

ALASKA LEGISLATURE COMMITTEE FILES, 1989-1990 8672
6710 SENATE STATE AFFAIRS

Policy #257

[REDACTED]

Fingerprinting is an invasion of an individual's privacy and right of anonymity. While its use may be an aid in the enforcement of criminal law in certain situations, the areas in which the taking of fingerprints is permissible should be strictly limited. Were fingerprinting to be carried out indiscriminately, the individual's freedom of movement might easily be curbed, minority groups and aliens would be subjected to close surveillance, and the way would be prepared for labor blacklists, police blackmail and frame-ups, and eventually search without warrant and denial of habeas corpus.

For these reasons, persons acquitted of a criminal charge should have their prints returned to them. [Board Minutes, February 7, 1938; Thumbs Down, 1938.]

The employment of public school teachers is not an area in which fingerprinting is permissible. The fingerprinting of teachers would be proper only if used for the detection of cheating in license examinations, and then only if the prints are not sent on to be filed with the FBI or the local police. [Board Minutes, June 10, 1963; Minutes of Academic Freedom Committee, November 1, 1960.] (For fingerprinting of children, see Section (b) of the policy on Children's Rights.)

Criminal Justice Records

The need to protect the privacy rights of individuals and the need of the public to monitor the activities of governmental agencies raise difficult questions. One of these, which seems to pit First Amendment rights of expression against the right of privacy, is this: to what kinds of criminal justice record, if any, should the press and public be allowed to access? We have been and continue to be concerned with the maintenance of criminal justice records in general: they are often inaccurate; they refer, in a large number of instances, to arrests for acts which should have enjoyed constitutional protection, and most importantly, they are abused by the many people in our society who draw improper inference from arrests not resulting in convictions. In this way, the arrest record places a stigma upon an individual which has serious impact on his or her prospects for employment, housing, education and other opportunities.

On the other hand, access to certain types of arrest records and statistics is vital to the public's ability to guard against abuses by its police agencies. Such access is of special importance in minority group neighborhoods, where sealing of all arrest records would seriously undercut efforts to curb police misconduct. After examination of these issues, we reaffirm our strong view that there should be absolutely no prior restraints or sanctions placed on anyone for publishing whatever information can be obtained.

* * *

(a) The traditional term "arrest records" encompasses a range of records that differ in function, content and the way they are maintained, and we therefore use the broader term "criminal justice records." The question of the public's right of access to information in criminal justice records requires balancing several conflicting interests: the public's right to be informed of the workings of the government, the public policy interest in eliminating discrimination against the subjects of records, the privacy rights of the subjects, and the interest in controlling and reducing crime. How these interests balance varies with the different types of records.

Chronologically listed and name-indexed files can be distinguished. Chronological records which are not indexed as to the names of individuals, such as the police blotter (see definition below), are public documents, subject to access in accordance with the provisions below. The public's right to information about official state action and exercise of police power requires that these records be open to public scrutiny. Only an informed public can curb abuses of police power. Because such records are maintained chronologically, the potential threat to individual reputations is mitigated and cannot override the public interest in access. However, the public right to know about official police action does not necessarily include a right of access to individuals' state-compiled histories of arrests, convictions and other involvement with the criminal justice

system. The potential harm to individual reputations and society's interest in eliminating discrimination require proof of a compelling reason for release.

Use of criminal justice records in determining grants or denials of benefits or employment tends to perpetuate discrimination against the poor and minorities because they are arrested and convicted more frequently than those who engage in the same conduct who are of other races or of different economic status.

Standards for determining granting of access to the following types of records:

1) Blotter

a) Definition: Chronological police station records that list arrests, detentions, stops, called-in complaints and miscellaneous anecdotal information.

b) Right of access: The blotter should be divided into records of arrests, which should be publicly available (because arrests are official police action and require probable cause), and records of stops, called-in complaints and other anecdotal information, which should not be public because they do not represent official police accusations, except upon court order upon showing of legitimate purpose.

2) Investigative Records

a) Definition: Records relating to identifiable individuals that are kept only upon reasonable belief that 1) a crime other than a petty offense was or will be committed; and 2) the record subject was or will be a participant in or has knowledge of significant facts concerning such crimes.

b) Right of access:

i.) Subject individual: Investigative records containing information pertaining to an active investigation can be denied to the individual involved and to the public.

Records pertaining to an investigation where a final decision has been reached (an investigation is presumptively inactive after a specified amount of time) are available to the subject individual, qualified by certain narrow exceptions and subject to court review, to protect sources, privacy and information about police investigative techniques before the subject individual is granted access.

ii.) Press and Public: The subject of the record should be given notice and the opportunity to consent to disclosure. The person seeking access bears the burden of finding the individual involved. If the individual does not affirmatively consent or cannot be located, the person seeking access may obtain the records only if he or she bears the burden of demonstrating that the interest in disclosure outweighs the privacy interest of the individual. If access is granted, names of living persons and other material in the records that would identify living persons shall be removed to protect their privacy, unless such persons have consented to disclosure of their identity.

iii.) Investigative Records: Investigative records should contain only information relevant to a law enforcement purpose.

3) Rap Sheets

a) Definition: Rap sheets are name-indexed files of an individual's complete criminal history.

b) Right to Access

i.) Records of Arrests: Arrests (for adults or juveniles) not resulting in conviction (other than pending arrests) should not be included in compilations of an individual's criminal justice record that are available to the press and/or the public. Such information may, however, be available to law enforcement agencies for investigation.

ii.) Records of Conviction: Records of conviction of adult offenses should be publicly available provided laws prohibiting the misuse of the information are strengthened to include the following:

- Time limits on the use of conviction records for purposes of employment, licensing and granting credit. These limits may vary depending on the nature of the offense;
- Requirements that the identity and affiliation of those who obtain access can be recorded;
- Notice of restrictions on the use of the information to those who obtain access;
- The burden of proof should be on the employer, licensing agency, credit granting agency, etc. to show that the conviction is relevant to the benefit involved;
- The subject of the records should be provided with the opportunity to explain a conviction;
- In case of pardons, or convictions reversed or procured under laws determined to be unconstitutional or otherwise invalid, the convictions should be removed from records of conviction.

[Board Minutes, January 29-30, 1983; September 24-25, 1988.]

* * *

(b) In light of increasingly serious civil liberties and social problems raised by the indiscriminate use by employers of criminal history records, ACLU will seek the adoption of legislation to forbid employers to inquire, by use of a form or other similar means, into the criminal history records of employees or applicants for employment in cases where no conviction has resulted. ("Conviction" means conviction by a court other than a juvenile court, and should not include a conviction that has been reversed or has been followed by a pardon on grounds of innocence.)

There is an obvious contradiction between an employer's use of an applicant's criminal history record to determine suitability for a job and the theoretical meaninglessness of an arrest without a conviction in our system of criminal justice. For ghetto residents and other poor people, including many hundred arrested in civil rights and other demonstrations who were subsequently acquitted, a criminal history record alone can be a permanent bar to a decent job.

The Union favors prohibitory legislation applying to all employers because of the impossibility of carving out reasonable exceptions, and because, in any case, employers in sensitive areas have other, more valid means to discover the background of an employee, such as face-to-face discussion between the employer

and the prospective employee, that might uncover both the arrest and the surrounding circumstances. Such legislation should also prohibit the exclusion or expulsion of a person from membership in a labor organization because of a prior or subsequent arrest that does not result in conviction. [Board Minutes, May 9, 1968.]*/

* * *

(c) Any individual ought to be able to get his or her arrest record from the FBI, either directly or through the local police department. Adequate safeguards must be incorporated into any administrative procedure to protect privacy of arrest records from disclosure to unauthorized persons.

Arrest records should always contain a notation whether a person arrested was convicted, acquitted, or released without prosecution. They ought also to allow some opportunity for explanation by the person arrested as to the circumstances surrounding the arrest and prosecution. [Minutes of Due Process Committee, March 10, 1965.]

The FBI has the responsibility to take affirmative action to see that final disposition of each case reported to it by local law agencies is accurately and promptly recorded in its files. Failure to do so prejudices a person who was not prosecuted or was acquitted. [Minutes of Due Process Committee, October 18, 1960.]**/

*/ The changes made in Section (b) of this policy were approved at the Executive Committee meeting of June 14, 1989 and will be submitted for ratification at the October 14-15, 1989 Board meeting.

**/ Section (c) of this policy was approved at the Executive Committee meeting of June 14, 1989 and will be submitted for ratification at the October 14-15, 1989 Board meeting.

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April 26, 1990

Senator Pat Pourchot
Chairman, State Affairs Committee
Alaska State Legislature
P.O. Box V
Juneau, Alaska 99811

Sent by Fax

Re: SCS CSHB 405 (State Affairs)

Dear Senator Pourchot:

Thank you for the opportunity to testify before the Senate State Affairs Committee yesterday on behalf of the Alaska Newspaper Association and the Alaska Public Radio Network. Since that hearing, I have worked with Terry Fleischer, attorney for The Anchorage Times, to address some issues and concerns raised at the hearing and at the request of Senator Faiks. I will be available for the teleconference hearing tomorrow at 1:30, and I understand that Mr. Fleischer -- although he will be out of state -- would like to also participate telephonically. Meanwhile, I would offer the following comments for your consideration as you prepare for that hearing and prepare any Committee substitute bill. I have discussed these comments with Mr. Fleischer by phone today, and he concurs with them.

1. Exclusion of Municipalities from the State Public Records Act (Title 9) (referred to in Committee as "Amendment No. 5").

The Alaska Newspaper Association and APRN continue to oppose the Municipality of Anchorage's request to exempt itself and other municipalities from the state public records law. In short, the Municipality's proposed amendment would undercut or reverse the most significant Alaska Supreme Court rulings favoring public access to government information, and would unquestionably provide citizens with less access than they presently enjoy. Our reasons for this opposition are stated in more detail at your Committee hearing yesterday, and in the interest of time will not be repeated here. If you would like any further elaboration on either the general concerns or specific problems, I would be happy to supply them.

Senator Pat Pourchot
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This amendment was not even moved in Committee, and we believe that was the appropriate response to it. No further action should be taken on it, and we would oppose any attempts to resurrect it, or to adopt any version of it.

2. Exemption for Municipal Personnel Records
(referred to in Committee as "Amendment No. 6").

(a) The Alaska Newspaper Association and APRN oppose the adoption of Amendment No. 6. It failed in Committee yesterday, and we urge that it not be reconsidered or included in any further version of the bill. If it is reconsidered, we urge that it be rejected. The reasons are perhaps best summarized by the testimony of the Municipality's own testimony to the Committee on this matter yesterday: Mr. Koeninger stated that it is important that the law balance the legitimate interests of the public in having disclosure of information of public interest, on the one hand, and the individual's right of privacy on the other hand. This sort of balancing of the public's interest and the individual's right of privacy is already a part of the municipal law in Anchorage and in most other municipalities throughout the state. It is also a feature of federal law governing access to such information.¹ The amendment proposed by the Municipality of Anchorage would eliminate the opportunity for this balancing, and would lead to results quite contrary to the public interest. In several important instances, the public has been able to learn about fraud or misconduct by public officials and employees and other similar matters of legitimate public interest and concern only because of the applicability of state law principles. A few of these examples were cited at the Committee hearing yesterday. Access to such documents, including documents that have been freely provided by the city to date because disclosure was appropriate under this balancing of the competing interests, would now be foreclosed under this amendment. The current state of the law appropriately takes into account the individual's right to privacy, and balances it with the public interest. This law works. The Municipality has lived with it for years. It's not broken. Please don't "fix it."

¹ This balancing approach is not incorporated in the state law governing access to records of a limited class of state employees. That is a flaw in that statute that perhaps should be addressed at some future date, but it is beyond the scope of these remarks or of the legislation before this Committee.

