UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

December 9, 1998

ALL AGREEMENT STATES
MINNESOTA, OHIO, OKLAHOMA, PENNSYLVANIA, AND WISCONSIN

TRANSMITTAL OF STATE AGREEMENTS PROGRAM INFORMATION (SP-98-097)

Your attention is invited to the following:

INCIDENT AND EVENT INFORMATION.....

PROGRAM MANAGEMENT INFORMATION...XX THE PROTECTION OF THE IDENTITY OF ALLEGERS FROM PUBLIC DISCLOSURE

TRAINING COURSE INFORMATION.....

TECHNICAL INFORMATION.....

OTHER INFORMATION.....

Supplementary information: As part of our process of referring allegations to Agreement States, we provide as much information as we can. When authorized by the alleger or when disclosure is necessary because of an overriding safety issue, we will provide the name and other personal information concerning the alleger. Our expectation is that there would be limited distribution of such documents and that the State would have the legal authority and would make all reasonable efforts to protect the identity of the alleger. However, some questions have been raised regarding the legal authority of some Agreement States to protect this information. For example, recently, an Agreement State requested that when we refer allegations that we clearly mark the package and documents with the statement, "Please keep confidential." The State indicated that without these markings that their regulations would require that all documents be released to the public, which may include the alleger's identity. However, under the Nuclear Regulatory Commission (NRC) regulations and practices, the term "confidential" has a very specific meaning and most allegation-related documents are not classified as confidential. Therefore, we are seeking information from all the Agreement States on their ability to protect allegation information, especially the identity of allegers from public disclosure.

The NRC policy with regard to the disclosure of an alleger's identity, as noted in Management Directive 8.8, Management of Allegations, is that the NRC intends to take all reasonable efforts not to disclose the identity of an alleger outside the agency, including the purging of names and other potential identifiers of allegers in information provided under the Freedom of Information Act, to the extent consistent with the act. There are limited instances in which the NRC discloses an alleger's identity. They are:

- The alleger has clearly indicated no objection to being identified.
- Disclosure is necessary because of an overriding safety issue.

- Disclosure is necessary pursuant to an order of a court or NRC adjudicatory authority or to inform Congress or State or Federal agencies in furtherance of NRC responsibilities under law or public trust.

- Disclosure is necessary in furtherance of a wrongdoing investigation, including an investigation of harassment and intimidation allegation.

- Disclosure is necessary to support a hearing on an enforcement matter.

- The alleger has taken actions that are inconsistent with and override the purpose of protecting the alleger's identity.

Is your State's policy with regard to protecting alleger's identity similar to that of the NRC described above? Please provide information regarding your State's laws, procedures or policies regarding the disclosure of an alleger's identity. For example, some States require specific labeling of allegation material received from the NRC in order to withhold documents in accordance with individual State public disclosure laws. We request information about whether your State laws contain requirements for labeling, or whether specific labeling would assist in meeting the intent of the NRC label, "Sensitive Allegation Material," and the protection of an alleger's identity. In addition, a copy of the pertinent State law, procedure and/or policy regarding the public disclosure of this information is requested.

We would appreciate a response to this letter by January 22, 1999. If you have questions regarding this correspondence, please contact me, or the individual named below.

POINT OF CONTACT:	Cardelia H. Maupin
TELEPHONE:	(301) 415-2312
FAX:	(301) 415-3502
INTERNET:	CHM@NRC.GOV

This information request has been approved by OMB 3150-0029, expiration April 30, 2001. The estimated burden per response to comply with this voluntary collection request is 3 hours. Forward any comments regarding the burden estimate to the Information and Records Branch (T-6 F33), U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, and to the Paperwork Reduction Project (3150-0052), Office of Management and Budget, Washington, DC 20503. If a document does not display a currently valid OMB control number, the NRC may not conduct or sponsor, and a person is not required to respond to, a collection of information.

Richard L. Bangart

Richard L. Bangart, Director
Office of State Programs

#15

From: <Kirksey_Whatley/HCS/Alabama_Department_of_Public_Health@adph.state.al.us>
To: OWFN_DO.owf1_po(PML)
Date: Tue, Feb 16, 1999 9:17 AM
Subject: Opinion - Confidentiality of Public Records

Attached is a reply from the Agency Office of Legal Services regarding your recent inquiry. If this does not properly address your concern, please contact me.

---------- Forwarded by Kirksey Whatley/HCS/Alabama Department of Public Health on 02/16/99 08:11 AM ----------

JOHN
WIBLE
02/12/99 07:55 PM
(Embedded image moved to file: PIC25576.PCX)

To: Kirksey Whatley/HCS/Alabama Department of Public Health@ADPH
cc: Ashley Hamlett/LEGAL/Alabama Department of Public Health@ADPH, Jim Mysinger/LEGAL/Alabama Department of Public Health@ADPH, Dennis Blair/LEGAL/Alabama Department of Public Health@ADPH, Angie Royal/LEGAL/Alabama Department of Public Health@ADPH, Gloria Kleinsasser/LEGAL/Alabama Department of Public Health@ADPH
Subject: Opinion - Confidentiality of Public Records

In your memorandum of February 12, 1999, you requested the opinion of the General Counsel upon the question which I paraphrase as follows:

> Whether the State of Alabama has sufficient authority to maintain as confidential, names and information provided by allegers of violations to radiation laws and rules

Your question is answered in the affirmative. Alabama has sufficient authority to maintain as confidential the identity of allegers of violations of radiation laws and rules and the information provided by such persons.

