Cowen, 1987). What about "new" information derived from records? It is clear that the range of potential products that may be generated by a GIS is nearly limitless. The GIS has unique capabilities for processing map information and conducting special geographic analysis. Because of this, the issue of "what is a record" becomes more complex in a GIS environment as opposed to more traditional information system handling tabular data alone.

One can conceive of a wide range of GIS product offerings such as those illustrated in the sample list below:

Aerial Photography and Survey Control Products

- Standard 9 inch by 9 inch prints, transparencies, or diapositives
- Photo print or transparency enlargements
- Specially formatted prints or transparencies covering defined areas
- Compiled lists of survey control and documentation on monuments

Standard Map Set Products

- 1" = 100' scale planimetric or contour base maps with standard sheet format, feature content, symbology, annotation, etc.
- 1" = 100' scale parcel maps with standard sheet format, content, etc.
- 1" = 100' scale utility maps with standard sheet format, content, etc.
- Small scale regional or county maps (scale of 1" = 1,000') with standard content, symbology, etc.

Special Variations on Standard Map Sets

This product category includes variations of a standard map product in which specifications of scale, sheet format, area of coverage, feature content, symbology, or annotation are customized for a particular use.

Special Thematic Maps

This category of products consists of any specially designed shaded or symbolized maps based on features in the GIS and their nongraphic attributes. Some examples may include the following:

- Shaded maps of existing land use based on attributes assigned to parcels
- Shaded maps depicting categories of appraised value of residential property
- Demographic maps depicting income or population by census tract or other enumeration district
- Incident maps showing the distribution of permit sites or business licenses by type.

Special Reports

A range of tabular reports using query and analysis capabilities of the system, such as those listed below, may be generated:

- Lists of names and addresses organized by property characteristics, demographic characteristics, or location within a political or administrative district
- Summary lists of demographic characteristics by enumeration district
- Voter registration lists
- Reports on permitting and development activities
- Reports on utility service by parcel or district

Special Geographic Analysis and Services

- Environmental impact assessment analysis
- Spatial model to evaluate site suitability for development
- Analysis of demographic and infrastructure data for market analysis
- Utility demand modeling to evaluate expansion of network (e.g., for water systems or electric distribution systems)
- Network analysis for optimal route determination

What are the impacts of on-line access to the database or requests for special GIS products when it would interfere with the agency doing its job? The taxpayer cannot enter the office and take the typewriter simply because it was purchased with tax dollars and is used to create records. When is the database more like the typewriter (i.e., part of an information processing tool), and when is it more like a full filing cabinet (i.e., electronically stored records)? The open records law was not written to deal with the issues raised by these new tools. A sufficiently discriminating policy must be designed and implemented now before the wrong precedents are established, either by courts or overly conservative managers.

Institutional Roles

Agencies planning for a GIS must take an active role in molding the access policy and not wait for the state legislature to catch up with the technological progress and the implementation of GIS in government agencies. Without active guidance, the legislature won't catch up in time to deal efficiently with the many systems that are currently reaching maturity. However, literal application of the current statutory language in most states causes more potential restriction of information access than it promotes in the GIS environment. We cannot expect the courts, in isolation from any policy formulated by the professionals in information management, to find the best solutions based only on the current statutes and meager case law precedents. That pre-electronic age line of policy is based on a very different set of priorities. Any case that comes before the court involving the sale of GIS products or the provision of GIS information should be based on a course of conduct established by the agency from the inception of the GIS program.

Open records law can render the cost of owning a GIS prohibitive because of unanticipated impacts that result from the statutory language dealing with response time to a records request, and cost recovery limitations. 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.

While it would be a losing argument to propose that open records laws do not apply to computerized *records*, the lesson being learned now is that once a map is in the computer you can do an awful lot more than just plot it out again. You can calculate areas, optimize routes, balance sales territories, and take advantage of other new applications as they appear. This can be accomplished without ever again recreating the map in pictorial form. We are now able to manage the map as a database and not as a picture.

According to current interpretations of open records law, a GIS product would be classified as a public record if it was produced using public funds or to support the formation of public policy. For instance, a special zoning case map produced to support a rezoning decision must be available to requests under open records law. But is there any public policy basis for providing access relatively free for the commercial applications of information that did not exist before the request? Is there any public policy basis for granting access in a fashion not restricted by open records statutory procedures?

Records Policy: Foundations and Expansion

State open records laws have by no means reached a point of uniformity, but there are basic principles and trends that can be isolated:

- Definitions of "records" and "open records" are very broad. Formerly, release limitations based on the purpose of the requestor (i.e., commercial purpose) or the form in which the record is stored (i.e., electronically) were commonly found, but are disappearing. It is more common today to prohibit any inquiry into the intended use of requested information to avoid abuse of custodial discretion.
- Applicable statutes, in a majority of states, severely limit the freedom of the custodial agency in defining what constitutes a "record."
- Recovery of costs is very limited, usually allowing a charge only for the direct cost of producing copies for distribution. This assures that the custodian does not abuse purse string control to defeat the records request. Capital costs are almost never allowed, search or staff time charges are prohibited or very limited, reproduction costs are often specified based on paper format records only, and all costs are mandated to be minimal.
- The time frame for meeting a request is specified to assure that delays are not used to defeat the public's right to know. A written refusal with the basis for the refusal specified is most often required.
- The time frame for judicial review of any effort to restrict access is often given priority over other types of cases.

The need to assure accountability for the decisions of government, especially in the area of expenditure of public funds, has overridden the potential problems that a broad access policy places on the custodial agencies. (In several states, statistical analysis of records that would otherwise meet privacy exceptions, has been required. This is called "redaction," and constitutes a requirement that the custodial agency produce information that did not exist but for the request.) A balance was struck over the history of the evolving open records policy to allow the broadest possible access in spite of the taxpayer's expense, and specifying exceptions only in narrow rules protecting privacy for personal, national, and commercial security (Massachusetts Secretary of State, 1987).

Given the economy of scale we face with the potential "market" for GIS access, however, the balance traditionally considered by the courts is shifting. The utility of these new tools 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. The balance is also significantly affected by the ever increasing costs to taxpayers to meet the increasing costs of increasing access. Automated information management changes the impact of the old policy in ways that require immediate correction. The refinement of outdated policies in the case of GIS can be accomplished eventually through statutory changes, but currently requires an interim strategy, one that involves the creation of a defensible course of conduct under the current open records statutes and case law.

The dilemma facing organizations in the distribution of GIS products and services is illustrated in Figure 2.

Two basic and quite diverse policy approaches visible today

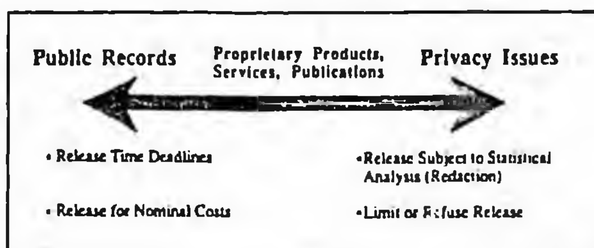

Fig. 2.

in different jurisdictions are being used by policymakers to meet the requirements of the applicable state open records law (Archer, 1988):

(1) Find a statutory basis to refuse as many requests as possible.

