anc.law.ecf@alaska.gov

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

American First Legal Foundation, Plaintiff, v. Alaska Judicial Council, Defendant.	)	Case No. 3AN-26-09043CI

STATE OF ALASKA AMICUS BRIEF

The State of Alaska has a direct and continuing interest in the transparency of state government and in the fairness of the process by which Alaska's judges are chosen. The Alaska Judicial Council exercises extraordinary gatekeeping authority over Alaska's judiciary. It decides which applicants the Governor may consider—and which he may not. Once the Council excludes an applicant, the Governor cannot appoint that person, regardless of the applicant's qualifications or the Governor's judgment. Nor may the Governor simply reject the Council's slate and demand additional names. The Governor must appoint from the Council's nominees within 45 days.[1] Appointed judges then exercise enormous power over the lives, liberty, and property of Alaskans. The public is entitled to know how the gatekeepers to that power do their work.

America First Legal Foundation (AFL) asked the Council for records bearing on whether race, sex, or similar characteristics play a role in judicial selection. In connection with the selection of justices and judges, the Council's bylaws expressly

[1] Alaska Const. art. IV, § 5.

DEPARTMENT OF LAW
OFFICE OF THE ATTORNEY GENERAL
ANCHORAGE BRANCH
1031 W. FOURTH AVENUE, SUITE 200
ANCHORAGE, ALASKA 99501
PHONE (907) 269-5100

direct it to make "every effort to promote diversity, including gender and ethnic diversity." AJC Bylaws art. I, § 2. The same by-laws include criteria that are facially neutral, such as "life experience" and "demonstrated commitment to equal justice and the legal needs of the diverse communities of Alaska," but AFL raises the concern that such criteria may serve as proxies for considerations the law forbids. Compl. Ex. A at 2–3; AJC Bylaws art. I, § 2. The State does not prejudge that question, but the concern is a serious one. Calling a practice "diversity, equity, and inclusion" does not make it lawful, and what the law forbids directly it also forbids indirectly.[2] The Council's own bylaws commit its members not to "discriminate on any basis prohibited by law." AJC Bylaws art. I, § 1.

The Council's extraordinary gatekeeping authority makes these concerns particularly troubling. An applicant excluded for an improper reason has little practical incentive to challenge the Council, knowing that the same body will control whether the applicant is considered for future vacancies. And meaningful legal remedies may be difficult to obtain. Whether the Council qualifies as an employer or employment agency under Title VII presents substantial legal questions. The possibility that unlawful discrimination could escape judicial scrutiny makes public access to the Council's records all the more important.

Transparency serves the Council as much as anyone. If AFL's concerns are unfounded, the records will show it, and public confidence in the merit selection system

[2] *See* Alaska Const. art. I, §§ 1, 3; *Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll.*, 600 U.S. 181, 230 (2023).

DEPARTMENT OF LAW
OFFICE OF THE ATTORNEY GENERAL
ANCHORAGE BRANCH
1031 W. FOURTH AVENUE, SUITE 200
ANCHORAGE, ALASKA 99501
PHONE (907) 269-5100

will be stronger for the showing. The records AFL seeks—including scoring criteria, applicant evaluations, and communications concerning demographic considerations—may reveal whether the Council evaluates applicants according to lawful, merit-based criteria. What cannot be accepted is the position the Council takes here: that the Public Records Act binds it only as far as its own bylaws allow, and that no court may ask whether it is complying until the Council itself decides it is finished. The State submits this brief to address those legal positions. It takes no view on whether any particular record must ultimately be disclosed.

ARGUMENT

I. The Public Records Act applies to the Council as a matter of statute, not by the Council's grace.

The Council's motion treats the Public Records Act as though it reached the Council only because Council bylaw Article XI incorporates it. Mot. at 4. That inverts the relationship between statute and bylaw. The Act opens "the public records of all public agencies" to inspection "[u]nless specifically provided otherwise."[3] A "public agency" includes any "department, institution, board, commission, division, authority, public corporation, *council*, committee, or other instrumentality of the state."[4] The Alaska Judicial Council is, by name and by constitutional design, a council and an instrumentality of the State.[5]