The general rule is stated by taking together the following: Code of Ala.1975, Sections 36-12-2; 36-12-40; and 41-13-1. They provide as follows:

> 36-12-2. Public officers and servants to accurately maintain and preserve
> from loss, destruction, etc., complete books, papers, files, etc.
>
> All public officers and servants shall correctly make and accurately keep in
> and for their respective offices or places of business all such books or sets
> of books, documents, files, papers, letters and copies of letters as at all

times shall afford full and detailed information in reference to the activities
or business required to be done or carried on by such officer or servant and
from which the actual status and condition of such activities and business can
be ascertained without extraneous information, and all of the books, documents,
files, papers, letters, and copies of letters so made and kept shall be
carefully protected and safely preserved and guarded from mutilation, loss or
destruction.

* * *

36-12-40. Rights of citizens to inspect and copy public writings; exception for public library registration and circulation records.

Every citizen has a right to inspect and take a copy of any public writing of
this state, except as otherwise expressly provided by statute. Provided
however, registration and circulation records and information concerning the
use of the public, public school or college and university libraries of this
state shall be exempted from this section. Provided further, any parent of a
minor child shall have the right to inspect the registration and circulation
records of any school or public library that pertain to his or her child.

* * *

41-13-1. Public records defined.

As used in this article, the term "public records" shall include all written,
typed or printed books, papers, letters, documents and maps made or received in
pursuance of law by the public officers of the state, counties, municipalities
and other subdivisions of government in the transactions of public business and
shall also include any record authorized to be made by any law of this state
belonging or pertaining to any court of record or any other public record
authorized by law or any paper, pleading, exhibit or other writing filed with,
in or by any such court, office or officer.

Thus, the general rule is that all public records are open to the public and may be viewed and copied as desired by the public. An important exception is set out in the case of Stone v. Consolidated Publishing Company, 404 So.2d 678 (Ala.1981). The Court held:

Recorded information received by a public officer in confidence, sensitive personnel records, pending criminal investigations, and records the disclosure of which would be detrimental to the best interests of the public are some of the areas which may not be subject to public disclosure; courts must balance interests of citizens in knowing what their public officers are doing and the discharge of public duties against the interest of the general public in having the business of government carried out efficiently and without undue interference. Code 1975, S 36-12-40.

The Supreme Court has gone further to interpret Stone in Blakenship v. City of Hoover, 590 So.2d 245(Ala.1991) at page 248 in which the Court said:

"[This Court has] paid particular attention to the language in Stone [404 So.2d 678 (Ala.1981)] that seeks to prescribe exceptions to the public disclosure requirement of public writings and records, together with the language in Section 36-12-40. It is clear from the wording of Section 36-12-40 that the legislature intended that the statute be liberally construed. In addition, we note, statutes intended for the public benefit are to be construed in favor of the public. Gant v. Warr, 286 Ala. 387, 240 So.2d 353 (1970).

"To put the Stone 'exception' language into perspective, along with the language of Section 36-12-40, we offer the following guidance. There is a presumption in favor of public disclosure of public writings and records expressed in the language of Section 36-12-40. Limitations to the broad language of the statute are, nevertheless, necessary, and, as stated in Stone, absent legislative action, the judiciary has to apply the 'rule of reason' [in making case by case determinations about whether disclosure is required]. However, it must be noted that this 'rule of reason' shall not be applied so as to hamper the liberal construction of Section 36-12-40. The exceptions set forth in Stone must be strictly construed and must be applied only in those cases where it is readily apparent that disclosure will result in undue harm or embarrassment to an individual, or where the public interest will clearly be adversely affected, when weighed against the public policy considerations suggesting disclosure. These questions, of course, are factual in nature and are for the trial judge to resolve. Moreover, the Stone exceptions should not come into play merely because of some perceived necessity on the part of a public official or established office policy. Furthermore, because there is a presumption of required disclosure, the party refusing disclosure shall have the burden of proving that the writings or records sought are within an exception and warrant nondisclosure of them.

"Doubtless, exceptions to the broad language of Section 36-12-40 are needed and should be applied under appropriate circumstances. But, we emphasize that these exceptions must be narrowly construed and their application limited to the circumstances stated herein, for it is the general rule, and has been the policy of this state for a number of years, to advocate open government. The Stone exceptions were not intended, nor shall they be used, as an avenue for public officials to pick and choose what they believe the public should be made aware of." Chambers v. Birmingham News Co., 552 So.2d 854, 856-57 (Ala.1989) (emphasis added); see, also, Advertiser Co. v. Auburn University, 579

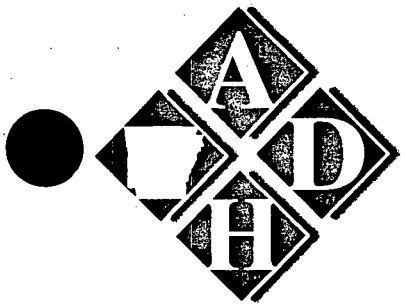
So.2d 645 (Ala.Civ.App.1991); Walsh v. Barnes, 541 So.2d 33 (Ala.Civ.App.1989).

Where the State of Alabama has a clear mandate from the government of the United States or an agency thereof to maintain certain records confidential and where the names of the informants and the information they give was received in confidence with the clear understanding of the informant that the information and names will remain confidential, the State can protect such information as secret.

I trust this answers your question, if not, please advise.

