



Ombudsman Complaint A2010-0552

Finding of Record and Closure  
September 13, 2011

*This investigative report has been edited and redacted to remove information made confidential by Alaska Statute and to protect privacy rights.*

A former state employee filed a complaint against the Division of Personnel & Labor Relations (DOP&LR) on April 19, 2010 alleging that DOP&LR refused to comply with his request for a full copy of his personnel file.

Assistant Ombudsman Kate Higgins notified DOP&LR of the complaint on July 13, 2010. The ombudsman investigated the following allegation stated in terms that conform with AS 24.55.150:

*Contrary to Law, DOP&LR refused to provide the complainant with a full copy of his personnel file.*

## **Background**

The Complainant was a former employee of the Department of Transportation and Public Facilities. He was terminated from state service on August 15, 2008. The Complainant feels that he was wrongly terminated from his position and has been working to clear his name ever since.

The ombudsman has not, and will not, review the merits of the Complainant's termination from state service. Per Alaska Administrative Code 22.20.010, the ombudsman is prevented from investigating complaints that "relates to an administrative act of which the complainant has had knowledge for more than one year before the complaint is filed." The Complainant was terminated on August 15, 2008, but did not complain about his termination until after he filed the present complaint regarding his personnel file in 2010. Any allegations regarding his termination, therefore, are too old for our office to review.

DOP&LR's mission statement regarding its personnel functions is to "provide policy, consultative guidance and direct human resource services to State of Alaska Executive Branch agencies."

On May 27, 2010, the Complainant faxed the following request to DOP&LR:

I am writing at the suggestion of Linda Ritchey the Intake Secretary at the Legislative Affairs, Ombudsman Office in Anchorage to request a copy of my complete personnel file. I previously received my medical records, attendance records, pay records and initial hire paperwork, but I am requesting my file in its entirety, specifically the complaints filed against me as well as documented information from the Fact Finding Hearing. I worked at . . . from 2001-2008. [Emphasis in original.]

On June 4, 2010, DOP&LR Human Resource Manager Sherilyn Knight responded:

This letter is to address your records request. As you state in your letter on May 27, 2010, you have both a copy of your personnel file and medical file from your time of employment with [DOT]. You additionally requested a copy of the complaints filed against you while working for [DOT]. The contents of complaints and investigatory files are confidential and not accessible to employees. Those documents are not part of your supervisory or personnel files.

On June 14, 2010, the Complainant sent another letter to DOP&LR regarding his personnel file, writing:

Thank you for your response to my request of my personnel file, but I am once again requesting a copy of the complaints filed against me while employed by [DOT]...I am also asking for a copy of the findings of the committee of August 2, 2008, the so called "Fact Finding Committee." Since these documents are not part of my personnel file and cannot be released to me, I would like to know specifically which State of Alaska Statute governs this decision, so that I can better understand why I am unable to receive a copy of the complaints and finding of the "Fact Finding Committee."

On June 28, 2010, DOP&LR Deputy Director of Labor Relations Kate Sheehan sent the following letter to the Complainant :

This letter is to address your request dated June 14, 2010, where you again requested copies of complaints filed against you while employed with the [DOT] System. Your request for copies of the complaints filed against you and the investigatory file is denied pursuant to Personnel Rule 2 AAC 07.910 and Alaska Statute (sic) 39.25.080.

## INVESTIGATION

### ***Alaska Statute (AS) 39.25.080:***

**Personnel Records confidential; exceptions.**

***(a) State personnel records, including employment applications and examinations and other assessment materials, are confidential and are not open to public inspection except as provided in this section.***

(b) The following information is available for public inspection, subject to reasonable regulations on the time and manner of inspection:

- (1) the names and position titles of all state employees;

- (2) the position held by a state employee;
- (3) prior positions held by a state employee;
- (4) whether a state employee is in the classified, partially exempt, or exempt service;
- (5) the dates of appointment and separation of a state employee;
- (6) the compensation authorized for a state employee; and
- (7) whether a state employee has been dismissed or disciplined for a violation of AS 39.25.160(1) (interference or failure to cooperate with the Legislative Budget and Audit Committee).

*(c) A state employee has the right to examine the employee's own personnel files and may authorize others to examine those files.* [Emphasis added.]

