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PART 2
CRIMINAL IDENTIFICATION

53-5-201. Short title.

This part is known as the "Criminal Identification Act."

History: C. 1953, 53-5-201, enacted by L. 1993, ch. 234, § 182.

Effective Dates. — Laws 1993, ch. 234, § 395 makes the act effective on July 1, 1993.

53-5-202. Definitions.

As used in this part:

(1) "Administration of criminal justice" means performance of any of the following: detection, apprehension, detention, pretrial release, post-trial release, prosecution, adjudication, correctional supervision, or rehabilitation of accused persons or criminal offenders.

(2) "Criminal history record information" means information on individuals consisting of identifiable descriptions and notations of:

(a) arrests, detentions, indictments, informations, or other formal criminal charges, and any disposition arising from any of them; and

(b) sentencing, correctional supervision, and release.

(3) "Criminal justice agency" means courts or a government agency or subdivision of a government agency that administers criminal justice under a statute, executive order, or local ordinance and that allocates greater than 50% of its annual budget to the administration of criminal justice.

(4) "Executive order" means an order of the president of the United States or the chief executive of a state that has the force of law and that is published in a manner permitting regular public access to it.

(5) "Missing child" means any person under the age of 18 years who is missing from his or her home environment or a temporary placement facility for any reason and whose location cannot be determined by the person responsible for the child's care.

53-5-203. Criminal investigation — Duties of division.

The division shall:

(1) procure and file information relating to identification and activities of persons who:

(a) are fugitives from justice;

(b) are wanted or missing;

(c) have been arrested for or convicted of a crime under the laws of any state or nation; and

(d) are believed to be involved in racketeering, organized crime, or a dangerous offense;

(2) establish a statewide uniform crime reporting system that shall include:

(a) statistics concerning general categories of criminal activities;

(b) statistics concerning crimes that exhibit evidence of prejudice based on race, religion, ancestry, national origin, ethnicity, or other categories that the division finds appropriate; and

(c) other statistics as required by the Federal Bureau of Investigation;

(3) make a complete and systematic record and index of the information obtained under this part;

(4) subject to the restrictions in this part, establish policy concerning the use and dissemination of data obtained under this part;

(5) publish an annual report concerning the extent, fluctuation, distribution, and nature of crime in Utah;

(6) establish a statewide central register for children, which may include:

(a) identifying data including fingerprints of each child whose legal parent or guardian voluntarily submits the information to the register;

(b) identifying data of any child reported as missing by the person responsible for the child's care;

(c) dates and circumstances of any persons requesting or receiving information from the register; and

(d) any other information, including blood types and photographs found necessary in furthering the purposes of this part;

(7) receive information regarding missing children, as provided in Section 53A-11-502, and stolen vehicles, vessels, and outboard motors, as provided in Section 41-1a-1401;

(8) adopt systems of identification, including the fingerprint system, to be used by the division to facilitate law enforcement; and

(9) assign a distinguishing number or mark of identification to any pistol or revolver, as provided in Section 76-10-520.

53-5-204. Missing children — Reports — Notification.

(1) Each law enforcement agency that is investigating the report of a missing child shall provide information regarding that report to the division.

(2) The division shall notify the State Registrar of Vital Statistics of all missing children reported in accordance with Subsection (1) and shall provide the state registrar with information concerning the identity of those missing children.

(3) If the division has reason to believe that a missing child reported in accordance with Subsection (1) has been enrolled in a specific school in this state, the division shall also notify the last-known school of that report.

(4) Upon learning of the recovery of a missing child, the division shall notify the state registrar and any school that it has previously informed of the child's disappearance.

(5) The division shall, by rule, determine the manner and form of reports, notices, and information required by this section.

(6) Upon notification by the state registrar or school personnel that a request for a birth certificate, school record, or other information concerning a missing child has been made, or that an investigation is needed in accordance with Section 53A-11-503, the division shall immediately notify the local law enforcement authority.

53-5-208. Peace officers, prosecutors, and magistrates to supply information to state and F.B.I. — Notification of arrest based on warrant.

(1) Every peace officer shall:

(a) cause fingerprints of persons he has arrested to be taken on forms provided by the division and the Federal Bureau of Investigation;

(b) supply information requested on the forms; and

(c) forward without delay both copies to the division, which shall forward the F.B.I. copy to the Identification Division of the Federal Bureau of Investigation.

(2) If, after fingerprints have been taken in accordance with Subsection (1), the prosecutor declines to prosecute, or investigative action as described in Section 77-2-3 is terminated, the prosecutor or law enforcement agency shall notify the division of this action within 14 working days.

(3) At the preliminary hearing or arraignment of a felony case, the prosecutor shall ensure that each felony defendant has been fingerprinted and an arrest and fingerprint form is transmitted to the division. In felony cases where fingerprints have not been taken, the judge shall order the chief law enforcement officer of the jurisdiction or the sheriff of the county to:

(a) cause fingerprints of each felony defendant to be taken on forms provided by the division;

(b) supply information requested on the forms; and

(c) forward without delay both copies to the division.

(4) If an arrest is based upon information about the existence of a criminal warrant of arrest or commitment under Rule 6, Utah Rules of Criminal Procedure, every peace officer shall without delay notify the division of the service of each warrant of arrest or commitment, in a manner specified by the division.

53-5-209. Definition — Magistrates and court clerks to supply information — Offenses included on statewide warrant system — Transportation fee to be included — Statewide warrant system responsibility — Quality control — Training — Technical support — Transaction costs.

(1) "Statewide warrant system" means the portion of the state court computer system containing records of criminal warrant information that is accessed by modem from the state mainframe computer.

(2) Every magistrate or clerk of a court responsible for court records in this state shall furnish the division with:

(a) information pertaining to all dispositions of criminal matters, including guilty pleas, convictions, dismissals, acquittals, pleas held in abeyance, or probations granted, within 30 days of the disposition and on forms provided by the division; and

(b) information pertaining to the issuance, recall, cancellation, or modification of all warrants of arrest or commitment as described in Rule 6, Utah Rules of Criminal Procedure and Section 78-32-4, within one day of the action and in a manner provided by the division.

(3) (a) (i) The division will include on the statewide warrant system all warrants issued for felony offenses and class A, B, and C misdemeanor offenses in the state.

(ii) For each offense the division shall indicate whether the magistrate ordered under Section 77-7-5 and Rule 6, Utah Rules of Criminal Procedure, that the accused appear in court.

(b) Infractions will not be included on the statewide warrant system, including any subsequent failure to appear warrants issued on an infraction.

(4) The division is the agency responsible for the statewide warrant system and shall:

(a) ensure quality control of all warrants of arrest or commitment in the statewide warrant system by conducting regular validation checks with every clerk of a court responsible for entering warrant information on the system;

(b) establish system procedures and provide training to all criminal justice agencies having access to warrant information;

(c) provide technical support, program development, and systems maintenance for the operation of the system; and

(d) pay data processing and transaction costs for state, county, and city law enforcement agencies and criminal justice agencies having access to warrant information.

(5) (a) Any data processing or transaction costs not funded by legislative appropriation shall be paid on a pro rata basis by all agencies using the system during the fiscal year.

(b) This subsection supersedes any conflicting provision in Subsection (4)(d).

53-5-210. Penal institutions and state hospital to supply information.

(1) The warden of the state prison, keeper of any jail or correctional institution, and superintendent of the state hospital shall forward to the division:

(a) the fingerprints and recent photographs of all persons confined in each institution under criminal commitment;

(b) information relating to the parole, termination or expiration of sentence, or any other release of each person from confinement during the preceding month; and

(c) a photograph taken near the time of release.

(2) The adult probation and parole section of the Department of Corrections shall furnish to the division:

(a) information relating to the revocation or termination of probation or parole; and

(b) upon request, the names, fingerprints, photographs, and other data.

(3) The chairman of the Board of Pardons shall provide to the division information regarding the issuance, recall, cancellation, or modification of any warrant issued by members of the Board of Pardons, under Section 77-27-11, within one day of issuance.

(4) Information provided to the division under this section shall be on forms designated by the division.

53-5-211. Assistance to law enforcement agencies — Investigation of crimes — Laboratory facilities.

(1) The commissioner may assist any law enforcement agency in:

(a) establishing identification and investigation records systems;

(b) establishing uniform crime reporting systems;

(c) investigating any crime;

(d) coordinating the exchange of criminal identification, intelligence, and investigation information among law enforcement agencies; and

(e) providing the agencies with equipment, technical assistance, and instruction.

(2) (a) At the governor's direction, the commissioner shall assign division employees to investigate any crime within this state for the purpose of identifying, apprehending, and convicting the perpetrator or perpetrators of that crime even if the commissioner has not received a request from a law enforcement agency.

(b) The governor may establish a time period for the commissioner to pursue the investigation.

(c) To accomplish the purposes of this section, the commissioner may provide, through the division, crime detection laboratory facilities.

53-5-212. Cooperation with agencies of any state or nation.

The division shall cooperate with appropriate agencies of any state or nation in developing uniform systems of criminal identification, crime reporting, and information exchange.

53-5-213. Admissibility in evidence of certified copies of division files.

A copy of any fingerprint, record, document, or other evidence in the files of the division, certified by the commissioner to be a true copy of the original, is admissible in evidence in the same manner as the original.

53-5-214. Restrictions on access, use, and contents of division records — Challenging accuracy of records — Usage fees — Missing children records.

(1) Dissemination of information from a criminal history record or warrant of arrest information from division files is limited to:

(a) criminal justice agencies for purposes of administration of criminal justice and for employment screening by criminal justice agencies;

(b) noncriminal justice agencies or individuals for any purpose authorized by statute, executive order, court rule, court order, or local ordinance;

(c) agencies or individuals for the purpose of obtaining required clearances connected with foreign travel or obtaining citizenship;

(d) (i) agencies or individuals pursuant to a specific agreement with a criminal justice agency to provide services required for the administration of criminal justice;

(ii) the agreement shall specifically authorize access to data, limit the use of the data to purposes for which given, and ensure the security and confidentiality of the data;

(e) agencies or individuals for the purpose of a preplacement adoptive study, in accordance with the requirements of Section 78-30-3.5;

(f) (i) agencies and individuals as the commissioner authorizes for the express purpose of research, evaluative, or statistical activities pursuant to an agreement with a criminal justice agency; and

(ii) private security agencies through guidelines established by the commissioner for employment background checks for their own employees and prospective employees; and

(g) other agencies and individuals as the commissioner authorizes and finds necessary for protection of life and property and for offender identification, apprehension, and prosecution pursuant to an agreement.

(2) An agreement under Subsection (1)(f) or (1)(g) shall specifically authorize access to data, limit the use of data to research, evaluative, or statistical purposes, preserve the anonymity of individuals to whom the information relates, and ensure the confidentiality and security of the data.

(3) Any criminal history record information obtained from division files may be used only for the purposes for which it was provided and may not be further disseminated.

(4) If an individual has no prior criminal convictions, criminal history record information contained in the division's computerized criminal history files may not include arrest or disposition data concerning an individual who

has been acquitted, his charges dismissed, or when no complaint against him has been filed.

(5) (a) This section does not preclude the use of the division's central computing facilities for the storage and retrieval of criminal history record information.

(b) This information shall be stored so it cannot be modified, destroyed, or accessed by unauthorized agencies or individuals.

(6) Direct access through remote computer terminals to criminal history record information in the division's files is limited to those agencies authorized by the commissioner under procedures designed to prevent unauthorized access to this information.

(7) (a) The commissioner shall establish:

(i) procedures to allow an individual to review his criminal history record information; and

(ii) a processing fee under Section 63-38-3 for the services.

(b) (i) The commissioner shall establish procedures for an individual to challenge the completeness and accuracy of criminal history record information contained in the division's computerized criminal history files regarding that individual.

(ii) These procedures shall include provisions for amending any information found to be inaccurate or incomplete.

(8) The private security agencies as provided in Subsection (2)(f)(ii):

(a) shall be charged for access; and

(b) shall be registered with the division according to administrative rule, Title 63, Chapter 46a, Utah Administrative Rulemaking Act.

(9) (a) Misuse of access to criminal history record information is a class B misdemeanor.

(b) The commissioner shall be informed of the misuse.

53-5-215. Telecommunications systems.