DCD(SP08)

(1) PHL #17
(2) SCD
CHM



Arkansas Department of Health

4815 West Markham Street • Little Rock, Arkansas 72205-3867 • Telephone (501) 661-2000
Sandra B. Nichols, M.D., Director • Mike Huckabee, Governor

99 FEB 26 AM 11:25

Re: SP-98-097

-VIA U.S. MAIL & FAX-

February 17, 1999

Mr. Paul Lohaus, Director
Office of State Programs
U.S. Nuclear Regulatory Commission
Washington, D.C. 20665-0001

Dear Mr. Lohaus:

In an electronic mail letter dated December 9, 1998, Mr. Richard L. Bangart requested confirmation from the Department that the State of Arkansas' policy for 'The Protection of the Identity of Allegers From Public Disclosure' is the same as the U.S. Nuclear Regulatory Commission's policy. The Arkansas Rules and Regulations for Control of Sources of Ionizing Radiation has provisions for the withholding of the names of workers who make allegations related to violations in the work place. (Reference RH-2807.a.) Yet, this particular regulation appears to be in conflict with the Arkansas Freedom of Information Act (FOIA), A.C.A. 25-19-101, et seq. (Repl. 1996). Therefore, the State of Arkansas may not have the ability to protect the identity of allegers from public disclosure once their name(s) become part of any public document.

Paragraph RH-2807.a. states that:

a. Any worker or representative of workers who believes that a violation of the Act, these Regulations or license conditions exists or has occurred in work under a license or registration with regard to radiological working conditions in which the worker is engaged, may request an inspection by giving notice of the alleged violation to the Department. Any such notice shall be in writing, shall set forth the specific grounds for the notice and shall be signed by the worker or representative of the workers. A copy shall be provided to the licensee or registrant by the Department no later than at the time of the inspection except that, upon the request of the worker giving such notice, his/her name and the name of individuals referred to therein shall not appear in such copy or on any record published, released or made available by the Department, except for good cause shown.

-Continued-

SP-A-4

SP-AG-3

Letter to Paul Lohaus
RE: The Protection of the
Identity of Allegers
From Public Disclosure
February 17, 1998

A copy of the "Arkansas Freedom of Information Handbook" is attached for your information and reference. This "Handbook" details the Arkansas Freedom of Information Act (FOIA). Reference may be made to pages 6 and 7 of this "Handbook" where the eleven exemptions to the FOIA contained in A.C.A. 25-19-105(b) are given. Review indicates that none appear to be relevant to the protection of allegers unless the Department has brought a law enforcement agency into investigate suspected criminal activity (Exemption #6) or the Department's documents are protected from disclosure by order or rule of court (Exemption #8).

If you have ANY questions related to this letter, please call me. My telephone number is (501) 661-2301.

Sincerely,

David D. Snellings, Jr., CHP, Director
Division of Radiation Control &
Emergency Management Programs
Arkansas Department of Health

Attachment

cc: Bolling (NRC)

How to challenge a meeting about to be closed.

Below is a suggested statement for reporters and citizens to use when a board, commission, or other government entity (including committees thereof) votes to go into executive session. The reporter or citizen should rise and state:

"The Arkansas Freedom of Information Act suggests that you state the general natural or purpose of the executive session. I request that you do so at this time."

The reason given must be for the specific purpose of considering "employment, appointment, promotion, demotion, disciplining or resignation of any public officer or employee." This may **not** include **general discussion** about making **policies** related to these. This must be done in open session.

Anything else violates the Freedom of Information Act and the reporter or citizen should call somebody's attention to this point.

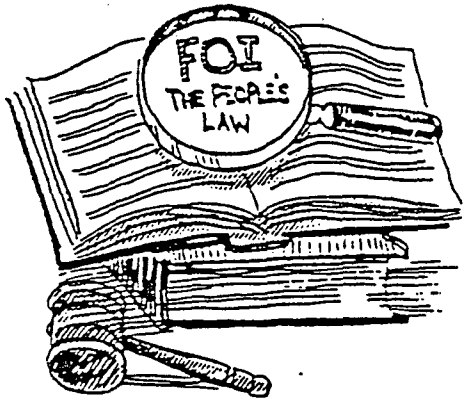
If the body persists, the reporter should notify his or her supervisor immediately, and the citizen should contact the prosecuting attorney.

1st Amendment, U.S. Constitution

"Congress shall make no law respecting an establishment of religion or abridging the freedom of speech or of the press: or the right of the people peaceably to assemble, and petition the Government for a redress of grievances."

ARKANSAS FREEDOM OF INFORMATION HANDBOOK

7th Edition
September 1995



Co-Sponsors:
Arkansas Governor's Office
Arkansas Attorney General's Office
Arkansas Press Association
The Society of Professional Journalists
Arkansas Broadcasters Association
Arkansas Press Women
Associated Press Managing Editors
Associated Press Broadcasters Association
Arkansas High School Press Association
Arkansas College Press Association

The motto of Arkansas emblazoned on the Great Seal is "Regnat Populous." Freely translated, it means "the people rule." But how can the people rule if they don't have access to all the information that makes informed choices possible?

In the late 1960s, Arkansans were drawn into a movement that was sweeping the nation to give citizens a way to look at the actions taken by government on their behalf.

On February 14, 1967 Arkansas adopted what is generally conceded to be one of the strongest and most comprehensive Freedom of Information Acts in the nation. It gives us an opportunity to look at a wide range of information at every level of government and the right – not the privilege, but the right – to attend the meetings of policy making, tax-supported bodies.

Although the FOIA is thought of largely as a law for the media, nothing could be further from the truth. The act itself states that it is vital for a democratic society to be well informed about the actions of its government. The FOIA is thus the people's law.

I hope you will use this handbook to help you exercise your right to be well informed. Let the people rule.

