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IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT ANCHORAGE

ALASKA STATE EMPLOYEES ASSOCIATION/AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES LOCAL 52,	)	
Plaintiff,	)	
v.	)	
STATE OF ALASKA, DEPARTMENT OF ADMINISTRATION,	)	
Defendant.	)	Case No.: 3AN-25-04636CI

DEFENDANT'S OPPOSITION TO PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION

I. Introduction

ASEA's (the "Union") conspiracy theories about this salary study are factually wrong. First, the Department of Administration (the "Agency") has only ever received drafts from the contractor. And because the Union only requested the "results" of a "completed" salary study under the Alaska Public Records Act ("APRA"), this Court does not have jurisdiction over a claim for drafts of the salary study.

Second, the Agency extended the contract and requested additional work from the contractor to ensure that the Agency receives the best final product possible for the public money spent. These extensions have nothing to do with bargaining with the Union. And the Union's arguments that the Agency's refusal to release the drafts unfairly harms its bargaining position should be made to the Alaska Labor Relations Agency as an unfair bargaining practice complaint, not to this Court as an APRA claim.

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Finally, even if this Court does choose to consider the Union's motion for immediate release of these drafts, the affidavits submitted in support of this opposition demonstrate that they are protected by the deliberative process privilege.

This Court should deny the Union's motion for preliminary injunction.

II. Factual Background.

A. The Union misstates the facts of their public records request.

The Union made a request to commence the current, and ongoing, collective bargaining negotiations by submitting a request to bargain on September 26, 2024.[1] That request included a public records request for, among other things, "[t]he *results* of any salary study conducted by the State and *completed* within the last six (6) months. On information and belief, the salary study was finished at least two (2) months ago but, for unknown reasons, has not yet been released."[2] (Emphases added.) The State constructively denied this request on October 10, 2024 by not responding within 10 business days.[3] Therefore, the Union was able to file an administrative appeal or sue for an injunction from this Court as soon as October 11, 2024.[4] But the Union took no action, and the time to file an administrative appeal of the constructive denial expired on January 9, 2025.[5]

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1 Exhibit A, attached.

2 *Id.*

3 *See* 2 AAC 96.325(f).

4 *See* AS 40.25.125; 2 AAC 96.340.

5 *See* 2 AAC 96.340.

Additionally, the Agency issued a formal written denial to the public records request on January 16, 2025.[6] The Agency explained that it had no "results" to provide because the salary study was not finished: "as the study has not been completed, DOA has not received the preliminary or final statewide salary study and, therefore, has no records responsive to this request."[7] The response also recognized that a statement that no records exist constitutes a denial, again allowing the Union to immediately pursue an administrative appeal or an injunction in superior court. The Union also could have submitted a new public records request for drafts of the salary study; it did not.

Although not required by the APRA, as a courtesy the response included additional information regarding the status of the salary study. It attached a letter from Deputy Chief of Staff Rachel Bylsma to all state agency commissioners, dated December 6, 2024.[8] The letter explained the following:

> As we reviewed drafts of the study, we identified the need to gather additional data and requested the contractor solicit salary data from additional peer/comparable jurisdictions. We also asked the contractor to factor in investments the State made in salaries through collective bargaining and the passage and implementation of Senate Bill 259 (2024 legislation that addressed state employee compensation).[9]

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6 Exhibit B, attached.

7 *Id; see also* Affidavit of Brittany Patzke in support of this Opposition (averring that the Division has only received drafts of the salary study report from Segal).

8 Exhibit C, attached.

9 *Id.*

The House State Affairs Committee held a hearing regarding the draft salary study on January 30, 2025.[10] The Commissioner of the Agency, Paula Vrana, testified along with the Director of the Division of Personnel, Kate Sheehan. The Agency also submitted a slide deck regarding the status of the salary study,[11] and, after the hearing, the Agency submitted a letter to the Chair responsive to committee members' questions.[12] That letter confirmed that the Agency has received only drafts, not a final report. It also noted that "it is not unusual for large projects such as the salary study to be subject to amendments."[13]

The Union's Executive Director, Heidi Drygas, also testified at that hearing. Ms. Drygas testified that the Union had requested "a copy of the results of any salary study that had been completed in the last 6 months."[14] Ms. Drygas also recognized that the Union received a formal denial of that request on January 16, two weeks earlier.

The first time "drafts" of the salary study were mentioned was in a January 29, 2025, letter to the Attorney General's office from the Union's counsel. That

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10 Hearing, House State Affairs Committee, Jan. 30, 2025 (available online at https://www.akleg.gov/basis/Meeting/Detail?Meeting=HSTA%202025-01-30%2015:15:00).

11 Exhibit D.

12 Exhibit E.

13 *Id. See also* Affidavit of Kate Sheehan in support of this Opposition at ¶14 (averring that she would consider this type of contract amendment and extension to be "business as usual").

14 This testimony begins at about 1 hour 23 minutes.

letter, which was attached to the Union's Motion for Preliminary Injunction as Exhibit 11, inaccurately stated:

> To be clear, ASEA seeks all documents related to the salary study commissioned by the State in the Request for Proposal #2024-0200-0142/02-111-24, including without limitation all documents that exist related to the contract with The Segal Company (Western States), Inc. This includes all drafts, correspondence, emails, notes, and any other public record that exists, related to the salary study that was to be completed no later than October 23, 2024, as well as all documents related to any amendment to that contract.

This description of the Union's public records request is inconsistent with the Union's public records request for the "results of any salary study conducted by the State and completed within the last six (6) months."[15] Further, this letter from counsel to the Attorney General's office does not constitute a public records request for drafts in the possession of the Agency: public records requests must be made to the agency from which the records are requested.[16]

Thus, to date, the Agency has never received a public records request from the Union for drafts of the salary study—or for any other records related to the salary study except the final "results," which do not yet exist.

B. The Union misrepresents the facts of the salary study.

The Union asserts that the salary study is "independent," but it is not: although the Administration elected to contract it out for efficiency, it is not like a financial audit,

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[15] *See* 2 AAC 96.315 (requiring the requester to specifically describe records sought).

[16] *See* 2 AAC 96.305 ("A request for a public agency record may be filed at the nearest office of that public agency.").

which often cannot be done by the Agency internally. The Union asserts that the salary study has no deliberative elements, but it does: many variables go into identifying the underlying data set and policy decisions guide which target market points will be analyzed for the data set. The Union asserts that the salary study is final, but it is not: the Agency has received only drafts. The Union asserts that the timing of the salary study is related to bargaining, but it is not: the extensions reflect the time necessary to complete the work. The Union asserts that once the salary study is released, state employee salaries will immediately increase, but they will not: whether to adjust state employee compensation, and by how much, will be guided by a thorough review of the study's findings in the context of the entire classification plan, subject to policy decisions, and funding may be subject to legislative approval.

1. The study is not "independent."

The study could have been done internally by the Agency, but the Administration chose to contract it out for efficiency. Again, this type of study is not like a financial audit that usually is conducted solely by an external reviewer. The Director of the Division of Personnel expected a similar deliberative back-and-forth iterative process with the contractor to develop and finalize this salary study that she would expect between her staff conducting similar smaller-scale studies internally.[17] The Director was also employed by the Division in 2009 when it last contracted out a statewide salary

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[17] Affidavit of Kate Sheehan at ¶¶5-6.

study, and in 2013 when the Division contracted out another large statewide study, and recalls similar deliberative give-and-take with the contractors in those instances.[18]

2. The study has many deliberative elements.

Many variables and policy choices go into the design and methodology of a salary study. The affidavit of the Director of the Division of Personnel describes the collaborative process between the Agency and contractor of selecting those variables and also describes giving direction to the contractor on the Agency's and Governor's Office's policy choices.[19] The affidavit also describes ongoing consultation between the Agency and the contractor in weekly meetings since December of 2023.

These variables are also apparent from the contract language. As described by the contract, the first step is "survey design," which calls for the contractor to "collaborate with State of Alaska representatives to define survey objectives, target job roles, and compensation components to be included."[20] The contract also notes that the "survey tools must be provided to the State for review and acceptance before use."[21] This type of collaboration between the Agency and contractor is apparent throughout the contract.[22]

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18 *Id.* at ¶4.

19 Affidavit of Kate Sheehan at ¶¶3, 9-10.

20 Exhibit 1 to P.'s Mot. for P.I. at 13.

21 *Id*.

22 *See also e.g. id.* at 15 ("This narrative report must include preliminary survey results and summary tables that *will be reviewed by the State to ensure* that each Job Family is represented and that matching jobs were found for each job in the State's comparison pool."); *id.* at 28 ("the final report it "should include narratives that detail any changes to the original comparison pool as developed by DOPLR and describe the benefit of said changes.").

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This agency-contractor collaboration is also apparent in the salary study that the State completed in 2009:[23]

> [The contractor] met with individuals of the State's Personnel and Labor Relations Division (State) to review and discuss many items relating to the survey as well as the current compensation philosophy and pay system. Items discussed and identified in this discussion included:
>
> - Definition of the labor market(s)
>
> - The specific pay and benefits questions to include in the data collection form (survey instrument)
>
> - The use and application of geographic (cost of labor) differentials (which is different from the recent cost of living differentials study that the State has access to)
>
> - The calculation of varying statistics (mean, median, percentiles, etc.) for the survey analysis
>
> - Survey schedule[24]

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[23] An excerpt of that report is attached as Exhibit F. The full report is available online at https://doa.alaska.gov/dop/fileadmin/SalarySurvey/FullReport.pdf. Note that the 2009 report looked at a range of market percentiles. *Id.* at 19 ("As requested by the State, one set of these benchmark comparisons is shown comparing to the market median, which is the same as the 50th percentile, (set 1), one set is shown for the market 60th percentile (set 2), and one set is shown for the market 65th percentile (set 3).").

[24] *Id.* at 3 (formatting edited). *See also, e.g., id.* ("[D]iscussions were held with the State regarding criteria and guidelines for determining benchmarks."); *id.* at 9 ("[The contractor] worked with the State in identifying eighty (80) organizations from which to collect salary and benefits information."); *id.* at 15 ("The survey instrument data collection form (DCF) was provided to the State for review and comment. Based on the State's comments, adjustments were made and the DCF was finalized.").

The fact that salary studies can reach different conclusions based on variables in design is also apparent from court cases in which the parties submit competing salary studies to support their arguments.[25]

3. No "final" salary study exists.

The affidavit of the contract manager for the Agency is clear that the Agency has received only drafts from Segal to date. The Union's only assertion to the contrary is vague and inadmissible hearsay, and this Court should not find it credible.[26]

4. The timing of the contract amendments is not related to bargaining with the Union.

The affidavit of the Director of Personnel explains that amendments, extensions, and spending cap increases are common with this type of contract.[27] The affidavit also explains that the length of the extensions was based on the amount of time that Segal estimated it needed to do the additional work requested by the Agency.[28] This is consistent with the language of the contract, which contemplates extensions and additional work. The original contract "understand[s] that the collection of data for comparison factors may be challenging within the time frame."[29] It also recognizes that

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25 *See, e.g., Maitland v. Univ. of Minn.*, 155 F.3d 1013, 1017 (8th Cir. 1998) ("There were three comparative salary studies performed in connection with the *Rajender* salary litigation, and three different results were reached because different variables were used.").

26 Affidavit of Heidi Drygas in support of P.'s Mot. for P.I. at ¶12 ("I heard that Segal delivered the Salary Study to the Department by June 30, 2024.").

27 Affidavit of Kate Sheehan at ¶14.

28 *Id.* at ¶¶ 11, 15.

29 Exhibit 1 to P.'s Mot. for P.I. at 14.

"the contractor may be required to perform additional work" and that, in that situation the contractor will provide the schedule for accomplishing the additional work.[30] The affidavit also explains that the Union does not have to agree to a three-year contract—it can bargain for a shorter contract and reopen negotiations once the final salary study is released, if it really considers the results of the salary study so crucial to its bargaining position.[31]

But most importantly, the reason for the extension had nothing to do with bargaining: the Agency and Governor's Office decided to take the time to get the best possible product. As the Commissioner of the Agency explained in her follow-up letter to the Chair of the House State Affairs Committee regarding the salary study:

> It is not unusual for large projects such as the salary study to be subject to amendments. It is the responsibility of the Executive Branch to ensure that the State receives the best final product possible for the money spent, for the public, the Legislature, and the Administration to review. It is incumbent upon the Administration to do our due diligence to ensure accurate and complete data for decision making, especially with the continued focus on recruitment and retention. This is the sole objective in extending the study's due date and requesting additional information.[32]

This is consistent with the affidavit of the Agency's Director of Personnel saying that she and the Governor's Office identified additional work necessary to make the salary study as robust and reliable as possible to produce the best final product for the

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30 *Id.* at 31.

31 Affidavit of Kate Sheehan at ¶17.

32 Exhibit E at 2.

public money spent, and for the Governor's, Legislature's and public's review. The affidavit gives specific examples such as improving the survey response rate, updating the base state employee salary data, identifying additional comparable markets, and ensuring the contractor addresses all elements of the report outlined in the RFP.[33]

The Commissioner's letter also recognizes the value of the salary study in the legislative process and "the administration's objective of releasing the study during the legislative session."[34] It also affirms that the Administration "will release the final salary study as expeditiously as possible."[35]

5. The final salary study does not bind the Agency or Governor to any particular action.

The Union inaccurately asserts that as soon as the salary study is released, its members will immediately get a pay raise.[36] That is not what will happen. An external contractor, such as Segal, does not have the power to re-classify State jobs or change salary ranges via a salary study. Rather, the salary study will be one tool among many for the Agency, the Governor and the Legislature to use when making delicate policy and budgetary decisions around State employee compensation. As the Commissioner explained in her letter to the Chair of the House State Affairs Committee:

> [W]hile the final salary study will be an important informational tool for the Administration, the Legislature, and the public, it should be noted that even *the final study will not define appropriate*

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33 Affidavit of Kate Sheehan at ¶¶3, 9-10.