The Act also directs the administrative director of the Alaska Court System to

---

3 AS 40.25.110(a).

4 AS 40.25.220(2) (emphasis added).

5 Alaska Const. art. IV, § 8.

DEPARTMENT OF LAW
OFFICE OF THE ATTORNEY GENERAL
ANCHORAGE BRANCH
1031 W. FOURTH AVENUE, SUITE 200
ANCHORAGE, ALASKA 99501
PHONE (907) 269-5100

DEPARTMENT OF LAW
OFFICE OF THE ATTORNEY GENERAL
ANCHORAGE BRANCH
1031 W. FOURTH AVENUE, SUITE 200
ANCHORAGE, ALASKA 99501
PHONE (907) 269-5100

"supervise and adopt procedures for the operation and implementation of AS 40.25.110–40.25.140 by public agencies in the judicial branch."[6] The Council sits in Article IV, the Judiciary Article. Whether it is best described as a judicial-branch agency or as an independent constitutional body, the result is the same: if it is in the judicial branch, AS 40.25.123(c) confirms coverage; if it stands apart from every branch, it is still a "council" and an "instrumentality of the state" under AS 40.25.220(2).[7]

The Council's response to AFL's complaint is that the executive-branch regulation AFL cited, 2 AAC 96.325(a), does not apply to it. Mot. at 3–4. The State, which administers that regulation, does not dispute that its ten-working-day deadline governs executive-branch agencies.[8] But the point does not carry the Council where it needs to go. AFL's claim arises under AS 40.25.125, and the statutory duty it enforces comes from AS 40.25.110 and .120. Those provisions bind the Council whether or not any regulation sets a deadline, and whether or not the Council's bylaws choose to restate them. The bylaw the motion quotes is, at most, an acknowledgment of an obligation the Council already had.

II. The Council's constitutional authority to adopt rules is not authority to rewrite the Public Records Act.

The Council leans on the provision that it shall "act by concurrence of four or

---

6 AS 40.25.123(c).

7 1984 Op. Alaska Att'y Gen. (Oct. 3; No. 366-625-84).

8 2 AAC 96.900(7).

more members and according to rules which it adopts."[9] That language governs how the Council conducts its own business: its voting, its meetings, its procedures for evaluating applicants. It does not say the Council may decide which of its records the public may see, and it says nothing about displacing a statute of general application. The very next section of Article IV confirms that the Council "shall perform other duties assigned by law."[10] Public records duties assigned by the legislature are such duties.

The Alaska Supreme Court has rejected a similar claim by a government body with far broader self-governing powers than the Council's. In *City of Kenai v. Kenai Peninsula Newspapers, Inc.*, the Municipality of Anchorage, a home rule municipality, had enacted a records ordinance exempting personnel files, including employment applications.[11] The court held that, to the extent the ordinance barred disclosure the state statute required, it was "directly inconsistent with state law and cannot be accorded substantive effect." *Id.* A local body could adopt records rules "consistent with state law," but exceptions to disclosure were permitted only "on the basis of need," as determined through the balancing the statute permits.[12] If a home rule municipality cannot legislate around the Act, a council with authority to adopt rules for its own proceedings cannot either.

The statute's structure points the same way. Where the legislature wanted a

DEPARTMENT OF LAW
OFFICE OF THE ATTORNEY GENERAL
ANCHORAGE BRANCH
1031 W. FOURTH AVENUE, SUITE 200
ANCHORAGE, ALASKA 99501
PHONE (907) 269-5100

---

9 Alaska Const. art. IV, § 8; Mot. at 4.

10 Alaska Const. art. IV, § 9.

11 642 P.2d 1316, 1325 (Alaska 1982).

12 *Id.*

judicial-branch rule to vary the Act, it said so expressly and specified the instrument: "the judicial branch may establish by court rule reasonable fees."[13] And where judicial-branch procedures are needed, the legislature assigned that task to the administrative director of the court system, not to each judicial-branch agency individually.[14] It is unclear whether the administrative director adopted or approved Article XI of the Council's bylaws. To the extent the bylaws purport to supply judicial-branch procedures under the Act, they may not have been adopted by the official the statute designates. And to the extent they purport to create substantive exemptions, no one has that power except the legislature.[15]

III. The Council's categorical confidentiality bylaws illustrate why its own rules cannot be the measure of its obligations.

