

## Part 1 General Provisions

### **63G-2-101 Title.**

This chapter is known as the "Government Records Access and Management Act."

Renumbered and Amended by Chapter 382, 2008 General Session

### **63G-2-102 Legislative intent.**

- (1) In enacting this act, the Legislature recognizes two constitutional rights:
  - (a) the public's right of access to information concerning the conduct of the public's business; and
  - (b) the right of privacy in relation to personal data gathered by governmental entities.
- (2) The Legislature also recognizes a public policy interest in allowing a government to restrict access to certain records, as specified in this chapter, for the public good.
- (3) It is the intent of the Legislature to:
  - (a) promote the public's right of easy and reasonable access to unrestricted public records;
  - (b) specify those conditions under which the public interest in allowing restrictions on access to records may outweigh the public's interest in access;
  - (c) prevent abuse of confidentiality by governmental entities by permitting confidential treatment of records only as provided in this chapter;
  - (d) provide guidelines for both disclosure and restrictions on access to government records, which are based on the equitable weighing of the pertinent interests and which are consistent with nationwide standards of information practices;
  - (e) favor public access when, in the application of this act, countervailing interests are of equal weight; and
  - (f) establish fair and reasonable records management practices.

Renumbered and Amended by Chapter 382, 2008 General Session

### **63G-2-103 Definitions.**

As used in this chapter:

- (1) "Audit" means:
  - (a) a systematic examination of financial, management, program, and related records for the purpose of determining the fair presentation of financial statements, adequacy of internal controls, or compliance with laws and regulations; or
  - (b) a systematic examination of program procedures and operations for the purpose of determining their effectiveness, economy, efficiency, and compliance with statutes and regulations.
- (2) "Chronological logs" mean the regular and customary summary records of law enforcement agencies and other public safety agencies that show:
  - (a) the time and general nature of police, fire, and paramedic calls made to the agency; and
  - (b) any arrests or jail bookings made by the agency.
- (3) "Classification," "classify," and their derivative forms mean determining whether a record series, record, or information within a record is public, private, controlled, protected, or exempt from disclosure under Subsection 63G-2-201(3)(b).
- (4)
  - (a) "Computer program" means:

- (i) a series of instructions or statements that permit the functioning of a computer system in a manner designed to provide storage, retrieval, and manipulation of data from the computer system; and
  - (ii) any associated documentation and source material that explain how to operate the computer program.
- (b) "Computer program" does not mean:
- (i) the original data, including numbers, text, voice, graphics, and images;
  - (ii) analysis, compilation, and other manipulated forms of the original data produced by use of the program; or
  - (iii) the mathematical or statistical formulas, excluding the underlying mathematical algorithms contained in the program, that would be used if the manipulated forms of the original data were to be produced manually.
- (5)
- (a) "Contractor" means:
- (i) any person who contracts with a governmental entity to provide goods or services directly to a governmental entity; or
  - (ii) any private, nonprofit organization that receives funds from a governmental entity.
- (b) "Contractor" does not mean a private provider.
- (6) "Controlled record" means a record containing data on individuals that is controlled as provided by Section 63G-2-304.
- (7) "Designation," "designate," and their derivative forms mean indicating, based on a governmental entity's familiarity with a record series or based on a governmental entity's review of a reasonable sample of a record series, the primary classification that a majority of records in a record series would be given if classified and the classification that other records typically present in the record series would be given if classified.
- (8) "Elected official" means each person elected to a state office, county office, municipal office, school board or school district office, local district office, or special service district office, but does not include judges.
- (9) "Explosive" means a chemical compound, device, or mixture:
- (a) commonly used or intended for the purpose of producing an explosion; and
  - (b) that contains oxidizing or combustive units or other ingredients in proportions, quantities, or packing so that:
    - (i) an ignition by fire, friction, concussion, percussion, or detonator of any part of the compound or mixture may cause a sudden generation of highly heated gases; and
    - (ii) the resultant gaseous pressures are capable of:
      - (A) producing destructive effects on contiguous objects; or
      - (B) causing death or serious bodily injury.
- (10) "Government audit agency" means any governmental entity that conducts an audit.
- (11)
- (a) "Governmental entity" means:
- (i) executive department agencies of the state, the offices of the governor, lieutenant governor, state auditor, attorney general, and state treasurer, the Board of Pardons and Parole, the Board of Examiners, the National Guard, the Career Service Review Office, the State Board of Education, the State Board of Regents, and the State Archives;
  - (ii) the Office of the Legislative Auditor General, Office of the Legislative Fiscal Analyst, Office of Legislative Research and General Counsel, the Legislature, and legislative committees, except any political party, group, caucus, or rules or sifting committee of the Legislature;

