



THE STATE
of **ALASKA**
GOVERNOR SEAN PARNELL

**Department of Transportation and
Public Facilities**

Statewide Administrative Services
Budget

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October 10, 2014

Stephanie A. Kesler
President, Government Hill Community Council
1057 West Fireweed Lane, Suite 100
Anchorage, AK 99503

Re: Appeal of denial of public records requests

Dear Ms. Kesler

I am responding to your October 7, 2014, letter appealing the denial of your June 11 and August 20 public records requests. By regulation I have ten working days after the close of the record on appeal to issue a written determination on your appeal. *See* 2 AAC 96.345(attached). So first I want to determine what should be included in that record.

I believe the record on appeal should include at least the following documents:

1. your June 11, 2014, letter to Knik Arm Bridge and Toll Authority Executive Director Judy Dougherty requesting copies of records;
2. Ms. Dougherty's June 20, 2014, letter responding to your request;
3. your August 20, 2014, letter to Ms. Dougherty modifying your June 11 request;
4. Central Region Director Robert Campbell's September 4, 2014, letter denying your August 20 request;
5. your October 7, 2014, letter appealing that denial; and
6. the documents you requested in your June 11 and August 20 letters: the Cardno/Agnew::Beck report for the Knik Arm Bridge and Toll Authority; the CDM Smith toll and revenue study based on that report; the five-year projected traffic numbers for the Knik Arm Crossing and the Glenn Highway at the Old Glenn Highway/Eklutna Flats; maps of the traffic analysis zone boundaries; the reasoning behind any differences between those boundaries and the boundaries of the Anchorage Metropolitan Area Transportation Solutions and the Matanuska-Susitna Borough Parks Highway Bypass projects; and, in Excel format, the traffic analysis zone data for population, households, employment, and traffic counts and revenues per traffic analysis zone for 2015, 2020, 2025, 2030, 2035, 2040, or the five-year projected numbers produced by the contracts.

If you believe other documents should be included in the record, please provide copies to me as soon as possible. If you do not have copies, please identify the documents so I can attempt to obtain copies. And if you respond by identifying or producing copies of any additional documents, please send copies of your response to Ms. Dougherty and Mr. Campbell. Unless I hear otherwise from you by October 17, I will assume you believe the documents listed above are sufficient for the record on appeal.

Likewise, I invite Ms. Dougherty and Mr. Campbell, who are receiving copies of this letter, to provide me copies of any other documents they believe should be included. I also ask them to provide me copies of the documents you requested in your June 11 and August 20 letters, as well as a copy of Ms. Dougherty's June 20 response. If they respond by identifying or producing copies of any other documents, I ask that they send copies of their responses to you. If they believe any of the documents they provide me are privileged or confidential, they should either redact the copies provided to you or merely identify those documents for you.

I am unsure now that I will be able to issue a written determination within ten working days after the record on appeal closes. The reason is that the lawyers in the Department of Law who would normally advise me on this matter were previously involved in providing advice on the response to your records request. And to avoid any appearance of a conflict of interests in considering your appeal, I am consulting a lawyer in the Department of Law who was not previously involved, Senior Assistant Attorney General David Jones. Unfortunately, Mr. Jones will be unavailable for the next two weeks. Consequently, as the regulations permit, I am extending by thirty working days the deadline for issuing a written determination on your appeal. *See* 2 AAC 96.345(b). I hope, however, not to take that long; I intend to issue a written determination as soon as I can after Mr. Jones returns.

I regret any delay this may cause, but I want to be sure that I respond appropriately to your appeal.

Sincerely,

Mary P. Siroky
Director

cc: Robert Campbell, P.E.
Judy Dougherty
David Jones

Enclosed 2 AAC 96.340

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

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

(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.

2 AAC 96.350. Contents of determination denying appeal

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.