For the purpose of expediting local, state, national, and international efforts in the detection and apprehension of criminals, the division may operate and coordinate telecommunications systems as may be required in the conduct of its duties under this part.

53-5-216. Authority of officers and officials to take fingerprints, photographs, and other data.

The officers and officials described in Sections 53-5-208 through 53-5-210 shall take, or cause to be taken, fingerprints, photographs, and other related data of persons under this part.

53A-3-409. Local governmental entities and school districts — Contracts and cooperation — Disbursement of funds.

(1) Local governmental entities and school districts may contract and cooperate with one another in matters affecting the health, welfare, and convenience of the inhabitants within their respective territorial limits.

(2) A local governmental entity may disburse public funds in aid of a school district located wholly or partially within the limits of its jurisdiction.

53A-3-410. Criminal background checks on school personnel — Notice — Payment of cost.

(1) A school district superintendent, the superintendent's designee, or their counterparts at a private school may require a potential employee or volunteer to submit to a criminal background check as a condition for employment or appointment and, where reasonable cause exists, may require an existing employee or volunteer to submit to a criminal background check.

(2) The applicant, volunteer, or employee shall receive written notice that the background check has been requested.

(3) Fingerprints of the individual shall be taken if necessary to assure accurate identification, and the Law Enforcement and Technical Services Division of the Department of Public Safety shall release to the superintendent, the superintendent's designee, or their counterparts at a private school the person's record of all criminal convictions.

(4) The superintendent, local school board, or their counterparts at a private school shall consider only those convictions which are job-related for the employee, applicant, or volunteer.

(5) (a) The district or private school shall pay the cost of the background check except as otherwise provided in Subsection (b), and the revenue collected shall be credited to the Law Enforcement and Technical Services Division to offset its expenses.

(b) The district or private school may require an applicant to pay the costs of a background check as a condition for consideration for employment, if the applicant:

(i) has passed an initial review;

(ii) is one of a pool of no more than five candidates for a position; and

(iii) has not been the subject of a criminal background check during the preceding two years that was requested by the potential employer or the State Board of Education.

(6) The Law Enforcement and Technical Services Division shall, upon request, seek additional information from regional or national criminal data files in responding to inquiries under this section.

(7) The applicant, volunteer, or employee shall have opportunity to respond to any information received as a result of the background check.

(8) If a person is denied employment or is dismissed from employment because of information obtained through a criminal background check, the person shall receive written notice of the reasons for denial or dismissal and have an opportunity to respond to the reasons.

(9) Information obtained under this part is confidential and may only be disclosed as provided in this section.

CHAPTER 26

CRIMINAL IDENTIFICATION

Section

77-26-1. Duties of board and director transferred to commissioner.
77-26-2. Control by commissioner—Compensation—Employment of personnel.
77-26-3. General duties and functions of bureau.
77-26-4. Identification systems.
77-26-5. Collection of information.
77-26-6. Regulations governing administration of bureau.
77-26-7. Peace officer status of commissioner and bureau employees.
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77-26-13. Assistance to law enforcement agencies—Investigation of crimes—Laboratory facilities.
77-26-14. Cooperation with agencies of any state or nation.
77-26-15. Admissibility in evidence of certified copies of bureau files.
77-26-16. Definitions—Restrictions on access, use and contents of bureau records—Challenging accuracy of records.
77-26-17. Communication systems.
77-26-18. Authority of officers and officials to take fingerprints, photographs and other data.
77-26-19. Refusal to provide information—False information—Misdemeanor.
77-26-20. Unauthorized removal, destruction, alteration or disclosure of records—Misdemeanor.

77-26-1. Duties of board and director transferred to commissioner.—Whenever any existing or continuing law names or refers to the board of managers, or the director of the bureau of criminal identification, it means the commissioner of public safety.

77-26-2. Control by commissioner—Compensation—Employment of personnel.—The state bureau of criminal identification shall be under the supervision and control of the commissioner of public safety. The commissioner shall receive no extra compensation or salary as head of the bureau but shall be reimbursed for expenses actually and necessarily incurred in the performance of his duties as supervisor of the bureau. The commissioner shall employ such personnel as may be required to properly discharge the duties of the bureau.

77-26-3. General duties and functions of bureau.—The bureau shall procure and file information relating to identification and activities of persons who are fugitives from justice, wanted or missing, or who have been arrested for or convicted of a crime under the laws of any state or nation and of persons believed to be involved in racketeering, organized crime or dangerous offenses. The bureau shall make a complete and systematic record and index of the same.

77-26-4. Identification systems.—The commissioner shall adopt systems of identification, including the fingerprint system, to be used by the bureau to facilitate the enforcement of the law.

77-26-5. Collection of information.—The commissioner and persons designated by him are authorized to call upon all law enforcement officers, the warden of the state prison, the keeper of any jail or correctional institution or superintendent of the state hospital to obtain information which will aid in establishing the records required to be kept, and all such officers shall furnish the information.

77-26-6. Regulations governing administration of bureau.—The commissioner shall have authority to promulgate regulations for the administration of the bureau.

77-26-7. Peace officer status of commissioner and bureau employees.—The commissioner and such employees as he designates shall be peace officers.

77-26-8. Peace officers, prosecutors, and magistrates to supply information to state and F.B.I. — Notification of arrest based on warrant.

(1) Every peace officer shall:

(a) cause fingerprints of persons he has arrested to be taken on forms provided by the bureau and the Federal Bureau of Investigation;

(b) supply information requested on the forms; and

(c) forward without delay both copies to the bureau, which shall forward the F.B.I. copy to the Identification Division, Federal Bureau of Investigation.

(2) If, after fingerprints have been taken in accordance with Subsection (1), the prosecutor declines to prosecute, or investigative action as described in Section 77-2-3 is terminated, the prosecutor or law enforcement agency shall notify the bureau of this action within 14 working days.

(3) At the preliminary hearing or arraignment of a felony case, the prosecutor shall ensure that each felony defendant has been fingerprinted and an arrest and fingerprint form is transmitted to the bureau. In felony cases where fingerprints have not been taken, the judge shall order the chief law enforcement officer of the jurisdiction or the sheriff of the county to:

(a) cause fingerprints of each felony defendant to be taken on forms provided by the bureau;

(b) supply information requested on the forms; and

(c) forward without delay both copies to the bureau.

(4) If an arrest is based upon information about the existence of a criminal warrant of arrest or commitment under Rule 6, Utah Rules of Criminal Procedure, every peace officer shall notify the bureau of the service of each warrant of arrest or commitment, in a manner specified by the bureau without delay.

77-26-9. Magistrates and court clerks to supply information — Quality control — Training [Effective January 1, 1990].

(1) Every magistrate or clerk of a court responsible for court records in this state shall furnish the bureau with:

(a) information pertaining to all dispositions of criminal matters, including guilty pleas, convictions, acquittals, probations granted, or any other dispositions, within 30 days of the disposition and on forms provided by the bureau; and

(b) information pertaining to the issuance, recall, cancellation, or modification of all warrants of arrest or commitment as described in Sections 77-35-6 and 78-32-4, within one day of the action and in a manner provided by the bureau.

(2) To ensure quality control of all warrants of arrest or commitment in the statewide warrant system, the bureau shall conduct regular validation checks with every clerk of a court responsible for entering warrant information on the system.

(3) The bureau shall establish system procedures and provide training to all criminal justice agencies having access to warrant information.

77-26-11. Adult probation and parole section to supply information.

The adult probation and parole section of the state Department of Corrections shall furnish to the bureau information relating to the revocation or termination of probation or parole and shall upon request furnish the names, fingerprints, photographs, and other data on forms provided by the bureau.

77-26-11.5. Board of Pardons — Notification of action on a warrant [Effective January 1, 1990].

The chairman of the Board of Pardons shall provide to the bureau information regarding the issuance, recall, cancellation, or modification of any warrant issued by members of the board under Section 77-27-11 within one day of issuance.

77-26-16. Definitions — Restrictions on access, use and contents of bureau records — Challenging accuracy of records — Usage fees [Effective January 1, 1990].

(1) As used in this chapter:

(a) "Administration of criminal justice" means performance of any of the following: detection, apprehension, detention pretrial release, posttrial release, prosecution, adjudication, correctional supervision, or rehabilitation of accused persons or criminal offenders.

(b) "Criminal history record information" means information on individuals consisting of identifiable descriptions and notations of:

(i) arrests, detentions, indictments, informations, or other formal criminal charges, and any disposition arising from any of them; and

(ii) sentencing, correctional supervision, and release.

(c) "Criminal justice agency" means courts, or a government agency or subdivision of it, which administers criminal justice under a statute, executive order, or local ordinance and which allocates greater than 50% of its annual budget to the administration of criminal justice.

(d) "Executive order" means an order of the president of the United States or the chief executive of a state which has the force of law and which is published in a manner permitting regular public access to it.

(2) Dissemination of criminal history record and warrant of arrest information from bureau files is limited to:

(a) criminal justice agencies for purposes of administration of criminal justice and for employment screening by criminal justice agencies;

(b) noncriminal justice agencies or individuals for any purpose authorized by statute, executive order, court rule, court order, or local ordinance;

(c) agencies or individuals for the purpose of obtaining required clearances connected with foreign travel or obtaining citizenship;

(d) agencies or individuals pursuant to a specific agreement with a criminal justice agency to provide services required for the administration of criminal justice; the agreement shall specifically authorize access to data, limit the use of the data to purposes for which given, and ensure the security and confidentiality of the data;

(e) agencies and individuals as authorized by the commissioner for the express purpose of research, evaluative, or statistical activities pursuant to an agreement with a criminal justice agency; the agreement shall specifically authorize access to data, limit the use of data to research, evaluative, or statistical purposes, preserve the anonymity of individuals to whom the information relates, and ensure the confidentiality and security of the data; and

(f) other agencies and individuals as the commissioner authorizes and finds necessary for protection of life and property and for offender identification, apprehension, and prosecution.

(3) Any criminal history record information obtained from bureau files may be used only for the purposes for which it was provided and may not be further disseminated.

(4) Criminal history record information contained in the bureau's computerized criminal history files may not include arrest or disposition data concerning individuals who have been acquitted, or their charges dismissed, or when no complaint against them has been filed, if they have had no prior criminal convictions.

(5) This section does not preclude the use of the Division of Data Processing central computing facilities for the storage and retrieval of criminal history record information. This information shall be stored in a manner so it cannot be modified, destroyed, or accessed by unauthorized agencies or individuals.

(6) Direct access through remote computer terminals to criminal history record information in the bureau's files shall be limited to those agencies authorized by the commissioner under procedures designed to prevent unauthorized access to this information.

(7) (a) The commissioner shall establish procedures so an individual may review criminal history record information regarding himself. A reasonable processing fee may be charged.

(b) The commissioner shall establish procedures for an individual to challenge the completeness and accuracy of criminal history record information contained in the bureau's computerized criminal history files regarding that individual. These procedures shall include provisions for amending any information found to be inaccurate or incomplete.

(8) Authorized law enforcement agencies shall not be charged computer usage fees when accessing the statewide warrant file.

77-26-16.5. Procedures — Adjudicative proceedings.

The bureau and the commissioner shall comply with the procedures and requirements of Chapter 46b, Title 63, in their adjudicative proceedings.

77-26-17. Communication systems.—For the purpose of expediting local, state, national, and international efforts in the detection and apprehension of criminals, the bureau may operate and coordinate such communication systems as may be required in the conduct of its duties as herein set forth.

77-26-18. Authority of officers and officials to take fingerprints, photographs and other data.—To the end that officers and officials described in sections 77-26-8 through 77-26-11 may be enabled to transmit the information required of them in these sections, such officers and officials shall have the authority and duty to take, or cause to be taken, fingerprints, photographs, and other related data of persons described in such sections.

77-26-19. Refusal to provide information—False information—Misdemeanor.—Any person who neglects or refuses to provide, or willfully withholds, any information under provisions of this chapter, or who willfully provides false information, or who willfully fails to do or perform any act so required to be done or performed by him under this chapter, or who shall

hinder or prevent another from doing an act so required to be done by that other, shall be guilty of a class B misdemeanor.

History: C. 1953, 77-26-19, enacted by L. 1980, ch. 15, § 2.

