

HB0343S01 compared with HB0343

~~{deleted text}~~ shows text that was in HB0343 but was deleted in HB0343S01.

inserted text shows text that was not in HB0343 but was inserted into HB0343S01.

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Representative Jefferson Moss proposes the following substitute bill:

GOVERNMENT RECORDS MODIFICATIONS

2023 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Jefferson Moss

Senate Sponsor: _____

LONG TITLE

General Description:

This bill amends provisions relating to government records, including provisions relating to the Division of Archives and Records Service, the Government Records Access and Management Act, and a chief privacy officer.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ permits the Division of Archives and Records Service to require a background check of employees and volunteers who have direct access to vulnerable records;
- ▶ modifies the duties ~~{and training }~~ of a records officer;

~~{ } requires the appointment of one or more privacy officers for an executive branch agency to fulfill certain duties relating to the agency's records;~~

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- ~~requires the appointment of one or more security officers for an executive branch agency to assess, coordinate, and manage cybersecurity for the agency;~~
- †
- ▶ grants rulemaking authority to the state archivist, the executive director of the Department of Government Operations, and other departments, in relation to government records and the provisions of this bill;
 - ▶ requires executive branch agencies to:
 - make and maintain an inventory of records that contain personal identifying information; and
 - prepare and maintain a privacy annotation for each record series collected, maintained, or used by the executive branch agency that discloses whether the record series contains personal identifying information, describes the type of personal identifying information contained in the record series, and provides other information regarding the personal identifying information contained in the record series;
 - ▶ requires the executive director of the Department of Government Operations to make rules for identifying personal identifying information, inventorying the information, and reporting regarding the information;
 - ▶ modifies individual rights with respect to records that may be classified as private or controlled or that may contain personal identifying information;
 - ▶ changes the title of the "government operations privacy officer" to the "chief privacy officer"; and
 - ▶ makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

63A-12-100.5, as last amended by Laws of Utah 2015, Chapter 322

63A-12-101, as last amended by Laws of Utah 2022, Chapter 169

~~63A-12-103, as last amended by Laws of Utah 2021, Chapter 344~~

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- † 63A-12-108, as renumbered and amended by Laws of Utah 2008, Chapter 382
- 63C-24-202, as enacted by Laws of Utah 2021, Chapter 155
- 63G-2-103, as last amended by Laws of Utah 2021, Chapters 211, 283
- 63G-2-107, as last amended by Laws of Utah 2016, Chapter 380
- 63G-2-201, as last amended by Laws of Utah 2019, Chapter 334
- 63G-2-204, as last amended by Laws of Utah 2021, Chapter 64
- 63G-2-307, as renumbered and amended by Laws of Utah 2008, Chapter 382
- 63G-2-601, as renumbered and amended by Laws of Utah 2008, Chapter 382
- 63G-2-604, as last amended by Laws of Utah 2019, Chapter 254
- 67-1-17, as enacted by Laws of Utah 2021, Chapter 155
- 67-3-13, as enacted by Laws of Utah 2021, Chapter 155
- 77-27-5, as last amended by Laws of Utah 2021, Chapters 21, 246 and 260 and last amended by Coordination Clause, Laws of Utah 2021, Chapter 260

ENACTS:

63A-12-115, Utah Code Annotated 1953

63A-12-116, Utah Code Annotated 1953

REPEALS AND REENACTS:

63A-12-104, as last amended by Laws of Utah 2022, Chapter 169

REPEALS:

63A-12-100, as last amended by Laws of Utah 2021, Chapter 84

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

Section 1. Section **63A-12-100.5** is amended to read:

CHAPTER 12. DIVISION OF ARCHIVES AND RECORDS SERVICE AND MANAGEMENT OF GOVERNMENT RECORDS

63A-12-100.5. Definitions.

(1) Except as provided under Subsection (2), the definitions in Section 63G-2-103 apply to this chapter.

(2) As used in this chapter:

(a) [~~"division" or "state archives"~~] "Division" means the Division of Archives and Records Service[~~;~~and].

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(b) (i) "Executive branch agency" means the same as that term is defined in Section 63A-16-102.

(ii) "Executive Branch agency" includes a state agency, as defined in Subsection 67-1-17(1)(d).

(c) (i) "Personal identifying information" means information about an individual that:

(A) identifies, or can be used to identify, an individual;

(B) distinguishes an individual from one or more other individuals; or

(C) is, or can be, logically associated with other information or data, through technology or otherwise, to identify an individual or distinguish an individual from one or more other individuals.

(ii) "Personal identifying information" includes information identified as personal identifying information in accordance with the rules described in Section 63A-12-104.

(d) "Privacy annotation" means a summary, described in Subsection 63A-12-115(2) and rules made by the executive director under Subsection 63A-12-104(2), that, for each record series that an executive branch agency collects, maintains, or uses:

(i) discloses whether the record series contains personal identifying information; and

(ii) if the record series contains personal identifying information, includes the information described in Subsection 63A-12-115(2)(b).

~~[(b)]~~ (e) ["record"] Record" means:

(i) the same as that term is defined in Section 63G-2-103; or

(ii) 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, the release of which is governed by Section 77-37-4.

(f) "State archives" means the Division of Archives and Records Service.

(g) "Vulnerable adult" means the same as that term is defined in Section 62A-3-301.

(h) "Vulnerable record" means a record or data relating to:

(i) national security interests;

(ii) the care, custody, or control of a child;

(iii) a fiduciary trust over money;

(iv) health care of a child; or

(v) the following, in relation to a vulnerable adult:

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(A) protection, health care, or other care; or

(B) the provision of food, shelter, clothing, assistance with an activity of daily living, or assistance with financial resource management.

Section 2. Section **63A-12-101** is amended to read:

63A-12-101. Division of Archives and Records Service created -- Duties.

- (1) There is created the Division of Archives and Records Service within the department.
- (2) The state archives shall:
 - (a) administer the state's archives and records management programs, including storage of records, central reformatting programs, and quality control;
 - (b) apply fair, efficient, and economical management methods to the collection, creation, use, maintenance, retention, preservation, disclosure, and disposal of records and documents;
 - (c) establish standards, procedures, and techniques for the effective management and physical care of records;
 - (d) conduct surveys of office operations and recommend improvements in current records management practices, including the use of space, equipment, automation, and supplies used in creating, maintaining, storing, and servicing records;
 - (e) establish standards for the preparation of schedules providing for the retention of records of continuing value and for the prompt and orderly disposal of state records no longer possessing sufficient administrative, historical, legal, or fiscal value to warrant further retention;
 - (f) establish, maintain, and operate centralized reformatting lab facilities and quality control for the state;
 - (g) provide staff and support services to the Records Management Committee created in Section 63A-12-112 and the State Records Committee created in Section 63G-2-501;
 - (h) develop training programs to assist records officers and other interested officers and employees of governmental entities to administer this chapter and Title 63G, Chapter 2, Government Records Access and Management Act;
 - (i) provide access to public records deposited in the archives;
 - (j) administer and maintain the Utah Public Notice Website established under Section

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63A-16-601;

(k) provide assistance to any governmental entity in administering this chapter and Title 63G, Chapter 2, Government Records Access and Management Act;

(l) prepare forms for use by all governmental entities for a person requesting access to a record; and

(m) if the department operates the Division of Archives and Records Service as an internal service fund agency in accordance with Section 63A-1-109.5, submit to the Rate Committee established in Section 63A-1-114:

(i) the proposed rate schedule as required by Section 63A-1-114; and

(ii) other information or analysis requested by the Rate Committee.

