

ADVICE TO UNIVERSITY DEPARTMENTS RESPONDING TO PUBLIC RECORDS REQUESTS

Many University documents are subject to disclosure to the public, upon written request, in accordance with the Alaska Public Records Act and BOR 06.02.010-.100. The statutory definition of records includes books, papers, files, writings, including drafts and memorializations of conversations, and other items, regardless of format. There are exceptions for records that are confidential under state or federal law (FERPA, the limited research exception under AS 14.40.453, etc.) and for proprietary software.

Requests for documents that are readily available to the public are easily fulfilled. When a person asks for a form, brochure or other document that is available for public distribution, there is often no cost involved. If a person asks for a copy of a current department file that is known to be public, the requester is entitled to a copy at the cost of 25 cents per page (which can be waived if the total is under \$5 and the fee is less than the cost to arrange for payment).

However, some public records requests raise issues of confidentiality or expense. Even if the records can not be disclosed, the requester is entitled to a response **within 15 days after a written request is submitted**.

If you have questions about responding to a public records request, the following procedure will expedite review:

1. Ask the requester to put the request in writing so that there is no misunderstanding of the request. You can provide them with a copy of the information sheet "Information for the Public on Making Records Requests to the University of Alaska" and BOR 06.02.

2. Immediately upon receipt of the written request:

A. Unless all of the requested records are obviously confidential under state or federal law (such as non-directory education records, medical records, etc.), determine the following:

Are the records in a central location? If not, identify who may have the requested records.

Identify the volume of records that has been requested and estimate the copying costs.

Will it take more than five person-hours to complete the search for the records and the copying?
If so, how many hours?

Approximately how many copies will be required to fulfill the request?

Will the records require redaction to remove confidential information? If so, explain how the records are maintained and identify the confidential information.

Note any other special circumstances, such as large documents that may require outside copying, reasons that a request may require an extensive search, etc.

B. Identify any concerns that you have about release of the records.

Is any portion of the records confidential under federal or state law?

Are the records of a private nature? (For example, personnel, health or other personal information?)

Is there any other reason that the records should not be made public, in your opinion?

3. **Email or fax your responses to the above questions and a copy of the records request to General Counsel and Statewide Public Affairs for advice and assistance with drafting a response.** Allow enough time so that an initial response with the cost estimate for copying can be sent to the requester **within ten days after the request**.

4. Was a fee waiver requested? If so, discuss with GC and Statewide Public Affairs. Fees may be reduced or waived when the university determines that the reduction or waiver is in the public interest.

5. Notify the requester in writing of the cost of copying the records that are public. Payment is required before the records are disclosed (and may be required before the records are copied).

6. If any part of the request is denied, the department head must notify the requester in writing in accordance with BOR 06.02.060-.080. **The denial must state that that the requestor may appeal the denial by complying with the procedures in BOR 06.02, and a copy of those policies must be enclosed with the denial.**

Board of Regents Policy

Chapter 06.02 – Public Records

P06.02.010. Access to Public Records.

In accordance with AS 14.40.453, AS 40.25.110 - 40.25.220, and this policy, the university will provide copies of public records upon written request and payment of the applicable fees. All disclosable public records will be made available upon compliance with the requirements of AS 40.25.110 - AS 40.25.125 and this policy. The university may not require a justification or explanation of need or intended use, but it may inquire whether the person making the request is a party, or represents a party, involved in litigation with the university. If so, the requestor shall be informed to make the request in accordance with applicable court rules.

(06-07-07)

P06.02.020. Definition of Public Records.

- A. In P06.02, “public records” has the meaning given in AS 40.25.220, which includes 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 the university, or by a private contractor for the university, and that are preserved for their informational value or as evidence of the organization or operation of the university. “Public records” does not include proprietary software programs.
- B. “Public records” does not include the exceptions listed in AS 40.25.120, which include but are not limited to, records required to be kept confidential by a federal law or regulation or by state law; medical and related public health records; certain records or information compiled for law enforcement purposes, if production of records or information could reasonably be expected to interfere with enforcement proceedings, deprive a person of a right to a fair trial or an impartial adjudication, constitute an unwarranted invasion of the personal privacy of a person, disclose the identity of a confidential source, or endanger the life or physical safety of an individual.

(06-07-07)

P06.02.030. Confidentiality.

University records may be confidential under AS 14.40.367 (university land), AS 14.40.453 (confidentiality of research), AS 40.25.140 (library records), or other state or federal law or regulation, or protected by the constitutional right to privacy or other statutory or common law.

(06-07-07)

P06.02.040. Requests for Public Records.

- A. A request for a public record must be in writing and delivered to the department of the university responsible for maintaining the record. The requestor must describe the public records sought in sufficient detail to enable the department to locate the records. If the records are described in general terms, the department shall attempt to communicate with

the requestor in order to identify the public records requested, speed the response, and lessen the administrative burden of processing an overly broad request.

- B. If the department determines that the description of the records sought is not sufficient to allow it to identify the requested records, it shall, no later than 15 working days after receipt of the written request, notify the requestor that the request cannot be processed until additional information is furnished. Time limits set out in other provisions of P06.02 do not begin to run until a sufficient written description of the records is received in the department of the university responsible for maintaining the records.

(06-07-07)

P06.02.050. Copies and Fees.

