ALASKA PUBLIC RECORDS ACT:
What does the law require and how do I follow it?

CBJ Law Department

- General rule: “Unless specifically provided otherwise, the public records of all public agencies are open to inspection by the public under reasonable rules during regular office hours.” AS 40.25.110(a).

Most records in the possession of municipal and state government are subject to disclosure under Alaska’s public records statutes. The law is set out in the Alaska Statutes at AS 40.25.100 – .220. This law applies to municipalities. You should presume that all records are public and subject to inspection by any member of the public.

A record may be withheld from public disclosure only if a legal exception can be identified that authorizes withholding access. Exceptions are set out in state statute, and there are also exceptions that have developed through court decisions.

The question of whether an agency must disclose a particular document is resolved by balancing the fundamental public interest in disclosure against the state’s interest in confidentiality. In recognition of the fundamental nature of the public’s right to know, the municipality has the burden of proving that the record should not be disclosed. Exceptions to the statutory disclosure requirements are narrowly construed. Doubtful cases are to be resolved by permitting public inspection.

- What is the definition of “public records”?

AS 40.25.220(3) defines “public records” to mean “books, papers, files, accounts, writings, including drafts and memorializations of conversations, and other items, regardless of format or physical characteristics, that are developed or received by a public agency, or by a private contractor for a public agency, and that are preserved for their informational value or as evidence of the organization or operation of the public agency; ‘public records’ does not include proprietary software programs;”

- What records are NOT subject to public inspection?

Certain kinds of records are not subject to public inspection under AS 40.25.120(a) and decisions of the Alaska Supreme Court. The following is a partial list of the exceptions:

a. Records that come within the “deliberative process privilege”
b. Confidential attorney-client records
c. Records that come within the Alaska constitutional right to privacy
d. Most personnel records
e. Most records concerning conflict of interest and ethics investigations
f. Records required to be kept confidential under CBJ code, such as certain sales tax return information
g. Records required to be kept confidential by a federal law or regulation or by state law  

h. Records compiled for law enforcement purposes, under certain circumstances  
i. Library records  
j. State PERS retirement records

- **Does labeling a document “draft” make a difference?**

  No. Draft documents are public records, as are final documents. AS 40.25.220(3).

- **Does labeling a document “confidential” make a difference?**

  Labeling a document “confidential” may make a difference because it clearly shows the intent of the author that the record should be kept confidential. However, a label alone does not make a record privileged.

- **What about e-mail?**

  E-mail and other electronic documents and records are subject to the same rules of public disclosure as traditional hard copy files.

- **What is the “deliberative process privilege”?**


  “Public officials may assert [the deliberative process] privilege and withhold documents when public disclosure would deter the open exchange of opinions and recommendations between government officials. The privilege is intended to protect the executive's decisionmaking process, its consultative functions, and the quality of its decisions.” *Gwich’in Steering Committee*, 10 P.3d at 578.

  To establish a *prima facie* claim to this privilege, the municipality must show that the document is an **internal communication or one that is directly solicited** and that the communication is **both predecisional and deliberative**. If so, the privilege presumptively attaches overriding the usual presumption of disclosure. The burden then shifts to the requesting party to demonstrate that the public’s interest in disclosure outweighs the government’s interest in confidentiality. *Fuller v. City of Homer*, 75 P.3d 1059, 1063 (Alaska 2003).

  This privilege is not absolute (as compared to the attorney-client privilege, which is absolute unless waived). A balancing test is applied. The Alaska Supreme Court has said that “[i]n balancing the interests ... the scales must reflect the fundamental right of a citizen to have access to the public records as contrasted with the incidental right of the agency to be free from unreasonable interference.” *Gwich’in Steering Committee*, 10 P.3d at 579. Also, this privilege may be waived.
- **Litigation disclosure: AS 40.25.122**

  If the person making the request is involved in litigation with the CBJ concerning the matter over which records are sought, the person cannot use the public records act to obtain the records, but must instead use the rules of procedure applicable in a court or administrative proceeding. In that situation, the request may be denied on that basis.

- **Procedures to follow when a public records request is made and key points:**

  1. You should **consult** with your supervisor in responding to records requests, and your agency should feel free to ask for legal advice from the CBJ Law Department.

  2. Unless the request is very simple, you should **require the requestor to put the request in writing** using the CBJ form for requests (attached). A letter or e-mail from requestor is also a written request.

  3. You have **10 working-days to respond** (do not count day request received or Saturday, Sunday or CBJ holidays). You should respond promptly but you do not have to drop everything to deal with a request.

  4. You may **extend the 10 working-day deadline** by advising the requestor in writing that you are doing so before the initial 10 days expires. Reasons for extensions: need to search for and collect the records from other offices; voluminous amount of records requested; need to consult with someone else who is not available; peak workload period; need to consult with city attorney.

  5. You are **not required to create documents** that do not already exist.

  6. You are **not required to compile or summarize** public records in response to a request.

  7. You are **not required to manipulate data to create new records** in response to a request. However, if you can electronically sort an existing database for the requested subset of data and print just that, do so.

  8. The **requestor needs to describe the records** sought in sufficient detail to enable you to locate the records.

  9. If you do not understand the request, **ask for clarification or additional information.** You should make reasonable efforts to assist in identification and description of the records sought but this does not mean you need to suggest or offer more than is requested.
10. If the production of records sought by one requestor in a calendar month 
**exceeds five person-hours**, the agency must require the requestor to pay 
the personnel costs to complete the search and copy the records. The 
requestor must pay the fee before the records are disclosed, and the 
agency may require payment in advance of the search.