Article XI, section 2 of the bylaws declares entire categories of records confidential, including all "[s]olicited communications relating to the qualifications" of applicants and all "[u]nsolicited communications" about applicants "where the source requests confidentiality." AJC Bylaws art. XI, § 2(1)–(2). The bylaw grounds these categories in the constitutional right to privacy. *Id.* § 2. The Alaska Supreme Court's decisions are difficult to square with that approach. The concern is heightened by the Council's separate requirement that members preserve covered confidential information in perpetuity, even after their service ends. Internal confidentiality obligations cannot

---

13 AS 40.25.110(h).

14 AS 40.25.123(c).

15 AS 40.25.120(a)(4) (excepting records "required to be kept confidential by . . . state law").

DEPARTMENT OF LAW
OFFICE OF THE ATTORNEY GENERAL
ANCHORAGE BRANCH
1031 W. FOURTH AVENUE, SUITE 200
ANCHORAGE, ALASKA 99501
PHONE (907) 269-5100

decide the scope of a public right created by statute.

In *Doe v. Alaska Superior Court*, citizens had written the Governor about a candidate for the State Medical Board.[16] The court held that "the right of privacy is not implicated when an individual voluntarily sends an unsolicited letter to a public official commenting on a public issue such as the appointment of a state officer." *Id*. at 629. Privacy protects sensitive personal information about oneself, not opinions offered to influence a public decision; such letters "lost whatever private character they originally had."[17] The court added that disclosure "furthers the public interest by encouraging public awareness of potential appointees as well as public scrutiny of the selection process, including the extent of lobbying pressure."[18] Under *Doe*, a commenter's request for confidentiality does not convert a public letter into a private one.

City of Kenai teaches the same lesson about promises. Anchorage had expressly promised police chief applicants confidentiality.[19] The court nonetheless held that "the law does not permit a confidential application" for a high public office, because "[t]here is a strong public interest in disclosure of the affairs of government generally, and in an open selection process for high public officials in particular."[20] Judgeships are among the highest offices the State fills.

DEPARTMENT OF LAW
OFFICE OF THE ATTORNEY GENERAL
ANCHORAGE BRANCH
1031 W. FOURTH AVENUE, SUITE 200
ANCHORAGE, ALASKA 99501
PHONE (907) 269-5100

16 721 P.2d 617, 619 (Alaska 1986).

17 *Id*. at 629–30.

18 *Id*. at 622.

19 642 P.2d at 1318.

20 *Id*. at 1323–24.

DEPARTMENT OF LAW
OFFICE OF THE ATTORNEY GENERAL
ANCHORAGE BRANCH
1031 W. FOURTH AVENUE, SUITE 200
ANCHORAGE, ALASKA 99501
PHONE (907) 269-5100

The State does not contend that nothing in the Council's files may be withheld. *Doe* expressly reserved whether a letter "directly solicited by a public official, accompanied by an implied or express promise of confidentiality," would be protected.[21] Genuinely sensitive personal information, such as medical or financial details, may warrant protection. And internal deliberative material may be privileged. But *Doe* also prescribes how such claims must be made—the agency must "specifically identify and describe the documents sought to be protected and explain why they fall within the scope of the [] privilege," after which the court balances the State's need for confidentiality against the public's interest in disclosure.[22] A bylaw that labels whole categories confidential in advance does the opposite. The Council should protect what actually warrants protection, identify the legal basis for each withholding, and release the rest. A bylaw calling something confidential does not settle the question; the law and, ultimately, the courts do.

IV. The absence of a ten-working-day deadline does not defeat an obstruction claim, and the claim does not wait on the Council's say-so.

The Council argues that because no ten-working-day deadline applies to it, and because it has not formally denied the request, there is nothing for the Court to review. Mot. at 4–6. The statute says otherwise. Section 125 authorizes the superior court to enjoin anyone who "denies, obstructs, or attempts to obstruct" inspection of a public

---

[21] 721 P.2d at 630 n.19.

[22] *Id.* at 626; *see also, e.g.*, *Griswold v. Homer City Council*, 428 P.3d 180, 186–87 (Alaska 2018).

record.[23] The legislature chose to reach obstruction, not only denial. And it provided that a requester "may seek injunctive relief under this section without exhausting the person's remedies under AS 40.25.123 – 40.25.124."[24] An agency need not issue a final decision before its compliance can be tested; that is the point of the no-exhaustion clause.

