

STATE OF ALASKA

DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES

DESIGN & ENGINEERING SERVICES DIVISION, NORTHERN REGION

TONY KNOWLES, GOVERNOR

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October 19, 1999

Oles Morrison Rinker & Baker, LLP
745 West Fourth Avenue, Ste. 502
Anchorage, AK 99501-2136
Attn: C. Russell Lewis

Re: Chitina-McCarthy Road
Public Records Request
Your File No. 99092.2

Dear Mr. Lewis:

I am writing as a follow-up to my earlier correspondence to you dated October 1, 1999, and also to provide a preliminary response to your public records request dated August 16, 1999. As I have already indicated, it has become necessary to consult with the Attorney General's Office regarding this matter, and thus the normal 10 day response time has been automatically extended, pursuant to 6 AAC 96.325(d)(5).

As a preliminary matter, I must make further inquiry regarding whether in fact you are attempting to collect records and documents relevant to litigation. I have read your disclaimer in the August 16 letter stating that, "the records requested above are not related to any current litigation with the State of Alaska or any agency thereof." However, I cannot ignore the fact that you are an attorney working in a law firm that has brought, on behalf of various clients, several legal actions against the State of Alaska. Nor can I ignore the fact that your own correspondence indicates that your firm has an apparently open file concerning this matter (your "File No. 99092.2"). In addition, my office has just recently received a letter from Mr. Stephen D. Syren concerning the terminus of the Chitina-McCarthy Road, on which correspondence you are listed as having received a courtesy copy.

It is evident from your correspondence that you are familiar with the Public Records Act and its implementing regulations. I therefore assume that you know about A.S. 09.25.122, requiring a person involved in litigation with the State to use the formal rules of discovery in order to obtain relevant documents. I also assume that you are aware of 6 AAC 96.220, which allows the State to "inquire whether the person making the request is a party, or represents a party, involved in litigation with the state or a public agency to which the requested record is relevant." Given the circumstances, and

in order to comply with the intent of applicable law, I must request a thorough and forthright answer to the question whether you or someone you represent is involved in litigation against the State or any of its agencies, to which the requested public records are relevant. Your response will hasten my ability to make an informed decision concerning your request.

I note that, even if you do represent a party involved in litigation with the State, and even if the requested public records are related to your client's dispute, there may yet be another alternative. I am advised by counsel (without waiving any attorney-client privilege) that the procedure approved by the Alaska Supreme Court in Brady v. State, 965 P.2d 1, 18, 22 (Alaska 1998) might be helpful here. Specifically, if you are able to promise that the requested public records will not be used in any litigation against the State, then the State's concern would be allayed and the documents could be produced soon thereafter. Please let me know if you wish to agree to such a procedure.

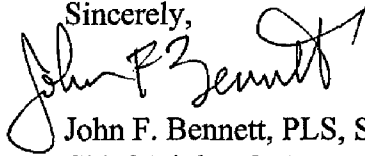
With regard to your specific request regarding public records that are "readily available", pursuant to 6 AAC 96.100(b), I must respectfully decline to respond. As you state at the outset of your August 16 correspondence, your "letter is a request under the Public Records Act . . . and its implementing regulations . . ." However, 6 AAC 96.100 itself provides that, "Records that are readily available for public inspection are not subject to the procedures of this chapter", i.e. Chapter 96, entitled "Public Information". Simply put, your requests regarding "readily available" public records are not properly includable in a formal public records request. Further, there certainly is no provision requiring that the State agency "identify those records" or recite the "source of those records", as you have asked. In order that there be no misunderstanding, no readily available records are being withheld, nor is access to them being denied. All such records are in fact readily available to anyone, as defined in 6 AAC 96.100(b), and you are of course welcome to avail yourself of such records, given their nature. The State's response must be the same with regard to your specific requests to identify and provide copies of applicable regulations. Any and all such regulations would of course be a part of the Alaska Administrative Code, which can be found in most libraries in Alaska, and are therefore "readily available" by definition. Moreover, even if a party is already involved in litigation, that party is not required to provide, as part of the discovery process, citations to the law which that party believes is applicable. McKibben v. Mohawk Oil Co., Ltd., 667 P.2d 1223,1231 (Alaska 1983). This rule, of course, is the same where there is not litigation.