11. **CBJ Resolution 2288** addresses copy costs and personnel costs. Copy 
attached.

12. If you estimate a **substantial cost**, you should advise the requestor in 
writing of the estimate and inquire as to whether the person wants to 
narrow the request or proceed.

13. You may **not request a justification or explanation** of need or intended 
use for the information requested.

14. **You should furnish all requested records that are subject to 
disclosure.**

15. If a record contains both disclosable and nondisclosable information, the 
nondisclosable information should be segregated and withheld, and the 
disclosable information should be provided. This can be done by 
**redacting or blacking out the nondisclosable information.**

16. If the **request is denied in whole or in part**, you must explain in writing 
what is not being provided and the legal basis for nondisclosure.

17. A denial, in whole or in part, **may be immediately appealed** to superior 
court. Often people will appeal to a higher administrative authority first, 
although they are not required to exhaust that remedy before going to 
court.

Attachments:

   CBJ Resolution 2288
   CBJ Request for Public Records Form
RESOLUTION OF THE CITY AND BOROUGH OF JUNEAU, ALASKA

Serial No. 2288

A Resolution Establishing the Fees for Copying, Certifying or Conforming Documents of the City and Borough of Juneau, and Repealing Resolutions No. 321, and 125.

WHEREAS, the Assembly, by Resolution 125 (dated June, 1972), ratified and approved continuation of City of Juneau Resolution 321 (dated May, 1968), approving fees for copying, certifying or conforming documents of the City and Borough of Juneau; and

WHEREAS, Alaska Statute AS 09.25.110 requires public agencies to provide access to, and copies of, public documents upon request, at a standard unit cost for duplication; and

WHEREAS, the current fees for copying outlined in Resolutions 125 and 321 exceed the standard cost of duplication.

NOW, THEREFORE, BE IT RESOLVED BY THE ASSEMBLY OF THE CITY AND BOROUGH OF JUNEAU, ALASKA:

Section 1. City and Borough of Juneau Copy Fees. The following policy and fee are established for producing copies of public records of the City and Borough of Juneau, Alaska:

A. Unless specifically provided otherwise, the public records of the City and Borough of Juneau are open to inspection by the public under reasonable rules during regular office hours. The employee having the custody of public records shall give on request and payment of the fee established under his section a certified copy of the public record.

B. Except as otherwise provided in this section, the fee for copying public records may not exceed the standard unit cost of duplication established by the City and Borough of Juneau print shop.
C. At the custodian’s option, the records may be delivered to a local privately operated print shop for copying, and the cost of duplication will be the charges incurred at the private print shop.

D. If the production of records for one requester in a calendar month exceeds five person-hours, the City and Borough of Juneau shall require the requester to pay the personnel costs required during the month to complete the search and copying tasks. The personnel costs may not exceed the actual salary and benefit costs for the personnel time required to perform the search and copying tasks. The requester shall pay the fee before the records are disclosed, and the City and Borough may require payment in advance of the search.

E. The City and Borough may reduce or waive a fee when it determines that the reduction or waiver is in the public interest. Fee reductions and waivers shall be uniformly applied among persons who are similarly situated. The City and Borough may waive a fee of $5 or less.

Section 2. Repeal of Resolutions. Resolutions Serial No. 125 and 321 are repealed.

Section 3. Effective Date. This resolution shall be effective immediately upon adoption.

Adopted this 22nd day of November, 2004.

Bruce Botelho, Mayor

Attest:

Laurie J. Sica, Clerk
REQUEST for
PUBLIC RECORDS

REQUESTOR: Please identify yourself and tell us how to notify you regarding this request.

Name _________________________ Telephone ___________________ Fax _____________________
Address _______________________________ E-mail ___________________

DOCUMENTS REQUESTED: Identify and describe the documents you seek. Be specific. Indicate if you want copies to be made; there may be a charge.

_______________________________________________________________________________________
_______________________________________________________________________________________
_______________________________________________________________________________________
_______________________________________________________________________________________
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ADMINISTRATION: For CBJ staff use only. Provide photocopy of this form to requestor after completing line 1.

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<td>Request received</td>
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<td>Request reviewed</td>
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OPEN RECORDS ACT: This is the State law on public records. Exceptions are listed in AS 40.25.120.

AS 40.25.110. Public records open to inspection and copying; fees.

(a) Unless specifically provided otherwise, the public records of all public agencies are open to inspection by the public under reasonable rules during regular office hours. The public officer having the custody of public records shall give on request and payment of the fee established under this section or AS 40.25.115 a certified copy of the public record.

(b) Except as otherwise provided in this section, the fee for copying public records may not exceed the standard unit cost of duplication established by the public agency.

(c) If the production of records for one requestor in a calendar month exceeds five person-hours, the public agency shall require the requestor to pay the personnel costs required during the month to complete the search and copying tasks. The personnel costs may not exceed the actual salary and benefit costs for the personnel time required to perform and the search and copying tasks. The requestor shall pay the fee before the records are disclosed, and the public agency may require payment in advance for the search.

(d) A public agency may reduce or waive a fee when the public agency determines that the reduction or waiver is in the public interest. Fee reductions and waivers shall be uniformly applied among persons who are similarly situated. A public agency may waive a fee of $5 or less if the fee is less than the cost to the public agency to arrange for payment.