77-26-20. Unauthorized removal, destruction, alteration or disclosure of records—Misdemeanor.—Any person who, except by the authority of and in compliance with procedures as established by the commissioner, willfully removes, destroys, alters, mutilates or discloses the contents of any file or record of the bureau shall be guilty of a class B misdemeanor.

Chapter 18

77-18-2. Expungement and sealing of records — Procedures.

(1) (a) A person convicted of any crime, except a capital felony, first degree felony, or second degree forcible felony as defined in Subsection 76-2-402(3), within this state may petition the convicting court for an expungement and for sealing of his record in that court.

(i) The person shall file both the petition and a certificate issued by the Law Enforcement and Technical Services Division of the Department of Public Safety, hereafter referred to as the "division" in this section, indicating that there is no record with the division of an expungement regarding the petitioner.

(ii) Both documents shall be served upon the prosecuting attorney.

(iii) A victim shall receive notice of a petition for expungement if the victim, or in the case of a minor or a person who is incapacitated or deceased the victim's next of kin, prior to the entry of an expungement order, submits a written and signed request for notice to the office of the Department of Corrections in the judicial district in which the crime occurred, and judgment was entered.

(iv) The Department of Corrections shall serve notice of the expungement request by first class mail to the victim at the most recent address of record with the department.

(v) The notice shall include a copy of the petition and of the statutes and rules applicable to the petition.

(vi) The court in its discretion may request a written evaluation by the Adult Parole and Probation Section of the Department of Corrections, except that a written evaluation is required for any conviction of a sexual offense under Title 76.

(vii) The evaluation shall include a recommendation concerning the requested expungement.

(viii) If expungement is recommended, the evaluation shall include certification that the petitioner has completed all requirements of sentencing and probation or parole and state any rationale that would support or refute consideration for expungement.

(ix) The conclusions and recommendations contained in the evaluation shall be provided to the petitioner and to the prosecuting attorney.

(x) If the prosecuting attorney or the victim submits a written objection to the court concerning the petition within 30 days after service of the notice, or if the petitioner objects to the conclusions and recommendations in the evaluation within 15 days after receipt of the conclusions and recommendations, then the court shall set a date

for a hearing and notify the prosecuting attorney for the jurisdiction, the petitioner, and the victim of the date set for the hearing.

(xi) Persons having relevant information about the petitioner may testify at the hearing.

(xii) If an objection is not received under Subsection (x), then expungement may be granted without a hearing.

(b) A person who at the time of petition for expungement has two or more convictions for any type of felony offense on his record, not arising out of a single criminal episode, or whose felony criminal record has been previously expunged is not eligible for expungement of any of those offenses regardless of type or degree of offense.

(c) The court shall enter an order to seal all records in the petitioner's case in the custody of that court or in the custody of any other court, agency, or official if the court finds that:

(i) the petitioner has not been convicted of a felony or of a misdemeanor for a period of seven years in the case of a felony, six years in the case of an alcohol-related traffic offense under Title 41, five years in the case of a class A misdemeanor, or three years in the case of all other misdemeanors or an infraction under Title 76 after his release from incarceration, parole, or probation, whichever occurs last;

(ii) no proceeding involving a crime is pending or being instituted against the petitioner;

(iii) the petitioner has presented to the court a certificate issued by the division as described in Subsection (1)(a); and

(iv) the petitioner has not engaged in any conduct similar to that involved in the offense petitioned for expungement.

(d) The court shall issue to the petitioner a certificate stating the court's finding that he has satisfied the statutory requirements for expungement.

(e) The court may not expunge a capital felony, first degree felony, second degree forcible felony conviction, or a conviction involving a sexual act against a minor.

(2) (a) When a person has been arrested with or without a warrant, that individual, after one month if there have been no intervening arrests, may petition the court in which the proceeding occurred, or, if there were no court proceedings, any court in the jurisdiction where the arrest occurred, for an order expunging and sealing any and all records of arrest and detention which may have been made, if any of the following occurred:

(i) he was released without the filing of formal charges;

(ii) proceedings against him were dismissed, he was discharged without a conviction and no charges were refiled against him within 30 days, or he was acquitted at trial; or

(iii) the record of any proceedings against him has been sealed under Subsection (1).

(b) If the court finds that the petitioner is eligible for relief under this subsection, it shall issue its order granting the expungement and sealing.

(c) This subsection applies to all arrests and any proceedings which occurred before, as well as those which may occur after, April 27, 1987.

(d) The court shall enter an order to seal all records in the petitioner's case which are in the custody of that court, or any other court, or any state, county, or local entity, agency, or official.

(e) The petitioner shall distribute the orders of expungement and sealing to all affected agencies and officials including the court, the arresting agency, booking agency, Department of Corrections, and the division.

(f) The division shall forward a copy of the expungement order to the Federal Bureau of Investigation.

(g) The division shall provide a list of the agencies named in this subsection and clear written directions regarding the requirements of this section to the petitioner.

(3) The person who has received expungement and sealing of an arrest or conviction may answer an inquiring employer as though the arrest or conviction did not occur.

(4) The court may permit inspection of the sealed records only upon petition by the person who is the subject of those records and only to the persons named in the petition.

(5) (a) (i) The division shall keep, index, and maintain all expunged and sealed records of arrests and convictions.

(ii) Any agency or its employee who receives an expungement order may not divulge any information in the sealed expunged records.

(iii) Employees of the division may not divulge any information contained in its index to any person or agency without a court order, except for certification of an applicant for peace officer status, for use by the Board of Pardons, or after notice is given to the subject of the record by the State Board of Education, for use by the State Board of Education.

(b) (i) Records released to the State Board of Education under this section are confidential and accessible for official purposes only to the board, the Professional Practices Commission, the subject of the record, and counsel for the board, the commission, and the subject.

(ii) A person whose records are released to the board or commission under this subsection shall be given a reasonable opportunity to challenge and explain any information in the records, and to challenge the relevancy of that information to any question of certification or employment before a final determination is made by the board or commission.

(c) (i) For judicial sentencing, a court may order any records sealed under this section to be opened and admitted into evidence.

(ii) The records are confidential and are available for inspection only by the court, parties, counsel for the parties, and any other person who is authorized by the court to inspect them.

(iii) At the end of the action or proceeding, the court shall order the records sealed again.

(6) A person who willfully violates any provision of this section is guilty of a class B misdemeanor.

(7) The division may charge a reasonable fee for processing the expungement order under Section 63-38-3.

77-18-10. Petition — Expungement of records of arrest, investigation, and detention — Eligibility conditions — No filing fee.

(1) A person who has been arrested with or without a warrant may petition the court in which the proceeding occurred or, if there were no court proceedings, any court in the jurisdiction where the arrest occurred, for an order expunging any and all records of arrest, investigation, and detention which may have been made in the case, subject to the following conditions:

(a) at least 30 days have passed since the arrest for which expungement is sought;

(b) there have been no intervening arrests; and

(c) one of the following occurred:

(i) the person was released without the filing of formal charges;

(ii) proceedings against the person were dismissed;

(iii) the person was discharged without a conviction and no charges were refiled within 30 days;

(iv) the person was acquitted at trial; or

(v) the record of any proceedings against the person has been sealed under Section 77-18-13.

(2) (a) A person seeking expungement under Subsection (1) may petition the court for expungement before the expiration of the 30 days required by Subsection (1)(a) if he believes extraordinary circumstances exist.

(b) A court may order expungement if the court finds that the petitioner is eligible for relief under this subsection and in the interest of justice the order should be issued prior to the expiration of the 30-day period required by Subsection (1)(a).

(3) As provided in Subsection 21-1-5(1)(i), there is no fee for a petition filed under Subsection (2).

(4) The petitioner shall file a certificate of eligibility issued by the division to be reviewed by the prosecuting attorney and the court prior to issuing an order granting the expungement.

(5) If the court finds that the petitioner is eligible for relief under this section, it shall issue an order granting the expungement.

(6) No filing fees or other administrative charges shall be assessed against a successful petitioner under this section.

(7) A person who has received expungement of an arrest under this section may respond to any inquiry as though the arrest did not occur, unless otherwise provided by law.

77-18-11. Petition — Expungement of conviction — Certificate of eligibility — Notice — Written evaluation — Objections — Hearing.

(1) A person convicted of a crime may petition the convicting court for an expungement of the record of conviction.

(2) The court shall require receipt of a certificate of eligibility issued by the division under Section 77-18-12.

(3) The petition and certificate of eligibility shall be filed with the court and served upon the prosecuting attorney and the Department of Corrections.

(4) A victim shall receive notice of a petition for expungement if, prior to the entry of an expungement order, the victim or, in the case of a minor or a person who is incapacitated or deceased, the victim's next of kin or authorized representative, submits a written and signed request for notice to the office of the Department of Corrections in the judicial district in which the crime occurred or judgment was entered.

(5) The Department of Corrections shall serve notice of the expungement request by first-class mail to the victim at the most recent address of record on file with the department. The notice shall include a copy of the petition, certificate of eligibility, and statutes and rules applicable to the petition.

(6) The court in its discretion may request a written evaluation by Adult Parole and Probation of the Department of Corrections, except that a written evaluation shall be required for any conviction of a sexual offense under Title 76, Chapter 5, Part 4, Sexual Offenses, and Title 76, Chapter 5a, Sexual Exploitation of Children, or of any sexual act against a minor.

(a) The evaluation shall include a recommendation concerning the petition for expungement.

(b) If expungement is recommended, the evaluation shall include certification that the petitioner has completed all requirements of sentencing and probation or parole and state any rationale that would support or refute consideration for expungement.

(c) The conclusions and recommendations contained in the evaluation shall be provided to the petitioner and the prosecuting attorney.

(7) If the prosecuting attorney or a victim submits a written objection to the court concerning the petition within 30 days after service of the notice, or if the petitioner objects to the conclusions and recommendations in the evaluation within 15 days after receipt of the conclusions and recommendations, the court shall set a date for a hearing and notify the prosecuting attorney for the jurisdiction, the petitioner, and the victim of the date set for the hearing.

(8) Any person who has relevant information about the petitioner may testify at the hearing.

(9) If an objection is not received under Subsection (7), the expungement may be granted without a hearing.

(10) A court may not expunge a conviction of a:

(a) capital felony;

(b) first degree felony;

(c) second degree forcible felony; or

(d) any sexual act against a minor.

77-18-12. Grounds for denial of certificate of eligibility — Effect of prior convictions.

(1) The division shall issue a certificate of eligibility to a petitioner seeking to obtain expungement for a criminal record unless prior to issuing a certificate of eligibility the division finds, through records of a governmental agency, including national criminal data bases that:

(a) the conviction for which expungement is sought is a capital felony, first degree felony, second degree forcible felony, or a conviction involving a sexual act against a minor;

(b) the petitioner's record includes two or more convictions for any type of offense which would be classified as a felony under Utah law, not arising out of a single criminal episode, regardless of the jurisdiction in which the convictions occurred;

(c) the petitioner has previously obtained expungement in any jurisdiction of a crime which would be classified as a felony in Utah;

(d) the petitioner has previously obtained expungement in any jurisdiction of two or more convictions which would be classified as misdemeanors in Utah;

(e) the petitioner was convicted in any jurisdiction, subsequent to the conviction for which expungement is sought and within the time periods as provided in Subsection (2), of a crime which would be classified in Utah as a felony, misdemeanor, or infraction;

(f) the person has a combination of three or more convictions not arising out of a single criminal episode including any conviction for an offense which would be classified under Utah law as a class B or class A misdemeanor or as a felony, including any misdemeanor and felony convictions previously expunged, regardless of the jurisdiction in which the conviction or expungement occurred; or

(g) a proceeding involving a crime is pending or being instituted in any jurisdiction against the petitioner.

(2) A conviction shall not be included for purposes of Subsection (1)(e), and no conviction shall be considered for expungement until, after the petitioner's release from incarceration, parole, or probation, whichever occurs last, at least the following period of time has elapsed:

(a) seven years in the case of a felony;

(b) six years in the case of an alcohol-related traffic offense under Title 41;

(c) five years in the case of a class A misdemeanor; or

(d) three years in the case of any other misdemeanor or infraction under Title 76.