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(b) Alternate Language. If the Committee does wish to address this matter by way of amendment, I have attached to these comments a revision of the Municipality of Anchorage's proposed amendment to Title 29. This revised amendment was developed by Mr. Weisner, on behalf of the Times, and me, on behalf of the members of the newspaper association and the radio network. We strongly support its adoption. Specifically, our revised amendment incorporates in a new subsection (AS 29.20.650(a)(ii)) the same balancing test that the Municipality's witness said was important, that we agree is important, and that presently exists in the Anchorage Municipal Code, as well as in the federal law governing access to federal employee personnel matters.

There are two other changes in this revised amendment. One addresses the comments raised -- we believe by Senator Kelly -- concerning the disclosure of compensation actually paid to public employees as well as compensation authorized for their positions. The Municipality indicated at the hearing it had no objection to this. It also makes clear, in subsection (2) that resumes and applications are part of the information available to the public. There is a strong public interest in deterring applicants for public employment from falsifying or misrepresenting information on employment applications and resumes, and strong interest of the public in being able to know about it when they do. There is virtually no legitimate countervailing interest imaginable.

3. Exhaustion of Remedies.

Senator Adams asked that the Committee consider two amendments. The one of concern to us is the suggestion that the Committee delete the last sentence of section 7 (AS 09.25.125, page 8, lines 14-16 on the version we have).² We strongly oppose

² The other issue of concern to Senator Adams involved the inclusion of the word "subcommittee" in the groups covered by this bill. Senator Adams expressed the concern that because subcommittees are not generally required to generate documents, this might impose upon them some recordkeeping requirements they do not already have. We do not take a position on this amendment because it is of no significance one way or the other. However, perhaps a clarification would indicate that it is unnecessary. Public records laws do not require public agencies to create records that do not exist, but rather only to provide copies of records that do exist. As a result, if the word subcommittee
(Footnote Continued)

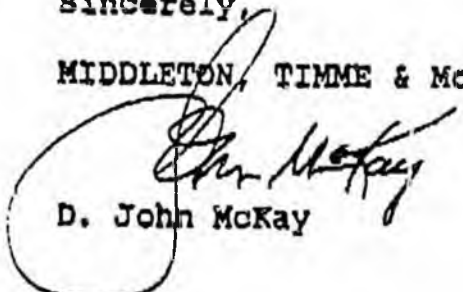
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the deletion of this language. This is so for several reasons, but in particular because the need of the public for access to government information is often very time critical, and deleting this opens the door for abuses by agencies that would benefit from delay in the release of public records when there is no just cause for it. This is not mere speculation or conjecture. The Municipality of Anchorage, for example, is presently under a permanent injunction issued by the superior court specifically in response to problems with delaying or manipulating the release of public records for political or other reasons not authorized by law. It is noteworthy that the state administration and department of law do not oppose this language. The track record on the part of the public generally, and the news media in particular, demonstrate that they have not unreasonably or frivolously run into court on repeated occasions. In virtually every instance that I am aware of, the courts have upheld claims by members of the public, including news media, who have been forced to seek judicial assistance in obtaining public records. On a number of those occasions, the judges have chastized the municipality or other public agency for delaying or withholding the information. One issue that was raised on behalf of a legislator after the hearing yesterday was a concern that this provision could somehow facilitate a damage suit against a clerk or other records custodian for damages for failure to provide a public record. It does nothing of the kind. Nothing about this provision or any other provision in the Alaska statutes that I am aware of, would impose upon any records custodians civil liability for failure to provide public records upon request. If that is a concern of any member of the Committee, it need not be. It is simply not an issue here.

Thank you for consideration of our comments.

Sincerely,

MIDDLETON, TIMME & MCKAY


 D. John McKay

DJM:dka

(Footnote Continued)

remains, nothing about this bill would require that committee, or for that matter any other government agency, to create records that do not otherwise exist.

Senator Pat Pourchot
April 26, 1990
Page No. 5

cc: Senator Faiks
Senator Adams
Senator Kelly
Senator Uehling

A M E N D M E N T

OFFERED IN THE SENATE

TO: SCS CSHB 405(State Affairs) (6- 1782G, 4/12/90)

Page 12, following line 9:

Insert new bill sections to read:

"* Sec. 14. AS 29.10.200 is amended by adding a new paragraph to read:

(51) AS 29.20.650 (personnel records).

* Sec. 15. AS 29.20 is amended by adding a new section to read:

Sec. 29.20.650. PERSONNEL RECORDS. (a) The personnel records of a municipality are presumptively confidential and are not open to public inspection except (i) as provided in subsection (b) of this section; or (ii) when disclosure of such municipal records would not constitute an unwarranted invasion of an employee's right of privacy.

(b) The following information about the employees of a municipality is available for public inspection, subject to reasonable requirements on the time and manner of inspection:

(1) the names and position titles of all employees of the municipality;

(2) resumes and applications;

- (3) the position held by an ~~employee~~
- (4) prior positions held by an employee;
- (5) the dates and appointment and separation of an employee; and
- (6) the compensation actually paid to an employee, and the compensation authorized for any position.

(c) An employee of a municipality has the right to examine the employee's own personnel files and may authorize others to examine those files.

(d) This section applies to home rule and general law municipalities."

Renumber the following bill sections accordingly.

Page 17, line 12:

Delete "sec. 16"

Insert "sec. 18"

Glenn

Municipality of Anchorage



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TOM FINK,
MAYOR

RECEIVED

APR 20 1990

Department of
Employee Relations

DEPARTMENT OF EMPLOYEE RELATIONS

April 19, 1990

Senator Pat Pourchot
Room 504, Capitol
P. O. Box V
Juneau, Alaska 99811

Dear Senator Pourchot:

During the last week, my office has been in contact with Representative Kay Brown regarding my April 13 correspondence on HB 405. Representative Brown has faxed to us three amendments to HB 405 intended to respond to our concerns on the original bill, as previously amended.

We have reviewed the amendments (attached) and find that they are responsive to our concerns in that they:

- clarify the term "may", making it clear that a public agency has full discretion whether to respond to requests involving electronic services and products; and
- specifically provide for the confidentiality of municipal employee personnel files.

However, we continue to believe that the amendments suggested in my April 13, 1990 letter with respect to the exemption of municipalities if they have adopted public disclosure laws and the ability of local assemblies to determine what municipal records should be kept confidential are appropriate.

We look forward to the opportunity to testify to your committee on Friday, April 20.

Sincerely,

Glenn Lundall

Glenn Lundall
Employee Relations Director

Attachments

A M E N D M E N T

OFFERED IN THE SENATE

TO: SCS CSHB 405(State Affairs) (6-1782G, 4/12/90)

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(51) AS 29.20.650 (personnel records).

* Sec. 15. AS 29.20 is amended by adding a new section to read:

Sec. 29.20.650. PERSONNEL RECORDS. (a) The personnel records of a municipality, including employment applications and examination materials, are confidential and are not open to public inspection except as provided in this section.

(b) The following information about the employees of a municipality is available for public inspection, subject to reasonable requirements on the time and manner of inspection:

(1) the names and position titles of all employees of the municipality;

(2) the position held by an employee;

(3) prior positions held by an employee;

(4) the dates of appointment and separation of an employee;

and

(5) the compensation authorized for an employee.

(c) An employee of a municipality has the right to examine the employee's own personnel files and may authorize others to examine

those files.

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Renumber the following bill sections accordingly.

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Delete "sec. 16"

Insert "sec. 18"

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April 26, 1990

Senator Pat Pourchot
Chairman, State Affairs Committee
Alaska State Legislature
P.O. Box V
Juneau, Alaska 99811

Re: SCS CSHB 405 (State Affairs)

Dear Senator Pourchot:

I testified yesterday before your committee in behalf of my client, The Anchorage Times. After that testimony Senator Faiks requested that I consider whether it would be possible to draft some compromise language to a number of amendments which I had opposed. I responded that while The Times was philosophically opposed to the amendments proposed by the Municipality of Anchorage, nevertheless I would do my best to see whether some language could be crafted that would be acceptable to all parties. I have worked with John McKay, counsel for the Newspaper Association, who also testified yesterday, to jointly draft some revisions, which I will discuss below.

Following is The Times' position on the pending amendments:

1. Amendment No. 5 (offered by the Municipality of Anchorage): The Times continues to oppose this request by the Municipality of Anchorage to exempt itself from application of the Public Records Law. The Times firmly believes that public access to municipal documents would become more restricted if municipalities are given the power to write their own ordinances controlling access to local governmental records. Alaska has had a long standing legislative policy of providing citizen access to state and local public records. Allowing municipalities to cut themselves loose from this statewide legislative policy of openness in government would be a giant step backward.

Senator Pat Fourchot
April 26, 1990
Page 2

2. Amendment No. 6 (proposed by the Municipality of Anchorage): The Times opposes adoption of this amendment, which would make all personnel records of municipal employees, with few exceptions, confidential. The proposed amendment is a virtual carbon copy of an exemption available to State employees. While it might seem attractive as a matter of symmetry to extend the same coverage to municipal employees, the testimony yesterday revealed that in several cases the media have obtained documents from municipalities which have disclosed significant inaccuracies in the resumes of applicants for public employment. Certainly it cannot be argued that it is good public policy to keep this type of information secret. While The Times continues to oppose adoption of the amendment, if the amendment is adopted we urge the Committee to add a clause which would require disclosure of personnel records where that disclosure would not constitute an unwarranted invasion of privacy. This would ensure that there would be a balancing between the public's right to know and a municipal employee's right not to have unwarranted interference with his or her privacy. (The language of the proposed revision has been forwarded by Mr. McKay's office under separate cover.)

3. Exhaustion of Remedies: During the hearing an amendment was tabled, which was not available to me while I was testifying, which proposes deleting the last sentence of Section 09.25.125. That sentence provides that a person may seek injunctive relief without first exhausting the administrative remedies provided by the statute or other similar remedies established by a public agency. The Times opposes the deletion of that critically-important language. Recently The Times was faced by a refusal of the Municipality of Anchorage to turn over documents, in a timely fashion, which related to a hotly-debated public issue. The Municipality desired to delay making documents public, which under State statute were required to be disclosed, until the administration was prepared to "go public" with a position. Faced with this refusal, The Times sued the Municipality of Anchorage seeking immediate release of the documents. One of the Municipality's defenses was that there was an administrative appeal provided by ordinance which had to be "exhausted" prior to a final decision being made, and that appeal would take seven working days. Obviously if that position had been accepted, the Municipality would have gained exactly the delay which it wanted. Judge Ripley granted a temporary restraining order requiring the Municipality immediately to turn over the documents, without waiting for exhaustion of any administrative

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remedy. Often a public agency wants to control the timing of disclosure of public documents, not necessarily to withhold them. Therefore, in our view it is absolutely critical that the sentence which allows a requesting party to go directly to court to obtain an injunction be retained in the bill.

The Times appreciates having been given the opportunity to testify and the Committee's consideration of its position. I understand that the Committee may hold another public hearing on Friday. Because I will be in Seattle at the time, I will make arrangements to testify in behalf of The Times via telephone.

Thank you for your consideration.

