



ALASKA STATE LEGISLATURE

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July 17, 2018

MEMORANDUM

TO: Robert Henderson, Deputy Attorney General
State of Alaska, Department of Law

FROM: The Honorable Senator Bert Stedman, Chairman
Legislative Budget & Audit Committee

B.S.

RE: Referral of CEO of the Alaska Mental Health Trust
Mike Abbott for Potential Violation of Confidentiality
Provisions

For roughly the last year and a half, the Legislative Budget and Audit Committee (LBAC) and the Division of Legislative Audit has been engaged in the performance of an audit of the Alaska Mental Health Trust Authority (AMHT). "Alaska Mental Health Trust Authority Asset Management and Other Select Issues; 04-30090-18" (Audit).

The audit process includes the release of a "preliminary" audit to the entity under audit for comment. The preliminary audit is considered a confidential document.

AS 24.20.301(a) and AS 24.20.311(a) and is expressly marked "confidential" on the front cover. Maintaining confidentiality is integral to the legislative audit process.

Sec. 24.20.301 **Records.**

(a) The legislative audit division shall keep a complete file of all audit reports, performance review reports, and other reports or releases issued by the division, and a complete file of audit work papers, performance review work papers, and other related supportive material. The division shall also keep a complete and accurate record of all fiscal transactions involving the division.

Audit records and performance review records are confidential, and audit reports and performance review reports are confidential unless the report has been approved for release under AS 24.20.311.

Emphasis added.

Sec. 24.20.311 **Reports.**

- (a) The committee shall file copies of approved audit reports including any committee recommendations with the governor, the agency concerned, and the legislature. An annual report summarizing the audit reports and committee recommendations made during the year shall be filed with the governor and with the legislature on or before the first day of each regular session of the legislature. **Reports shall be approved by a majority of the committee before their release and shall be open to public inspection after their release to the legislature.**

Emphasis added.

LBAC procedures require the auditor to “explain the confidential nature of the report to the auditee when delivered.” Legislative Budget and Audit Committee, Formal Policies and Procedures (1984). On February 8, 2018, the auditor and the audit team met with several representatives of the AMHT, including Mr. Abbott, and explained that the preliminary audit report is a confidential document.

During the audit process, it was discovered the confidential preliminary audit of the AMHT had been “leaked” to Ms. Anne Hillman, a reporter for Alaska Public Media, by the Executive Director of the AMHT, Mike Abbott.

Specifically, on June 5, 2018, Ms. Hillman attended the LBAC meeting in Anchorage, Alaska. The AMHT preliminary audit was on the agenda to be considered in executive session and possibly released in final to the public.

Ms. Hillman had previously emailed the auditor on June 4, 2018, and asked for an interview regarding the AMHT audit. The auditor suggested she wait until the preliminary audit was released and then read it.

At the LBAC meeting, Ms. Hillman introduced herself and again asked for an interview. The auditor again suggested she wait until the report was released and made public, since it contained a lot of information that should be read and understood before an interview. Ms. Hillman responded that she knew that already because she had read the preliminary audit. The auditor advised her that it was a confidential document that she should not have access to read. When asked who had provided the copy, Ms. Hillman said it had been provided by the AMHT. She then refused to return the preliminary audit report to the auditor.

Alaska law prohibits the misuse of confidential information:

Sec. 11.56.860 **Misuse of Confidential Information.**

- (a) A person who is or has been a public servant commits the crime of misuse of confidential information if the person

- (1) learns confidential information through employment as a public servant; and
 - (2) while in office or after leaving office, uses the confidential information for personal gain **or in a manner not connected with the performance of official duties** other than by giving sworn testimony or evidence in a legal proceeding in conformity with a court order.
- (b) As used in this section, “confidential information” means information which has been classified confidential by law.
- (c) Misuse of confidential information is a class A misdemeanor.

Emphasis added.

Accordingly, this matter involving Mr. Abbott is referred to the Department of Law for investigation of a possible violation of AS 11.56.860.