

# MEMORANDUM

## State of Alaska Department of Law

**TO:** The Honorable Jim Duncan  
Commissioner Designate  
Department of Administration

**DATE:** September 12, 2000

**FILE NO:** 661-01-0106

**TEL. NO:** (907) 269-5169

**SUBJECT:** Boat Registration and Public  
Records

**FROM:** David T. Jones  
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### **QUESTION AND SHORT ANSWER**

Your predecessor, former Commissioner Bob Poe, asked whether the Department of Administration could, by regulation, provide for withholding from public disclosure boat owners' personal information contained in boat registration records. The legislature has very clearly expressed its intent that boat registration records be subject to disclosure as public records. Accordingly, it would be inappropriate for the Department of Administration to adopt regulations to the contrary. Consequently, the registration records will generally be open to public inspection. However, the Department of Administration should, to ensure compliance with federal law, redact social security numbers from the records before producing them in response to public records requests.

### **FACTUAL BACKGROUND**

During its 2000 session, the Alaska Legislature enacted legislation providing for a boat registration system.<sup>1</sup> The legislation requires owners of certain boats to register their boats with the Department of Administration.<sup>2</sup> The information obtained from boat owners for registration will likely include the owners' names, addresses, and, possibly,

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<sup>1</sup> Ch. 28, SLA 2000.

<sup>2</sup> AS 05.25.055.

their social security or taxpayer identification numbers.<sup>3</sup> Former Commissioner Poe's inquiry concerns whether this information contained in the registration records will be subject to public disclosure.

### ANALYSIS

"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."<sup>4</sup> "Every person has a right to inspect a public record . . . except . . . records required to be kept confidential by a federal law or regulation or by state law."<sup>5</sup> "[E]xceptions to the disclosure requirement should be construed narrowly to further the legislature's goal of broad public access."<sup>6</sup>

Generally, when no express exception to the public records act applies, "a balance must be struck between the public interest in disclosure on the one hand, and the privacy and reputational interests of the affected individuals together with the government's interest in confidentiality, on the other."<sup>7</sup> "In striking a proper balance the custodian of the records in the first instance, and the court in the next, should bear in mind that the legislature has expressed a bias in favor of public disclosure. Doubtful cases should be resolved by permitting public inspection."<sup>8</sup> The fact that the legislature has created the obligation to manufacture particular records and has expressly provided that those records are open to public inspection may also tip the balance in favor of disclosure.<sup>9</sup>

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<sup>3</sup> See 33 C.F.R. § 187.101 (1999) (describing information states participating in federal vessel identification system must collect regarding ownership of vessels numbered or titled under states' laws).

<sup>4</sup> AS 09.25.110(a).

<sup>5</sup> AS 09.25.120(a).

<sup>6</sup> *Capital Information Group v. State, Office of the Governor*, 923 P.2d 29, 33 (Alaska 1996) (citing *Municipality of Anchorage v. Anchorage Daily News*, 794 P.2d 584, 589 (Alaska 1990); *Doe v. Alaska Superior Court*, 721 P.2d 617, 622 (Alaska 1986)).

<sup>7</sup> *Municipality of Anchorage v. Anchorage Daily News*, 794 P.2d at 590.

<sup>8</sup> *City of Kenai v. Kenai Peninsula Newspapers, Inc.*, 642 P.2d 1316, 1323 (Alaska 1982).

<sup>9</sup> *Capital Information Group v. State, Office of the Governor*, 923 P.2d at 40.

Here, there is no express exception to the public records act that appears to apply to the boat registration records or to all of the information likely to be included in the records. Furthermore, the legislature has not only created the obligation to manufacture boat registration records,<sup>10</sup> but has also expressly provided that "[a]ll records of ownership of boats that are kept by the Department of Administration under [AS 05.25.055] are public records."<sup>11</sup> Accordingly, the records and the information contained in them are presumptively subject to public disclosure.