Very truly yours,

GUESS & RUDD


Theodore E. Fleischer

TEF/hr:61

cc: Senator Faiks
Senator Adams
Senator Kelly
Senator Uehling

THEODORE C. FISCHER
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April 26, 1990

Senator Pat Pourchot
Chairman, State Affairs Committee
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Juneau, Alaska 99811

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Senator Pat Pourchot

April 26, 1990

Page 2

2. Amendment No. 6 (proposed by the Municipality of Anchorage): The Times opposes adoption of this amendment, which would make all personnel records of municipal employees, with few exceptions, confidential. The proposed amendment is a virtual carbon copy of an exemption available to State employees. While it might seem attractive as a matter of symmetry to extend the same coverage to municipal employees, the testimony yesterday revealed that in several cases the media have obtained documents from municipalities which have disclosed significant inaccuracies in the resumes of applicants for public employment. Certainly it cannot be argued that it is good public policy to keep this type of information secret. While The Times continues to oppose adoption of the amendment, if the amendment is adopted we urge the Committee to add a clause which would require disclosure of personnel records where that disclosure would not constitute an unwarranted invasion of privacy. This would ensure that there would be a balancing between the public's right to know and a municipal employee's right not to have unwarranted interference with his or her privacy. (The language of the proposed revision has been forwarded by Mr. McKay's office under separate cover.)

3. Exhaustion of Remedies: During the hearing an amendment was tabled, which was not available to me while I was testifying, which proposes deleting the last sentence of Section 09.25.125. That sentence provides that a person may seek injunctive relief without first exhausting the administrative remedies provided by the statute or other similar remedies established by a public agency. The Times opposes the deletion of that critically-important language. Recently The Times was faced by a refusal of the Municipality of Anchorage to turn over documents, in a timely fashion, which related to a hotly-debated public issue. The Municipality desired to delay making documents public, which under State statute were required to be disclosed, until the administration was prepared to "go public" with a position. Faced with this refusal, The Times sued the Municipality of Anchorage seeking immediate release of the documents. One of the Municipality's defenses was that there was an administrative appeal provided by ordinance which had to be "exhausted" prior to a final decision being made, and that appeal would take seven working days. Obviously if that position had been accepted, the Municipality would have gained exactly the delay which it wanted. Judge Ripley granted a temporary restraining order requiring the Municipality immediately to turn over the documents, without waiting for exhaustion of any administrative

Senator Pat Pourchot
April 26, 1990
Page 3

remedy. Often a public agency wants to control the timing of disclosure of public documents, not necessarily to withhold them. Therefore, in our view it is absolutely critical that the sentence which allows a requesting party to go directly to court to obtain an injunction be retained in the bill.

The Times appreciates having been given the opportunity to testify and the Committee's consideration of its position. I understand that the Committee may hold another public hearing on Friday. Because I will be in Seattle at the time, I will make arrangements to testify in behalf of The Times via telephone.

Thank you for your consideration.

Very truly yours,

GUESS & RUDD



Theodore E. Fleischer

TEF/hr:61

cc: Senator Faiks
Senator Adams
Senator Kelly
Senator Uehling

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

STEVE COWPER, GOVERNOR

REPLY TO:

1031 W 4th AVENUE SUITE 200
ANCHORAGE, ALASKA 99501-1994
PHONE: (907) 276-3550
FAX: (907) 276-3697

1st NATIONAL CENTER
100 CUSHMAN ST. SUITE 400
FAIRBANKS, ALASKA 99701-4679
PHONE: (907) 452-1568
FAX: (907) 456-1317

P.O. BOX K—STATE CAPITOL
JUNEAU, ALASKA 99811-0300
PHONE: (907) 465-3600
FAX: (907) 463-5295

April 11, 1990

APR 11 1990

Hon. Kay Brown
Alaska State Legislature
P.O. Box V
Juneau, AK 99811

Re: CSHB 405(Fin) am

Dear Kay:

I have reviewed your proposed amendment to CSHB 405(Fin) am regarding public records in litigation, and I have also spoken with several other attorneys in the department. One significant problem we have identified is that this proposal probably amends several court rules, including Civil Rules 26 and 34. Those rules specifically provide a set procedure for a party to obtain records from an opposing party in litigation. To the extent that this proposal authorizes a litigant to obtain public records in the normal manner, even when that party is in litigation with the state, the proposal is amending the court rules.

We would therefore recommend that your proposal be modified by adding the following clause to the end of current subsection (a): ", provided that with respect to a person involved in litigation, the records sought shall be disclosed in accordance with applicable court procedures." I then believe that you should delete subsection (b) and modify subsection (c) accordingly.

If you decide not to make these changes to your proposal and go forward with the court rule changes, we then recommend that subsection (b) be changed to require an agency to contact the Department of Law "before" releasing the public record, rather than "after" releasing it. Agency personnel may not recognize when a document is subject to one of the litigation privileges, and this department must be consulted to avoid an improper release of privileged information.

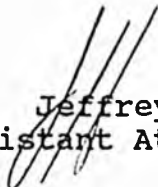
Hon. Kay Brown
Alaska State Legislature

April 11, 1990
Page 2

Please feel free to contact me or Craig Tillery if you wish to discuss this matter further.

Sincerely yours,

DOUGLAS B. BAILY
ATTORNEY GENERAL

By: 
Jeffrey W. Bush
Assistant Attorney General

JWB:jf

cc: Craig Tillery, Assistant Attorney General, Anchorage
Mark Worcester, Assistant Attorney General, Anchorage
Laurie Otto, Assistant Attorney General, CDO

A M E N D M E N T

OFFERED IN THE SENATE

TO: CSHB 405 (Finance) am

Page 2, line 17, following "request":

Insert ", satisfaction of the requestor's disclosure obligation under AS 09.25.122(b),"

Page 6, following line 22:

Insert a new section to read:

"Sec. 09.25.122. LITIGATION DISCLOSURE. (a) A public record that is subject to disclosure and copying under AS 09.25.110 - 09.-25.120 remains a public record subject to disclosure and copying even if the record is used for, included in, or relevant to litigation, including law enforcement proceedings, involving a public agency.

(b) To obtain a public record from a state agency, a person shall disclose to the state agency whether the person is involved in litigation with a state agency. If the person discloses that the person is involved in litigation with a state agency, the state agency shall, after releasing the public record, notify the Department of Law that the request was made.

(c) In (b) of this section,

(1) "involved in litigation" means a party to litigation or representing a party to litigation, including obtaining public records for the party;

(2) "state agency" means a public agency, but does not include a municipality or an administrative unit of a municipality."

April 12, 90

6-1782Mc ✓
Bannister

A M E N D M E N T

OFFERED IN THE SENATE

TO: CSHB 405 (Finance) am

Page 3, line 9:

Delete "the judicial branch,"

Page 3, line 14, following "searches":

Insert ", and may increase the fees as necessary to recover an amount that does not exceed the cost of performing the record searches"

Page 3, following line 14:

Insert a new subsection to read:

"(f) Notwithstanding other provisions of this section to the contrary, the judicial branch may establish by court rule reasonable fees for the inspection and copying of public records, including record searches."

Reletter the following subsection accordingly.

STATE OF ALASKA

DEPARTMENT OF FISH AND GAME

OFFICE OF THE COMMISSIONER

STEVE COWPER, GOVERNOR

P.O. BOX 3-2000
JUNEAU, ALASKA 99802-2000
PHONE: (907) 465-4100

March 19, 1990

MAR 20 1990

The Honorable Kay Brown
Alaska State Legislature
P.O. Box V
Juneau, AK 99811

Dear Representative Brown:

I appreciate the time you have taken to address the concerns we have raised for releasing information to the public in HB 405. You have asked us how we would address these situations if your bill, with the enclosed amendment, were to pass:

- * furbearer sealing certificates
- * licenses, tags, and subsistence permits issued under AS 16.05.330
- * harvest information under AS 16.05.370
- * bear baiting site registration documents

The information contained in these listed documents is currently considered public information, and would still be considered public information if your bill passes, so long as its release did not jeopardize the fish and wildlife population. In addition, the department understands that we are only responsible for releasing the information in the form in which we have it.

One further comment concerns bear baiting site registration documents. Under existing regulations, a hunter must mark the bait station with a sign which displays the hunter's name and current address, phone number, hunting license number, and bait station registration number. There are a number of proposals before the Board of Game, now meeting in Anchorage, to limit the information on the sign to just the registration number or to eliminate the identification completely. If the board does exercise its authority to remove or modify the identification at the bear station itself, the department would still consider the actual site registration documents public information.

Sincerely,



Don W. Collinsworth
Commissioner

Enclosure

STEVE COWPER
GOVERNOR



STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

March 21, 1990

Ms. Valerie Brown
Executive Director
The Alaska Wildlife Alliance
P.O. Box 202022
Anchorage, AK 99520

Dear Ms. Brown:

Thanks for your letter of February 15, regarding your efforts to secure the names of people who purchased Alaska trapping licenses in 1988.

The database containing the information captured from the Department of Fish and Game's (ADF&G) sport licenses is stored on the State's mainframe computer. For 1988, there are 408,178 sport license records on file. Each record is 222 characters in length. Under AS 09.25.110, ADF&G will provide a certified copy of public records in their possession. This statute precludes the manipulation of the information record in order to provide customized copies of public information. To provide only part of the information on a sport license would violate the concept of "certified copy." To provide a file containing only certain types of records from the file requires a considerable amount of an analyst/programmer's time. The records stored on the sport license file for 1988 represent over 90 million characters of data. This is the approximate capacity of 75 high density double-sided diskettes. Therefore, ADF&G provides all information (except social security number) for all sport licenses on a 1600 BPI tape. A 1600 BPI tape can be read by a suitably equipped microcomputer, minicomputer, or mainframe computer. Additionally, there are several data processing service organizations in the Anchorage area who can read the tape and manipulate the information into any format you may desire.

After several requests for customized files from other organizations such as yours, ADF&G adopted its current policy, since excess staff time is not available to

Ms. Valerie Brown

- 2 -

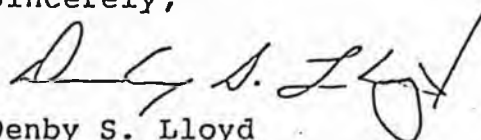
March 21, 1990

manipulate or oversee the transfer of this data from the mainframe to the microcomputer in order to create diskettes. The flat fee of \$250 is a part of the cost incurred by ADF&G when copying the license records from the database to the 1600 BPI magnetic tape.

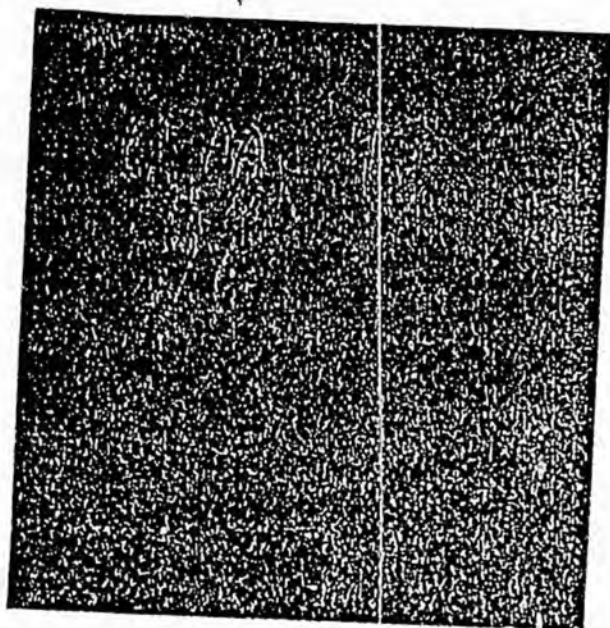
I know that these requests have continued for some time, but I do not concur that ADF&G has any intent to purposefully withhold the information. I encourage you to work with the Department to obtain the tapes you need.

Thanks again for your letter.

Sincerely,



Denby S. Lloyd
Special Staff Assistant
to the Governor



THE ALASKA WILDLIFE ALLIANCE

P. O. Box 190953
Anchorage, Alaska 99519
907-277-0897

September 13, 1989

Denby Lloyd
Office of the Governor
Pouch A
Juneau, AK 99802-2000

Dear Mr. Lloyd:

This is in response to your letter to Mr. Wayne Hall (Sept. 6, 1989), which was a response to his letter to Governor Cowper on August 16, 1989. We appreciate you checking into the fact that the Department of Fish and Game no longer keeps hunter and trapper names as part of the sealing record database.

