

D. John McKay
Attorney at Law
117 E. Cook Ave.
Anchorage, Alaska 99501
Phone (907) 274-3154
Attorney for Alaska Dispatch
Alaska Bar No. 7811117

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

FOURTH JUDICIAL DISTRICT AT FAIRBANKS

ALASKA DISPATCH,)
)
 Plaintiff,)
)
 v.) Case No. 4AN-10- _____ CI
)
 FAIRBANKS NORTH STAR)
 BOROUGH,)
)
 Defendant.)
 _____)

COMPLAINT FOR ACCESS TO PUBLIC RECORDS
CONCERNING U.S. SENATE CANDIDATE JOE MILLER

Alaska Dispatch, by and through undersigned counsel, D. John McKay, by way of
Complaint against the Fairbanks North Star Borough, alleges as follows:

1. Plaintiff Alaska Dispatch, LLC (hereinafter referred to as Alaska Dispatch or the
Dispatch) is an Alaska LLC with principal offices in Anchorage. It employs ten experienced
journalists who provide coverage of statewide news, politics and features, and publishes the
online newsmagazine *Alaska Dispatch*, available online at AlaskaDispatch.com.

2. Defendant Fairbanks North Star Borough (“Borough” or “FNSB”) is a municipal
corporation, organized and operating pursuant to the laws of, and a political subdivision of, the
State of Alaska.

3. From 2002 through 2009, the Borough employed Joseph W. (“Joe”) Miller in its Legal Department.

4. Mr. Miller’s employment with the Borough was terminated as of September 2, 2009.

5. Mr. Miller maintained a private law practice while employed as an attorney by the Borough. Mr. Miller has characterized his employment by the Borough Legal Department as “public service.”

6. Mr. Miller is currently the Republican nominee for the United States Senate seat to be filled in the November 2, 2010, election.

7. Alaska Dispatch reporters have made a number of requests from June through October, 2010, for records maintained by the Borough relating to or arising from Mr. Miller’s employment with the Borough. These records include, but are not limited to any records maintained by or on behalf of the Borough, whether in the files of the Borough Mayor, Borough Attorney, other Borough employees or contractors, or otherwise, that relate to (a) Mr. Miller’s performance as an assistant Borough Attorney and the termination of Mr. Miller’s employment with the Borough or the circumstances thereof, and (b) any letters of reprimand, travel records, e-mails to or from Mr. Miller’s e-mail accounts, other communications to, from or concerning Mr. Miller, and (c) Mr. Miller’s use of Borough facilities, equipment or other assets for partisan political purposes or activities and/or incident reports, disciplinary actions reports, recommendations, or acknowledgements by Mr. Miller, relating to any such use, and (d) any records that relate to any other action involving Mr. Miller that involved violation or alleged violation of a law, rule, regulation or policy of the State or Borough governments, and (e) e-mails sent to or from Mr. Miller, particularly during the months of March 2008, August 2008 and

/or September 2008 pertaining to the Alaska Republican Party, the Alaska Republic Party Convention, Alaska Republican Party Chair, Randy Ruedrich, Sarah Palin, Cathy Giessel, Stephen Branchflower, Hollis French, Walt Monegan, “Troopergate,” or Vote.

8. In response to the Dispatch’s requests, the Borough provided some records concerning Mr. Miller. However, it also withheld many of the requested records, and provided others in redacted form, asserting various exemptions or privileges. It also provided, on or about July 15, 2010, an undated “matrix” identifying the documents produced and withheld by numbers assigned by the Borough to each, and indicating reasons for withholding or redacting documents not provided in full. Document numbers referred to hereinafter are those corresponding to the “matrix.” As used herein, “Miller Documents” refers to those portions of the documents requested by Alaska Dispatch that have been withheld or redacted.

9. Mr. Miller has publicly asserted during his Senate campaign that his employment with the Borough was terminated solely as the result of his completely voluntary resignation. He has indicated that he was under no pressure to resign. However, others, including political opponents of Mr. Miller or their supporters, have stated or suggested during the course of his political campaign that he resigned his position with the FNSB under pressure.

10. The Miller Documents in the possession of FNSB that have been requested by Alaska Dispatch, but not produced by the Borough, would explain the circumstances of the termination of Mr. Miller’s employment with FNSB more fully than has been done publicly to date, and would allow the public to better assess the accuracy and candor of any assertions by Mr. Miller that his resignation was completely voluntary. These records include, but are not limited to, e-mails to and from the Borough Attorney, the Borough Mayor, and other Borough

employees, as well as the unredacted September 1, 2009, “Personnel Action Form” indicating conditions on his eligibility for rehire.

11. The Miller Documents being kept secret also contain information concerning a matter that occurred in March 2008 that, upon information and belief, involved a misuse of Borough facilities, equipment and/or other assets by one or more Borough employees, including Mr. Miller, for partisan political purposes.