Sincerely,

Winston Bryant
Attorney General

This is the 7th Edition of the Arkansas FOI Handbook. It is better than ever, with a more detailed index. Please read through the table of contents and then flip through the entire book to know what is in it.

The co-sponsors of the handbook are strongly interested in protecting the FOI Act and hope you will call any of them if you have questions, need help or have suggestions.

Thanks to the Attorney General's Office for doing most of the research on this edition; and to APA's Milton Scott and Dennis Schick for getting it produced.

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NOTE: This handbook includes numerous references, summaries and highlights of Attorney General Office opinions and court decisions, limited by space restrictions. It is recommended that the full text of these be consulted in order to glean their full meaning.

SOURCES OF FOIA ASSISTANCE

● ATTORNEY GENERAL'S OFFICE
Perrin Jones
200 Tower Building
Little Rock, AR 72201
(501) 682-2007
Fax (501) 682-8084

FOI HOTLINE
ATTORNEY GENERAL'S OFFICE
1-800-482-8982

● ARKANSAS PRESS ASSOCIATION
1701 Broadway
Little Rock, AR 72206
(501) 374-1500
1-800-569-8762
Fax (501) 374-7509
Dennis Schick, Executive Director
Home: 753-8767
Milton Scott, APA Lobbyist
Home: 225-4192; Beeper, 671-8516

● Bill Rutherford
UALR Journalism Department
2801 S. University Ave.
Little Rock, AR 72204
(W) 569-3250; (H) 843-7819

● Brenda Blagg
The Morning News of Northwest Arkansas
P.O. Box 1933
Fayetteville, AR 72702
(W) 444-6397; (H) 443-5702
Fax (501) 444-7289

● Carol Griffee
Editorial Services, Inc.
2601 N. Taylor
Little Rock, AR 72207
(501) 666-6425

THE ARKANSAS FREEDOM OF INFORMATION ACT

Act 93 of 1967
As amended by Act 1201 of 1976; Act 652 of 1977; Act 608 of 1981; Acts 468 and 843 of 1985; Acts 1001 and 49 of 1987;
Act 8 of the 3rd Extr. Session of 1989.
The same being
Ark. Code Ann. § 25-19-101 et seq.

25-19-101. Title.

This chapter shall be known and cited as the "Freedom of
Information Act of 1967."

15-19-102. Legislative intent.

It is vital in a democratic society that public business be performed in an open and public manner so that the electors shall be advised of the performance of public officials and of the decisions that are reached in public activity and in making public policy. Toward this end, this chapter is adopted, making it possible for them, or their representatives to learn and to report fully the activities of their public officials.

25-19-103. Definitions.

As used in this chapter, unless the context otherwise requires:

(1) "Public records" means writings, recorded sounds, films, tapes, or data compilations in any form, required by law to be kept or otherwise kept, and which constitute a record of the performance or lack of performance of official functions which are or should be carried out by a public official or employee, a governmental agency, or any other agency wholly or partially supported by public funds or expending public funds. All records maintained in public offices or by public employees within the scope of their employment shall be presumed to be public records.

(2) "Public meetings" means the meetings of any bureau, commission, or agency of the state, or any political subdivision of the state, including municipalities and counties, boards of education, and all other boards, bureaus, commissions, or organizations in the State of Arkansas, except grand juries, supported wholly or in part by public funds or expending public funds.

25-19-104. Penalty.

Any person who negligently violates any of the provisions of this chapter shall be guilty of a misdemeanor and shall be punished by a fine of not more than two hundred dollars ($200) or thirty (30) days in jail, or both, or a sentence of appropriate public service or education, or both.

25-19-105. Examination and copying of public records.

(a) Except as otherwise specifically provided by this section or by laws specifically enacted to provide otherwise, all public records shall be open to inspection and copying by any citizen of the State of Arkansas during the regular business hours of the custodian of the records.

EXEMPTIONS:

(b) It is the specific intent of this section that the following shall not be deemed to be made open to the public under the provisions of this chapter:

(1) State income tax returns;

(2) Medical records; scholastic records, and adoption records;

(3) The site files and records maintained by the Arkansas Historic Preservation Program and the Arkansas Archeological Survey;

(4) Grand jury minutes;

(5) Unpublished drafts of judicial or quasi-judicial opinions and decisions;

(6) Undisclosed investigations by law enforcement agencies of suspected criminal activity;

(7) Unpublished memoranda, working papers, and correspondence of the Governor, members of the General Assembly, Supreme Court Justices, and the Attorney General;

(8) Documents which are protected from disclosure by order or rule of court;

(9) (a)Files which, if disclosed, would give advantage to competitors or bidders; and (b) records maintained by the Arkansas Industrial Development Commission related to any business entity's planning, site location, expansion, operations, or product development/marketing, unless approval for release of such records is granted by the business entity; provided , however, this exemption shall not be applicable to any records of expenditures or grants made or administered by the Arkansas Industrial Development Commission and otherwise disclosable under the provisions of this chapter;

(10) Personnel records to the extent that disclosure would constitute a clearly unwarranted invasion of personal privacy.

(11) The identity of law enforcement officers currently working undercover with their agency and identified in the Arkansas Minimum Standards Office as an undercover officer. Records of the number of undercover officers an agency lists are not exempt from this chapter.

(c)(1) However, all employee evaluation or job performance records, including preliminary notes and other materials, shall be open to public inspection only upon final administrative resolution of any suspension or termination proceeding at which the records form a basis for the decision to suspend or terminate the employee and if there is a compelling public interest in their disclosure.