An agency faced with dealing with open records requests at their own expense in terms of staff time, capital investment in the system, and especially operation and maintenance costs has little incentive to operate as a utilitarian information processor. Absent cost recovery options, a GIS manager could elect to refuse as many requests as possible on any basis they can invent that could meet specified statutory open records exceptions. 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, etc." The open records provisions in this scenario are utilized as a stick to force the resisting agency to grant access on a case by case basis, and the exceptions are used as a defense necessary to protect the custodial agency from becoming an unaffordable service bureau. Information access becomes a black-and-white issue: release information for nominal costs, or withhold information and be subjected to severe judicial scrutiny. Creative applications that could benefit the entire community are never explored.

(2) Establish a defendable policy to grant requests for information and to address cost recovery issues in this policy.

The context in which many GIS administrators are planning for record/product distinctions is one in which the broadest possible access to products and services is to be offered. A defensible course of conduct, based on existing statutes and legal precendents, can establish the primary difference between records and products. This clear differentiation will promote broader access and will merit more favorable judicial treatment than efforts to restrict information. Control of frivolous requests, control of timing access to the GIS that does not interfere with governmental duties, and funding for system operations, maintenance, and expansion become available policy choices for the particular jurisdiction. Promotion of GIS use by the custodian for the entire community becomes the guiding policy.

Most GIS managers would like to grant broader access to information, as described above in Approach 2, but they must be able to afford the exercise. Approach 1 is a convenient policy to pursue, because it results in less expenditures from the organization's budget to handle the potentially large cost of fulfilling requests for GIS products. When no defendable policy is in place to achieve any cost recovery for system development or ongoing system maintenance, Approach 1 is by default the only realistic option for many GIS custodial agencies.

It is easy to see that maintaining a policy that would effectively limit access to GIS products will vastly reduce the potential tangible and intangible benefits of the system, and will not allow an agency to fully capitalize on significant investments in the GIS database, hardware, and software.

We make the assumption that taxpayers will receive benefits from the implementation of a GIS if that system has been well designed and is managed effectively. If this assumption is correct, policies should support the increased use of tools provided by GIS and related technologies. Taxpayers, particularly those with a commercial purpose, have access to more and better information as do the public policy makers once a GIS is available for their service area. Wouldn't it be more acceptable for this improved access ability (which is in line with the underlying purpose of the open records laws) to be paid for in part by the users who will profit from the access? Then the financial roadblock to an expanded GIS use will be reduced, and more taxpayers will enjoy the fruits of the information management systems which they could not begin to afford to initiate in the private sector.

It is in the interest of all parties to remove this incentive for

the agencies to try to limit access within the confines of the current statutory framework. This is possible only if we can make reasonable distinctions between what information is a "record," and what is a product, publication, custom report, custom map, a service, etc. A reasonable distinction must not erode the purposes of the open records laws – particularly the accountability of government (Roitman, 1988). A reasonable distinction must promote the agency to in turn promote enhanced access for the general public. Establishing an access policy based on these reasonable distinctions can act as a carrot to work with the stick represented by the open records law. An agency that unreasonably limits access to government records is subject to being hit with an open records suit. An agency that promotes broad use and creative new uses for the GIS may obtain funding for necessary system enhancements and staff that are necessary to provide the service.

The most easily defended policy for distributing products from a GIS at this time is far from the best. This would be to simply grant all requests for traditional textual material in raw printout or map form, or deliver a database "dump" on magnetic tape media when asked. Under this scenario, the agency would absorb the real costs of the exercise, and turn down all requests that don't fit a standard mode. Enhanced data, on-line access, and the most useful applications resulting from the spatial analysis made available by GIS technology are lost to the community.

A dilemma faces GIS managers who must respond to information requests through a strict interpretation of open records law. On the one hand, 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 a wide range of potential GIS products. On the other hand, if the access request is met merely because no open records exception applies, then a precedent is established and no subsequent control is retained for similar requests in the future, no matter how burdensome or expensive they might prove to be.

Jurisdictions adopting the simple solution and treating all GIS access requests under the state's open records law are not serving the underlying utilitarian principles of the law as well as those seeking a reasonable distinction for identifiable products and services. They are also failing to adequately plan for the increase demand on these systems that will come with time. In the big picture, they are also not serving their taxpayers' financial interests as well, because they are missing the opportunity to distribute some of the costs to specific users, and limit the impact on the average taxpayer.

Those jurisdictions that are developing the distinctions between certain products and services and traditional records are finding the hidden carrot. They are finding themselves in an environment where it will be an advantage to promote outside access by educating the public as to the system's capabilities, marketing the existing applications to the commercial sector, looking for new applications and new products, and planning for staff and equipment to make broad access possible. They will retain the requisite control necessary to give priority to real records requests and to place governmental use ahead of commercial use of the system. They have increased the potential for financial survival of the GIS by spreading the tax burden in part to commercial users while providing more utility to the commercial users.

Given the state of the case law in most jurisdications, an open records challenge to any distinctions between records and other kinds of products and services is likely to have a chilling effect on any proposed strategy to allow for cost recovery. However, a cautiously constructed policy should be able to avoid premature challenges until a course of conduct can be established, regulations formulated, and eventual statutory changes made with a more discriminating breakdown of what is a record and what is not. The answer to an access request should be either "yes" (e.g., It is a public record and you may have it within three days) or "yes, but..." (e.g., It is a service/product we intend to provide, and you may have it, when we have time to produce it, for $50). Not turning down any reasonable request is critical to avoiding open records challenges. This approach is most attractive and practical if the custodial agency decides to actively provide and sell access from the GIS from the beginning.

SUMMARY

The creation of an institutional setting that will provide an appropriate organizational home for GIS technology requires more than a group of agencies that have enough funding to establish the initial configuration and database. GIS planners must consider access policy and the limitations and opportunities that the particular legal setting, equipment and database configuration, and demand for access provide. If access is to be controlled so as to allow reasonable use of the system by the custodial agency, some form of purse string control must evolve. The opportunity to spread the tax burden of establishing the system should not be lost by default. If government does exercise proprietary authority over GIS to establish user fees for access to the system, many corollary issues arise. To some extent, government must learn to operate as a private corporation and deal with marketing, liability disclaimers, and protections of proprietary value from third party commercial use.

