

HB0057S01 compared with HB0057

~~{deleted text}~~ shows text that was in HB0057 but was deleted in HB0057S01.

inserted text shows text that was not in HB0057 but was inserted into HB0057S01.

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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 ~~{records}~~device.

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 }~~modifies the definition of "record" and enacts a definition of "personal electronic device" for purposes of the ~~{governmental entity's official or employee;~~
▶ ~~prohibits a governmental entity from searching a }~~Government Records Access and Management Act;
▶ provides a process for searching the personal electronic device of an

HB0057S01 compared with HB0057

~~{official}~~officer or employee ~~{in responding}~~of a governmental entity for records that are responsive to a record request;

▶ ~~{requires}~~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 ~~{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}~~to impose disciplinary action against an employee; and

▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

~~{63G-2-701}~~63G-2-103, as last amended by Laws of Utah ~~{2019}~~2021, ~~{Chapter 254~~

~~ENACTS:}~~Chapters 211 and 283

~~{63G-2-109, Utah Code Annotated 1953~~

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

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

ENACTS:

63G-2-204.5, Utah Code Annotated 1953

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.

As used in this chapter:

(1) "Audit" means:

HB0057S01 compared with HB0057

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

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

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

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

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

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

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

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

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

(b) "Computer program" does not mean:

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

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

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

(5) (a) "Contractor" means:

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

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

HB0057S01 compared with HB0057

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

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

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

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

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

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

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

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

(ii) the resultant gaseous pressures are capable of:

(A) producing destructive effects on contiguous objects; or

(B) causing death or serious bodily injury.

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

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

(i) executive department agencies of the state, the offices of the governor, lieutenant governor, state auditor, attorney general, and state treasurer, the Board of Pardons and Parole, the Board of Examiners, the National Guard, the Career Service Review Office, the State Board of Education, the Utah Board of Higher Education, 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 Administrative Office of the Courts, and similar

HB0057S01 compared with HB0057

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;

(iv) an association as defined in Section 53G-7-1101;

(v) the Utah Independent Redistricting Commission; and

(vi) a law enforcement agency, as defined in Section 53-1-102, that employs one or more law enforcement officers, as defined in Section 53-13-103.

(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:

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

(ii) names of victims;

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

HB0057S01 compared with HB0057

incident;

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

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

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

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

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

(15) "Legislative body" means the Legislature.

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

(17) "Person" means:

(a) an individual;

(b) a nonprofit or profit corporation;

(c) a partnership;

(d) a sole proprietorship;

(e) other type of business organization; or

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

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

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

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

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

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

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

HB0057S01 compared with HB0057

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

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

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

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

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

~~[(22)]~~ (23) (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, or location, including on a personal electronic device:

(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;

HB0057S01 compared with HB0057

(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 53G-7-1101, 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;

(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;

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

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

(A) a Senate or House Ethics Committee;

(B) the Independent Legislative Ethics Commission;

HB0057S01 compared with HB0057

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

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

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

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

~~[(24)]~~ [(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.

~~[(25)]~~ [(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.

~~[(26)]~~ [(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.

~~[(27)]~~ [(28)] "State archives" means the Division of Archives and Records Service created in Section 63A-12-101.

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

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

HB0057S01 compared with HB0057

Section 63G-2-501.

~~[(30)]~~ (31) "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.

~~{~~ Section 1. Section ~~63G-2-109~~ is enacted to read:

~~63G-2-109. Electronic records.~~

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

~~}~~ Section 2. Section ~~63G-2-204.5~~ is enacted to read:

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

~~}~~ Search for records on personal electronic device.

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

~~{1}a) { may not }~~ conduct a search for a responsive record { that is:

~~(a) in an electronic format; and~~

~~(b) located only }~~ on a personal electronic device of an {official} officer or employee of the governmental entity, if the officer or employee consents to the search; or

~~{2}b) { shall }~~ request the {official} officer or employee to conduct a search for {the} a responsive record on the personal electronic device of the {official or employee; and

~~{3} officer or employee.~~

(2) If requested by the governmental entity that requests a search under Subsection (1)(b), an officer or employee who conducts the search shall provide a sworn declaration certifying that the officer or employee conducted the search and provided access to all records that the officer or employee located that are responsive to the request.