### **DOP&LR Standard Operating Procedure – DOP 06 – Employee Records**

DOP&LR's policy defines the types of records kept by the Employee Records Unit (ERU), proscribes the process for submitting documents to the ERU, and provides guidance on who can access the records held by the ERU, distinguishing between confidential and public information.<sup>1</sup>

The ERU holds two types of records:

- Personnel Records
- Position Records

Personnel Records are split into two categories – Non-medical and Medical. The non-medical personnel records include documents like performance evaluations, nepotism waivers, training certificates, kudos (praise or honors), and “disciplinary actions.”<sup>2</sup> Parts of an employee's non-medical personnel record, such as the employee's name, position held, dates of employment, and rate of compensation, are public information. Medical records consist of items like worker's compensation forms/correspondence, medical reports, and doctor's notes. All of the information contained in the medical portion of an employee's personnel record is confidential.

Position Records consist of documents like position descriptions and flex training plans. Position records are not confidential.

The policy provides that “any employee or former employee or applicant for employment has the right to examine their own personnel files (see AS 39.25.080(c)) and may request that any other person be granted access to their file.”<sup>3</sup>

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<sup>1</sup> The policy can be located online at:  
<http://doa.alaska.gov/dop/docpool/pdf/sop/Ch06EmployeeRecords/DOP06EmployeeRecordsSOPEffective050103.pdf>

<sup>2</sup> DOP 06 Employee Records at pg. 2.

<sup>3</sup> Id at pg. 10.

### ***Ombudsman Communications with DOP&LR Staff***

On July 13, 2010, Assistant Ombudsman Kate Higgins asked DOP&LR Deputy Director Kate Sheehan, via e-mail, about her decision to deny the Complainant's request for a complete copy of his personnel file. The e-mail read, in part:

You denied [the Complainant's] request "pursuant to Personnel Rule 2 AAC 07.910 and Alaska Statue [sic] 39.25.080." However, AS 39.25.080(c) provides that "(a) state employee has the right to examine the employee's own personnel files and may authorize others to examine those files." 2 AAC 07.910 addresses the release of confidential personnel records but it does not directly address requests from current employees, former employees, or job applicants for access to their own files.

I also reviewed Division of Personnel, Standard Operating Procedure 06 – Employee Records. The SOP indicates that disciplinary records are maintained as non-medical personnel records. I presume that complaint letters and investigative files would be maintained as part of a disciplinary action. Section III, F.5. provides that "(a)ny employee or former employee or applicant for employment has a right to examine their own personnel files (see AS 39.25.080(c)) and may request that any other person be granted access to their files."

The authority you cited for denying the Complainant's request does not appear to support your decision, as the statute you cited, AS 39.25.080, states that state employees have the right to review their personnel files. Please explain how the authority you cited supports your decision to deny the Complainant's request.

On July 27, 2010, Ms. Sheehan responded:

Our office has consistently taken the position that investigatory files are not personnel files or employment records and we routinely do not release them to the former/current employees or other agencies (without a subpoena and signed confidentiality agreement per the regulations, 2 AAC 07.910). A "disciplinary action" mentioned in the DOPLR DOP would be the letter to the employee outlining the discipline being imposed such as a Letter of Reprimand or Letter of Suspension. The evidence used to make a determination on whether or not discipline is appropriate is part of the investigatory file which is not part of the personnel file. These remain confidential for a variety of reasons including statements of third parties included in the file, discipline information compiled for third parties to determine comparators and deliberative materials and work product.

On August 11, Ms. Higgins wrote back:

I am somewhat confused at DOP&LR's position regarding investigative materials and am hoping you can clarify a couple of things. You said that investigative files are not considered personnel records and, thus, are not confidential per AS 39.25.080. It seems to me that, if the investigative file is not confidential, then it would be considered a public record, under AS 40.25, and be subject to disclosure unless there is a valid exception under AS 40.25.120.

DOP&LR's position is that the investigative files are confidential because they contain 1) statements by third parties, 2) "discipline information compiled for third parties to determine comparators," 3) deliberative materials, and 4) work product.

Would you please clarify what you mean by "discipline information compiled for third parties to determine comparators"? Do you mean records of disciplinary actions taken against other employees, or is there a different meaning to the phrase?

Also, please provide authority, statutory or otherwise, supporting the confidentiality of each of these four categories of material.