(3) The state archives may:

(a) establish a report and directives management program; ~~and~~

(b) establish a forms management program~~[-]; and~~

(c) in accordance with Section 63A-12-101, require that an individual undergo a background check if the individual:

(i) applies to be, or currently is, an employee or volunteer of the division; and

(ii) will have direct access to a vulnerable record in the capacity described in

Subsection (3)(c)(i).

(4) The executive director may direct the state archives to administer other functions or services consistent with this chapter and Title 63G, Chapter 2, Government Records Access and Management Act.

~~{ Section 3. Section 63A-12-103 is amended to read:~~

~~63A-12-103. Duties of governmental entities and executive branch agencies.~~

~~(1) The chief administrative officer of each governmental entity shall:~~

~~[(1)] (a) establish and maintain an active, continuing program for the economical and efficient management of the governmental entity's records as provided by this chapter and Title 63G, Chapter 2, Government Records Access and Management Act;~~

~~[(2)] (b) appoint one or more records officers who will be trained to work with the state archives in the care, maintenance, scheduling, disposal, classification, designation, access, privacy, and preservation of records;~~

~~[(3)] (c) ensure that officers and employees of the governmental entity that receive or~~

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~~process records requests receive required training on the procedures and requirements of this chapter and Title 63G, Chapter 2, Government Records Access and Management Act;~~

~~—— [(4)] (d) make and maintain adequate and proper documentation of the organization, functions, policies, decisions, procedures, and essential transactions of the governmental entity designed to furnish information to protect the legal and financial rights of persons directly affected by the entity's activities;~~

~~—— [(5)] (e) submit to the state archivist proposed schedules of records for final approval by the Records Management Committee created in Section 63A-12-112;~~

~~—— [(6)] (f) cooperate with the state archivist in conducting surveys made by the state archivist;~~

~~—— [(7)] (g) comply with rules issued by the Department of Government Operations as provided by Section 63A-12-104;~~

~~—— [(8)] (h) report to the state archives the designation of record series that it maintains;~~

~~—— [(9)] (i) report to the state archives the classification of each record series that is classified; and~~

~~—— [(10)] (j) establish and report to the state archives retention schedules for objects that the governmental entity determines are not defined as a record under Section 63G-2-103, but that have historical or evidentiary value:~~

~~—— (2) (a) The chief administrative officer of each executive branch agency shall appoint one or more privacy officers within the executive branch agency.~~

~~—— (b) A privacy officer appointed under Subsection (2)(a) shall, in accordance with the provisions of this part and the rules made under Section 63A-12-104:~~

~~—— (i) work with the chief privacy officer to establish and implement best practices for the executive branch agency's privacy practice, as defined in Subsection 67-1-17(1)(c);~~

~~—— (ii) make, update, and maintain the inventory described in Subsection 63A-12-104(2)(a);~~

~~—— (iii) determine, for each record series that the executive branch agency collects, maintains, or uses, whether the record series contains personal identifying information;~~

~~—— (iv) prepare a privacy annotation for each record series that the executive branch agency collects, maintains, or uses; and~~

~~—— (v) receive and comply with training provided by the chief privacy officer relating to~~

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~~fulfilling the provisions of this Subsection (2)(b):~~

~~—— (3) (a) The chief administrative officer of each executive branch agency shall appoint one or more security officers within the executive branch agency:~~

~~—— (b) A security officer appointed under Subsection (3)(a) shall:~~

~~—— (i) work with the chief information security officer, appointed under Section 63A-16-210, to assess, coordinate, and manage cybersecurity for the agency; and~~

~~—— (ii) receive and comply with training provided by the chief information security officer relating to fulfilling the duties described in Subsection (3)(b)(i):~~

~~—— (4) For an executive branch agency, an officer appointed under Subsection (1)(b), (2)(a), or (3)(a) may be the same individual, if the individual has the ability, time, and resources available to adequately, and timely, fulfill the responsibilities required of the officer under this section.~~

‡ Section ~~{4}~~³. Section **63A-12-104** is repealed and reenacted to read:

63A-12-104. Rulemaking authority.

(1) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act:

(a) the state archivist may, for an executive branch agency, make rules establishing procedures for the collection, storage, designation, classification, access, mediation for records access, and management of records under this chapter and Title 63G, Chapter 2, Government Records Access and Management Act; and

(b) a department may make rules specifying at which level within the department the requirements described in this chapter will be undertaken.

(2) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the executive director shall, in consultation with the state archivist and the chief privacy officer, make rules for an executive branch agency that establish:

(a) requirements for making an inventory of each record series that contains personal identifying information, including:

(i) information collected as part of the inventory;

(ii) regularly reviewing, updating, and maintaining the inventory; and

(iii) reporting the inventory to the chief privacy officer;

(b) a list of information, categories of information, or types of information expressly designated as personal identifying information, in accordance with the criteria described in

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Subsections 63A-12-100.5(2)(c)(i) through (iii)

(c) criteria, variables, and principles for determining whether information in a record series, not expressly designated under Subsection (2)(b), is personal identifying information;

(d) a list and description of categories or types of personal identifying information that are collected, maintained, or used by executive branch agencies; and

(e) requirements for the form, content, format, review, and update of a privacy annotation.

(3) The rules described in Subsection (2)(b) may incorporate, by reference, a data dictionary that a ~~{privacy}~~records officer appointed under Subsection 63A-12-103(2)(a) shall use in making the determination described in Subsection (2)(c).

Section ~~{5}~~4. Section **63A-12-108** is amended to read:

63A-12-108. Inspection and summary of record series -- Data dictionary.

(1) [~~The state~~] State archives shall provide for public inspection of:

(a) the title and a summary description of each record series[-]; and

(b) for an executive branch agency, the privacy annotation of each record series.

(2) The department shall:

(a) post the data dictionary described in Subsection 63A-12-104(3) on the department's website; and

(b) maintain and update the data dictionary on a regular basis.

