

**PERSONAL COMMUNICATIONS OF GOVERNMENTAL
ENTITY EMPLOYEES AND OFFICERS**

2018 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Justin L. Fawson

Senate Sponsor: _____

LONG TITLE

General Description:

This bill modifies a provision of the Government Records Access and Management Act relating to the definition of "record."

Highlighted Provisions:

This bill:

► provides that a personal communication, otherwise excluded from the definition of "record," is included in the definition if the personal communication relates to certain political activity.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

63G-2-103, as last amended by Laws of Utah 2017, Chapters 196 and 441

Be it enacted by the Legislature of the state of Utah:

Section 1. Section **63G-2-103** is amended to read:

63G-2-103. Definitions.



28 As used in this chapter:

29 (1) "Audit" means:

30 (a) a systematic examination of financial, management, program, and related records
31 for the purpose of determining the fair presentation of financial statements, adequacy of
32 internal controls, or compliance with laws and regulations; or

33 (b) a systematic examination of program procedures and operations for the purpose of
34 determining their effectiveness, economy, efficiency, and compliance with statutes and
35 regulations.

36 (2) "Chronological logs" mean the regular and customary summary records of law
37 enforcement agencies and other public safety agencies that show:

38 (a) the time and general nature of police, fire, and paramedic calls made to the agency;
39 and

40 (b) any arrests or jail bookings made by the agency.

41 (3) "Classification," "classify," and their derivative forms mean determining whether a
42 record series, record, or information within a record is public, private, controlled, protected, or
43 exempt from disclosure under Subsection [63G-2-201\(3\)\(b\)](#).

44 (4) (a) "Computer program" means:

45 (i) a series of instructions or statements that permit the functioning of a computer
46 system in a manner designed to provide storage, retrieval, and manipulation of data from the
47 computer system; and

48 (ii) any associated documentation and source material that explain how to operate the
49 computer program.

50 (b) "Computer program" does not mean:

51 (i) the original data, including numbers, text, voice, graphics, and images;

52 (ii) analysis, compilation, and other manipulated forms of the original data produced by
53 use of the program; or

54 (iii) the mathematical or statistical formulas, excluding the underlying mathematical
55 algorithms contained in the program, that would be used if the manipulated forms of the
56 original data were to be produced manually.

57 (5) (a) "Contractor" means:

58 (i) any person who contracts with a governmental entity to provide goods or services

59 directly to a governmental entity; or

60 (ii) any private, nonprofit organization that receives funds from a governmental entity.

61 (b) "Contractor" does not mean a private provider.

62 (6) "Controlled record" means a record containing data on individuals that is controlled
63 as provided by Section [63G-2-304](#).

64 (7) "Designation," "designate," and their derivative forms mean indicating, based on a
65 governmental entity's familiarity with a record series or based on a governmental entity's
66 review of a reasonable sample of a record series, the primary classification that a majority of
67 records in a record series would be given if classified and the classification that other records
68 typically present in the record series would be given if classified.

69 (8) "Elected official" means each person elected to a state office, county office,
70 municipal office, school board or school district office, local district office, or special service
71 district office, but does not include judges.

72 (9) "Explosive" means a chemical compound, device, or mixture:

73 (a) commonly used or intended for the purpose of producing an explosion; and

74 (b) that contains oxidizing or combustive units or other ingredients in proportions,
75 quantities, or packing so that:

76 (i) an ignition by fire, friction, concussion, percussion, or detonator of any part of the
77 compound or mixture may cause a sudden generation of highly heated gases; and

78 (ii) the resultant gaseous pressures are capable of:

79 (A) producing destructive effects on contiguous objects; or

80 (B) causing death or serious bodily injury.

81 (10) "Government audit agency" means any governmental entity that conducts an audit.