(3) A petitioner who would not be eligible to receive a certificate of eligibility under Subsection (1)(b), (c), (d), or (f) may receive a certificate of eligibility for an additional expungement if at least 20 years have elapsed since the last of any of the following:

(a) release from incarceration, parole, or probation relating to the most recent conviction; and

(b) any other conviction which would have prevented issuance of a certificate of eligibility under Subsection (1)(e).

77-18-13. Hearing — Standard of proof — Exception.

(1) The court shall review the petition, certificate of eligibility, and any written evaluation and receive any testimony or writing submitted by a victim or prosecuting attorney.

(2) The court shall issue a certificate to the petitioner, stating the court's finding that the petition and certificate of eligibility are sufficient and the statutory requirements for expungement have been satisfied unless there is clear and convincing evidence to persuade the court that it would be contrary to the interest of the public to grant a requested expungement.

(3) Except as otherwise provided by law, a person receiving expungement of a conviction under this section may respond to any inquiry as though the conviction did not occur.

History: C. 1953, 77-18-13, enacted by L. 1994, ch. 143, § 5; 1996, ch. 35, § 4.

Amendment Notes. — The 1996 amendment, effective April 29, 1996, deleted "if required" after "eligibility" in Subsections (1) and (2).

77-18-15. Retention of expunged records — Fee — Agencies.

(1) The division shall keep, index, and maintain all expunged records of arrests and convictions.

(2) The division may charge a petitioner a reasonable fee for processing an expungement order under Section 63-38-3.

(3) Employees of the division may not divulge any information contained in its index to any person or agency without a court order, except to the following:

(a) the Board of Pardons and Parole;

(b) the Peace Officer Standards and Training;

(c) federal authorities, unless prohibited by federal law;

(d) the Division of Occupational and Professional Licensing; and

(e) the State Office of Education.

(4) The division may also use the information in its index for the purpose of establishing good character for issuance of a concealed firearm permit as provided in Section 53-5-704.

(5) A person whose records are released under Subsection (3) shall be given a reasonable opportunity by the recipient agency to challenge and explain any information in the records and to challenge the relevancy of that information before a final determination is made by the agency.

(6) A court may permit inspection or release of an expunged record only upon petition by the person who is the subject of the record and only to the persons named in the petition.

(7) (a) For judicial sentencing, a court may order any records sealed under this section to be opened and admitted into evidence.

(b) The records are confidential and are available for inspection only by the court, parties, counsel for the parties, and any other person who is authorized by the court to inspect them.

(c) At the end of the action or proceeding, the court shall order the records sealed again.

(8) Records released under this section are classified as protected under Subsection 63-2-304(8) and are accessible only as provided under Title 63, Chapter 2, Part 2, Access to Records.

77-27-21.5. Sex offender registration — Information system — Law enforcement and courts to report — Registration — Penalty — Temporary releases — Effect of expungement [Effective April 1, 1992].

(1) As used in this section:

(a) "Department" means the Department of Corrections.

(b) "Register" means to comply with the rules of the department made under this section.

(c) "Sex offender" means any person convicted by this state of violating Section 76-7-102 or 76-9-702.5, or of committing or attempting to commit a felony under Part 4, Chapter 5, Title 76, Sexual Offenses, and any person convicted by any other state of an offense which if committed or attempted in this state would be punishable as one or more of these offenses. "Sex offender" also means all persons committed to a state mental hospital by reason of their mental incapacity and their commission or alleged commission of one or more offenses listed in this subsection.

(2) The department, to assist in investigating sex-related crimes and in apprehending offenders, shall:

(a) develop and operate a system to collect, analyze, and maintain information on sex offenders and sex offenses;

(b) make information collected and developed under this section available to law enforcement agencies in this state and other states; and

(c) establish security systems to ensure that only authorized personnel may gain access to information gathered under this section.

(3) All law enforcement agencies shall, in the manner prescribed by the department, inform the department of:

(a) the receipt of a report or complaint of an offense listed in Subsection (1)(c), within three working days; and

(b) the arrest of a person suspected of violating any of the offenses listed in Subsection (1)(c), within five working days.

(4) Upon convicting a person of any of the offenses listed in Subsection (1)(c), or any lesser included offense, the convicting court shall within ten working days forward a copy of the judgment and sentence to the department.

(5) All sex offenders in the custody of the department shall be registered by agents of the department upon:

(a) being placed on probation;

(b) commitment to a secure correctional facility operated by or under contract to the department;

(c) release from confinement to parole status, termination or expiration of sentence, or escape;

(d) entrance to and release from any community-based residential program operated by or under contract to the department; or

(e) termination of probation or parole.

(6) All sex offenders not in the custody of the department who are confined in a correctional facility not operated by or under contract to the department shall, upon release from confinement, be registered with the department by the sheriff of the county in which the offender is confined.

(7) All sex offenders confined in a state mental hospital shall be registered with the department by the hospital before September 1, 1987. All sex offenders committed to a state mental hospital shall be registered with the department by the hospital upon admission and upon discharge.

(8) Any sex offender not registered under Subsection (5), (6), or (7) shall, before September 1, 1987, register with the office of the department nearest to his residence.

(9) All sex offenders shall, for the first five years after termination of sentence, again register within ten days of changing their place of habitation.

(10) An agency that registers a sex offender shall inform him of his duty to comply with the continuing registration requirements of this section.

(11) (a) A sex offender who knowingly fails to register under this section is guilty of a class A misdemeanor and shall be sentenced to serve a term of incarceration for not fewer than 90 days and also at least one year of probation.

(b) Neither the court nor the Board of Pardons may release a person who violates this section from serving a term of at least 90 days and of completing probation of at least one year. This subsection supersedes any other provision of the law contrary to this section.

(12) Information collected under this section is classified as private, confidential, or protected under Chapter 2, Title 63, Government Records Access and Management Act, and is available to the following only in the performance of their duties:

(a) law enforcement agencies;

(b) the State Office of Education; and

(c) the department.

(13) (a) If a sex offender is to be temporarily sent outside a secure facility in which he is confined on any assignment, including, without limitation, firefighting or disaster control, the official who has custody of the offender shall, within a reasonable time prior to removal from the secure facility, notify the local law enforcement agencies where the assignment is to be filled.

(b) This subsection does not apply to any person temporarily released under guard from the institution in which he is confined.

(14) Notwithstanding Section 77-18-2 regarding expungement, a person convicted of any offense listed in Subsection (1)(c) is not relieved from the responsibility to register under this section.

(15) The department may make rules necessary to implement this section.

LOCAL SCHOOL BOARDS

53A-3-410. Criminal background checks on school personnel — Notice — Payment of cost.

(1) A school district superintendent, the superintendent's designee, or their counterparts at a private school may require a potential employee or volunteer to submit to a criminal background check as a condition for employment or appointment and, where reasonable cause exists, may require an existing employee or volunteer to submit to a criminal background check.

(2) The applicant, volunteer, or employee shall receive written notice that the background check has been requested.

(3) Fingerprints of the individual shall be taken if necessary to assure accurate identification, and the Utah Bureau of Criminal Identification shall

release to the superintendent, the superintendent's designee, or their counterparts at a private school the person's record of all criminal convictions.

(4) The superintendent, local school board, or their counterparts at a private school shall consider only those convictions which are job-related for the employee, applicant, or volunteer.

(5) The district or private school shall pay the cost of the background check, and the revenue collected shall be credited to the Utah Bureau of Criminal Identification to offset its expenses.

(6) The bureau shall, upon request, seek additional information from regional or national criminal data files in responding to inquiries under this section.

(7) The applicant, volunteer, or employee shall have opportunity to respond to any information received as a result of the background check.

(8) If a person is denied employment or is dismissed from employment because of information obtained through a criminal background check, the person shall receive written notice of the reasons for denial or dismissal and have an opportunity to respond to the reasons.

(9) Information obtained under this part is confidential and may only be disclosed as provided in this section.

PUBLIC RECORDS LAW
Effective April 1992

63-2-59. Short title [Repealed effective April 1, 1992].

Repealed effective April 1, 1992. — Section 63-2-59 was repealed by Laws 1991, ch. 259, § 75, effective April 1, 1992. See the "Revision of Chapter" note under the chapter heading, above.

63-2-60. Legislative intent [Repealed effective April 1, 1992].

Repealed effective April 1, 1992. — This section was repealed by Laws 1991, ch. 259, § 75, effective April 1, 1992. See the "Revision of Chapter" note under the chapter heading.

63-2-61. Definitions [Repealed effective April 1, 1992].

Repealed effective April 1, 1992. — This section was repealed by Laws 1991, ch. 259, § 75, effective April 1, 1992. See the "Revision of Chapter" note under the chapter heading.

63-2-62 to 63-2-71. [Repealed effective April 1, 1992.]

Repealed effective April 1, 1992. — Sections 63-2-62 to 63-2-71 were repealed by Laws 1991, ch. 259, § 75, effective April 1, 1992. See the "Revision of Chapter" note under the chapter heading.

63-2-73. Public records — Disposal by state agency without approval prohibited [Repealed effective April 1, 1992].

Repealed effective April 1, 1992. — This section was repealed by Laws 1991, ch. 259, § 75, effective April 1, 1992. See the "Revision of Chapter" note under the chapter heading.

63-2-75 to 63-2-80. [Repealed effective April 1, 1992.]

Repealed effective April 1, 1992. — Sections 63-2-75 to 63-2-80 were repealed by Laws 1991, ch. 259, § 75, effective April 1, 1992. See the "Revision of Chapter" note under the chapter heading.

63-2-84 to 63-2-89. [Repealed effective April 1, 1992.]

Repealed effective April 1, 1992. — Sections 63-2-84 to 63-2-89 were repealed by Laws 1991, ch. 259, § 75, effective April 1, 1992. See the "Revision of Chapter" note under the chapter heading.

CHAPTER 2
GOVERNMENT RECORDS ACCESS AND MANAGEMENT ACT

[Effective April 1, 1992]

PART 1
GENERAL PROVISIONS

[Effective April 1, 1992]

63-2-101. Short title [Effective April 1, 1992].

This chapter is known as the "Government Records Access and Management Act."

63-2-102. Legislative intent [Effective April 1, 1992].

(1) In enacting this act, the Legislature recognizes two fundamental constitutional rights:

(a) the right of privacy in relation to personal data gathered by governmental entities; and

(b) the public's right of access to information concerning the conduct of the public's business.

(2) It is the intent of the Legislature to:

(a) establish fair information practices to prevent abuse of personal information by governmental entities while protecting the public's right of easy and reasonable access to unrestricted public records; and

(b) provide guidelines of openness to government information and privacy of personal information consistent with nationwide standards.

63-2-103. Definitions [Effective April 1, 1992].

As used in this chapter:

(1) "Chronological logs" mean the regular and customary records of law enforcement agencies and other public safety agencies that show the time and general nature of police, fire, and paramedic calls made to the agency and any arrests or jail bookings made by the agency.

(2) "Classification," "classify," and their derivative forms mean the process of designating a record series or information within a record series as public, private, confidential, or protected.

(3) (a) "Computer program" means 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 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 that would be used if the manipulated forms of the original data were to be produced manually.

(4) "Confidential record" means a record containing data on individuals that is classified confidential as provided by Section 63-2-303. This definition of confidential does not apply in other sections of the code unless that section specifically refers to Chapter 2, Title 63, Government Records Access and Management Act.

(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) (a) "Governmental entity" means:

(i) the offices of the governor, lieutenant governor, state auditor, attorney general, state treasurer, the Board of Pardons, the Board of Examiners, the National Guard, the Career Service Review Board, the State Board of Education, the State Board of Regents, and every office, board, bureau, committee, state archives, department, advisory board, or commission in the executive branch that is publicly funded or that is established by the government to carry out the public's business;

(ii) the Office of the Legislative Auditor General, Office of the Legislative Fiscal Analyst, Office of Legislative Research and General Counsel, the Legislature, and legislative committees, except any political party, group, caucus, or rules or sifting committee of the Legislature;

(iii) courts, the Judicial Council, the Office of the Court Administrator, and similar administrative units in the judicial branch; or

(iv) any political subdivision of the state and any state-funded institution of higher education or public education.

(b) Notwithstanding Subsection 63-2-102 (6)(a)(iv), "governmental entity" does not mean a political subdivision that has adopted an ordinance or policy relating to information practices in accordance with Section 63-2-701.

(7) "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.