Public agencies implementing GISs and the GIS managers who are overseeing their operation should take public access issues into account at the earliest possible implementation stage. Consideration of the following issues and tasks are recommended as significant aspects of any GIS operational plan:

- Establish support for distinguishing GIS products and services from public records by including house counsel or the agency records custodian in the GIS planning process
- Gain an understanding of known, probable, and potential GIS users, and a long-term perspective on the potential "market" for particular GIS products and services in the community.
- Develop a thorough understanding of the open records rules for the jurisdiction, and establish operating procedures and provide staff training to assure no abuse of *records* access will occur. Define particular products and services and liberally treat all unclassifiable requests as records requests.
- Develop an initial list of computer products and services based on past and projected requests for maps and special analysis from other public agencies and the private sector.
- Develop a schedule for product and service availability, and work with the identified major users in the development of required GIS applications.
- Based on local policy, make a decision about whether pricing GIS access is to achieve reasonable control over "outside use," or whether cost recovery is a major objective.
- Develop a fee structure for products and services based on the actual and estimated costs for the GIS over a defined time period
- Establish GIS on-line access or GIS product availability conditions by contract, subscription agreement, etc., with particular attention to disclaiming product liability or duty of care as appropriate
- Codify course of conduct for GIS access once a clear line between records and GIS products can be established: user fees, definitions of particular products and services, and user fee waivers or reductions (e.g., allowed for acadamic research, journalism, or non-profit use) should all be subjected to regulatory review processes
- Seek statutory modifications when clarifications in light of the impact of this new technology are merited: definition of "open records" (e.g., distinguishing information products and services, treatment of in-house and licensed computer programs, "value-added," etc.), express authority to establish the proprietary service with any public utility-like checks and balances desired by the legislative branch, and policy to support GIS access as a "state action" exception under the antitrust law provisions
- On the national level, join the debate over who controls the value

of information: should the capital investment of the taxpayers be spread through user fees, or should government turn this resource over to the segment of the private sector "information industry" currently making a bid for control at the federal level; will the copyright law or some other grant of federal rights suffice to protect proprietary rights in databases?

- Approach the institutional issues surrounding information sharing and the cost of the exercise early in the planning process with the participation of the highest level policy makers in the organization; the major opportunities and the major roadblocks to GIS implementation are at stake.

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Remote Sensing:

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The Environmental Research Institute of Michigan (ERIM)
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Enquiries:
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PLEASE NOTE REVISED CONFERENCE DATES – NOT 8-10 OCTOBER AS STATED ON FIRST CIRCULAR

→ CS - Reflects comments / testimony

1. Edworthy - privacy sec. 1, 13 provisions - proposal
   Florida - let people know when info was available

2. Public Records (paper) present regs incorporated - be available at copy cost - standard charge included for excessive requests

3. ACLU - waiver / reductions - everyone gets same tx

MEMORANDUM

TO: Interested Parties

4. Fee = incremental cost of agency

FROM: Rep. Kay Brown Kay

5. TIC - Adopt regs or act except municipalities - implement this

DATE: Jan. 30, 1990

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.

<u>The House State Affairs Committee will hold a public hearing on the proposed Committee Substitute at 8:30 a.m., Thursday, Feb. 1</u>. 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.

Fees - Adopt fees / Disapprove fees ?

Appeal procedure for denial / choose admin route or go to court -

■ 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 establishes 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; proprietary software
- * 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)]

STATE: prop software not public / computer is public record
copyrighting - Distribution provisions however - at reasonable cost - Gov could develop software / but with restriction including copyright

■ 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.

"INFORMATION UTILITY"

AMENDED IN SENATE AUGUST 21, 1989

AMENDED IN ASSEMBLY JUNE 19, 1989

AMENDED IN ASSEMBLY JUNE 5, 1989

AMENDED IN ASSEMBLY MAY 4, 1989

AMENDED IN ASSEMBLY APRIL 24, 1989

AMENDED IN ASSEMBLY APRIL 12, 1989

AMENDED IN ASSEMBLY MARCH 28, 1989

CALIFORNIA LEGISLATURE—1989–90 REGULAR SESSION

ASSEMBLY BILL No. 539

Introduced by Assembly Member Moore

February 8, 1989

An act to add Chapter 2 (commencing with Section 1798.80) to Title 1.8 of Part 4 of Division 3 of the Civil Code, relating to privacy.

LEGISLATIVE COUNSEL'S DIGEST

AB 539, as amended, Moore. Privacy: personal information.

Existing law specifies procedures for the collection, maintenance, and dissemination of personal information maintained by any state agency, as defined, for the purpose of protecting the privacy of individuals and limiting the dissemination of personal information.

This bill would require, among other things, notification, as specified, to the individual that personal information, *as defined,* is being collected [illegible] *and* distributed for commercial purposes, as defined, disclosure of the identity of any 3rd persons to whom that information is collected for or distributed to, and would also require that the individual be

provided a true copy of the information being provided upon his or her request and that personal information in a data dossier, as defined, be accorded the same legal protections as the most secure information, as specified.

This bill would also establish that every individual about whom personal information is being collected *and distributed* has certain rights, among other things, including the right to inspect all records and sources of information, make corrections, as specified, and the right to inquire and be notified as to whether any person, organization, or entity maintains a record about himself or herself.

This bill would also provide that, any person who uses a computer network, as defined, with prescribed exceptions, to collect ~~or~~ *and* distribute personal information in a manner other than as specified in this act, as defined, about an individual is liable to him or her in an amount equal to the sum of all of the following: (1) any actual damages sustained by that individual or $500, whichever is greater, except in a class action, and, (2) the costs of any successful action together with reasonable attorney's fees. The court may also enjoin any person, organization, or entity that fails to comply with this act and may make any order or judgment, as specified.

This bill would also make a declaration of legislative intent.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Chapter 2 (commencing with Section
2 1798.80) is added to Title 1.8 of Part 4 of Division 3 of the
3 Civil Code, to read:
4
5 CHAPTER 2. THE PERSONAL INFORMATION
6 INTEGRITY ACT OF 1989
7
8 Article 1. General Provisions and Legislative Findings
9
10 1798.80. This chapter shall be known and may be
11 cited as the Personal Information Integrity Act of 1989.

1 1798.81. The Legislature hereby finds and declares
2 that:
3 (a) In a democratic society, rights are ~~bestowed on~~
4 *inherent to* individuals, and that among these rights is the
5 right to privacy, as declared in Section 1 of Article I of the
6 California Constitution.
7 (b) For the individual to be able to exercise the right
8 to privacy, the individual must be able to choose when to
9 release personal information, and to whom; and that
10 reasonable laws requiring the individual to surrender
11 such control should be propounded and enforced only
12 when it is deemed absolutely necessary for society's
13 welfare.
14 (c) In an age of computer networks and global
15 telecommunications, the integrity of the person is only as
16 secure as the integrity of the information about the
17 person which may be collected and distributed via these
18 proliferating information technologies; and to this end,
19 the Legislature has caused this legislation to be enacted.
20
21 Article 2. Definitions
22
23 1798.82. As used in this chapter:
24 (a) "Personal information" means any individually
25 identifiable information obtained through a commercial
26 transaction for personal, family, or household purposes or
27 through an exchange of information with the state or
28 local governments from which judgments can be made
29 about an individual's character, habits, avocations,
30 finances, occupation, general reputation, credit, health,
31 or any other personal characteristics.
32 *(b) "Personal information" does not mean:*
33 *(1) An individual's name and address.*
34 *(2) An individual's telephone number if the telephone*
35 *number is published in a current telephone directory.*
36 *(3) Disclosures from public records relating to land*
37 *and land titles.*
38 *(c)* "Computer network" means two or more
39 computers joined by a telephone line, coaxial cable, fiber
40 optic cable, any other connecting cable, or radio