12. The Borough has taken the position that it would publicly discuss the full circumstances of Mr. Miller’s employment termination, and disclose related documents, if Mr. Miller would sign a release stating that he does not object to this. The Borough has asked Mr. Miller to provide it with a release authorizing disclosure of the relevant documents, but Mr. Miller has failed or refused to do so. The Borough has asked Mr. Miller to help it avoid “unnecessary litigation” over disclosure of the Miller Documents.

13. Mr. Miller has publicly claimed that he desires “full disclosure” with respect to circumstances of the termination of his employment with the Borough’s Legal Department.

14. Mr. Miller has publicly expressed his belief that it is necessary for the Borough to completely waive its attorney client privilege with respect to significant matters Miller worked on in order for Mr. Miller to be able explain to the public the circumstances of the termination of his Borough employment. The Borough has asserted that it has asked Mr. Miller on multiple occasions to explain what he believes is privileged and what he would like to disclose, but to date Mr. Miller has failed or refused to provide this information requested by the Borough.

15. The Borough has also asserted that it does not believe that it is necessary for Mr. Miller to disclose client confidences or secrets in order to fairly address the circumstances (including the voluntariness) of the termination of his employment with the Borough Legal

Department. Nonetheless, the Borough has noted to Mr. Miller that Alaska Rules of Professional Conduct, and specifically RPC 1.6(b)(5), seem to allow Mr. Miller to disclose client confidences or secrets without FNSB permission if it is reasonably necessary in order to defend himself in any controversy with FNSB.

16. The Dispatch has informed the Borough that it disagrees with the Borough's decision to withhold or redact the Miller Documents, and since the initial disclosures, counsel for Alaska Dispatch and the Borough have conferred in good faith in an attempt to resolve their disagreements about the disclosability of the Miller Documents. As a result of these communications, the parties have determined that if Mr. Miller is willing to provide a release, or if the court finds the public interest warrants disclosure, the Borough has no objection to disclosure of any but two of the previously withheld or redacted documents. These two documents comprise e-mail threads from August 2009, comprising approximately ten e-mails to and from identified senders and recipients. Assuming disclosure of the remaining documents, and given the nature of the documents, Alaska Dispatch has agreed it does not object to nondisclosure of the two documents in question.

17. Mr. Miller, in various campaign advertisement and statements to the press and public, has made a campaign issue of the Senate candidates' his and/or his opponents' personal integrity, veracity, or like qualities.

18. Information concerning the termination Mr. Miller's employment relationship with the Borough, or concerning any misuse of Borough equipment or assets, or concerning any other violation, if any, of statutes, regulations, ordinances or policies, would not be limited to matters that are purely personal to Mr. Miller, "wholly private," or that do not affect the public or others beyond Mr. Miller.

19. Miller Documents pertaining to the termination of Mr. Miller's employment with the FNSB Legal Department, pertaining to the inappropriate use by Mr. Miller of Borough facilities, equipment or other assets for political purposes or any other incident to which the withheld March 2008 e-mails, employee statements and web activity reports [including but not limited to withheld or redacted document nos. 33-118] relate, and/or pertaining to any violation or alleged violation by Mr. Miller of any law, regulation, ordinance or policy during his tenure as a Borough employee should be disclosed to the public, as requested by Alaska Dispatch, pursuant to AS 40.25.110 *et seq.*

20. By failing or refusing to release the Miller Documents, the Borough, through its agents, officers and employees, has violated AS 40.25.110 *et seq.* The Borough's refusal to permit access to the Miller Documents is unreasonable, wrongful, and without privilege. In particular, but not by way of limitation, the Borough has obstructed or attempted to obstruct the public's access to public records that the public has the right to see and consider in connection with Mr. Miller's candidacy for one of the two highest elective offices in our state, and is interfering with the right and ability of Alaska voters to fully, fairly, and timely consider matters relevant to Mr. Miller's Senate candidacy.

WHEREFORE, Alaska Dispatch prays for relief as follows:

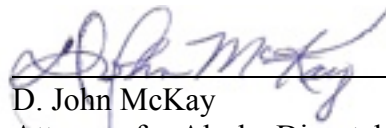
1. That this court order that the Borough make the Miller Documents available to the Alaska Dispatch and the public for inspection and copying without further delay.
2. That this court issue preliminary and permanent injunctive relief against the Fairbanks North Star Borough, and its officers, agents and employees, pursuant to AS 40.25.110 *et seq.*, restraining them from further obstructing or delaying access to the Miller Documents.

3. That the court enter such other and further legal or equitable relief as the court may deem just and appropriate.

4. That the court award Alaska Dispatch its costs and attorney fees incurred as a result of having to pursue this litigation to obtain the Miller Documents.

Dated at Anchorage, Alaska this 11th day of October, 2010.

LAW OFFICES OF D. JOHN MCKAY

A handwritten signature in blue ink, appearing to read "D. John McKay", is written over a horizontal line.

D. John McKay
Attorney for Alaska Dispatch