{deleted text} shows text that was in HB0072S01 but was deleted in HB0072S02.

Inserted text shows text that was not in HB0072S01 but was inserted into HB0072S02.

DISCLAIMER: This document is provided to assist you in your comparison of the two bills. Sometimes this automated comparison will NOT be completely accurate. Therefore, you need to read the actual bills. This automatically generated document could contain inaccuracies caused by: limitations of the compare program; bad input data; or other causes.

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} addresses a provision {of} relating to what constitutes a record under the Government Records Access and Management Act{ relating to the definition of "record}.{"}

#### **Highlighted Provisions:**

This bill:

provides that {a communication} an email, 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:

<del>{63G-2-103}</del><u>20A-11-1205</u>, as last amended by Laws of Utah 2017, <del>{Chapters 196 and 441}</del><u>Chapter 68</u>

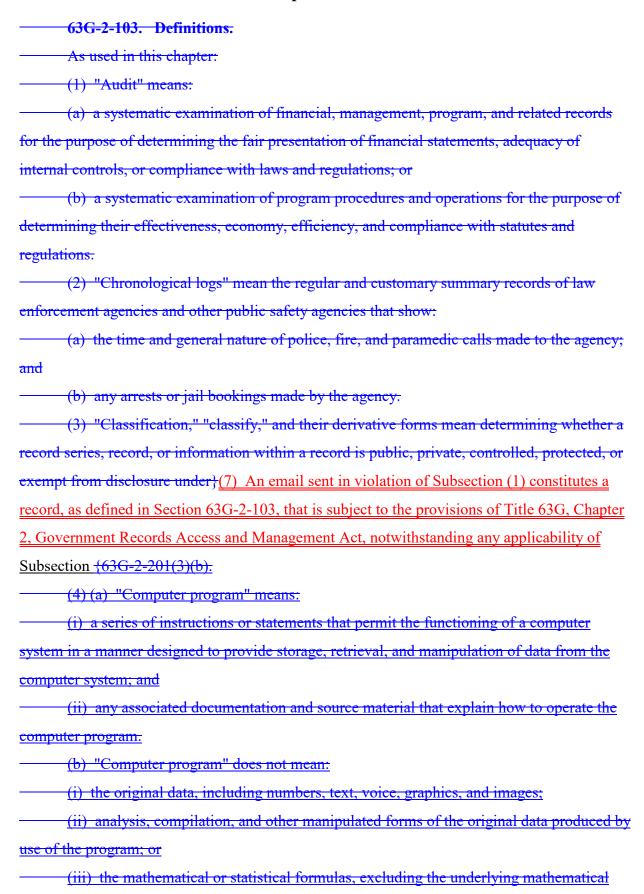
Be it enacted by the Legislature of the state of Utah:

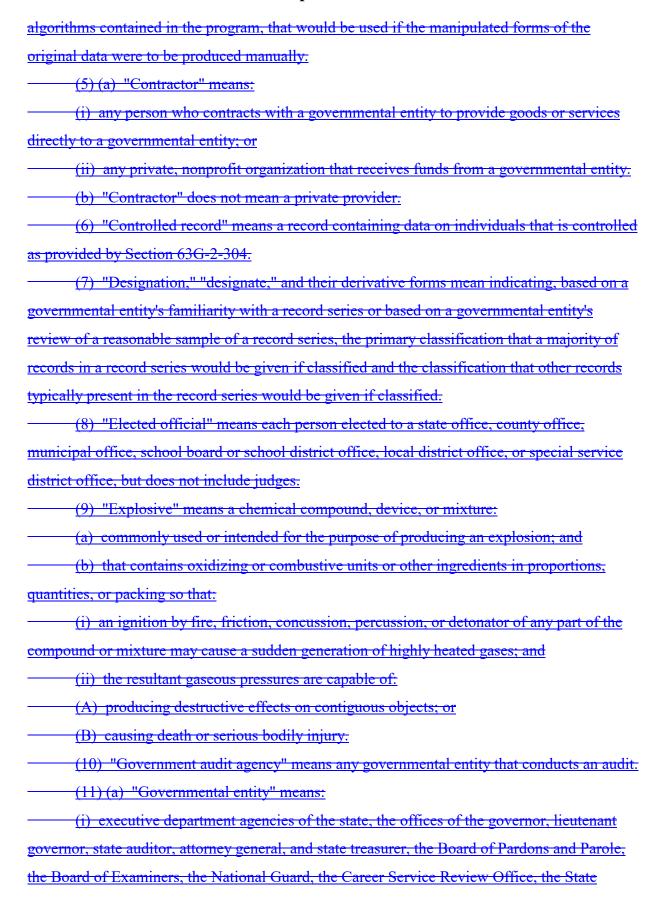
Section 1. Section 20A-11-1205 is amended to read:

