

Representative Andrew Stoddard proposes the following substitute bill:

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 records on a personal electronic device.

Highlighted Provisions:

This bill:

▶ modifies the definition of "record" and enacts a definition of "personal electronic device" for purposes of the Government Records Access and Management Act;

▶ provides a process for searching the personal electronic device of an officer or employee of a governmental entity for records that are responsive to a record request;

▶ provides criminal penalties for an officer or employee who refuses to conduct a search or who submits a materially false sworn declaration;

▶ modifies a provision allowing a governmental entity to impose disciplinary action against an employee; and

▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:



26 None

27 **Utah Code Sections Affected:**

28 AMENDS:

29 **63G-2-103**, as last amended by Laws of Utah 2021, Chapters 211 and 283

30 **63G-2-801**, as last amended by Laws of Utah 2019, Chapter 254

31 **63G-2-804**, as last amended by Laws of Utah 2009, Chapter 44

32 ENACTS:

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-2-103** is amended to read:

37 **63G-2-103. Definitions.**

38 As used in this chapter:

39 (1) "Audit" means:

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

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

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

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

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

51 (3) "Classification," "classify," and their derivative forms mean determining whether a
52 record series, record, or information within a record is public, private, controlled, protected, or
53 exempt from disclosure under Subsection **63G-2-201(3)(b)**.

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

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

57 computer system; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- 88 (ii) the resultant gaseous pressures are capable of:
89 (A) producing destructive effects on contiguous objects; or
90 (B) causing death or serious bodily injury.
- 91 (10) "Government audit agency" means any governmental entity that conducts an audit.
- 92 (11) (a) "Governmental entity" means:
- 93 (i) executive department agencies of the state, the offices of the governor, lieutenant
94 governor, state auditor, attorney general, and state treasurer, the Board of Pardons and Parole,
95 the Board of Examiners, the National Guard, the Career Service Review Office, the State
96 Board of Education, the Utah Board of Higher Education, and the State Archives;
- 97 (ii) the Office of the Legislative Auditor General, Office of the Legislative Fiscal
98 Analyst, Office of Legislative Research and General Counsel, the Legislature, and legislative
99 committees, except any political party, group, caucus, or rules or sifting committee of the
100 Legislature;
- 101 (iii) courts, the Judicial Council, the Administrative Office of the Courts, and similar
102 administrative units in the judicial branch;
- 103 (iv) any state-funded institution of higher education or public education; or
104 (v) any political subdivision of the state, but, if a political subdivision has adopted an
105 ordinance or a policy relating to information practices pursuant to Section 63G-2-701, this
106 chapter shall apply to the political subdivision to the extent specified in Section 63G-2-701 or
107 as specified in any other section of this chapter that specifically refers to political subdivisions.
- 108 (b) "Governmental entity" also means:
- 109 (i) every office, agency, board, bureau, committee, department, advisory board, or
110 commission of an entity listed in Subsection (11)(a) that is funded or established by the
111 government to carry out the public's business;
- 112 (ii) as defined in Section 11-13-103, an interlocal entity or joint or cooperative
113 undertaking;
- 114 (iii) as defined in Section 11-13a-102, a governmental nonprofit corporation;
- 115 (iv) an association as defined in Section 53G-7-1101;
- 116 (v) the Utah Independent Redistricting Commission; and
117 (vi) a law enforcement agency, as defined in Section 53-1-102, that employs one or
118 more law enforcement officers, as defined in Section 53-13-103.

119 (c) "Governmental entity" does not include the Utah Educational Savings Plan created
120 in Section [53B-8a-103](#).

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

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

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

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

131 (ii) names of victims;

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

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

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

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

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

143 (c) Initial contact reports do not include accident reports, as that term is described in
144 Title 41, Chapter 6a, Part 4, Accident Responsibilities.

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

146 (16) "Notice of compliance" means a statement confirming that a governmental entity
147 has complied with an order of the State Records Committee.

148 (17) "Person" means:

149 (a) an individual;

150 (b) a nonprofit or profit corporation;

151 (c) a partnership;

152 (d) a sole proprietorship;

153 (e) other type of business organization; or

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

155 (18) (a) "Personal electronic device" means a device that:

156 (i) enables access to or use of an electronic communication system, computing service,
157 or location information service;

158 (ii) (A) is owned by an individual who is an officer or employee of a governmental
159 entity;

160 (B) is partly or wholly paid for by the individual; or

161 (C) uses a data plan that is partly or wholly paid for by the individual; and

162 (iii) is used by the individual for government purposes or for the transaction of
163 government business.

