

Sunshine Week 2018

KEEPING THE DOOR OPEN AND WORKING TOGETHER

Patricia Smith-Mansfield

4 (8) ~~[The words "records]~~ "Records committee" mean the state
5 records committee[+] ;

6 (9) "Data on individuals" includes all records, files and
7 processes which contain any data on any individual and which are
8 kept or intended to be kept by state government on a permanent or
9 semi-permanent basis, including, but not limited to, that data by
10 which it is possible to identify with reasonable certainty the
11 person to whom such information pertains;

12 (10) "Responsible authority" means any state office or
13 state official established by law or executive order as the body
14 responsible for the collection or use of any set of data on
15 individuals or summary data;

16 (11) "Summary data" means statistical records and reports
17 derived from data on individuals but in which individuals are not
18 identified and from which neither their identities nor any other
19 characteristic that could uniquely identify an individual is
20 ascertainable;

21 (12) "Public data" means data on individuals collected and
22 maintained by state government which, in the opinion of the state
23 records committee, should be open to the public;

24 (13) "Confidential data" means data on individuals
25 collected and maintained by state government which, in the
26 opinion of the state records committee, should be available only
27 to appropriate agencies for the use specified in subsection 63-2-
28 85.3(2) and to others by express consent of the individual, but
29 not to the individual himself; and

30 (14) "Private data" means data on individuals collected and
31 maintained by state government which, in the opinion of the state
32 records committee, should be available only to the appropriate
33 agencies for the uses specified in subsection 63-2-85.3(2), to
34 others by the express consent of the individual, and to the

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2 63-2-85.2, AS LAST AMENDED BY CHAPTER 223, LAWS OF UTAH 1979
3 63-2-85.3, AS LAST AMENDED BY CHAPTER 257, LAWS OF UTAH 1981
4 63-2-85.4, AS ENACTED BY CHAPTER 223, LAWS OF UTAH 1979
5 63-2-86, AS ENACTED BY CHAPTER 212, LAWS OF UTAH 1969
6 63-2-87, AS LAST AMENDED BY CHAPTER 223, LAWS OF UTAH 1979
7 63-2-89, AS ENACTED BY CHAPTER 223, LAWS OF UTAH 1979

8 ENACTS:

9 63-2-68.1, UTAH CODE ANNOTATED 1953

10 REPEALS AND REENACTS:

11 63-2-70, AS ENACTED BY CHAPTER 212, LAWS OF UTAH 1969

12 REPEALS:

13 63-2-74, AS ENACTED BY CHAPTER 212, LAWS OF UTAH 1969

14 63-2-81, AS ENACTED BY CHAPTER 212, LAWS OF UTAH 1969

15 63-2-82, AS ENACTED BY CHAPTER 212, LAWS OF UTAH 1969

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

17 Section 1. Section 63-2-59, Utah Code Annotated 1953, as
18 last amended by Chapter 223, Laws of Utah 1979, is amended to
19 read:

20 63-2-59. This act ~~shall be~~ is known ~~and may be cited~~
21 as the "Archives and Records ~~Service~~ Services and Information
22 Practices Act."

23 Section 2. Section 63-2-60, Utah Code Annotated 1953, as
24 last amended by Chapter 257, Laws of Utah 1981, is amended to
25 read:

26 63-2-60. (1) It is the intent of the Legislature to
27 create a central archives and records service within the
28 Department of Administrative Services to administer the
29 archives, ~~and~~ records management, and information system
30 programs of the state and to apply fair, efficient, and

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1 economical management methods to the collection, creation,
2 utilization, maintenance, retention, preservation, disclosure,
3 and disposal of state records and documents.

4 ~~[it is also the intent of this act to establish fair~~
5 ~~information practices to ensure that the rights of persons are~~
6 ~~protected and that proper remedies are established to prevent~~
7 ~~abuse of personal information.]~~

8 (2) In enacting this act, the Legislature recognizes two
9 fundamental constitutional rights: (a) the right of privacy in
10 relation to personal data gathered by state agencies, and (b)
11 the public's right of access to information concerning the
12 conduct of the public's business. It is the intent of the
13 Legislature to establish fair information practices to prevent
14 abuse of personal information by state agencies while
15 protecting the public's right of easy and reasonable access to
16 unrestricted public records.