Section ~~{6}~~5. Section **63A-12-115** is enacted to read:

63A-12-115. Privacy annotation for records series -- Requirements -- Content.

(1) (a) Before January 1, 2026, an executive branch agency shall, for each record series that the executive branch agency collects, maintains, or uses, evaluate the record series and make a privacy annotation that completely and accurately complies with Subsection (2) and the rules described in Subsection 63A-12-104(2)(e).

(b) Beginning on January 1, 2026, an executive branch agency may not collect, maintain, or use personal identifying information unless the record series for which the personal identifying information is collected, maintained, or used includes a privacy annotation that completely and accurately complies with Subsection (2) and the rules described in Subsection 63A-12-104(2)(e).

(2) A privacy annotation shall include the following:

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(a) if the record series does not include personal identifying information, a statement indicating that the record series does not include personal identifying information;

(b) if the record series includes personal identifying information:

(i) an inventory of the personal identifying information included in the record series;

and

(ii) for the personal identifying information described in Subsection (2)(b)(i):

(A) the purpose for which the executive branch agency collects, keeps, or uses the personal identifying information;

(B) a citation to the executive branch agency's legal authority for collecting, keeping, or using the personal identifying information; and

(C) any other information required by state archives by rule under Subsection 63A-12-104(2)(e).

Section ~~7~~6. Section **63A-12-116** is enacted to read:

63A-12-116. Background check for individuals with direct access to a vulnerable record.

(1) If, under Subsection 63A-12-101(3)(c), state archives requires an individual to undergo a background check:

(a) the individual shall:

(i) submit to state archives, in a form designated by state archives, a fingerprint card and other information required by state archives for the background check; and

(ii) consent to a criminal background check by the Federal Bureau of Investigation, the Bureau of Criminal Identification, or any other state entity that performs criminal background checks; and

(b) state archives shall:

(i) submit the fingerprint card and information described in Subsection (1)(a)(i) to the Utah Bureau of Criminal Identification; and

(ii) pay all fees required to conduct the background check, including fees described in Subsection 53-10-108(15)(a) and fees required by the Federal Bureau of Investigation.

(2) The Bureau of Criminal Identification shall provide all results of a criminal background check described in this section to state archives, including results from state, regional, and nationwide background checks.

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(3) State archives may make rules, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to:

(a) establish procedures for requiring and conducting a background check under this section; and

(b) specify requirements for the information and fingerprint card required for a background check under this section.

Section ~~{8}~~7. Section **63C-24-202** is amended to read:

63C-24-202. Commission duties.

(1) The commission shall:

(a) develop guiding standards and best practices with respect to government privacy practices;

(b) develop educational and training materials that include information about:

(i) the privacy implications and civil liberties concerns of the privacy practices of government entities;

(ii) best practices for government collection and retention policies regarding personal data; and

(iii) best practices for government personal data security standards; and

(c) review the privacy implications and civil liberties concerns of government privacy practices.

(2) The commission may:

(a) review specific government privacy practices as referred to the commission by the [~~government operations~~] chief privacy officer described in Section 67-1-17 or the state privacy officer described in Section 67-3-13; and

(b) develop recommendations for legislation regarding the guiding standards and best practices the commission has developed in accordance with Subsection (1)(a).

(3) Annually, on or before October 1, the commission shall report to the Judiciary Interim Committee:

(a) the results of any reviews the commission has conducted;

(b) the guiding standards and best practices described in Subsection (1)(a); and

(c) any recommendations for legislation the commission has developed in accordance with Subsection (2)(b).

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Section ~~9~~8. Section **63G-2-103** is amended to read:

63G-2-103. Definitions.

As used in this chapter:

(1) "Audit" means:

(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.

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(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.

(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

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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 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

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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 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) "Personal identifying information" means the same as that term is defined in Section 63A-12-100.5.

(19) "Privacy annotation" means the same as that term is defined in Section 63A-12-100.5.

~~(18)~~ (20) "Private provider" means any person who contracts with a governmental

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entity to provide services directly to the public.

~~[(19)]~~ (21) "Private record" means a record containing data on individuals that is private as provided by Section 63G-2-302.

~~[(20)]~~ (22) "Protected record" means a record that is classified protected as provided by Section 63G-2-305.

~~[(21)]~~ (23) "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)]~~ (24) (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

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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;

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

(D) the Political Subdivisions Ethics Review Commission established in Section

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63A-15-201; or

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

~~[(23)]~~ (25) "Record series" means a group of records that may be treated as a unit for purposes of designation, description, management, or disposition.

~~[(24)]~~ (26) "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)]~~ (27) "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)]~~ (28) "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)]~~ (29) "State archives" means the Division of Archives and Records Service created in Section 63A-12-101.

~~[(28)]~~ (30) "State archivist" means the director of the state archives.

~~[(29)]~~ (31) "State Records Committee" means the State Records Committee created in Section 63G-2-501.

~~[(30)]~~ (32) "Summary data" means statistical records and compilations that contain data derived from private, controlled, or protected information but that do not disclose private,

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controlled, or protected information.

Section ~~{10}~~9. Section **63G-2-107** is amended to read:

63G-2-107. Disclosure of records subject to federal law or other provisions of state law.

(1) (a) The disclosure of a record to which access is governed or limited pursuant to court rule, another state statute, federal statute, or federal regulation, including a record for which access is governed or limited as a condition of participation in a state or federal program or for receiving state or federal funds, is governed by the specific provisions of that statute, rule, or regulation.

(b) Except as provided in Subsection (2) this chapter applies to records described in Subsection (1)(a) to the extent that this chapter is not inconsistent with the statute, rule, or regulation.

~~[(1)]~~ (2) ~~[Notwithstanding Subsection 63G-2-201(6), this]~~ Except as provided in Subsection (3), this chapter does not apply to a record containing protected health information as defined in 45 C.F.R., Part 164, Standards for Privacy of Individually Identifiable Health Information, if the record is:

(a) controlled or maintained by a governmental entity; and

(b) governed by 45 C.F.R., Parts 160 and 164, Standards for Privacy of Individually Identifiable Health Information.

~~[(2)]~~ (c) The disclosure of an education record as defined in the Family Educational Rights and Privacy Act, 34 C.F.R. Part 99, that is controlled or maintained by a governmental entity shall be governed by the Family Educational Rights and Privacy Act, 34 C.F.R. Part 99.

(3) This section does not exempt any record or record series from the provisions of Subsection 63G-2-601(1)

Section ~~{11}~~10. Section **63G-2-201** is amended to read:

63G-2-201. Provisions relating to records -- Public records -- Private, controlled, protected, and other restricted records -- Disclosure and nondisclosure of records -- Certified copy of record -- Limits on obligation to respond to record request.