- (iii) courts, the Judicial Council, the Administrative Office of the Courts, and similar administrative units in the judicial branch;
  - (iv) any state-funded institution of higher education or public education; or
  - (v) any political subdivision of the state, but, if a political subdivision has adopted an ordinance or a policy relating to information practices pursuant to Section 63G-2-701, this chapter shall apply to the political subdivision to the extent specified in Section 63G-2-701 or as specified in any other section of this chapter that specifically refers to political subdivisions.
- (b) "Governmental entity" also means:
- (i) every office, agency, board, bureau, committee, department, advisory board, or commission of an entity listed in Subsection (11)(a) that is funded or established by the government to carry out the public's business;
  - (ii) as defined in Section 11-13-103, an interlocal entity or joint or cooperative undertaking;
  - (iii) as defined in Section 11-13a-102, a governmental nonprofit corporation;
  - (iv) an association as defined in Section 53G-7-1101; and
  - (v) the Utah Independent Redistricting Commission.
- (c) "Governmental entity" does not include the Utah Educational Savings Plan created in Section 53B-8a-103.
- (12) "Gross compensation" means every form of remuneration payable for a given period to an individual for services provided including salaries, commissions, vacation pay, severance pay, bonuses, and any board, rent, housing, lodging, payments in kind, and any similar benefit received from the individual's employer.
- (13) "Individual" means a human being.
- (14)
- (a) "Initial contact report" means an initial written or recorded report, however titled, prepared by peace officers engaged in public patrol or response duties describing official actions initially taken in response to either a public complaint about or the discovery of an apparent violation of law, which report may describe:
- (i) the date, time, location, and nature of the complaint, the incident, or offense;
  - (ii) names of victims;
  - (iii) the nature or general scope of the agency's initial actions taken in response to the incident;
  - (iv) the general nature of any injuries or estimate of damages sustained in the incident;
  - (v) the name, address, and other identifying information about any person arrested or charged in connection with the incident; or
  - (vi) the identity of the public safety personnel, except undercover personnel, or prosecuting attorney involved in responding to the initial incident.
- (b) Initial contact reports do not include follow-up or investigative reports prepared after the initial contact report. However, if the information specified in Subsection (14)(a) appears in follow-up or investigative reports, it may only be treated confidentially if it is private, controlled, protected, or exempt from disclosure under Subsection 63G-2-201(3)(b).
- (15) "Legislative body" means the Legislature.
- (16) "Notice of compliance" means a statement confirming that a governmental entity has complied with a records committee order.
- (17) "Person" means:
- (a) an individual;
  - (b) a nonprofit or profit corporation;
  - (c) a partnership;
  - (d) a sole proprietorship;
  - (e) other type of business organization; or

- (f) any combination acting in concert with one another.
- (18) "Private provider" means any person who contracts with a governmental entity to provide services directly to the public.
- (19) "Private record" means a record containing data on individuals that is private as provided by Section 63G-2-302.
- (20) "Protected record" means a record that is classified protected as provided by Section 63G-2-305.
- (21) "Public record" means a record that is not private, controlled, or protected and that is not exempt from disclosure as provided in Subsection 63G-2-201(3)(b).
- (22)
  - (a) "Record" means a book, letter, document, paper, map, plan, photograph, film, card, tape, recording, electronic data, or other documentary material regardless of physical form or characteristics:
    - (i) that is prepared, owned, received, or retained by a governmental entity or political subdivision; and
    - (ii) where all of the information in the original is reproducible by photocopy or other mechanical or electronic means.
  - (b) "Record" does not mean:
    - (i) a personal note or personal communication prepared or received by an employee or officer of a governmental entity:
      - (A) in a capacity other than the employee's or officer's governmental capacity; or
      - (B) that is unrelated to the conduct of the public's business;
    - (ii) a temporary draft or similar material prepared for the originator's personal use or prepared by the originator for the personal use of an individual for whom the originator is working;
    - (iii) material that is legally owned by an individual in the individual's private capacity;
    - (iv) material to which access is limited by the laws of copyright or patent unless the copyright or patent is owned by a governmental entity or political subdivision;
    - (v) proprietary software;
    - (vi) junk mail or a commercial publication received by a governmental entity or an official or employee of a governmental entity;
    - (vii) a book that is cataloged, indexed, or inventoried and contained in the collections of a library open to the public;
    - (viii) material that is cataloged, indexed, or inventoried and contained in the collections of a library open to the public, regardless of physical form or characteristics of the material;
    - (ix) a daily calendar or other personal note prepared by the originator for the originator's personal use or for the personal use of an individual for whom the originator is working;
    - (x) a computer program that is developed or purchased by or for any governmental entity for its own use;
    - (xi) a note or internal memorandum prepared as part of the deliberative process by:
      - (A) a member of the judiciary;
      - (B) an administrative law judge;
      - (C) a member of the Board of Pardons and Parole; or
      - (D) a member of any other body, other than an association or appeals panel as defined in Section 53G-7-1101, charged by law with performing a quasi-judicial function;
    - (xii) a telephone number or similar code used to access a mobile communication device that is used by an employee or officer of a governmental entity, provided that the employee or officer of the governmental entity has designated at least one business telephone number that is a public record as provided in Section 63G-2-301;