However, as former Commissioner Poe noted in his memorandum requesting our opinion, making boat registration records open to public inspection may seem inconsistent with the legislature's decision in 1999 to make driving records "confidential and private"<sup>12</sup> and its decision to restrict access to personal information contained in motor vehicle records.<sup>13</sup> Nonetheless, the legislature's express statement that boat registration records are public prevails. Moreover, the fact that the legislature expressly provided for the confidentiality of personal information contained in motor vehicle and driving records, on the one hand, but explicitly made boat registration records public records, on the other, offers additional reason for hesitation in assuming that the legislature did not intend to allow disclosure of boat owners' personal information.<sup>14</sup>

One might argue that the boat owners' privacy interests, as protected under Alaska's constitution,<sup>15</sup> outweigh the interests in disclosure and serve as a basis for withholding personal information concerning boat owners. However, the information contained in boat registration records is not, for the most part, information that receives privacy protection under the Alaska Constitution. The Alaska Supreme Court has indicated that privacy protection extends to intimate, sensitive information of the type

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<sup>10</sup> See AS 05.25.055.

<sup>11</sup> AS 05.25.055(h).

<sup>12</sup> See AS 28.15.151(f); sec. 3, ch. 36, SLA 1999.

<sup>13</sup> See AS 28.10.505.

<sup>14</sup> See also AS 12.61.110 (expressly providing that crime victims' and witnesses' addresses and telephone numbers are confidential).

<sup>15</sup> Alaska Constitution art. I, sec. 22 ("The right of the people to privacy is recognized and shall not be infringed. The legislature shall implement this section.").

"which, if disclosed even to a friend, could cause embarrassment or anxiety."<sup>16</sup> The Court of Appeals of Alaska has concluded that "a person's name and address, by themselves, do not constitute information about which a person can have a reasonable expectation of privacy which society is willing to recognize."<sup>17</sup>

The legislature has also expressed the view that names and addresses, as well as listed telephone numbers, are not protected, private information. In requiring state agencies to give notice of how the agencies intend to use personal information that the agencies request for public records, the legislature provided that "personal information" includes

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.<sup>18</sup>

We have advised in several prior opinions that names, addresses, and listed telephone numbers are generally subject to disclosure under the public records act.<sup>19</sup>

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<sup>16</sup> *Doe v. Alaska Superior Court*, 721 P.2d at 629 (discussing disclosure of private citizens' unsolicited letters to governor).

<sup>17</sup> *State v. Chryst*, 793 P.2d 538, 542 (Alaska Ct. App. 1990) (addressing claim that trooper's obtaining defendant's power consumption and address information from electric utility without warrant violated defendant's privacy rights); *see also International Ass'n of Fire Fighters, Local 1264 v. Municipality of Anchorage*, 973 P.2d 1132, 1136-37 (Alaska 1999) (constitutional right to privacy does not prevent disclosure of public employees' names and salaries); *but see Jones v. Jennings*, 788 P.2d 732, 739 (Alaska 1990) (trial court did not violate police officer's privacy rights by ordering disclosure of officer's personnel records with family's name and address, as well as personal financial information, redacted).

<sup>18</sup> AS 44.99.350(2) (emphasis added).

<sup>19</sup> 1998 Inf. Op. Att'y Gen. 48, 58 (Mar. 10; 663-97-0305); 1995 Inf. Op. Att'y Gen. 291, 293-95 (July 25; 663-94-0164); 1993 Inf. Op. Att'y Gen. 435, 438 (Dec. 3; 663-92-0148); 1992 Inf. Op. Att'y Gen. 161, 163 (Apr. 1; 663-92-0163).

There is also evidence of a legislative purpose for making public this type of information from boat registration records. The legislature apparently adopted the boat registration provisions to meet the guidelines for participation in the federal vessel identification system.<sup>20</sup> The Coast Guard, in published commentary on proposed changes to its regulations governing the federal vessel identification system, responded to comments that the information collected through the system should not be available to the general public:

In identifying who should have access to the information in [the vessel identification system], we must consider the legislative history of the statute requiring establishment of [the system]. In debate on the floor of the House of Representatives during consideration of the legislation, the sponsors of the bill clearly stated several times that the purpose for collecting the information is not only to allow law enforcement officers to track interstate movement of stolen boats, but also to allow purchasers to obtain complete information before buying. To meet this legislative intent, it is necessary to provide information from [the system] to potential buyers, lenders, and others in the maritime community having business with the vessel in question. Data subject to the Privacy Act may be deleted from information to be made available publicly, as distinct from information to be made available to State agencies, in order to prevent unwarranted invasion of privacy.<sup>21</sup>

Similarly, a federal statute states that the purpose of the federal vessel identification system is "to make available information . . . for use by the public for law enforcement and other purposes . . ."<sup>22</sup> Consequently, the legislature may have decided to make boat registration records available to the public to assist buyers in determining the title status of boats that they are contemplating buying, as well as to assist law enforcement agencies. Therefore, the privacy interests served by withholding boat owners' names and addresses from public disclosure do not clearly outweigh the interests served by their disclosure.