1 transmitters for the exchange of data.
2 ~~(c)~~
3 *(d)* "Data dossier" means a collection of records,
4 documents, images, or other devices used to store
5 personal information about an individual.
6 ~~(d)~~
7 *(e)* "Commercial purpose" means any purpose which
8 has financial gain as a major objective. It does not include
9 the gathering or dissemination of newsworthy facts by a
10 publisher or broadcaster.
11 1798.83. Any person using a computer network to
12 collect ~~or~~ *and* distribute personal information about an
13 individual for commercial purposes shall do all of the
14 following:
15 (1) Notify the individual within seven days from the
16 date that personal information is first collected or
17 distributed. If the personal information is being collected
18 for or distributed to a third person, the identity of the
19 third person shall be provided to the individual as part of
20 this notice. The notice shall include a statement of the
21 individual's right of access to records containing personal
22 information which are maintained by the person,
23 organization, or entity.
24 (2) Provide, upon request of the individual, a true
25 copy of all personal information so collected or
26 distributed.
27 (3) Accord all personal information contained in a
28 data dossier the same legal protections, including all
29 noticing and disclosure requirements, as is required for
30 the most secure information within the dossier.
31 (4) Maintain the source or sources of the personal
32 information.
33 (5) Permit the inspection of all records and sources of
34 information by the person about whom information is
35 being collected.
36 (6) Permit an individual to request in writing an
37 amendment of a record and, shall within 30 days of the
38 date of receipt of the request:
39 (A) Make each correction in accordance with the
40 individual's request of any portion of a record which the

1 individual believes is not accurate, relevant, timely, or
2 complete and inform the individual of the corrections
3 made in accordance with his or her request; or
4 (B) Inform the individual of its refusal to amend the
5 record in accordance with the individual's request, the
6 reason for the refusal; and shall clearly note any portion
7 of the record which is disputed and shall include the
8 individual's concise statement of disagreement.
9 1798.84. (a) Any person who uses a computer
10 network to collect ~~or~~ *and* distribute personal information
11 in a manner other than as specified in this chapter is liable
12 to the individual about whom the personal information
13 pertains in an amount equal to the sum of all the
14 following:
15 (1) Any actual damages sustained by the injured
16 individual as a result of the collection or distribution or,
17 except in the case of class actions, five hundred dollars
18 ($500), whichever sum is greater.
19 (2) In the case of any successful action to enforce any
20 liability under this chapter, the costs of the action
21 together with reasonable attorney's fees as determined
22 by the court.
23 (b) The court may enjoin any person, organization, or
24 entity that fails to comply with this chapter, and may
25 make any order or judgment as may be necessary to
26 prevent any practices which violate this chapter.
27 1798.85. This act shall not apply to the following:
28 (a) The collection ~~or~~ *and* distribution within or by an
29 organization, person, or entity of personal information
30 about an individual if all of the following conditions are
31 met:
32 (1) The individual voluntarily provides, or authorizes
33 another person, organization, or entity to provide, the
34 personal information to the organization, person, or
35 entity and signs a written notice to that effect.
36 (2) At the time the individual provides, or authorizes
37 another person, organization, or entity to provide, the
38 personal information to the organization, person, or
39 entity, the individual is notified in writing of the intended
40 uses of the personal information and the names of other

1 persons or types of organizations, persons, or entities to
2 which the personal information may be distributed.
3 (3) *The notification provided by the person,*
4 *organization, or entity to the individual is supplemented*
5 *by written notice to the individual if the personal*
6 *information is be provided to persons or types of*
7 *organizations, persons, or entities other than those about*
8 *which the individual was initially notified.*
9 *(4)* The organization does not collect ~~or~~ *and* distribute
10 the personal information about the individual for
11 purposes other than those about which the individual is
12 notified.
13 (b) The collection ~~or~~ *and* distribution of personal
14 information by a person, organization, or entity legally
15 authorized, and acting within the scope of the
16 authorization, to collect and distribute personal
17 information, as prescribed, and for the purposes
18 intended, by state or federal law. These organizations,
19 persons, or entities include, but are not limited to:
20 (1) State and local governmental agencies, including
21 law enforcement agencies and courts.
22 (2) Credit reporting agencies which collect and
23 distribute personal information, provided that they
24 report the collection and distribution of this personal
25 information in compliance with the regulations of the
26 federal Fair Credit Reporting Act (15 U.S.C. Sec. 1681
27 and following) and the Consumer Credit Reporting
28 Agencies Act (Title 1.6 (commencing with Section
29 1785.1) of Part 4 of Division 3).
30 (3) Investigative consumer reporting agencies.
31 (4) Licensed private investigators.
32 (5) Regulated financial institutions, including banks,
33 savings and loans, *thrifts,* industrial loan companies,
34 personal property brokers, consumer finance lenders,
35 and commercial finance lenders.
36 (6) Public utilities.
37 (7) Providers of health care, as defined in subdivision
38 (d) of Section 56.05.
39 (8) A nongovernmental organization which regulates
40 professional practitioners and which collects ~~or~~ *and*

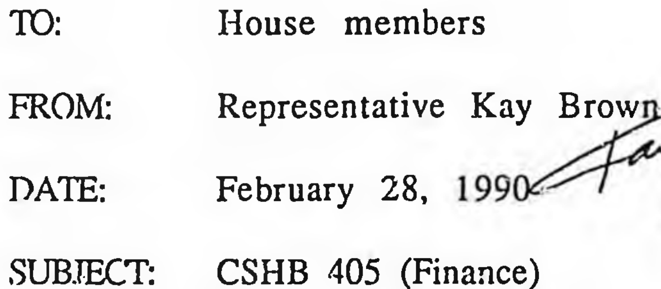
1 distributes information about those professional
2 practitioners in a manner that is regulated by a state or
3 federal agency.
4 ~~(9) An entity possessing a license or certificate under~~
5 ~~Chapter 1 (commencing with Section 12340) of Part 6 of~~
6 ~~Division 2 of the Insurance Code, or facilities under the~~
7 ~~joint ownership or control of these entities.~~
8 ~~(10)~~
9 *(9)* An insurance company.
10 ~~(11)~~
11 *(10)* Licensed real estate brokers.
12 (c) A seller, buyer, lessor, or lessee of real property or
13 an organization that collects information about
14 transactions in real property from sellers, buyers, lessors,
15 or lessees if the seller, buyer, lessor, or lessee providing
16 the information has given written permission for the
17 collection and distribution of the information relating to
18 the transaction.
19 (d) A seller or lessor of personal property *services* if
20 the individual about whom the personal information is
21 being collected has been notified of the seller's or lessor's
22 intended use of the personal information and has given
23 written permission for the collection and distribution of
24 the personal information for that sole purpose.
25 *(e) A person compiling or distributing a mailing list*
26 *which contains only the names and addresses of*
27 *individuals and which does not reveal personal*
28 *information as defined in Section 1798.82 if, at the request*
29 *of an individual appearing on the list, the person*
30 *promptly removes from the list the name and address of*
31 *the individual and informs the individual of the source of*
32 *the individual's name and address.*
33 1798.86. (a) Nothing in this chapter shall be
34 construed to deny or limit any right of privacy under
35 Section 1 of Article I of the California Constitution.
36 (b) The rights, remedies, and causes of action set forth
37 in this chapter shall be nonexclusive and are in addition
38 to all other rights, remedies, and causes of action for
39 invasion of privacy, provided in Section 1 of Article I of
40 the California Constitution.