We did not request that hunter and trapper addresses be made available to us, nor do we object to the omission of this particular piece of data from the ADF&G sealing record database. We do feel that user names are a vital part of the public record and that the public has a right to review who is using public resources. The time it takes to continue to include two fields of information could not possibly be cost prohibitive for the Department. We would like to request that the Department reverse its decision and enter the user information (the only two fields that were deleted) in the upcoming season's database.

You suggested that all we have to do is contact the Licensing Section of ADF&G and request a printout or a computer diskette to obtain hunter and trapper names. We did that prior to contacting you, and were informed that there would be a \$250 charge for a printout of the information (copy of response enclosed). We have made an additional request for a free copy of that information from the Licensing Section of the Department (enclosed). We have also requested that the Department let us have access to the original sealing records in Anchorage, which are now sitting in a box in Fairbanks (copy enclosed, no response yet from Fairbanks).

We should not have to pay a fee to obtain what you agree should be part of the public record. We have no desire to contact anyone on the list, we simply wish to review public information about who is using our public resources. We appreciate any assistance you can offer to bring this now somewhat lengthy affair to a rapid and satisfactory conclusion.

Thank you for your time and cooperation.

Sincerely,

Valerie Brown
Staff Representative

Enclosures (3)

cc: Licensing Section, ADF&G (w/ incoming)

STATE OF ALASKA

DEPARTMENT OF FISH AND GAME

STEVE COWPER, GOVERNOR

1300 COLLEGE ROAD
FAIRBANKS, ALASKA 99701-1599

September 18, 1989

Ms. Valerie Brown
The Alaska Wildlife Alliance
P.O. Box 190953
Anchorage, AK 99519

Dear Ms. Brown:

The 1988-89 furbearer sealing certificates you have asked to examine are here in Fairbanks. as I mentioned on the phone to one of your staff. However, based on your letter dated August 25, 1989, but postmarked September 1, 1989, it appears you have misjudged the magnitude of the task of looking through the documents.

There are 3,359 documents. Over the years, the average number of animal records per document has ranged between 2 and 4 resulting in a higher number of records than there are documents. Only one hunter/trapper name and address appears on each document so it is the number of documents, not records, that affects the amount of material you need to examine.

In the past, the requests your group has made for sealing data has been limited to lynx, river otter, wolf, and wolverine. Of the 3,359 sealing documents, 1,544 contain information on beaver. If you are not interested in this species, the maximum number of documents of interest to you would be only 1,815.

Since you already have all the animal record information on diskette, you can link this information to the names and addresses for the certificates of interest via the hunter/trapper license number.

You can obtain hunter/trapper names, addresses and license numbers from the Licensing Section, Alaska Department of Fish and Game, P.O. Box 3-2000, Juneau, AK 99802. If you request this information on diskette, you should be able to link the two files using your own computer. This will be more convenient and efficient for you than either travelling to Fairbanks or going to our office in Anchorage to examine documents.

Sincerely,



Herbert R. Melchior
Furbearer Coordinator
Division of Wildlife Conservation
(907) 456-5156

cc: Pamplin

THE ALASKA WILDLIFE ALLIANCE

P. O. Box 190953
Anchorage, Alaska 99519
907-277-0897

September 13, 1989

Linda Lockridge
Licensing Section
Department of Fish and Game
P.O. Box 3-2000
Juneau, AK 99802

Dear Ms. Lockridge:

We would like to request a copy of the names and license numbers of all individuals who purchased a hunting or trapping license in Alaska for the 1988-89 season. If you maintain this database in dBASE please provide us with the files on diskette. Otherwise, we will be satisfied with a printout as long as it includes both license numbers and names.

We are a non-profit organization and we request that this information be made available to us free of charge. We have contacted the governor's office concerning this request and the response is enclosed.

I have enclosed ⁴ a blank, formatted diskettes with my order form to make this job as simple and inexpensive as possible for your office. Thank you for your time and I look forward to your reply.

Sincerely,

Valerie Brown
Staff Representative

Enclosures

cc: Governor Cowper
Denby Lloyd

STEVE COWPER
GOVERNOR



STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

September 6, 1989

Mr. Wayne Hall
Director
The Alaska Wildlife Alliance
P.O. Box 190953
Anchorage, AK 99519

Dear Mr. Hall:

On behalf of Governor Cowper, thanks for your letter of August 16 expressing concern because the Department of Fish and Game has been reluctant to provide you names and street addresses of trappers from fur sealing records. As you point out, these records are public and should be made available on request.

Commissioner Collinsworth has reviewed this matter at my request, and it turns out that there was a very practical reason for omitting street addresses in the 1987-88 records and the trappers' names in the 1988-89 records. As a result of budgeting constraints, neither the trappers' names nor addresses are presently being entered into the computer. A trapper's license number is part of the data file, and should it be necessary for the Department to review the activities of a given trapper, they can get the individual's name and address from the license number. Because the Department is principally interested in biological matters such as total harvests for a species, it is not necessary for them to have names and addresses of individual trappers.

Because you already have access to the fur sealing records, you need merely request a printout or computer diskette from the Licensing Section, Department of Fish and Game, P.O. Box 3-2000, Juneau, AK, 99802, to connect license numbers with names and addresses of the trappers.

Thanks again for your letter.

Sincerely,

A handwritten signature in cursive script, appearing to read "Denby S. Lloyd".

Denby S. Lloyd
Special Staff Assistant
to the Governor

THE ALASKA WILDLIFE ALLIANCE

P. O. Box 190953
Anchorage, Alaska 99519
907-277-0897

August 25, 1989

Herbert Melchior
Furbearer Coordinator
Division of Wildlife Conservation
1300 College Road
Fairbanks, AK 99701-1599

Dear Mr. Melchior;

The Alaska Wildlife Alliance has been requesting access to complete sealing record data since June 5 of this year when I originally wrote to you to obtain the computerized database that has been provided to us in the past. Since that time, I have obtained the database which is maintained here in Anchorage, which I discovered no longer captures trapper names.

I have been informed by several people in the Anchorage office that the only place that data is still maintained is on the original sealing records, which were not available at the Anchorage office. After someone on our staff requested access to the original sealing records at your office she was informed by you that the records had just been received by the Fairbanks office and were in a cardboard carton, unsorted. We were willing to send someone to Fairbanks to use the original records, but it is impractical for someone on our staff to remain in Fairbanks long enough to sort through 12,455 records to obtain information that should be a matter of public record and a part of the ADF&G sealing record database.

We would still like access to the records, but since our staff is here in Anchorage, we can more efficiently use the records if they are here in the Department's Anchorage office. Since the records in Fairbanks will not be sorted for the next several months, and the Department seems to have no immediate interest in the data on those documents, we request that you make them available for us here in the Anchorage office.

Thank you for your time and I appreciate whatever help you can give in making those documents available in Anchorage. I look forward to your reply.

Sincerely,

Valerie Brown
Staff Representative

cc: Governor Cowper
Lewis Pamplin

STATE OF ALASKA

DEPARTMENT OF FISH AND GAME

DIVISION OF ADMINISTRATION

STEVE COWPER, GOVERNOR

1111 W. 8th St., Rm. # 108
Juneau, Alaska 99801-0404

8/23/89

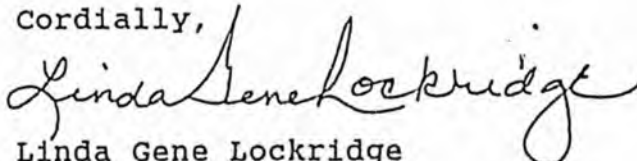
Gentle People:

In response to your request to purchase the Alaska Fish & Game License and/or Vendor files, I am enclosing an order form for your use. Please complete it in full and return it to this office along with your payment.

Please note that there will be additional charges for the cost of tape or diskette media. You will be billed at cost for these materials, and payment must be received before the file is sent to you.

If you have any questions, you may contact me at
(907) 465-2376

Cordially,



Linda Gene Lockridge
Licensing Supervisor
Fish & Game Licensing Section

Department of Fish & Game
Division of Administration
Licensing Section

1111 W. 8th Street, #108
Juneau, Alaska 99801
(907) 465-2376

REQUEST FOR PURCHASE OF FISH & GAME FILE Page 1

Please complete this "Request for Purchase" in full and return it to the Licensing Section at the above address along with the appropriate payment. If you have any questions, you may contact us at the number shown above.

COST: Payable in advance

<input type="checkbox"/>	License File Information	\$250.00
<input type="checkbox"/>	License Vendor Information	\$100.00

FORMAT: Indicate format desired for each file requested

<input type="checkbox"/>	Printed List (No Additional Charge)
<input type="checkbox"/>	Labels (No Additional Charge)

NOTE. You will be charged for the cost of the following media:

<input type="checkbox"/>	1600/96 BPI Tapes		
<input type="checkbox"/>	5-1/4" Diskette IBM DOS Compatible		
<input type="checkbox"/>	Single Sided	<input type="checkbox"/>	Single Density
<input type="checkbox"/>	Double Sided	<input type="checkbox"/>	Double Density
<input type="checkbox"/>		<input type="checkbox"/>	High Density
<input type="checkbox"/>	3-1/2" Diskette IBM DOS Compatible		
<input type="checkbox"/>	Single Sided	<input type="checkbox"/>	Single Density
<input type="checkbox"/>	Double Sided	<input type="checkbox"/>	Double Density
<input type="checkbox"/>		<input type="checkbox"/>	High Density

THE ALASKA WILDLIFE ALLIANCE

P. O. Box 190953
Anchorage, Alaska 99519
907-277-0897

August 16, 1989

Governor Steve Cowper
P. O. Box A
Juneau, AK 99801

Dear Governor Cowper,

For the past four years, The Alaska Wildlife Alliance has sought to obtain the trapping sealing records from the Alaska Department of Fish and Game (ADF&G). Although we have tried to make this acquisition of public records as painless as possible for the State, the staff of ADF&G has tried several times to make it as difficult or expensive as possible. It is no secret to us that ADF&G feels these records should not be available to the public. In several State legislative sessions they have strongly supported bills which would have made those records off limits to the public. Not only has such legislation not been adopted, but the courts, in a lawsuit brought by the Alaska Trappers Association to block public release, affirmed that the records are indeed public. The Alaska Supreme Court refused to hear an appeal by the Trappers Association.

We have ultimately obtained the records in question for each of the trapping seasons 84-85, 85-86, 86-87, 87-88 and, most recently, 88-89. At our request and to save the State the time and the Alliance the outrageous cost of obtaining physical copies of the sealing certificates, these records have been provided by ADF&G on computer diskettes (supplied by the Alliance). But now, in what we feel is an attempt by the Department to accomplish unilaterally what they were not able to accomplish either through legislation or the courts, ADF&G has omitted vital data from the records they have provided on diskette.

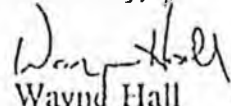
Beginning with the 87-88 season records, the Department omitted the physical street address of the trapper as required on the physical sealing certificate. As long as the city of residence was available for statistical analysis, we did not feel that was a meaningful omission. However, in the 88-89 season records recently provided (and not yet complete even six months after the close of the season) the trappers' names have been omitted from the computer records provided. What will they delete next? We are interested in reviewing data for potential abuse by any given trapper or even by Department employees even if the Department is not. Trapper names are essential in that review.

Even now, there are still 25 "fields" in every computer sealing record including the "scaler" first and last names. The entry of the trapper name would not add appreciably to the time required for data entry or the computer storage space needed. There is just no practical reason to avoid entering the trapper names other than to restrict access of the public to this information.