34 Exhibit E at 3.

35 *Id. See also* Affidavit of Kate Sheehan at ¶ 25.

36 P.'s Mot. for P.I. at 5 (asserting Agency "would have to substantially increase salaries of State employees across the board if the Salary Study went public").

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> *compensation, nor will it prescribe specific changes to the State's current salary structures.* The final report will not prescribe nor bind the State to any particular action; a salary study report merely provides external data and insights that can be used to inform decisions regarding market competitive salaries. Once the salary study is published, additional work will be required to comprehensively review study findings by job family and occupational group to inform implementation in a manner that accounts for the State's full classification outline and integrated pay plans.[37]

As for the drafts, the Agency and Governor's Office have already found them outdated and wanting, and do not intend to take any action based on them. So the Union is incorrect when it suggests that if this Court releases the drafts by March 10, it will secure a wage increase for its bargaining unit to present to the Legislature by March 22.

III. Argument Re: Jurisdiction.

A. This Court does not have jurisdiction because the Union did not make a public records request for drafts of the salary study.

The right to inspect public records that the Union invokes is a statutory right created by the APRA, and the remedy for violation of that right is created in AS 40.25.125.[38] The Union must meet the requirements of that statute to secure an injunction under the APRA. Under that statute, if a person has submitted a public records request that was "denie[d]" or "obstruct[ed]," then the person "may seek injunctive relief" in superior court for an order stopping the State from denying or obstructing its specific request.[39] Alaska Statute 40.25.125 provides:

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37 Exhibit E at 1 (emphasis added).

38 Motion for Preliminary Injunction at 10, Complaint at 13.

39 AS 40.25.125.

> A person having custody or control of a public record who denies, obstructs, or attempts to obstruct . . . the inspection of a public record subject to inspection under AS 40.25.110 or 40.25.120 may be enjoined by the superior court from denying, obstructing, or attempting to obstruct, the inspection of public records subject to inspection under AS 40.25.110 or 40.25.120. A person may seek injunctive relief under this section without exhausting the person's remedies under AS 40.25.123-40.25.124.

Here, the Agency has not denied the Union the ability to inspect the records it now seeks via injunction because the Union never *requested* to inspect the records it now seeks via injunction. On September 26, 2024, the Union asked for "[t]he *results* of any salary study conducted by the State *and completed* within the last six (6) months." The "results of any salary study . . . completed within the last six (6) months" plainly excludes any records about an ongoing salary study, which has not been "completed." By contrast, in the preliminary injunction motion, the Union now wants "all *drafts* of the Statewide Salary Study"—not any final product.

The disconnect between the original public records request and what the Union now wants is not mere semantics. The operative regulation puts the onus on the requester to be precise: "[a] requester must describe the public records sought in sufficient detail to enable the public agency to which the request is made to locate the records."[40] Once the requester submits its request, the agency is "bound to read it as drafted, not as either agency officials or [the requester] might wish it was drafted."[41]

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[40] 2 AAC 96.315(a). If the request is too general, then the public agency must clarify with the requester. *Id.* This approach speeds the response time "and lessen[s] the administrative burden of processing an overly broad request." *Id.*

[41] *See Miller v. Casey*, 730 F.2d 773, 777 (D.C. Cir. 1984).

That is, an "agency is not obligated to rewrite the request to ask for more than the requester did."[42]

Indeed, if agencies and courts did "not hold . . . requesters to their word—especially sophisticated [requesters]" (like the Union and its counsel, who have extensive experience in the state government)—then "agencies will always have to err on the side of the broadest plausible interpretation, forcing them to do more work than even the requesters themselves may have wanted."[43]

In short, courts reviewing public records requests must "give effect to an apparently deliberate decision" to make a particular request.[44] Applied here, the Court should find that it has no jurisdiction over an APRA claim for records the Union never requested of the Agency.[45]

Importantly, there could have been a simple fix; nothing stops a requester from submitting another public records request if it later realizes its first request was too narrow. But here, the Union never submitted a subsequent request for drafts to the Agency. Rather, its counsel wrote a letter to the Deputy Attorney General inaccurately characterizing the Union's prior public records request as including drafts, when it did

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42 *Canning v. U.S. Dep't of State*, 134 F. Supp. 3d 490, 517 (D.D.C. 2015) (affirming agency's denial of records request where the requester subsequently claimed that his request was broader than its plain terms).

43 *Am. Oversight v. U.S. Dep't of Justice*, 401 F. Supp. 3d 16, 36 (D.D.C. 2019).

44 *Id.*

45 As noted in the merits section below, the Union's failure to request drafts of the salary study, and the Agency's appropriate denial of their request for completed salaries studies, can be seen as either a jurisdictional or merits-based issue.

not. This letter did not purport to be a new public records request for Agency records; nor could it have been one because it was not submitted to the agency.[46]

Therefore, the Union has never submitted an APRA request for drafts of the salary study, and no such request has been denied. The Union has not established jurisdiction for this Court under AS 40.25.125.

IV. Argument Re: Preliminary Injunction

Even if this Court concludes that it has jurisdiction over the Union's APRA claims, it should decline to grant a preliminary injunction. The Union is not trying to maintain the status quo during litigation—the Union is trying to get a final judgment in advance of litigation. The Union requests a mandatory injunction, and if this Court issues it, there will be no going back. The toothpaste cannot go back into the tube. Even if the Court later determines that the Agency should prevail, it cannot claw back the released drafts. There is no way to adequately protect the Agency against the harm of improperly releasing the drafts. Thus, this Court should deny the motion for preliminary injunction and allow litigation over the drafts to proceed under the Civil Rules.[47]

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46 2 AAC 96.305.

47 *See A.J. Indus., Inc. v. Alaska Pub. Serv. Comm'n*, 470 P.2d 537, 540 (Alaska 1970), modified by 483 P.2d 198 (Alaska 1971) ("The necessity of avoiding litigation of the merits at this early stage stems from two factors. First, a ruling on the merits in an action for preliminary relief would be premature, since it would usually be based on an incomplete record and made with an insufficient amount of time. Second, a ruling at this early stage would ultimately result in forcing the court to rule on the merits of the case twice—once at the preliminary stage and once in the final adjudication.").

A. The legal standards for a mandatory preliminary injunction are very high.

A preliminary injunction is "'an extraordinary remedy never awarded as of right.'"[48] It is a "harsh remed[y]" meant to "preserve the status quo" when necessary to prevent "the irreparable loss of rights before judgment."[49] A mandatory injunction requiring a party to act (as opposed to a prohibitory injunction preventing action that changes the status quo) is particularly disfavored.[50] "[A] mandatory injunction will seldom be granted before final hearing[] and should be granted only in extreme or exceptional cases and with great caution."[51]

Under Alaska law, a "plaintiff may obtain a preliminary injunction by meeting either the balance of hardships or the probable success on the merits standard."[52] Under the balance of hardships standard, a plaintiff must make three showings: (1) it faces irreparable harm; (2) the opposing party can be adequately protected; and (3) the plaintiff raises "serious and substantial questions going to the merits of the case."[53] But if the opposing party cannot be adequately protected against issuance of a wrongful

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48 *State v. Galvin*, 491 P.3d 325, 338 (Alaska 2021) (quoting *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 24 (2008)).

49 *Martin v. Coastal Vills. Region Fund*, 156 P.3d 1121, 1126 & n.4 (Alaska 2007) (quoting *United States v. Guess*, 390 F. Supp. 2d. 979, 984 (S.D. Cal. 2005)).

50 *See State v. Kluti Kaah Native Vill. of Copper Ctr.*, 831 P.2d 1270, 1274 n.9 (Alaska 1992).

51 *Id.* (quoting 42 Am. Jur. 2d *Injunctions* § 21 (1969)) (internal alterations omitted).

52 *Alsworth v. Seybert*, 323 P.3d 47, 54 (Alaska 2014).

53 *Id.* (quoting *Kluti Kaah*, 831 P.2d at 1273).

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injunction, then the plaintiff can only obtain a preliminary injunction by proving "the heightened standard of a 'clear showing of probable success on the merits.'"[54]

B. The Union cannot satisfy the balance-of-hardships test.

1. The Union has an alternate forum to pursue alleged harms to its bargaining interests.

The main thrust of the Union's argument that it will suffer irreparable harm without an injunction is that its bargaining position will be worse. But an alternate forum exists specifically to resolve that allegation: the Alaska Labor Relations Agency. The Alaska Labor Relations Agency accepts and investigates complaints that a party is engaging in unfair labor practices, including a complaint that a party is unfairly withholding information during negotiations.[55] Specifically, the Alaska Labor Relations Agency has taken the position that the "obligation to bargain in good faith includes the

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[54] *State, Div. of Elections v. Metcalfe*, 110 P.3d 976, 978 (Alaska 2005) (quoting *Kluti Kaah*, 831 P.2d at 1272). Some Alaska Supreme Court decisions suggest that a plaintiff can obtain a preliminary injunction under the probable success on the merits standard in the absence of irreparable harm, but the Alaska Supreme Court has never actually decided such a case. *See id.* at 979 (stating that "issuance of this injunction is a zero-sum event, where one party will invariably see unmitigated harm to its interests"). If necessary, this Court should find more persuasive the federal view—that a showing of irreparable harm is always necessary to support a preliminary injunction. 11A Wright & Miller Fed. Prac. & Proc. Civ. § 2948.1 (3d ed.) ("Perhaps the single most important prerequisite for the issuance of a preliminary injunction is a demonstration that if it is not granted the applicant is likely to suffer irreparable harm before a decision on the merits can be rendered. Only when the threatened harm would impair the court's ability to grant an effective remedy is there really a need for preliminary relief.").

[55] AS 23.40.150.

duty to disclose relevant information about matters at issue in bargaining."[56] Thus, the Union's arguments should be put to the Alaska Labor Relations Agency, and the existence of an alternate forum undercuts the Union's argument that it will necessarily suffer irreparable harm unless this Court acts immediately.

2. The Union's only interest in these drafts under the APRA is the same as the general public's interest in promoting government transparency, which is not time sensitive.

Like all members of the public, the Union has a generalized interest in accessing public records to promote government transparency. But denying this preliminary injunction will not irreparably harm that interest. If the Union wins on the merits later (it should not), deferring release of the drafts until after litigation is finished will merely mean a few months longer wait, depending on how long the judiciary takes to resolve the litigation. At that point, the Union can scrutinize the documents and challenge them. This does not constitute an irreparable harm.

To the extent that the Union argues that its ongoing collective bargaining efforts will be irreparably harmed in the absence of an injunction, that argument is for the Alaska Labor Relations Agency, not for this Court under the APRA. The Union does not have some special interest in the drafts under the APRA due to its status as a Union. And the purpose of the salary study is not to support collective bargaining. Rather, the purpose of the salary study, according to the contract terms, is to serve as a resource for

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[56] *See Matanuska-Susitna Borough Sch. Dist. v. Matanuska-Susitna Educ. Ass'n,* Case No. 17-1714-ULP, 2019 WL 1464058 (AK LRA 2019) (citing *NLRB v. Truitt Mfg. Co.*, 351 US 149 (1956)).

the Director of the Division of Personnel in fulfilling her duties under AS 39.25.150, which requires her to oversee the State's position classification plan and pay plan.[57] Although the Director's duties under AS 39.25.150 interact with collective bargaining, they are independent.[58]

The fact that the Union has a secondary, political use for these drafts (separate from promoting "transparency and public scrutiny" of the government) cannot be leveraged to secure an emergency injunction, particularly given that another forum exists to specifically address those issues.[59]

3. Any harm to the Union is the result of its own delay in not pursuing these records earlier, as it had a right to do.

If the Union has a special interest in the documents, any harm to that interest is the result of its own substantial delay. The Union's public records request for the final salary study was constructively denied on October 10, 2024, and then it was denied in writing on January 16, 2025. Given that the Union could have filed its complaint as early as October 11, 2024, if there is any time pressure, it is of the Union's own making. What is more, the Union could have requested drafts of the salary study as early as July 1, 2024 (i.e., the day after Segal's final report was due to the Agency under the original terms of the contract) and filed suit in superior court by July 17, 2024. Instead,

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57 Exhibit 1 to P.'s Mot. for P.I. at 8; *see also id.* at 4 ("This data will serve as a valuable resource for the State of Alaska to make informed decisions regarding employee salary and overall compensation.").

58 *Alaska Pub. Emps. Ass'n v. State,* 831 P.2d 1245 (Alaska 1992).

59 *Basey v. State, Dep't of Pub. Safety*, 462 P.3d 529, 538 (Alaska 2020).

the Union waited. The Union should not be allowed to sit on its rights until the last minute and then assert that it will suffer irreparable harm in the absence of an expedited preliminary injunction.

In any case, access to drafts of the salary study is not necessary for bargaining. As Ms. Drygas conceded to the House State Affairs Committee at the January 30, 2025 hearing, the Union has other data and leverage to rely on in bargaining—or it could have funded its own limited salary study specific to its bargaining unit members if this information were crucial at this time. Further, as Ms. Drygas acknowledged and as the Agency's affidavit explains, the Union is not required to bargain for a three-year contract. It could bargain for a short extension of the existing contract, or for a one-year contract, and resume bargaining once the salary study results are made public.

Thus, any time-pressure the Union is experiencing is of its own making.