(2) Any personnel or evaluation records exempt from disclosure under this chapter shall nonetheless be made available to the person about whom the records are maintained or to that person's designated representative.

(3)(A) Upon receiving a request for the examination or copying of personnel or evaluation records, the custodian of the records shall, within twenty-four (24) hours of the receipt of the request, determine whether the records are exempt from disclosure and make efforts to the fullest extent possible to notify the person making the request and the subject of the records of that decision.

(B) If the subject of the records cannot be contacted in person or by telephone within the twenty-four hour period, the custodian shall send written notice via overnight mail to the subject of the records at his last known address. Either the custodian, requester, or the subject of the records may immediately seek an opinion from the Attorney General who, within three (3) working days of receipt of the request, shall issue an opinion stating whether the decision is consistent with this chapter. In the event of a review by the Attorney General, the custodian shall not disclose the records until the Attorney General has issued his opinion.

(C) However, nothing in this subsection shall be construed to prevent the requester or the subject of the records from seeking judicial review of the custodian's decision or the decision of the Attorney General.

(d) Reasonable access to public records and reasonable comforts and facilities for the full exercise of the right to inspect and copy those records shall not be denied to any citizen.

(e) If a public record is in active use or storage and, therefore, not available at the time a citizen asks

to examine it, the custodian shall certify this fact in writing to the applicant and set a date and hour within three (3) working days, at which time the record will be available for the exercise of the right given by this chapter.

25-19-106. Open public meetings.

(a) Except as otherwise specifically provided by law, all meetings, formal or informal, special or regular, of the governing bodies of all municipalities, counties, townships, and school districts and all boards, bureaus, commissions, or organizations of the State of Arkansas, except grand juries, supported wholly or in part by public funds or expending public funds, shall be public meetings.

(b)(1) The time and place of each regular meeting shall be furnished to anyone who requests the information.

(2) In the event of emergency or special meetings, the person calling the meeting shall notify the representatives of the newspapers, radio stations, and television stations, if any, located in the county in which the meeting is to be held, and any news media located elsewhere which cover regular meetings of the governing body, and which have requested to be so notified of emergency or special meetings, of the time, place, and date of the meeting. Notification shall be made at least two (2) hours before the meeting takes place in order that the public shall have representatives at the meeting.

(c)(1) Executive sessions will be permitted only for the purpose of considering employment, appointment, promotion, demotion, disciplining, or resignation of any public officer or employee.

(2)(A) Only the person holding the top administrative position in the public agency, department, or office involved, the immediate supervisor of the employee involved; and the employee may be present at the executive session when so requested by the governing body, board, commission, or other public body holding the executive session.

(B) Any person being interviewed for the top administrative position in the public agency, department, or office involved may be present at the executive session when so requested by the governing board, commission, or other public body holding the executive session.

(3) Executive sessions must never be called for the purpose of defeating the reason or the spirit of this chapter.

(4) No resolution, ordinance, rule, contract, regulation, or motion considered or arrived at in executive session will be legal unless, following the executive session, the public body reconvenes in public session and presents and votes on the resolution, ordinance, rule, contract, regulation, or motion.

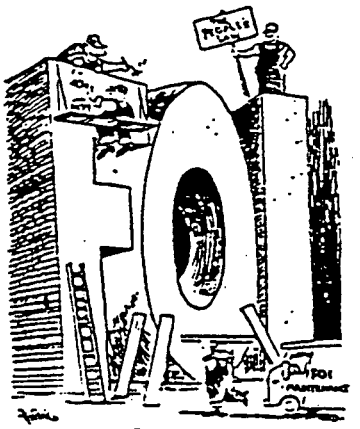
25-19-107. Appeal from denial of rights - Attorney fees.

(a) Any citizen denied the rights granted to him by this chapter may appeal immediately from the denial to the Pulaski County Circuit Court or to the circuit court of the residence of the aggrieved party, if an agency of the state is involved, or to any of the circuit courts of the appropriate judicial districts when an agency of a county, municipality, township, or school district, or a private organization supported by or expending public funds, is involved.

(b) Upon written application of the person denied the rights provided for in this chapter, or any interested party, it shall be mandatory upon the circuit court having jurisdiction to fix and assess a day the petition is to be heard within seven (7) days of the date of the application of the petitioner, and to hear and determine the case.

(c) Those who refuse to comply with the orders of the court shall be found guilty of contempt of court.

(d) In any action to enforce the rights granted by this chapter, or in any appeal therefrom, the court shall assess against the defendant reasonable attorney fees and other litigation expenses reasonably incurred by a plaintiff who has substantially prevailed unless the court finds that the position of the defendant was substantially justified or that other circumstances make an award of these expenses unjust. However, no expenses shall be assessed against the State of Arkansas or any of its agencies or departments. If the defendant has substantially prevailed in the action, the court may assess expenses against the plaintiff only upon a finding that the action was initiated primarily for frivolous or dilatory purposes.



MAJOR FOI COURT DECISIONS

PUBLIC RECORDS

(1) The records contemplated by the General Assembly in the FOIA are "those which by law are required to be kept and maintained" but the act does not itself provide that any particular records shall be kept. McMahan v. Board of Trustees of the University of Arkansas, 255 Ark. 108, 499 S.W.2d 56 (1973).

(2) The FOIA allows colleges and universities that are members of the Arkansas Intercollegiate Athletic Conference (AIC) to keep from the public only educational records or financial records showing federal and state grants and loans received by students. Records showing the amount of money that a student athlete received from the school the student attends are public records and open to the public. Arkansas Gazette Co. v. Southern State College, 273 Ark. 248, 620 S.W.2d 258 (1981).

