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

AMERICA FIRST LEGAL)
 FOUNDATION,)
)
 Plaintiff,)
)
 v.)
)
 ALASKA JUDICIAL COUNCIL,)
)
 Defendant.)
 _____)

Case No.: 3AN-26-09043CI

#3

**PLAINTIFF’S RESPONSE IN OPPOSITION TO DEFENDANT’S MOTION TO
 DISMISS**

Plaintiff, America First Legal Foundation (“AFL”), through its counsel, submits this Response in Opposition to Defendant Alaska Judicial Council (“AJC”)’s Motion to Dismiss. AFL’s Complaint states a claim upon which relief can be granted, and Defendant’s motion should be denied.

INTRODUCTION

AFL’s Complaint is clear. The facts alleged are simple. AFL requested access to public records, the Defendant’s communication was scant or nonexistent concerning those records, and the Defendant ultimately failed to produce the records within a reasonable time. AFL’s Complaint does not “rel[y] entirely on an administrative regulation,” Mot. to Dismiss at 1, nor does the Complaint “alleg[e] that the AJC violated the law by failing to respond . . . within the ten-day timeframe” established by that regulation. Mot. to Dismiss at 3. AFL’s claim does not depend on the reference to the Alaska Administrative Code;¹ the claim stands on its own.

First, AFL states a claim under the Alaska Public Records Act (“APRA”)² which requires that public records be “open to inspection by the public under reasonable rules.” AS 40.25.110(a). The Defendant failed to adopt rules governing the timing of public records productions, so a general reasonableness standard applies. After its initial two-word confirmation of receipt, the Defendant was silent until this suit was filed 89 days later. That is well outside “reasonable,” and constitutes obstruction.

Second, AFL’s Complaint alleges an actual case and controversy. Under AS 40.25.125, a requester may seek injunctive relief without awaiting final agency action. Additionally, AFL has suffered a cognizable injury—the abridgment of its fundamental right of access. Finally, no records have been produced, so the controversy remains live.

Because the Defendant has not adequately challenged the legal sufficiency of AFL’s claim, the court should deny the Motion to Dismiss.

¹ AFL concedes that the Code does not apply to the Defendant because it is a judicial branch agency. As explained below, AFL’s citation to the Code is not a pleading deficiency and, given the 10-day deadline for responding to a public records request found in the Alaska Court System’s Administrative Bulletins, Alaska Ct. Sys. Admin. Bull. No. 12 § V(D)–(E) (amend. May 3, 2018), <https://perma.cc/7VFP-2FCH>, the Code citation is illustrative of a reasonable response timeframe.

² AS 40.25.110–40.25.295.

FACTUAL BACKGROUND

On June 5, 2026, AFL sent an APRA request to the Defendant seeking records concerning Diversity, Equity, & Inclusion in judicial selection. Compl. ¶ 6; Compl. Ex. A. Executive Director Susanne DiPietro replied, “Receipt confirmed,” the same day. Compl. ¶ 7. Nothing further was communicated to AFL. Compl. ¶ 8. After 89 days without a substantive response, production, extension notice, or estimated completion date, AFL filed the Complaint on September 2, 2026.

LEGAL STANDARD

Alaska is a notice-pleading state and its “preference is for nontechnical pleadings which are only required to state a claim for relief with brevity and clarity.” *Schaible v. Fairbanks Med. & Surgical Clinic, Inc.*, 531 P.2d 1252, 1256 (Alaska 1975). A pleading can be overcome by a motion to dismiss under Civil Rule 12(b)(6) only if “it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief.” *Id.* at 1257 (quoting *Conley v. Gibson*, 355 U.S. 41, 45–46 (1957)). This standard “tests the legal sufficiency of the complaint’s [factual] allegations,” and legal conclusions are not considered admitted. *Id.* (citing *Dworkin v. First Nat’l Bank of Fairbanks*, 444 P.2d 777, 779 (Alaska 1968)). When reviewing a Rule 12(b)(6) motion, courts will treat the factual allegations in the complaint as true, and draw reasonable inferences in favor of the complainant. *See Mitchell v. Bering Strait Sch. Dist.*, 586 P.3d 672, 679 (Alaska 2026). The court is required to accord the complaint a liberal construction “in order to achieve ‘substantial justice.’” *Schaible*, 531 P.2d at 1255 (quoting Alaska R. Civ. P. 8(f)).