4. The Agency cannot be adequately protected against an injunction.

The Agency cannot be protected by an injunction because there is nothing "preliminary" about the Union's request—if an injunction is granted, it will be impossible to make the drafts privileged again. To analyze this factor, the Court must "assume the [Agency] ultimately will prevail" and assess "the harm to the [Agency] from the injunction."[60] The question is whether that harm "can be indemnified by a

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[60] *Alsworth*, 323 P.3d at 54.

bond" or is "relatively slight in comparison to the injury" that the Union will suffer if an injunction is not granted.[61] This factor cuts against granting the injunction.

Releasing the drafts will cause three irreversible harms to the Agency and Governor's Office, further detailed in the Agency's affidavit. First, release will thrust incomplete documents with outdated data into the public sphere, which could confuse or mislead the public. The draft versions of the salary study are just that—drafts. They did not meet Agency's and Governor's Office standards, which is why they asked Segal to keep working. If these drafts are disclosed, the public may become confused. The public may think that the draft documents have been endorsed by the Agency when they have not been; they may think the drafts are robust and up-to-date when they are not; and it may expect that the Agency or Governor will take action based on the drafts when they will not. Courts regularly rely on this rationale to support the deliberative process privilege, which is specifically designed "to protect against confusing the issues and misleading the public."[62] Plus, if the drafts are released, the Agency will need to spend time and resources combatting this confusion through education.[63] This harm would be irreversible.

Second, release will undermine the Agency's and Governor Office's ability to finalize a high-quality salary study by harming their relationship with the contractor. As

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61 *Id.* (quoting *State v. United Cook Inlet Drift Ass'n*, 815 P.2d 378, 378-79 (Alaska 1991)).

62 *See, e.g.*, *Coastal States Gas Corp. v. Dep't of Energy,* 617 F.2d 854, 866 (D.C. Cir. 1980).

63 Affidavit of Kate Sheehan at ¶22.

the RFP indicates, and the Director of Personnel's affidavit describes, the process for finalizing the salary study is collaborative and iterative. The Agency and Governor's Office have provided extensive feedback and given the contractor policy direction in order to produce a high-quality study that reflects the uniqueness of Alaska's job market and the Administration's policy choices. Opening that back-and-forth up to public scrutiny in the media *before* Segal has delivered a final product can only make it harder for the Agency and Governor's Office to have open and frank conversations with Segal over the remainder of the contract.[64] Further, this may compromise the Agency's ability to attract quality contractors in the future when contractors learn that, if you contract with the State of Alaska, you can expect to see your early, rejected drafts raked over in the news.[65] These harms would also be irreversible.

Third, release will have a chilling effect on communications within the Agency and the Governor's Office. The changes in the drafts reflect communications with Agency and Governor's Office staff working on the study. Those employees may be less likely to communicate frankly and openly in the ongoing work on the study—and on other matters—if their preliminary work is shared with the public and they fear that the next set of drafts may be made public too. This too will irreversibly harm the Agency's ability to finalize a high-quality draft.

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64 Affidavit of Kate Sheehan at ¶¶20-21.

65 Affidavit of Kate Sheehan at ¶21.

To be clear, this assertion of privilege does not necessarily mean that the Agency has something to hide or is trying to suppress any secrets. The disclosure of privileged material is itself an irreparable harm, regardless of whether that material is "good" or "bad" for the Agency. The harm to the State of chilling frank and open discourse, and harming the quality of ongoing decisionmaking, exists even if the actual privileged material turns out to be entirely anodyne. The hovering threat of disclosure means that Agency staff and contractors will be forced to keep all drafts anodyne, and it would eliminate the opportunity for "candid, objective, and even blunt or harsh opinions" that are so valuable to quality decisionmaking.[66]

These harms cannot be protected by a bond, and they are irreparable. The State's potential harms from a wrongful preliminary injunction far outweigh the Union's potential harms from denial of a meritorious one. Therefore, the Union must satisfy the heightened standard of probable success on the merits and cannot rely on the lower standard of "serious and substantial" questions about the merits.

C. The Union has not made a clear showing of probable success on the merits.

1. Even if this Court finds that it has jurisdiction, it should still find that the Agency properly denied the Union's APRA request under AS 40.25.125.

As discussed further above, the Union has not made a clear showing of probable success on the merits because the Union never requested drafts of the salary study. Even

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66 *Capital Info. Grp. v. State, Off. of the Governor*, 923 P.2d 29, 34 (Alaska 1996) (quoting *United States v. Nixon,* 418 U.S. 683, 708 (1974)).

if this Court determines that this failure goes to the merits of the Union's claim, rather than jurisdiction, it should still deny the Motion for Preliminary Injunction on this basis. The Agency properly denied the Union's APRA request, which was for the results of salary studies completed within the previous six months, because the Agency had no responsive records to produce.

2. The deliberative process privilege applies to the drafts sought.

Even if the Union had properly requested these drafts under the APRA, they meet the test for the deliberative process privilege because they were directly solicited by the Agency from Segal, they are predecisional and deliberative, and the Union has not shown that the public's interest in disclosure outweighs the State's interest in protecting the decisionmaking of the Agency and Governor's Office. Therefore, even if this Court decides that it has jurisdiction to address the Union's APRA claim, these drafts are protected by the deliberative process privilege.

The deliberative process privilege ensures that public disclosure does not "deter the open exchange of opinions and recommendations between government officials."[67] The purpose of the privilege is "to protect the executive's decisionmaking process, its consultative functions, and the quality of its decisions.'[68]

The deliberative process privilege has three elements, and the draft salary studies meet them. The communications or documents must be (1) internal or directly solicited

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67 *Griswold v. Homer City Council*, 428 P.3d 180, 186 (Alaska 2018) (quoting *Gwich'in Steering Comm. v. State, Office of the Governor*, 10 P.3d 572, 578 (Alaska 2000)).

68 *Gwich'in*, 10 P.3d at 578.

(including from an outside contractor), (2) predecisional, i.e., prepared to assist in reaching a decision, and (3) deliberative, i.e., part of the give-and-take of the decisionmaking process.[69] Once these elements are met, the documents are presumptively privileged, and the burden shifts to the requester to show that the public's interest in disclosure outweighs the government's interest in nondisclosure.[70]

The drafts of the salary study meet the first element: the Agency directly solicited the salary study from Segal in the RFP and resulting contract. Alaska law is clear that the deliberative process privilege applies to contractors.[71]

The drafts of the salary study meet the second element because they are predecisional to the final study that the Agency and Governor's Office will approve for release and that will trigger final payment and completion of Segal's contract.[72] The Agency will use the final salary study to assist in executive branch decisions regarding the State's classification and pay plan under AS 39.25.150, but the Agency will not use the drafts for any purpose, especially given that the drafts are now obsolete and the Agency has no administrative or management need for them.[73] The changing drafts

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69 *Id.* at 78-79.

70 *Compare id.* at 581 (holding that the deliberative process privilege protected outside consultants' memoranda), *with Doe v. Alaska Superior Court, Third Judicial Dist.,* 721 P.2d 617 (Alaska 1986) (holding that the deliberative process privilege did not apply to letters submitted by members of the public to the governor).

71 *Gwich'in*, 10 P.3d at 581 ("The office of the governor clearly invited [the contractor] to submit a proposal and [the contractor] responded.").

72 Exhibit 1 to P.'s Mt. for P.I. at 28, Exhibit 6 to P.'s Mt. for P.I. at 2.

73 Exhibit 1 to P.'s Mt. for P.I. at 8; Affidavit of Kate Sheehan at ¶13.

reflect the "mental processes of government decisionmakers," which the privilege protects from interference.[74] "The privilege protects the give-and-take deliberative process, not final decisions; no ultimate conclusion needs to be identified, or even reached, for the privilege to attach."[75] The drafts also meet this element even though Segal is *neutral* as to the outcome of the study—which is not to be confused with *independence*, such as a financial auditor or other contractor who makes findings independent of a decisionmaker. A neutral advisor can provide protected predecisional advice to a decisionmaker in the same way that a staff attorney might provide protected advice to a judge without taking a position as to the ultimate outcome of case.[76]

The drafts of the salary study also meet the third element: development and finalization of the salary study is an iterative process between the Agency, the Governor's office, and Segal. This process is predecisional to a final report with a robust and up-to-date data set and reliable methodologies, reflecting State policy choices, that will be most useful and relevant to the Agency, the Governor, the Legislature and the public.

The deliberative process between the contractor and the Agency and Governor's Office to craft that final product deserves the same protection as it would if done wholly

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74 *Gwich'in*, 10 P.3d at 578.

75 *Id.* at 581.

76 *See Griswold*, 428 P.3d at 188 (holding deliberative process privilege applied to communications of neutral advisor to decisionmaking board).

internally by the Agency.[77] The Agency and Governor's Office benefit from frank and open deliberations with the contractor just as they benefit from frank and open deliberations with their staffs. And the State also has an interest in attracting quality consultants to bid on its RFPs for these types of studies. The threat of public disclosure of deliberative drafts may make quality contractors shun State contracts.[78]

Thus, the drafts of the salary study meet the three elements of the deliberative process privilege, and the Union cannot overcome the presumptive application of the privilege by showing that the interests of the public outweigh the State's interests in protecting its deliberative communications. "Generally, it is difficult for a requestor to override a presumptive privilege."[79] The Alaska Supreme Court has identified relevant factors for courts to consider, including "the degree of confidentiality and sensitivity of the communication; the time elapsed after deliberation concluded and after communications were made; and whether deliberation is ongoing."[80]

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77 *See U.S. Fish & Wildlife Serv. v. Sierra Club, Inc.*, 592 U.S. 261, 267 (2021) ("[T]o encourage candor, which improves agency decisionmaking, the privilege blunts the chilling effect that accompanies the prospect of disclosure"). *See also* Affidavit of Kate Sheehan at ¶ 6.

78 *See Gwichi'in*, 10 P.3d at 583 ("Disclosing proposals made—but not adopted—could chill the possible future adoption of those or similar proposals, or the relationships between the Office of the Governor and its lobbyists."). *See also* Affidavit of Kate Sheehan at ¶21.

79 *Gwichi'in*, 10 P.3d at 584.

80 *Id.*

These drafts are currently the object of political and media interest.[81] The Union frankly admits that it wants these drafts so it can use them for political and bargaining pressure. As the United States Supreme Court recently reiterated, "[t]he privilege is rooted in 'the obvious realization that officials will not communicate candidly among themselves if each remark is a potential item of discovery and front page news.'"[82] And Segal is still hard at work on the final salary study, with its next draft expected by the Agency on March 31.[83] Many deliberative process privilege cases discuss how the threat of disclosure risks chilling frank and open communications in future deliberations, but the threat of *this* disclosure may chill frank and open ongoing communications affecting the draft that Segal is working on now. Disclosure of these drafts now may negatively impact the quality of the yet-to-be created final product.

Federal courts also note that the deliberative process privilege is important because it serves "to protect against premature disclosure of proposed policies before they have been finally formulated or adopted; and to protect against confusing the issues and misleading the public by dissemination of documents suggesting reasons and rationales for a course of action which were not in fact the ultimate reasons for the

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81 *See, e.g.* Hearing, House State Affairs Committee, Jan. 30, 2025 (available online at https://www.akleg.gov/basis/Meeting/Detail?Meeting=HSTA%202025-01-30%2015:15:00); Eric Stone, Public-sector union calls for pension legislation and release of salary study at Capitol rally, Alaska Public Media (Feb. 14, 2025); Iris Samuels, Lawmakers Grill Dunleavy administration over delayed salary study, Anchorage Daily News (Jan. 31, 2025).

82 *U.S. Fish & Wildlife Serv.*, 592 U.S. at 267 (quoting *Dep't of Interior v. Klamath Water Users Protective Ass'n*, 532 U.S. 1, 8 (2001)).

83 Affidavit of Kate Sheehan at ¶11.

agency's action."[84] The data contained in the summer 2024 drafts were never sufficiently robust from the Agency and Governor's point of view and are now significantly outdated.[85] Accordingly, releasing the drafts would likely mislead and confuse the public, which generally lacks the technical expertise to recognize or appreciate these issues.[86] Nor should the Agency and Governor's Office be burdened with addressing this confusion, especially while working with Segal to complete the study within the next few weeks.

Further, the Union's speculation about what the drafts *might* show is premature. Once the final study is released, the Union can analyze its methodology and quality and attack it on its merits, if it sees fit. If, upon review of the final study, the Union believes that other datasets or methodologies would have yielded more accurate results, or if the Union believes that the Agency did not use the funding for the study in the manner intended by the legislature, the Union will be free to make those arguments at that time. The Union does not need to see early drafts in order to attack the final results of the study if the Union ultimately thinks it is unreliable. And the Union *cannot* make its

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84 *Coastal States Gas Corp.*, 617 F.2d at 866. The Alaska Supreme Court considers federal cases regarding the analogous federal Freedom of Information Act instructive as they relate to the deliberative process privilege under Alaska law. *Capital Info. Grp.*, 923 P.2d at 35 n.4.

85 *See* Affidavit of Kate Sheehan at ¶10.

86 Affidavit of Kate Sheehan at ¶¶22-23.

arguments regarding legislative intent based on early drafts.[87] The Union will need to wait to see the final results of the study before making those arguments, in any case.[88] The quality of the final salary study can—and no doubt will—be tested in the public eye, including in the legislative budgeting process.