(8) "Incident reports" mean records customarily created by law enforcement agencies and other public safety agencies about specific incidents and that normally include:

(a) the nature of the complaint, the incident, or offense;

(b) the agency's actions taken in response to the incident;

(c) any assessment of the injuries or damages suffered in the incident;

(d) the general scope of the agency's investigation of the incident;

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

(f) search warrants or arrest warrants issued in connection with the incident; and

(g) the identity of the officers and public safety personnel involved in investigating or prosecuting the incident.

(9) "Individual" means a human being.

(10) "Person" means any individual, nonprofit or profit corporation, partnership, sole proprietorship, or other type of business organization.

(11) "Private record" means a record containing data on individuals that is classified private as provided by Section 63-2-302.

(12) "Private provider" means any person who contracts with a governmental entity to provide services directly to the public.

(13) "Protected record" means a record that is classified protected as provided by Section 63-2-304.

(14) "Public record" means a record that has not been appropriately classified private, confidential, or protected as provided in Section 63-2-302, 63-2-303, or 63-2-304 of this chapter or a record that is not restricted from disclosure as provided in Subsection 63-2-201 (3)(b).

(15) (a) "Record" means all books, letters, documents, papers, maps, plans, photographs, films, cards, tapes, recordings, or other documentary materials, and electronic data regardless of physical form or characteristics, prepared, owned, used, received, or retained by a governmental entity;

(b) "Record" does not mean:

(i) temporary drafts or similar materials prepared for the originator's personal use or prepared by the originator for the personal use of a person for whom he is working;

(ii) materials that are legally owned by an individual in his private capacity;

(iii) materials to which access is limited by the laws of copyright or patent unless the copyright or patent is owned by a governmental entity;

(iv) proprietary software;

(v) junk mail or commercial publications received by a governmental entity or an official or employee of a governmental entity;

(vi) books and other materials that are cataloged, indexed, or inventoried and contained in the collections of libraries open to the public, regardless of physical form or characteristics of the material;

(vii) personal notes or notes prepared by the judiciary as part of the deliberative process; or

(viii) computer programs as defined in Subsection (3) that are developed or purchased by or for any governmental entity for its own use.

(16) "Record series" means a group of records that may be treated as a unit for purposes of classification, description, management, or disposition.

(17) "Records committee" means the State Records Committee created in Section 63-2-501.

(18) "Records officer" means the individual designated by the chief administrative officer of each governmental entity to work with state archives in the care, maintenance, scheduling, disposal, and preservation of records.

(19) "Schedule," "scheduling," and their derivative forms mean the process of designating 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.

(20) "State archives" means the Division of Archives and Records Service created in Section 63-2-901.

(21) "State archivist" means the director of the state archives.

(22) "Summary data" means statistical records and compilations that contain data derived from private, confidential, or protected information but that do not disclose private, confidential, or protected information.

63-2-104. Administrative Procedures Act not applicable [Effective April 1, 1992].

Chapter 46b, Title 63, Administrative Procedures Act, does not apply to this chapter.

PART 2

ACCESS TO RECORDS

[Effective April 1, 1992]

63-2-201. Right to see public records and receive certified copies of public records [Effective April 1, 1992].

(1) Every person has the right to inspect and to take a copy of a public record during normal working hours, subject to Sections 63-2-203 and 63-2-204.

(2) All records are public unless otherwise expressly provided by statute.

(3) The following records are not public:

(a) records that are appropriately classified private, confidential, or protected as allowed by Sections 63-2-302, 63-2-303, and 63-2-304; and

(b) records to which access is restricted by another state statute, federal statute, or federal regulation, either directly or as a condition of participation in a state or federal program or for receiving state or federal funds.

(4) 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 see it;

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

(c) he pays the lawful fees.

(5) (a) A governmental entity is not required to create a record in response to a request.

(b) A governmental entity shall provide a record in a particular format if:

(i) the governmental entity is able to do so without unreasonably interfering with the governmental entity's duties and responsibilities; and

(ii) the requester agrees to pay the governmental entity for additional costs if the governmental entity actually incurs additional costs in providing the record in the requested format.

(c) Nothing in this section requires a governmental entity to fulfill a person's records request if the request unreasonably duplicates prior records requests from that person.

(6) If a person requests more than 50 pages of records from a governmental entity, and if the records are contained in files that do not contain records that are exempt from disclosure, the governmental entity may:

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

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

(7) A governmental entity that owns a copyright or patent affecting a record, and that offers the copyrighted or patented record for sale, may control by ordinance or policy the access, duplication, and distribution of the material based on terms the governmental entity considers to be in the public interest. 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 copyright or patent.

63-2-202. Access to private, confidential, and protected documents [Effective April 1, 1992].

(1) Upon request, a governmental entity shall disclose a record that is classified private to:

(a) the subject of the record;

(b) the parent or legal guardian of an unemancipated minor who is the subject of the record;

(c) the legal guardian of a legally incapacitated individual who is the subject of the record;

(d) any other individual who:

(i) has a power of attorney from the subject of the record; or

(ii) submits a notarized release from the subject of the record or his legal representative dated no more than 30 days before the date the request is made; or

(e) any person who has a court order signed by a judge from a Utah court, other than a justice of the peace court, or a federal court of competent jurisdiction to the extent that the record deals with a matter in controversy over which the court has jurisdiction after the court has considered the merits of the record request.

(2) (a) Upon request, a governmental entity shall disclose a record that is classified confidential to:

(i) a physician, psychologist, or certified social worker upon submission of a notarized release from the subject of the record that is dated no more than 30 days prior to the date the request is made and a signed acknowledgment of the terms of disclosure of confidential information as provided by Subsection (b); and

(ii) any person who has a court order signed by a judge from a Utah court, other than a justice of the peace court, or a federal court of competent jurisdiction to the extent that the record deals with a matter in controversy over which the court has jurisdiction after the court has considered the merits of the record request.

(b) A person who receives a record from a governmental entity in accordance with Subsection (2)(a)(i) may not disclose confidential information from that record to any person, including the subject of a record.

(3) Upon request, a governmental entity shall disclose a record that is classified as protected to:

(a) the person who submitted the information in the record;

(b) any other individual who:

(i) has a power of attorney from the subject of the record; or

(ii) submits a notarized release from the subject of the record or his legal representative dated no more than 30 days prior to the date the request is made; or

(c) any person who has a court order signed by a judge from a Utah court other than a justice of the peace court, or a federal court of competent jurisdiction to the extent that the record deals with a matter in controversy over which the court has jurisdiction after the court has considered the merits of the record request.

(4) A governmental entity may disclose a record classified private, confidential, or protected to another governmental entity, another state, the United States, or a foreign government only as provided by Section 63-2-206.

(5) Before releasing a record classified private, confidential, or protected, the governmental entity shall obtain evidence of the requester's identity.

(6) Nothing in this section prohibits a governmental entity from disclosing a record to persons other than those listed in Subsections (1), (2), and (3) if the governmental entity determines that disclosure is in the public interest.

63-2-203. Fees [Effective April 1, 1992].

(1) A governmental entity may charge a reasonable fee to cover the governmental entity's actual cost of duplicating a record or compiling a record in a form other than that maintained by the governmental entity as follows:

(a) Governmental entities subject to Section 63-38-3 shall establish fees using a cost formula determined by and in conjunction with the Office of Planning and Budget and the Division of Finance.

(b) Political subdivisions shall establish fees by ordinance.

(c) The judiciary shall establish fees by rules of the judicial council.

(2) A governmental entity may fulfill a request without charge when it determines that:

(a) releasing the record primarily benefits the public rather than an individual; or

(b) the individual requesting the record is the subject of the record.

(3) A governmental entity may not charge a fee for:

(a) reviewing a record to determine whether it is subject to disclosure; or

(b) inspecting a record.

(4) All money received by a state agency to cover the actual cost of duplicating a record or compiling a record in a form other than that maintained by the state agency shall be retained by the state agency as a dedicated credit. Those funds shall be used to recover the actual cost and expenses incurred by the state agency in providing the requested record or record series.

(5) This section does not apply to fees established by other statutes.

63-2-204. Requests — Time limit for response and extraordinary circumstances [Effective April 1, 1992].

(1) A person making a request for a record shall furnish the governmental entity with a written request containing his name, mailing address, daytime telephone number, and a description of the records requested that identifies the record with reasonable specificity.

(2) A governmental entity may make rules in accordance with Chapter 46a, Title 63, Utah Administrative Rulemaking Act, specifying where and to whom requests for access shall be directed.

(3) Except as provided in Subsection (4), a governmental entity shall respond to a records request no later than ten business days after receiving the request by:

(a) approving the request and providing the record;

(b) denying the request;

(c) notifying the requester that it does not maintain the record and providing, if known, the name and address of the governmental entity that does maintain the record; or

(d) notifying the requester that because of the extraordinary circumstances listed in Subsection (5), it cannot immediately approve or deny the request, and specifying the earliest time and date when the records will be available.

(4) If a requester demonstrates that he is a member of the news media or that expedited release of the record benefits the public rather than an individual, the governmental entity shall respond to a records request no later than five business days after receiving the request.

(5) The following circumstances constitute "extraordinary circumstances" that allow a governmental entity to delay approval or denial by an additional number of days as specified in Subsection 63-2-204 (6) if the governmental entity determines that due to the extraordinary circumstances it cannot respond within the time limits provided in Subsection (3) or (4):

(a) another governmental entity is using the record, in which case the originating governmental entity shall immediately 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) the request is for a voluminous quantity of records;

(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 requiring analysis of statutes, rules, ordinances, regulations, or case law;

(g) separating public information from private, confidential, or protected information requires extensive editing; or

(h) separating public information from private, confidential, or protected information requires computer programming.

(6) If a governmental entity claims that one of the extraordinary circumstances listed in Subsection (5) precludes approval or denial within the time specified in Subsection (3) or (4), the following time limits apply to the extraordinary circumstances:

(a) for claims under Subsection (5)(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 (5)(b), the originating governmental entity shall notify the requester when the record is available for inspection and copying;

(c) for claims under Subsections (5)(c), (d), and (e), the governmental entity shall:

(i) disclose the public records that it has located;

(ii) provide the requester with an estimate of the amount of time it will take to finish the search; and

(iii) complete the search and disclose the requested records as soon as reasonably possible;

(d) for claims under Subsection (5)(f), the governmental entity shall either approve or deny the request within five days after the response time designated for the original request has expired;

(e) for claims under Subsection (5)(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 (5)(h), the governmental entity shall complete its programming and disclose the requested records as soon as reasonably possible.

(7) If a request for access is submitted to an office of a governmental entity other than that specified by rule in accordance with Subsection (2), the office shall immediately forward the request to the appropriate office. If the request is forwarded immediately, the time limit for response begins when the record is received by the office designated by rule.

(8) 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 records.

63-2-205. Denials [Effective April 1, 1992].

(1) If the governmental entity denies the request in whole or part, it shall send a notice of denial to the requester's address.

(2) The notice of denial shall contain the following information:

(a) a description of the record or portions of the record to which access was denied, provided that the description does not disclose private, confidential, or protected information;

(b) citations to the provisions of this chapter, another state statute, federal statute, or federal regulation that exempt the record or portions of the record from disclosure, provided that the citations do not disclose private, confidential, or protected information;

(c) a statement that the requester has the right to appeal the denial to the chief administrative officer of the governmental entity and then to either the records committee or district court; and

(d) a brief summary of the appeals process, the time limits for filing an appeal, and the name and business address of the chief administrative officer of the governmental entity.

(3) Unless otherwise required by a court or agency of competent jurisdiction, a governmental entity may not destroy or give up custody of any record to which access was denied until the period in which to bring an appeal has expired or the end of the appeals process, including judicial appeal.

63-2-206. Sharing records [Effective April 1, 1992].

(1) A governmental entity may provide a record series classified private under Section 63-2-302, confidential under Section 63-2-303, or protected under Subsection 63-2-304 (1) or (2) to another governmental entity or government-managed corporation if the requesting governmental entity or government-managed corporation:

(a) serves as a repository or archives for purposes of historical preservation, administrative maintenance, or destruction;

(b) enforces or investigates civil or criminal law and the record is necessary to a proceeding or investigation; or

(c) is authorized by state statute to conduct an audit and the record is needed for that purpose.