17 Section 3. Section 63-2-61, Utah Code Annotated 1953, as
18 last amended by Chapter 223, Laws of Utah 1979, is amended to
19 read:

20 63-2-61. As used in this act:

21 (1) "Public records" ~~[mean all written or printed books,~~
22 ~~papers, letters, documents, maps, plans, photographs, sound~~
23 ~~recordings, and other records made or received in pursuance of~~
24 ~~state law or in connection with the transaction of public~~
25 ~~business by the public offices, agencies, and institutions of~~
26 ~~the state and its counties, municipalities, and other~~
27 ~~subdivisions of government]~~ means all books, papers, letters,
28 documents, maps, plans, photographs, sound recordings,
29 management information systems, or other documentary materials,
30 regardless of physical form or characteristics, made or

1991 HB 246;
1992 HB400

GOVERNMENT RECORDS ACCESS AND MANAGEMENT ACT

1991

GENERAL SESSION

Enrolled Copy

H. B. No. 246

By Martin R. Stephens

Gene Davis

AN ACT RELATING TO STATE AFFAIRS IN GENERAL; GRANTING RIGHTS OF ACCESS TO PUBLIC RECORDS; ESTABLISHING FEES; DESIGNATING RECORDS CLASSIFICATIONS AS PUBLIC, PRIVATE, CONFIDENTIAL, AND PROTECTED; CREATING A STATE RECORDS COMMITTEE AND DIVISION OF ARCHIVES AND RECORDS SERVICE; ALLOWING APPEALS FROM RECORDS DECISIONS; AND PROVIDING AN EFFECTIVE DATE.

THIS ACT AFFECTS SECTIONS OF UTAH CODE ANNOTATED 1953 AS FOLLOWS:

AMENDS:

10-3-1303, AS LAST AMENDED BY CHAPTER 147, LAWS OF UTAH 1989

10-3-1304, AS LAST AMENDED BY CHAPTER 147, LAWS OF UTAH 1989

13-1a-6, AS ENACTED BY CHAPTER 9, LAWS OF UTAH 1990

31A-2-207, AS ENACTED BY CHAPTER 242, LAWS OF UTAH 1985

31A-2-209, AS ENACTED BY CHAPTER 242, LAWS OF UTAH 1985

35-3-18, AS ENACTED BY CHAPTER 56, LAWS OF UTAH 1988

62A-4-113, AS ENACTED BY CHAPTER 1, LAWS OF UTAH 1988

63-46b-1, AS LAST AMENDED BY CHAPTER 306, LAWS OF UTAH 1990

63-56-4, AS ENACTED BY CHAPTER 75, LAWS OF UTAH 1980

63-56-34, AS ENACTED BY CHAPTER 75, LAWS OF UTAH 1980

63-56c-4, AS ENACTED BY CHAPTER 12, LAWS OF UTAH 1983, FIRST SPECIAL

SESSION

63-57-5, AS ENACTED BY CHAPTER 313, LAWS OF UTAH 1983

1991 HB 246; 1992 HB400

LEGISLATIVE GENERAL COUNSEL

§§§ H. B. No. 400 §§§

Approved for Filing CJD

Date 02-12-92 3:44 PM

(INFORMATION ACCESS AMENDMENTS)

1992

GENERAL SESSION

H. B. No. 400

By Martin R. Stephens

AN ACT RELATING TO GOVERNMENT RECORDS ACCESS AND MANAGEMENT ACT; AMENDING DEFINITIONS, CLASSIFICATION OF RECORDS, ACCESS TO RECORDS, THE SELECTION AND COMPOSITION OF THE RECORDS COMMITTEE, AND THE APPEALS PROCESS; EXEMPTING CERTAIN GOVERNMENT RECORDS FROM THE ACT; MAKING TECHNICAL AND CONFORMING AMENDMENTS; AND PROVIDING AN EFFECTIVE DATE.