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<sup>20</sup> See 46 U.S.C. §§ 12501-12507 (2000); 33 C.F.R. part 187 (1999).

<sup>21</sup> Vessel Identification System; Proposed Rule, 65 Fed. Reg. 7925, 7928 (2000) (proposed Feb. 16, 2000).

<sup>22</sup> 46 U.S.C. § 12501(a) (2000).

Whether to disclose boat owners' telephone numbers presents a closer question. Plainly, to the extent that the owners' telephone numbers are published in current directories, the owners have no reasonable expectations that their numbers will be private. As to others, although determining the proper balance is more difficult, the presumption in favor of disclosure -- coupled with the legislature's express statement that the records are public -- probably overrides the owners' privacy interests. It is not clear, however, that the Department of Administration will need to obtain telephone numbers from boat owners as part of the boat registration system.<sup>23</sup>

Social security numbers also present a difficult question. The numbers might not be subject to disclosure under the public records act because federal law limits their disclosure. Federal law provides that authorized persons -- including officers and employees of a state -- who obtain social security numbers pursuant to "any provision of law enacted on or after October 1, 1990" may not disclose the numbers.<sup>24</sup> Assuming that "any provision of law" includes state laws, this prohibition would apply to social security numbers that the Department of Administration obtains pursuant to Alaska's boat registration legislation, which the legislature adopted this year. On the other hand, the federal law establishing the federal vessel identification system -- which specifically authorizes collection of vessel owners' social security numbers -- provides that the federal government may make available "information in the vessel identification system" to states and "others" for "law enforcement or other purposes."<sup>25</sup> The Coast Guard is currently soliciting public comment on the scope of information that should be available to the public from the federal vessel identification system.<sup>26</sup> However, it is a crime to disclose willfully the social security number of another in violation of federal law.<sup>27</sup> Therefore, unless we receive reliable clarifying information from the federal government to the

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<sup>23</sup> See 33 C.F.R. § 187.101 (1999) (describing information that state participating in federal vessel identification system must collect from vessel owners); *see also* 33 C.F.R. § 174.17 (1999) (describing required contents of application for certificate of number for approved state vessel numbering systems).

<sup>24</sup> 42 U.S.C. § 405(c)(2)(C)(viii) (Supp. 2000).

<sup>25</sup> 46 U.S.C. § 12504 (2000).

<sup>26</sup> *See* Vessel Identification System; Proposed Rule, 65 Fed. Reg. 7925, 7928 (2000).

<sup>27</sup> 42 U.S.C. § 408(a)(8) (Supp. 2000).

contrary, the Department of Administration should redact owners' social security numbers before producing boat registration records for public inspection.

Situations might arise in which the Department of Administration believes that disclosing information about particular boat owners would be imprudent, because, for example, of threats to the owners' safety.<sup>28</sup> It may be that, in such circumstances, the Department of Administration would be justified in withholding personal information or advising the affected boat owners of the requests for disclosure. However, whether withholding the information is warranted in those situations will depend on the particular circumstances of each situation.

There are two steps that the Department of Administration might consider taking to address concerns about disclosure of boat owners' information. First, the Department of Administration might consider seeking additional legislation addressing treatment of the information contained in boat registration records. Second, the department might consider including on the registration application a prominent notice to boat owners that the application is a public record, by virtue of AS 05.25.055, and that information supplied in the application (with the exception, at least for the present, of social security numbers) is therefore subject to public disclosure under the public records act.

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<sup>28</sup> See, e.g., *Alaska Wildlife Alliance v. Rue*, 948 P.2d 976, 980 (Alaska 1997) (redacting names of public employees and contractors from public records before disclosure justified where there are credible threats against their lives); see also 1998 Op. Att'y Gen. 48, 58 (Mar. 10; 663-97-0305) (credible threats of stalking may warrant withholding address and phone number of licensee).