

Representative Justin L. Fawson proposes the following substitute bill:

**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 communication, otherwise excluded from the definition of "record," is a "record" if it meets certain criteria.

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:



26 **63G-2-103. Definitions.**

27 As used in this chapter:

28 (1) "Audit" means:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

79 (B) causing death or serious bodily injury.

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

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

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

86 (ii) the Office of the Legislative Auditor General, Office of the Legislative Fiscal
87 Analyst, Office of Legislative Research and General Counsel, the Legislature, and legislative

88 committees, except any political party, group, caucus, or rules or sifting committee of the
89 Legislature;

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

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

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

97 (b) "Governmental entity" also means:

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

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

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

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

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

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

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

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

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

117 (ii) names of victims;

118 (iii) the nature or general scope of the agency's initial actions taken in response to the

119 incident;

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

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

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

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

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

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

132 (17) "Person" means:

133 (a) an individual;

134 (b) a nonprofit or profit corporation;

135 (c) a partnership;

136 (d) a sole proprietorship;

137 (e) other type of business organization; or

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

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

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

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

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

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

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

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

154 (b) "Record" does not mean:

155 (i) a personal note or personal communication prepared or received by an employee or
156 officer of a governmental entity:

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

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

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

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

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

165 (v) proprietary software;

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

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

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

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

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

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

178 (A) a member of the judiciary;

179 (B) an administrative law judge;

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

181 (D) a member of any other body, other than an association or appeals panel as defined
182 in Section [53A-1-1601](#), charged by law with performing a quasi-judicial function;

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

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

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

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

194 (c) Notwithstanding Subsection (22)(b)(i), a communication is a "record" if the
195 communication is sent or received:

196 (i) by an employee or officer of a governmental entity;

197 (ii) for political purposes, as defined in Section [20A-11-1202](#); and

198 (ii) using a computer, mobile device, or other resource of the governmental entity.

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

201 (24) "Records committee" means the State Records Committee created in Section
202 [63G-2-501](#).

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

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

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

212 defined by the federal Executive Office of the President, Office of Management and Budget:

213 (a) conducted:

214 (i) by an institution within the state system of higher education defined in Section

215 [53B-1-102](#); and

216 (ii) through an office responsible for sponsored projects or programs; and

217 (b) funded or otherwise supported by an external:

218 (i) person that is not created or controlled by the institution within the state system of
219 higher education; or

220 (ii) federal, state, or local governmental entity.

221 (28) "State archives" means the Division of Archives and Records Service created in
222 Section [63A-12-101](#).

223 (29) "State archivist" means the director of the state archives.

224 (30) "Summary data" means statistical records and compilations that contain data
225 derived from private, controlled, or protected information but that do not disclose private,
226 controlled, or protected information.