



THE STATE
of **ALASKA**
GOVERNOR MICHAEL J. DUNLEAVY

Department of Administration

ALASKA PUBLIC OFFICES COMMISSION

2221 E. Northern Lights Blvd., Rm. 128
Anchorage, AK 99508-4149
Main: 907.276.4176
Fax: 907.276.7018
www.doa.alaska.gov/apoc

March 4, 2019

VIA U.S. MAIL and EMAIL

Stacey Stone
Holmes Weddle & Barcott, P.C.
701 West Eighth Avenue, Suite 700
Anchorage, Alaska 99501
sstone@hwb-law.com

Re: Staff Response to Request for Exemption

Dear Ms. Stone:

This letter responds to your January 31, 2019, request for an exemption made on behalf of your client, Mary Ann Pruitt, from the requirement that she disclose, as sources of income, the names of clients that paid her business, P.S. Strategies, more than \$1,000 for services rendered in calendar year 2018. Based on the information you have provided, staff denies the exemption request.

Ms. Pruitt is currently working under contract as the Communication Director within the Office of the Governor and is subject to the reporting requirements of Alaska's Public Official Financial Disclosure Law (AS 39.50).¹ As the owner of P.S. Strategies ("P.S."), an advertising and marketing agency, Ms. Pruitt is also by definition "self-employed."² As such, Ms. Pruitt is required to disclose, as sources of income, the names of all clients that paid her business more than \$1,000 during 2018, and the amount of income received from each client.³ Ms. Pruitt requests an exemption from this requirement and states that it would put P.S. at a competitive disadvantage and would irreparably harm her business. Ms. Pruitt contends that P.S.'s right to privacy outweighs any compelling state interest in disclosure.

Pursuant to 2 AAC 50.821(b), APOC staff denies Ms. Pruitt's request for exemption from disclosing, as sources of income, clients who paid P.S. more than \$1,000 in 2018. The names of all clients who paid P.S. more than \$1,000 for services rendered in 2018 must be disclosed, as well as the amount of the income received from each client.

¹ Exhibit 1, Personal Services Contract.

² 2 AAC 50.799(a).

³ AS 39.50.030(b)(1); 2 AAC 50.700(a).

Analysis

A. Clients who paid P.S. over \$1,000 do not constitute a “trade secret”.

Ms. Pruitt requests an exemption from disclosing the names of all clients who paid P.S. over \$1,000, as well as the amounts paid by each. Her request asserts that P.S.’s client list and amounts paid by clients constitute a trade secret and that the information is not known outside of the business.

Staff disagrees. P.S.’s client list, in and of itself, does not derive economic value from not being generally known. Rather, the economic value lies in the specific services and rates provided by P.S., which do not require disclosure. Additionally, much of the information Ms. Pruitt seeks to exempt from disclosure is readily available to the public through P.S.’s own website and many records filed with this agency.⁵ The general availability of this information contradicts the argument that identifying clients who paid over \$1,000 for services constitutes a “trade secret” that would irreparably harm Ms. Pruitt and her business if disclosed.⁶

Ms. Pruitt argues that disclosure of the amount of income paid by a client could cause irreparable harm by enabling a competitor to undercut the rates charged by P.S. Understandably, P.S. takes precautions to guard information regarding the specific charges for specific services rendered. Staff recognizes that if the specific rates charged were readily available to the public and potential competitors, P.S. could risk losing clients to competitors who could offer similar services at lower cost. However, Ms. Pruitt is not required to disclose specific rates or exact amounts paid by each client. Instead, filers may disclose income within prescribed monetary ranges.⁷ This means that the higher the income from a client, the broader the range within which such income may be reported—and the less likely a competitor could meaningfully undercut P.S.’s rates.

⁵ See, <https://psstrats.com/what-we-do/> (last accessed on February 28, 2019); Exhibit 2, Campaign Disclosure Expenditures paid to P.S. Strategies in CY18.

⁶ See, *Powercorp Alaska, LLC v. Alaska Energy Authority*, 290 P.3d 1173, 1187-90 (Alaska 2012) (holding that under AS 45.50.940(3), a “trade secret” is information worthy of being kept secret and for which reasonable efforts have been made to maintain its secrecy, and establishing six factors for determining whether such information constitutes a trade secret).

⁷ See, 2 AAC 50.685(c) (“The amount of any income more than \$1,000 that must be reported...may be stated in a range rather than as an exact amount. The ranges to be used for this purpose are the following: (1) more than \$250 and no more than \$1,000, for gifts only; (2) more than \$1,000 and no more than \$2,000; (3) more than \$2,000 and no more than \$5,000; (4) more than \$5,000 and no more than \$10,000; (5) more than \$10,000 and no more than \$20,000; (6) more than \$20,000 and no more than \$50,000; (7) more than \$50,000 and no more than \$100,000; (8) more than \$100,000 and no more than \$200,000; (9) more than \$200,000 and no more than \$500,000; (10) more than \$500,000 and no more than \$1,000,000; (11) more than \$1,000,000.”).