(3) Information stored on computer tapes is a public record, and the public is entitled to have it in the form in which it is kept. Blaylock v. Staley, 293 Ark. 26, 732 S.W.2d 152 (1987).

(4) The FOIA should be broadly construed in favor of disclosure; under the rules of evidence now in effect, there is no exception for the attorney-client privilege concerning state agency records in the possession of its attorney, and such records are subject to public disclosure. Scott v. Smith, 292 Ark. 174, 728 S.W.2d 515 (1987).

(5) Intent of FOIA includes a corporation doing business in this state as being a party entitled to information. Hence, a representative of a corporation is entitled to receive any information that any other person would be entitled to receive pursuant to the FOIA. Arkansas Hwy. Transp. Deptp. v. Hope Brick Works, Inc., 294 Ark. 490, 744 S.W.2d 711 (1988).

(6) Records that are not a part of an "undisclosed investigation" are public and available for examination. City of Fayetteville v. Rose, 294 Ark. 468, 743 S.W.2d 817 (1988). If a law enforcement investigation remains open and ongoing it is one meant to be protected as "undisclosed" under the act. The investigation in this case could be said to be closed and thus not ongoing to the extent that it was an investigation of an individual who had been charged; however, it was the sort of investigation intended by the General Assembly to deserve the label "undisclosed," because of its continuing and sensitive nature. Martin v. Musteen, 303 Ark. 656, 799 S.W.2d 540 (1990).

(7) "Public records" are those required by law to be kept or otherwise kept and that constitute a record of the performance or lack of performance of official functions; police and pathologist photos were public records and are subject to the FOIA. Where items involve personal matters, the Court is to balance the individual's privacy interest in nondisclosure against the governmental interest in disclosure under the FOIA. McCambridge v. City of Little Rock, 298 Ark. 219, 766 S.W.2d 909 (1989)

(8) The use of unsigned written slips as ballots which were not retained as part of the records of the Arkansas Activities Association, a state organization, violated the FOIA in part because the Association's normal policy was to retain ballots. The recorded votes of the individual members of the organization constitute a record of the performance or lack of performance of official functions carried out by the organization under Ark. Code Ann § 25-19-103 (1), and as such, are open to inspection and copying. Depoyster v. Cole, 298 Ark. 203, 766 S.W.2d 606 (1989).

(9) Records in the possession of a city's retained attorney, who was hired in lieu of the city attorney, are subject to disclosure under the FOIA ; attorneys retained for the city in lieu of the regular city attorney are the functional equivalent of the regular city attorney, and the city cannot avoid the FOIA requirements by substituting a private attorney for the city attorney; legal memoranda prepared by outside counsel for the city for litigation purposes were public records within the meaning of the FOIA; there is no attorney-client privilege or attorney work product exemption under the FOIA. City of Fayetteville v. Edmark, 304 Ark. 179, 801 S.W.2d 275 (1990)

(10) The jail log, arrest records and shift sheets of a police department are not records containing disclosed law enforcement investigations and are therefore subject to disclosure under the FOIA. Additionally, because the police department operates twenty-four hours a day, those are its "regular business hours." The department's records must be available for reasonable inspection by the public at all times during those hours of operation. Hengel and Donrey, Inc., d/b/a/ Pine Bluff Commercial v. City of Pine Bluff, No. 91-108 (Ark. S.Ct. Dec. 23, 1991)

(11) While Troutt Brothers v. Emison, 311 Ark. 27 (1992) held that juvenile detention logs and booking sheets are not exempt from public disclosure under Ark. Code Ann § 9-27-348, the legislature amended this section in Act 408 of 1993 to clarify that records of the arrest or detention of a juvenile and proceedings under the juvenile code shall be confidential and shall not be subject to disclosure under the FOIA unless by a written order of the juvenile court, or unless the arrest results in the juvenile being formally charged in circuit court for a felony.

OPEN MEETINGS

(12) Statutes enacted for the public benefit are to be construed most favorably to the public. The FOIA was passed wholly in the public interest and is therefore to be liberally interpreted to the end that its purposes may be accomplished. The Act states that "except as otherwise specifically provided by law, all meetings...of the governing bodies of all municipalities...shall be public meetings." There exists no provision of law which "specifically" exempts meetings between the city council and the city attorney from the coverage of the FOIA. Laman v. McCord, 245 Ark. 401, 432 S.W.2d 753 (1968).

(13) When the State Police Commission conducts a hearing on the application for reinstatement of a discharged state policeman, the FOIA requires that the taking of testimony and hearing of arguments be held in public. At the conclusion of the evidentiary hearing the Commission may go into executive session to discuss the decision it should reach. Arkansas State Police Commission v. Davidson, 253 Ark. 1090, 490 S.W.2d 788 (1973).

(14) When a committee of a board or commission that is subject to the FOIA meets for the transaction of business, the meeting is a public meeting and subject to the provisions of the Act. Members of the news media are interested parties and have standing to institute a declaratory judgment action to enforce the provisions of the act. Arkansas Gazette Company v. Pickens, 258 Ark. 69, 522 S.W.2d 350 (1975).

(15) A meeting of any number of the members of a city council, even if less than a quorum, is subject to the FOIA if members of the council discuss or take action on any matter on which foreseeable city council action will be taken. Mayor and City Council of El Dorado v. El Dorado Broadcasting Co., 260 Ark. 821, 544 S.W.2d 206 (1976).