(1) (a) Except as provided in Subsection (1)(b), a person has the right to inspect a public record free of charge, and the right to take a copy of a public record during normal working hours, subject to Sections 63G-2-203 and 63G-2-204.

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- (b) A right under Subsection (1)(a) does not apply with respect to a record:
- (i) a copy of which the governmental entity has already provided to the person;
 - (ii) that is the subject of a records request that the governmental entity is not required to fill under Subsection [~~(8)(e)~~] (7)(e); or
 - (iii) (A) that is accessible only by a computer or other electronic device owned or controlled by the governmental entity;
 - (B) that is part of an electronic file that also contains a record that is private, controlled, or protected; and
 - (C) that the governmental entity cannot readily segregate from the part of the electronic file that contains a private, controlled, or protected record.
- (2) A record is public unless otherwise expressly provided by statute.
- (3) The following records are not public:
- (a) a record that is private, controlled, or protected under Sections 63G-2-302, 63G-2-303, 63G-2-304, and 63G-2-305; and
 - (b) a record to which access is restricted pursuant to court rule, another state statute, federal statute, or federal regulation, including records for which access is governed or restricted as a condition of participation in a state or federal program or for receiving state or federal funds.
- (4) Only a record specified in Section 63G-2-302, 63G-2-303, 63G-2-304, or 63G-2-305 may be classified private, controlled, or protected.
- (5) (a) A governmental entity may not disclose a record that is private, controlled, or protected to any person except as provided in Subsection (5)(b), Subsection (5)(c), Section 63G-2-202, 63G-2-206, or 63G-2-303.
- (b) A governmental entity may disclose a record that is private under Subsection 63G-2-302(2) or protected under Section 63G-2-305 to persons other than those specified in Section 63G-2-202 or 63G-2-206 if the head of a governmental entity, or a designee, determines that:
- (i) there is no interest in restricting access to the record; or
 - (ii) the interests favoring access are greater than or equal to the interest favoring restriction of access.
- (c) In addition to the disclosure under Subsection (5)(b), a governmental entity may

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disclose a record that is protected under Subsection 63G-2-305(51) if:

(i) the head of the governmental entity, or a designee, determines that the disclosure:

(A) is mutually beneficial to:

(I) the subject of the record;

(II) the governmental entity; and

(III) the public; and

(B) serves a public purpose related to:

(I) public safety; or

(II) consumer protection; and

(ii) the person who receives the record from the governmental entity agrees not to use or allow the use of the record for advertising or solicitation purposes.

~~[(6)(a) The disclosure of a record to which access is governed or limited pursuant to court rule, another state statute, federal statute, or federal regulation, including a record for which access is governed or limited as a condition of participation in a state or federal program or for receiving state or federal funds, is governed by the specific provisions of that statute, rule, or regulation.]~~

~~[(b) This chapter applies to records described in Subsection (6)(a) insofar as this chapter is not inconsistent with the statute, rule, or regulation.]~~

~~[(7)] (6)~~ A governmental entity shall provide a person with a certified copy of a record if:

(a) the person requesting the record has a right to inspect it;

(b) the person identifies the record with reasonable specificity; and

(c) the person pays the lawful fees.

~~[(8)] (7)~~ In response to a request, a governmental entity is not required to:

(a) create a record;

(b) compile, format, manipulate, package, summarize, or tailor information;

(c) provide a record in a particular format, medium, or program not currently maintained by the governmental entity;

(d) fulfill a person's records request if the request unreasonably duplicates prior records requests from that person; or

(e) fill a person's records request if:

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(i) the record requested is:

(A) publicly accessible online; or

(B) included in a public publication or product produced by the governmental entity receiving the request; and

(ii) the governmental entity:

(A) specifies to the person requesting the record where the record is accessible online;

or

(B) provides the person requesting the record with the public publication or product and specifies where the record can be found in the public publication or product.

~~[(9)]~~ (8) (a) Although not required to do so, a governmental entity may, upon request from the person who submitted the records request, compile, format, manipulate, package, summarize, or tailor information or provide a record in a format, medium, or program not currently maintained by the governmental entity.

(b) In determining whether to fulfill a request described in Subsection ~~[(9)(a)]~~ (8)(a), a governmental entity may consider whether the governmental entity is able to fulfill the request without unreasonably interfering with the governmental entity's duties and responsibilities.

(c) A governmental entity may require a person who makes a request under Subsection ~~[(9)(a)]~~ (8)(a) to pay the governmental entity, in accordance with Section 63G-2-203, for providing the information or record as requested.

~~[(10)]~~ (9) (a) Notwithstanding any other provision of this chapter, and subject to Subsection ~~[(10)(b)]~~ (9)(b), a governmental entity is not required to respond to, or provide a record in response to, a record request if the request is submitted by or in behalf of an individual who is confined in a jail or other correctional facility following the individual's conviction.

(b) Subsection ~~[(10)(a)]~~ (9)(a) does not apply to:

(i) the first five record requests submitted to the governmental entity by or in behalf of an individual described in Subsection ~~[(10)(a)]~~ (9)(a) during any calendar year requesting only a record that contains a specific reference to the individual; or

(ii) a record request that is submitted by an attorney of an individual described in Subsection ~~[(10)(a)]~~ (9)(a).

~~[(11)]~~ (10) (a) A governmental entity may allow a person requesting more than 50

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pages of records to copy the records if:

(i) the records are contained in files that do not contain records that are exempt from disclosure, or the records may be segregated to remove private, protected, or controlled information from disclosure; and

(ii) the governmental entity provides reasonable safeguards to protect the public from the potential for loss of a public record.

(b) If the requirements of Subsection [~~(11)~~(a)] (10)(a) are met, the governmental entity may:

(i) provide the requester with the facilities for copying the requested records and require that the requester make the copies; or

(ii) allow the requester to provide the requester's own copying facilities and personnel to make the copies at the governmental entity's offices and waive the fees for copying the records.

~~[(12)]~~ (11) (a) A governmental entity that owns an intellectual property right and that offers the intellectual property right for sale or license may control by ordinance or policy the duplication and distribution of the material based on terms the governmental entity considers to be in the public interest.

(b) Nothing in this chapter shall be construed to limit or impair the rights or protections granted to the governmental entity under federal copyright or patent law as a result of its ownership of the intellectual property right.

~~[(13)]~~ (12) A governmental entity may not use the physical form, electronic or otherwise, in which a record is stored to deny, or unreasonably hinder the rights of a person to inspect and receive a copy of a record under this chapter.