1 (c) Every individual shall have the right to inquire
2 and be notified as to whether any person, organization, or
3 ~~entity maintains a record about himself or herself.~~ *entity*
4 *maintains a record of personal information, as defined in*
5 *Section 1798.82, about himself or herself, unless otherwise*
6 *provided by law.*

O

Kay Brown

Alaska State Legislature
House of Representatives



TO: House members

FROM: Representative Kay Brown

DATE: February 28, 1990

SUBJECT: CSHB 405 (Finance)

I would appreciate your support for CSHB 405 (Finance), which deals with public access to state and local government records. The bill will come before the House for a vote in the near future.

The major provisions of the bill:

- **Govern access to and fees for obtaining public records.** The provisions cover all agencies of the executive, legislative, judicial branches of state government, and of municipalities.

- **Establish discretionary authority for public agencies to offer to the public electronic services and products, and criteria for setting fees.** The intent is that electronic services and products would be offered if there is sufficient public demand to generate enough fees (program receipts) to cover the costs.

- **Authorize state agencies and municipalities to copyright software.**

- **Address privacy rights of individuals** by requiring state agencies to inform individuals that personal information may be subject to public disclosure, and providing a process to correct inaccurate personal information in public files. The bill also provides that in the event of ambiguity regarding whether personal information should be released, the ambiguity must be resolved in favor of the right to privacy.

- **Define terms,** including "public records," electronic services and products," and "personal information."

P. O. Box 20-2661
Anchorage, AK 99520-2661
(907) 272-0207

During Session:
P. O. Box V
Juneau, AK 99811
(907) 465-4998

A sectional analysis prepared by Legislative Counsel is attached for your information.

Since passage from the House Finance Committee, questions have arisen regarding Section 11 of the bill, which expands the confidentiality provisions affecting data collected by the Department of Fish and Game. **I am holding a work session at 8 a.m., Friday, March 2, in the House Finance Committee Room to discuss an amendment to this section that will be offered on the House floor.**

Please let me know if I can answer any questions about the bill. Thank you for your interest and support.

H B

420

House Committee on State Affairs

RECAP OF
HB 420

Alaska Garden Week

Received January 17, 1990
by Reps. Hudson, C. Davis

Heard February 6, 1990

Passed Out of Committee February 6, 1990
4 Do Pass
1 No Recommendation

TABLE OF CONTENTS

HB 420: Alaska Garden Week

Item 1: HB 420 by Reps. Hudson, C. Davis

Item 2: Fiscal Note by HouseState Affairs

Item 3: Letter from Rep. Hudson, January 18, 1990

Item 4: Position Paper from Alaska State Federation of Garden Clubs, January 26, 1990

Item 5: Position Paper from Cooperative Extension Service, UAF, January 30, 1990

HOUSE COMMITTEE REPORT

(7)
Date Referred: January 17, 1990 FURTHER REFERRALS:

Date of Committee Action: __________

The STATE AFFAIRS Committee considered: HB 420

HOUSE BILL NO. 420 ALASKA GARDEN WEEK

"An Act establishing Alaska Garden Week."

RECOMMENDATIONS:
[ ] be replaced with ______________ [ ] the same title [ ] a new title
[ ] have attached amendment(s)
[X] do pass
[ ] do not pass
[ ] no recommendation
[ ] individual recommendations
[ ] additional referral to the ______________ Committee

ADOPTS: ______________ letter of intent

ATTACHES NEW FISCAL NOTE(s): (Dept)
[ ] fiscal impact ________
[X] zero fiscal note SA
[ ] zero with analysis ________

APPROVES PREVIOUS: (Date/Dept)
[ ] fiscal note(s) ________
[ ] zero fiscal note(s) ________
[ ] zero fn/analysis ________

SIGNING DO PASS:

[signatures]

SIGNING:
(Check approp. column)

	Do Not Pass	No Rec	Amend
[signature]		X	

Chairman's Signature

Item 2

STATE OF ALASKA
1990 LEGISLATIVE SESSION

BILL VERSION :
PUBLISH DATE :

FISCAL NOTE

REQUEST:

Revision Date:
Title : Alaska Garden Week

Sponsor : Hudson
Requestor :

Agency Affected :
BRU :

Components :

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
REVENUE	-0-	-0-	-0-	-0-	-0-	-0-

FUNDING: (Thousands of Dollars)

	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS:

	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

No fiscal impact.

Prepared by : House State Affairs
Division :
Phone : 465-4963
Date : Feb 02, 1990

Approved by Commissioner : H. A. "Red" Boucher, Chair
Agency :
Date : Feb 02, 1990

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

page ___ of ___

Item 3

Alaska State Legislature

REPRESENTATIVE BILL HUDSON

P.O. BOX V
Juneau, Alaska
99811
(907)465-3744 or 4991

COMMITTEES:
Transportation
Resources
Foreign Trade

FINANCE SUBCOMMITTEES
DOT/PF
C & RA

January 18, 1990

RECEIVED
JAN 22 1990

Representative H. A. Boucher,
Chairman
House State Affairs Committee
Alaska State Legislature
Juneau, Alaska

Dear Representative Boucher:

HB 420 relating to establishing Alaska Garden Week, was referred to the House State Affairs Committee on January 17, 1990.

This bill seeks to establish the week of June 1 - 7 as Alaska Garden Week. I introduced it at the request of the Alaska State Garden Club, and I believe this bill has statewide support.

Copies of proclamations by the governor, the National Council of State Garden Clubs, Inc., and by Juneau's Former Mayor Polley are enclosed. All of the proclamations point out that gardening instills a sense of pride in our respective communities, a sense of independence and well being, and also fosters a greater awareness of our natural environment.

Similar legislation was introduced in the 15th Alaska Legislature; SB 86 by Senator Duncan passed the Senate unanimously.

It would be very much appreciated if you would schedule HB 420 for an early hearing in the House State Affairs Committee. If you or your staff need further information, please contact me or Landa Holtan at 3744 or 4991.