(16) The meetings of the Arkansas State Committee of the North Central Association of Colleges and Schools, a private nonprofit organization, are subject to the FOIA because the Association's state committee is composed of public servants, has its official status and operation in a publicly-owned facility, and is supported wholly or in part with public funds. North Central Association of Colleges and Schools v. Trout Brothers, Inc., d.b.a. The Jonesboro Sun, 261 Ark. 378, 548 S.W.2d 825 (1977).

(17) The FOIA establishes no right to minutes of a grand jury proceeding. There is a policy of secrecy surrounding grand jury proceedings, and the limited exception under which disclosure can be made requires the moving party to establish a "particularized need" which does not include a general "fishing expedition." Thomas v. United States, 597 F.2d 656 (8th Cir. 1979).

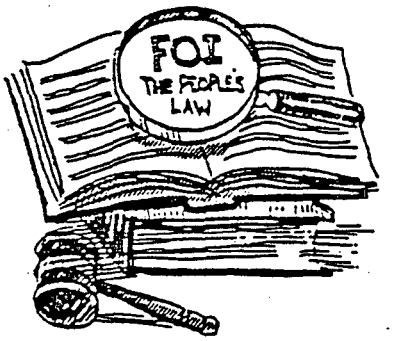
(18) The FOIA allows the board of a public supported agency (i.e., county hospital board), or committee of a public funded agency to discuss or consider a personnel issue in an executive or private session. However, testimony and voting on the issue must be done in a public session. Baxter County Newspapers, Inc. v. Medical Staff of Baxter General Hospital, 273 Ark. 511, 622 S.W.2d 495 (1981).

(19) A nonprofit regional health planning corporation that received its primary funding from the federal government was subject to this chapter and violated its open public meeting requirements when it reconsidered the granting of a certificate of need to construct a hospital after conducting a telephone poll of members of the executive committee. Rehab. Hosp. Services Corp. v. Delta-Hills Health Systems Agency and Elener, 285 Ark. 397, 687 S.W.2d 840 (1985).

EXECUTIVE SESSIONS

(20) When a public body is meeting in executive session to consider disciplining an employee, all discussion must be related to the legal purpose for which the session was called. Such discussion may properly delve into all circumstances surrounding the incident that gave rise to the question of discipline in the first place without contravening the FOIA. Once a decision has been made in executive session that discipline or other action is needed, all further acts of the public body should be public. Commercial Printing Company et al. v. Rush, 261 Ark. 468, 549 S.W.2d 790 (1977).

(21) The purpose of the FOIA is to protect the public's right to information, not to specify what action shall be taken in an executive session on a personnel matter. The FOIA does require that a resolution or motion actually considered or decided in executive session must be publicly ratified if it is to be legal. Yandall v. Havana Board of Education, 266 Ark. 434, 585 S.W.ld 927 (1979).



QUESTIONS AND ANSWERS

IN GENERAL

Q. Who is Subject to the FOIA?

A. Any governmental or private agency supported in whole or in part by public funds or expending public funds. The mere receipt of public funds will probably not subject a private entity to the FOIA. Rather, the question seems to be whether the private group carries on public business or is otherwise intertwined with the activities of a government agency.

Q. Who may obtain records?

A. "Any citizen of the State of Arkansas" may inspect and copy public records. "Citizen" includes corporations. A requester's purpose or motive in seeking access to particular records is irrelevant. Nothing in the FOIA restricts the subsequent use of information obtained under the act.

Q. What records are subject to the act?

A. Any record "required by law to be kept or otherwise kept, and which constitutes a record of the performance or lack of performance of official functions" is a public record. Further, "all records maintained in public offices or by public employees within the scope of their employment are presumed to be public records." The FOIA covers both records originated by an agency and those received from third parties. The physical form of the record is unimportant, as the FOIA applies to "writings, recorded sounds, films, tapes, or data compilations in any form."

Q. What records are exempt from disclosure?

A. The FOIA lists ten specific exemptions, plus a catch-all exemption that incorporates the confidentiality provisions of other statutes. If a record does not fall squarely within an exemption, it must be disclosed. Exemptions are to be narrowly construed. If a record contains both exempt and nonexempt information, it must be made available for public inspection with the exempt material deleted. The specific exemptions are:

(1) State Income tax records;
(2) Medical, scholastic, and adoption records;
(3) Historical and archeological files;
(4) Grand jury minutes;
(5) Judicial and quasi-judicial drafts;
(6) Law enforcement records (This exemption is available only if an investigation is ongoing, and records must be released when an investigation is completed.);
(7) Working papers (Unpublished memoranda, working papers, and correspondence of the Governor, Legislators, Supreme Court Justices, and the Attorney General);
(8) Documents exempted by court order or rule of court;
(9) Competitive advantage (Files that, if disclosed, would give advantage to competitors or bidders) and records maintained by the Arkansas Industrial Development Commission related to any business entity's planning, site location, expansion, operations, or product development/marketing;
(10) Personnel records (Only to the extent that their disclosure would constitute a clearly unwarranted invasion of personal privacy; examples of exemptions: personal identifiers such as unlisted addresses and telephone numbers, personal histories, religious affiliation, citizenship, information about family life, welfare payments, legitimacy of children, alcohol use, marital status, payroll

deductions, social security numbers, credit union statements and other financial records; insurance coverage and medical records; examples of records not exempt: salary, work history, educational background, training and certification, and terms of a settlement releasing an employee from his contract). All employee evaluation or job performance records are open only upon final administrative resolution of any suspension or termination proceeding at which the records form a basis for the decision to suspend or terminate the employee and if there is a compelling public interest in their disclosure.