Nor do the Union's policy arguments go to the public's interest in transparency of government action.[89] The Union makes clear that it intends to use these drafts as a political and bargaining tool with the goal of increasing the salaries of its bargaining unit. But, as discussed above, these are not the purposes for which the APRA exists. The Union has tools and funds of its own to leverage for its political and bargaining

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87 On page 18 of its motion, the Union implies that intent language is an operative part of the law and that such language in the appropriation bill bars Segal from looking at anything other than the 65th percentile. But prefatory language is not an operative part of the law. *See State, Dep't of Pub. Safety v. Doe*, 425 P.3d 115, 120-21 (Alaska 2018) (treating legislative findings as an interpretive guide more like legislative history); Antonin Scalia & Bryan A. Garner, Reading Law: The Interpretation of Legal Texts 217 (2012) ("The prologue [and other prefatory material], is in reality as well as in name *not* part of the congressionally legislated or privately created set of rights and duties." (emphasis original)). Intent language in an appropriations bill could also violate the confinement clause if it were considered to have the force of law. *See Alaska Leg. Council v. Knowles*, 21 P.3d 367, 377 (Alaska 2001). In any event, the Union cannot challenge the Department's compliance with the appropriation bill until a final study has been issued.

88 *See Griswold*, 428 P.3d at 189 ("[D]isclosure of the documents Griswold requested would serve little public purpose. The board issued its decision and that decision was appealed. Making public previous drafts of the decision or communications discussing those drafts would not change the decision or the appellate process." (internal footnote omitted)).

89 *Id.* at 187 (balancing the State's interests against "the interest of the citizen in knowing what the servants of government are doing and the citizen's proprietary interest in public property." (quoting *Capital Info. Grp.*, 923 P.2d at 36-37)).

purposes.[90] And, although it is certainly true that the public at large has an interest in seeing how the legislative appropriation was spent, the public will have the opportunity to do so when the salary study is completed and released.

Finally, the Union relies heavily on the inaccurate premise that the salary study is "independent." The Unions offers no factual or legal basis for that assertion. The prior salary study conducted in 2009 was done in collaboration with the Agency; the legislative appropriation does not use the word "independent" or anything like it; the RFP and contract language itself calls for extensive collaboration with the Agency; and the affidavits demonstrate that the Agency and Governor's Office have actually collaborated with Segal extensively throughout this process.[91]

The Union relies heavily on the Alaska Supreme Court case of *Fuller v. City of Homer*, which is distinguishable.[92] First, the public records at issue were final documents, not drafts.[93] In this case, the Agency intends to release the final salary study and only objects to the production of drafts. Second, the policy decision that the documents supported had already been made at the time of the public records request—the documents included cost estimates and a work plan associated with an annexation petition that the city had already finalized and filed at the time of the public records

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90 *See Gwich'in*, 10 P.3d at 584 ("Gwich'in has a great interest in maintaining its way of life and culture, but it can conduct its own lobbying efforts to advance that interest.").

91 Affidavit of Kate Sheehan at ¶¶8-11.

92 75 P.3d 1059 (Alaska 2003).

93 *Id.* at 1060-62.

request.[94] Although the City articulated good reasons to maintain the confidentiality of the documents while still deciding whether to submit the annexation petition, the city did not articulate any good reason to do so after submitting the petition.[95] And, unlike in this case, the City manager actually "implied that the disputed information could be disclosed once the annexation plan was completed"[96] Thus, the court found that neither the City manager nor the employees who prepared the documents had reason to expect that the documents would remain confidential after filing of the annexation petition.[97] This case is unlike *Fuller* because, among other things, Segal and the Agency are still in the midst of the ongoing deliberative process, and unlike the City in *Fuller*, the Agency and Governor's Office have never represented or implied that any draft of the salary study will be disclosed when the study is completed.

The Union asserts—without evidence other than vague hearsay—that Segal delivered a final salary study to the Agency on June 30, 2024.[98] That assertion is contradicted by the affidavits of credible witnesses with first-hand knowledge of the content of the materials that the Agency has received from Segal.[99]

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94 *Id.*

95 *Id.* at 1064.

96 *Id.* at 1064-65.

97 *Id.* at 1065.

98 Affidavit of Heidi Drygas at 3 ¶ 12 ("I heard that Segal delivered the Salary Study to the Department by June 30, 2024").

99 Affidavit of Kate Sheehan at ¶¶9-10; Affidavit of Brittany Patzke.

But even if the Union were correct (it is not), that document would still be protected by the deliberative process privilege because it remains a draft until approved and accepted by the Agency. In *U.S. Fish and Wildlife Service v. Sierra Club,* the United States Supreme Court recently addressed FOIA requests for draft opinions that the United States Fish and Wildlife Service and the National Marine Fisheries Service (the "Services") prepared on a proposed Environmental Protection Agency rule, finding that the proposed rule would jeopardize certain endangered species.[100] Those drafts may well have been "polished documents lacking only an autopen signature," and they may well have reflected the final position of the Services on that proposed rule.[101] However, review of those drafts caused the Services to determine that "more work needed to be done" on the proposed rule with the EPA, and the Services then entered into discussions with the EPA.[102] The EPA then altered its proposed rule, and the Services issued final opinions finding that the EPA's new proposed rule did not jeopardize endangered species.[103] The District Court and Ninth Circuit ordered production of the drafts, but the United States Supreme Court reversed and found the drafts protected.[104]

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100 *U.S. Fish & Wildlife Serv.*, 592 U.S. at 264-65.

101 *Id.* at 271.

102 *Id.* at 265.

103 *Id.* at 266.

104 *Id.*

The Supreme Court emphasized that the drafts were deliberative because "they were prepared to help the agency formulate its position."[105] The Supreme Court also explained that "the determinative fact is not their level of polish—it is that the decisionmakers at the Services neither approved the drafts nor sent them to the EPA."[106] So even if the product delivered by Segal in June 2024 had been polished and signature ready, because the Agency did not approve it and determined, in collaboration with the Governor's Office, that "more work needed to be done" before approving and releasing it, finding that the drafts are protected under the deliberative process privilege is entirely consistent with the United States Supreme Court's view of the privilege.

Thus, even if this Court takes up the Union's APRA claim, this Court should find that the deliberative process privilege applies to the drafts of the salary study and deny the Union's Motion for Preliminary Injunction.

V. *In Camera* Review

This Court should deny the Union's Motion for Preliminary Injunction on the grounds that the Union never properly requested drafts of the salary study under the APRA, without conducting *in camera* review of those drafts. This Court can fully evaluate whether the Union has stated a claim under AS 40.25.125 based on the exchange of correspondence between the Union and Agency without reviewing the draft documents. Even if this Court reaches the question of deliberative process privilege, it

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105 *Id.*at 268.

106 *Id.* at 272.

should deny the Union's motion based on the Agency's affidavits, without the need to conduct *in camera* review. The Agency's affidavits are more than sufficient to establish that the Union is unlikely to succeed on the merits due to application of the deliberative process privilege, and the Court should deny the Union's motion for preliminary injunction on that basis.[107] However, in the event that this Court does determine that *in camera* review of the drafts is necessary to evaluate the strength of the Agency's assertion of deliberative process privilege, the Agency is prepared to file, under seal, the drafts of the salary study report that it has received from Segal to date, for this Court's *in camera* review.

VI. Conclusion

This Court should deny the Union's Motion for Preliminary Injunction.

DATED: February 27, 2025.

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[107] *In camera* review is at the discretion of the superior court judge and is not necessary where the court has affidavits from witnesses with first hand knowledge of the content of the documents. *Capital Info. Grp.*, 923 P.2d at 38 n. 5; *See also, e.g., Local 3, Int'l Bhd. of Elec. Workers, AFL–CIO v. NLRB,* 845 F.2d 1177, 1180 (2d Cir. 1988) ("*In camera* review is considered the exception, not the rule, and the propriety of such review is a matter entrusted to the district court's discretion.").

ALASKA STATE EMPLOYEES ASSOCIATION
American Federation of State, County & Municipal Employees Local 52

September 26, 2024

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550 W. 7th Avenue, Suite 1970
Anchorage, AK 99501

Re: CONTRACT NEGOTIATIONS

Dear Commissioner Vrana:

ASEA/AFSCME Local 52 is prepared to meet and negotiate a successor agreement to our Collective Bargaining Agreement with the State of Alaska that expires on June 30, 2025. Pursuant to Article 42 of the 7/1/2022 - 6/30/2025 Collective Bargaining Agreement between ASEA/AFSCME Local 52 and the State of Alaska covering the General Government Bargaining Unit, this serves as notice of our desire to negotiate a new agreement.

While we intend to conduct most of our negotiating sessions in person, we propose the first formal negotiating session with the State be held virtually for one day on either October 28, 29 or 30, 2024 in accordance with Article 42.

In preparation for bargaining please provide ASEA the following information:

1. All documents and/or lists showing GGU bargaining unit members who are currently receiving public assistance. Upon information and belief, such documents and/or lists already exist. To protect the confidentiality of aid recipients, names can be redacted and replaced with numbers as long as that list also identifies the position each employee occupies and the duty station for each position;

2. Current geographic differential charts for each bargaining unit performing State work;

3. Pursuant to Article 9.03(B) of the collective bargaining agreement, please provide a list of all long-term nonpermanent bargaining unit members including names, dates of hire, position occupied, and current range and step placement.

4. The results of any salary study conducted by the State and completed within the last six (6) months. On information and belief, the salary study was finished at least two (2) months ago but, for unknown reasons, has not yet been released.

2601 Denali Street, Anchorage, Alaska 99503 (907)277-5200 • Fax (907)277-5206 aseahq@afscmelocal52.org www.afscmelocal52.org

To the extent necessary, please consider all the records requested above to also be requests for public records under the Alaska Public Records Act, AS 40.25.100 – 295.

Sincerely,

Heidi Drygas
Executive Director
ASEA/AFSCME Local 52, AFL-CIO

cc: Kate Sheehan, Division Director
Benthe Mertl-Posthumus, Labor Relations
ASEA Contract Negotiating Committee

THE STATE of ALASKA
GOVERNOR MIKE DUNLEAVY

Department of Administration
DIVISION OF PERSONNEL
10th Fl. State Office Building
PO Box 110201
Juneau, Alaska 99811-0201
Main: 907.465.4430
Fax: 907.465.3415
www.doa.alaska.gov/dop/

January 16, 2025

Heidi Drygas, Executive Director
ASEA/AFSCME Local 52, AFL-CIO
Email: heidid@afscmelocal52.org

Dear Ms. Drygas:

On September 26, 2024, you requested, on behalf of ASEA/AFSCME Local 52 (ASEA), four categories of records from the Alaska Department of Administration (DOA). DOA initially viewed all of these requests as happening in the course of bargaining, which is a separate process. However, since the Alaska Public Records Act (APRA) was mentioned, we wanted to ensure that request was specifically addressed. To the extent that you requested those records under the APRA, I am responding on DOA's behalf.

I understand that the State of Alaska's chief negotiator has addressed the records that are responsive to your first three requests through the standard information disclosure processes for collective bargaining. If this is not correct, please follow up with the chief negotiator.

Regarding your fourth request—i.e., for "[t]he results of any salary study conducted by the State and completed within the last six (6) months"—as the study has not been completed, DOA has not received the preliminary or final statewide salary study and, therefore, has no records responsive to this request.

Attached is a related document: an email message that Deputy Chief of Staff Rachel Bylsma sent to State agency commissioners. The message explains the status of the statewide salary study contract, the decision to extend the contract to the spring, and the additional work that the amendment to the contract covers. In addition, to continue the State's efforts to negotiate in good faith with ASEA, Deputy Attorney General Cori Mills will soon reach out to schedule an informational session on the salary study with you, the State's contractor (i.e., The Segal Company (Western States), Inc.), and State personnel working with Segal.

Because the APRA regulations state that if a record does not exist the response constitutes a denial, this response constitutes a denial of your request. Further, under the APRA regulations, whenever an agency denies a request, it must tell the requester the following: you may administratively appeal by complying with 2 AAC 96.340; an administrative appeal requires no appeal bond; you may seek immediate judicial review by pursuing an injunction from the superior court under AS 40.25.125; not pursuing an injunction will not adversely affect your rights before DOA, including in administratively appealing the denial; and I have been delegated the authority to deny APRA requests. Enclosed are 2 AAC 96.335 – 2 AAC 96.350.

Sincerely,

Brittany Patzke

Brittany Patzke
Classification Program Manager

December 6, 2024
Rachel Bylsma
Deputy Chief of Staff
Office of Governor Mike Dunleavy
Email to State Agency Commissioners

Good afternoon Commissioners,

I hope this message finds you well. I want to provide you an update regarding the timeline for the statewide salary study contract. As you know, funding for the study was included in the FY2024 budget. An RFP was issued in the fall of 2023 with the initial goal of completing the study by June 30, 2024.

To date, we have not received a preliminary or final study report. As we reviewed drafts of the study, we identified the need to gather additional data and requested the contractor solicit salary data from additional peer/comparable jurisdictions. We also asked the contractor to factor in investments the State made in salaries through collective bargaining and the passage and implementation of Senate Bill 259 (2024 legislation that addressed state employee compensation).

Potential changes to the State's classification and pay plans informed by the final study report could substantially impact the State's budget, and additional due diligence is necessary, especially as we look at the State's revenue projections.

With the additional information being requested, the contract will be extended again and the approximate timeline for completion of the report is now projected for mid-legislative session.

While we understand the importance of this study in discussions regarding ongoing recruitment and retention challenges the State is facing, it is important to ensure we have as much data as possible to make an informed decision.

We appreciate your patience and understanding. Please don't hesitate to reach out if you have any questions or require further information.