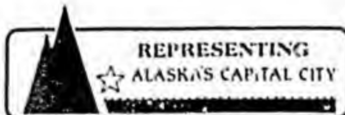
Respectfully,

Bill

Bill Hudson

BH:Lh

Enclosures



National Council Legislation Chairman, will direct this activity.

Celebrate National Garden Week June 1 thru 7 with pride in your membership and *"Pride in the Land"*.

The

National Council of State Garden Clubs, Inc.

GARDEN WEEK RESOLUTION

WHEREAS: the gardeners of the United States produce the food which feeds our people and permits us to export our abundance to other countries; and

WHEREAS: our gardeners help to preserve our traditional spirit of independence and initiative; and

WHEREAS: gardening instills in our people a greater respect and care for our environment and our natural resources; and

WHEREAS: gardening furnishes a challenging and productive full or part-time activity for a large number of our citizens; and

WHEREAS: our gardens also yield herbs, foliage and flowers which add beauty, fragrance, and nutrition to our lives: Now, therefore, be it

RESOLVED: that the week of the first Sunday in June 1986 be designated as:

NATIONAL GARDEN WEEK,

and that all of the people of our United States observe the week with educational activities and projects that stress the benefits of gardening, and

that gardeners share food from their gardens with less fortunate citizens and share flowers and plants with nursing homes, shut-ins and friends.

Proclaimed by me on this twelfth day of January in the year of our Lord 1986.

MRS. JOHN NICHOLAS FERRER, PRESIDENT

PROCLAMATION

WHEREAS, gardening, without a doubt, improves the scenic values of property, contributes a beneficial impact to entire neighborhoods and provides exercise that can improve good health. Gardening can promote individual and community pride and the beauty it creates is one benefit beyond price.

WHEREAS, through the years, the Juneau Garden Club has been a positive influence for the aesthetic good in our community. Juneau Garden Club members have provided inspiration and valuable information so that residents of this community can reap the pleasures of personally growing and then witnessing the beauty of the flowers, trees, shrubs, lawns or vegetable gardens they have planted.

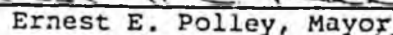
WHEREAS, the large planter boxes lining the Juneau Motors Parking Lot is a major example of the Juneau Garden Club's visual impact upon the City and Borough of Juneau. Members volunteered to assist the Parks and Recreation Department in planting and maintaining the planters. Other municipal sites such as the airport, high school and hospital have also benefited from the volunteer efforts and expertise of the Juneau Garden Club.

BE IT RESOLVED that I, Ernest E. Polley, Mayor of the City and Borough of Juneau, deem it an honor and a pleasure to publicly thank the Juneau Garden Club for their many contributions and inspiration. I, now therefore, proclaim the first week in June, 1988 as

JUNEAU GARDEN CLUB APPRECIATION WEEK

I ask that residents publicly express their admiration for both public and private examples of outstanding gardening in their community, to consider planting flowers and vegetable gardens. and to reflect on the importance of agriculture to our economy and our whole way of life.

IN WITNESS WHEREOF, I have hereto set my hand and caused the seal of the City and Borough of Juneau, Alaska, to be affixed this 27th day of May, 1988.



Ernest E. Polley, Mayor

Executive Proclamation

by

Steve Cowper, Governor

The growing of flowers and vegetables is important to the citizens of Alaska. Flowers add beauty to the lawns of private homes, parks, and public places.

The growing of vegetables means Alaskans are more self-reliant and import less food from the "Lower 48." It means Alaskans can increase their nutritional state by eating fresh vegetables rich in vitamins, while at the same time cutting their cost of living by paying less for imported vegetables.

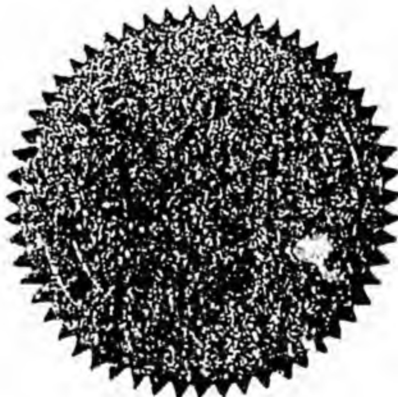
Gardening, in general, is a positive habit. It improves the scenic value of property, contributing a beneficial impact to entire neighborhoods, and provides exercise which can improve good health. Gardening can promote individual and community pride, and the beauty it creates is one benefit beyond price.

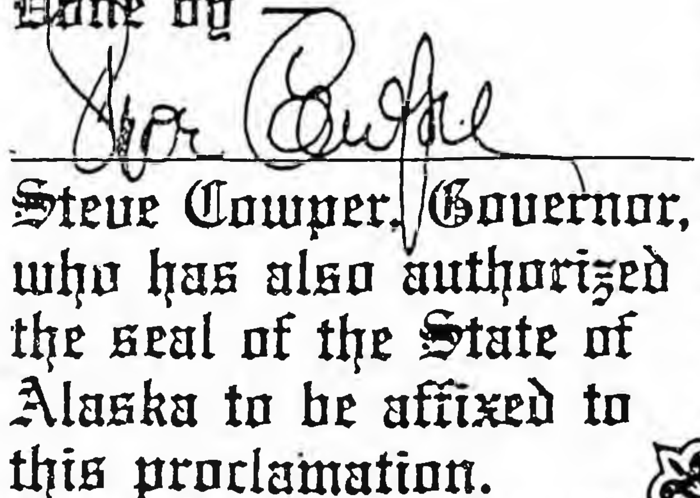
NOW, THEREFORE, I, Steve Cowper, Governor of the State of Alaska, do hereby proclaim the week of June 1 - 7, 1988, as:

GARDEN WEEK

in Alaska, and at the request of the National Council of State Garden Clubs and the Alaska State Federation of Garden Clubs, ask residents to publicly express their admiration for both public and private examples of outstanding gardening in their local communities, to consider planting flowers and vegetable gardens, and to reflect on the importance of agriculture to our economy and our whole way of life.

DATED: May 17, 1988





Done by

Steve Cowper, Governor, who has also authorized the seal of the State of Alaska to be affixed to this proclamation.

ALASKA STATE GARDEN CLUB
ANNUAL LEGISLATIVE REPORT
1986-1987

Senator Jim Duncan of Juneau, Alaska introduced Senate Bill 86 in the Alaska State Legislature January 27, 1987 at the request of Peggie Garrison, President, Juneau Garden Club.

Senate Bill 86, "An Act establishing Alaska Garden Week," would amend Alaska Statute 44.12 by adding a new section to read:

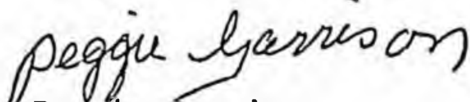
> Sec. 44.12.070. ALASKA GARDEN WEEK. Alaska Garden Week is established from June 1 to June 7 of each year to recognize the importance of gardening to Alaskans and to encourage participation by the public in activities sponsored by the National Council of State Garden Clubs, Inc., celebrating National Garden Week.