If the Department is allowed to proceed with this treatment of public records which have been previously available, and if indeed the trapper name information is not captured in the computer data base, we feel that physical copies of the trapper records should be provided at no cost.

We would appreciate your assistance in making this information available one way or the other and will look forward to hearing from you. Thank you very much for your cooperation.

Sincerely,


Wayne Hall
Director

CS HB 405, An Act relating to requests for information by public agencies, and relating to the copyrighting of software produced by or for public agencies. Sponsored by Representative Brown, this bill deals with public access to state and local government records. The major provisions of the bill are:

- .to govern access to and fees for obtaining public records, covering all agencies of state government and municipalities.
- .to establish discretionary authority for public agencies to offer to the public electronic services and products and criteria for setting fees, based on public demand and sufficient program receipts.
- .to authorize state agencies and municipalities to copyright software.
- .to address privacy rights of individuals by requiring state agencies to inform individuals that personal information may be subject to public disclosure and to provide a process to correct inaccurate personal information.

STATE OF ALASKA
THE LEGISLATURE

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

LEGISLATIVE AFFAIRS AGENCY

M E M O R A N D U M

April 12, 1990

SUBJECT: Sectional summary of draft of SCS CSHB 405
(State Affairs) (6-1782G, 4-12-90)

TO: Senator Pat Pourchot
Chair, Senate State Affairs Committee
Attn: Susie

FROM: Theresa L. Bannister ^{2B}
Legislative Counsel

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

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

Section 1 provides findings and intent for the bill.

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

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

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

disclosed and authorizes the agency to require payment in advance of the search.

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

Sec. 09.25.110(e) authorizes the Bureau of Vital Statistics, the library archives, and the Division of Banking, Securities, and Corporations to continue charging the same fees for performing record searches, and to increase the fees as necessary to recover an amount that does not exceed the cost of performing the record searches.

Sec. 09.25.110(f) authorizes the judicial branch to establish by court rule reasonable fees for the inspection and copying of public records, including record searches.

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

Section 4. Sec. 09.25.115(a) authorizes a public agency, upon request and fee payment, to provide electronic services and products involving public records to members of the public. Encourages public agencies to make information available in usable electronic formats to the greatest extent feasible. Prohibits giving the activities authorized under this section a priority over primary agency responsibilities.

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

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

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

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

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

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

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

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

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

Section 6 enacts three new sections.

Sec. 09.25.122 declares that a public record subject to disclosure and copying remains such a public record even if the record is related to litigation involving a public agency, except that for persons involved in litigation, the records are to be disclosed under applicable court procedures.

Sec. 09.25.123(a) directs the TIC to supervise and adopt regulations for the implementation of AS 09.25.110 - 09.25.-140 by public agencies in the executive branch.

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

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

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

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

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

Section 7 amends AS 09.25.125 to cover the denial or attempt to deny the inspection of a public record. Also authorizes a person to seek injunctive relief under AS 09.25.125 without exhausting the person's remedies under AS 09.25.123 - 09.25.124 or other remedies established by a public agency.

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

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

Section 10 allows a person to request from the Department of Public Safety a record from Alaska listing each criminal conviction involving an individual who has filed for public office in the state. Requires the department to provide a copy to the person and to the candidate. Authorizes the department to establish by regulation reasonable fees to cover the costs of researching and reproducing the conviction record.

Section 11 requires each state agency to notify the state library of the creation of certain data, including automated data bases, and provide for their accessibility through the library, except in certain circumstances.

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

Section 13 directs that the voting record for each legislator is to be made available to any person on request. Directs the Legislative Affairs Agency to keep voting records compiled annually under this section on the agency data system and to distribute copies to all legislative information offices for a fee established under AS 09.25.-115.

Section 14 authorizes a municipality to copyright software and to enforce its copyright rights.

Section 15 makes a technical change to conform to other changes in the bill.

Section 16 adds four new sections.

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

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

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

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

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

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

Senator Pat Pouchot
Page 6
April 12, 1990

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

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

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

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

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

Section 17 states that requests for personal information made by a state agency on or after the effective date of the bill are covered by sec. 44.99.020.

TLB:pl
WKP4/058

cc: Representative Kay Brown

THE ALASKA WILDLIFE ALLIANCE

P. O. Box 202022
Anchorage, Alaska 99520
907-277-0897

MAR 26 1990

March 23, 1990

Kay Brown
Pouch V
Juneau, AK 99811

Dear Representative Brown,

Thank you for calling in response to my concerns about House Bill 405, relating to requests for information from public agencies. I received your message and the amendment, which I had already reviewed. With the help of Sharon Sturgess, a staff attorney for Trustees for Alaska, we have identified several potential problems with the bill as written.

The most important consideration is the definition of "personal information" as it appears in Sec. 44.99.030 (page 16 of the bill). While names, addresses and phone numbers are excepted, the language is ambiguous in other respects. "...information that can be used to identify a person and from which judgments can be made about ...habits, avocation, finance, occupation..." are too general. If a person is a trapper by trade, then access to complete sealing records would reveal information about habits, finance and occupation. While this may be a stretch of possible applications, people who do not want their names associated with wildlife consumption may try to argue this point. While I do not have specific wording, the definition of "personal information" should specifically exclude any documents that pertain to wildlife harvest or other natural resource consumption. The four specific types of public documents you listed (including sealing records) for exclusion are a good place to start, but the exemption should be broad enough to cover future needs for public disclosure of documents.

While the bill states that a court should rule on the side of disclosure if there is any ambiguity, there is an explicit exemption for personal information in Section 1 (b). This is the section which will direct a court how to interpret the legislation. The wording in this section is too broad in our view, and may allow more information than necessary to be withheld, unless personal information is more narrowly defined.

Our biggest difficulty with access to public documents has been with the Department of Fish and Game over complete furbearer sealing records. Prior to the 88-89 harvest season, ADF&G included all the necessary information in a computer database which we could obtain. They now omit names of hunters and trappers from the database, and there is no easy way to obtain names and licence numbers to review consumptive use of furbearers. To document the hurdles we have encountered obtaining these records during the last year, I have attached a series of letters. You might wish to carefully review the March 21, 1990 letter from Denby Lloyd in the Governor's office which states the position of the State on access to sport license numbers and names. There are tens of thousands of those documents which we have no interest in, yet this seems to be the only way to link user names with sealing record information, if we are ever able to obtain them in a form we can use without employing a professional data analyst. We feel the best solution would be for the Division of Wildlife Conservation to resume including names in the sealing record database, but we have been unable to convince them of this and I assume that this year's computerized harvest data will also omit user names.

We feel that Sec. 09.25.124 (page 7, line 13) which allows appeal of the final administrative order to superior court is important. This is an excellent provision that will allow more immediate relief if public disclosure is denied by an agency. What remains unclear to us is whether or not the remainder of the scope of the bill is redundant to the access we already should have to public records. We feel that the access that has been denied to us so far by the Alaska Department of Fish and Game violates existing regulations so the problem may lie more in administrative red-tape, stalling and adept data "burying" than inadequate legislation to require disclosure. At least in our case, reasonable cooperation from the Division of Wildlife Conservation is all that is necessary to continue access to complete sealing records, but obviously that has not been forthcoming. If this proposed legislation can fix this problem then we are fully in support of it.

Despite the controversy over what should and shouldn't be public information, The Alaska Wildlife Alliance firmly believes the public interest is always best served by open public access to information about resource use. We appreciate your efforts on HB 405 and we hope to continue working with you on this. Thanks for your time and for your concern.

Sincerely,



Valerie Brown
Executive Director

Enclosures

cc: Sharon Sturgess, Trustees for Alaska



ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES
RESEARCH AGENCY

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April 20, 1989

MEMORANDUM

TO: Representative Kay Brown

FROM: Maria Gladyszewski *M. Gladyszewski*
Legislative Analyst

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

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

SUMMARY

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

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

PUBLIC ACCESS/FREEDOM OF INFORMATION

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

"Public Access" to Information

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

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

Federal Legislation Relating to Access to Information

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

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

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

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

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

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

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

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

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

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

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

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

States' Action Relating to Freedom of Information

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

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

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

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

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

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

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

Access to Information in Alaska

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

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

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

¹⁰AS 11.81.900.

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

Access to Information in the Computer Age

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

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

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

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

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

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

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

One issue already mentioned concerns whether an agency creates a new record by compiling information from a database in response to a FOIA request. The federal FOIA and state freedom of information laws obligate agencies to allow examination of existing records. Agencies are not required to interpret information or create new records. According to the Reporters Committee for Freedom of the Press, the Justice Department (which provides FOIA guidance to all federal agencies) contends that agencies are not required to program their computers to respond to information requests.¹⁶ In December 1988, however, the Administrative Conference of the United States (an independent federal agency established to improve the procedures of federal agencies) issued recommendations stating that "agencies using electronic databases rather than paper records should not deny access to the electronic data on the grounds that the electronic data are not "records," that retrieval of the electronic information is equivalent to the creation of a "new" record, or that programming is required for retrieval."¹⁷

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

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

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

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

¹⁷Recommendation 88-10, see note 12.

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

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Page 16

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

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

COMPUTER CRIME

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

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

¹⁹Office of Technology Assessment, Informing the Nation.

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

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

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

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

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

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

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

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

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COMPUTER SURVEILLANCE AND EMPLOYEE MONITORING

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

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

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

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

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

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

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

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

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

* * * *

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

Attachments

Municipality of Anchorage



P.O. BOX 196650
ANCHORAGE, ALASKA 99519-6650
(907) 343-4425

TOM FINK,
MAYOR

DEPARTMENT OF EMPLOYEE RELATIONS

April 13, 1990

Senator Pat Pourchot
Rm 504, Capitol
P O Box V
Juneau, AK 99811

Dear Senator Pourchot:

The Municipality has reviewed with particular concern HB 405, an act relating to public access to the records of public agencies and recognizing the availability of electronic services and products.

The Anchorage Assembly has enacted AMC 3.90, Access to Public Records, which clearly recognizes the right of the people to the fullest and most rapid public access to municipal records and information. The policy statement provides that this chapter shall be liberally construed to require full disclosure of public records, except for those specifically exempted by this chapter.

Under the definition of "electronic services and products", the Municipality would be compelled to develop new computer applications and programs, and manipulate data to develop a product(s) specifically to respond to a request for public information. Although the bill provides that reasonable costs can be assessed for this effort, given the state of existing Municipal resources and the backlog of work requests for development and maintenance of operating systems for Municipal agencies themselves, it would place an undue financial hardship on this organization.

To recognize the ability of municipalities to establish appropriate standards for public disclosure, and the level of responsiveness to requests for public information in terms of fiscal and human resources, we suggest the following amendments to HB 405:

Amend Sec. 09.25.120 (4) to read:

- (4) records required to be kept confidential by a federal law or regulation [OR], by state law, or municipal ordinance;

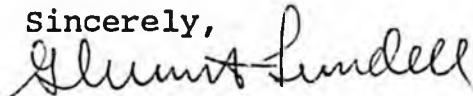
Amend Sec. 09.25.220 (5) to read:

(5) "public agency" means a department, institution, board, commission, division, authority, public corporation, committee, or other administrative entity of the executive, judicial, or legislative branch or state government, or of a municipality which has not adopted public disclosure legislation; "public agency" includes the University of Alaska, the Alaska State Housing Authority, and the Alaska Railroad Corporation;

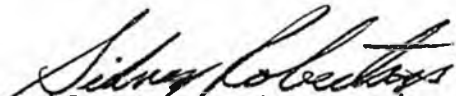
It is our understanding that Senate State Affairs will be holding a hearing on HB 405 on Wednesday, April 18 at 1:30 p.m. We would appreciate the opportunity to testify regarding the bill and our proposed amendments by teleconference.

