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Division of Tourism
Department of Commerce
and Economic Development

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663-95-0424

465-3600

Use of tourism survey
mailing list

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You have asked the Department of Law for advice regarding the allowable use of the names and addresses of persons who voluntarily provided that information to the Division of Tourism (division) during response to a division-sponsored survey of visitors to Alaska. As we understand it, the survey was conducted during the summer of 1993 by a contractor in connection with the division's Alaska Visitor Statistics Program III (AVSP III). The survey form upon which the name and address information was recorded stated: "Your name and address will be kept confidential and utilized solely for the purpose of this survey."

The Alaska Department of Fish and Game (ADF&G) has asked the division if ADF&G may use the names and addresses of the tourism survey respondents to distribute another survey regarding the economic impact of the nonresident, nonconsumptive use of wildlife. In your request you explain that the division intends not to release the names and addresses directly to ADF&G, but rather would prepare and directly distribute the cover letters for the survey form. In our opinion, the division may distribute the ADF&G wildlife use survey to the persons who originally responded to the Division of Tourism survey, but should do so under the conditions discussed below.

Your request raises a number of issues. It may be that the list of names and addresses collected in the original survey are public records, as there does not appear to be any provision specifically exempting this material from the public records law (AS 09.25.110, 09.25.120). Alaska Statute 44.33.723 provides that "Marketing information and data generated by the [Alaska Tourism Marketing] council, including tourism mailing lists, . . . are not public writings or records under AS 09.25.110 or 09.25.120." This statute applies to the Tourism Marketing Council, however, not the division. It also does not make these lists confidential. The tourism mailing lists are exempted from the public records laws so that they may be sold or leased to qualified trade associations under AS 44.33.715(a)(14), rather than be released

for free, or upon payment of a nominal copying charge, as a public record would be.

In other contexts, such as records compiled for law enforcement purposes, courts have recognized that an explicit promise of confidentiality to a source may create a legally-protectable privilege against disclosure of information received from that source. See, e.g., Wiener v. Federal Bureau of Investigation, 943 F.2d 972 (9th Cir. 1991), cert. den., 112 S. Ct. 3013, 120 L. Ed. 2d 886 (1992). On the other hand, the Alaska Supreme Court has repeatedly held that "exceptions" to the disclosure requirements of Alaska's public records laws are not favored, and will be narrowly construed. See, e.g., Municipality of Anchorage v. Anchorage Daily News, 794 P.2d 584 (Alaska 1990); City of Kenai v. Kenai Peninsula Newspapers, Inc., 642 P.2d 1316 (Alaska 1982). In an opinion issued prior to the adoption of AS 44.33.723, this office advised that mailing lists maintained by the Alaska Tourism Marketing Council and the Alaska Visitors Association, generated from enquiries about tourism received on "business reply cards" contained in print ads, were public records that had to be produced at cost for anyone who requested them. See 1990 Inf. Op. Att'y Gen. (Jan. 10; 663-90-0214). We therefore caution the division about the use of language which may create an expectation of "confidentiality" among members of the public in information gathered in a survey; such language quite likely may not be sufficient to create an enforceable exception to the explicit terms of the state's public records statutes.

Because this is not a public records request, however, and because the "confidentiality" language was used in the 1993 survey form, we would urge the division to follow the procedure outlined in your memorandum. If the division itself prepares and distributes the cover letter and survey form (even if the responses are to be sent directly to ADF&G), the division is complying with its promise to keep the names and addresses of its survey respondents confidential. (The division survey form actually said the information would be used "solely for the purpose of this survey," so the use of those names and addresses for the ADF&G survey is "stretching" the promise a little.) We recommend that the cover letter explain to the recipients that the division is distributing the survey in order to comply with its original offer of confidentiality, that recipients do not have to respond to the survey if they don't wish to, and if they do respond they don't have to provide their names or addresses.

We trust this answers the questions raised in your request for advice.

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