~~[(14)]~~ (13) Subject to the requirements of Subsection [~~(8)~~] (7), a governmental entity shall provide access to an electronic copy of a record in lieu of providing access to its paper equivalent if:

(a) the person making the request requests or states a preference for an electronic copy;

(b) the governmental entity currently maintains the record in an electronic format that is reproducible and may be provided without reformatting or conversion; and

(c) the electronic copy of the record:

(i) does not disclose other records that are exempt from disclosure; or

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(ii) may be segregated to protect private, protected, or controlled information from disclosure without the undue expenditure of public resources or funds.

~~[(15)]~~ (14) In determining whether a record is properly classified as private under Subsection 63G-2-302(2)(d), the governmental entity, State Records Committee, local appeals board, or court shall consider and weigh:

(a) any personal privacy interests, including those in images, that would be affected by disclosure of the records in question; and

(b) any public interests served by disclosure.

Section ~~{12}~~11. Section **63G-2-204** is amended to read:

63G-2-204. Record request -- Response -- Time for responding.

(1) (a) A person making a request for a record shall submit to the governmental entity that retains the record a written request containing:

(i) the person's:

(A) name;

(B) mailing address;

(C) email address, if the person has an email address and is willing to accept communications by email relating to the person's records request; and

(D) daytime telephone number; and

(ii) a description of the record requested that identifies the record with reasonable specificity.

(b) (i) A single record request may not be submitted to multiple governmental entities.

(ii) Subsection (1)(b)(i) may not be construed to prevent a person from submitting a separate record request to each of multiple governmental entities, even if each of the separate requests seeks access to the same record.

(2) (a) In response to a request for a record, a governmental entity may not provide a record that it has received under Section 63G-2-206 as a shared record.

(b) If a governmental entity is prohibited from providing a record under Subsection (2)(a), the governmental entity shall:

(i) deny the records request; and

(ii) inform the person making the request of the identity of the governmental entity from which the shared record was received.

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(3) A governmental entity may make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, specifying where and to whom requests for access shall be directed.

(4) After receiving a request for a record, a governmental entity shall:

(a) review each request that seeks an expedited response and notify, within five business days after receiving the request, each requester that has not demonstrated that their record request benefits the public rather than the person that their response will not be expedited; and

(b) as soon as reasonably possible, but no later than 10 business days after receiving a written request, or five business days after receiving a written request if the requester demonstrates that expedited response to the record request benefits the public rather than the person:

(i) approve the request and provide a copy of the record;

(ii) deny the request in accordance with the procedures and requirements of Section 63G-2-205;

(iii) notify the requester that it does not maintain the record requested and provide, if known, the name and address of the governmental entity that does maintain the record; or

(iv) notify the requester that because of one of the extraordinary circumstances listed in Subsection (6), it cannot immediately approve or deny the request, and include with the notice:

(A) a description of the circumstances that constitute the extraordinary circumstances; and

(B) the date when the records will be available, consistent with the requirements of Subsection (7).

(5) Any person who requests a record to obtain information for a story or report for publication or broadcast to the general public is presumed to be acting to benefit the public rather than a person.

(6) The following circumstances constitute "extraordinary circumstances" that allow a governmental entity to delay approval or denial by an additional period of time as specified in Subsection (7) if the governmental entity determines that due to the extraordinary circumstances it cannot respond within the time limits provided in Subsection (4):

(a) another governmental entity is using the record, in which case the originating

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governmental entity shall promptly request that the governmental entity currently in possession return the record;

(b) another governmental entity is using the record as part of an audit, and returning the record before the completion of the audit would impair the conduct of the audit;

(c) (i) the request is for a voluminous quantity of records or a record series containing a substantial number of records; or

(ii) the requester seeks a substantial number of records or records series in requests filed within five working days of each other;

(d) the governmental entity is currently processing a large number of records requests;

(e) the request requires the governmental entity to review a large number of records to locate the records requested;

(f) the decision to release a record involves legal issues that require the governmental entity to seek legal counsel for the analysis of statutes, rules, ordinances, regulations, or case law;

(g) segregating information that the requester is entitled to inspect from information that the requester is not entitled to inspect requires extensive editing; or

(h) segregating information that the requester is entitled to inspect from information that the requester is not entitled to inspect requires computer programming.

(7) If one of the extraordinary circumstances listed in Subsection (6) precludes approval or denial within the time specified in Subsection (4), the following time limits apply to the extraordinary circumstances:

(a) for claims under Subsection (6)(a), the governmental entity currently in possession of the record shall return the record to the originating entity within five business days of the request for the return unless returning the record would impair the holder's work;

(b) for claims under Subsection (6)(b), the originating governmental entity shall notify the requester when the record is available for inspection and copying;

(c) for claims under Subsections (6)(c), (d), and (e), the governmental entity shall:

(i) disclose the records that it has located which the requester is entitled to inspect;

(ii) provide the requester with an estimate of the amount of time it will take to finish the work required to respond to the request;

(iii) complete the work and disclose those records that the requester is entitled to

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inspect as soon as reasonably possible; and

(iv) for any person that does not establish a right to an expedited response as authorized by Subsection (4), a governmental entity may choose to:

(A) require the person to provide for copying of the records as provided in Subsection [63G-2-201(11)] 63G-2-201(10); or

(B) treat a request for multiple records as separate record requests, and respond sequentially to each request;

(d) for claims under Subsection (6)(f), the governmental entity shall either approve or deny the request within five business days after the response time specified for the original request has expired;

(e) for claims under Subsection (6)(g), the governmental entity shall fulfill the request within 15 business days from the date of the original request; or

(f) for claims under Subsection (6)(h), the governmental entity shall complete its programming and disclose the requested records as soon as reasonably possible.

(8) (a) If a request for access is submitted to an office of a governmental entity other than that specified by rule in accordance with Subsection (3), the office shall promptly forward the request to the appropriate office.

(b) If the request is forwarded promptly, the time limit for response begins when the request is received by the office specified by rule.

(9) If the governmental entity fails to provide the requested records or issue a denial within the specified time period, that failure is considered the equivalent of a determination denying access to the record.

Section ~~{13}~~12. Section **63G-2-307** is amended to read:

63G-2-307. Duty to evaluate records and make designations, classifications, and annotations.

(1) A governmental entity shall, for each record series that the governmental entity keeps, uses, or creates:

(a) evaluate all record series [~~that it uses or creates~~];

(b) designate [~~those~~] each record series as provided by this chapter and Title 63A, Chapter 12, Division of Archives and Records Service; and

(c) report [~~the designations of its record series~~] to the state archives;

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(i) the designation described in Subsection (1)(b); and

(ii) if the governmental entity is an executive branch agency, as defined in Section 63A-12-100.5, the privacy annotation.