During the 1987 legislative session, the undersigned testified on six different occasions in support of Senate Bill 86.

The bill was referred to the Senate State Affairs Committee and Senate Resources Committee. It was approved by both of these committees and passed the full Senate unanimously February 27, 1987.

The 1987 Alaska Legislature adjourned without House action on Senate Bill 86. When the Alaska Legislature is again convened, the bill will be heard in the House State Affairs, Resources and Judiciary Committees before it comes up for a vote before the full body of the House of Representatives.

If the House of Representatives passes Senate Bill 86 without amendment, it will be forwarded to the Governor for his signature and become law.



Peggie Garrison
Legislative Chairman

National Garden Week

June 1 thru 7

By Mrs. Harold V. Pasley

With the theme of our National Council President, Mrs. John N. Fehrer "Pride in the Land" in particular focus this year, members of our 10,553 garden clubs will celebrate National Garden Week June 1 thru 7, the first full week in June. Although observances will be varied in form, National Garden Week is an event which brings a sense of togetherness among us and a sense of pride in membership in a garden club federated with the National Council of State Garden Clubs, Inc., the largest organization in the world devoted to gardening in its broad context. Community residents will respond favorably to well-planned observances and these provide our organization with visibility in a very positive way — the ideal climate for securing new club members.

A strong, nation-wide effort to project National Garden Week and *"Pride in the Land"* is now in progress under the direction of Mrs. Graem Yates, Fourth Vice-President and Promotion Coordinator, National Council of State Garden Clubs, Inc., who has completed plans with the McDonald Corporation to carry this message:

Show *"Pride in the Land"*
Observe National Garden Week
June 1 thru 7
National Council of State
Garden Clubs, Inc.

on its community service readerboards located in the interior of each restaurant throughout our country.

National Garden Week is our opportunity to tell the story of gardening and its benefits; aesthetic, economic and therapeutic and to tell the story of the importance of garden clubs. Let it be known that the idea of a National Garden Week originated in The National Council of State Garden Clubs.

Whatever may be the form of observance, do relate it to your garden club, your state federation and our National Council of State Garden Clubs, Inc. and to our National Council President's theme *"Pride in the Land"*.

Television and radio stations schedule community service time with advance reservation. It will be an educational experience to participate in a "talk show" not only discussing horticultural practices but also explaining selected National Council programs relating them to your area when applicable, our conservation and environmental concerns and our contributions to the betterment of our country. In a shopping mall, set up a display or a "how to do" exhibit including information about your own club and its projects. Place an artistic design in a location where it can be appreciated. Plan something special for garden therapy.

Within the past year, commercial interests related to gardening, combined their efforts and introduced SJR 136 in the U.S. Senate to hold a "National Gardening Week" beginning on April 13, 1986. The Resolutions passed in the Senate on June 18, 1985. Soon thereafter, a corresponding Resolution was introduced in the House of Representatives (HJR 266) which is, as of this writing, yet in the Post Office/Civil Service Committee. It is understood that, should this Resolution become a reality, its duration would be for one year.

Be that as it may, together we will continue on to work, without interruption, for our National Garden Week.

So much work has already been done in that direction by so many people in our organization tht it seems in order to proceed to accomplish what is evident our members want, a National Garden Week, in perpetuity.

A number of our states have enacted in their state legislatures a Bill to establish a Garden Week the first full week in June of each year. It is the goal that all states will have such legislation by June 1987, the conclusion of the present biennium. We will then have achieved a National Garden Week for always. Mrs. J. Murray Blue,

I believe 17 states have a chairman to date!

NATIONAL GARDEN WEEK

Chairman, Jerry Tubb (Mrs. K.O.)
1575 Old Mill Road
Germantown, TN 38138
901-754-7412

Over ten yeatssago National Council initiated the idea of National Garden Week to recognize gardening activities. It also gave us an opportunity for pride in our federated membership and our local and national accomplishments. National Garden Week is the perfect vehicle to promote National Council, increase membership, publicize activities, show gardening activities and results, and to generate interest in all aspects of garden club work. Our goals for this administration are:

1. To have all states issue proclamations proclaiming the first full week in June as National Garden Week and, whenever possible, to have these proclamations issued in perpetuity. 17 states have already had their proclamations so issued.

2. To have all regions and states appoint National Garden Week Chairmen.

3. To publicize the first full week in June as National Garden Week through the media, public service announcements, reader boards, exhibits, flower shows, and membership drives.

4. Tooregognize clubs, districts, and states for their efforts in promoting National Garden Weeks with the following award.

NATIONAL GARDEN WEEK AWARD

Awarded for the best promotion of Garden Week. Promotion to create public awareness of National Garden Week and the plant world. Awarded to (A) Club, (B) District, and (C) State

Scales of Points

A and B Club and/or District		C State	
Scope of participation	30	Scope of participation	30
Community Awareness	25	Community awareness	25
Educational Value	25	Educational value	20
Presentation	10	Presentation	10
Publicity	10	Publicity	10
	100	State Proclamation	5
			100

This award will be a certificate presented at the 1990 and 1991
This award will be a certificate presented at the 1990 and 1991 Conventions.

Suggestions for National Garden Week Promotions: Flower shows held in public buildings or malls, gardening tips in local papers and on television shows, presentation of plants or arrangements to public officials, educational exhibits in spring shows, and publicity on any aspect of garden club work.

SUGGESTED PROCLAMATION

for

GARDEN WEEK: JUNE 4 - 10, 1989

WHEREAS: the gardeners of this country produce a multitude of foods for our people and enable us to export to other countries which are in desperate need: and

WHEREAS: our gardeners help to preserve and foster our traditional spirit of independence and individual initiative: and

WHEREAS: gardening instills in our people, both young and old, a greater appreciation for nature, in general, and for our beautiful land in particular: and

WHEREAS: such appreciation naturally leads to a greater respect and care for our environment: and

WHEREAS: gardening in addition to being most beneficial for our country, furnishes a pleasant and productive full or part-time activity for a large number of our citizens: and

WHEREAS: our gardens also yield flowers of great variety and breathtaking beauty: and

WHEREAS: these flowers bring beauty into our lives and satisfy our aesthetic needs:

now, THEREFORE, be it

RESOLVED THAT THE WEEK OF JUNE 4 - 10, 1989 be designated as GARDEN WEEK.

Proclaimed by me on this day of , in the year of our Lord 1989

NAME TITLE

Item 4

ALASKA STATE FEDERATION OF GARDEN CLUBS

Member of the National Council of State Garden Clubs, Inc.

Mrs. Albert J. Silk (Linda)
2801 Bennett
Anchorage, Alaska 99517
(907) 243-8825

RECEIVED
JAN 29 1990

January 26, 1990

Representative H.A. "Red" Boucher
Chairman House State Affairs Committee
Alaska State Legislature
102 Capitol
P.O. Box V (MS 3100)
Juneau, Alaska 99811

Dear Representative Boucher:

As President of the Alaska State Federation of Garden Clubs, I am writing to urge you to support the passage of House Bill No. 420 "An Act establishing Alaska Garden Week".