Ms. Sheehan responded on August 25:

Reports and documents compiled through the State's investigation are considered records compiled for law enforcement purposes. In addition, victims have an expectation of privacy in their complaints and statements. Because disclosure of reports or documents containing victim or witness statements could reasonably be expected to constitute an unwarranted invasion of personal privacy of a victim or a witness, these records are confidential and not subject to disclosure. Finally, reports and documents compiled in preparation for litigation are confidential work product.

As far as what I meant by "discipline information compiled for third parties to determine comparators", yes I do mean records of disciplinary actions taken against other employees. The files may contain the actual discipline letter itself as well as supporting documentation.

On September 15, Assistant Ombudsman Beth Leibowitz sent the following letter to Ms. Sheehan:

I believe there are some records in that file which can be legally withheld from [the Complainant], but I am not convinced that any exception justifies withholding the entire file.

In your correspondence, you have offered numerous rationales for why the Complainant cannot obtain the record of the personnel investigation that led to his termination from state employment. I have attempted to summarize the correspondence as follows:

In your e-mail of August 25, 2010, you wrote that "Reports and documents compiled through the State's investigation are considered records compiled for law enforcement purposes." If this were so, then an exception to the Public Records Act, AS 40.25.120(a)(6) would apply to at least some of the investigation records.

In your e-mail of August 25, 2010, you also stated that "disclosure of reports or documents containing victim or witness statements could reasonably be expected to constitute an unwarranted invasion of the personal privacy of a victim or witness."

Also in your e-mail of August 25, 2010, you implied that the investigation record is confidential work product because it was compiled in preparation for litigation.

In your e-mail of July 27, 2010, you wrote, “investigatory files are not personnel files or employment records and we routinely do not release them to the former/current employees or other agencies (without a subpoena and signed confidentiality agreement per the regulations, 2 AAC 07.910) . . . The evidence used to make a determination on whether or not discipline is appropriate is part of the investigatory file which is not part of the personnel file.”

In your e-mail of July 27, 2010, you cited several possible exceptions to the Public Records Act: (1) privacy interests of third parties whose statements were included in the file, and similarly privacy interests of other employees whose disciplinary information was included in the file for comparative purposes; (2) deliberative process privilege; and (3) work product privilege.

In your original letter to the Complainant, dated June 28, 2010, you wrote: “Your request for copies of the complaints filed against you and the investigatory file is denied pursuant to Personnel Rule 2 AAC 07.910 and Alaska Statute AS 39.25.080.”

The Alaska Public Records Act (AS 40.25.100 – 40.25.350) requires disclosure of state agency records unless a specific exception exists. Also, if a record can be redacted to remove non-disclosable material, then the state agency is expected to provide a redacted copy of the record, rather than completely denying access.

### ***AS 39.25.080 Statutory exception for personnel records***

AS 39.25.080 *does* provide that “personnel records” are not *public* records. However, the Complainant, as a former state employee, “has the right to examine the employee’s own personnel files.” *See* AS 39.25.080(c). The implementing regulation, 2 AAC 07.910 does not appear to add anything to this.

I requested that you explain how AS 39.25.080 allowed the Division of Personnel to withhold the records in question, even though AS 39.25.080(c) appears to mandate access. You responded that the investigatory file in question was not a personnel file or employment record. This would seem to imply that AS 39.25.080 was not applicable, and you supplied several other exceptions of the Public Records Act that might arguably apply instead, such as deliberative process privilege and the privacy interests of third parties.

Regarding AS 39.25.080(c), the term “personnel files” is not defined in that statute. However, AS 23.10.430, which applies to the State of Alaska, also mandates that an employee shall have access to “the employee’s personnel file and other personnel information maintained by the employer.” 8 AAC 15.910(d) defines “personnel file and other personnel information” for purposes of AS 23.10.430:

As used in AS 23.10.430, "personnel file and other personnel information" means all papers, documents, and reports pertaining to a particular employee that are used or have been used by an employer to determine that employee's eligibility

for employment, promotion, additional compensation, transfer, termination, disciplinary or other adverse personnel action; "personnel file and other personnel information"

(1) includes

- (A) applications;
- (B) notices of commendation, warning or discipline;
- (C) authorization for withholding or deductions from pay;
- (D) records of hours worked and leave records;
- (E) formal and informal employee evaluations;
- (F) reports relating to the employee's character, credit, work habits, compensation, and benefits;
- (G) medical records; and
- (H) letters of reference or recommendations from third parties, including former employers;

(2) does not include

- (A) information of a personal nature about a person other than the employee if disclosure of the information would constitute an unwarranted invasion of the other person's privacy;
- (B) information relating to an ongoing investigation of a violation of a criminal or civil statute by an employee; or
- (C) an employer's ongoing investigation of employee misconduct.

