

Hon. Darrel Rexwinkel
Commissioner
Department of Revenue

April 1, 1992

663-92-0163

465-2398

Confidentiality of PFD
applicant information

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You asked that we review this department's opinion of July 15, 1987,¹ and the provisions of ch. 200, SLA 1990. Specifically, you ask whether the passage of the latter alters the advice contained in the former. We conclude that it does alter our earlier advice insofar as the memorandum advises the Department of Revenue that it should not disclose applicant addresses for purely commercial purposes.

The passage of ch. 200, SLA 1990, continued an era of expanded openness in government and increased access to government records. In that legislation the legislature clarified the statutory availability of public records to the public. Section 8 amended AS 09.25.220² to clarify that section by comprehensively defining public records. We infer from such a broad definition that the legislature intended to include virtually every possible kind of record except those specifically excluded. We have no doubt but that permanent fund dividend applications are most certainly included as records developed by a public agency preserved both for informational value and as evidence of the operation of the agency, i.e., they are public records.

¹ 1987 Inf. Op. Att'y Gen. (July 15; 663-87-0598).

² This section provides, in part:

(6) "public records" means books, papers, files, accounts, writings, including drafts and memorializations of conversations, and other items, regardless of format or physical characteristics, that are developed or received by a public agency, or by a public 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.

(Emphasis added.)

The privacy provision of the Alaska Constitution³ has consistently been interpreted as a "state law" exception to the public records law. See AS 09.25.120(4). These privacy protections have been construed by the Alaska Supreme Court to include protecting information that is sensitive and confidential and "which a person desires to keep private and which, if disseminated, would tend to cause substantial concern, anxiety, or embarrassment to a reasonable person." **Falcon v. Alaska Pub. Offices Comm'n**, 570 P.2d 469, 479 (Alaska 1977) (quoting 3 Hasting Const. L. Q. 249 (1976)).

In 1990, the legislature passed laws directing the state to provide special notice when requiring a person to supply personal information so that the person may, among other things, challenge the accuracy or completeness of the information. Chapter 200, SLA 1990. As a part of this Act, the legislature adopted a definition of "personal information." Sec. 15, ch. 200, SLA 1990. This definition specifically excludes a person's name and address. AS 44.99.350(2).⁴

Although we don't know whether the legislature was explicitly interpreting, or implementing, the constitutional right to privacy when it adopted AS 44.99.350,⁵ this definition

³ Alaska Constitution, article I, section 22, provides that "[t]he right of the people to privacy is recognized and shall not be infringed. The legislature shall implement this section."

⁴ AS 44.99.350(2) (enacted as AS 44.99.040 and renumbered in 1990) reads:

personal information means information that can be used to identify a person and from which judgments can be made about a person's character, habits, avocations, finances, occupation, general reputation, credit, health, or other personal characteristics but does not include a person's name, address, or telephone number, if the number is published in a current telephone directory, or information describing a public job held by a person.

(Emphasis added.)

⁵ Although it is clear that a legislative enactment cannot abrogate constitutional guarantees, the privacy section of the

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of "personal information" is an implicit statement by the legislature that it does not consider a person's name or address to be protected by the right to privacy. On this basis, we conclude that a person's name and address are subject to disclosure under AS 09.25.110 and 09.25.120. We thus overrule the advice contained in our memorandum of advice dated July 15, 1987, and now advise you that the department must provide the names and addresses of PFD applicants to any member of the public who requests the information and pays the required fees.

VLU:prm

(..continued)

Alaska Constitution contains a directive that the legislature implement the section. See note 3 above.