(2) A governmental entity may provide a record or record series that is classified private or confidential to another governmental entity if the requesting governmental entity:

(a) certifies that the record or record series is necessary to the performance of the governmental entity's duties and functions;

(b) certifies that the record or record series will be used for a purpose similar to the purpose for which the information in the record or record series was collected or obtained; and

(c) certifies that the use of the record or record series produces a public benefit that outweighs the individual privacy right that protects the record or record series.

(3) A governmental entity may provide a record or record series classified protected under Subsection 63-2-304 (1) or (2) to another governmental entity if:

(a) the record is necessary to the performance of the governmental entity's duties and functions; or

(b) the record will be used for a purpose similar to the purpose for which the information in the record or record series was collected or obtained.

(4) Notwithstanding Subsection (2), a governmental entity may disclose a record to another state, the United States, or a foreign government for the reasons listed in Subsections (1), (2), and (3) if disclosure is authorized by executive agreement, treaty, federal statute, compact, federal regulation, or state statute.

(5) Before disclosing a record or record series under this section to another governmental entity, another state, the United States, or a foreign government, the originating governmental entity shall:

(a) inform the recipient of the record's classification and the accompanying restrictions on access; and

(b) obtain the recipient's written agreement that it will abide by those restrictions on access unless a statute, federal regulation, or interstate agreement otherwise governs the sharing of the record or record series.

(6) A governmental entity shall provide a private, confidential, or protected record to another governmental entity if the requesting entity:

(a) is entitled by law to inspect the record; or

(b) is required to inspect the record as a condition of participating in a state or federal program or for receiving state or federal funds.

(7) Notwithstanding any other provision of this section, if a more specific state statute, federal statute, or federal regulation prohibits or requires sharing information, that statute or federal regulation controls.

(8) The provisions of this section do not apply to:

(a) records held by the Utah State Tax Commission that pertain to any person and that are gathered under authority of Title 59, Revenue and Taxation;

(b) records held by the Utah Division of Oil, Gas and Mining that pertain to any person and that are gathered under authority of Chapter 6, Title 40, Board and Division of Oil, Gas and Mining; and

(c) records of publicly funded libraries as described in Subsection 63-2-302 (5).

PART 3

CLASSIFICATION

[Effective April 1, 1992]

63-2-301. Records that must be disclosed [Effective April 1, 1992].

Without limiting the records that a governmental entity may classify as public, a governmental entity shall classify the following records as public except to the extent they contain information expressly permitted to be classified as exempt from disclosure under the provisions of Subsection 63-2-201 (3)(b) or Section 63-2-302, 63-2-303, or 63-2-304:

(1) names, gender, gross compensation, job titles, job descriptions, job qualifications, business addresses, business telephone numbers, number of hours worked per pay period, and dates of employment of its former and present employees and officers excluding undercover law enforcement officers or investigative personnel if disclosure would impair the effectiveness of investigations or endanger any person's safety;

(2) final opinions, including concurring and dissenting opinions, and orders that are made by a governmental entity in an administrative, adjudicative, or judicial proceeding except that if the proceedings were properly closed to the public, the opinion and order may be withheld to the extent that they contain information classified as private, protected, or confidential;

(3) final interpretations of statutes or rules by a governmental entity unless classified as protected as provided in Section 63-2-304;

(4) information contained in or compiled from a transcript, minutes, or report of a proceeding of a governmental entity including the records of all votes of each member of the governmental entity except as provided by Chapter 4, Title 52, Open and Public Meetings;

(5) laws;

(6) judicial records unless a court orders the records to be restricted under the rules of civil or criminal procedure or unless the records are properly classified as private;

(7) records maintained by county recorders, clerks, treasurers, surveyors, zoning commissions, the Division of State Lands and Forestry, the Division of Oil, Gas and Mining, the Division of Water Rights, or other governmental entities that evidence:

(a) titles or encumbrances to real property;

(b) restrictions on the use of real property;

(c) the capacity of persons to take or convey title to real property;

(d) tax status for real and personal property; or

(e) mineral production on government lands;

(8) records of the Department of Commerce pertaining to incorporations, mergers, name changes, and uniform commercial code filings;

(9) records containing data on individuals that would otherwise be classified as private if the individual who is the subject of the record has

given the governmental entity written permission to make the records available to the public;

(10) records that do not contain data on individuals if the public's interest in access outweighs the interest of the governmental entity or other persons who seek to prevent disclosure;

(11) original data in a computer program if the governmental entity chooses not to disclose the program;

(12) administrative staff manuals, instructions to staff, and statements of policy;

(13) records documenting a contractor's or private provider's compliance with the terms of a contract with a governmental entity;

(14) records documenting the services provided by a contractor or a private provider to the extent the records would be public if prepared by the governmental entity;

(15) records documenting the compensation that a governmental entity pays to a contractor or private provider;

(16) contracts entered into by a governmental entity;

(17) information in or taken from any account, voucher, or contract that deals with the receipt or expenditure of funds by a governmental entity;

(18) records relating to assistance or incentives offered by or requested from a governmental entity, encouraging a person to expand or relocate a business in Utah, except the governmental entity may withhold the person's name and disclose only the size and nature of the business, using Standard Industrial Classification or a similar description of the business unless:

(a) the person has publicly announced its plans to expand or relocate in Utah; or

(b) ten days have elapsed since the person accepted the governmental entity's commitment to provide assistance or incentives;

(19) summary data;

(20) chronological logs and incident reports;

(21) correspondence by and with a governmental entity in which the governmental entity determines or states an opinion upon the rights of the state, a political subdivision, the public, or any person;

(22) empirical data contained in drafts if:

(a) the empirical data is not reasonably available to the requester elsewhere in similar form; and

(b) the governmental entity is given a reasonable opportunity to correct any errors or make nonsubstantive changes before release;

(23) drafts that are circulated to anyone other than a governmental entity or to anyone other than a federal agency if the governmental entity and the federal agency are jointly responsible for implementation of a program or project that has been legislatively approved; and

(24) drafts that have never been finalized but were relied upon by the governmental entity in carrying out action or policy.

63-2-302. Records that may be classified as private [Effective April 1, 1992].

A governmental entity may classify only the following records as private:

(1) records concerning an individual's eligibility for unemployment insurance benefits, social services, welfare benefits, or the determination of benefit levels;

(2) records describing an individual's finances except that the following is public:

(a) records described in Section 63-2-301;

(b) information provided to the governmental entity for the purpose of complying with a financial assurance requirement; or

(c) records that may be disclosed in accordance with another statute;

(3) records containing data on individuals describing medical history, diagnosis, condition, treatment, evaluation, or similar medical data;

(4) records containing data on individuals the disclosure of which constitutes a clearly unwarranted invasion of personal privacy;

(5) records of publicly funded libraries that when examined alone or with other records identify a patron;

(6) records of independent state agencies if the disclosure of those records would conflict with the fiduciary obligations of the agency;

(7) records received or generated in a Senate or House ethics committee concerning any alleged violation of the rules on legislative ethics if the ethics committee meeting was closed to the public;

(8) information in any agency's personnel file, applications, nominations, recommendations, or proposals for public employment or appointment, except information relating to formal charges against the employee and disciplinary action unless such charges and action are not sustained or are shown to be groundless or except as the data is already classified as public;

(9) information comprising a personal recommendation or evaluation concerning an individual, or provided by the individual with respect to a third party if disclosure would constitute a clearly unwarranted invasion of privacy and disclosure is not in the public interest;

(10) records that would disclose military status; and

(11) records provided by the United States or by a governmental entity outside the state that are given with the requirement that the records be given private status.

History: C. 1953, 63-2-302, enacted by L. 1991, ch. 259, § 19.

Effective Dates. — Laws 1991, ch. 259, § 76 makes the act effective on April 1, 1992.

63-2-303. Records that may be classified as confidential [Effective April 1, 1992].

A governmental entity may classify a record as confidential only if:

(1) the record contains medical, psychiatric, or psychological data about an individual; and

(2) the governmental entity reasonably believes that releasing the record would be detrimental to the subject's mental health or to the safety of any individual.

63-2-304. Records that may be classified as protected [Effective April 1, 1992].

A governmental entity may classify only the following records as protected:

(1) trade secrets as defined in Section 13-24-2 if the person submitting the trade secret has provided the governmental entity with the information specified in Section 63-2-308;

(2) commercial or nonindividual financial information exchanged between a governmental entity and a person if:

(a) disclosure of the information would result in unfair competitive injury to the person submitting the information or would impair the ability of the governmental entity to obtain necessary information in the future;

(b) the person submitting the information has a greater interest in prohibiting access than the public in obtaining access; and

(c) the person submitting the information has provided the governmental entity with the information specified in Section 63-2-308;

(3) commercial or financial information acquired or prepared by a governmental entity to the extent that disclosure would lead to financial speculations in currencies, securities, or commodities that will interfere with a planned transaction by the governmental entity or cause substantial financial injury to the governmental entity or national economy;

(4) test questions and answers to be used in future license, employment, or academic examinations;

(5) records the disclosure of which would impair governmental procurement proceedings or give an unfair advantage to any person proposing to enter into a contract or agreement with a governmental entity, except that this subsection does not restrict the right of a person to see bids submitted by a governmental entity after bidding has closed;

(6) records that would identify real property or the value of the real property under consideration for public acquisition before any rights to the property are acquired unless:

(a) public interest in obtaining access to the information outweighs the governmental entity's need to acquire the real property on the best terms possible; or

(b) potential sellers of the real property have already learned of the governmental entity's plans to acquire the property or of the governmental entity's estimated value of the real property;

(7) records compiled for civil enforcement or law enforcement purposes or for licensing, certification, or registration if release of the records would:

(a) interfere with enforcement proceedings or investigations for licensing, certification, or registration;

(b) deprive a person of a right to a fair trial or impartial hearing;

(c) disclose the identity of a source who is not generally known outside of government and, in the case of a record compiled in the course of an investigation, disclose information furnished by a source not generally known outside of government if disclosure would compromise the source; or

(d) disclose investigative techniques, procedures, policies, or orders not generally known outside of government if disclosure would interfere with enforcement efforts;

(8) records the disclosure of which would jeopardize the life or safety of an individual;

(9) records the disclosure of which would jeopardize the security of governmental property, governmental programs, or governmental recordkeeping systems;

(10) records relating to incarceration, probation, or parole, if the disclosure of the records would jeopardize the security of a governmental facility, or interfere with the supervision of an individual's incarceration, probation, or parole;

(11) records that would disclose audit techniques, procedures, and policies if disclosure would risk circumvention of an audit;

(12) records and audit workpapers that identify audit procedures and methods used by the Utah State Tax Commission to select tax returns for audit reviews or that disclose an auditor's mental impressions about an audit;

(13) records of a governmental audit agency relating to an ongoing or planned audit until the final audit is released;

(14) records prepared by or on behalf of a governmental entity in anticipation of litigation that are not available under the rules of discovery, unless the records are otherwise classified as public;

(15) records disclosing an attorney's work product, including the mental impressions, or legal theories of an attorney or other representative of a governmental entity concerning litigation;

(16) records of communications between a governmental entity and an attorney representing, retained or employed by the governmental entity if the communications would be privileged as provided in Section 78-24-8;

(17) personal files of a legislator, including personal correspondence to or from a member of the Legislature, but not correspondence that gives notice of legislative action or policy;

(18) unnumbered bill requests that are designated as protected by the legislator who requests that the bill be prepared by the Office of Legislative Research and General Counsel;

(19) research requests from legislators to the Office of Legislative Research and General Counsel or the Office of the Legislative Fiscal Analyst and research findings prepared in response to these requests;

(20) drafts, unless otherwise classified as public;

(21) records concerning a governmental entity's strategy about collective bargaining or pending litigation;

(22) records of investigations of loss occurrences and analyses of loss occurrences that may be covered by the Division of Risk Management, the Employers' Reinsurance Fund, the Uninsured Employers' Fund, or similar divisions in other governmental entities;

(23) communications between individuals sitting on a board or commission who are acting in a judicial capacity to the extent that the communications relate to the deliberative aspects of the adjudications;

(24) records that reveal the location of historic, prehistoric, paleontological, or biological resources that if known would jeopardize the security of those resources or of valuable historic, scientific, educational, or cultural information;

(25) records of independent state agencies if the disclosure of the records would conflict with the fiduciary obligations of the agency;

(26) records of tenure evaluations, appointments, retention decisions, and promotions generated in a meeting closed in accordance with Chapter 4, Title 52, Open and Public Meetings;

(27) records of the governor's office, including, but not limited to, budget recommendations, legislative proposals and policy statements, that if disclosed would reveal the governor's contemplated policies or contemplated courses of action before the governor has implemented or rejected those policies or courses of action or made them public;

(28) records of the Office of the Legislative Fiscal Analyst relating to budget analysis, revenue estimates, and fiscal notes of proposed legislation before issuance of the final recommendations in these areas; and

(29) records provided by the United States or by a governmental entity outside the state that are given to the governmental entity with a requirement that they be given a protected status.