A motion to dismiss under Rule 12(b)(1) for lack of subject matter jurisdiction asks whether a court has “the legal authority . . . to hear and decide a particular type of case.” *Nw. Med. Imaging, Inc. v. State Dep’t of Revenue*, 151 P.3d 434, 438 (Alaska 2006) (internal citation omitted). For actions seeking declaratory relief, all that is required is a “simple statement of facts demonstrating” jurisdiction and an actual case and controversy.

See Ruckle v. Anchorage Sch. Dist., 85 P.3d 1030, 1034 (Alaska 2004) (internal citation omitted).

Under the Alaska declaratory judgment act, ripeness, mootness, and standing are the elements that make up an actual controversy. *See Borer v. Eyak Corp.*, 507 P.3d 49, 57–58, 58 n.20 (Alaska 2022) (internal citation omitted). Courts do not apply any one formula to determine whether a claim is ripe, but rather balance “the fitness of the issues for judicial decision with the hardship to the parties of withholding court consideration.” *Id.* at 58 (internal quotations omitted). The question for this Court is whether AFL has suffered an injury or will suffer one in the future because of the Defendant’s actions. *See id.* Courts will also “refrain from deciding questions where the facts have rendered the legal issues moot.” *Mun. of Anchorage v. Anchorage Daily News*, 794 P.2d 584, 588 (Alaska 1990) (internal quotations omitted). “A claim is moot if it is no longer a present, live controversy” *Fairbanks Fire Fighters Ass’n, Loc. 1324 v. City of Fairbanks*, 48 P.3d 1165, 1167 (Alaska 2002).

ARGUMENT

The Defendant’s motion should be denied because (1) AFL stated a claim under AS 40.25.110; and (2) AFL’s Complaint alleges an actual case and controversy.

I. AFL stated a claim under AS 40.25.110.

First, AFL has stated a claim under the APRA by alleging that (1) AFL requested access to and inspection of the Defendant’s records, which are subject to disclosure under the APRA; and (2) the Defendant obstructed access to these records by ignoring AFL’s request for 89 days.

A. The Defendant’s records are subject to disclosure under the APRA.

The Defendant concedes that the AJC’s records are subject to disclosure under AS 40.25.120. *See* Mot. to Dismiss at 4 (citing the AJC bylaws).

However, the Defendant puts the cart before the horse in arguing that the “Council’s bylaws” subject it to the APRA, when it is the AJC’s existence as an agency of the judiciary which subjects it to the APRA. If the AJC’s bylaws ceased to exist, the AJC would still be required to adhere to the APRA requirements.

The Defendant appears to argue that it is *sui generis*, that it “is an independent constitutional council,” outside of, at least, the executive branch if not all branches. Mot. to Dismiss at 1 & 3–4. But the Defendant is, without a doubt, an agency of the judicial branch. The Defendant was created by Article IV of the Alaska Constitution, the Judiciary Article, and is chaired ex officio by the Chief Justice. Alaska Const. art. IV, § 8. The Alaska Court System identifies the Defendant as one of the “three separate entities” that make up the Alaska judicial branch. Alaska Court Sys., *Profile of the Alaska Court System 2026* 1 (2026), <https://perma.cc/BZ8D-9722>. It follows that the Defendant sits within the judicial branch for purposes of AS 40.25.123(c), which provides that: “The administrative director of the Alaska Court System shall supervise and adopt procedures for the operation and implementation of AS 40.25.110 – 40.25.140 by public agencies in the judicial branch.”

The Alaska Court System likewise lists the Defendant among its “Other Judicial Branch Agencies.” *Court System Information*, Alaska Ct. Sys., <https://perma.cc/R39N-USNR>. The Alaska Legislature treats the Defendant as a part of the judicial branch, has included the Defendant as a separate appropriation within the Judiciary budget, and describes all three judicial entities as “independent.” Alaska Legis. Fin. Div., *Legislative Fiscal Analyst’s Overview of the Governor’s FY2019 Request* 195 (2018), <https://perma.cc/SB6C-H49H>. Independence and judicial-branch status are compatible, and the Defendant’s independence does not exempt it from AS 40.25.123(c).

As such, AS 40.25.110—which applies the APRA to “all public agencies” including “council[s],” *see* AS 40.25.220(2)—applies to the Defendant under the plain statutory text. The Defendant is “an independent state agency,” *State v. Jeffery*, 170 P.3d 226, 238 (Alaska 2007) (Bryner, J., dissenting), but may be called upon to perform

functions assigned by law. Alaska Const. art. IV, § 9. Though the Defendant may be an independent council, it does not sit outside every branch of government and is not exempt from a statute that applies to public agencies, and that clearly applies to agencies of the judicial branch.

