

July 24, 1997

SENT VIA FACSIMILE AND U.S. MAIL

Jim Kentch, Esq.
634 K Street
Anchorage, Alaska 99501

Re: Written Determination of Appeal;
6 AAC 96.345 -- 6 AAC 96.350
A.G. file no: 663-97-0433

Dear Mr. Kentch:

This constitutes the determination of your appeal of the partial denial of your public records request for certain phone and facsimile numbers of employees of the civil and criminal divisions of the Anchorage Department of Law. In a letter dated April 22, 1997, Assistant Attorney General David Jones denied your request for a list of direct phone numbers of the attorneys and paralegals (professionals), but provided you with their facsimile numbers and the direct phone numbers of their secretaries. You raise four points in your letter appealing the denial of the direct phone numbers for the attorneys and paralegals. I will address each of those points below.

Appeal Point No. 1. The Department of Law has already waived the confidentiality of the requested records.

You allege that paralegals and assistant attorneys general have given their direct phone numbers to some members of the public (as well as private individuals) and, therefore, such disclosure operates as a general waiver by the department of the confidentiality of direct phone numbers.

Response to No. 1. I disagree that an individual attorney's or paralegal's act of giving out their direct phone number to specific persons, public or private, constitutes a waiver by the Department of Law as to the continuing confidentiality of the list of these direct phone numbers. As discussed by David Jones in his letter of April 22, 1997, the department has a valid interest in not publicly disclosing the list of the direct phone numbers of the department's attorneys and paralegals, as this would substantially interfere with the department's efficiency. The Alaska Supreme Court has recognized that the government's interest in efficiency is a factor to weigh in determining whether the public records act requires disclosure of particular records. *City of Kenai v. Kenai Peninsula Newspapers*, 642 P.2d 1316, 1325 (Alaska 1982) (citations omitted). Furthermore, I concur in

the analysis and findings of David Jones in his April 22, 1997, letter that the balancing of interests is in favor of non-disclosure of the requested records. I further discuss the balancing of interests in response to appeal points Nos. 2 and 3 below.

Appeal Point No. 2. Disclosure of the records requested to some members of the public but not all members of the public creates an unfair classification of haves and have nots.

Response to No. 2. I disagree that an individual attorney's and paralegal's act of providing their direct phone numbers to certain persons creates an unfair classification or constitutes a waiver of the department's continuing confidential status of the list of the direct phone numbers. I do not believe that a court would find there is a "class" of individuals that are legally privileged or that there is a two-tier system of haves and have nots based upon the personal decisions of attorneys or paralegals to give out their direct phone numbers to certain individuals. Separate from the acts of the individual professionals and other employees of the department, the department itself is the entity with the right to protect the confidentiality of its list of direct line phone numbers. The department's list for its own use is a document related to the efficient operations of the department. Whatever interest the public may have in being provided this list of direct phone numbers of attorneys and paralegals (which there appears to be no protected interest) does not, in our opinion, outweigh the court-recognized interest expressed in the *Kenai* case, allowing the government to protect the efficiency of its operations. The main phone numbers for the civil and criminal divisions are widely published. The public and other entities (government and private) may reach the attorneys, paralegals, support staff, and other employees of the criminal and civil divisions of the Department of Law in Anchorage during normal working hours through the main phone numbers. The caller simply must endure a transfer of the call and being announced to the professional. If the professional cannot immediately take the call, then the caller may leave a message on the professional's voice-mail. The public has been provided the main phone numbers by which the professionals of the Anchorage Department of Law may be reached. They may be reached as well through the secretaries' direct lines and the facsimile numbers.

Appeal Point No. 3. The argument that disclosing these public records will decrease efficiency is erroneous.

The inconvenience of a caller being transferred or announced to the professional when phoning the main Department of Law phone numbers (for criminal or civil divisions) is minimal compared to the disruption that would occur if the professionals were inundated with direct line calls from persons whose identity they would have no ability to screen unless the phones are call-forwarded to their secretaries. And, if attorneys are constrained to program their phones to the call-forward function in order to create a screening system for their calls, call-forwarding would simply result in extra steps, not only to the caller, but to Department of Law employees. For example, the call would have to be transferred back to the professional after the call-forward function was canceled and after the secretary announced the caller. This would not only be an inefficient process, but, as noted by Mr. Jones in his letter, would undermine the purpose and benefits of the present phone system. Even the in-house use of direct lines between department staff would be affected because those calls would also end up being call-forwarded to the secretary, thus substantially interfering with the department's intra-agency communications that are benefitted by the current phone system.

Finally, you allege that it would be more efficient to give out the direct lines of professionals so they could receive after-hours voice mail messages. I do not believe that receipt of direct voice-mail messages after-hours is a basis for releasing a list of the direct phone numbers when balanced against the disruption that would occur during the normal working hours -- as described above. You currently have the option of leaving a message on the voice mail of the secretary for a particular attorney or paralegal (whose direct line numbers you were provided) or faxing your message to the professional after hours. In any event, the person to whom you direct the voice-mail or facsimile after normal working hours will receive the message.

Appeal Point No. 4. It is the job of the employees of the Department of Law to serve the public.

Response to No. 4. You claim that it is the job of the professionals in the Department of Law to serve the public and that includes speaking with members of the public. While I do not disagree that as government lawyers we work in the public interest, your implication that we must talk to members of the public whenever the public chooses to speak to the professionals is not an accurate statement of the Department of Law's statutory duties. Under the statutory duties set out in AS 44.23.020, the attorney general is the legal advisor of the governor and other state officials. The attorneys with this office may provide legal advice and assistance solely to state agencies and officials. We may not give legal advice or assistance to the public.

Conclusion

Please be advised that it is my determination to deny your appeal for the reasons set forth above and those set forth in Dave Jones' letter of April 22, 1997. This constitutes the

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final decision of the Department of Law. As provided by AS 09.25.124, you may obtain judicial review of this denial by appealing the denial to the Superior Court.

Sincerely,

BRUCE M. BOTELHO
ATTORNEY GENERAL

By:
Marjorie L. Vandor
Assistant Attorney General

cc: Bruce Botelho
Attorney General

David Jones
Assistant Attorney General