(2) A governmental entity may classify a particular record, record series, or information within a record at any time, but is not required to classify a particular record, record series, or information until access to the record is requested.

(3) A governmental entity may redesignate a record series or reclassify a record or record series, or information within a record at any time.

Section ~~{14}~~13. Section 63G-2-601 is amended to read:

63G-2-601. Rights of individuals on whom data is maintained -- Classification and personal identifying information statement -- Notice to provider of information.

(1) (a) Each governmental entity shall file with the state archivist a statement explaining, for each record series collected, maintained, or used by the governmental entity, the purposes for which [a record series that is designated as private or controlled is collected and] each private or controlled record in the record series is collected, maintained, or used by that governmental entity.

(b) Each executive branch agency, as defined in Section 63A-12-100.5, shall file with the state archivist a statement explaining, for each record series collected, maintained, or used by the executive branch agency, the purposes for which the personal identifying information in the record series is collected, maintained, or used by the executive branch agency.

~~{(b)}~~ (c) The statement filed under Subsection (1)(a) or (b):

(i) shall, for each purpose described in Subsection (1)(a) or (b), identify the authority under which the governmental entity or executive branch agency collects the records or information included in the statement described in Subsection (1)(a) or (b); and

(ii) is a public record.

(2) (a) A governmental entity shall provide ~~[notice of the following]~~ the notice described in this Subsection (2) to a person that is asked to furnish information that could be classified as a private or controlled record[?].

(b) An executive branch agency, as defined in Section 63A-12-100.5, shall provide the notice described in this Subsection (2) to a person that is asked to furnish personal identifying information.

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(c) The notice required under Subsection (2)(a) or (b) shall:

(i) identify the record series that includes the information described in Subsection (2)(a) or (b);

~~(i)~~ (ii) state the reasons the person is asked to furnish the information;

~~(ii)~~ (iii) state the intended uses of the information;

~~(iii)~~ (iv) state the consequences for refusing to provide the information; and

~~(iv)~~ (v) disclose the classes of persons and the governmental entities that currently:

(A) share the information with the governmental entity; or

(B) receive the information from the governmental entity on a regular or contractual basis.

~~(b)~~ (d) The ~~[notice shall be]~~ governmental entity shall:

(i) ~~[posted]~~ post the notice required under this Subsection (2) in a prominent place at all locations where the governmental entity collects the information; or

(ii) ~~[included]~~ include the notice required under this Subsection (2) as part of the documents or forms that are used by the governmental entity to collect the information.

(3) Upon request, each governmental entity shall, in relation to the information described in Subsection (2)(a) or (b), as applicable, explain to a person:

(a) the reasons the person is asked to furnish information ~~[that could be classified as a private or controlled record];~~

(b) the intended uses of the information ~~[referred to in Subsection (3)(a)];~~

(c) the consequences for refusing to provide the information ~~[referred to in Subsection (3)(a)];~~ and

(d) the reasons and circumstances under which the information ~~[referred to in Subsection (3)(a)]~~ may be shared with, or provided to, other persons or governmental entities.

(4) A governmental entity may use ~~[private or controlled records]~~ the information that the governmental entity is required to disclose under Subsection (2)(a) or (b) only for those purposes:

(a) given in the statement filed with the state archivist under Subsection (1); or

(b) for which another governmental entity may use the record under Section 63G-2-206.

Section ~~{15}~~14. Section **63G-2-604** is amended to read:

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63G-2-604. Retention and disposition of records.

(1) (a) Except for a governmental entity that is permitted to maintain the governmental entity's own retention schedules under Part 7, Applicability to Political Subdivisions, the Judiciary, and the Legislature, each governmental entity shall file with the Records Management Committee created in Section 63A-12-112 a proposed schedule for the retention and disposition of each type of material that is defined as a record under this chapter.

(b) After a retention schedule is reviewed and approved by the Records Management Committee under Subsection 63A-12-113(1)(b), the governmental entity shall maintain and destroy records in accordance with the retention schedule.

(c) If a governmental entity subject to the provisions of this section has not received an approved retention schedule from the Records Management Committee for a specific type of material that is ~~[classified]~~ defined as a record under this chapter, the ~~[model]~~ general retention schedule maintained by the state archivist shall govern the retention and destruction of that type of material.

(2) A retention schedule that is filed with or approved by the Records Management Committee under the requirements of this section is a public record.

Section ~~67-1-15~~ 15. Section **67-1-17** is amended to read:

67-1-17. Chief privacy officer.

(1) As used in this section:

(a) "Independent entity" means the same as that term is defined in Section 63E-1-102.

(b) (i) "Personal data" means any information relating to an identified or identifiable individual.

(ii) "Personal data" includes personally identifying information.

(c) (i) "Privacy practice" means the acquisition, use, storage, or disposal of personal data.

(ii) "Privacy practice" includes:

(A) a technology use related to personal data; and

(B) policies related to the protection, storage, sharing, and retention of personal data.

(d) (i) "State agency" means the following entities that are under the direct supervision and control of the governor or the lieutenant governor:

(A) a department;

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- (B) a commission;
 - (C) a board;
 - (D) a council;
 - (E) an institution;
 - (F) an officer;
 - (G) a corporation;
 - (H) a fund;
 - (I) a division;
 - (J) an office;
 - (K) a committee;
 - (L) an authority;
 - (M) a laboratory;
 - (N) a library;
 - (O) a bureau;
 - (P) a panel;
 - (Q) another administrative unit of the state; or
 - (R) an agent of an entity described in Subsections (A) through (Q).
- (ii) "State agency" does not include:
- (A) the legislative branch;
 - (B) the judicial branch;
 - (C) an executive branch agency within the Office of the Attorney General, the state auditor, the state treasurer, or the State Board of Education; or
 - (D) an independent entity.
- (2) The governor [~~may~~] shall, with the advice and consent of the Senate, appoint a [~~government operations~~] chief privacy officer.
- (3) The [~~government operations~~] chief privacy officer shall:
- (a) compile information about the privacy practices of state agencies;
 - (b) make public and maintain information about the privacy practices of state agencies on the governor's website;
 - (c) provide state agencies with educational and training materials developed by the Personal Privacy Oversight Commission established in Section 63C-24-201 that include the

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information described in Subsection 63C-24-202(1)(b);

(d) implement a process to analyze and respond to requests from individuals for the [~~government operations~~] chief privacy officer to review a state agency's privacy practice;

(e) identify annually which state agencies' privacy practices pose the greatest risk to individual privacy and prioritize those privacy practices for review;

(f) review each year, in as timely a manner as possible, the privacy practices that the [~~government operations~~] chief privacy officer identifies under Subsection (3)(d) or (e) as posing the greatest risk to individuals' privacy;