B. The Defendant obstructed AFL’s access to the records.

In spite of Alaska “state law and the court rules express[ing] a clear preference for public records to remain accessible,” *Johnson v. State*, 50 P.3d 404, 406 (Alaska Ct. App. 2002), the Defendant has obstructed AFL’s access to requested public documents by failing to make the records “available in a timely manner” and ultimately by ignoring the request. *See Hickel v. Se. Conf.*, 868 P.2d 919, 930 (Alaska 1994). The Defendant does not dispute that it has not produced the documents, nor does it dispute that it has been silent until now. The Defendant’s allegations of “actively processing the request,” Mot. to Dismiss at 5, are, at this stage, unfounded and unreliable.

First, the Defendant has failed to make the records “available in a timely manner.” *Hickel*, 868 P.2d at 930. The Defendant devotes its Motion to arguing that the ten-day Administrative Code deadline does not apply to it. However, nowhere does the Defendant argue that waiting almost three months—and until this lawsuit was filed—to communicate with AFL regarding production is reasonable.³ Public records are to be open to inspection “under *reasonable* rules.” AS 40.25.110(a) (emphasis added). Under the written guidelines regarding public records productions for courts and judicial agencies, a custodian of all “other” court and administrative records—besides case files—shall respond to a request for production within ten days, confirming receipt and providing specific information about production. Alaska Ct. Sys. Admin. Bull. No. 12 § V(D)–(E) (amend. May 3, 2018), <https://perma.cc/7VFP-2FCH>.

³ On September 24, 2026—22 days after AFL filed its lawsuit—counsel for the Defendant sent AFL a letter explaining in broad strokes the efforts of the AJC to respond to AFL’s “exceedingly broad” request and estimated it would take 100 hours to review and produce what will “likely be few” responsive, nonprivileged documents.

The Defendant confirmed receipt but failed to provide any information regarding production. It gave no notice of when records would be available, no reasons for delay, and no documents. Compl. ¶¶ 7–8, 11. Even accepting the Defendant’s assertion that AFL’s request is broad and sensitive, Mot. to Dismiss at 4–5, the answer to a complex request is a “response” explaining the delay and setting a time and place, not silence. Admin. Bull. No. 12 § V(E)(2). Regardless of whether the Court System’s Administrative Bulletin applies to the Defendant—we argue it does—the Bulletin and the ten-day deadline in the Administrative Code clearly “reflect an intent to promptly fulfill requests,” with the aim that requests be handled in a “timely, reasonable, and responsive manner” and that records be disclosed “in an expeditious manner.” *Basey v. Dep’t of Pub. Safety*, 462 P.3d 529, 534, nn.24–25 (Alaska 2020) (internal quotations omitted). A two-word response in an 89-day period is neither prompt nor reasonable.

Here, nearly three months passed with no response. The AJC gave no extension notice, no estimated date for production, no partial production, and no request for clarification or narrowing, even though AFL’s request invited contact to construe the request and facilitate efficient production. Compl. Ex. A, § V. The problem is not merely the length of the delay but the Defendant’s silence. The breadth and sensitivity of a request may require a communicated extension or a rolling production, but it does not justify silence. The ten-day benchmark was not offered to suggest that the Defendant is liable for missing that specific deadline. Whatever outer limit a reasonable time may have for a broad request, it does not stretch to unexplained silence of more than 60 workdays. Under Alaska law, “the scales must reflect the fundamental right of a citizen to have access to the public records as contrasted with the incidental right of the agency to be free from unreasonable interference.” *Gwich’in Steering Comm. v. State, Office of the Governor*, 10 P.3d 572, 579 (Alaska 2000) (internal quotations omitted). The Defendant’s administrative burden is, at most, an incidental interest, and it does not outweigh the public’s right to timely access.

Second, the Defendant ignored AFL's request. The Defendant's argument that the bylaws have "no ten-day limit," Mot. to Dismiss at 4–5, proves the point that the Defendant assumes no limit applies to it. Under the Defendant's reading, it could delay indefinitely (i.e., ignore) while still claiming to process the request. The Defendant has had every opportunity for at least 42 years, under its own asserted independence and as authorized by the Attorney General in 1984,⁴ to promulgate its own rules regarding public records productions.⁵ Article XI of the Defendant's bylaws addresses which records are public, confidential, or privileged, and the redaction and release of records. *AJC Bylaws, Article XI – Access to Council Records*, Alaska Jud. Council, <https://perma.cc/7PZR-AFAA>. It sets no deadline and no procedure for responding to a request.