164 (b) "Personal electronic device" includes a telephone, computer, pager, and electronic
165 tablet.

166 [~~(18)~~] (19) "Private provider" means any person who contracts with a governmental
167 entity to provide services directly to the public.

168 [~~(19)~~] (20) "Private record" means a record containing data on individuals that is
169 private as provided by Section 63G-2-302.

170 [~~(20)~~] (21) "Protected record" means a record that is classified protected as provided by
171 Section 63G-2-305.

172 [~~(21)~~] (22) "Public record" means a record that is not private, controlled, or protected
173 and that is not exempt from disclosure as provided in Subsection 63G-2-201(3)(b).

174 [~~(22)~~] (23) (a) "Record" means a book, letter, document, paper, map, plan, photograph,
175 film, card, tape, recording, electronic data, or other documentary material regardless of physical
176 form ~~or~~, characteristics, or location, including on a personal electronic device:

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

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

- 181 (b) "Record" does not mean:
- 182 (i) a personal note or personal communication prepared or received by an employee or
183 officer of a governmental entity:
- 184 (A) in a capacity other than the employee's or officer's governmental capacity; or
185 (B) that is unrelated to the conduct of the public's business;
- 186 (ii) a temporary draft or similar material prepared for the originator's personal use or
187 prepared by the originator for the personal use of an individual for whom the originator is
188 working;
- 189 (iii) material that is legally owned by an individual in the individual's private capacity;
- 190 (iv) material to which access is limited by the laws of copyright or patent unless the
191 copyright or patent is owned by a governmental entity or political subdivision;
- 192 (v) proprietary software;
- 193 (vi) junk mail or a commercial publication received by a governmental entity or an
194 official or employee of a governmental entity;
- 195 (vii) a book that is cataloged, indexed, or inventoried and contained in the collections
196 of a library open to the public;
- 197 (viii) material that is cataloged, indexed, or inventoried and contained in the collections
198 of a library open to the public, regardless of physical form or characteristics of the material;
- 199 (ix) a daily calendar or other personal note prepared by the originator for the
200 originator's personal use or for the personal use of an individual for whom the originator is
201 working;
- 202 (x) a computer program that is developed or purchased by or for any governmental
203 entity for its own use;
- 204 (xi) a note or internal memorandum prepared as part of the deliberative process by:
- 205 (A) a member of the judiciary;
- 206 (B) an administrative law judge;
- 207 (C) a member of the Board of Pardons and Parole; or
208 (D) a member of any other body, other than an association or appeals panel as defined
209 in Section [53G-7-1101](#), charged by law with performing a quasi-judicial function;
- 210 (xii) a telephone number or similar code used to access a mobile communication
211 device that is used by an employee or officer of a governmental entity, provided that the

212 employee or officer of the governmental entity has designated at least one business telephone
213 number that is a public record as provided in Section 63G-2-301;

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

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

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

221 (xvi) child pornography, as defined by Section 76-5b-103;

222 (xvii) before final disposition of an ethics complaint occurs, a video or audio recording
223 of the closed portion of a meeting or hearing of:

224 (A) a Senate or House Ethics Committee;

225 (B) the Independent Legislative Ethics Commission;

226 (C) the Independent Executive Branch Ethics Commission, created in Section
227 63A-14-202; or

228 (D) the Political Subdivisions Ethics Review Commission established in Section
229 63A-15-201; or

230 (xviii) confidential communication described in Section 58-60-102, 58-61-102, or
231 58-61-702.

232 [~~(23)~~] (24) "Record series" means a group of records that may be treated as a unit for
233 purposes of designation, description, management, or disposition.

234 [~~(24)~~] (25) "Records officer" means the individual appointed by the chief
235 administrative officer of each governmental entity, or the political subdivision to work with
236 state archives in the care, maintenance, scheduling, designation, classification, disposal, and
237 preservation of records.

238 [~~(25)~~] (26) "Schedule," "scheduling," and their derivative forms mean the process of
239 specifying the length of time each record series should be retained by a governmental entity for
240 administrative, legal, fiscal, or historical purposes and when each record series should be
241 transferred to the state archives or destroyed.

242 [~~(26)~~] (27) "Sponsored research" means research, training, and other sponsored

243 activities as defined by the federal Executive Office of the President, Office of Management
244 and Budget:

245 (a) conducted:

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

247 [53B-1-102](#); and

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

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

250 (i) person that is not created or controlled by the institution within the state system of

251 higher education; or

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

253 ~~[(27)]~~ (28) "State archives" means the Division of Archives and Records Service

254 created in Section [63A-12-101](#).

