

GOVERNMENT RECORDS ACCESS AMENDMENTS

2022 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Andrew Stoddard

Senate Sponsor: _____

LONG TITLE

General Description:

This bill modifies provisions of the Government Records Access and Management Act related to electronic records.

Highlighted Provisions:

This bill:

- ▶ provides that an item that, if retained by a governmental entity, would be considered to be a record, does not lose its character as a record because it is located only on a personal electronic device of the governmental entity's official or employee;
- ▶ prohibits a governmental entity from searching a personal electronic device of an official or employee in responding to a record request;
- ▶ requires a governmental entity responding to a record request to request an official or employee to search a personal electronic device for an electronic record located on the personal electronic device;
- ▶ provides that the governmental entity may rely on the results of the official or employee's search; and
- ▶ makes political subdivisions subject to these provisions.

Money Appropriated in this Bill:

None

Other Special Clauses:

None



28 **Utah Code Sections Affected:**

29 AMENDS:

30 **63G-2-701**, as last amended by Laws of Utah 2019, Chapter 254

31 ENACTS:

32 **63G-2-109**, Utah Code Annotated 1953

33 **63G-2-204.5**, Utah Code Annotated 1953



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

36 Section 1. Section **63G-2-109** is enacted to read:

37 **63G-2-109. Electronic records.**

38 An item that, if retained by a governmental entity, would be considered to be a record
39 does not lose the item's character as a record because the item is in an electronic format and is
40 located on a personal electronic device of an official or employee of the governmental entity.

41 Section 2. Section **63G-2-204.5** is enacted to read:

42 **63G-2-204.5. Governmental entity's search for electronic records on an official or**
43 **employee's personal device.**

44 In responding to a request under Section **63G-2-204**, a governmental entity:

45 (1) may not conduct a search for a record that is:

46 (a) in an electronic format; and

47 (b) located only on a personal electronic device of an official or employee of the
48 governmental entity;

49 (2) shall request the official or employee to conduct a search for the record on the
50 personal electronic device of the official or employee; and

51 (3) may rely on the results of the search conducted by the official or employee as
52 conclusive of the existence of the record.

53 Section 3. Section **63G-2-701** is amended to read:

54 **63G-2-701. Political subdivisions may adopt ordinances in compliance with**
55 **chapter -- Appeal process.**

56 (1) As used in this section:

57 (a) "Access denial" means the same as that term is defined in Section **63G-2-400.5**.

58 (b) "Interested party" means the same as that term is defined in Section **63G-2-400.5**.

59 (c) "Requester" means the same as that term is defined in Section [63G-2-400.5](#).

60 (2) (a) Each political subdivision may adopt an ordinance or a policy applicable
61 throughout its jurisdiction relating to information practices including classification,
62 designation, access, denials, segregation, appeals, management, retention, and amendment of
63 records.

64 (b) The ordinance or policy shall comply with the criteria set forth in this section.

65 (c) If any political subdivision does not adopt and maintain an ordinance or policy, then
66 that political subdivision is subject to this chapter.

67 (d) Notwithstanding the adoption of an ordinance or policy, each political subdivision
68 is subject to Part 1, General Provisions, Part 3, Classification, and Sections [63A-12-105](#),
69 [63A-12-107](#), [63G-2-109](#), [63G-2-201](#), [63G-2-202](#), [63G-2-204.5](#), [63G-2-205](#), [63G-2-206](#),
70 [63G-2-601](#), and [63G-2-602](#).

71 (e) Every ordinance, policy, or amendment to the ordinance or policy shall be filed
72 with the state archives no later than 30 days after its effective date.

73 (f) The political subdivision shall also report to the state archives all retention
74 schedules, and all designations and classifications applied to record series maintained by the
75 political subdivision.

76 (g) The report required by Subsection (2)(f) is notification to state archives of the
77 political subdivision's retention schedules, designations, and classifications. The report is not
78 subject to approval by state archives. If state archives determines that a different retention
79 schedule is needed for state purposes, state archives shall notify the political subdivision of the
80 state's retention schedule for the records and shall maintain the records if requested to do so
81 under Subsection [63A-12-105\(2\)](#).

82 (3) Each ordinance or policy relating to information practices shall:

83 (a) provide standards for the classification and designation of the records of the
84 political subdivision as public, private, controlled, or protected in accordance with Part 3,
85 Classification;

86 (b) require the classification of the records of the political subdivision in accordance
87 with those standards;

88 (c) provide guidelines for establishment of fees in accordance with Section [63G-2-203](#);
89 and

90 (d) provide standards for the management and retention of the records of the political
91 subdivision comparable to Section 63A-12-103.

92 (4) (a) Each ordinance or policy shall establish access criteria, procedures, and
93 response times for requests to inspect, obtain, or amend records of the political subdivision,
94 and time limits for appeals consistent with this chapter.

95 (b) In establishing response times for access requests and time limits for appeals, the
96 political subdivision may establish reasonable time frames different than those set out in
97 Section 63G-2-204 and Part 4, Appeals, if it determines that the resources of the political
98 subdivision are insufficient to meet the requirements of those sections.

99 (5) (a) A political subdivision shall establish an appeals process for persons aggrieved
100 by classification, designation, or access decisions.

101 (b) A political subdivision's appeals process shall include a process for a requester or
102 interested party to appeal an access denial to a person designated by the political subdivision as
103 the chief administrative officer for purposes of an appeal under Section 63G-2-401.

104 (c) (i) A political subdivision may establish an appeals board to decide an appeal of a
105 decision of the chief administrative officer affirming an access denial.

106 (ii) An appeals board established by a political subdivision shall be composed of three
107 members:

108 (A) one of whom shall be an employee of the political subdivision; and

109 (B) two of whom shall be members of the public who are not employed by or officials
110 of a governmental entity, at least one of whom shall have professional experience with
111 requesting or managing records.

112 (iii) If a political subdivision establishes an appeals board, any appeal of a decision of a
113 chief administrative officer shall be made to the appeals board.

114 (iv) If a political subdivision does not establish an appeals board, the political
115 subdivision's appeals process shall provide for an appeal of a chief administrative officer's
116 decision to the State Records Committee, as provided in Section 63G-2-403.

117 (6) (a) A political subdivision or requester may appeal an appeals board decision:

118 (i) to the State Records Committee, as provided in Section 63G-2-403; or

119 (ii) by filing a petition for judicial review with the district court.

120 (b) The contents of a petition for judicial review under Subsection (6)(a)(ii) and the

121 conduct of the proceeding shall be in accordance with Sections 63G-2-402 and 63G-2-404.

122 (c) A person who appeals an appeals board decision to the State Records Committee
123 does not lose or waive the right to seek judicial review of the decision of the State Records
124 Committee.

125 (7) Any political subdivision that adopts an ordinance or policy under Subsection (1)
126 shall forward to state archives a copy and summary description of the ordinance or policy.