82 (11) (a) "Governmental entity" means:

83 (i) executive department agencies of the state, the offices of the governor, lieutenant
84 governor, state auditor, attorney general, and state treasurer, the Board of Pardons and Parole,
85 the Board of Examiners, the National Guard, the Career Service Review Office, the State
86 Board of Education, the State Board of Regents, and the State Archives;

87 (ii) the Office of the Legislative Auditor General, Office of the Legislative Fiscal
88 Analyst, Office of Legislative Research and General Counsel, the Legislature, and legislative
89 committees, except any political party, group, caucus, or rules or sifting committee of the

90 Legislature;

91 (iii) courts, the Judicial Council, the Office of the Court Administrator, and similar
92 administrative units in the judicial branch;

93 (iv) any state-funded institution of higher education or public education; or

94 (v) any political subdivision of the state, but, if a political subdivision has adopted an
95 ordinance or a policy relating to information practices pursuant to Section 63G-2-701, this
96 chapter shall apply to the political subdivision to the extent specified in Section 63G-2-701 or
97 as specified in any other section of this chapter that specifically refers to political subdivisions.

98 (b) "Governmental entity" also means:

99 (i) every office, agency, board, bureau, committee, department, advisory board, or
100 commission of an entity listed in Subsection (11)(a) that is funded or established by the
101 government to carry out the public's business;

102 (ii) as defined in Section 11-13-103, an interlocal entity or joint or cooperative
103 undertaking;

104 (iii) as defined in Section 11-13a-102, a governmental nonprofit corporation; and

105 (iv) an association as defined in Section 53A-1-1601.

106 (c) "Governmental entity" does not include the Utah Educational Savings Plan created
107 in Section 53B-8a-103.

108 (12) "Gross compensation" means every form of remuneration payable for a given
109 period to an individual for services provided including salaries, commissions, vacation pay,
110 severance pay, bonuses, and any board, rent, housing, lodging, payments in kind, and any
111 similar benefit received from the individual's employer.

112 (13) "Individual" means a human being.

113 (14) (a) "Initial contact report" means an initial written or recorded report, however
114 titled, prepared by peace officers engaged in public patrol or response duties describing official
115 actions initially taken in response to either a public complaint about or the discovery of an
116 apparent violation of law, which report may describe:

117 (i) the date, time, location, and nature of the complaint, the incident, or offense;

118 (ii) names of victims;

119 (iii) the nature or general scope of the agency's initial actions taken in response to the
120 incident;

121 (iv) the general nature of any injuries or estimate of damages sustained in the incident;

122 (v) the name, address, and other identifying information about any person arrested or
123 charged in connection with the incident; or

124 (vi) the identity of the public safety personnel, except undercover personnel, or
125 prosecuting attorney involved in responding to the initial incident.

126 (b) Initial contact reports do not include follow-up or investigative reports prepared
127 after the initial contact report. However, if the information specified in Subsection (14)(a)
128 appears in follow-up or investigative reports, it may only be treated confidentially if it is
129 private, controlled, protected, or exempt from disclosure under Subsection 63G-2-201(3)(b).

130 (15) "Legislative body" means the Legislature.

131 (16) "Notice of compliance" means a statement confirming that a governmental entity
132 has complied with a records committee order.

133 (17) "Person" means:

134 (a) an individual;

135 (b) a nonprofit or profit corporation;

136 (c) a partnership;

137 (d) a sole proprietorship;

138 (e) other type of business organization; or

139 (f) any combination acting in concert with one another.

140 (18) "Private provider" means any person who contracts with a governmental entity to
141 provide services directly to the public.

142 (19) "Private record" means a record containing data on individuals that is private as
143 provided by Section 63G-2-302.

144 (20) "Protected record" means a record that is classified protected as provided by
145 Section 63G-2-305.

146 (21) "Public record" means a record that is not private, controlled, or protected and that
147 is not exempt from disclosure as provided in Subsection 63G-2-201(3)(b).

148 (22) (a) "Record" means a book, letter, document, paper, map, plan, photograph, film,
149 card, tape, recording, electronic data, or other documentary material regardless of physical form
150 or characteristics:

151 (i) that is prepared, owned, received, or retained by a governmental entity or political

152 subdivision; and

153 (ii) where all of the information in the original is reproducible by photocopy or other
154 mechanical or electronic means.