THIS ACT AFFECTS SECTIONS OF UTAH CODE ANNOTATED 1953 AS FOLLOWS:

AMENDS:

10-3-1303, AS LAST AMENDED BY CHAPTER 259, LAWS OF UTAH 1991

10-3-1304, AS LAST AMENDED BY CHAPTER 259, LAWS OF UTAH 1991

19-5-113, AS RENUMBERED AND AMENDED BY CHAPTER 112, LAWS OF UTAH 1991

19-6-303, AS RENUMBERED AND AMENDED BY CHAPTER 112, LAWS OF UTAH 1991

19-6-402, AS RENUMBERED AND AMENDED BY CHAPTER 112, LAWS OF UTAH 1991

63-2-102, AS ENACTED BY CHAPTER 259, LAWS OF UTAH 1991

63-2-103, AS ENACTED BY CHAPTER 259, LAWS OF UTAH 1991

63-2-201, AS ENACTED BY CHAPTER 259, LAWS OF UTAH 1991

63-2-202, AS ENACTED BY CHAPTER 259, LAWS OF UTAH 1991

63-2-203, AS ENACTED BY CHAPTER 259, LAWS OF UTAH 1991

63-2-204, AS ENACTED BY CHAPTER 259, LAWS OF UTAH 1991

GRAMA Task Force—June 2005

- ⦿ Potential GRAMA and Electronic Messaging Principles
 - The content not the physical form, electronic or otherwise, of the material determines its status as a record.
 - All material received or prepared "in connection with the transaction of public business is a record" subject to potential disclosure.
 - Material received or prepared for personal use is not considered a government record.
 - "Transitory" material (i.e. many electronic messages) has only communicative or administrative value and loses that value upon receipt by the addressee.
 - Email communications between government entities/elected officials and citizens/constituents may be considered confidential by the sender. Such communications may also be voluminous or duplicative.

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93 which access is governed or limited as a condition of participation in a state or federal
program
94 or for receiving state or federal funds, is governed by the specific provisions of that
statute,
95 rule, or regulation.
96 (b) This chapter applies to records described in Subsection (6)(a) insofar as this
chapter
97 is not inconsistent with the statute, rule, or regulation.
98 (7) A governmental entity shall provide a person with a certified copy of a record if:
99 (a) the person requesting the record has a right to inspect it;
100 (b) ~~the person identifies the record with reasonable specificity; and~~
101 (c) the person pays the lawful fees.
102 (8) (a) [~~A~~] *In response to a request, a* governmental entity is not
required to
103 : (i) ~~create a record [in response to a request.] ;~~
104 *(ii) compile, format, manipulate, package, summarize, or tailor information;*
105 *(iii) provide a record in a particular format, medium, or program not*
currently
106 *maintained by the governmental entity;*
107 *(iv) fulfill a person's records request if the request unreasonably duplicates*
prior
108 *records requests from that person; or*
109 *(v) fill a person's records request if:*
110 *(A) the record requested is accessible in the identical physical form and content*
in a
111 *public publication or product produced by the governmental entity receiving the*
request;
112 *(B) the governmental entity provides the person requesting the record with the*
public
113 *publication or product; and*

114 *(C) the governmental entity specifies where the record can be found in the*
public
115 *publication or product.*
116 (b) Upon request, a governmental entity [~~shall~~] *may* provide a record
in a particular
117 [~~format~~] *form under Subsection (8)(a)(ii) or (iii)* if:
118 (i) the governmental entity *determines it* is able to do so without
unreasonably
119 interfering with the governmental entity's duties and responsibilities; and
120 (ii) the requester agrees to pay the governmental entity for [~~its costs incurred~~
in]
121 providing the record in the requested [~~format~~] *form* in accordance with

the

114 duplication and distribution of the material based on terms the governmental entity
 115 considers

115 to be in the public interest.

116 (b) Nothing in this chapter shall be construed to limit or impair the rights or
 117 law as a result protections granted to the governmental entity under federal copyright or patent

118 of its ownership of the intellectual property right.

119 (1) A governmental entity may not use the physical form, electronic or otherwise,
 in 120 which a record is stored to deny, or unreasonably hinder the rights of a person to

inspect and 121 receive a copy of a record under this chapter.

122 (12) [A] Subject to the requirements of Subsection (8), a governmental
 entity [may]

123 shall provide access to an electronic copy of a record in lieu of providing
 access to its paper

124 equivalent[:] if:

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

127 (b) the governmental entity currently maintains the record in an electronic
format that

128 is reproducible and may be provided without reformatting or conversion; and

129 (c) the electronic copy of the record;

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

131 (ii) may be segregated to protect private, protected, or controlled information

from

132 disclosure without the undue expenditure of public resources or funds.