Thank you,

Rachel Bylsma
Deputy Chief of Staff
Office of Governor Mike Dunleavy
550 W 7th Ave Suite 1700
Anchorage, Alaska 99501
O: 907-269-7450

State of Alaska
Department of Administration

State of Alaska Statewide Salary Study
Presentation to the House State Affairs Committee
Paula Vrana, Commissioner, Department of Administration
Kate Sheehan, Director, Division of Personnel and Labor Relations
January 30, 2025

Statewide Salary Study: Background

- Legislative Appropriation
  - Funds appropriated in FY24 budget for a comprehensive study including State Executive Branch employee salaries
  - Estimated project dates: 7/1/2023-6/30/2028

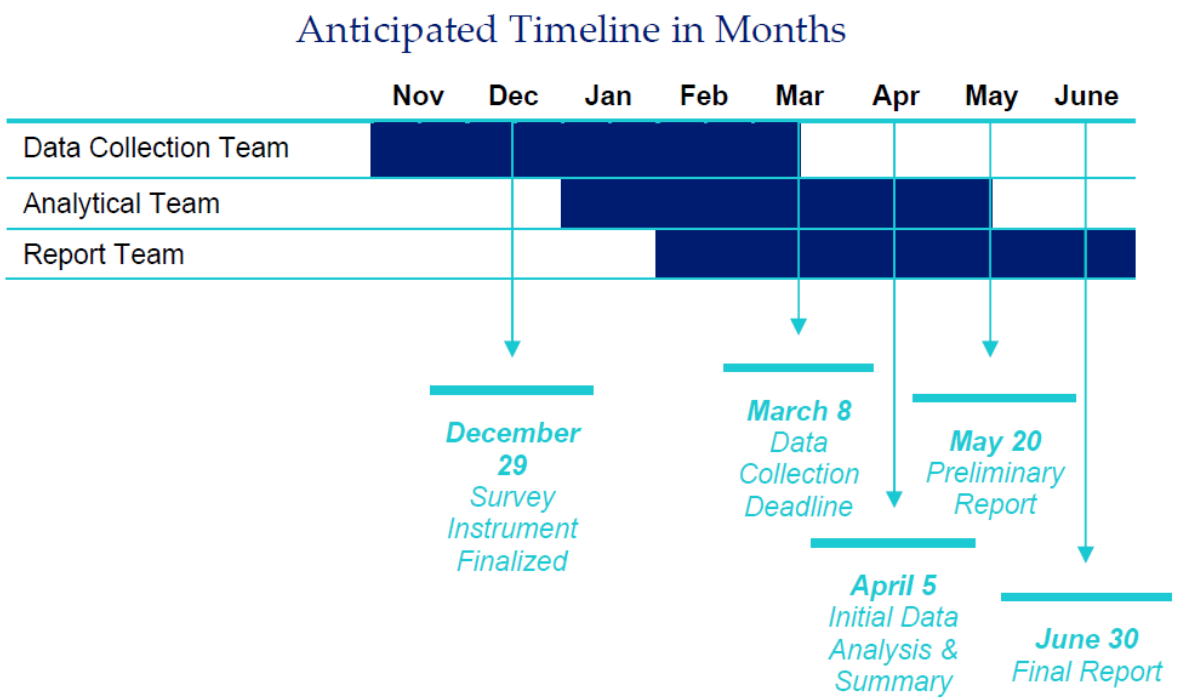
- Purpose of Study
  - Gather data on salary and compensation practices across various industries
  - Compare external market data with salary and pay structures in the State of Alaska's Classification and Pay Plan
  - Provide a report of findings to inform decision making regarding wages and compensation

Statewide Salary Study: Scope

- Project Scope:
  - Compare approximately 404 benchmark jobs from the State of Alaska's Classification and Pay Plan to external market data
  - Analyze State wages in comparison to market data and provide insights and recommendations to inform decision making regarding a market-competitive compensation package for the Executive Branch

Statewide Salary Study: Timeline

- Original Timeline:
  - Project kickoff in December 2023 / target completion date of June 30, 2024



Statewide Salary Study: Current Status

- Contract extended with Segal
  - Early review indicated a need to gather additional data and update State wage information
  - Contract with Segal extended to June 30, 2025
  - Segal is actively working on updating and gathering additional data and timelines are being met

Statewide Salary Study: Data Updates

- Additional Peer/Comparable Jurisdictions being surveyed

- Factor in investments the State made in salaries through collective bargaining and the legislature's passage and the implementation of Senate Bill 259

  - Senate Bill 259
    - Passed May 15, 2024
    - 1212 partially exempt and exempt employees received wage increases pursuant to SB 259
    - $25,125,500 invested in wage increases

  - Collective Bargaining
    - 11,873 employees* who are subject to the State's Classification and Pay Plan received contractually negotiated wage increases in July 2024
    - $100,455,700 invested in contractually negotiated wage increases

**Includes the following unions: APEA, ASEA, AVTEC, CEA, LTC, PSEA, TEAME, does not include marine unions*

Statewide Salary Study: Looking Forward

- Final report due March 31, 2025
- The final report will be shared upon completion

Department of Administration

Alaskans Proudly Serving Alaskans

For more information, please contact Forrest Wolfe at forrest.wolfe@alaska.gov

THE STATE of ALASKA
GOVERNOR MIKE DUNLEAVY

Department of Administration
PAULA VRANA, COMMISSIONER
550 W. 7th Ave., Ste. 1970
Anchorage, AK 99501
Main: 907.269.6293
Fax: 907.465.2135
www.doa.alaska.gov

February 11, 2025

The Honorable Ashley Carrick
Chair, House State Affairs Committee
Alaska State Capitol, Room 406
Juneau, AK 99801

Dear Chair Carrick:

Thank you for the opportunity to present to the House State Affairs Committee on January 30, 2025 concerning the progress of the Statewide Salary Study. I appreciate the Committee's interest in this important topic. In addition to the follow up questions sent by Committee on February 3, I want to take this opportunity to provide further clarity regarding the study.

First, while the final salary study will be an important informational tool for the Administration, the Legislature, and the public, it should be noted that even the final study will not define appropriate compensation, nor will it prescribe specific changes to the State's current salary structures. The final report will not prescribe nor bind the State to any particular action; a salary study report merely provides external data and insights that can be used to inform decisions regarding market competitive salaries. Once the salary study is published, additional work will be required to comprehensively review study findings by job family and occupational group to inform implementation in a manner that accounts for the State's full classification outline and integrated pay plans.

Second, the State has only received drafts, not a final report. As mentioned in the hearing, the administration has seen drafts of the report and has worked with the contractor to garner additional information. While the initial contract included a timeline, that timeline was for the delivery of the final report to the State, not a date for publishing the study. The contract has since been amended a few times. Specific questions related to amendment 2 are addressed in Enclosure 1; also enclosed is amendment 4 on the additional asks, as well as the timeline for completing them.

It is not unusual for large projects such as the salary study to be subject to amendments. It is the responsibility of the Executive Branch to ensure that the State receives the best final product possible for the money spent, for the public, the Legislature, and the Administration to review. It is incumbent upon the Administration to do our due diligence to ensure accurate and complete data for decision making, especially with the continued focus on recruitment and retention. This is the sole objective in extending the study's due date and requesting additional information.

I appreciate this opportunity to share more information regarding the status of this important project.

Sincerely,

Paula Vrana

Paula Vrana
Commissioner
Department of Administration

Enclosures

cc: Jordan Shilling, Director, Governor's Legislative Office

Enclosure 1 – Responses to Committee Follow up Questions

1. **Did the administration ask for the report to be distributed in March, or did Segal need more time to conduct the report? (Rep Carrick)**

   The State requested the contractor solicit salary data from additional peer/comparable jurisdictions, as well as factor in investments the State made in salaries through collective bargaining and the implementation of Senate Bill 259. Segal reviewed the request and provided a timeline for completing the work. The timeline Segal provided indicates they will have a full draft report ready for the State by March 31, 2025. The timeline was specifically discussed and considered with the administration's objective of releasing the study during the legislative session. While there is no specific date by which the study must be published, the administration will release the final study as expeditiously as possible.

2. **Is there an opportunity for Segal to finish and distribute the report early? (Rep Story)**

   As of February 6, 2025, Segal confirmed that the project is progressing in accordance with Segal's timeline; Segal does not anticipate having a draft report ready for the State prior to March 31, 2025. However, we will update the committee as the project progresses and will release the final study as expeditiously as possible.

3. **Why are portions of the second amendment to the contract redacted? What is the reason? (Rep Himschoot)**

   The redactions reflect confidential and deliberative information: they are pre-decisional and deliberative communications among the Governor's advisors and the State's contractor and concern decision-making by the Governor and his advisors. It is not uncommon as these projects progress for additional information or changes in the study's design to become necessary. Accordingly, the communications were redacted to avoid, among other things, public confusion resulting from assumptions regarding the final direction of the study or assumptions on decisions the State may or may not make based on the information. The State is not taking positions or actions based on a draft of the study.

   The study is not finished. The final design of the study will be disclosed when the study is completed, so the public will receive the information needed to evaluate the study. Further, it should be noted that even the final study will not define appropriate compensation, nor will it prescribe specific changes to the State's current salary structures. The final report will not prescribe or bind the State to any particular action; a salary study report merely provides external data and insights that can be used to inform decisions regarding market competitive salaries.

4. **Relating to amendment 2, how could we not get delivery of 80 hours of work from August until now? (Rep Himschoot)**

Amendment 2 increased the "not-to-exceed" amount for the contract. The additional funds were not calculated solely on an hourly basis, and they are to account for additional potential requests or engagements related to the study, such as internal and external meetings as noted in the information provided from Richard Ward, Senior Vice President of Segal, in amendment 2. As it turned out, the "estimated approximately 100" hours was too low. As reflected in amendment 4 (attached), the State requested additional data and work on the report, and this resulted in the revised timeline for the report.

5. **What is the statewide employee vacancy rate compared to any other states? What is the employee vacancy rate per department? (Rep McCabe)**

Recruitment and retention challenges are not unique to State government: the entire State and country have faced these challenges for several years. In fact, last year, the Bureau of Labor Statistics projected two job openings for every unemployed worker in Alaska. As employers statewide and nationwide work to attract workers, it is more important than ever that the State have the best information possible when comparing our wages to the current market.

The breakdown of the vacancy rate by department from December 2023 and December 2024 is below.

% Vacant PCNs	December 2023
DOA	15.2%
DCCED	18.7%
DOC	15.0%
DEED	16.0%
DEC	13.5%
DFCS	20.0%
DFG	14.2%
Gov	26.9%
DOH	19.3%
DOL&WD	20.9%
Law	9.7%
DMVA	9.9%
DNR	21.4%
DPS	18.0%
DOR	17.9%
DOT&PF	17.8%
Total	**17.3%**

% Vacant Positions	December 2024
DOA	13.7%
DCCED	20.6%
DOC	12.2%
DEED	13.4%
DEC	8.0%
DFCS	16.2%
DFG	15.5%
Gov	29.7%
DOH	19.0%
DOL&WD	21.4%
Law	18.4%
DMVA	13.3%
DNR	19.7%
DPS	17.2%
DOR	14.7%
DOT&PF	15.1%
Total	**16.0%**

Sixteen state governments shared their vacancy percentages through the National Association of State Personnel Executives network in January 2025 and the average vacancy rate was 14.5%.

State	Vacancy Percentage
Hawaii	24.0%
New Mexico	21.8%
Arkansas	21.8%
North Carolina	20.1%
Mississippi	17.9%
South Carolina	17.3%
Alaska	**16.0% (as of December 2024)**
Maine	15.6%
Nevada	13.0%
West Virginia	12.9%
Arizona	10.9%
Vermont	10.4%
Illinois	10.0%
Tennessee	9.9%
Louisiana	9.0%
North Dakota	8.5%
Pennsylvania	7.5%

6. Where were vacancy rates at before the use of hiring and retention bonuses? (Rep Holland)

Recruitment and retention bonuses are not universally applied across state government or even within a job class; the department does not have the data to answer this in a comprehensive manner.

7. Why are the salary study drafts privileged, why is that information not available to the legislature? (Rep Carrick)

The drafts were withheld because they are confidential: they are pre-decisional and deliberative communications among the Governor's advisors and the State's contractor and concern decision-making by the Governor and his advisors. It is not uncommon as these projects progress for additional information or changes in the study's design to become necessary. Accordingly, the communications were redacted to avoid, among other things, public confusion resulting from assumptions regarding the final direction of the study or assumptions on decisions the State may or may not make based on the information. The State is not taking positions or actions based on a draft of the study.

The study is not finished. The final design of the study will be disclosed when the study is completed, so the public will receive the information needed to evaluate the study. Further, it should be noted that even the final study will not define appropriate compensation, nor will it prescribe specific changes to the State's current salary structures. In fact, the report will not prescribe or bind the State to any particular action: a salary study report merely provides

external data and insights that can be used to inform decisions regarding market competitive salaries.

8. What factors should we take into account as we look at the salary study knowing we are making heavy uses of recruitment and retention bonuses? (Rep Story)

The salary study does not incorporate incentive or premium pays, including negotiated agreements aimed to incentivize recruitment and retention. Premium pays and incentives are not considered part of the State's base compensation package, nor are they universally applied to positions across state government or even across the same job class. The salary study will provide external data and insights that can be used to inform decisions regarding market competitive base salaries. Salaries are not the only factor impacting recruitment and retention.

