

**CONFIDENTIAL  
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**LEVESQUE LAW GROUP, LLC**

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Joseph N. Levesque  
Shane E. Levesque, Of Counsel

3380 C Street, Suite 202  
Anchorage, Alaska 99503

Phone: (907) 261-8935  
Fax: (206) 309-0667  
Website: [levesquelawgroup.com](http://levesquelawgroup.com)

**MEMORANDUM**

**TO:** Kim Lane, Borough Clerk

**FROM:** Joseph N. Levesque, Borough Attorney *JNL*

**DATE:** April 22, 2020

**RE:** KSTK'S RECORDS REQUEST

**Our File No. 584-2700**

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This memorandum is written in response to a Request for Public Records submitted by reporter June Leffler on behalf of the local KSTK Radio Station. The Request was made to the City and Borough of Wrangell ("CBW") through the clerk's office on April 14, 2020. It expressly requested the following documents:

All plans submitted to the City of Wrangell from Sea Level/Pacific Seafood regarding COVID-19 safety protocol including quarantine, protective gear, sanitization and social distancing measures.

All plans submitted to the City of Wrangell from Sea Level/Pacific Seafood regarding the additional workforce Sea level will bring to Wrangell in 2020 – including number of workers, arrival dates and workers travel.

Upon receiving the Request for Public Records, CBW Clerk Kim Lane corresponded with June Leffler explaining that CBW is not approving or rejecting business plans and that the business plan being requested is a draft plan presently being reviewed by the State of Alaska. Accordingly, the Clerk suggested that Ms. Leffler request the

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information directly from the State of Alaska.<sup>1</sup> In response to CBW's suggestion, Ms. Leffler stated that if CBW was in possession of the Sea Level/Pacific Seafood business plan then KSTK wanted to see it.

Pursuant to CBW Charter Section 4-5:

All records and accounts of every office, department or agency of the borough government shall be open to public inspection as otherwise provided by Alaska Statutes, municipal code or other applicable law.

Alaska Statute 40.25.110 governs public records requests in Alaska; it essentially provides that all public records are available and open for inspection by the public. However, it also includes a qualification stating “[u]nless specifically provided otherwise[.]”

This reference is relevant when considering the exceptions to the AS 40.25.110 which are listed in AS 40.25.120. Included in the exceptions is AS 40.25.120 (a) (4) which reads:

- (a) Every person has a right to inspect a public record in the state, including public records in the recorders' offices, except
  - (4) records required to be kept confidential by a federal law or regulation or by state law[.]

Following correspondence with KSTK demanding to see Sea Level/Pacific Seafood business plan, Clerk Lane contacted Sea Level/Pacific Seafood to determine whether the company would allow CBW to release the business plan and Sea Level/Pacific Seafood requested that CBW not release its business plan as they view it as confidential information under both Federal and State law.

Accordingly, my recommendation to you as Borough Clerk is that KSTK's request for the business plan be denied at this time. CBW's original suggestion that KSTK request the information from the State of Alaska still appears to be a viable option. In addition, it

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<sup>1</sup> As an Alaska municipality, CBW has made attempts to obtain copies of business plans in possession of the State of Alaska. The State at first refused and since then has agreed to share local business plans with municipalities once the business plans are accepted by the State of Alaska; to date, CBW has not received any of the other local business plans from the State. Accordingly, the confidentiality of these draft documents should be determined by the State, not CBW. In addition, the draft business plan from Sea Level/Pacific Seafood was provided to CBW as a confidential draft plan. If CBW were to unilaterally release the business plan it would interfere with CBW's ability to receive any additional business plans which are used solely for prevention of the COVID-19 spread which is a matter of public health and safety.

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would serve the Wrangell community as CBW has still not received any other local business plans.

Finally, it appears that KSTK has available an administrative remedy pursuant to AS 40.29.129. This remedy is detailed on the CBW Public Information Request form.

CC: Sea Level/Pacific Seafood