20A-11-1205. Use of public email for a political purpose.

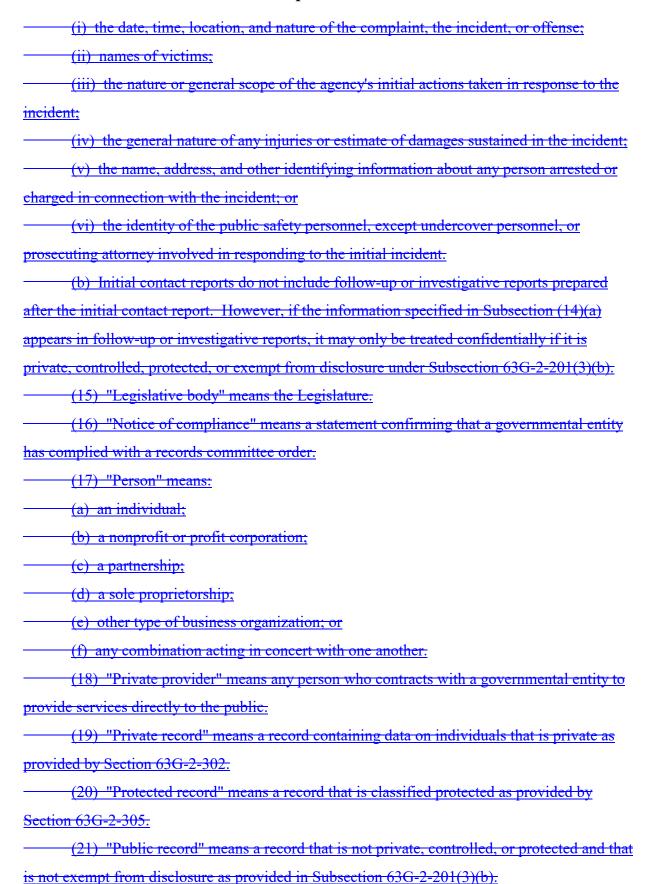
- (1) Except as provided in Subsection (5), a person may not send an email using the email of a public entity:
  - (a) for a political purpose;
  - (b) to advocate for or against a ballot proposition; or
  - (c) to solicit a campaign contribution.
- (2) The applicable election officer shall impose a civil fine against a person who violates Subsection (1) as follows:
  - (a) up to \$250 for a first violation; and
- (b) except as provided in Subsection (3), for each subsequent violation committed after any applicable election officer imposes a fine against the person for a first violation, \$1,000 multiplied by the number of violations committed by the person.
- (3) The applicable election officer shall consider a violation of this section as a first violation if the violation is committed more than seven years after the day on which the person last committed a violation of this section.
- (4) For purposes of this section, one violation means one act of sending an email, regardless of the number of recipients of the email.
- (5) A person does not violate this section if the lieutenant governor finds that the email described in Subsection (1) was inadvertently sent by the person described in Subsection (1), using the email of a public entity.
  - (6) A violation of this section does not invalidate an otherwise valid election.

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





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 Office of the Court Administrator, 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; and (iv) an association as defined in Section 53A-1-1601. (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:



(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 53A-1-1601, 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; or
(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.
(c) Notwithstanding Subsection (22)(b)(i), a communication is a "record" if the
communication is sent or received:
(i) by an employee or officer of a governmental entity;
(ii) for political purposes, as defined in Section 20A-11-1202; and
(ii) using a computer, mobile device, or other resource of the governmental entity.
(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
<u>63G-2-501.</u>
(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. ₹63G-2-103(22)(b)(i).

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