255 ~~[(28)]~~ (29) "State archivist" means the director of the state archives.

256 ~~[(29)]~~ (30) "State Records Committee" means the State Records Committee created in

257 Section [63G-2-501](#).

258 ~~[(30)]~~ (31) "Summary data" means statistical records and compilations that contain

259 data derived from private, controlled, or protected information but that do not disclose private,

260 controlled, or protected information.

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

262 **63G-2-204.5. Search for records on personal electronic device.**

263 (1) In responding to a request under Section [63G-2-204](#), a governmental entity may:

264 (a) conduct a search for a responsive record on a personal electronic device of an

265 officer or employee of the governmental entity, if the officer or employee consents to the

266 search; or

267 (b) request the officer or employee to conduct a search for a responsive record on the

268 personal electronic device of the officer or employee.

269 (2) If requested by the governmental entity that requests a search under Subsection

270 (1)(b), an officer or employee who conducts the search shall provide a sworn declaration

271 certifying that the officer or employee conducted the search and provided access to all records

272 that the officer or employee located that are responsive to the request.

273 (3) A governmental entity that requires and receives a sworn declaration under

274 Subsection (2):

275 (a) may rely on the sworn declaration in responding to the request for records with
276 respect to which the sworn declaration was provided; and

277 (b) if the sworn declaration is later shown to be false, is not liable for a violation of this
278 chapter that occurs because of the falsity of the sworn affidavit.

279 Section 3. Section **63G-2-801** is amended to read:

280 **63G-2-801. Criminal penalties.**

281 (1) (a) A public employee or other person who has lawful access to any private,
282 controlled, or protected record under this chapter, and who intentionally discloses, provides a
283 copy of, or improperly uses a private, controlled, or protected record knowing that the
284 disclosure or use is prohibited under this chapter, is, except as provided in Subsection
285 [53-5-708\(1\)\(c\)](#), guilty of a class B misdemeanor.

286 (b) It is a defense to prosecution under Subsection (1)(a) that the actor used or released
287 private, controlled, or protected information in the reasonable belief that the use or disclosure
288 of the information was necessary to expose a violation of law involving government
289 corruption, abuse of office, or misappropriation of public funds or property.

290 (c) It is a defense to prosecution under Subsection (1)(a) that the record could have
291 lawfully been released to the recipient if it had been properly classified.

292 (d) It is a defense to prosecution under Subsection (1)(a) that the public employee or
293 other person disclosed, provided, or used the record based on a good faith belief that the
294 disclosure, provision, or use was in accordance with the law.

295 (2) (a) A person who by false pretenses, bribery, or theft, gains access to or obtains a
296 copy of any private, controlled, or protected record to which the person is not legally entitled is
297 guilty of a class B misdemeanor.

298 (b) No person shall be guilty under Subsection (2)(a) who receives the record,
299 information, or copy after the fact and without prior knowledge of or participation in the false
300 pretenses, bribery, or theft.

301 (3) (a) A public employee who intentionally refuses to release a record, the disclosure
302 of which the employee knows is required by law, is guilty of a class B misdemeanor.

303 (b) It is a defense to prosecution under Subsection (3)(a) that the public employee's
304 failure to release the record was based on a good faith belief that the public employee was

305 acting in accordance with the requirements of law.

306 ~~[(e)]~~ (4) A public employee who intentionally refuses to release a record, the disclosure
307 of which the employee knows is required by a final unappealed order from a government entity,
308 the State Records Committee, or a court is guilty of a class B misdemeanor.

309 (5) An officer or employee of a governmental entity is guilty of a class B misdemeanor
310 if the officer or employee:

311 (a) refuses to conduct a search after a governmental entity requests the officer or
312 employee to conduct a search under Subsection 63G-2-204.5(1)(b); or

313 (b) provides a sworn declaration under Subsection 63G-2-204.5(2) that is materially
314 false.

315 Section 4. Section **63G-2-804** is amended to read:

316 **63G-2-804. Violation of provision of chapter -- Penalties for intentional**
317 **mutilation or destruction -- Disciplinary action.**

318 A governmental entity may take disciplinary action [~~which may include~~], including
319 suspension or discharge, against any employee of the governmental entity who intentionally:

320 (1) violates any provision of this chapter or Subsection 63A-12-105(3)[-]; or

321 (2) refuses to conduct a search after a governmental entity requests the officer or
322 employee to conduct a search under Subsection 63G-2-204.5(1)(b).