The Defendant has been authorized to adopt rules and regulations regarding public records productions "provided they are consistent with state statutes," 1984 Op. Att'y Gen. (Oct. 3; No. 366-625-84), and a bylaw that leaves the timing of access open-ended cannot be consistent with AS 40.25.110(a)'s reasonableness requirement. Regardless, because the bylaws supply no response deadline, the governing standard is the one supplied by the APRA and the judicial branch's implementing guidelines: access "under reasonable rules," AS 40.25.110(a), which means inspection or copies "within a reasonable time from the date of the request." Admin. Bull. No. 12, § V(E)(2).

Silence that extends beyond a reasonable time functionally obstructs inspection. The Defendant's motion argues that "obstruction" implies refusal, but an agency can obstruct access by withholding any response, timeline, or production just as effectively as by issuing an express refusal. *See Hickel*, 868 P.2d at 930. The Defendant's nearly three-month silence, beyond the ten-day benchmark and without the notice of delay Administrative Bulletin No. 12 requires, shows that its silence was obstruction rather than

⁴ 1984 Op. Att'y Gen. (Oct. 3; No. 366-625-84).

⁵ AFL noted in its original request to the Defendant that the Defendant's bylaws are likely void as unlawfully promulgated. Compl. Ex. A, § III (explaining that the Alaska Court System's administrative director has the sole authority to create APRA rules for agencies of the judicial branch). AFL maintains this position and does not concede that the Defendant may make its own rules regarding public records.

ordinary processing. The Alaska Supreme Court has recognized that government abuses of the APRA process are “not consistent with the Public Records Act’s objectives” and unfair to requesters, who typically lack the State’s capacity for drawn-out litigation. *Basey*, 462 P.3d at 533–34 (noting that “serial, delayed objections” and risks of “indefinite litigation” waste judicial resources and are unfair). The public’s right of access is “fundamental.” *Id.* at 534. The Complaint, therefore, should not be dismissed because AFL has alleged a set of “facts in support of [its] claim that would entitle [it] to some form of relief.” *Basey v. State, Dep’t of Pub. Safety*, 408 P.3d 1173, 1175 (Alaska 2017) (internal quotations omitted).

II. AFL’s Complaint alleges an actual case and controversy.

Second, AFL’s Complaint alleges an actual case and controversy. Ripeness, mootness, and standing are the elements that make up an actual controversy. *See Borer*, 507 P.3d at 58, 58 n.20. The Defendant focuses the Court’s jurisdictional analysis here on ripeness and mootness.⁶ First, AFL’s claim is ripe because AFL has pled “a substantial controversy, between parties having adverse legal interests, of sufficient immediacy and reality to warrant” a court order. *See Borer*, 507 P.3d at 58. Second, AFL’s claim is not moot. The Defendant has done nothing to nullify AFL’s claim and even if the Defendant’s alleged processing efforts did moot this case, the public interest favors court intervention. *See Anchorage Daily News*, 794 P.2d at 588 (recognizing a “public interest exception” to the ordinary bar on review of moot questions).

A. AFL’s claim is ripe.

Throughout the jurisdictional section of the motion, the Defendant seems to conflate two distinct paths of enforcement of the right to inspect public documents: (1)

⁶ The Defendant presents to the Court fact issues which are beyond the pleading, and which are better suited to a motion for summary judgment. *See Schaible*, 531 P.2d at 1255–56, 1256 n.16 (explaining that the only function of pleadings is notice and that fact issues necessarily must be argued in other stages of the case).

injunctive relief under AS 40.25.125 and (2) an administrative appeal and judicial review under AS 40.25.123–124. For the latter, final agency action *is* required. But AFL brings its claim through the former. The Defendant’s cite to *Brause v. State, Department of Health & Social Services*, 21 P.3d 357, 359 (Alaska 2001)—for the proposition that ripeness “precludes courts from prematurely entangling themselves in administrative processes before a *final agency decision* has been made,” Mot. to Dismiss at 5 (emphasis added)—proves the point and is misplaced. In any event, *Brause* was not a public records case and was therefore not governed by any provision of the APRA, specifically not AS 40.25.125, which exempts a requestor from the obligation to wait for a final agency decision.