B. The right to privacy does not outweigh the compelling state interest in disclosing the information.

As the requestor, Ms. Pruitt carries the burden of proving that an exemption is necessary.⁸ Here, staff finds that Ms. Pruitt has failed to demonstrate that the right to privacy of the information outweighs the compelling state interest in disclosure.⁹

As Communication Director in the Office of the Governor, Ms. Pruitt holds an executive policy-making position with the State of Alaska. The underlying purpose of Alaska's disclosure laws is to assure that public officials are free from the influence of *undisclosed* private or business interests when engaging in state business.¹⁰ Given Ms. Pruitt's role within the highest state executive office, the public has the right to disclosure of the business and financial ties with corporate and political entities held by her company.¹¹ Such disclosure is reasonable and does not violate Ms. Pruitt's right to privacy. Indeed, the disclosure of such financial and business information is precisely what public official financial disclosure law seeks to ensure.

Moreover, the State's public official financial disclosure laws do not require Ms. Pruitt to disclose specific amounts of income received from each client, or the specific services rendered to or rates given to those clients. Ms. Pruitt must only disclose the name of each client who paid P.S. more than \$1,000 and select one of the income ranges set out in 2 AAC 50.685(c). Because Ms. Pruitt has failed to explain how or why stating income from clients within a range, without having to state specific services provided by P.S., would allow competitors to unfairly undercut P.S.'s rates, staff finds that the State's compelling interest in the disclosure of income from P.S.'s clients is not outweighed by any right to privacy Ms. Pruitt or P.S. may have as to the amounts of income from P.S.'s clients.

Conclusion

Although staff understands the concerns raised in Ms. Pruitt's request, we are unable to grant an exemption as she has not demonstrated that disclosure of the names of and

⁸ 2 AAC 50.775(a).

⁹ See AS 39.50.010 (declaring that the purposes of public official financial disclosures include assuring the public that public officials are free of the influence of undisclosed private or business interests, allowing the public access to information necessary to judge a public official's credentials and performance in office; and discouraging public officials from acting on private or business interests in performance of their public duties, among other compelling state interests).

¹⁰ AS 39.50.010(a). See also, *Falcon v. Alaska Public Offices Commission*, 570 P.2d 469, 477 (Alaska 1977) (recognizing that the overall purpose of financial disclosure law is "promoting efficient, ethical government and preserving the integrity and fairness of the political process both in fact and in appearance.").

¹¹ AS 39.50.010(b).

income received from P.S.'s clients would irreparably harm her business or that P.S.'s right to privacy outweighs the compelling state interest in disclosure.

If Ms. Pruitt does not agree with staff's determination, she has the right to appeal this decision to the Commission.¹² If Ms. Pruitt wishes to appeal, she must submit a written appeal within 30 days of this staff decision. If Ms. Pruitt does not appeal staff's decision to the Commission, this decision will be final and she must amend her 2019 Initial POFD within 30 days of the date of this letter, to identify, as sources of income, clients who paid P.S. more than \$1,000 in 2018 and the amounts of income received from each client in accordance with AS 39.50.030(b), 2 AAC 50.685 and 2 AAC 50.700.

Please feel free to contact APOC staff if you have any questions or require any additional information.

Sincerely,

ALASKA PUBLIC OFFICES COMMISSION



Madeline Scholl
Paralegal

cc: Heather Hebdon, Executive Director
Mary Lynn Macsalka, Assistant Attorney General

Encl: Exhibit 1 – SOA Employment Contract
Exhibit 2 – Expenditures to P.S.

CERTIFICATE OF SERVICE: I hereby certify that on this date, I caused a true and correct copy of the foregoing to be delivered to:	
Stacey Stone Holmes Weddle & Barcott, P.C. 701 West Eighth Avenue, Suite 700 Anchorage, Alaska 99501 sstone@hwb-law.com	<input checked="" type="checkbox"/> Email <input checked="" type="checkbox"/> U.S. Mail

 3/04/2019
Legal Assistant Date

¹² 2 AAC 50.831.

