



THE STATE  
of ALASKA  
GOVERNOR MICHAEL J. DUNLEAVY

Department of Transportation and  
Public Facilities

Statewide Administrative Services  
Director's Office

PO Box 112500  
3132 Channel Drive  
Juneau, Alaska 99811-2500  
Main: 907.465.3900  
dot.alaska.gov

November 13, 2019

Mr. Jacob Resneck  
CoastAlaska  
360 Egan Drive  
Juneau, Alaska 99801

VIA USPS & EMAIL: [jacob@jcoastalaska.org](mailto:jacob@jcoastalaska.org)

Re: Public Records Act Request - Northern Economics Draft Reshaping Report

Dear Mr. Resneck:

This letter is in response to your email dated November 7, 2019. Citing the Alaska Public Records Act (Act), AS 40.25.100 *et seq.*, you requested a copy of the AMHS economic reshaping report created by Northern Economics.

The purpose of this reshaping report is to assist the Department in making decisions concerning the nature and extent of the Alaska Marine Highway System's (AMHS) future operations. For instance, the Request for Proposals for this project included the following explanation regarding the solicited consultative work:

Governor Dunleavy directed the Department to hire a qualified economic consultant, working with a marine consultant to identify potential reductions of the State's financial obligation and/or liability as related to the AMHS...

\* \* \* \*

The department will enlist the assistance of a qualified economic/marine consultant to identify potential reductions of the State's financial obligation and/or liability as they relate to the AMHS. The project will include an analysis of options available for reshaping the system, such as through a public/private partnership, and a determination of the various options' feasibility.

To date, Northern Economics has only generated a draft report, which it has shared with the Department. It continues to work with the Department as it refines the analysis and recommendations for the completed report.

In short, the report is a solicited, pre-decisional and deliberative document. As such, it is not presently subject to disclosure under the Alaska Public Records Act by virtue of the deliberative process privilege. AS 40.25.120(a)(4); 2 AAC 96.335(a)(4); *Gwich'in Steering Committee v. State, Office of the Governor*, 10 P.3d 572 (Alaska 2000).

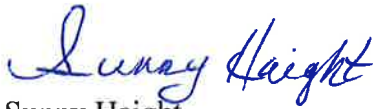
In compliance with the Act, we wish to inform you of the following:

1. You may administratively appeal the denial by complying with the procedures in 2 AAC 96.340;
2. You may obtain immediate judicial review of the denial by seeking an injunction from the superior court under AS 40.25.125;
3. An election not to pursue injunctive remedies in superior court shall have no adverse effects on your rights before the public agency; and
4. An administrative appeal from a denial of a request for public records requires no appeal bond.

I have enclosed a copy of 2 AAC 96.335 - 2 AAC 96.350 for your reference.

The Commissioner of the Department of Transportation & Public Facilities has delegated authority to me to deny Public Records Act requests submitted to the Department.

Sincerely,



Sunny Haight  
Deputy Director

Enclosure

Alaska Administrative Code
Title 2. Administration (Refs & Annos)
Chapter 96. Public Information (Refs & Annos)
Article 3. Requests for Public Records

2 AAC 96.335

2 AAC 96.335. Denial of request.

Currentness

(a) A request for a public record that complies with this chapter may be denied only if

(1) the record is not known to exist after the public agency makes a diligent search for it;

(2) the record is not in the public agency's possession, and after a diligent search the public agency does not know where the record is to be found;

(3) the record has been destroyed in accordance with an applicable record-retention schedule;

(4) nondisclosure of the record is authorized by a federal law or regulation, or by state law; or

(5) the record is believed to be in the agency's possession but has not yet been located, in which case the public agency shall proceed under (f) of this section.

(b) A request may be denied by the public agency head or by an agency employee to whom denial authority has been delegated by the public agency head.

(c) An initial denial of a written request must be in writing; must state the reasons for the denial, including any specific legal grounds for the denial; and must be dated and signed by the person issuing the denial. If a request is denied by a public agency employee to whom denial authority has been delegated, the notice of denial must reflect this delegation. A copy of 2 AAC 96.335 - 2 AAC 96.350 must be enclosed with the denial.

(d) A denial of a written request, in whole or in part, must state that

(1) the requester may administratively appeal the denial by complying with the procedures in 2 AAC 96.340;

(2) the requester may obtain immediate judicial review of the denial by seeking an injunction from the superior court under AS 40.25.125;

(3) an election not to pursue injunctive remedies in superior court shall have no adverse effects on the rights of the requester before the public agency; and

(4) an administrative appeal from a denial of a request for public records requires no appeal bond.