There are no Alaska public records cases that discuss ripeness. This logically follows from the explicit exemption found in AS 40.25.125. However, though not directly on point, the *Brause* Court does explain ripeness quite aptly as requiring a plaintiff to claim “that either a legal injury has been suffered or that one will be suffered in the future.” 21 P.3d at 359. The court must then balance “the need for decision against the risks of decision,” asking whether the case turns on uncertain or contingent future events and whether the issues require further factual development. *Id.* at 359 (internal citations omitted).

The Defendant argues that AFL’s claim is not ripe because AFL has not “suffered any concrete injury.” Mot. to Dismiss at 6. However, AS 40.25.110 and AS 40.25.120 establish that every person has a right to inspect public records. This is a “fundamental right.” *See Gwich’in Steering Comm.*, 10 P.3d at 579. Therefore, abridgment of this right—by denying, obstructing, or attempting to obstruct production—is a legally cognizable injury. AFL has suffered and will continue to suffer this injury until the Court intervenes to settle the issues surrounding production.

Nor do the “risks of decision” counsel restraint. *Brause*, 21 P.3d at 360 (internal citation omitted). The legal issues are not “difficult.” *Id.* No “further factual development” is needed to decide whether the Defendant must respond within a reasonable time. *Id.* The

need for a decision, meanwhile, is concrete. The Defendant's insistence that no response deadline binds it, *see* Mot. to Dismiss at 3–4, supplies precisely the “substantial controversy, between parties having adverse legal interests, of sufficient immediacy and reality” that the Supreme Court has recognized as ripe. *Brause*, 21 P.3d at 359 (quoting *Lake Carriers' Ass'n. v. MacMullan*, 406 U.S. 498, 506 (1972)). The relief AFL seeks, an order requiring the Defendant to search for and produce responsive records by a date certain, together with declarations of the parties' rights, is concrete, within the Court's power, and would resolve the present dispute.

B. AFL's claim is not moot.

The argument that the Defendant is “actively processing” the request, Mot. to Dismiss at 5, is in substance a mootness argument, and it fails. A claim is moot when it no longer “presents a live controversy.” *Anchorage Daily News*, 794 P.2d at 588. The Defendant conflates mootness and ripeness. Mootness is primarily backward-looking; it is defined by reference to what has already occurred. *See Brause*, 21 P.3d at 358 n.6 (“[M]ootness . . . asks whether there is anything left for the court to do . . .”). Ripeness is forward-looking. It is defined by what has yet to happen. *Id.* (“[R]ipeness asks whether there yet is any need for the court to act.”). Beyond a two-word email confirming receipt, the Defendant has done nothing to moot this case at this stage. The Defendant's summary allegations in its Motion and its September 24 letter do not rise to the level of “facts [which] have rendered the legal issues moot.” *Anchorage Daily News*, 794 P.2d at 588. (internal citation omitted). The claims in *Anchorage Daily News* were moot because the records had *already* been produced. *See id.* Here, no records have been produced, so the Court can still grant effective relief.

Even if AFL's claim were now moot, Alaska's public interest exception to mootness applies. Under that exception, courts consider (1) whether the issue is capable of repetition; (2) whether applying mootness may cause review to be repeatedly circumvented; and (3) whether the issue is important enough to the public interest to justify

overriding the doctrine. *See id.* Each factor favors review. First, the Defendant’s position that it does not have to respond on any timeline is “capable of repetition so long as . . . members of the public continue to make requests for documents” *Id.* Second, “it is possible for document request cases repeatedly to evade review” since production will occur swiftly after judgment of the superior court. *Id.* Third, public records cases are “of considerable public importance.” *Id.* Public access to judicial selection records is also important, and there is a strong public interest “in an open selection process for high public officials.” *City of Kenai v. Kenai Peninsula Newspapers, Inc.*, 642 P.2d 1316, 1323 (Alaska 1982). The Complaint states a valid claim to relief, and the Defendant’s motion for dismissal under Rule 12(b)(1) should be denied.

CONCLUSION

For the foregoing reasons, the Court should deny the Defendant’s Motion to Dismiss under both Rule 12(b)(6) and Rule 12(b)(1). Alternatively, if the Court finds any deficiency, it should grant AFL leave to amend under Rule 15(a).⁷

Dated: October 19, 2026.

Respectfully submitted,

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⁷ Leave to amend under Civil Rule 15(a) “should be freely given.” *Ruckle*, 85 P.3d at 1039.

CERTIFICATE OF SERVICE

This certifies that on October 19, 2026, a copy of the foregoing was served via the TrueFiling system on the following:

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