133 Section 2. Section **63G-2-204** is amended to read:

134 **63G-2-204. Requests -- Time limit for response and extraordinary**
 135 **circumstances.**

136 (1) A person making a request for a record shall furnish the governmental entity
 with a 137 written request containing:

138 (a) the person's name, mailing address, and daytime telephone number, if
 available;

139 and

140 (b) a description of the record requested that identifies the record with reasonable
 141 specificity.

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3. 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 GRAMA. Utah Code § 63G-2-201(11).

4. Ms. Stecklein stated that the Tribune has filed more than a dozen GRAMA requests with law enforcement agencies in Salt Lake County as part of an ongoing project to analyze verified crime trends. Ms. Stecklein argued that UTA is housing public information with a private entity and using that as an excuse not to produce public records upon request. The Tribune has been able to obtain "the exact same information and databases from nearly every law enforcement agency that received the same GRAMA request." Ms. Stecklein claimed that FatPot, the third party contracted by UTA to house the crime statistics, would be able to produce the requested information in the format requested. However, counsel for UTA argued that the older version of the software maintained by FatPot made it extremely difficult for UTA produce the requested records without expending many hours of work.

5. After hearing the arguments of the parties, and having reviewed their submissions, the Committee is not persuaded that the difficulties by UTA to produce the requested records should result in a denial of access to the requested records.

6. Pursuant to Utah Code § 63G-2-201(1), every person has a right to inspect a public record subject to statutory restrictions. Additionally, the Utah Legislature recognizing the technology trend to have more records kept in an electronic format, stated its intention that a governmental entity cannot use the electronic form 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 GRAMA. See, Utah Code § 63G-2-201(11). Accordingly, UTA's restriction to Petitioner to have access to its records in its electronic database would result in an effective denial of access to public records.

Records Information Management

- ◎ Government must require electronic *recordkeeping* to ensure transparency, efficiency, and accountability
 - It must demand *access* and *retention* be integrated into the systems from their concept—including email systems. Embed records management requirements into cloud architectures and IT systems and commercially-available products.
 - It must calculate the costs of conversion and migration as ongoing costs.
 - It must manage both permanent and temporary records in an *accessible* electronic format and require that information be available and exportable in open and useable formats for access and if government decides to abandon the system.
 - It must standardize formats.

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2 individual himself or next of kin when information is needed to
3 acquire benefits due a deceased person.

4 Section 4. Section 63-2-85.1, Utah Code Annotated 1953, is
5 enacted to read:

6 63-2-85.1. The archivist is directed to identify
7 responsible authorities in state government involved in the
8 collection or use of data on individuals or summary data.

9 Section 5. Section 63-2-85.2, Utah Code Annotated 1953, is
10 enacted to read:

11 63-2-85.2. (1) On or before December 1 of each year, the
12 archivist shall prepare a report or a revision of the previous
13 year's report, on information practices for presentation to the
14 legislature and to the governor. Summaries of the report shall
15 be available to the public at a nominal cost. The report shall
16 contain to the extent feasible, information including, but not
17 limited to:

18 (a) A complete listing of all systems of confidential and
19 private data on individuals which are kept by the state, a
20 description of the kinds of information contained therein, and
21 the reason that the data is kept;

22 (b) The title, name and address of the responsible
23 authority for each system of confidential or private data on
24 individuals;

25 (c) The policies and practices of the responsible authority
26 and the secretary regarding data storage, duration of retention
27 of data and disposal thereof;

28 (d) A description of the provisions for maintaining the
29 integrity of the data pursuant to subsection 63-2-85.3(4);

30 (e) The procedures, pursuant to section 63-2-85.4, whereby
31 an individual can:

32 (i) Be informed if he is the subject of any data on
33 individuals in the system;

34 (ii) Gain access to that data; and

○ “One person’s reasonable statute is another person’s burdensome government regulation, Saying record laws are a burden on government is like saying the speedometer and fuel gauge are burdens on a car. Both record laws and dashboard displays tell you what their respective vehicles are doing and whether there are problems.”

- “Commentary: The Freedom of Information Act is the speedometer on your car; not the cop writing tickets,” [The Utah Headliners, Salt Lake Tribune](#), March 11, 2018.

- ⦿ Happy Sunshine Week 2018
 - ⦿ Thank-you