- A. Fees shall be charged in accordance with AS 40.25.110. The standard unit charge for copies of public records is 25 cents per page. The fee to search for and duplicate a public record will reflect the actual costs for copying the record in the requested format, including costs for paper, tapes, microfiche, disks or other media and computer processing time, and salary and benefits costs for the employees performing the search and copying.
- B. Fees must be paid before the records are disclosed. A department may require payment in advance of a search for a public record if it reasonably believes that the search will generate a fee.
- C. Fees may be reduced or waived if the university 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 fee of \$5 or less may be waived if the fee is less than the cost to the university to arrange for payment.

(06-07-07)

P06.02.060. Response to Request.

- (a) The university is not required to compile or summarize its public records or to create new records in response to a request for public records.
- B. Within 15 working days after the date the department receives a written request for public records that complies with AS 40.25.110 – 40.25.220 and P06.02, it shall
 - 1. furnish all requested records that are disclosable; and
 - 2. advise the requestor which of the requested records are nondisclosable, if any, and the legal authority and facts supporting nondisclosure.
- C. Any time that elapses between the time a requestor is sent notice that processing the request will generate chargeable fees and the time the requestor pays those fees is excluded from the 15 working-day period of B. of this section or any extension of that period.
- D. A department may extend the basic 15 working-day period established under B. of this section for a period not to exceed 10 additional working days by providing notice to the

requestor stating the reasons for the extension and the date by which the office expects to be able to furnish the requested records or to issue a determination that the records are not disclosable.

- E. The time limits set out in this section do not apply if the requestor agrees in writing that the requested records need not be supplied until a specified date. A department shall give a written response granting or denying a request for public records within the prescribed time limit. If a written response is not received by a requestor by the expiration of the time limit, the requestor may consider the request denied.

(06-07-07)

P06.02.070. Deletion of Nondisclosable Information.

If a record contains both disclosable and nondisclosable information, the nondisclosable information must be segregated and withheld and the disclosable information must be disclosed. If the disclosable portions of a record cannot reasonably be segregated from the nondisclosable portions in a manner that allows information meaningful to the requestor to be disclosed, the department may not disclose the record.

(06-07-07)

P06.02.080. Denial of Request.

- A. A request for a public record may be denied by the department head in accordance with this section. A denial of a written request is considered to be issued at the time the denial is either delivered to the United States Postal Service for mailing, or hand-delivered to the requestor. A request for a public record may be denied if:

1. nondisclosure of the record is authorized by a federal law or regulation, or by state law;
2. the record is not known to exist after the department makes a diligent search for it;
3. the record is not in the department's possession and, after a diligent search, the department does not know where the record is to be found;
4. the record was destroyed prior to the request in accordance with record-retention procedures; or
5. the record is believed to be in the department's possession but has not yet been located, in which case the department shall continue to search until the record is located or until it appears that the record does not exist or is not in the department's possession.

- B. A denial of a written request must be in writing; must state the reasons for the denial, including any specific legal grounds for the denial; and must be dated and signed by the department head issuing the denial. A copy of P06.02 must be enclosed with the denial. A denial of a written request, in whole or in part, must state that the requestor may administratively appeal the denial by complying with the procedures in P06.02.

(06-07-07)

P06.02.090. Appeal of Denial of Request.

- A. A requester whose written request has been denied, in whole or in part, may seek reconsideration of the denial by submitting a written appeal to the chancellor of the involved MAU, or to the president if a statewide administrative unit is involved.
- B. An appeal must be mailed or hand-delivered to the appropriate university office within 30 working days after the denial is issued and must include the date of denial and the name and address of the person responsible for the denial. The appeal must also identify the records to which access was denied and that are the subject of the appeal.
- C. If an appeal is from the failure of the university to respond to the records request within the appropriate time limit, the appeal must so state, must identify the records sought, and must identify the university office to which the request was directed and the date of the request.
- D. The 30 working days within which an appeal must be filed begins to run upon the issuance of the denial or the expiration of the time period within which the university should have responded, whichever occurs first.
- E. The person responsible for the denial and any other interested party may file a written response to the appeal with the chancellor or the president as appropriate. A response shall be filed no later than the 7th working day after the university receives the appeal, unless the chancellor or president grants an extension of time. A person who files a written response to an appeal must mail or hand-deliver a copy of the response to the requester and to all other persons who have filed a response. The requester may file a reply no later than the 7th working day after a response is mailed or hand-delivered.

(04-15-04)

P06.02.100. Appeal Determination.

- A. As soon as practicable, but not later than the 10th working day after the university receives an appeal, the chancellor or president will issue a written determination stating which of the records that are the subject of the appeal will be disclosed and which records will not be disclosed. The written determination must specify the legal grounds and factual basis for denying access to any records that are not being disclosed specify that the decision constitutes a final university decision, and advise that the requester may seek judicial review of the denial by appealing the denial in superior court.
- B. The chancellor or president may extend the 10-working day period for a period not to exceed 30 working days upon written request from the requester, or by sending a written notice to the requester within the 10-working day period.
- C. The chancellor or president may delegate authority and duties under this section to any full-time employee of the university not involved in the denial and not subordinate to the person responsible for the denial. The person delegated this authority may not further delegate such authority.

(04-15-04)