This bill proclaiming the first full week in June Alaska Garden Week in perpetuity has the wholehearted support of all our garden club members throughout the state of Alaska representing twelve garden clubs located in the following cities, Anchorage, Wasilla, Fairbanks Skagway, Kodiak, Haines, Ketchikan, North Pole, and Juneau.

We are non-profit, educational, conservationist volunteers. We are concerned with all aspects of gardening and landscaping. We are concerned with beautification of our homes, communities, industrial areas and roadsides. We are concerned with the wise use and protection of our natural resources as well as with preservation and restoration.

Alaska Garden Week is our opportunity to tell the story of gardening and its benefits; aesthetic, economic and therapeutic. We are affiliated with the National Council of State Garden Clubs, Inc. which is attempting to have the first week in June proclaimed Garden Week throughout all fifty states and the District of Columbia. Seventeen states have already had their proclamations so issued.

Our garden clubs have been of service in communities throughout Alaska since the 1940s. The passable of this bill will show your appreciation of our conservation and environmental concerns and our contributions to the betterment of our country.

Sincerely,

Linda

Linda L. Silk

Item 5

COOPERATIVE EXTENSION SERVICE

UNIVERSITY OF ALASKA FAIRBANKS

2221 E. Northern Lights Blvd., Suite 118
Anchorage, Alaska 99508-4143
(907) 262-5824

January 30, 1990

RECEIVED
FEB 02 1990

Red Boucher, Representative
State Affairs Chairman
Capitol, Room 102
PO Box V
Juneau, AK 99811

Dear Representative Boucher:

I was very pleased to see the introduction of House Bill 420 which would establish an Alaskan Garden Week. June is a more appropriate time to promote gardening in our state than during National Garden Week in April.

Alaskans take pride in producing beautiful flowers and vegetables. The establishment of Alaska Garden Week would allow garden clubs, agencies and horticultural businesses to promote gardening and encourage the beautification of our communities.

The horticulture industry would also benefit by establishment of Alaska Garden Week. Horticulture businesses are important to the state. They represent an $18 million dollar industry as last reported by the USDA Alaska Agricultural Statistics Service. I hope you will support House Bill 420. Thank you.

Sincerely,

Julie Riley

Julie Riley
Extension Horticulture Agent

JR/dmm

H B
426

House Committee on State Affairs

RECAP OF
HB 426

Publication of Proposed Regulatory Action

Received March 14, 1990
by Rep. Jacko, Foster, Zawacki

Heard April 5, 1990
Heard April 17, 1990

Adopted CSHB 426 (SA) April 17, 1990

Passed Out of Committee April 17, 1990
3 Do Pass
1 No Recommendation

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HB 426: Publication of Proposed Regulatory Action

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Item 6: AS 24.05.182

Item 7: Chapter 4. Public I

Item 8: Sectional Summary, ary 23, 1990

Item 9: CRA Committee Report

STATE OF ALASKA
1990 LEGISLATIVE SESSION

BILL VERSION: CSHB 426(STA)
PUBLISH DATE:

FISCAL NOTE

REQUEST:

Revision Date:
Title: An Act relating to the notice requirements fo adopting, amending, . . .
Sponsor: Representative Jacko
Requestor: House State Affairs

Agency Affected: Health & Social Services
BRU:
Components:

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 91	FY92	FY93	FY94	FY 95	FY 96
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL	0.0	0.0	0.0	0.0	0.0	0.0
REVENUE	0.0	0.0	0.0	0.0	0.0	0.0

FUNDING: (Thousands of Dollars)

	FY 91	FY92	FY93	FY94	FY 95	FY 96
GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:

	FY 91	FY92	FY93	FY94	FY 95	FY 96
FULL-TIME	0.0	0.0	0.0	0.0	0.0	0.0
PART-TIME	0.0	0.0	0.0	0.0	0.0	0.0
TEMPORARY	0.0	0.0	0.0	0.0	0.0	0.0

ANALYSIS: (Attach a separate page if necessary)
FY 90 fiscal impact is "0".

Prepared by: Joy Livey, Special Assistant
Division: Office of the Commissioner
Phone: 465-3030
Date:

Approved by Commissioner: Myra M. Munson
Agency: Department of Health and Social Services
Date: 5-2-90

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

Item 1

6-1795E

Offered: 3/14/90
Referred: State Affairs, and Finance

Admin Notice - code
Also, Responsibility of Agencies -
— public notice issue

Original sponsor(s): REP. JACKO, Foster, Zawacki

IN THE HOUSE BY THE C&RA COMMITTEE

CS FOR HOUSE BILL NO. 426 (C&RA)

IN THE LEGISLATURE OF THE STATE OF ALASKA

SIXTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to the notice requirements for adopting, amending, or repealing a regulation."

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

* Section 1. AS 44.62.190(a) is amended to read:

(a) At least 30 days before the adoption, amendment, or repeal of a regulation, notice of the proposed action shall be

(1) published in the newspaper of general circulation, or trade or industry publication, that the state agency prescribes and in the Alaska Administrative Journal; if the state agency proposing the adoption, amendment, or repeal determines that the proposed action is reasonably expected to have a significant effect on a community or on a substantial number of the members of a community, and if there is a regional newspaper that is distributed on a regular basis in the community, notice of the proposed action shall also be published in the regional newspaper; in this paragraph,

(A) "community" means

(i) a municipality; and

(ii) an area that is not a municipality and in which 25 or more adult persons permanently reside within one mile of a designated point or structure;

(B) "effect" includes an effect that may also be experienced by other communities;

(2) mailed to every person who has filed a request for notice of proposed action with the state agency;

Mailing list - Receive notification of Regs - notice

1 (3) if the agency is within a department, mailed or de-
2 livered to the commissioner of the department;
3 (4) when appropriate in the judgment of the agency,
4 (A) mailed to a person or group of persons whom the
5 agency believes is interested in the proposed action, and
6 (B) published in the additional form and manner the
7 state agency prescribes;
8 (5) furnished the Department of Law together with a copy of
9 the proposed regulation, amendment, or order of repeal for the depart-
10 ment's use in preparing the opinion required after adoption and before
11 filing by AS 44.62.060;
12 (6) furnished to all incumbent State of Alaska legislators
13 and the Legislative Affairs Agency;
14 (7) furnished to the standing committee of each house of
15 the legislature having legislative jurisdiction over the subject
16 matter treated by the regulation under the Uniform Rules of the Alaska
17 State Legislature, together with a copy of the proposed regulation,
18 amendment, or order of repeal for the committee's use in conducting
19 the review authorized by AS 24.05.182;
20 (8) furnished to the staff of the Administrative Regulation
21 Review Committee.

ART - Recommendation - cost not justified - now in the bill -

Any other provisions in bill other than costs?