The Municipality supports the concept of public disclosure as is evidenced by AMC 3.90. However, we believe that local determination by municipalities is essential, especially given the significant additional costs which would be incurred as a result of this legislation.

Sincerely,



Glenn Lundell
Employee Relations Director



Sidney Robertson, Director
Management Information Systems

Rep. Brown
5/7/90 revised

SCS CS HB 405 (FINANCE)

Major provisions	Bill Section	Municipalities covered?
<u>Fees for public records</u>		
* paper duplication	3, (b)	yes
large requests (5+ hours/mo.) duplication + personnel costs	3, (c)	yes
* electronic public records actual cost	4, (c)	yes
* electronic services and products actual cost + reasonable portion of system overhead	4, (b)	yes
Executive agencies set fees under regulations adopted by TIC	4,(g);6,(a)	no
Alaska Railroad sets fees under regulations adopted by Board of Director	3(g),4,(g)	no
Univ. of Alaska sets fees under regulations adopted by Board of Regents	3(f),4(g)	no
Notice to state library of electronic products and services (formats and fees)	4, (c)	yes
Program receipts accounting for fees	4,(i)	no
Confidential student records	5	yes
Copyright software	13,15	yes
Personal information notice by state agencies	15	no
Change inaccurate personal information in public files	15	no
Injunctive relief without exhausting administrative appeal	7	yes
Definitions	8	yes
Legislative voting records	12	no
Litigation disclosure	6	yes
Fish & Wildlife Data	10	no

CS HB 405 (Finance) am

Major provisions	Bill section	Municipalities covered?
<u>Fees for public records</u>		
* paper duplication	3, (b)	yes
large requests (5+ hours/mo.) duplication + personnel costs	3, (c)	yes
* electronic public records actual cost	4, (c)	yes
* electronic services and products actual cost + reasonable portion of system overhead	4, (b)	yes
Executive agencies set fees under regulations adopted by TIC	4,(g);6,(a)	no
Notice to state library of electronic products and services (formats and fees)	4, (e)	yes
Program receipts accounting for fees	4,(i)	no
Copyright software	14, 16	yes
Personal information notice by state agencies	1 6	no
Change inaccurate personal information in public files	1 6	no
Injunctive relief without exhausting administrative appeal	7	yes
Personal information: disclosure/privacy	1,(b);8	yes
Definitions	9	yes
Legislative voting records	13	no

STATE FREEDOM OF INFORMATION ACTS

Chart IV-A
4/87

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

Charging policy for copies of public records

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

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

** FOIA may not apply to legislature.

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

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

Charging policy for copies of public records

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

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

** FOIA may not apply to legislature.

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

TABLE 1
ALASKA STATUTES MANDATING A RECORD AS PUBLIC

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

STATUTE

TYPE OF RECORD

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

TABLE 2
ALASKA STATUTES WHICH MANDATE A RECORD AS CONFIDENTIAL

STATUTE TYPE OF RECORD

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

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

REGARDING COMMERCE

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

TABLE 2 (Continued)

ALASKA STATUTES WHICH MANDATE A RECORD AS CONFIDENTIAL

STATUTE TYPE OF RECORD

LAW ENFORCEMENT AND INVESTIGATORY INFORMATION

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

REGARDING PUBLIC EMPLOYEES

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

REGARDING THE LEGISLATURE

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

TABLE 2 (Continued)

ALASKA STATUTES WHICH MANDATE A RECORD AS CONFIDENTIAL

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

TABLE 3
ALASKA STATUTES RELATING TO ACCESS TO INFORMATION

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

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

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

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

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

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

Source: Index to Attorney General Opinions

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

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accessing a written appeal

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INATIONS: TIME AL-
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Ak. Const.

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Ak. Const.
Ak. Const.

6 AAC 95.130. COPIES AND FEES. (a) The office responsible for maintaining the records sought shall provide copies of records only at the request of the requestor and at the requestor's expense. The agency shall prescribe in writing the standard unit charges for copies. The charge for copies may not exceed the cost to the before making the copies, except in the case of a request from an employee or agent of a news organization.

(b) Copying charges of \$5 or less may be waived where the cost to the agency of contacting the requestor to arrange payment exceeds the copying charges.

(c) Searches must be conducted as a public service, free of charge. However, if one or more requests by a single requestor or agent of a requestor within a calendar month require more than 10 person-hours to complete search and copying tasks, the agency head may ask the commissioner of administration for authority to require the requestor to pay costs for the period in excess of 10 hours. The costs may not exceed the unit cost of salary and benefits for the searching and copying employee. Except in the case of news organizations, authorized search costs must be paid before the records are disclosed, and the agency may require payment in advance of the search. If requests from a news organization or its agents require more than 10 person-hours to complete, the commissioner may grant authority to require payment of search costs by the news organization only when requests are unreasonable or in bad faith, or require extraordinary expenditure of state resources.

(d) Agencies or offices with a primary function of performing records searches and which have customarily charged a fee for searches, including the Bureau of Vital Statistics, the District Recorder, and the Division of Banking, Securities, and Corporations, may continue to do so in accordance with written standard search charges. (Eff. 10/8/82, Register 84)

Authority: AS 09.25.110
AS 09.25.120
AS 44.17.030

Art. III, secs. 1, 16,
and 24, Alaska Const.

6 AAC 95.140. CONVERSION OF INFORMATION. (a) It is the responsibility of the requestor to translate, transcribe, decode, or otherwise convert information in records into a form useable by the requestor. The agency shall make available records to assist in this conversion if those records are disclosable.

(b) Nothing in this chapter requires an agency to organize, coordinate, collate, modify, create, interpret, or program records requested. Only a literal or verbatim record need be provided. (Eff. 10/8/82, Register 84)



Anchorage Daily News

Gerald E. Orly
Publisher

Howard Weaver
Editor



Michael Carey, Editorial Page Editor
Patrick Dougherty, Managing Editor

Katherine Fanning, Editor and Publisher 1971 to 1983
Lawrence Fanning, Editor and Publisher 1967 to 1971

Founded in 1948 by Norman C. Brown

Bits and bytes

Bring state records law into computer age

Buried in the bits and bytes of state computers are warehouses full of useful and fascinating information.

As the public grows more computer-sophisticated, public demands for access to these computer data have grown. People want the information searched and tabulated. People want data released onto computer disks for easy use.



The public has a right to that information, yet some agencies hesitate. Sorting data on their computers takes time and money from

busy staffs and tight budgets.

Anchorage Rep. Kay Brown wants to change that. She's shepherded a bill through the House that would encourage agencies to handle computer requests by letting them charge fees for the service.

Rep. Brown's bill, HB405, would add a mixture of other good ideas to the state records law. When Alaskans are asked for personal information, the state would have to say why the information is needed and let people know if it may be made public. The bill also would give Alaskans a way to seek corrections if the state has compiled erroneous information about them.

Access to public information isn't what you'd call a sexy legislative subject. Work on the bill went along quietly until House lawmakers added two catchy items. One would publicize individual legislators' voting records; the other would open the state's criminal "rap sheets" on political candidates.

Those are good ideas, too. If senators will embrace the full package, they'll help Alaskans take advantage of computers to stay better informed about their government.

LOOKING AHEAD / ROBERT M. CURTICE

How Future Information-Based Firms Will Cut Fat

What business theorist Peter F. Drucker has called "the information-based organization" is indeed upon us:

- Citicorp has realigned its information systems and organizational structure to enable an account manager to deal with almost any customer's request.
- A new information system has enabled a telephone company to merge its installation and repair departments, eliminating one-third of its work force while improving customer service.
- Airline ticket agencies can sell not only airplane seats but also automobile rentals, hotel rooms and tickets to Disney World.

Fast disappearing is the military-based, hierarchical management structure that passes information and decisions up and down the chain of command. The future corporation will provide one person or a small team of colleagues with all the necessary information to make decisions and take action.

As a result, each person or team will be more responsive to its customers inside and outside the company, and layers of middle managers will disappear.

Drucker has compared the organization of the future to an orchestra in which each musician has clear responsibility. No middle managers check on individual musicians. The proper notes are left to the musicians themselves, under the direction of a conductor, who frequently "manages" more than 75 people. The musician takes full responsibility for themselves, based on clear instruction from the conductor and the music.

In the modern organization, a customer service representative should bear full responsibility for taking, entering and pricing an order, verifying credit, determining the shipping location and date and confirming delivery.

Most organizations are over-staffed not at the bottom or top but in the middle. Mid-level

ROBERT M. CURTICE is a vice president, specializing in information systems planning, at Arthur D. Little, the international management and technology consulting firm headquartered in Cambridge, Mass.



Los Angeles Times

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managers are largely couriers, assemblers and frequently filters of information. They build staffs, often no more than five people, who report to them. Through reports, the manager has access to unique information, which only he or she can add to a decision or transaction.

However, modern information systems can now assemble previously unique information and coordinate it with other previously unique information to allow one person close to the customer or shop floor to make decisions. Layers of staff can thus be reduced or eliminated entirely.

As the information-based organization continues to unfold, one can expect to see 7 staffs reduced along the following lines:

- Companies will attempt to minimize handoffs. Rather than have several people participate in an action, with each person handing a partially completed task to the next, a company will give one person the responsibility of processing the task to completion.

- Information systems and databases will shape organizational structure, not vice versa. Modern approaches recognize that structures change over time, but key information does not. Systems must be

structured around information and business processes, not organizational units.

- Companies will seek to design jobs so that managers manage and workers add value. Managers must resist the temptation to create situations where they do the work as well as manage others. They will find little to be gained by taking the most interesting and visible tasks for themselves and leaving their subordinates with the drags.

- Finally, companies can be counted on to remove management layers that consolidate and merely send on information. This action is inevitable once the preceding steps have been pursued and a modern information system is in place.

As stated earlier, we are beginning to see indications that the "information-based organization" has arrived.

A national conference titled "Information-Based Organizations: From Vision to Reality" will take place March 15-16 in Rancho Mirage. Among the companies scheduled to send speakers to the conference are Sunkist Growers of Van Nuys and Kendall-McGaw, a pharmaceuticals company based in Irvine.

For information on the conference, contact Marie Malangone at Arthur D. Little Inc. (617-864-5770).

THE DAZZLING BENEFITS (AND HIDDEN COSTS) OF COMPUTERIZED MAPPING

Geographic information systems are transforming governments. But you can't get there by just plugging in a box.

By *Boyce Thompson*

Brevard County, Florida, home of the John F. Kennedy Space Center, can put a man on the moon. But when the county assessor goes out to value a vacant lot, he often has no idea how it's zoned: the maps are kept by another agency. And for lack of readily available information, the county road and bridge department has paved over manholes that had been put in place by the utilities department only months before.

Brevard, like many counties and cities, is counting on a computerized geographic information system, or GIS, to improve its operations dramatically. Once this dream machine is operational, county agencies will use it to call up a map of the county and zoom in on any parcel, subdivision or other geographic region. The GIS will aid in spatial analysis by displaying—in color-coded layers—parcels, roads, water and sewer lines, zoning and topography. At a command, users will be able to pull out other data that might be associated with a point on the map, such as maintenance schedules for a road or the type of materials used to build a house, and display it on a separate computer screen.

Boyce Thompson is a Washington, D.C.-based freelance writer. Research for this article was contributed by Lisa Warnecke, an independent consultant based in Syracuse, New York, who specializes in public-sector geographic information development.

The county of 390,000 bought its GIS hardware and software for \$300,000 two years ago. But before the system can work its wonders, it must be tediously loaded with data. Perhaps the most difficult chore is creating the base map, the one that every agency will use, by converting mountains of information into numeric data the computer can read. That's called "digitizing." Because of the personnel costs, it's the most expensive part of getting a GIS up and running.