Certainly, bonuses, leave, health insurance and pay in general are included in recruitment and retention considerations. We also look at training opportunities for all employees (in fact, we have updated our performance evaluation system to include training that employees need to take in the following year), supervisory skills, and helping with work/life balance for our staff. We have moved to competency based minimum qualifications for over 300 job classes and have removed the "paper ceiling." Meaning not every position requires a degree. We have been working with the National Governor's Association on this important project, which also includes multiple states and Alaska is a leader in the process. The Division of Personnel holds monthly meetings with agency recruitment staff to see where we, as a division, can assist. Per the Office of the Governor's directive, we are implementing a more robust internship program, which will include a new website, and we are attending multiple job fairs to include those for the public, veterans, college employees and high school students. All of these initiatives impact recruitment and retention.

9. Has Segal completed a portion of the classification study? If so, can part of it be released before the whole study? (Rep Holland)

No portion of the salary study is complete. Segal is still gathering data for additional peer/comparable jurisdictions and updating salary data for State benchmark jobs. The scope of work applies to all benchmark jobs; therefore, no portion will be ready for release ahead of the entire study. As noted above, we will continue to keep the committee apprised as the project progresses and will release the final study as expeditiously as possible.

FLA

State of Alaska

2009 Salary Survey Report

FINAL

FOX LAWSON & ASSOCIATES LLC
COMPENSATION AND HUMAN RESOURCES SPECIALISTS

TABLE OF CONTENTS

SURVEY METHODOLOGY, PROCESS, AND PROCEDURES

- Fox Lawson & Associates, LLC (FLA) met with individuals of the State's Personnel and Labor Relations Division (State) to review and discuss many items relating to the survey as well as the current compensation philosophy and pay system. Items discussed and identified in this discussion included:
  - Definition of the labor market(s)
  - The specific pay and benefits questions to include in the data collection form (survey instrument)
  - The use and application of geographic (cost of labor) differentials (which is different from the recent cost of living differentials study that the State has access to)
  - The calculation of varying statistics (mean, median, percentiles, etc.) for the survey analysis
  - Survey schedule

- Further discussions with the State took place throughout the course of the survey regarding survey participation and data analysis.

- FLA conducted a thorough review and analysis of the State's comparison pool. Several documents were referenced for conducting this review, and discussions were held with the State regarding criteria and guidelines for determining benchmarks. The written narrative regarding this review and analysis was provided to the State in a separate document from this report. Upon discussion with the State, the list of benchmark jobs to include in the survey was finalized, which are listed on the following pages.

SURVEY METHODOLOGY, PROCESS, AND PROCEDURES

- One hundred seventy-nine (179) classifications were included as survey benchmarks on which to collect salary information. The benchmarks, which are grouped by job family, are listed below.

Executive and Senior Administrators:

1. Division Director – PX
2. Division Operations Manager

General Administration:

3. Administrative Clerk II
4. Administrative Assistant II
5. Administrative Officer I

Accounting and Fiscal:

6. Accounting Technician I
7. Accountant III
8. Accountant V

Personnel and Employee Relations:

9. Human Resource Technician II
10. Human Resource Specialist I
11. Human Resource Manager I

Information Technology:

12. Analyst Programmer IV
13. Data Processing Manager I
14. Microcomputer/Network Specialist I
15. Systems Programmer II
16. Internet Specialist I

Statistics and Research Analysis:

17. Statistical Technician I
18. Research Analyst III

Supply:

19. Stock & Parts Services, Journey II
20. Procurement Specialist III

Other Administrative:

21. Claims Administrator

Business Finance:

22. Loan Closer/Processor II
23. Grants Administrator II

Business Regulation and Compliance:

24. Occupational License Examiner
25. Insurance Analyst I
26. Community Care Licensing Specialist I
27. Financial Institution Examiner III
28. Utility Financial Analyst III

Safety Inspection:

29. Commercial Vehicle Enforcement Officer II
30. Occupational Safety & Compliance Officer
31. Safety Inspection & Compliance, Elevator Inspector

Environmental Health:

32. Environmental Health Officer III

Revenue and Audit:

33. Tax Technician III
34. Tax Auditor III
35. Revenue Audit Supervisor II
36. Oil & Gas Revenue Auditor III
37. Internal Auditor III

Government Management and Operations:

38. Local Government Specialist III
39. Budget Analyst III

Economic Research:

40. Economist III
41. Petroleum Economist II

Development and Infrastructure Planning:

42. Community Development Specialist II
43. Planner III
44. Transportation Planner I

Emergency Planning and Response:

45. Radio Dispatcher II
46. Emergency Management Specialist II

Airport Administration:

47. Airport Operations Officer

Ferry System Administration:

48. Ferry Terminal Assistant I
49. Reservations Specialist
50. Port Captain

Maintenance Administration:

51. Maintenance & Operations Superintendent

Real Estate Appraisal:

52. Right-of-Way Agent III
53. Appraiser II

Property Management:

54. Building Management Specialist
55. Airport leasing Specialist II

Education Programs:

56. Education Program Assistant
57. Education Specialist II

Teaching and Instruction:

58. AVTEC Instructor
59. Training Specialist II

Student Services:

60. Alaska Military Youth Academy Team Leader
61. Recreation Assistant

Library and Archives:

62. Library Assistant I
63. Librarian III
64. Archivist II

Anthropological Research and Education:

65. Museum Curator II
66. Archaeologist II
67. Subsistence Resource Specialist II

Arts, Photography and Information:

68. Publications Specialist II
69. Information Officer II

Public Programs:

70. Child Support Specialist I
71. Child Support Manager
72. Eligibility Technician II
73. Medical Assistance Administrator III
74. Workers' Compensation Technician
75. Social Services Program Coordinator

Social Work:

76. Social Services Associate II
77. Social Worker II (Children's Services)
78. Social Worker IV (Children's Services)/Children's Services Supervisor

Special Social Service:

79. Public Guardian

Vocational Rehabilitation:

80. Vocational Rehabilitation Assistant II
81. Vocational Rehabilitation Counselor III

Labor and Employment Services:

82. Employment Security Specialist IB
83. Employment Service Manager I

Internship Programs:

84. College Intern III

Health Administration:

85. Health Program Associate
86. Health Program Manager II
87. Public Health Specialist II

Nursing, Assistive:

88. Certified Nurse Aide I
89. Psychiatric Nursing Assistant III

Nursing, Professional:

90. Nurse II
91. Nurse II (Psychiatric)
92. Public Health Nurse II
93. Nurse IV

Medical, Professional:

94. Health Practitioner I
95. Wildlife Veterinarian

Mental and Behavioral Health Services:

96. Psychological Counselor II
97. Mental Health Clinician III

Special Health Services:

98. Pharmacy Technician
99. Recreation Therapist II

Health Laboratory and Related:

100. Laboratory Technician
101. Public Health Microbiologist I

Fish and Wildlife:

102. Fish & Wildlife Technician II
103. Fishery Biologist II
104. Fishery Biologist IV
105. Biometrician III
106. Fisheries Scientist I

Agriculture:

107. Agronomist II

Natural Resource and Forestry:

108. Natural Resource Technician II
109. Natural Resource Specialist II
110. Natural Resource Manager II
111. Wildland Fire & Resource Technician III

Parks:

112. Park Ranger I
113. Museum Protection & Visitor Services Supervisor

Legal Support and Related:

114. Criminal Justice Technician I
115. Law Office Assistant I
116. Paralegal II

Attorneys:

117. Attorney II
118. Attorney IV

Judges and Adjudicators:

119. Administrative Law Judge I
120. Workers' Compensation Hearing Officer II

Evidence Investigation:

121. Forensic Technician I
122. Forensic Scientist III – Chemistry
123. Forensic Scientist III – DNA
124. Investigator III

Legal and Document Processing:

125. Recorder II
126. Motor Vehicle Customer Service Representative I
127. Motor Vehicle Office Manager I

Law Enforcement:

128. State Trooper
129. Lieutenant, Alaska State Troopers
130. Court Services Officer

Fire Fighting and Inspection:

131. Airport Police & Fire Officer II
132. Airport Police & Fire Officer V
133. Deputy Fire Marshal I

Corrections:

134. Correctional Officer II
135. Correctional Superintendent I
136. Juvenile Justice Officer II

Probation and Parole:

137. Juvenile Probation Officer II
138. Adult Probation Officer II
139. Adult Probation Officer IV

Physics and Science Specialists:

140. Hydrologist II
141. Geologist III
142. Chemist IV

Environmental Science Specialists:

143. Environmental Program Specialist III
144. Environmental Program Manager I
145. Environmental Impact Analyst III

Engineering, Unlicensed:

146. Engineering Assistant III
147. Communications Engineering Associate II
148. Utility Engineering Analyst IV

Engineering, Licensed:

149. Engineer/Architect III
150. Technical Engineer I/Architect I

Architecture and Landscape Architecture:

151. Landscape Specialist

Vessel Construction:

152. Vessel Construction Manager II

Land Surveying:

153. Land Surveyor I
154. Survey, Journey

Cartography and Drafting:

155. Drafting Technician III
156. Cartographer II

Food and Custodial Services:

157. Food Service, Sub-Journey
158. Food Service, Lead
159. Environmental Services, Journey II

Aircraft, Automobile or Vessel Maintenance:

160. Mechanic, Automotive, Advanced Journey/Lead
161. Mechanic, Automotive, Foreman I

Equipment Operations:

162. Equipment Operator, Journey II
163. Equipment Operator Foreman I

Building and Facility Maintenance:

164. Maintenance Generalist, Journey
165. Maintenance Specialist, Bldg/Facility/Construction, Journey I
166. Maintenance Specialist, Bldg/Facility/Construction, Foreman
167. Maintenance Specialist, Electrician, Journey II/Lead

Instrument Technician:

168. Survey Instrument Technician II

Construction Support:

169. Engineering Technician, Journey
170. Materials Laboratory Technician, Journey

Vessel and Aircraft Operations:

171. Aircraft Pilot II
172. Boat Officer III

Office Equipment Operation:

173. Mail Services Courier

Facility Security:

174. Security Guard I

Vessel Workers:

175. Second Mate
176. Steward
177. Third Assistant Engineer
178. Able Bodied Seaman
179. Oiler

SURVEY METHODOLOGY, PROCESS, AND PROCEDURES

- FLA worked with the State in identifying eighty (80) organizations from which to collect salary and benefits information. These organizations represented the federal government, other states, municipal governments, healthcare organizations, universities (both local and out of state), school districts, utilities, native corporations, engineering firms, airports and ferry systems.

- When determining organizations to include in the survey, major considerations were size, geographic location, and industry. For example, states were selected based on a combination of geographic location and similar sized per capita income, airports were selected based on similar number of enplanements, the out of state counties and universities were selected based on the largest entities in the same states that were selected, and ferry systems were selected based on those that operate vessels much like the Alaska Marine Highway System.

- The benchmark jobs were specified by their corresponding labor market, as different jobs have different recruiting markets. The local market and the states included all benchmark jobs (as they were applicable to each industry within the local market). Those organizations outside of Alaska were considered an expanded market and included professional/management level jobs as well as any specialized or industry-specific jobs.

- A detailed table is included in Appendix D which outlines the comparison pool positions (benchmarks), the type of organization that the survey was distributed to for each benchmark (with the total number distributed listed under each category heading), and the number of valid survey responses.

SURVEY METHODOLOGY, PROCESS, AND PROCEDURES

- We received data from 65 out of the 80 organizations, for an 81% participation rate. Each organization category (states, municipalities, etc.), is represented by at least 50% participation. Following is a breakout of participation by organization category.

	Number Received	Percent of Total
Municipalities	3	100%
United States Federal Government	1	100%
Healthcare Organizations/Hospitals	3	50%
Local Universities within the State	1	50%
School Districts	3	75%
Utilities	5	71%
Native Corporations	7	78%
Engineering Firms	3	50%
States	12	100%
Counties	10	100%
Universities in Other States	11	100%
Airports	4	67%
Ferry Systems	2	67%

SURVEY METHODOLOGY, PROCESS, AND PROCEDURES

- The following table is a summary of the organizational information collected from each participant compared to the State. Data break-outs are shown for all organizations combined (labeled Market-All), States Only (labeled Market-States), and States only, but excluding California and Texas (labeled Market-States Only Excluding CA & TX). In this last break-out, California and Texas were excluded because, even though they are considered to be in Alaska's labor market definition, their figures were significantly different from all others in the same group and therefore, would have distorted the overall averages.

	State of AK	**Market-All**
Average number of customers served (population)	***679,720***	4,096,709
Average annual operating budget	***$6,574,796,300***	$4,530,059,847
Average number of full-time employees	***15,088***	17,226
Average number of job classifications	***1,077***	505

	Market-States Only	**Market-States Only Excluding CA & TX**
Average number of customers served (population)	7,240,313	2,138,987
Average annual operating budget	$18,540,292,438	$10,670,217,911
Average number of full-time employees	52,228	19,582
Average number of job classifications	1,166	828

- Listed on the following page are those organizations that are represented in the survey as well as those that did not participate.