Please note that the exclusion for an employer's investigation of employee misconduct applies only to an *ongoing* investigation, not to one that has been closed for two years. Also, under 8 AAC 15.910(F), the former employee clearly has access to "reports" relating to the employee's character and work habits.

Under AS 23.10.430 and its implementing regulation, the only plausible justification for withholding portions of the investigatory file is for "information of a personal nature about a person other than the employee if disclosure of the information would constitute an unwarranted invasion of the other person's privacy." Disciplinary information regarding other employees, included in the file for comparative purposes, would almost certainly fit under this exception. However, it is not clear that the substance of other employee's complaints about the Complainant would qualify as being "of a personal nature," given that those complaints involved working conditions, not the other employee's personal life.

Given AS 23.10.430, as well as AS 39.25.080(c), it appears that the Complainant has a statutory right to access to the investigatory file, except for information that would be an unwarranted invasion of third parties' privacy rights.

### ***Other exceptions of the Public Records Act***

In addition to initially citing AS 39.25.080, you cited several other exceptions that fall under AS 40.25.120(a)(4) (confidentiality required by state law): constitutionally protected privacy interests; deliberative process privilege; and work product privilege (for materials prepared in anticipation of litigation). It is possible that portions of the investigatory file qualify for one of these exceptions; the usual process would be for the state to redact the requested records, indicating the legal basis for specific redactions. That information would then be provided to the Complainant in writing, along with the redacted records. This has not been done.

In your e-mail of August 25, you also referred to the Division of Personnel's records as records compiled for law enforcement purposes. With all due respect, I have never heard of the Division of Personnel being a "law enforcement agency." Without further explanation and legal authority, I do not find this argument convincing.

### **Conclusion**

I suggest that you specify which portions of the requested records must be redacted, and provide the specific authority for each redaction. I strongly suggest that you provide the Complainant with a denial letter that conforms to the procedure set forth in the regulations implementing the Public Records Act. Your letter of June 28, 2010 did not satisfy the requirements of 2 AAC 96.335, which reads in relevant part:

- (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 requestor may administratively appeal the denial by complying with the procedures in 2 AAC 96.340;
  - (2) the requestor 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 requestor before the public agency; and
  - (4) an administrative appeal from a denial of a request for public records requires no appeal bond.

Once you have responded to the Complainant in accordance with the Public Records Act and AS 23.10.430, please provide a copy of your response to our office.

On September 24, Ms. Sheehan left a voice-mail for Ms. Leibowitz acknowledging receipt of the letter and indicating that she had turned it over to DOP&LR's legal counsel at the Department of Law for advice.

On October 20, Ms. Sheehan advised Ms. Higgins that DOP&LR's legal counsel agreed with Ms. Leibowitz's suggested course of action. Ms. Sheehan told Ms. Higgins that she planned to complete a response within several days and would copy Ms. Higgins on her correspondence with the Complainant.

On November 16, after several follow-up calls from the ombudsman investigator, DOP&LR sent the following letter to the Complainant:

Enclosed please find a copy of the State's investigatory file regarding your employment with the State of Alaska, Department of Transportation and Public Facilities. As you can see, some portions of the file are redacted. The redacted portions include names and contact information for former co-workers who filed written complaints/responses regarding their perception of your conduct. I have redacted these names in order to protect their privacy. I have also not included information on specific employees and the discipline they received. Information as to a personal nature may constitute an unwarranted invasion of privacy and is, therefore, confidential.

I have also withheld notes from meetings and interviews with State employees. These notes are deliberative and, therefore, meet the deliberative process privilege.