The task was given to Michael Wentworth, director of the county's Geographic Research Division. In a largely abandoned shopping mall, across the hall from Fabric King, Wentworth and his staff are tracing the appraiser's paper maps into the computer, section by section. Unfortunately, because of inaccuracies in the maps, the sections don't fall into place like pieces of a puzzle. To fit, they must be squeezed and stretched through a process called "rubbersheeting," which is



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no more than a technical term for fudging.

One section map has different northeast corners set by three different surveyors, who probably relied on trees, barns or some other non-existent landmarks as reference points. "Which corner do you use?" Wentworth asks. He lays two more maps side by side, something that whoever drew them apparently never did. A county road that winds through one map dead-ends suddenly at the border with the next. The road continues 20 feet to the

tions. When a parcel of land switches hands, map keepers may or may not learn of the development. Brevard expects \$440,000 in annual savings from its GIS.

Considering these benefits, it's no wonder local and state government is buying into GIS in a big way. Daratech Inc., a Cambridge, Massachusetts,

market research firm, estimates that those levels of government accounted for nearly 20 percent, or \$105 million, of the \$529 million in GIS software, hardware and closely related services sold in 1985. That \$529 million generated another \$2.4 billion in sales for additional GIS-related services—digitizing, surveying and consulting.

Daratech projects a 32 percent annual growth in GIS sales through 1993, as the technology continues to come within easier reach of potential buyers. Hardware costs are one-fifth of what they were five years ago, and the amount of processing power available for a given dollar has been doubling every year. Five years ago, few jurisdictions with less than 500,000 in population could cost-justify GIS, which required a minimum investment of \$500,000. Today, nearly any city or county can afford some type of system, whether it's based on personal computers, more powerful engineering workstations or mainframe computers. PCs may suffice in small jurisdictions, and a GIS based on them can perform relatively sophisticated planning analysis; using PCs, however, may limit expansion later on. Many jurisdictions are opting for workstations, tied together in networks, to take a load off their mainframes. Larger cities and counties, with more data to crunch and more potential users, may need a minicomputer- or mainframe-based system.

When you consider that at least 80 percent of the information collected by local governments relates back to a particular location, the management promise of GIS comes into sharper focus. An address is the common denominator, notes Tom Foss, a Tallahassee, Florida, consultant to local governments, "whether I am registering to vote, registering a car or boat, getting a fishing license, paying my property taxes, getting a building permit or even paying a parking ticket."

GIS is already being put to some exciting uses. It's being used to optimize school-bus routes; to decide on sites for fire stations and other emergency-services buildings; to redraw political districts; and to map the outbreak of diseases. The city of Los Angeles is developing one of the first GIS systems that can do earthquake analysis. Pilot studies already have revealed that a road the city expected to use as an emergency escape route lies on a fault line and that proposed development in the marina district would be endangered if the Big One hit. (Northern California jurisdictions were relying on paper rather than computerized topographic maps to do earthquake planning before the October earthquake.)

South Carolina is building a statewide GIS with the goal of putting economic development resources to the best use.

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The state hopes the system will help officials make decisions about funding road, water, sewer and other public works projects on a more rational basis. The central GIS files will be accessible to local governments through a network of workstations and terminals.

More than half the states use GIS in natural resource applications. In New Hampshire, for instance, where rapid population growth has raised concern about the loss of open space and access to public waters, GIS has been employed to identify deer habitats, forest types and aquifers. A statewide inventory of pesticide applications during the past 25 years is being put into the system, along with the locations of leaking underground storage tanks and hazardous-waste facilities.

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Milwaukee's \$4.5 million system is capable of pretty quick response to complicated queries. When city employees were given the option of joining health maintenance organizations, a health care provider asked the city for a list of optimum health care sites, based on the density of city workers living nearby. The city produced an answer in a day, says William Huxhold, who runs Milwaukee's GIS operation, and could have done it faster had all the relevant data already been loaded into the computer. Still, that's a lot faster than going through an address list and sticking pins on a giant map, the process that many jurisdictions must still go through to answer that kind of question.

Unfortunately, a city or county can't buy a GIS, plug it in and expect instant answers from it. Several years may elapse between the day a system is bought and the day it becomes fully operational. During this phase, unexpected costs and delays may deflate the high expectations that prevailed when the system was purchased.

Milwaukee found that it spent more time checking its base map for accuracy than it spent building the map in the first place, a hidden cost that any GIS buyer should expect. Determining accuracy is not just a matter of checking addresses and street names, explains Huxhold, who is writing a GIS textbook. "You've got to make sure that each category of data—street names, house numbers, utilities—is on the right layer."

CORRECTION

**THIS DOCUMENT
HAS BEEN REPHOTOGRAPHED
TO ASSURE LEGIBILITY**

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Brevard County planning technician Dave Jordan traces a paper map to convert it into digital form. Creating the computerized base map for an area is perhaps the most difficult chore in getting a geographic information system up and running.

south on the second map.

After Wentworth's staff finishes the two-year task of loading the base map into the system in June 1990—at a cost of \$250,000, mostly in payroll—Wentworth expects to spend at least a year editing it and two years adding data for the zoning, topography and other layers. These expenses don't include the cost of continuously updating data in the system, which, at roughly \$125,000 a year, will be the largest single cost associated with the project. When the five-year, \$1.2 million development phase (excluding updating) is complete, the GIS hardware and software purchase will represent less than one-third of total costs. In many projects, it accounts for an even smaller share.

Welcome to the sobering world of GIS implementation. It's a world that GIS vendors may gloss over or ignore completely while dazzling potential buyers with color graphics, map print-outs that look as if they could have been published in *National Geographic*, instant answers to "what if" policy questions and lots of good shop talk about pixels, rasters and cadastres.

Some jurisdictions are taking the plunge into computerized cartography without an appreciation of implementation costs. "The technology is leading everybody by the nose," says Costis Toregas, president of Public Technology Inc., a nonprofit consulting and research arm of the

National League of Cities and the International City Management Association. "People aren't asking themselves the basic questions, such as 'Why do I want this system in the first place?' and 'What are the total project costs?'"

"I'm sure that a lot of systems are sold with high expectations and too little attention to cost," agrees Thomas M. Palmerlee, executive director of the Urban and Regional Information Systems Association, an organization for public officials who deal with GIS. "But the other side of that coin is that the costs of not doing GIS are pretty great, too."

Palmerlee refers to political costs—the taxpayer's perception that a city or county doesn't have its management act together. It's the image that develops when the sewer department, repairing pipes, digs up a road that was paved by another agency several months before; or a road crew plows into telephone lines no one knew were there; zapping service on the block; or a person in search of a building permit spends weeks traipsing from one department to the next.

The more quantifiable cost savings associated with GIS, although not huge, are hard to ignore as well. Brevard County, for instance, works from 54 different types of maps, some of them hopelessly out of date. When subdivision maps come in, six agencies, ranging from utilities to planning, redraw them to their own specifica-

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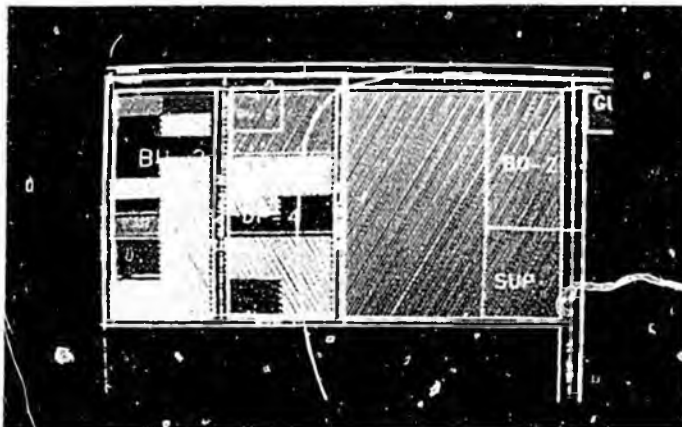
THE ROUTE TO GEOMAPPING INFORMATION

A wealth of information, much of it free for the asking, is available to government officials planning purchasing or implementing a geographical information system.

The Institute for Land Information, a forum for organizations with an interest in digital mapping and related subjects, has identified more than 100 such groups and plans to publish a directory. Copies are expected to be available in early 1990 from the address listed below.

Some national associations of state and local government officials are producing publications or sponsoring conference sessions on the topic. They include the Council of State Governments, the International City Management Association, the National Association of Counties, the National Association of Regional Councils, the National Conference of State Legislatures, the National League of Cities, the National Governors' Association and Public Technology Inc.

Other associations of governmental agencies and professionals have a special interest in the benefits of



this technology. The American Association of State Highway and Transportation Officials, for instance, has held conferences on GIS-related technologies and in 1990 will participate with the National Research Council's Transportation Research Board in a study of GIS use in transportation agencies. The International Association of As-

sessing Officers holds courses on computer-assisted mapping and provides services such as consulting and research.

Societies of professionals in the geographic information field are heavily involved in automated mapping and can be a source of technical expertise. They include the American Congress on Surveying and Mapping, the American Society for Photogrammetry and Remote Sensing, the Association of American Geographers, Automated Mapping Facilities Management International (whose membership includes utilities) and the Urban and Regional Information Systems Association.

—Lisa Warnecke

AMERICAN ASSOCIATION OF STATE HIGHWAY AND TRANSPORTATION OFFICIALS

Contact: Francis Francous, 202/624-5800
141 N. Capitol St., Washington, D.C. 20001

AMERICAN CONGRESS ON SURVEYING AND MAPPING

Contact: Richard Dorman, 301/493-0200
5410 Grosvenor Lane, Bethesda, Md. 20814-2160

AMERICAN SOCIETY FOR PHOTOGAMMETRY AND REMOTE SENSING

Contact: William French, 703/534-6617
5410 Grosvenor Lane, Bethesda, Md. 20814-2160

ASSOCIATION OF AMERICAN GEOGRAPHERS

Contact: Ronald E. Adler, 202/234-2764
1700 K St. N.W., Washington, D.C. 20009-3198

AUTOMATED MAPPING FACILITIES MANAGEMENT INTERNATIONAL

Contact: Robert M. Samirski, 303/779-8310
8775 E. Osburn Road, Suite 820, Englewood, Colo. 80111

COUNCIL OF STATE GOVERNMENTS

Center for the Environment and Natural Resources
Contact: R. Steven Brown, 606/231-1866
P.O. Box 13910, Iron Works Pike, Lexington, Ky. 40578

INSTITUTE FOR LAND INFORMATION

Contact: Jim Stern, 301/443-8749
410 First St. N.W., 8th floor, Washington, D.C. 20001

INTERNATIONAL ASSOCIATION OF ASSESSING OFFICERS

Contact: Richard Mory, 312/947-2069
1131 E. 90th St., Chicago, Ill. 60657-9990

INTERNATIONAL CITY MANAGEMENT ASSOCIATION

Contact: Christine Ulrich, 202/626-4600
1120 G St. N.W., Suite 300, Washington, D.C. 20005

NATIONAL ASSOCIATION OF COUNTIES

Research Department
Contact: James Golden, 202/393-6226
410 First St. N.W., Washington, D.C. 20001

NATIONAL ASSOCIATION OF REGIONAL COUNCILS

Contact: Alice Watland, 202/457-0710
1700 K St. N.W., Suite 1300, Washington, D.C. 20006

NATIONAL CONFERENCE OF STATE LEGISLATURES

Contact: Steve Graf, 303/623-7800
1050 17th St., Suite 2100, Denver, Colo. 80265

NATIONAL LEAGUE OF CITIES

Contact: Kathryn Shane McCarty, 202/626-3000
1301 Pennsylvania Ave. N.W., Washington, D.C. 20004

NATIONAL GOVERNORS' ASSOCIATION

Information Management Program
Contacts: Richard Hayes, Lorraine Amico, 202/624-5300
441 North Capitol St., Washington, D.C. 20001

PUBLIC TECHNOLOGY INC.