Whether there is a regulatory deadline goes to what counts as unreasonable delay, not to whether delay can ever be actionable. An agency with no fixed deadline still must respond within a reasonable time; otherwise, inaction becomes a complete defense. AFL alleges nearly three months with nothing beyond a two-word acknowledgment of receipt. Compl. ¶¶ 7–8, 11 & Ex. B. On a Rule 12(b)(6) motion, those allegations are taken as true. Mot. at 2–3 (citing *Dworkin v. First Nat'l Bank of Fairbanks*, 444 P.2d 777, 779 (Alaska 1968)). Whether the delay amounts to obstruction is a question of fact the Court cannot resolve against AFL on the pleadings.

The Council's contrary account, that it is "actively processing" the request, depends on assertions outside the complaint. Mot. at 4–6. Those assertions cannot support dismissal under Rule 12(b)(6) without conversion to summary judgment.[25] Nor do they defeat jurisdiction under Rule 12(b)(1). The motion offers no production date and no schedule. The State does not doubt that a broad request takes time, and the Court may well consider the scope of the request in fashioning relief. But time is a remedy

---

23 AS 40.25.125.

24 *Id.*

25 Alaska R. Civ. P. 12(b).

DEPARTMENT OF LAW
OFFICE OF THE ATTORNEY GENERAL
ANCHORAGE BRANCH
1031 W. FOURTH AVENUE, SUITE 200
ANCHORAGE, ALASKA 99501
PHONE (907) 269-5100

question, not a reason to grant the motion to dismiss.

The Council's theory has no stopping point. If no claim is ripe until the agency announces it is finished, the agency alone decides when, or whether, its compliance can be reviewed. That is especially troubling here. The Act requires the procedures governing judicial-branch agencies to include an administrative appeal opportunity.[26] The Council identifies none. A requester with no administrative appeal opportunity and no access to a court would have no remedy at all. The legislature foreclosed that outcome when it authorized suit against obstruction without exhaustion.

CONCLUSION

The Alaska Public Records Act applies to the Alaska Judicial Council by its own terms. The Council's rulemaking authority does not permit it to narrow the Act, and its bylaws cannot substitute categorical labels for the document-specific showing Alaska law requires.

The stakes here are substantial. The Council exercises extraordinary power over who may become a judge in Alaska. Its decisions may be difficult to challenge, and improper considerations in judicial selection could evade meaningful judicial review. That makes transparency all the more important. The State does not ask this Court to decide whether discrimination occurred or whether any particular record must be disclosed. It asks only that the Council be held to the same law that binds every other public agency—and that the public's right to enforce that law not depend on the Council's willingness to comply.

---

[26] AS 40.25.123(e).

DEPARTMENT OF LAW
OFFICE OF THE ATTORNEY GENERAL
ANCHORAGE BRANCH
1031 W. FOURTH AVENUE, SUITE 200
ANCHORAGE, ALASKA 99501
PHONE (907) 269-5100

AFL has alleged a cognizable claim of obstruction under AS 40.25.125. The motion to dismiss should be denied.

DATED October 20, 2026.

CORI MILLS
ACTING ATTORNEY GENERAL

By: */s/ Charles J. Garland*
Charles J. Gartland
Civil Division Director
Alaska Bar No. 2509064

DEPARTMENT OF LAW
OFFICE OF THE ATTORNEY GENERAL
ANCHORAGE BRANCH
1031 W. FOURTH AVENUE, SUITE 200
ANCHORAGE, ALASKA 99501
PHONE (907) 269-5100

CERTIFICATE OF SERVICE

I certify that on October 20, 2026, the foregoing **State of Alaska Amicus Brief** was served on the following via the TrueFiling system:

Alexandra N. Dunn
Emily C. Percival
Robert A. Crossin
America First Legal Foundation
alexandra.dunn@aflegal.org
emily.percival@aflegal.org
bobby.crossin@aflegal.org

Thomas Amodio
Kevin Boots
Reeves Amodio LLC
Tom@reevesamodio.com
kevin@reevesamodio.com
staff@reevesamodio.com

/s/ Angela Hobbs
Angela Hobbs
Law Office Assistant III