(e) A denial of a written request is considered to be issued at the time the denial is either delivered to the United States Postal Service for mailing, or hand-delivered to the requester by an employee or agent of the public agency.

(f) If a written request is denied because a record has not yet been located and the record is believed to exist in the agency's possession, the office in the public agency responsible for maintaining the record is believed to exist in the agency's possession, the office in the public agency responsible for maintaining the record shall continue to search until the record is located or until it appears that the record does not exist or is not in the public agency's possession. The public agency shall periodically inform the requester of its progress in searching for the requested record.

(g) A record that is the subject of a public records request that has been denied shall not be destroyed or transferred from the public agency's custody, except that records may be transferred to state archives and records management services as provided by AS 40.21 and regulations adopted under AS 40.21. A public agency may not destroy or transfer custody of a record to which access has been denied or restricted until at least 60 working days after the requester is notified in writing that the request has been denied, or if there is an administrative or judicial appeal or other legal action pending at the end of the 60-working-day period, until the requester has exhausted those actions.

#### **Credits**

(Eff. 11/6/94, Register 132)

AUTHORITY: AS 40.25.110, AS 40.25.120, AS 40.25.123, AS 40.25.125

#### **Editors' Notes**

As of Register 158 (July 2001), the regulations attorney made technical revisions under AS 44.62.125(b)(6), to reflect the

**2 AAC 96.335. Denial of request., 2 AK ADC 96.335**

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2000 renumbering of former AS 09.25.100 - 09.25.220 by the revisor of statutes. The provisions of former AS 09.25.100 - 09.25.220 were relocated to AS 40.25.100 - 40.25.220.

As of Register 176 (January 2006), and acting under AS 44.62.125(b)(6), the regulations attorney relocated former 6 AAC 96.335 to 2 AAC 96.335, and made conforming technical changes to 2 AAC 96.335(c) and (d)(1), to reflect Executive Order 113 (2005). Executive Order 113 eliminated the Telecommunications Information Council and transferred its functions to the governor and to the Department of Administration. The history note for 2 AAC 96.335 carries forward the history from former 6 AAC 96.335.

As of Register 204 (January 2013), and under AS 44.62.125(b)(6), the regulations attorney made technical corrections to 2 AAC 96.335.

Current with amendments received through the Quarterly Supplement, October 2019 (Register 231).

Alaska Admin. Code tit. 2, § 96.335, 2 AK ADC 96.335

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Alaska Administrative Code

Title 2. Administration (Refs & Annos)

Chapter 96. Public Information (Refs & Annos)

Article 3. Requests for Public Records

2 AAC 96.340

2 AAC 96.340. Appeal from denial; manner of making.

Currentness

(a) A requester whose written request for a public record has been denied, in whole or in part, may ask for reconsideration of the denial by submitting a written appeal to the agency head.

(b) An appeal under (a) of this section must be mailed or hand-delivered to the agency head within 60 working days after the denial is issued and must include the date of the denial and the name and address of the person issuing the denial. The appeal must also identify the records to which access was denied and which are the subject of the appeal. If an appeal is from the failure of the agency to respond to the records request within the appropriate time limit under [2 AAC 96.325](#), the appeal must so state, must identify the records sought, and must identify the public agency to which the request was directed and the date of the request.

(c) The 60 working days within which an appeal must be filed begins to run upon the issuance of the denial or, if no denial is issued, upon the expiration of the time period within which the public agency should have responded.

**Credits**

(Eff. 11/6/94, Register 132)

AUTHORITY: [AS 40.25.110](#), [AS 40.25.120](#), [AS 40.25.123](#), [AS 40.25.125](#)

**Editors' Notes**

As of Register 158 (July 2001), the regulations attorney made technical revisions under [AS 44.62.125\(b\)\(6\)](#), to reflect the 2000 renumbering of former [AS 09.25.100 - 09.25.220](#) by the revisor of statutes. The provisions of former [AS 09.25.100 - 09.25.220](#) were relocated to [AS 40.25.100 - 40.25.220](#).

As of Register 176 (January 2006), and acting under [AS 44.62.125\(b\)\(6\)](#), the regulations attorney relocated former 6 AAC 96.340 to 2 AAC 96.340, and made a conforming technical change to 2 AAC 96.340(b), to reflect Executive Order 113 (2005). Executive Order 113 eliminated the Telecommunications Information Council and transferred its functions to the governor and to the Department of Administration. The history note for 2 AAC 96.340 carries forward the history from

**2 AAC 96.340. Appeal from denial; manner of making., 2 AK ADC 96.340**

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former 6 AAC 96.340.