63-2-305. Procedure to determine classification [Effective April 1, 1992].

(1) If more than one provision of this chapter appear to govern the classification of a record, the governmental entity shall classify the record by considering the nature of the interests intended to be protected and the specificity of the competing provisions.

(2) Nothing in Section 63-2-302, 63-2-303, or 63-2-304 requires a governmental entity to classify a record as private, confidential, or protected.

63-2-306. Duty to examine records and make classifications [Effective April 1, 1992].

(1) Beginning April 1, 1992, a governmental entity shall:

(a) examine all records or record series that it creates or to which it adds information after that date;

(b) classify those records or record series as provided by this chapter;

(c) designate a primary classification for each record or record series to indicate whether the majority of the information in the record series is public, private, confidential, or protected; and

(d) indicate whether information within a classification other than the primary classification is present in the record series, and list the appropriate classifications.

(2) A governmental entity is not required to reclassify any record or record series created before April 1, 1992, until:

(a) information is added to the record series; or

(b) a person requests access to the record or to a record within the record series.

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

(4) By July 1 of each year, beginning July 1, 1993, each governmental entity shall report to the state archives the classification for each record series that it created or classified during the previous calendar year.

63-2-307. Segregation of records [Effective April 1, 1992].

Notwithstanding any other provision in this chapter, if a governmental entity receives a request for access to a record in a record series that is classified as private, confidential, or protected, and the record contains information that standing alone would be public and intelligible, the governmental entity:

(1) shall allow access to public information in the record; and

(2) may deny access to information in the record if the information is exempt from disclosure, issuing a notice of denial as provided in Section 63-2-205.

63-2-308. Business confidentiality claims [Effective April 1, 1992].

(1) (a) Any person who provides to a governmental entity a record that he believes should be protected under Subsection 63-2-304 (1) or (2) shall provide with the record a written claim of business confidentiality and a concise statement of reasons supporting the claim of business confidentiality.

(b) The claimant shall be notified by the governmental entity if a record claimed to be protected under Subsection 63-2-304 (1) or (2) is not classified protected or if a requester appeals denial of access to the record. The claimant shall then be allowed to provide further support for the claim of business confidentiality.

(2) The governmental entity may not disclose records claimed to be protected under Subsection 63-2-304 (1) or (2) but which it determines should be classified public until the period in which to bring an appeal expires or the end of the appeals process, including judicial appeal.

(3) Disclosure or acquisition of information under this chapter does not constitute misappropriation under Subsection 13-24-2 (2).

PART 4

APPEALS

[Effective April 1, 1992]

63-2-401. Appeal to head of governmental entity [Effective April 1, 1992].

(1) Any person aggrieved by a governmental entity's determination under this chapter, including a person not a party to the governmental entity's proceeding, may appeal the determination within 30 days to the chief administrative officer of the governmental entity by filing a notice of appeal.

(2) The notice of appeal shall contain the following information:

(a) the petitioner's name, mailing address, and daytime telephone number; and

(b) the relief sought.

(3) The petitioner may file a short statement of facts, reasons, and legal authority in support of the appeal.

(4) In the case of a protected record, the chief administrative officer shall inform the claimant of business confidentiality under Section 63-2-308 of the appeal and allow the claimant to provide further support for the claim of business confidentiality.

(5) The chief administrative officer shall make a determination on the appeal within five business days of his receipt of the notice. If the chief administrative officer fails to make a determination within this time, that failure shall be considered the equivalent of an order denying the appeal.

(6) If the chief administrative officer affirms the denial in whole or in part, he shall send to the requester a written statement that the requester may appeal to the records committee or district court and provide the name and address of the executive secretary of the records committee.

63-2-402. Option for appealing a denial [Effective April 1, 1992].

(1) If the chief administrative officer of a governmental entity denies a records request under Section 63-2-401, the requester may:

(a) appeal the denial to the records committee as provided in Section 63-2-403; or

(b) petition for judicial review in district court as provided in Section 63-2-404.

(2) Any person aggrieved by a determination of the head of a governmental entity under this chapter, including persons not a party to the governmental entity's proceeding, may appeal the determination to the records committee as provided in Section 63-2-403.

63-2-403. Appeals to the records committee [Effective April 1, 1992].

(1) A petitioner may appeal to the records committee by filing a notice of appeal with the executive secretary no later than:

(a) 30 days after the governmental entity has responded to the records request by either providing the requested records or denying the request in whole or in part; or

(b) 35 days after the original request if the governmental entity failed to respond to the request.

(2) The notice of appeal shall contain the following information:

(a) the petitioner's name, mailing address, and daytime telephone number; and

(b) the relief sought.

(3) The petitioner may file a short statement of facts, reasons, and legal authority in support of the appeal.

(4) No later than five days after receiving a notice of appeal, the executive secretary of the records committee shall:

(a) schedule a hearing for the records committee to discuss the appeal which shall be held within 30 days from the date of the filing of the appeal;

(b) send a copy of the notice of hearing to the petitioner; and

(c) forward a copy of the notice of appeal, supporting statement, and a notice of hearing to:

(i) each member of the records committee;

(ii) the records officer and the chief administrative officer of the governmental entity from which the appeal originated; and

(iii) in the case of a protected record, the claimant of business confidentiality under Section 63-2-308.

(5) No later than ten business days after receiving the notice of appeal, the governmental entity may submit to the executive secretary of the records committee a written statement of facts, reasons, and legal authority in support of its position. The governmental entity shall send a copy of the written statement to the petitioner by first class mail, postage prepaid. The executive secretary shall forward a copy of the written statement to each member of the records committee.

(6) (a) Intervention in the records committee's proceeding shall be permitted using the procedures and standards specified in Section 63-46b-9.

(b) In the case of a protected record, the claimant of business confidentiality under Section 63-2-308 may provide reasons for its claim of business confidentiality.

(7) The records committee shall hold a hearing within 30 days of receiving the notice of appeal.

(8) At the hearing, the records committee shall allow the parties to testify, present evidence, and comment on the issues. The records committee may allow other interested persons to comment on the issues.

(9) (a) The records committee may review the disputed records in camera.

(b) Members of the records committee may not disclose any information or record reviewed by the committee in camera unless the disclosure is otherwise authorized by this chapter.

(10) (a) Discovery is prohibited, but the records committee may issue subpoenas or other orders to compel production of necessary evidence.

(b) The records committee's review shall be de novo.

(11) (a) No later than three business days after the hearing, the records committee shall issue a signed order either granting the petition in whole or in part or upholding the determination of the governmental entity in whole or in part.

(b) The records committee may, upon consideration and weighing of the various interests and public policies pertinent to the classification and disclosure or nondisclosure, order the disclosure of information properly classified as private, confidential, or protected if the public interest in access outweighs a person's or governmental entity's interests in restricting access.

(12) The order of the records committee shall include:

(a) a statement of reasons for the decision, including citations to this chapter, another state statute, federal statute, or federal regulation that governs disclosure of the record, provided that the citations do not disclose private, confidential, or protected information;

(b) a description of the record or portions of the record to which access was ordered or denied, provided that the description does not disclose private, confidential, or protected information;

(c) a statement that any party to the proceeding before the records committee may appeal the records committee's decision to district court; and

(d) a brief summary of the appeals process, the time limits for filing an appeal, and a notice that in order to protect its rights on appeal, the party may wish to seek advice from an attorney.

(13) If the records committee fails to issue a decision within 35 days of the filing of the notice of appeal, that failure shall be considered the equivalent of an order denying the appeal. The petitioner shall notify the records committee in writing if he considers the appeal denied.

63-2-404. Judicial review [Effective April 1, 1992].

(1) Any party to a proceeding before the records committee may petition for judicial review by the district court of the records committee's order. The petition shall be filed no later than 30 days after the date of the records committee's order.

(2) A requester may petition for judicial review by the district court of a governmental entity's determination as specified in Subsection 63-2-402 (1)(b). The requester shall file a petition no later than:

(a) 30 days after the governmental entity has responded to the records request by either providing the requested records or denying the request in whole or in part; or

(b) 35 days after the original request if the governmental entity failed to respond to the request.

(3) The petition for judicial review shall be a complaint governed by the Utah Rules of Civil Procedure and shall contain:

(a) the petitioner's name and mailing address;

(b) a copy of the records committee order from which the appeal is taken, if the petitioner brought a prior appeal to the records committee;

(c) the name and mailing address of the governmental entity that issued the initial determination with a copy of that determination;

(d) a request for relief specifying the type and extent of relief requested; and

(e) a statement of the reasons why the petitioner is entitled to relief.

(4) If the appeal is based on the denial of access to a protected record, the court shall allow the claimant of business confidentiality to provide to the court the reasons for the claim of business confidentiality.

(5) All additional pleadings and proceedings in the district court are governed by the Utah Rules of Civil Procedure.

(6) The district court may review the disputed records in camera.

(7) The court shall:

(a) make its decision de novo, but allow introduction of evidence presented to the records committee;

(b) determine all questions of fact and law without a jury; and

(c) decide the issue at the earliest practical opportunity.

(8) The court may, upon consideration and weighing of the various interests and public policies pertinent to the classification and disclosure or nondisclosure, order the disclosure of information properly classified as private, confidential, or protected if the public interest in access outweighs a person's or governmental entity's interests in restricting access.

PART 5

STATE RECORDS COMMITTEE

[Effective April 1, 1992]

63-2-501. State Records Committee created — Membership [Effective April 1, 1992].

There is created the State Records Committee within the Department of Administrative Services to consist of the following seven individuals:

(1) the state archivist;

(2) the state auditor;

(3) the director of the Division of State History;

(4) the attorney general or the attorney general's designee;

(5) one citizen member appointed for a four-year term by the governor upon the recommendation of the members of the records committee;

(6) one individual representing political subdivisions appointed by the governor for a four-year term; and

(7) one individual representing the news media appointed by the governor for a four-year term.

63-2-502. State Records Committee — Duties [Effective April 1, 1992].

(1) The records committee shall:

(a) meet at least once every three months to review and approve rules and programs for the collection, classification, and disclosure of records;

(b) review and approve retention and disposal of records;

(c) hear appeals from determinations of access as provided by Section 63-2-403; and

(d) appoint a chairman from among its members.

(2) The records committee may:

(a) make rules to govern its own proceedings as provided by Chapter 46a, Title 63, Utah Administrative Rulemaking Act; and

(b) reassign classification for any record series by a governmental entity if the governmental entity's classification is inconsistent with this chapter.

(3) The state archivist is the executive secretary to the records committee.

(4) Five members of the records committee are a quorum for the transaction of business.

(5) The state archives shall provide staff and support services for the records committee.

(6) Unless otherwise reimbursed, the citizen member and the representative of the news media shall receive a per diem as established by the Division of Finance in Section 63-1-14.5.

(7) If the records committee reassigns the classification of a record or record series under Subsection (2)(b), the governmental entity may appeal the reclassification to the district court.

PART 6

ACCURACY OF RECORDS

[Effective April 1, 1992]

63-2-601. Rights of individuals on whom data is maintained [Effective April 1, 1992].

(1) Each governmental entity shall file with the state archivist a statement explaining the purposes for which data on individuals are collected and used by that governmental entity. That statement is a public record.

(2) Upon request, each governmental entity shall explain to an individual:

(a) the reasons he is asked to furnish private or confidential information;

(b) the intended uses of the information; and

(c) the consequences for refusing to provide the information.

(3) A governmental entity may not use private, confidential, or protected data for purposes other than those given in the statement filed with the state archivist under Subsection (1) or for sharing records as specified in Section 63-2-206.

