



# Office of Assembly Counsel

# Public Records

Its not stalking  
when it is public record



somee cards  
user card

# 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



# Social Media



## INTERNET

IT DOESN'T MAKE YOU STUPID, IT JUST MAKES  
YOUR STUPIDITY 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



Palmer Mayor Edna DeVries

Today's Edition

SEE MORE E-EDITIONS





Questions?

Dance Like No One  
Is Watching.

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



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