SURVEY METHODOLOGY, PROCESS, AND PROCEDURES

Organizations Represented in Survey:

Municipalities:
City of Fairbanks
City & Borough of Juneau
Municipality of Anchorage

United States Federal Government (salary info only)

Healthcare Organizations/Hospitals:
Banner Health-Fairbanks Memorial
Bartlett Hospital
Providence Healthcare

Local Universities within the State:
University of Alaska

School Districts:
Anchorage School District
Fairbanks School District
Mat-Su School District

Utilities:
Alaska Electric Light & Power
Anchorage Municipal Power & Light
General Communications Inc.
Golden Valley Electric Association
Matanuska Electric

Engineering Firms:
Dowl HKM Engineering
HDR Inc.
USKH

Native Corporations:
Arctic Slope Regional Corporation
Central Council Tlingit & Haida
Doyon, Limited
Fairbanks Native Association
Goldbelt, Inc.
NANA Regional Corporation
Sealaska

States:
State of California
State of Colorado
State of Idaho
State of Montana
State of Nevada
State of North Dakota
State of Oklahoma
State of Oregon
State of South Dakota
State of Texas
State of Washington
State of Wyoming

Airports:
Buffalo Niagara International Airport
Reno-Tahoe Airport Authority
Theodore Francis Green State Airport
Tucson Airport

Organizations Represented in Survey (Continued):

Counties:
Ada County, ID
Cass County, ND
City-County of Denver, CO
Clark County, NV
King County, WA
Laramie County, WY
Los Angeles County, CA
Minnehaha County, SD
Multnomah County, OR
Yellowstone County, MT

Ferry Systems:
Golden Gate Transportation District
Grand Portage-Isle Royale Ferry Service

Universities:
University of California
University of Colorado
University of Idaho
University of Montana
University of Nevada Las Vegas
University of Nevada Reno
University of North Dakota
University of Oregon
University of South Dakota
University of Washington
University of Wyoming

Organizations that did not Participate:

Airports:
Bob Hope Airport
Eppley Airfield

Local Universities within the State:
Alaska Pacific University

School Districts:
Juneau School District

Utilities:
Alaska Communications
Chugach Electric

Ferry Systems:
Lake Express

Native Corporations:
Cook Inlet Region, Inc.
Kootznoowoo Inc.

Engineering Firms:
CH2M Hill
Design Alaska
R&M Engineering

Healthcare Organizations/Hospitals:
Alaska Native Tribal Health Consortium
Alaska Regional
Southeast Alaska Regional Health Consortium

SURVEY METHODOLOGY, PROCESS, AND PROCEDURES

- Published sources were also utilized to supplement the custom survey and to provide a representation of the private sector market. All published sources were discussed and approved by the State prior to using them. Our firm requires the following criteria be met by the published source:
  - The survey is conducted by a reputable salary survey firm
  - The survey data is not self reported
  - The survey is conducted on a continual basis instead of a one-time event
  - The survey reports its data sources, the effective date of the data, and was tested to ensure accurate matches and data

- The published sources utilized are listed below. All data referenced from these published sources represent the Anchorage geographic market. All data were aged to be effective for 9/1/09, consistent with the market data. We did not use any data that were older than 18 months from the date of this study.

  Watson Wyatt (ECS), Office Personnel Report
  Watson Wyatt (ECS), Professional Administrative Report
  Watson Wyatt (ECS), Professional Specialized Report
  Watson Wyatt (ECS), Middle Management Report
  Watson Wyatt (ECS), Supervisory Report
  Employer's Association, National IT and Engineering Report
  Mercer, Finance, Accounting & Legal Report
  AFT Public Employee's Compensation Survey
  Milliman, Alaska Cross-Industry Survey
  CUPA Mid-Level Administration & Professional Survey
  CUPA National Faculty Salary Survey
  Hospital & Healthcare Compensation Services, Compensation & Benefits Report
  American Society of Civil Engineers, Salary Survey
  National Society of Professional Engineers, Salary Survey
  Central States Survey
  Marine Highway Vessel Workers' Union Contracts (provided by former maritime union negotiator, located in District of Columbia)

SURVEY METHODOLOGY, PROCESS, AND PROCEDURES

- Next, a customized data collection survey instrument was developed to collect benefits data and pay data on each of the benchmark classifications. The questions in the survey were posed in a fashion that were easy for participants to answer, as well as being easy to quantify and analyze.

- Job summaries were included in the survey instrument and were prepared from the State's job descriptions as well as from summaries prepared by the State, to assist participants in matching their jobs to the State's benchmark jobs. The benchmark summaries included standardized level designations as well as typical minimum qualifications for participants to use as guidelines in matching.

- The survey instrument data collection form (DCF) was provided to the State for review and comment. Based on the State's comments, adjustments were made and the DCF was finalized (a copy of the data collection form is in Appendix C, with the job summaries beginning on page 15 of that document).

- The survey was then distributed to all of the defined organizations, and a series of follow-up calls were made throughout the course of the survey to the organizations to encourage participation, answer questions, and ensure data quality. The participants were given the option to complete the survey either in hardcopy or electronic format.

- Weekly status reports were sent to the State regarding updates on survey participation.

- FLA reviewed and entered the data collected from participants. We followed-up with participants to ensure the accuracy of benchmark matches and to ensure the validity of the salary data reported.

- We ask participants to match only those jobs within their organization that match at least 70% of the duties, responsibilities and functions as outlined in the benchmark job summary. We do not ask that participants rate the quality of the match as this introduces a level of subjectivity that can produce invalid results. This guideline follows standard compensation practices as endorsed by *WorldatWork*. If there are any questions in data matching, we reference job descriptions, organizational charts and other information to verify that the match is valid.

SURVEY METHODOLOGY, PROCESS, AND PROCEDURES

- FLA performed several reviews of the data to identify any extreme data and to ensure validity and reliability of the data. The following list of items were reviewed to ensure data accuracy: the range of salaries reported for each benchmark job (any abnormally high or low), extreme range spreads, relationship of minimums and maximums and steps in-between (i.e., minimums not higher than maximums), and relationship of progression in levels (i.e., a level II job should have a higher salary than a level I job), and similar consistency checks.

- Federal rates were adjusted to account for the 23% Alaska COLA.

- Because geographic markets are not only different across the nation but also within specific labor markets, geographic differential factors were collected by referencing the Economic Research Institute's Geographic Difference Reference Report. This geographic differential figure reflects wage and salary (cost of labor) differentials by each geographic location.

- In discussions with the State, it was determined that Anchorage would be considered the base City. Geographic differential figures were then collected for each organization, as well as for Anchorage, AK. All other areas are compared to the base (Anchorage). For example, if it is found that Olympia, WA has a geographic differential of 96.0 compared to Anchorage, this means that Olympia is 4% below the geographic market for Anchorage. Thus, Olympia's data were increased by 4% to equate to the Anchorage geographic market. A table outlining the differentials for the organizations is shown in Appendix B.

- Applying geographic differentials is a sound compensation practice in an effort to arrive at a more precise figure for use in analyzing and setting pay. Just as data are trended forward to be effective for a current point in time, data should be adjusted to reflect cost of labor differences between geographic areas.

- This geographic differential differs from the recent cost of living differentials study that the State has access to. Any cost of living differentials that exist for certain locations within the State of Alaska will be addressed by the State Personnel Department.

SURVEY METHODOLOGY, PROCESS, AND PROCEDURES

- Although data were sent to us in many different formats, all salary data were adjusted to reflect annual salaries based on 1,950 hours per year which is a 37.5 hour work-week (with the exception of some specific jobs that have a different base), to make consistent comparisons with the State of Alaska base hours, and were adjusted for the Anchorage geographic labor market. Thus, any anecdotal or contract information you may receive from other sources may not match the figures we are reporting.

- We also follow the U.S. Department of Labor guidelines that states that 5 job matches should exist per job for drawing conclusions. Therefore, we did not calculate statistics on jobs with fewer than 5 job matches. Where published sources were included as a job match, the number of matches were irrelevant since many organizations are represented within each published source match.

- Once the survey analysis and report was completed, it was submitted internally through our firm's quality control process for review before it was submitted to the State of Alaska.

BENEFITS OVERVIEW

- Detailed responses by both the State and the market to the benefits questions are provided in individual tables and summarized beginning in Appendix A on page 22 of this report.

- The table below shows the various benefit categories and the relationship between the State and the market.

Benefit Item	How the State of Alaska Compares to Market
Monthly employer premium cost for family medical, dental, and vision	Alaska provides less than entire market but more than other states
Annual paid holidays, floating holidays	Alaska provides 1 more day offered/year
Annual paid leave (paid-time-off, vacation days, sick leave)	Alaska provides more days offered/year
Banking of unused leave	Varies, but comparable

SALARY COMPARISONS OVERVIEW

- Summary charts were prepared to reflect the relationship of the State's pay to market pay on a benchmark by benchmark basis, for the salary figures collected (labeled benchmark comparison charts). These summary charts exclude the Vessel Worker benchmarks (#'s 175-179), since this information was gathered as information-only for the State and is shown in the detailed summary sheets in Appendix B.

- As requested by the State, one set of these benchmark comparisons is shown comparing to the market median, which is the same as the 50th percentile, (set 1), one set is shown for the market 60th percentile (set 2), and one set is shown for the market 65th percentile (set 3).

    - the market median (or 50th percentile) represents the salary figure that is in the middle of all the rates reported, where 50% of the rates are below it, and 50% of the rates are above it
    - the market 60th percentile represents the salary figure where 60% of the rates are below it, and 40% of the rates are above it
    - the market 65th percentile represents the salary figure where 65% of the rates are below it, and 35% of the rates are above it

- The salary data reflect adjustments to the Anchorage market and 1,950 hours per year, which is a 37.5 hour work-week (with the exception of specific jobs that have different base hours - these are noted in a table in Appendix B).

- For the State of Alaska, the range maximum reflects the step after 30 years, with the exception of specific jobs that reflected either 15 years (labor and trades jobs), 18 years (correctional officers), or 25 years (troopers and lieutenants, airport public safety, court services officers, deputy fire marshals, corrections superintendents, and justice and probation officers).

- Each salary figure is referenced from the individual summary sheet for each benchmark (found in Appendix B). The market salary figures exclude the State's data.

- Benchmarks where fewer than 5 organizations reported job matches were excluded from any analyses because fewer than 5 job matches to a given benchmark are considered an insufficient sample size for drawing conclusions. Five (5) of the benchmarks had fewer than 5 job matches and therefore these benchmarks are noted on each chart with an "n/a" in the market columns. In addition, any benchmarks that may have had 5 job matches, but did not have any figures reported for a particular category (step), are also shown as "n/a" in the market columns.

SALARY COMPARISONS OVERVIEW

- Note that not all organizations reported figures in all of the requested categories (flat rate salary, entry (minimum) salary, salary after 5 years, salary after 10 years, and maximum salary). Therefore, depending on how each organization's salary schedules are set-up and how they reported their data, the resulting figures calculated in the analysis will not relate to each other and also will not necessarily progress in value from entry to 5-year to 10-year to max because of these differences in reporting. In addition, in those cases where a single rate is reported for a particular category, that same figure will be referenced for each of the differing summary statistics (i.e., a particular rate may be the same for the 50th, 60th, and 65th percentile report).

- In each comparison, the percentage difference has been calculated between the State's salary figure and the market salary figure, in terms of the State's salary. For example, a positive percentage figure indicates that the State pays *above* the market, and a negative figure indicates that the State pays *below* the market. This percentage difference is shown for each benchmark job, and as an aggregate figure of all jobs combined, at the bottom of the chart.

- The aggregate percentage difference figure at the bottom of the page is not simply an average of all of the individual averages, but rather, reflects the sum of all State salary rates minus the sum of all market salary rates, divided by the sum of all State salary rates. This reflects a more accurate comparison rather than averaging averages.

- The benchmark comparison charts consisting of three percentile sets (as defined above) begin on the following page.

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IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT ANCHORAGE

ALASKA STATE EMPLOYEES ASSOCIATION/AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES LOCAL 52,	)	
Plaintiff,	)	
v.	)	
STATE OF ALASKA, DEPARTMENT OF ADMINISTRATION,	)	
Defendant.	)	Case No.: 3AN-25-04636CI

AFFIDAVIT OF KATE SHEEHAN

STATE OF ALASKA)
) ss.
JUDICIAL DISTRICT)

Kate Sheehan, being duly sworn, states as follows:

1. I am the Division Director of the Division of Personnel within the Alaska Department of Administration. I have been in this position since May 1, 2014. I have been in various positions within the Department of Administration since October of 2004.

2. The Division has the legal authority and ability to conduct a statewide salary study. We regularly conduct similar studies on smaller scales internally, such as classification studies for a limited number of job classes. However, we regularly contract out large statewide studies, because the hours involved in

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conducting robust statewide studies would be burdensome on our staff, and outside contractors may have expertise and access to data that our staff lacks. For example, the Division contracted out the statewide salary study in 2009 and the statewide pay plan and classification study in 2013. For this salary study, Governor Dunleavy again decided to request funding from the legislature to contract out the salary study rather than conduct it internally.

3. Many variables go into the design of a robust salary study, and the Division works with the contractor to make those design decisions. Some of these variables include which employers to survey to obtain comparable salary information, how many employers to survey, what questions to ask employers in those surveys, what markets to compare to Alaska markets, and so forth. There are also policy decisions, such as those surrounding the State's compensation philosophy and the target market position, and the Division collaborates with the contractor to inform direction on the report in these areas.

4. I was employed with the Division in 2009 when the last salary study was conducted, and I recall that the Division engaged in deliberative back-and-forth with the contractor for that study before the study was finalized and released. I was also employed with the Division in 2013 and I recall that the Division engaged in deliberative back-and-forth with the contractor for the statewide pay plan and classification study before the study was finalized and released.

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5. When contracting for this salary study, I expected that the Division would engage in deliberative back-and-forth with the contractor before the study would be finalized and released.

6. This kind of exchange with contractors is no different from the kind of deliberative back-and-forth that we engage in internally within the Division when conducting smaller-scale studies like classification studies for a limited number of job classes. One or more staff members will research the study and prepare drafts for their supervisor, who may send it back for further research or additional analysis or provide policy direction before approving it to be finalized and published.

7. When we contracted with Segal for this salary study, the original contract schedule accounted for the possibility of this type of back-and-forth. It required the contractor to provide a final report by June 30, 2024 but the contract period of performance continued until November 30, 2024. It intentionally built in time to allow additional work with the contractor after June 30, 2024, if necessary.

