

CITY OF HOMER  
HOMER, ALASKA

City Attorney  
Personnel

ORDINANCE 95-29 (A)

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY  
OF HOMER AMENDING CHAPTER 1.80 OF THE CITY  
CODE RELATING TO THE PUBLIC DISCLOSURE OF  
CERTAIN RECORDS.

WHEREAS, court rulings by the Alaska Supreme Court have clarified that state statutes governing access to government information apply to city records; and

WHEREAS, public access to government information is one important method of maintaining citizen control of government; and

WHEREAS, balance must be struck between the public interest in disclosure on the one hand and the privacy and reputation interests of affected individuals, together with the government's interest in confidentiality, on the other hand; and

WHEREAS, recent state legislation and court rulings have given municipalities additional direction in identifying those records that should be available for public disclosure and those that should be kept confidential in order to protect an individual's right to privacy, or public and private safety, or for other legitimate purposes.

NOW, THEREFORE, THE CITY OF HOMER ORDAINS:

Section 1. Homer City Code § 1.80.020 is hereby amended to read as follows:

Definitions. For the purposes of this chapter:

a. ~~"Document" means any method of storing information, including but not limited to spoken words, handwriting, typewriting, printing, photostating, photographing and any other form of communication or reproduction, upon any medium, including but not limited to paper, magnetic or paper tape, photographic film or prints, magnetic or punched cards, discs, drums and phonograph records.~~

a.b. "Municipal agency" shall be defined as any department,

division, board, commission or private contractor of the city which has custody of public records as defined in this chapter.

b.e. "Public records" means books, papers, files accounts, writings, including drafts and memorializations of conversations, and other items, regardless of format or physical characteristics, that are developed or received by the city or a municipal agency and that are preserved for their informational value or as evidence of the organization or operation of the city; "public records" does not include proprietary software programs. "Records" means any document containing information relating to the conduct of the people's business which is prepared, owned, used or retained by a municipal agency, regardless of the physical form or characteristic of the document. (Ord. 78-17 §2, 1978).

Section 2. Homer City Code §1.80.040 is hereby amended to read as follows:

Records exempted. The City shall not be required to release or disclose the following documents or records:

a. Communications of any kind between the municipal attorney and officers or employees of the City, or any other individual, firm or corporation containing a legal opinion, memorandum or other disclosure or information pertaining to any matter then in litigation or where litigation may be pending. This exemption does not extend, however, to any documents, records or other written communication that may have been made public prior to the commencement of litigation and public records which must otherwise be disclosed cannot be withheld on the grounds that they have been submitted to the municipal attorney;

b. All personnel records of city officers and employees, including, without limitation, employment applications, examination materials, and performance evaluations; payroll records that reveal financial information about any specific individual; records that reveal medical information about any specific individual; records that reveal the personal, intimate, or private life of an individual; and, in addition, any record the disclosure of which would constitute an unwarranted invasion of privacy; but this subsection does not protect from disclosure the following:

1. employment applications and examination materials

of city officials appointed by the city council;

2. employment applications and examination materials of the director of each department of the city, as defined in sections 1.40.010 and 1.40.030;

3. performance evaluations of city officials appointed by the city council and department directors to the extent the performance evaluations relate to the individual's job performance and do not impugn an individual's honesty, integrity, or morality outside of professional life;

4. the names and position titles of all city employees;

5. the current and prior positions held by a city employee;

6. the dates of appointment and separation of a city employee; and

7. the records described in subsection 1.80.030(d) → In *(done)*  
the event of a request for disclosure of items described in subparts 1, 2, and 3 of this subsection City Officials and Directors will be notified at least 2 days prior to release of such records.

~~b. Personnel, payroll and medical files which would reveal the financial or medical status of any specific individual, thereby creating an unreasonable invasion of that individual's privacy. Salary levels and fringe benefits accorded all municipal officers and employees by law shall be considered public information, pursuant to Section 1.80.030(a);~~

c. Records or information compiled for law enforcement purposes, but only to the extent that the production of the law enforcement records or information:

1. could reasonably be expected to interfere with enforcement proceedings;

2. would deprive a person of a right to a fair trial or an impartial adjudication;

3. could reasonably be expected to constitute an unwarranted invasion of the personal privacy of a suspect, defendant, victim, or witness;

4. could reasonably be expected to disclose the identity of a confidential source;

5. would disclose confidential techniques and procedures for law enforcement investigations or prosecutions;

6. would disclose guidelines for law enforcement

investigations or prosecutions if the disclosure could reasonably be expected to risk circumvention of the law; or

7. could reasonably be expected to endanger the life or physical safety of an individual;

~~c. Files pertaining to the investigation of criminal activity with the exception of records that may be required by other governmental agencies or entities for the proper administration of justice. In this regard the provisions of Alaska Statute title 12, Chapter 62, Criminal Justice Information Systems Security and Privacy shall apply;~~

d. Information such as name, address, etc., that would identify complainants in actions to enforce any City regulation or ordinance, except as such disclosure may become necessary to a fair and just disposition of the enforcement proceeding;

e. Records held by the City concerning any customer using municipal services, release of which would be unwarranted invasion of privacy;

f. Engineering or other technical specifications or data which might provide a competitive advantage to any person, firm or corporation engaged or potentially to be engaged in municipal business;

g. Information obtained by and in the custody of insurance carriers insuring the municipality and their attorneys and agents regarding possible and pending claims against the municipality;

~~h. Medical and related public health records; Health, mental health, medical, juvenile and personality problem information obtained or prepared by the municipality with respect to any person for whom treatment or services were provided. (Ord. 78-17 §4, 1978).~~

i. Records pertaining to juveniles unless disclosure is authorized by law;

j. Records required to be kept confidential by law.

Section 3. A new section 1.80.055 of the Homer City Code is hereby created to read as follows:

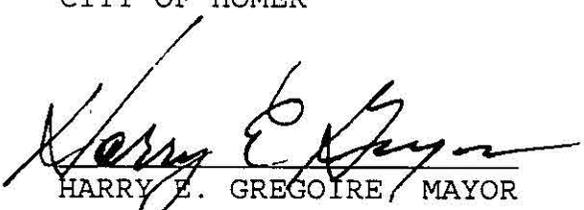
Litigation Disclosure. A public record that is subject to disclosure and copying remains a public record subject to disclosure and copying even if the record is used for, included in, or relevant to litigation, including law enforcement

proceedings, involving the city or any municipal agency, except that with respect to a person involved in litigation, the records sought shall be disclosed in accordance with applicable court rules. In this section, "involved in litigation" means a party to litigation or representing a party to litigation, including obtaining public records for the party.

Section 4. This ordinance is of a permanent and general character and shall be included in the City Code.

ENACTED BY THE CITY COUNCIL OF THE CITY OF HOMER, ALASKA,  
this 18<sup>th</sup> day of December, 1995.

CITY OF HOMER

  
HARRY E. GREGOIRE, MAYOR

ATTEST:

  
MARY L. CALHOUN, CITY CLERK

AYES: 4  
NOES: 0  
ABSENT: 0  
ABSTAIN: 0

First Reading: 12/11/95  
Public Hearing: 12/18/95  
Second Reading: 12/18/95  
Effective Date: 12/19/95

Reviewed and approved as to form and content:

\_\_\_\_\_  
Patti J. Whalin, City Manager  
Date: \_\_\_\_\_  
Fiscal Note not required.

\_\_\_\_\_  
Gordon J. Tans, City Attorney  
Date: \_\_\_\_\_