As of Register 204 (January 2013), and under AS 44.62.125(b)(6), the regulations attorney made technical corrections to 2 AAC 96.340.

Current with amendments received through the Quarterly Supplement, October 2019 (Register 231).

**Alaska Admin. Code tit. 2, § 96.340, 2 AK ADC 96.340**

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Alaska Administrative Code

Title 2. Administration (Refs & Annos)

Chapter 96. Public Information (Refs & Annos)

Article 3. Requests for Public Records

2 AAC 96.345

2 AAC 96.345. Appeal determinations; time allowed; by whom made.

Currentness

(a) As soon as practicable, but not later than the 10th working day after the close of the record on appeal, the agency head shall issue a written determination stating which of the records that are the subject of the appeal will be disclosed and which records will not be disclosed. The written determination must comply with [2 AAC 96.350](#).

(b) The agency head may extend the 10-working-day period for a period not to exceed 30 working days upon written request from the requester, or by sending a written notice to the requester within the basic 10-working-day period.

(c) The agency head may delegate authority and duties under (a) and (b) of this section to a full-time employee of the public agency not involved in the denial and not subordinate to the employee responsible for the denial. The employee delegated this authority may not subdelegate to another employee.

**Credits**

(Eff. 11/6/94, Register 132)

AUTHORITY: [AS 40.25.110](#), [AS 40.25.120](#), [AS 40.25.123](#), [AS 40.25.124](#)

**Editors' Notes**

As of Register 158 (July 2001), the regulations attorney made technical revisions under [AS 44.62.125\(b\)\(6\)](#), to reflect the 2000 renumbering of former [AS 09.25.100 - 09.25.220](#) by the revisor of statutes. The provisions of former [AS 09.25.100 - 09.25.220](#) were relocated to [AS 40.25.100 - 40.25.220](#).

As of Register 176 (January 2006), and acting under [AS 44.62.125\(b\)\(6\)](#), the regulations attorney relocated former 6 AAC 96.345 to 2 AAC 96.345, and made a conforming technical change to 2 AAC 96.345(a), to reflect Executive Order 113 (2005). Executive Order 113 eliminated the Telecommunications Information Council and transferred its functions to the governor and to the Department of Administration. The history note for 2 AAC 96.345 carries forward the history from former 6 AAC 96.345.



**2 AAC 96.345. Appeal determinations; time allowed; by whom made., 2 AK ADC 96.345**

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As of Register 204 (January 2013), and under AS 44.62.125(b)(6), the regulations attorney made technical corrections to 2 AAC 96.345.

Current with amendments received through the Quarterly Supplement, October 2019 (Register 231).

Alaska Admin. Code tit. 2, § 96.345, 2 AK ADC 96.345

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Alaska Administrative Code
Title 2. Administration (Refs & Annos)
Chapter 96. Public Information (Refs & Annos)
Article 3. Requests for Public Records

2 AAC 96.350

2 AAC 96.350. Contents of determination denying appeal.

Currentness

A determination under 2 AAC 96.345 responding to an appeal must be in writing, must specify the specific statute, regulation, or court decision that is the basis for the denial, and must state briefly the reason for the denial. A denial under this section is the final agency decision. A denial must further state that, as provided by AS 40.25.124, the requester may obtain judicial review of the denial by appealing the denial to the superior court.

**Credits**

(Eff. 11/6/94, Register 132)

AUTHORITY: AS 40.25.110, AS 40.25.120, AS 40.25.123, AS 40.25.124, AS 40.25.125

**Editors' Notes**

As of Register 158 (July 2001), the regulations attorney made technical revisions under AS 44.62.125(b)(6), to reflect the 2000 renumbering of former AS 09.25.100 - 09.25.220 by the revisor of statutes. The provisions of former AS 09.25.100 - 09.25.220 were relocated to AS 40.25.100 - 40.25.220.

As of Register 176 (January 2006), and acting under AS 44.62.125(b)(6), the regulations attorney relocated former 6 AAC 96.350 to 2 AAC 96.350, and made a conforming technical change to 2 AAC 96.350, to reflect Executive Order 113 (2005). Executive Order 113 eliminated the Telecommunications Information Council and transferred its functions to the governor and to the Department of Administration. The history note for 2 AAC 96.350 carries forward the history from former 6 AAC 96.350.

As of Register 204 (January 2013), and under AS 44.62.125(b)(6), the regulations attorney made technical corrections to 2 AAC 96.350.

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Alaska Admin. Code tit. 2, § 96.350, 2 AK ADC 96.350

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