(3) A governmental entity that requires and receives a sworn declaration under Subsection (2):

(a) may rely on the {results of the search conducted by the official or employee as conclusive of the existence of the record} sworn declaration in responding to the request for records with respect to which the sworn declaration was provided; and

(b) if the sworn declaration is later shown to be false, is not liable for a violation of this

HB0057S01 compared with HB0057

chapter that occurs because of the falsity of the sworn affidavit.

Section 3. Section ~~{63G-2-701}~~ 63G-2-801 is amended to read:

~~{63G-2-701. Political subdivisions may adopt ordinances in compliance with chapter -- Appeal process.~~

~~—— (1) As used in this section:~~

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

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

~~—— (c) "Requester" means the same as that term is defined in Section 63G-2-400.5.~~

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

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

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

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

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

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

~~—— (g) The report required by Subsection (2)(f) is notification to state archives of the political subdivision's retention schedules, designations, and classifications. The report is not subject to approval by state archives. If state archives determines that a different retention schedule is needed for state purposes, state archives shall notify the political subdivision of the state's retention schedule for the records and shall maintain the records if requested to do so.~~

so} 63G-2-801. Criminal penalties.

(1) (a) A public employee or other person who has lawful access to any private,

HB0057S01 compared with HB0057

controlled, or protected record under this chapter, and who intentionally discloses, provides a copy of, or improperly uses a private, controlled, or protected record knowing that the disclosure or use is prohibited under this chapter, is, except as provided in Subsection 53-5-708(1)(c), guilty of a class B misdemeanor.

(b) It is a defense to prosecution under Subsection ~~{63A-12-105(2)}~~.

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

~~— (a) provide standards for the classification and designation of the records of the political subdivision as public,}~~ (1)(a) that the actor used or released private, controlled, or protected ~~{in accordance with Part 3, Classification;~~

~~— (b) require the classification of the records of the political subdivision}~~ information in the reasonable belief that the use or disclosure of the information was necessary to expose a violation of law involving government corruption, abuse of office, or misappropriation of public funds or property.

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

(d) It is a defense to prosecution under Subsection (1)(a) that the public employee or other person disclosed, provided, or used the record based on a good faith belief that the disclosure, provision, or use was in accordance with ~~{those standards;~~

~~— (c) provide guidelines for establishment of fees}~~ the law.

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

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

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

(b) It is a defense to prosecution under Subsection (3)(a) that the public employee's failure to release the record was based on a good faith belief that the public employee was acting in accordance with ~~{ Section 63G-2-203; and~~

~~— (d) provide standards for the management and retention of the records of the political~~

HB0057S01 compared with HB0057

~~subdivision comparable to Section 63A-12-103:~~

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

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

~~—— (5) (a) A political subdivision shall establish an appeals process for persons aggrieved by classification, designation, or access decisions:~~

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

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

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

~~—— (A) one of whom shall be an} law.~~

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

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

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

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

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

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

A governmental entity may take disciplinary action [which may include], including

HB0057S01 compared with HB0057

suspension or discharge, against any employee of the ~~{political subdivision; and~~

~~—— (B) two of whom shall be members of the public who are not employed by or officials of};~~ governmental entity who intentionally:

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

(2) refuses to conduct a search after a governmental entity~~}; at least one of whom shall have professional experience with requesting or managing records:~~

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

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

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

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

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

~~—— (b) The contents of a petition for judicial review};~~ requests the officer or employee to conduct a search under Subsection ~~{(6)(a)(ii) and the conduct of the proceeding shall be in accordance with Sections 63G-2-402 and 63G-2-404:~~

~~—— (c) A person who appeals an appeals board decision to the State Records Committee does not lose or waive the right to seek judicial review of the decision of the State Records Committee:~~

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

~~};~~ 63G-2-204.5(1)(b).