The file consisted of 92-double side pages and included the following:

- E-mails between the ombudsman investigator and Ms. Sheehan, (2 pages)
- Letters between DOP&LR and the Complainant regarding his requests for his files (4 pages)
- Documents relating to a claim for, and an appeal of, unemployment benefits (41 pages)
- Documents relating to the Complainant's 2008 termination from AMHS
- August 15, 2008, letter terminating the Complainant from state employment (2 pages)
- a July 30, 2008, notice of employee conduct violations (1)
- a July 28, 2008, letter of warning, (1 page)
- February 26, 2008 letter of warning (1 page)
- February 4, 2008 notice of missed assignment (1 page)
- 6 letters of complaint (10 pages)
- AMHS position description for the Complainant's position as Wiper (1 page)

- Handwritten statement of the Complainant detailing complaints about his working conditions (18 pages)
- AMHS letter of appreciation for 5 years of state service and state certification of appreciation, dated June 2008 (2 pages)
- Documentation relating to 2006 personnel issues with the Complainant (8 pages)
- Various AMHS position descriptions (7 pages)
- AMHS standing orders and policies (57 pages)
- AMHS Standing Orders acknowledgement sheet (18 pages)

DOP&LR redacted the names of the AMHS employees who complained about the Complainant's work performance and behavior.

Upon receipt of the letter, Ms. Higgins contacted DOP&LR Director Nicki Neal because the letter did not satisfy the requirements of the Alaska Public Records Act, as Ms. Sheehan had pledged it would. Specifically, the letter did not contain specific authority for denying the Complainant access to portions of his file, nor did it provide him with appeal information as required by regulation.

On November 19, Ms. Higgins spoke to DOP&LR Labor Relations Analyst Dallas Hargrave. He explained that he needed to research the issue further but speculated that Ms. Sheehan did not provide the specific authority for withholding items from the file, or the appeal information, because she treated the disclosure as a release of personnel files and not as a public records request.

Between November and December 2010, Ms. Higgins and Mr. Hargrave spoke on several occasions. On December 7, 2010, Mr. Hargrave confirmed, after speaking with Ms. Sheehan, that DOP&LR released its investigative file as a release of an employee's personnel file. Ms. Higgins also asked Mr. Hargrave to find out how the agency intended to implement its change of position.

On December 30, 2010, Mr. Hargrave responded:

My understanding is that you were interested in knowing what kind of policy change or guidance DOPLR has put out regarding whether an employee or former employee can have access to an investigation file. I had previously told you that I believe Kate Sheehan, Deputy Director, had sent out an e-mail to the Human Resource Managers (HRM's) advising them that employees had a right to examine their own closed investigation files. However, after talking to the HRM's, they were aware of this information, but it appears that they received the information from Ms. Sheehan during a management staff meeting. I talked to Director Nicki Neal about this and she decided to follow up the verbal directions with an e-mail to all DOPLR employees regarding this information. This e-mail was sent today and reiterates that these files are personnel records to which the employee or former employee should have access. The HRM's were directed to consult with the Labor Relations section before providing the files because the

Labor Relations Analysts have knowledge of the rules of evidence and can determine what, if any, information should be redacted.

Ms. Higgins responded:

Would you mind sending me a copy of the e-mail that went out to staff? Also, is DOP&LR planning on updating the division's standard operating procedure regarding employee records? I believe this policy is known as DOP 06.

Mr. Hargrave wrote back:

We looked at the SOP for employee records (DOP 06) and it doesn't apply to this situation because investigation files are not maintained at the Employee Records Unit. Investigation files are maintained at the HR Service Centers. Nicki Neal decided she would rather send out the e-mail to everyone because the SOP doesn't apply to this situation.

Like I mentioned to you on the phone, having an employee actually request this type of information is rare. However, having their union request this type of information (with a confidentiality waiver from the employee) is quite common. We already have a standard process we follow to gather these types of records and respond to the unions through the Labor Relations Unit. Nicki Neal just clarified that she would like the same process to be followed when an employee or former employee request an investigation file.

Mr. Hargrave also forwarded a copy of Ms. Neal's e-mail to staff.

## **ANALYSIS AND PROPOSED FINDINGS**

The standard used to evaluate all ombudsman complaints is the preponderance of the evidence. If the preponderance of the evidence indicates that it is more likely than not that the administrative act took place and the complainant's criticism of it is valid, the allegation is found justified.

The Office of the Ombudsman's Policies and Procedures Manual at 4040(1) defines *contrary to law*. The portion of the definition relevant to this investigation is:

(B) misinterpretation or misapplication of a statute, regulation, or comparable requirement;

AS 39.25.080(c) states that "a state employee has the right to examine the employee's own personnel files." Initially, DOP&LR asserted that investigative files were not "personnel records," and thus, the agency was not required to provide the contents of those files to state employees.