(g) when reviewing a state agency's privacy practice under Subsection (3)(f), analyze:

(i) details about the privacy practice;

(ii) information about the type of data being used;

(iii) information about how the data is obtained, shared, secured, stored, and disposed;

(iv) information about with which persons the state agency shares the information;

(v) information about whether an individual can or should be able to opt out of the retention and sharing of the individual's data;

(vi) information about how the state agency de-identifies or anonymizes data;

(vii) a determination about the existence of alternative technology or improved practices to protect privacy; and

(viii) a finding of whether the state agency's current privacy practice adequately protects individual privacy; and

(h) after completing a review described in Subsections (3)(f) and (g), determine:

(i) each state agency's use of personal data, including the state agency's practices regarding data:

(A) acquisition;

(B) storage;

(C) disposal;

(D) protection; and

(E) sharing;

(ii) the adequacy of the state agency's practices in each of the areas described in Subsection (3)(h)(i); and

(iii) for each of the areas described in Subsection (3)(h)(i) that the [~~government~~

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~~operations]~~ chief privacy officer determines require reform, provide recommendations to the state agency for reform.

(4) The [~~government operations]~~ chief privacy officer shall:

(a) quarterly report, to the Personal Privacy Oversight Commission:

(i) recommendations for privacy practices for the commission to review; and

(ii) the information described in Subsection (3)(h); and

(b) annually, on or before October 1, report to the Judiciary Interim Committee:

(i) the results of any reviews described in Subsection (3)(g), if any reviews have been completed;

(ii) reforms, to the extent that the [~~government operations]~~ chief privacy officer is aware of any reforms, that the state agency made in response to any reviews described in Subsection (3)(g);

(iii) the information described in Subsection (3)(h); and

(iv) recommendations for legislation based on the results of any reviews described in Subsection (3)(g).

(5) The chief privacy officer may make rules, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, that:

~~— (a) } establish requirements and standards for determining whether a state agency's privacy practice, in relation to the areas described in Subsection (3)(h)(i), is adequate or requires reform; and~~

~~— (b) establish the training described in Subsections 63A-12-103(2)(b)(v) and (3)(b)(ii).~~

Section ~~{17}~~16. Section **67-3-13** is amended to read:

67-3-13. State privacy officer.

(1) As used in this section:

(a) "Designated government entity" means a government entity that is not a state agency.

(b) "Independent entity" means the same as that term is defined in Section 63E-1-102.

(c) (i) "Government entity" means the state, a county, a municipality, a higher education institution, a local district, a special service district, a school district, an independent entity, or any other political subdivision of the state or an administrative subunit of any political subdivision, including a law enforcement entity.

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(ii) "Government entity" includes an agent of an entity described in Subsection (1)(c)(i).

(d) (i) "Personal data" means any information relating to an identified or identifiable individual.

(ii) "Personal data" includes personally identifying information.

(e) (i) "Privacy practice" means the acquisition, use, storage, or disposal of personal data.

(ii) "Privacy practice" includes:

(A) a technology use related to personal data; and

(B) policies related to the protection, storage, sharing, and retention of personal data.

(f) (i) "State agency" means the following entities that are under the direct supervision and control of the governor or the lieutenant governor:

(A) a department;

(B) a commission;

(C) a board;

(D) a council;

(E) an institution;

(F) an officer;

(G) a corporation;

(H) a fund;

(I) a division;

(J) an office;

(K) a committee;

(L) an authority;

(M) a laboratory;

(N) a library;

(O) a bureau;

(P) a panel;

(Q) another administrative unit of the state; or

(R) an agent of an entity described in Subsections (A) through (Q).

(ii) "State agency" does not include:

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- (A) the legislative branch;
 - (B) the judicial branch;
 - (C) an executive branch agency within the Office of the Attorney General, the state auditor, the state treasurer, or the State Board of Education; or
 - (D) an independent entity.
- (2) The state privacy officer shall:
- (a) when completing the duties of this Subsection (2), focus on the privacy practices of designated government entities;
 - (b) compile information about government privacy practices of designated government entities;
 - (c) make public and maintain information about government privacy practices on the state auditor's website;
 - (d) provide designated government entities with educational and training materials developed by the Personal Privacy Oversight Commission established in Section 63C-24-201 that include the information described in Subsection 63C-24-202(1)(b);
 - (e) implement a process to analyze and respond to requests from individuals for the state privacy officer to review a designated government entity's privacy practice;
 - (f) identify annually which designated government entities' privacy practices pose the greatest risk to individual privacy and prioritize those privacy practices for review;
 - (g) review each year, in as timely a manner as possible, the privacy practices that the privacy officer identifies under Subsection (2)(e) or (2)(f) as posing the greatest risk to individuals' privacy;
 - (h) when reviewing a designated government entity's privacy practice under Subsection (2)(g), analyze:
 - (i) details about the technology or the policy and the technology's or the policy's application;
 - (ii) information about the type of data being used;
 - (iii) information about how the data is obtained, stored, shared, secured, and disposed;
 - (iv) information about with which persons the designated government entity shares the information;
 - (v) information about whether an individual can or should be able to opt out of the

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retention and sharing of the individual's data;

(vi) information about how the designated government entity de-identifies or anonymizes data;

(vii) a determination about the existence of alternative technology or improved practices to protect privacy; and

(viii) a finding of whether the designated government entity's current privacy practice adequately protects individual privacy; and

(i) after completing a review described in Subsections (2)(g) and (h), determine:

(i) each designated government entity's use of personal data, including the designated government entity's practices regarding data:

(A) acquisition;

(B) storage;

(C) disposal;

(D) protection; and

(E) sharing;

(ii) the adequacy of the designated government entity's practices in each of the areas described in Subsection (2)(i)(i); and

(iii) for each of the areas described in Subsection (2)(i)(i) that the state privacy officer determines to require reform, provide recommendations for reform to the designated government entity and the legislative body charged with regulating the designated government entity.

(3) (a) The legislative body charged with regulating a designated government entity that receives a recommendation described in Subsection (2)(i)(iii) shall hold a public hearing on the proposed reforms:

(i) with a quorum of the legislative body present; and

(ii) within 90 days after the day on which the legislative body receives the recommendation.

(b) (i) The legislative body shall provide notice of the hearing described in Subsection (3)(a).

(ii) Notice of the public hearing and the recommendations to be discussed shall be posted on:

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(A) the Utah Public Notice Website created in Section 63A-16-601 for 30 days before the day on which the legislative body will hold the public hearing; and

(B) the website of the designated government entity that received a recommendation, if the designated government entity has a website, for 30 days before the day on which the legislative body will hold the public hearing.