Contacts: Costis Torgas, Franca Gilman, 202/626-2400
1301 Pennsylvania Ave. N.W., Washington, D.C. 20004

URBAN AND REGIONAL INFORMATION SYSTEMS ASSOCIATION

Contact: Thomas M. Palmerlee, 202/289-1685
900 2nd St. N.E., Suite 304, Washington, D.C. 20002

Buyers are also likely to encounter the need for separate custom software so that their new GIS can "talk" with other computer systems or print out documents such as permits and licenses. Custom software rarely works perfectly the first time. "The unfortunate thing about this technology," says Glenn Montgomery, president of Utility Graphics Consultants, a private consulting firm that has worked on more than 300 GIS projects, "is that you can't send someone down to K-Mart to buy it off the shelf. It requires a reasonable amount of customization, which can be a big hump to get over in terms of cost."

When it comes to preparation, the city of Houston is widely considered to be a model of neglect. The city embarked on its five-phase Metrocom project in 1975. All the work was done under contract with one firm. Only when the contractor billed the city for the final phase, data conversion, did the city council learn that additional computer hardware would be needed to use the GIS software and the new data, says Frank L. Hanigan, who was a project manager for the contractor and was involved in the project at several points. It took the city two years to ready itself to receive the data—buying computers, finding a place to put them and training personnel.

When the converted data arrived, it was inaccurate and incomplete because the city had failed to set any quality assurance standards, Hanigan says. In subsequent years, he adds, the city hasn't spent enough money to maintain and upgrade the database: it doesn't include areas annexed since 1981. Also, because the system was primarily designed for engineering purposes, it is missing planning data that would be most useful to other agencies. Joseph Chow, assistant director in the planning department, says he's looking into buying additional software so the system can be used to develop land-use plans or ensure compliance with ordinances regulating the location of sexually oriented businesses.

Hanigan believes blame for Houston's difficulties lies with the city council. Elected to two-year terms, the council members "never looked beyond the current year's operating budget," he says. A big contributing factor, says Chow, whose department has inherited the GIS project, was that the main force behind it, the public works director, died in the planning stages. No overall project manager was appointed in his stead, until Hanigan arrived.

The most important lesson to be learned from Houston's experience, Hanigan says, is that cities and counties must understand that they are getting into a long-term project



Bulky maps like the one studied by Brevard County technician Helen Daubs will be digitized.

and stick with it. But as many project sponsors have learned the hard way, it's equally important that the project show early results, because no politician wants to pay for a project that won't bear fruit during his or her term of office. Oklahoma City stuck with its second GIS project, its first one, dating back to the 1970s, was limited to planning uses for four years, at a cost exceeding \$1 million, then cut off funding because it saw no useful results. "They bought a GIS, assigned people to it, and the people went behind closed

doors and started coding, geocoding, processing—doing things," says Toregas, whose firm was part of a team called in by the city to straighten things out in 1985. "The people opened the door and said, 'More money, please,' and more money was thrown in. They kept working and working, but after four years nothing had come out the other side. Finally, out of frustration, the city put a stop to the project."

Four years of effort to build a base map of the city had produced a highly accurate one of water and waste water facilities, from fire hydrants to water lines to mains and meters—for one-fifth of the city. Bobbie Borchardt, who was hired as GIS manager a year ago, says the system can be used "for little more than automated mapping. There is really no attribute [reference] data to speak of for analysis. There's no water pressure data, for instance." The sewer department could have used this information to determine what would happen to the rest of the system if it turned off one portion to fix a valve.

Back in Brevard County, Wentworth is seeking to avoid political broadsides by showing early results through three pilot projects. Enough of the county is digitized for him to have recently completed a test for the natural resources department that will track the impact of development and storm water run-off on sea grass and other vegetation in and along the Indian River.

After that, he plans to assist a government redevelopment agency in its quest to develop a downtown district for unincorporated Merritt Island, by providing one-stop shopping for parcel information for developers. Next, he will examine zoning compliance within one unincorporated area of the county. Why three projects? Each happens to be a pet project of one of the five county commission members. "All you need is a three-to-two majority," he says, only half-joking.

Political support is especially critical now because unforeseen delays have added costs. The project was nearly

Despite conflicts, most GIS experts say the technology is fostering unprecedented cooperation among agencies, governments and private interests.

stillborn in 1987, when the county failed to come to contract terms with the consultant it initially selected, a consortium that had developed a GIS for another Florida county. Wentworth had felt so comfortable with the consultants that he had started work with them even though a contract hadn't been signed. After six months, however, it was clear that the group would not be able to agree on how to split the fees and duties.

"One of the most humiliating experiences in this project," says Wentworth, "was going back before the county council and saying, 'Sorry, we picked the wrong consultant. We'll have to select another.' We had passed the date when we were supposed to start digitizing. One of the first questions I was asked was, 'How much will this cost us?'" Wentworth had to answer that the six-month delay had cost the county \$220,000, half of what it expected to save each year once the GIS was operational.

There were more delays. The software selection committee was forced to re-advertise its software contract when a local firm complained that it hadn't had enough time to prepare a bid. Then a local engineering firm criticized the selection committee's eventual software choice before the county council, that drew out the process of gaining final approval of the committee's selection.

Wentworth saw the political support for the project beginning to unravel. "Another unforeseen delay would have been fatal to the project," he says, adding that momentum is going the other way now. "A former county administrator once told me that GIS is the kind of project that will make or break you, and he's right. Nothing displeases an elected official like an expensive, lengthy project that shows no tangible results. The delays caused some dissension and second-guessing, not only with elected officials but also with county staff on the project."

In the absence of a consensus around a single GIS, individual agencies may run off and develop systems of their own, which, by perpetuating redundancies, defeats the purpose of buying a system in the first place. "When you get right down to it," explains URISA's Palmerlee, "agencies have different data requirements in terms of accuracy and precision." Indeed, the biggest bone of contention often is how accurate to make the base map, which coincidentally also happens to be the biggest cost variable in a GIS project. The assessor, if he intends to use the map for legal purposes, may insist on absolute accuracy in the base map. The same may go for public works, which may want to use the system to design roads or bridges or for other engineering purposes. The planning department may not need that level of accuracy. Unless the jurisdiction's paper maps are extremely accurate to begin with, a highly unlikely proposition, obtaining absolute accuracy will entail expensive surveying.

Someone will be upset if the costs of a particular level of accuracy must be shared equally. "Accuracy is some-

thing you typically can't negotiate," says Montgomery, adding that the greatest accuracy needs must dictate. "That throws in a political ball—who pays for what? Are people stuck with having to pay for absolute accuracy even though they didn't want it?"

The city of Huntsville, Alabama, bought a GIS and paid

for expensive satellite surveying of most of the county, and only then invited the county to participate. If the county wants to pay for costly surveying, the city says it will digitize the rest of the county. Why didn't the two governments discuss a joint project at the outset? The two have a long history of noncooperation, explains David Buckelew, director of management information services for the city. "We wanted the work done to our standards."

Despite those kinds of questions and conflicts, most GIS experts say the technology is fostering unprecedented cooperation among agencies, governments and even private interests. Montgomery says that single departments within a city rarely proceed on GIS projects alone anymore because, working together, they can cut into the biggest cost of the project—building the base map—and complete the project faster.

Montgomery's company, UGC, served as master consultant in one of the largest GIS endeavors to date, the \$10 million Indianapolis project. Eight city and private agencies initially contributed to the conversion of more than eight million documents. The project was structured so that 20 other potential beneficiaries, including Marion County agencies, that initially couldn't afford the project could buy in later. Two years passed before the county agencies were able to sign on.

In Brevard County, cities were left out of the project initially because it was hard enough gaining support within the county. Wentworth doesn't want to think about the conflicts and questions that might have arisen had the cities been involved from the beginning. Whose maps do you digitize? Which parts of the county do you digitize first? What level of accuracy do you use? How would the county charge the cities for use of its computers and personnel?

But now, as the base map conversion process draws to a close, several cities and private utilities in the county have expressed interest in joining the project, which is expected to happen soon. At the same time, Wentworth says sentiment appears to be building among county agencies to increase the accuracy of the base map (so that it can be used by the tax assessor and county engineer) by doing some ground and aerial surveying.

With more exact geographic references, Wentworth the technician could do some more rubbersheeting to line up the section maps more accurately. He is clearly excited by this prospect. For now, however, Wentworth the politician must be content with what he refers to as "GIS on \$5 a day." □

THE DATA GAME

Modern technology has made information about individuals both accessible and vulnerable. A few states are trying to balance the need to protect sensitive data with open-government concerns.

By Anita Amirrezvani

At the age of 21, Los Angeles actress Rebecca Schaeffer had already co-starred in the TV series *My Sister Sam* and appeared in a movie. But her good fortune ended when she answered her doorbell last July. A fan whom police described as obsessed with Schaeffer shot her in the chest, killing her with a single blast.

Police say the suspect, Robert John Bardo, didn't stalk his victim in the usual way. According to Los Angeles police detective Dan Andrews, Bardo allegedly hired a Tucson-based investigative firm for \$250, and it obtained Schaeffer's home address through the California Department of Motor Vehicles.

Schaeffer's murder caused an uproar in California and prompted quick action in the legislature. Within two weeks, Assembly member Mike Roos, a Democrat, introduced a bill allowing motor vehicle registrants to require that their home addresses remain confidential. The bill also imposed a 10-day delay on the release of most motor vehicle files, so that affected individuals could be notified of a request. Two months later, the bill became law.

Schaeffer's story illustrates the tension between government's need to gather and use personal data and the individual's right to privacy. In an age when governmental agencies at all levels are gathering and trading massive amounts of computerized information, personal records are increasingly vulnerable. The concurrent growth of corporate databases, many of which feed on government data, intensifies the threat to privacy. Even so, there are few

comprehensive data-privacy laws, and proposed legislation has faced fierce opposition, especially from the private sector.

Federal legislation dealing with data privacy is relatively new. Congress passed the Privacy Act in 1974, when public fears were aroused by the aggressive government surveillance practices exposed during the Watergate scandal, as well as the rapid computerization of massive records systems. The law gives individuals a measure of control over personal information held by federal agencies, including the right to obtain a copy of their records and to request corrections. The Privacy Act also regulates the disclosure of federal data, although loosely. Records are not supposed to be released without the consent of the individual except for "routine use"—the specific purpose for which they were collected.

Shortly before the federal law was enacted, Minnesota passed its own law regulating state records. Ten other states—Arkansas, California, Connecticut, Hawaii, Indiana, Massachusetts, New York, Ohio, Utah and Virginia—have followed suit. Most of the state laws are modeled on the federal act.

None of the remaining 39 states have comprehensive data-privacy legislation, according to Robert Ellis Smith, editor of the newsletter *Privacy Journal*. In some states, separate open-records laws and regulations often permit individuals to see their own files, but Smith says there may be "no statutory right to correct information, no requirement that the information not be used for other purposes and no government-wide limitation on disclosure." A smattering of laws prohibit the release of narrowly defined types of data, such as library borrowing records.

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John M. McCabe, legislative director for the National Conference of Commissioners on Uniform State Laws believes that having different privacy laws around the country is "outlandish," especially because computerized data doesn't respect political boundaries. To address this problem, in the last 10 years the commissioners have approved model privacy laws covering medical records and criminal history records, as well as a more comprehensive Uniform Information Practices Code. So far, only

Hawaii has adopted a modified version of the comprehensive law, and Montana and Illinois have passed laws covering medical and criminal history records, respectively.

In Florida, an omnibus data-privacy bill approved by the House has failed to gain Senate approval for three years in a row, largely because of budget considerations. A joint legislative committee estimated that the bill would cost about \$257,000 to administer, but state agencies put the figure at closer to \$2 million. A new version of the bill