155 (b) "Record" does not mean:

156 (i) a personal note or, except as provided in Subsection (22)(c), personal
157 communication prepared or received by an employee or officer of a governmental entity:

158 (A) in a capacity other than the employee's or officer's governmental capacity; or

159 (B) that is unrelated to the conduct of the public's business;

160 (ii) a temporary draft or similar material prepared for the originator's personal use or
161 prepared by the originator for the personal use of an individual for whom the originator is
162 working;

163 (iii) material that is legally owned by an individual in the individual's private capacity;

164 (iv) material to which access is limited by the laws of copyright or patent unless the
165 copyright or patent is owned by a governmental entity or political subdivision;

166 (v) proprietary software;

167 (vi) junk mail or a commercial publication received by a governmental entity or an
168 official or employee of a governmental entity;

169 (vii) a book that is cataloged, indexed, or inventoried and contained in the collections
170 of a library open to the public;

171 (viii) material that is cataloged, indexed, or inventoried and contained in the collections
172 of a library open to the public, regardless of physical form or characteristics of the material;

173 (ix) a daily calendar or other personal note prepared by the originator for the
174 originator's personal use or for the personal use of an individual for whom the originator is
175 working;

176 (x) a computer program that is developed or purchased by or for any governmental
177 entity for its own use;

178 (xi) a note or internal memorandum prepared as part of the deliberative process by:

179 (A) a member of the judiciary;

180 (B) an administrative law judge;

181 (C) a member of the Board of Pardons and Parole; or

182 (D) a member of any other body, other than an association or appeals panel as defined

183 in Section 53A-1-1601, charged by law with performing a quasi-judicial function;

184 (xii) a telephone number or similar code used to access a mobile communication
185 device that is used by an employee or officer of a governmental entity, provided that the
186 employee or officer of the governmental entity has designated at least one business telephone
187 number that is a public record as provided in Section 63G-2-301;

188 (xiii) information provided by the Public Employees' Benefit and Insurance Program,
189 created in Section 49-20-103, to a county to enable the county to calculate the amount to be
190 paid to a health care provider under Subsection 17-50-319(2)(e)(ii);

191 (xiv) information that an owner of unimproved property provides to a local entity as
192 provided in Section 11-42-205; or

193 (xv) a video or audio recording of an interview, or a transcript of the video or audio
194 recording, that is conducted at a Children's Justice Center established under Section 67-5b-102.

195 (c) Notwithstanding Subsection (22)(b)(i), "record" includes a personal communication
196 described in Subsection (22)(b)(i) if the personal communication relates to political activity
197 that is:

198 (i) conducted by an employee or officer of a governmental entity; and

199 (ii) not within the scope of the employee or officer's employment with or work for the
200 governmental entity.

201 (23) "Record series" means a group of records that may be treated as a unit for
202 purposes of designation, description, management, or disposition.

203 (24) "Records committee" means the State Records Committee created in Section
204 63G-2-501.

205 (25) "Records officer" means the individual appointed by the chief administrative
206 officer of each governmental entity, or the political subdivision to work with state archives in
207 the care, maintenance, scheduling, designation, classification, disposal, and preservation of
208 records.

209 (26) "Schedule," "scheduling," and their derivative forms mean the process of
210 specifying the length of time each record series should be retained by a governmental entity for
211 administrative, legal, fiscal, or historical purposes and when each record series should be
212 transferred to the state archives or destroyed.

213 (27) "Sponsored research" means research, training, and other sponsored activities as

214 defined by the federal Executive Office of the President, Office of Management and Budget:
215 (a) conducted:
216 (i) by an institution within the state system of higher education defined in Section
217 [53B-1-102](#); and
218 (ii) through an office responsible for sponsored projects or programs; and
219 (b) funded or otherwise supported by an external:
220 (i) person that is not created or controlled by the institution within the state system of
221 higher education; or
222 (ii) federal, state, or local governmental entity.
223 (28) "State archives" means the Division of Archives and Records Service created in
224 Section [63A-12-101](#).
225 (29) "State archivist" means the director of the state archives.
226 (30) "Summary data" means statistical records and compilations that contain data
227 derived from private, controlled, or protected information but that do not disclose private,
228 controlled, or protected information.

Legislative Review Note
Office of Legislative Research and General Counsel