(iii) Each notice required under Subsection (3)(b)(i) shall:

(A) identify the recommendations to be discussed; and

(B) state the date, time, and location of the public hearing.

(c) During the hearing described in Subsection (3)(a), the legislative body shall:

(i) provide the public the opportunity to ask questions and obtain further information about the recommendations; and

(ii) provide any interested person an opportunity to address the legislative body with concerns about the recommendations.

(d) At the conclusion of the hearing, the legislative body shall determine whether the legislative body shall adopt reforms to address the recommendations and any concerns raised during the public hearing.

(4) (a) Except as provided in Subsection (4)(b), if the [~~government operations~~] chief privacy officer described in Section 67-1-17 is not conducting reviews of the privacy practices of state agencies, the state privacy officer may review the privacy practices of a state agency in accordance with the processes described in this section.

(b) Subsection (3) does not apply to a state agency.

(5) The state privacy officer shall:

(a) quarterly report, to the Personal Privacy Oversight Commission:

(i) recommendations for privacy practices for the commission to review; and

(ii) the information provided in Subsection (2)(i); and

(b) annually, on or before October 1, report to the Judiciary Interim Committee:

(i) the results of any reviews described in Subsection (2)(g), if any reviews have been completed;

(ii) reforms, to the extent that the state privacy officer is aware of any reforms, that the designated government entity made in response to any reviews described in Subsection (2)(g);

(iii) the information described in Subsection (2)(i); and

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(iv) recommendations for legislation based on any results of a review described in Subsection (2)(g).

Section ~~18~~17. Section 77-27-5 is amended to read:

77-27-5. Board of Pardons and Parole authority.

(1) (a) Subject to this chapter and other laws of the state, and except for a conviction for treason or impeachment, the board shall determine by majority decision when and under what conditions an offender's conviction may be pardoned or commuted.

(b) The Board of Pardons and Parole shall determine by majority decision when and under what conditions an offender committed to serve a sentence at a penal or correctional facility, which is under the jurisdiction of the department, may:

(i) be released upon parole;

(ii) have a fine or forfeiture remitted;

(iii) have the offender's criminal accounts receivable remitted in accordance with Section 77-32b-105 or 77-32b-106;

(iv) have the offender's payment schedule modified in accordance with Section 77-32b-103; or

(v) have the offender's sentence terminated.

(c) (i) The board may sit together or in panels to conduct hearings.

(ii) The chair shall appoint members to the panels in any combination and in accordance with rules made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, by the board.

(iii) The chair may participate on any panel and when doing so is chair of the panel.

(iv) The chair of the board may designate the chair for any other panel.

(d) (i) Except after a hearing before the board, or the board's appointed examiner, in an open session, the board may not:

(A) remit a fine or forfeiture for an offender or the offender's criminal accounts receivable;

(B) release the offender on parole; or

(C) commute, pardon, or terminate an offender's sentence.

(ii) An action taken under this Subsection (1) other than by a majority of the board shall be affirmed by a majority of the board.

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(e) A commutation or pardon may be granted only after a full hearing before the board.

(2) (a) In the case of any hearings, timely prior notice of the time and location of the hearing shall be given to the offender.

(b) The county or district attorney's office responsible for prosecution of the case, the sentencing court, and law enforcement officials responsible for the defendant's arrest and conviction shall be notified of any board hearings through the board's website.

(c) Whenever possible, the victim or the victim's representative, if designated, shall be notified of original hearings and any hearing after that if notification is requested and current contact information has been provided to the board.

(d) (i) Notice to the victim or the victim's representative shall include information provided in Section 77-27-9.5, and any related rules made by the board under that section.

(ii) The information under Subsection (2)(d)(i) shall be provided in terms that are reasonable for the lay person to understand.

(3) (a) A decision by the board is final and not subject for judicial review if the decision is regarding:

- (i) a pardon, parole, commutation, or termination of an offender's sentence;
- (ii) the modification of an offender's payment schedule for restitution; or
- (iii) the remission of an offender's criminal accounts receivable or a fine or forfeiture.

(b) Deliberative processes are not public and the board is exempt from Title 52, Chapter 4, Open and Public Meetings Act, when the board is engaged in the board's deliberative process.

(c) Pursuant to Subsection [~~63G-2-103(22)(b)(xi)~~] 63G-2-103(24)(b)(xi), records of the deliberative process are exempt from Title 63G, Chapter 2, Government Records Access and Management Act.

(d) Unless it will interfere with a constitutional right, deliberative processes are not subject to disclosure, including discovery.

(e) Nothing in this section prevents the obtaining or enforcement of a civil judgment.

(4) (a) This chapter may not be construed as a denial of or limitation of the governor's power to grant respite or reprieves in all cases of convictions for offenses against the state, except treason or conviction on impeachment.

(b) Notwithstanding Subsection (4)(a), respites or reprieves may not extend beyond the

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next session of the Board of Pardons and Parole.

(c) At the next session of the board, the board:

(i) shall continue or terminate the respite or reprieve; or

(ii) may commute the punishment or pardon the offense as provided.

(d) In the case of conviction for treason, the governor may suspend execution of the sentence until the case is reported to the Legislature at the Legislature's next session.

(e) The Legislature shall pardon or commute the sentence or direct the sentence's execution.

(5) (a) In determining when, where, and under what conditions an offender serving a sentence may be paroled or pardoned, have a fine or forfeiture remitted, have the offender's criminal accounts receivable remitted, or have the offender's sentence commuted or terminated, the board shall:

(i) consider whether the offender has made restitution ordered by the court under Section 77-38b-205, or is prepared to pay restitution as a condition of any parole, pardon, remission of a criminal accounts receivable or a fine or forfeiture, or a commutation or termination of the offender's sentence;

(ii) except as provided in Subsection (5)(b), develop and use a list of criteria for making determinations under this Subsection (5);

(iii) consider information provided by the Department of Corrections regarding an offender's individual case action plan; and

(iv) review an offender's status within 60 days after the day on which the board receives notice from the Department of Corrections that the offender has completed all of the offender's case action plan components that relate to activities that can be accomplished while the offender is imprisoned.

(b) The board shall determine whether to remit an offender's criminal accounts receivable under this Subsection (5) in accordance with Section 77-32b-105 or 77-32b-106.

(6) In determining whether parole may be terminated, the board shall consider:

(a) the offense committed by the parolee; and

(b) the parole period under Section 76-3-202, and in accordance with Section 77-27-13.

(7) For an offender placed on parole after December 31, 2018, the board shall

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terminate parole in accordance with the supervision length guidelines established by the Utah Sentencing Commission under Section 63M-7-404, to the extent the guidelines are consistent with the requirements of the law.

Section ~~19~~18. **Repealer.**

This bill repeals:

Section **63A-12-100**, Title.