



	Approved	Denied
Action taken		
Other:	<i>Postponed Indefinitely 6/14/04</i>	
Verified by:	<i>K. Smithers</i>	

COUNCIL ACTION MEMORANDUM

AM No. 04-36

TITLE: APPEALS TO COUNCIL BY WMC 3.90.020.A.7.b

Agenda of: June 14, 2004
 Originator: Kristie Smithers, City Clerk

Date: June 7, 2004

Route to:	Department	Signature/Date
X	Finance *signature required	<i>[Signature]</i>
X	Clerk	<i>Jamie Ruess, acting Clerk</i>

REVIEWED BY MAYOR DIANNE M. KELLER: *Dianne M. Keller*

FISCAL IMPACT: yes or no Funds Available yes no
 Account name/number:

Attachments: Information request from Mr. Kalenka, dated May 19, 2004; Memo from Tom Klinkner, dated May 24, 2004; copy of WMC 3.90.020.

SUMMARY STATEMENT:

On May 19, 2004, an organization calling itself Alaskans for Efficient Government requested City records of employee gross pay, overtime, names, positions and benefits for 2003. As required by WMC 3.90.020.A.7.b, the mayor notified all City employees of this request on June 1, 2004. City employees had five working days, or until June 8, 2004, to object to the release of the requested information.

Our attorney, Tom Klinkner, has advised the mayor that the Alaska Supreme Court has held that the requested information is subject to disclosure under the State's public records statutes.

On June 9, 2004, the mayor will submit a written response to any employee who filed an objection notifying the employee that the employee may appeal the mayor's decision to the council at its next regular meeting, and that appeals should be filed in the office of the city clerk by noon on Monday, June 14, 2004.

If the city clerk receives any such appeals, they will be copied and submitted to the council at the regular meeting that will be held at 7 p.m. on June 14, 2004. The council will then have the opportunity to review the appeals and act on them individually.

STAFF RECOMMENDED ACTION:

Act on each appeal individually and direct the mayor to release the information. If no appeals are submitted by noon on June 14, 2004, the action on this AM will be postponed indefinitely.

Uwe Kalenka
Alaskans for effi. gover.
278-2111 after 4 PM - 12 PM
344-0055 message

Request: Empl. records for 2003
Gross pay, OT, Name + Position +
Benefits

Uwe Kalenka

May 19/04

M. UWE
Kalenka

12:30 5/19/04

MRF

LAW OFFICES

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May 24, 2004

via EMAIL and FIRST CLASS MAIL

Ms. Kristie L. Smithers
City Clerk
City of Wasilla
290 East Herning Avenue
Wasilla, Alaska 99654

Re: Public Records Request for Employee Compensation Information
Our File No. 505,780.69

Dear Kristie:

You have asked for advice as to the City's response to a request for the following information: "Empl. Records for 2003 gross pay, OT, Name & Position & Benefits." If there are City records that contain the requested information, and that do not contain any confidential information, you are required to provide copies of those records to the requester after he has paid the City's standard unit cost of duplication. If the only City records that contain the information subject to disclosure also contain confidential information, you may either provide copies of the records with the confidential information redacted, or provide a compilation of the information that is subject to disclosure. If more than five person-hours of time will be required to search for and copy the requested information, you may require that the requester pay the City's estimate of the actual employee salary and benefit cost for the search and copying time in advance of your search for the requested information.

Under AS 40.25.120, a person has right to inspect public records, subject to specified exceptions. A municipality may designate categories of records that will be withheld from disclosure, where the privacy interests of affected individuals outweigh the public interest in disclosure.¹ The City has not enacted any City Code provision authorizing the withholding of City records on privacy grounds.

In the absence of a City Code provision authorizing the City to withhold records from disclosure, a City employee still may have a privacy interest in information about the

¹ *City of Kenai v. Kenai Peninsula Newspapers*, 642 P.2d 1316, 1323 (Alaska 1982).

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employee that is contained in City records. Where the employee's privacy interest in information contained in a City record outweighs the public interest in disclosure, it would be appropriate for the City to withhold the City record from disclosure.² An employee's privacy interest does not justify the City's withholding information concerning employees' names, job titles, base salaries, overtime, benefits, and cashed-in leave.³ However, the employee's privacy interest will justify withholding "information which reveals the details of an individual's personal life."⁴ There is no comprehensive delineation of the information that would be protected by an employee's privacy interest, but employment applications and examination materials have been cited as examples of information that would be protected.⁵

The City may charge a fee for copying records that does not exceed the standard unit cost of duplication established by the City.⁶ If the City employee time required to produce records for this requester will exceed five person-hours in a calendar month, the City may require the requester to pay the personnel costs required during the month to complete the search and copying tasks, at a rate not exceeding the salary and benefit costs for the personnel time required to perform the search and copying tasks.⁷ The City may require the requester to pay the estimated cost of a records search in advance.⁸

If there are City records that contain the requested information, and that do not contain any confidential information, you are required to provide copies of those records to the requester after he has paid the copying fee. If the only City records that contain the information subject to disclosure also contain confidential information, you have the option of either (i) providing copies of the records with the confidential information redacted, or (ii) providing a compilation of the information that is subject to disclosure. You should choose the response that involves the least burden to the City. If more than five person-hours of time will be required to respond to the request, the City may charge the requester for the actual City employee salary and benefit cost for the search and copying time, and require that the requester pay the estimated cost in advance of your search for the records.

² Article 1, § 22 of the Alaska Constitution provides in relevant part, "The right of the people to privacy is recognized and shall not be infringed." *International Association of Fire Fighters, Local 1264 v. Municipality of Anchorage*, 973 P.2d 1132, 1134 (Alaska 1999).

³ *International Association of Fire Fighters*, 973 P.2d 1132, 1135-1136.

⁴ *International Association of Fire Fighters*. 937 P.2d at 1135.

⁵ *Id.*

⁶ AS 40.25.110(b).

⁷ AS 40.25.110(c).

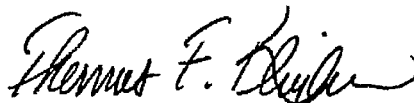
⁸ *Id.*

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Please let me know if you have any questions concerning this matter.

Yours truly,

BIRCH, HORTON, BITTNER and CHEROT

A handwritten signature in cursive script, appearing to read "Thomas F. Klinkner".

Thomas F. Klinkner