63-2-602. Subject of records allowed to inspect and make copies of private records [Effective April 1, 1992].

(1) Upon request, the governmental entity shall disclose to the subject the content of the information that is classified public and the context in which it is used.

(2) Upon request and a reasonable showing that the individual is the subject of a record classified private, the governmental entity shall disclose to the subject or to his authorized attorney the content of the information classified private and the context in which it is used.

63-2-603. Requests to amend a record — Appeals [Effective April 1, 1992].

(1) Subject to Subsection (7), an individual may contest the accuracy or completeness of any data on individuals classified as public or private concerning him by petitioning the governmental entity to amend the record. The petition shall contain the following information:

(a) the petitioner's name, mailing address, and daytime telephone number; and

(b) a brief statement explaining why the governmental entity should amend the record.

(2) The governmental entity shall either approve or deny the petition to amend no later than 30 days after the petition.

(3) If the governmental entity approves the petition, it shall correct all of its records that contain the same incorrect information as soon as practical. A governmental entity may not disclose the record until it has amended it.

(4) If the governmental entity denies the petition, it shall:

(a) inform the petitioner in writing; and

(b) provide a brief statement giving its reasons for denying the petition.

(5) If a governmental entity denies a petition to amend a record, the petitioner may submit a written statement contesting the information in the record. The governmental entity shall:

(a) file the petitioner's statement with the disputed record if the record is in a form such that the statement can accompany the record or make the statement accessible if the record is not in a form such that the statement can accompany the record; and

(b) disclose the petitioner's statement along with the information in the record whenever the governmental entity discloses the disputed information.

(6) The petitioner may appeal the denial of the petition to amend a record to district court.

(7) This section does not apply to records relating to title to real or personal property, medical records, judicial case files, or any other records that the governmental entity determines must be maintained in their original form to protect the public interest and to preserve the integrity of the record system.

PART 7

APPLICABILITY TO POLITICAL SUBDIVISIONS, THE JUDICIARY, AND THE LEGISLATURE

[Effective April 1, 1992]

63-2-701. Political subdivisions to enact ordinances in compliance with chapter [Effective April 1, 1992].

(1) Each political subdivision may adopt an ordinance or a policy applicable throughout its jurisdiction relating to information practices including classification, access, appeals, management, and retention. The ordinance or policy shall comply with the criteria set forth in this section. If any political subdivision does not adopt and maintain an ordinance or policy on or before April 1, 1992, then that political subdivision is subject to this chapter. Notwithstanding the adoption of an ordinance or policy, each political subdivision is subject to Section 63-2-201. Every ordinance, policy, or amendment to the ordinance or policy shall be filed with the state archives no later than 30 days after its effective date.

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

(a) provide standards for the classification of the records of the political subdivision as public, private, confidential, or protected in accordance with Sections 63-2-301, 63-2-302, 63-2-303, and 63-2-304;

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

(c) provide guidelines for establishment of fees in accordance with Section 63-2-203.

(3) Each ordinance or policy shall establish access criteria, procedures, and response times for requests to inspect or obtain records of the political subdivision and time limits for appeals. In establishing response times for access requests and time limits for appeals, the political subdivision may establish reasonable time frames different than those set out in Section 63-2-204 and Part 4 of this chapter if it determines that the resources of the political subdivision are insufficient to meet the requirements of those sections.

(4) The political subdivision shall establish an appeals process for persons aggrieved by classification or access decisions. The policy or ordinance shall provide for:

(a) an appeals board composed of the governing body of the political subdivision; or

(b) a separate appeals board composed of members of the governing body and the public, designated by the governing body.

(5) If the requester concurs, the political subdivision may also provide for an additional level of administrative review to the records committee in accordance with Section 63-2-403.

(6) Appeals of the decisions of the appeals boards established by political subdivisions shall be by petition for judicial review to the district court. The contents of the petition for review and the conduct of the proceeding shall be in accordance with Section 63-2-402.

63-2-702. Applicability to judiciary [Effective April 1, 1992].

(1) The Judicial Council, the Administrative Office of the Courts, the courts, and other administrative units in the judicial branch shall classify their records in accordance with Sections 63-2-301 through 63-2-304.

(2) On or before April 1, 1992, the Judicial Council shall:

(a) make rules governing requests for access, fees, classification, segregation, appeals of requests for access and retention, and amendment of judicial records; and

(b) establish an appellate board to handle appeals from denials of requests for access and provide that a requester who is denied access by the appellate board may file a lawsuit in district court.

(3) Upon request, the state archivist shall:

(a) assist with and advise concerning the establishment of a records management program in the judicial branch; and

(b) as required by the judiciary, provide program services similar to those available to the executive and legislative branches of government as provided in this chapter.

63-2-703. Applicability to the Legislature [Effective April 1, 1992].

(1) The Legislature and its staff offices shall classify records in accordance with Sections 63-2-301 through 63-2-304 as public, private, confidential, or protected.

(2) (a) The Legislature is not subject to Part 4, 5, or 9 of this chapter. The Legislature, through the Legislative Management Committee, shall establish policies to handle requests for records and may establish an appellate board to hear appeals from denials of access.

(b) Policies shall include reasonable times for responding to access requests and time limits for appeals.

(3) Upon request, the state archivist shall:

(a) assist with and advise concerning the establishment of a records management program in the Legislature; and

(b) as required by the Legislature, provide program services similar to those available to the executive branch of government, as provided in this chapter.

PART 8

REMEDIES

[Effective April 1, 1992]

63-2-801. Criminal penalties [Effective April 1, 1992].

(1) Any public employee who knowingly releases private, confidential, or protected records or refuses to release public records in violation of this chapter is guilty of an infraction and may be subject to disciplinary action as provided by law.

(2) Notwithstanding Subsection (1), a public employee is not criminally liable for failure to comply with Section 63-2-204 unless he intended to deny access to public records unlawfully.

63-2-802. Injunction — Attorneys' fees [Effective April 1, 1992].

(1) A district court in this state may enjoin any governmental entity or political subdivision that violates or proposes to violate the provisions of this chapter.

(2) (a) A district court may assess against any governmental entity or political subdivision reasonable attorneys' fees and other litigation costs reasonably incurred in connection with a judicial appeal of a denial of a records request if the requester substantially prevails.

(b) In determining whether to award attorneys' fees under this section, the court shall consider:

(i) the public benefit derived from the case;

(ii) the nature of the requester's interest in the records; and

(iii) whether the governmental entity's or political subdivision's actions had a reasonable basis in law.

(c) Attorneys' fees shall not ordinarily be awarded if the purpose of the litigation is primarily to benefit the requester's financial or commercial interest.

(3) Neither attorneys' fees nor costs shall be awarded for fees or costs incurred during administrative proceedings.

(4) Notwithstanding Subsection (2), a court may only award fees and costs incurred in connection with appeals to district courts under Subsection 63-2-404 (2) if the fees and costs were incurred 20 or more days after the requester provided to the agency a statement of position that explained, as fully as possible, the basis for the requester's position.

(5) Claims for attorneys' fees as provided in this section or for damages are subject to Chapter 30, Title 63, Governmental Immunity Act.

63-2-803. No liability for certain decisions of a governmental entity [Effective April 1, 1992].

Neither the governmental entity nor any officer or employee of the governmental entity is liable for damages resulting from the release of a record where the person or government requesting the record presented evidence of authority to obtain the record even if it is subsequently determined that the requester had no authority.

PART 9

ARCHIVES AND RECORDS SERVICE

[Effective April 1, 1992]

63-2-901. Division of Archives and Records Service created — Duties [Effective April 1, 1992].

(1) There is created the Division of Archives and Records Service within the Department of Administrative Services.

(2) The state archives shall:

(a) administer the state's archives and records management programs, including storage of records, central microphotography programs, and quality control;

(b) apply fair, efficient, and economical management methods to the collection, creation, utilization, 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 microphotography lab facilities and quality control for the state;

(g) provide staff and support services to the records committee;

(h) develop training programs to assist records officers and other interested officers and employees of governmental entities to administer this chapter;

(i) provide access to public records deposited in the archives;

(j) provide assistance to any governmental entity in administering this chapter; and

(k) prepare forms for use by all governmental entities that include space for a person requesting access to a record to provide the following information:

(i) name and mailing address;

(ii) date and time of the request; and

(iii) a description of the records requested.

(2) The state archives may:

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

(b) establish a forms management program.

(3) The executive director of the Department of Administrative Services may direct the state archives to administer other functions or services.

63-2-902. State archivist — Duties [Effective April 1, 1992].

(1) With the approval of the governor, the executive director of the Department of Administrative Services shall appoint the state archivist to serve as director of the state archives. The state archivist shall be qualified by archival training, education, and experience.

(2) The state archivist is charged with custody of the following:

(a) the enrolled copy of the Utah constitution;

(b) the acts and resolutions passed by the Legislature;

(c) all records kept or deposited with the state archivist as provided by law;

(d) the journals of the Legislature and all bills, resolutions, memorials, petitions, and claims introduced in the Senate or the House of Representatives; and

(e) oaths of office of all state officials.

(3) (a) The state archivist is the official custodian of all noncurrent records of permanent or historic value that are not required by law to remain in the custody of the originating governmental entity.

(b) Upon the termination of any governmental entity, its records shall be transferred to the state archives.

63-2-903. Duties of governmental entities [Effective April 1, 1992].

The chief administrative officer of each governmental entity shall:

(1) establish and maintain an active, continuing program for the economical and efficient management of the governmental entity's records as provided by this chapter;

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

(3) 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;

(4) submit to the state archivist proposed schedules of records for final approval by the records committee;

(5) cooperate with the state archivist in conducting surveys made by the state archivist; and

(6) comply with rules issued by the Department of Administrative Services as provided by Section 63-2-904.

63-2-904. Rulemaking authority [Effective April 1, 1992].

The executive director of the Department of Administrative Services, with the recommendation of the state archivist, may make rules as provided by Chapter 46a, Title 63, Utah Administrative Rulemaking Act, to implement provisions of this chapter dealing with procedures for the collection, storage, classification, access, and management of public, private, confidential, and protected records.

63-2-905. Records declared property of the state — Disposition [Effective April 1, 1992].

All records created or maintained by a governmental entity of the state are the property of the state and shall not be mutilated, destroyed, transferred, removed, or otherwise damaged or disposed of, in whole or part, except as provided in this chapter.

63-2-906. Certified and microphotographed copies [Effective April 1, 1992].

(1) Upon demand, the state archives shall furnish certified copies of a record in its exclusive custody that is classified public or that is otherwise determined to be public under this chapter by the originating agency, the records committee, or a court of law. When certified by the state archivist under the seal of the state archives, the copy has the same legal force and effect as if certified by the originating governmental entity.

(2) The state archives may microphotograph records when it determines that microphotography is an efficient and economical way to care, maintain, and preserve the record. A transcript, exemplification, or certified copy of a microphotograph has the same legal force and effect as the original. Upon review and approval of the microphotographed film by the state archivist, the source documents may be destroyed.

(3) The state archives may allow another governmental entity to microphotograph records in accordance with standards set by the state archives.

63-2-907. Right to replevin [Effective April 1, 1992].

To secure the safety and preservation of records, the state archivist or his representative may examine all records. On behalf of the state archivist, the attorney general may replevin any records that are not adequately safeguarded.

63-2-908. Report on information practices [Effective April 1, 1992].

(1) On or before June 1 of each year, beginning June 1, 1993, the state archives shall prepare a report for the Legislature and governor containing the title and a summary description of each record series containing data on individuals. The state archives shall provide for public inspection of the title and a summary description of each record series that does not contain data on individuals.

(2) The report also shall contain a summary description of each ordinance enacted in compliance with Section 63-2-701 and any report of noncompliance with this chapter.

63-2-909. Records made public after 75 years [Effective April 1, 1992].

(1) The classification of a record is not permanent and a record that was not classified public under this act shall become a public record when the justification for the original or any subsequent restrictive classification no longer exists. A record shall be presumed to be public 75 years after its creation, except that a record that contains information about an individual 21 years old or younger at the time of the records' creation shall be presumed to be public 100 years after its creation.

(2) Subsection (1) does not apply to records of unclaimed property held by the state treasurer in accordance with Chapter 44, Title 78, Uniform Unclaimed Property Act.