After prolonged discourse between DOP&LR and ombudsman staff, the agency conceded that investigative files *are* personnel files within the meaning of AS 39.25.080. Investigative files may be subject to redactions of materials confidential under state law because they contain information implicating the privacy rights of others or contain privileged material. DOP&LR subsequently provided the Complainant with the contents of its investigative file on him.

Therefore, the ombudsman proposes to find this complaint *justified*.

### **Agency Response to Ombudsman Proposed Finding**

Kate Sheehan, Deputy Director of the Department of Labor Division of Personnel and Labor Relations, responded for the Division on September 2, 2011. The Division did not comment on the proposed finding therefore this complaint will be closed as *justified*.

### **Proposed Recommendations**

***Recommendation One: DOP&LR should revise its policy regarding employee records to incorporate Director Neal's e-mailed instructions reiterating which files are personnel records to which the employee or former employee should have access. If there are situations where staff should consult with the Labor Relations section before providing the files, the policy should outline those situations.***

DOP&LR instructed staff on the proper procedure for handling investigative files in the future but declined to revise its policy regarding employee records. We think the instructional e-mail was a good start but believe that DOP&LR should revise its policy addressing employee records. We are concerned that, by not committing this newly established position in policy, this issue may repeat itself in the future as staff changes and historical memory fades.

Office policies are most useful in addressing non-routine situations. Once employees learn how to do the everyday functions of their job, they don't need to consult the policy manual to carry out those functions – they just know how to properly complete the tasks. But, when confronted with an out of the ordinary request, most state employees look first to their policies and procedures for guidance. Mr. Hargrave believes that requests for investigatory files will be rare.

If a current or former employee submits a request for his or her investigative file, it is probable that the DOP&LR employee who receives the request will be unsure how to complete the task. Unless the agency adopts the ombudsman's recommendation, a review of the agency's policies won't help them.

DOP&LR's current policy only addresses personnel files maintained by the Employee Records Unit. It does not address personnel files that are maintained elsewhere, such as investigatory files or supervisory<sup>4</sup> files. Investigatory and supervisory files are not mentioned in *any* of DOP&LR's policies.

If the recipient of a request for an investigatory file happens to recall Director Neal's e-mail on the subject, he or she will refer the request to the Labor Relations Analyst to fulfill the request. What happens, though, if the employee doesn't remember the e-mail, or wasn't employed by DOP&LR when the e-mail went out? Will the request be fulfilled or will DOP&LR deny a valid request? A written policy would serve to clarify that situation.

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<sup>4</sup> Supervisory files are files kept by an employee's direct supervisor and are used to document the employee's job performance. For more information about supervisory files, see DOP&LR newsletter "HR Update," FY 09 Issue 06, April 22, 2009.

### **Agency Response To Recommendation One**

Regarding Recommendation One, Ms. Sheehan responded:

The Division of Personnel and Labor Relations will agree to revise its policy regarding employee files to incorporate Director Neal's emailed instructions reiterating which files are personnel records to which the employee or former employee should have access. The policy will also include a note that staff should consult with Labor Relations in instances when there are issues or questions related to the release of files.

\* \* \*

***Recommendation 2: All agency responses to staff requests to view their own personnel files should include a list of the types of personnel files that exist and the name of the custodian of the files.***

AS 39.25.080(c) gives employees, former employees and applicants for employment the right to review their own personnel files. It is likely, however, that people entitled to access their personnel files may not know exactly what types of personnel files exist. And, if a person doesn't know that certain types of files exist, they can't be expected to know how to tailor their request to receive all of the documents maintained by the state in regard to their employment.

At the very least, DOP&LR should issue a policy specifying *all* of the different types of files held by the division and where those files are located. Additionally, the division should clearly state that current and former employees have the right to review the files kept on them.

### **Agency Response Agency Response to Recommendation Two**

Ms. Sheehan responded:

DOP&LJ will draft a document that explains the potential files that may be kept on an employee and where that file can be located. This document will be attached to responses to requests for employee records. This document will also clearly articulate that not every employee has each of the files listed. It will also only provide the location of the file (for example, under Personnel File it will simply list the Employee Planning and Information Center, DOP&LJ rather than a specific individual.) This document is still being drafted due to the fact that there are many employment records and we want to ensure that we have a complete list for the document.

## **FINDING OF RECORD AND CLOSURE**

The agency's responses fulfill the letter and intent of the ombudsman's recommendations. This complaint will therefore be closed as ***justified*** and ***rectified***.