With regard to your request for copies of procedures related to applicable regulations, these too are "readily available" in the form of several Policy and Procedure Manuals maintained by the Department of Transportation & Public Facilities and its various divisions. These include, for example, the general "Policies and Procedures Manual", the Right of Way Manual, Construction Manual, Preconstruction Manual, Highway Drainage Manual, Engineering Geology and Geotechnical Exploration Procedures Manual, Utilities Manual, and other such topic specific compilations of

DOT&PF policies and procedures. They are available in most DOT&PF offices throughout the State. If you do not wish to physically go to review and/or request designated portions of any of the Policy and Procedure Manuals yourself, I would offer, as a courtesy, to discuss with you which manual or manuals might be most relevant to your needs, and to make copies of the entire manual or manuals that you designate, at the normal cost rate.

Finally, to follow up on the actual cost of the copying involved, I have enclosed a copy of the Department's applicable policy on copying charges. As referenced in my previous letter, I remain hopeful that you might be able to narrow the focus of your request, and thereby avoid the costs of copying a large number of materials that may not specifically relate to your particular area of interest. If that can be done, it will also aid my ability to estimate the anticipated costs, which are payable in advance under A.S. 09.25.110(c). If you have any questions regarding the charges to be incurred, please do not hesitate to contact me. I look forward to hearing from you with regard to the above inquiry concerning litigation.

Sincerely,



John F. Bennett, PLS, SR/WA
Chief, Right of Way

Enclosure

CC: Mason Damrau, AGO
JB:jm

MEMORANDUM

State of Alaska Department of Transportation & Public Facilities

TO: Rod Platzke, Director, Design & Construction
Ralph Swarthout, Director, Maintenance & Operations

DATE: October 12, 1995

FILE NO:

RECEIVED BY:

TELEPHONE NO: 451-5150

OCT 25 1995

FROM: *MSS*
Martin S. Ott, Chief
Planning & Administrative Services

SUBJECT: Copying Policy

Attached you will find an updated copy of the Northern Region Copying Policy and Pricing.

jt

cc: Anton K. Johansen, Regional Director, Northern Region

CHIEF RW AGENT	
PRE AUDIT	
ENGINEERING	
APPRAISALS	
NEGOTIATIONS	
Relocation/Prog. Mntnl.	
FACILITIES	
ROBIN / CONSTR	R.V.V.
RETURN TO:	
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D&C DIRECTOR	
X DESIGN 10/24	C
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X ROW	C
X PROJ CONT	C
NOME	
VALDEZ	
REG DIR	C
M & O	C
PLANNING	C
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RETURN	

PLEASE POST THIS NEAR (ABOVE)
THE COPY MACHINE.

NORTHERN REGION COPYING POLICY
(Charges for copying documents for the public)

COPIES

8 1/2x11 or 8 1/2x14 Single or Double Sided		\$.25	each
Microfilm Correspondence		\$.25	each
Microfiche Correspondence		\$.25	each
Microfiche Drawings	1/2 size	\$3.25	each
	full size	\$6.50	each
Blue/Blackline 24x36		\$3.00	each
Half size Xerox Plans 11x18		\$1.00	each

PAYMENT

Labor will be charged if the production of records for one requester in a calendar month exceeds 5 person hours. Charges will be based on the actual salary plus benefit costs for the personnel time required to perform the search and copying tasks. The requestor shall pay the fee before the records are disclosed and the agency may require payment in advance of the search. AS 09.25.110(c)

The agency may waive the requirement for payment in advance if the requester and the public agency agree in writing to mutually acceptable time frames for payment. 6 AAC 96.360(d)

No charge will be made for services which cost less than \$5.00 to the agency. AS 09.25.110(d)