

# MEMORANDUM

State of Alaska  
Department of Law

TO: The Honorable Glenn Olds  
Commissioner  
Department of Natural Resources

DATE: June 11, 1993

FILE NO.: 663-93-0510

TELEPHONE NO.: 465-3600

SUBJECT: Confidentiality of Public  
Records Made or Kept in the  
Administration of the Alaska  
Land Act (AS 30.05)

FROM: James L. Baldwin  
Assistant Attorney General  
Oil, Gas, and Mining - Juneau

You requested our advice whether public records of the Department of Natural Resources pertaining to land selections are governed by statute. The central statute stating the overall policy of the state is AS 09.25.120. Section 120 provides "Every state . . ." This right is limited by exceptions. Of these exceptions, only one appears to apply to land selection records. The public disclosure law excepts from it coverage "records required to be kept confidential by a federal law or regulation or by state law, . . . ." AS 09.25.120(4).

The Alaska Land Act (AS 38.05) provides limited authority for keeping certain records confidential. The Act provides:

[T]he following records and files shall be kept confidential upon request of the person supplying the information:

- (A) the name of the person nominating or applying for the sale, lease, or other disposal of land by competitive bidding;
- (B) before the announced time of opening, the names of the bidder and the amounts of the bids;
- (C) all geological, geophysical, and engineering data supplied, whether or not concerned with the extraction or development of natural resources;
- (D) except as provided in AS 38.05.036, cost data and financial information submitted in support of applications, bonds, leases, and similar items;

(E) applications for rights-of-way or easements; and

(F) requests for information or applications by public agencies for land which is being considered for use for a public purpose.

AS 38.05.035(a)(9). Non-interpretative data developed for exploration, development, or production of oil or gas on state leases is also covered by the authority granted in AS 38.05.035(a)(9). AS 38.05.180(x); 11 AAC 82.210; 11 AAC 83.153. Additional authority exists for the Alaska Oil and Gas Conservation Commission to keep certain oil and gas well data confidential. AS 31.05.035. These discrete authorizations appear to be the express authority to keep land selection or land development records confidential. Our research of the Alaska Statutes failed to disclose other authority to keep departmental records confidential.

For records covered by the Alaska Land Act, confidentiality attaches only upon request of the person supplying the records. A state agency, as distinguished from a natural person, could request confidentiality in connection with the use of land under certain circumstances. Land records may be kept confidential if their disclosure would provide information relevant to an agency's intent to select land for "a public purpose." AS 38.05.035(a)(9)(F).

As a matter of statutory interpretations, it would be difficult to defend a liberal construction of the power to keep confidential records concerning public use selections. *See Municipality of Anchorage v. Anchorage Daily News*, 794 P.2d 584 (Alaska 1990)(exceptions to disclosure requirements set out in AS 09.25.120 construed narrowly in favor of legislature's bias in favor of broad public access to records). For that reason, the authority granted in AS 38.05.035(a)(9)(F) may not be broad enough to cover records containing information developed by the department or its agents about the characteristics of land. However, if the department can show that it possesses categories of information so sensitive that disclosure would harm a vital public interest, it may be possible to invoke the doctrine of necessity in order to protect the public interest.

I hope this memorandum adequately answers your question concerning handling of records development in connection with the department's administration of the Alaska Land Act (AS 38.05). If you have additional questions or desire further work on this matter, do not hesitate to call.

JLB:tg