8. The Division has held approximately weekly meetings with Segal since December 2023 to address their progress and discuss variables that go into the salary study. I have attended some of these meetings personally. The Governor's Deputy Chief of Staff has also attended some of those meetings. Classification Manager Brittany Patzke, who is the current project manager for this contract, has attended these meetings since April 2024. The prior Classification Manager, Kate Orozco, attended these meetings from December 2023 – April 2024. At these meetings, sometimes the Division and Governor's Office accepts the contractor's recommendations, sometimes

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we collaborate with the contractor to reach consensus, and sometimes I or the Governor's Office gives direction to the contractor, such as on policy decisions.

9. I was dissatisfied with the early drafts of the salary study from Segal, in that they did not reflect the State's policy choices for data analysis, and I found the narrative description in the report to be lacking in some areas. Among other things, I instructed the contractor to provide new drafts based on State policy choices. The four drafts provided on June 28 are actually alternate versions reflecting two different policy options.

10. After reviewing the June 28 drafts, in consultation with the Governor's Chief of Staff and later the Deputy Chief of Staff, it was determined that more work needed to be done by the contractor to make the study as robust and reliable as possible. Among other things, we instructed the contractor to solicit salary data from additional peer/comparable jurisdictions, as well as factor in investments the State made in salaries through collective bargaining and the implementation of Senate Bill 259. I also did not believe that the June 28 draft reports contained all the elements that the contractor was contractually required to provide and instructed the contractor to address those elements.

11. The contractor provided a timeline for completing the additional work. The timeline was specifically discussed and considered with the administration's objective of releasing the study during the legislative session. The contractor's timeline indicates they will have a full draft report ready by March 31, 2025. Again, understanding that more deliberative back-and-forth may be necessary before

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finalization and release, the contract was amended and extended until June 30, 2025. However, we hope to have the report finalized and released before that. Ideally, we will be able to release the final while the legislature is still in session.

12. We have not received any further drafts of the salary study report from the contractor since July of 2024.

13. The Division has not used the draft salary study reports received from the contractor for any purpose and does not intend to. Now that the Division and Governor's Office have identified the additional work to be completed on the salary study, we have no further use for these drafts. All the draft reports and sets of draft exhibits are superseded and/or obsolete. Neither the Division nor the Department of Administration has any administrative or management need for them.

14. There is nothing unusual about this type of contract amendment and extension for this type of contract. I would consider this type of give-and-take, additional work, amendment and extension to be business as usual.

15. The Union's statement that these extensions were "an attempt to keep the final Salary Study secret for the duration of the ASEA negotiations" is not correct.

16. The salary study will look at benchmark jobs that span the entire classification outline, which consists of over 1,000 job classes. The benchmark jobs in the salary study encompass 10 state employee unions, as well as nonunionized partially exempt employees. The contracts of the various unions expire on staggered schedules,

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and in any given year the Division is in bargaining with one or more unions. This salary study is not specific to ASEA.

17. Although State employee negotiated agreements can be no longer than 3 years, they can be shorter. If ASEA considers the results of the salary study crucial to its bargaining position, it could bargain for a short extension of the existing contract, or bargain for a short-term contract and return to the table after release of the final salary study.

18. Although the Division will use the salary study to inform decisions about whether and how to amend the State's classification and pay plan, the final salary study itself has no legal effect. Classification and pay plans are not tied to the results of the salary study, and nothing changes automatically upon finalization of the study. Following finalization of the study, the Division will most likely conduct a comprehensive analysis of study results in the context of the entire classification and pay plan to inform next steps and policy decisions. Those next steps and policy decisions would be made by the governor, and would ultimately have to be funded by the legislature.

19. The Union's statement that "the Department know[s] it would have to substantially increase the salaries of State employees across the board if the Salary Study went public" is not accurate.

20. I am concerned that if the Court orders the Division to release these drafts, there will be a negative effect on the next draft that we are expecting to receive from the contractor on March 31, 2025. If the contractor has just had their prior drafts

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raked over in the public eye, they may be less frank and forthright with their analysis and opinions, and they may be less likely to ask for Division input in their next draft.

21. I am also concerned that if the Court orders the Division to release these drafts, Segal and other quality contractors will be less likely to bid on future RFPs that the State issues. Quality contractors do not want to become involved in political imbroglios or have their drafts picked over in the media. They may shun future State contracts as not worth the aggravation of having their drafts released and made part of political battles.

22. I am also concerned that if the Court orders the Division to release these drafts, the public will be misled by them. There is a high level of public and media interest in the salary study, but most members of the public do not have the technical expertise to understand the shortcomings in the drafts that needed to be addressed. The Division will have to conduct outreach, and answer questions from the public, legislators and the media, to try to provide context for these drafts, which will be significant burden on the Division.

23. As a case in point, even ASEA, whose staff are much more sophisticated in this arena than most members of the public, misconstrued what little privileged data they were able to acquire in an unredacted version of a communication with the contractor. The unredacted communication instructs the contractor to look at one market definition based on the 50th percentile and another at the 65th percentile. On page 6 of their Motion for Preliminary Injunction, ASEA interprets this as follows: "the unredacted Amendment 2 confirms that the Department commissioned a revised salary

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study that would generally decrease the cost to the State by 15%." But the salary study does not bind the State to implementing any particular raise for State employees. And even more, ASEA's statement inaccurately implies that the difference between looking at the 50th and 65th percentile market definitions is 15% of salary. Not so. The 50th percentile is the median salary in the surveyed range. The 65th percentile is the salary in the surveyed range where 65% of data points are below and 35% are above. If the spread of surveyed employers is very small—say, the lowest salary in the surveyed range is $70,000 and the highest salary in the surveyed range is $75,000, the difference between the median salary and the 65th percentile salary will be much less than 15%. In fact, it would only be by mere coincidence if the difference in salaries between those two data points were ever actually 15%. So, for multiple reasons, the Union is incorrect to say that looking at the 50th versus 65th percentile would "generally decrease the cost to the State by 15%."

24. Furthermore, because they do not understand the technical issues, members of the public, legislators and the media may be confused about why the Division has not taken action based on the drafts. Worse still, the public may demand action based on them, artificially forcing premature action on unreliable data that does not directly represent every job class in the State's classification outline.

25. We intend to complete and release the final salary study as expeditiously as possible, consistent with the administration's objective of releasing the study during the legislative session.

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KATE SHEEHAN

Subscribed and sworn to before me on February 27th, 2025.

Notary Public in and for Alaska
My Commission Expires: With Office

STATE OF ALASKA
OFFICIAL SEAL
Brook Riley
NOTARY PUBLIC
My Commission Expires With Office

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IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT ANCHORAGE

ALASKA STATE EMPLOYEES ASSOCIATION/AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES LOCAL 52,	)	
Plaintiff,	)	
v.	)	
STATE OF ALASKA, DEPARTMENT OF ADMINISTRATION,	)	
Defendant.	)	Case No.: 3AN-25-04636CI

AFFIDAVIT OF BRITTANY PATZKE

STATE OF ALASKA)
) ss.
JUDICIAL DISTRICT)

Brittany Patzke, being duly sworn, states as follows:

1. I am a Classification Manager for the Division of Personnel ("the Division") within the Alaska Department of Administration. I have been in this position since April 2024. I have also been the project manager for the Segal salary study contract since May 2024.

2. The Division has received multiple iterative drafts of the salary study report, including draft exhibits both embedded in the report and as separate documents, from Segal and provided feedback on them. I have reviewed all materials the Division has received from Segal and identified 9 drafts of the salary study report

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and 6 sets of draft exhibits, received on May 15 (draft report), May 31 (draft report and one set of draft exhibits), June 10 (draft report), June 14 (two draft reports and one set of draft exhibits), June 28 (two draft reports and two sets of draft exhibits), and July 18 (two draft reports and two sets of draft exhibits), 2024. All these documents were labeled "draft" in the text and/or had "draft" in the file name. None were accepted to become final, and none are signed.

3. I have reviewed the documents that are ready to be filed under seal with the court for possible *in camera* review, and the spreadsheet identifying the date on which the Division received them and the file name associated with them, and affirm that the information in that spreadsheet is true and correct to the best of my knowledge.

Brittany Patzke
BRITTANY PATZKE

Subscribed and sworn to before me on February 27, 2025.

Kelley N. Roberson
Notary Public in and for Alaska
My Commission Expires: With Office

State of Alaska
NOTARY PUBLIC
Kelley N. Roberson
My Commission Expires With Office

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IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT ANCHORAGE

ALASKA STATE EMPLOYEES ASSOCIATION/AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES LOCAL 52,	)	
Plaintiff,	)	
v.	)	
STATE OF ALASKA, DEPARTMENT OF ADMINISTRATION,	)	
Defendant.	)	Case No.: 3AN-25-04636CI

[PROPOSED] ORDER DENYING MOTION FOR PRELIMINARY INJUNCTION

THIS COURT, having considered the Plaintiff's Motion for Preliminary Injunction (the "Motion"), the Defendant's opposition, the Plaintiff's reply thereto, and oral argument hereby DENIES the motion.

In this suit, Plaintiff ASEA (the "Union") asserts a claim under the Alaska Public Records Act ("APRA"). Specifically, under AS 40.25.125, a person who has requested a public record and had access to the record wrongly denied or obstructed may bring an action in superior court to enjoin the denial or obstruction of the request. On September 26, 2024, the Union submitted a public records request to the Agency for "[t]he *results* of any salary study conducted by the State and *completed* within the last six (6) months."[1] (Emphases added.) The State of Alaska, Department of Administration

[1] The salary study is a yet-to-be-finalized report comparing the salaries of select positions with the State of Alaska against analogous markets.

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(the "Agency") denied the request by not responding within ten business days. Further, the Agency issued a formal written denial to the public records request on January 16, 2025. The Agency explained that "the study has not been completed, DOA has not received the preliminary or final statewide salary study and, therefore, has no records responsive to this request." Nearly a month later, claiming that it needs some of the records at issue immediately, the Union brought suit and filed the Motion at issue, requesting "all drafts of the Statewide Salary Study."

To successfully bring suit for an injunction under APRA, a plaintiff must prove at least two elements. First, the person must request the public record at issue. Second, only after making a specific request can the requester bring suit for injunctive relief to access the records at issue. The request for an injunction must seek access to the same records that the person sought in the underlying request.

Here, the Union's claim fails because it lacks this thread: it never requested the records that it now seeks via injunction. On September 26, 2024, the Union asked for "[t]he *results* of any salary study conducted by the State *and completed* within the last six (6) months." (Emphases added.) It did not seek drafts—only the completed results of the salary study. But now, in the Motion, the Union has broadened its request to "all *drafts* of the Statewide Salary Study." (Emphasis added.)

Agencies have no obligation to produce records that were never requested, so the Court cannot enjoin them from denying or obstructing access to non-responsive records. Indeed, APRA's implementing regulations require the requester to "describe the public records sought in sufficient detail to enable the public agency to which the request is

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made to locate the records."[2] And, once the requester submits its request, the agency is "bound to read it as drafted, not as either agency officials or [the requester] might wish it was drafted."[3] That is, an "agency is not obligated to rewrite the request to ask for more than the requester did."[4]

Indeed, if agencies and courts did "not hold . . . requesters to their word—especially sophisticated [requesters]" like the Union—then "agencies will always have to err on the side of the broadest plausible interpretation, forcing them to do more work than even the requesters themselves may have wanted."[5] The APRA attempts to avoid this sort of administrative burden on public agencies.[6]

In short, the Court must "give effect to an apparently deliberate decision" to make the request it submitted.[7] Here, that means concluding that the Court cannot issue a preliminary injunction for the records sought in the Motion because the Union never submitted a request for those records to the Agency.

There could have been a simple fix; the Union could have submitted another public records request. But it did not ever submit a request for drafts to the Agency.

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2 2 AAC 96.315(a).

3 *Miller v. Casey*, 730 F.2d 773, 777 (D.C. Cir. 1984).

4 *Canning v. U.S. Dep't of State*, 134 F. Supp. 3d 490, 517 (D.D.C. 2015) (affirming agency's denial of records request where the requestor subsequently claimed that his request was broader than its plain terms).

5 *Am. Oversight v. U.S. Dep't of Justice*, 401 F. Supp. 3d 16, 36 (D.D.C. 2019).

6 *See* 2 AAC 96.315(a) (noting that if a public records request is too general, then the public agency must clarify with the requester in order to, among other things, "lessen the administrative burden of processing an overly broad request")

7 *Id.*

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Rather, its counsel wrote a letter to the Deputy Attorney General inaccurately characterizing the Union's prior public records request as including drafts, when it did not. This letter was not, and did not purport to be, a new public records request.

Therefore, the Union has never submitted an APRA request for drafts of the salary study, and so no such request has been denied. For that reason, the Court lacks jurisdiction to consider the Union's request for an injunction under AS 40.25.125 for the drafts of the salary study and therefore denies the Motion.[8]

IT IS SO ORDERED.

DATED: _____

_____
Hon. Ian Wheeles
Superior Court Judge

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[8] Even if this finding were not jurisdictional, the Court would find the same point dispositive under either standard for issuing a preliminary injunction. That is, under the balance-of-hardships standard, the Union has not raised serious and substantial questions going to the merits of the case because it never submitted a public records request for drafts of the salary study. That precludes the Union from obtaining a preliminary injunction under that standard. Likewise, the Union cannot make a clear showing of probable success on the merits where it cannot prove an essential element of an APRA claim, which precludes the Union from obtaining a preliminary injunction under that standard.