# Office of Assembly Counsel

#### Public Records

#### Its not stalking when it is public record



#### Public Records

AMC Chapter 3.90
AS Chapter 40.25
Plenty of caselaw

## AMC 3.90.010

"It is the policy of the municipality to provide the fullest and most rapid public access to municipal records and information so that the right of the people to remain informed is protected. In enacting this measure, the assembly recognizes the competing interests of personal privacy and the right of the public to have access to information concerning the conduct of the people's business. This chapter shall therefore be liberally construed to require full disclosure of all public records in the possession or control of any municipal agency, except those specifically exempted under section 3.90.040."

#### AMC 3.90.020

"Records means any document, whether in draft or final form, containing information relating to the conduct of the people's business which is prepared, owned, used or retained by a municipal agency or an agency under contract with the municipality, regardless of the physical form or characteristic of the document."

# Alaska Public Records Act AS 40.25.220

"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 a public agency, or by a private contractor for a public agency, and that are preserved for their informational value or as evidence of the organization or operation of the public agency; "public records" does not include proprietary software programs."

#### In practical terms Probably Public Records

#### Handwritten notes

Pretty much everything we give you

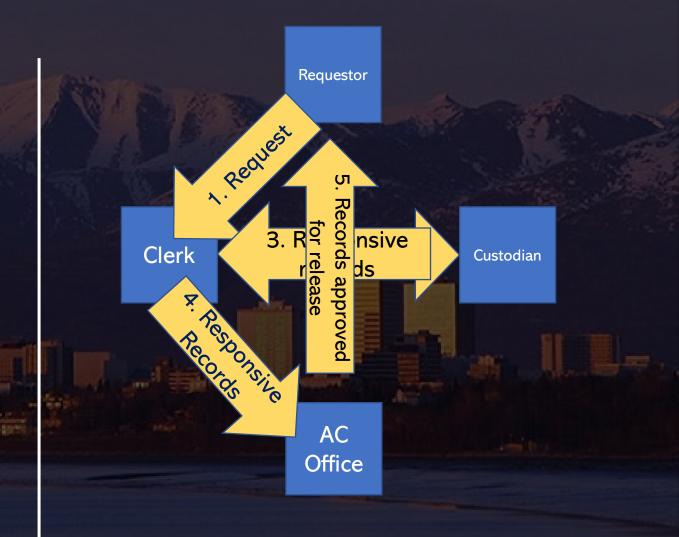
• E-mail

- Official E-mail
- Personal E-mail (if you're using it for official business)
- Text Messages . . . Maybe (if you're using it for official business... still emerging caselaw).
- Just about everything that touches your hands as an Assembly member

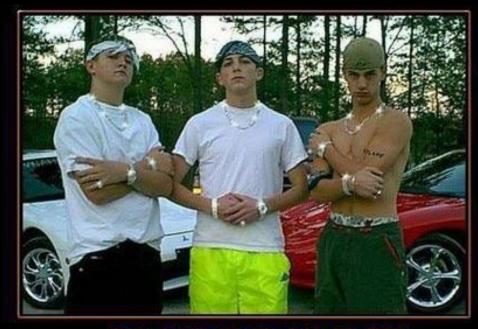
#### McLeod v. Parnell

"State agency records preserved or appropriate for preservation under the Records Management Act are public records subject to review under the Public Records Act. But not every record a state employee creates, and certainly not every state employee email, is necessarily appropriate for preservation under the Records Management Act."

### Records Request Process







INTERNET

IT DOESN'T MAKE YOU STUPID, IT JUST MAKES YOUR STUPIDTIY MORE ACCESSIBLE TO OTHERS.

#### Social Media

Traditional Public Forum
Public Forum by Designation
Nonpublic Forum

#### Public Fora

Traditional Public Forum
Public Forum by Designation
Nonpublic Forum

#### Social Media: A Public Forum?

- Do you identify your official position?
- Do you engage in discussion of issues that come before the body?
- Do you announce actions taken by the body or the municipality?

### Social Media: the Public Forum by Designation you just can't seem to quit...

- Viewpoint discrimination
   Strict scrutiny
- Subject matter discrimination
   Strict scrutiny
- Total ban
   Strict scrutiny
- Time, place, and manner restrictions
  - Intermediate Scrutiny

#### Pending before SCOTUS

Lindke v. Freed
O'Connor-Ratcliff v. Garnier

#### Social Media: it's not all fun and games and first amendment ballyhoo

# Open Meetings Act can still apply.....

#### Palmer to conduct two separate open meetings act violation investigations

By Tim Rockey Frontiersman.com Sep 16, 2021 🗣 0



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### Questions?

Dance Like No One Is Watching.

Email Like It May One Day Be Read Aloud In A Deposition.