- (xiii) information provided by the Public Employees' Benefit and Insurance Program, created in Section 49-20-103, to a county to enable the county to calculate the amount to be paid to a health care provider under Subsection 17-50-319(2)(e)(ii);
- (xiv) information that an owner of unimproved property provides to a local entity as provided in Section 11-42-205;
- (xv) a video or audio recording of an interview, or a transcript of the video or audio recording, that is conducted at a Children's Justice Center established under Section 67-5b-102;
- (xvi) child pornography, as defined by Section 76-5b-103; or
- (xvii) before final disposition of an ethics complaint occurs, a video or audio recording of the closed portion of a meeting or hearing of:
  - (A) a Senate or House Ethics Committee;
  - (B) the Independent Legislative Ethics Commission;
  - (C) the Independent Executive Branch Ethics Commission, created in Section 63A-14-202; or
  - (D) the Political Subdivisions Ethics Review Commission established in Section 63A-15-201.
- (23) "Record series" means a group of records that may be treated as a unit for purposes of designation, description, management, or disposition.
- (24) "Records committee" means the State Records Committee created in Section 63G-2-501.
- (25) "Records officer" means the individual appointed by the chief administrative officer of each governmental entity, or the political subdivision to work with state archives in the care, maintenance, scheduling, designation, classification, disposal, and preservation of records.
- (26) "Schedule," "scheduling," and their derivative forms mean the process of specifying the length of time each record series should be retained by a governmental entity for administrative, legal, fiscal, or historical purposes and when each record series should be transferred to the state archives or destroyed.
- (27) "Sponsored research" means research, training, and other sponsored activities as defined by the federal Executive Office of the President, Office of Management and Budget:
  - (a) conducted:
    - (i) by an institution within the state system of higher education defined in Section 53B-1-102; and
    - (ii) through an office responsible for sponsored projects or programs; and
  - (b) funded or otherwise supported by an external:
    - (i) person that is not created or controlled by the institution within the state system of higher education; or
    - (ii) federal, state, or local governmental entity.
- (28) "State archives" means the Division of Archives and Records Service created in Section 63A-12-101.
- (29) "State archivist" means the director of the state archives.
- (30) "Summary data" means statistical records and compilations that contain data derived from private, controlled, or protected information but that do not disclose private, controlled, or protected information.

Amended by Statewide Initiative -- Proposition 4, Nov. 6, 2018

**63G-2-104 Administrative Procedures Act not applicable.**

Title 63G, Chapter 4, Administrative Procedures Act, does not apply to this chapter except as provided in Section 63G-2-603.

Renumbered and Amended by Chapter 382, 2008 General Session

**63G-2-105 Confidentiality agreements.**

If a governmental entity or political subdivision receives a request for a record that is subject to a confidentiality agreement executed before April 1, 1992, the law in effect at the time the agreement was executed, including late judicial interpretations of the law, shall govern access to the record, unless all parties to the confidentiality agreement agree in writing to be governed by the provisions of this chapter.

Renumbered and Amended by Chapter 382, 2008 General Session

**63G-2-106 Records of security measures.**

The records of a governmental entity or political subdivision regarding security measures designed for the protection of persons or property, public or private, are not subject to this chapter. These records include:

- (1) security plans;
- (2) security codes and combinations, and passwords;
- (3) passes and keys;
- (4) security procedures; and
- (5) building and public works designs, to the extent that the records or information relate to the ongoing security measures of a public entity.

Renumbered and Amended by Chapter 382, 2008 General Session

**63G-2-107 Disclosure of records subject to federal law.**

- (1) Notwithstanding Subsection 63G-2-201(6), this chapter does not apply to a record containing protected health information as defined in 45 C.F.R., Part 164, Standards for Privacy of Individually Identifiable Health Information, if the record is:
  - (a) controlled or maintained by a governmental entity; and
  - (b) governed by 45 C.F.R., Parts 160 and 164, Standards for Privacy of Individually Identifiable Health Information.
- (2) The disclosure of an education record as defined in the Family Educational Rights and Privacy Act, 34 C.F.R. Part 99, that is controlled or maintained by a governmental entity shall be governed by the Family Educational Rights and Privacy Act, 34 C.F.R. Part 99.

Amended by Chapter 380, 2016 General Session

**63G-2-108 Certification of records officer.**

Each records officer of a governmental entity or political subdivision shall, on an annual basis, successfully complete online training and obtain certification from state archives in accordance with Section 63A-12-110.

Enacted by Chapter 377, 2012 General Session