**STATE OF ALASKA
OFFICE OF THE GOVERNOR
PERSONAL SERVICES CONTRACT**

Mary Ann Pruitt agrees to provide personal services to the State of Alaska, Office of the Governor on the following terms:

1. Ms. Pruitt will perform services as directed by the governor or his designee, to include servicing as Director of Communications.
2. This contract is not for a definite term and will continue only so long as both parties agree. Either party may terminate the contract by written notice to the other.
3. Ms. Pruitt will receive compensation of \$15,417 per month for services performed under this contract. The parties expect that Ms. Pruitt will generally provide services for 37.5 hours per week under this contract. Ms. Pruitt will notify the Office of the Governor's Administrative Services Section if she is unavailable to perform services for substantial periods during regular work hours, so appropriate adjustments can be made to compensation payments.
4. Ms. Pruitt will not accrue personal leave or receive medical, dental, vision, or similar coverage under any health plan for service under this contract.
5. Ms. Pruitt will not be eligible for unemployment insurance as his position is excluded from the definition of employment under AS 23.20.526(d)(8)(A).
6. Ms. Pruitt will not receive credit under the State of Alaska Public Employees' Retirement System (PERS) for service under this contract, nor will the compensation for service under this contract be used to recalculate a benefit under PERS. For service under this contract Ms. Pruitt will not participate in the State of Alaska Deferred Compensation Plan but shall participate in the State of Alaska Supplemental Annuity Plan.
7. Ms. Pruitt is required to report to Alaska Public Offices Commission, APOC.
8. This contract may not be modified unless in writing and signed by both parties.

 _____ Contractor Signature	 _____ Date
 _____ State of Alaska Official Signature	 _____ Date

State of Alaska myAlaska My Government Resident Business in Alaska Visiting Alaska State Employees

APOC Online Reports

HOME POFD/LFD **CAMPAIGN DISCLOSURE** LOBBYING INDEPENDENT EXPENDITURES COMMISSION ACTIONS

State of Alaska > Department of Administration > APOC > Online Reports > Campaign > Campaign Disclosure Expenditures

CAMPAIGN DISCLOSURE: EXPENDITURES

Report Year: Any Status: Complete, Not Amended Filed After: 1/1/2018 Filed Before: Any Name PS Strategies Type Any

[Search](#) [Export](#) [Clear](#)

Name	Date	Contributor/Vendor	Payment Type	Amount	Submitted	Status
Families of the Last Frontier	10/31/2018	PS Strategies Inc.	Check	\$31,856.56	02/15/2019	Filed
Families of the Last Frontier	11/01/2018	PS Strategies Inc.	Check	\$58,694.00	02/15/2019	Filed
Families for Alaska's Future- Dunleavy	12/20/2018	PS Strategies	Check	\$20,000.00	02/15/2019	Filed
Families for Alaska's Future- Dunleavy	12/20/2018	PS Strategies	Check	\$10,000.00	02/15/2019	Filed
Families for Alaska's Future- Dunleavy	10/31/2018	PS Strategies	Check	\$70,000.00	02/15/2019	Filed
Alaska Republican Party	08/31/2018	PS Strategies, Inc	Check	\$20,320.00	09/04/2018	Filed
Families for Alaska's Future- Dunleavy	10/09/2018	PS Strategies	Check	\$31,642.00	10/30/2018	Filed
Families for Alaska's Future- Dunleavy	10/22/2018	PS Strategies	Check	\$50,000.00	10/30/2018	Filed
Families for Alaska's Future- Dunleavy	10/25/2018	PS Strategies	Check	\$65,216.00	10/30/2018	Filed
Families of the Last Frontier	10/08/2018	PS Strategies Inc.	Check	\$51,940.00	10/30/2018	Filed
Families of the Last Frontier	10/14/2018	PS Strategies Inc.	Check	\$50,881.00	10/30/2018	Filed
Families of the Last Frontier	08/03/2018	PS Strategies Inc.	Check	\$2,750.00	08/14/2018	Filed
Families of the Last Frontier	08/03/2018	PS Strategies Inc.	Check	\$2,750.00	08/14/2018	Filed
Families of the Last Frontier	08/10/2018	PS Strategies Inc.	Check	\$11,220.18	08/14/2018	Filed
Families of the Last Frontier	08/14/2018	PS Strategies Inc.	Check	\$17,460.00	10/08/2018	Filed
Families of the Last Frontier	10/03/2018	PS Strategies Inc.	Check	\$7,000.00	10/08/2018	Filed

Note: There are additional features and columns available by right-clicking the column headers. You may add and remove columns under the 'Additional Fields' submenu.

* Items with a black asterisk (*) have been Amended and may not represent the most current or accurate information.
 ** Items with two red asterisks (**) are Amendments.
 *** Items with three blue asterisks (***) have been filed by APOC Staff members.

State of Alaska | © 2019 | [Send us Feedback](#)