(11) Indentity of undercover law enforcement officers

Q. How does one request records?

A. The request should be directed to the "custodian of the records." It need not be in writing, though a written request is advisable, because it provides a record if litigation becomes necessary.

Q. When must the agency respond?

A. Records must be made available immediately unless in active use or storage, in which case they must be made available within three working days of the request. Requests for personnel records and employee evaluation records must be acted upon within 24 hours of the custodian's receipt of the request. During that same period, the custodian must make effort to the fullest extent possible to notify the person making the request and the subject of the records of the custodian's decision.. The custodian, requester, or subject of the records may seek an Attorney General's opinion on whether the custodian's decision is consistent with the act..

Q. How must the agency respond?

A. There is no obligation on the agency's part to provide copies or furnish duplicating equipment: it must simply make available existing records. Reasonable comforts and facilities for the full exercise of the right to inspect and copy the records must be provided as well.

Q. What fees may be charged?

A. An agency may charge a fee that is reasonably related to actual copying cost. The Attorney General has opined that 25 cents a page is not unreasonable. An agency may not charge for time spent by an employee in searching manually for records or for computer time.

Q. Who may attend meetings?

A. Because meetings "shall be public," any person may attend.

Q. What is a meeting?

A. Any meeting, formal or informal, regular or special, of a governing body, including sub-bodies, where more than one member is present and business is discussed. A quorum of the governing body need not be present for the meeting to be subject to the FOIA. If two members meet informally to discuss past or pending business, that meeting is subject to the FOIA.

Q. What meetings are exempt from the FOIA?

A. There is only one exemption: an executive session may be held only "for the purpose of considering employment, appointment, promotion, demotion, disciplining, or resignation of any public officer or employee." In contrast, an executive session to consider

general salary matters, an across-the-board pay increase, or the overall performance of employees as a group is not permissible.

Q. Who may attend an executive session?

A. Only the top administrator in an agency may attend, the employee's immediate supervisor, the employee in question, and any person being interviewed for the top administrative position in the agency involved. Neither the agency's nor the employee's attorney may attend an executive session.

Q. When does the action discussed in an executive session become legal?

A. When the governing body involved ratifies the action with a public vote in open session following the executive session. If no public vote is taken, the decision discussed in closed session has no legal effect.

Q. What type of notice of meetings is required?

A. For regular meetings, notice must be furnished to anyone who requests that information. For special or emergency meetings, notice must be given at least two hours before the special or emergency meeting to news media located in the county where the meeting is to be held and to news organizations elsewhere that cover regular meetings of the governing body and that have requested to be notified..

Q. How does one challenge an agency's action?

A. "Any citizen denied the rights granted to him may appeal immediately from the denial" to an appropriate circuit court, which may issue "orders" to enforce the act.

Q. Are attorney's fees available?

A. The court may award attorney's fees and other litigation expenses to a party who has substantially prevailed in an FOIA case unless the court finds that the position of the defendant was substantially justified or that other circumstances make an award unjust.

Q. Is violation of the FOIA a criminal offense?

A. A person who "negligently violates" the FOIA is guilty of a misdemeanor and can be punished by a fine of up to $200, a jail term of up to 30 days, or both. Alternatively, the court may sentence the defendant to "appropriate public service or education, or both."

Q. What is a recommended way to announce an executive session?

A. After approval of a motion to retire into executive session, the chairman may announce: "This body has voted to retire into executive session to consider the [employment, appointment, promotion, demotion, discipline or resignation] of an employee. We will reconvene in public session following this executive session to present and vote on any action arrived at in private."

PUBLIC AGENCIES

The following questions and answers pertain to all public boards and agencies regulated by state, county and municipal governments, including local public school districts. The opinion numbers represent the year and sequence the opinion was issued; e.g., Opinion No. 74-10 was the tenth opinion issued in 1974.

Q. Does a committee or subcommittee of a governing body have to meet the requirements of the FOIA?

A. Generally, yes. Ark. Gazette Co. v. Pickens, 258 Ark. 69, 522 S.W.2d 350 (1975).

Q. Must a governing body hold a public meeting even if its only purpose is to gather information?

A. Yes. Opinion Nos. 95-098.

Q. Can an attorney for a governing body be present during its executive session?

A. No. Opinion of 1-14-81.

Q. Could members of a public board or agency meet informally in closed session to discuss recommendations by administrative employees and other board or agency business before the public meet?

A. No. Opinion of 1-28-68; Mayor & City Council of El Dorado v. El Dorado Broadcasting Co. 260 Ark. 821, 544 S.W. 2d 206 (1976).

Q. Following an executive session, must a public agency reassemble in public for the purpose of formally voting on any resolution, ordinance, rule, contract, regulation, or motion approved at the closed session?

A. Yes. Ark. Code Ann. § 25-19-106 (c) (4); Arkansas State Police Comm. v. Davidson 253 Ark. 1090, 490 S.W.2d 788 (1973).

Q. Would it violate the FOIA if the governing board of a public entity voted by secret ballot at a public meeting?

A. Yes. Opinion of 11-22-71.

Q. If a matter is discussed at a regular public meeting of a public agency with no action taken, could the members later vote on the matter by telephone?

A. No. Opinion No. 74-10.

Q. Are conference calls of governing bodies subject to the FOIA?

A. Yes. Rehab Hospital Services Corp. v. Delta-Hills Health Systems Agency, Inc. 285 Ark. 397, 687 S.W.2d 840 (1985).

Q. Can a governing board go into executive session to consider giving a salary raise to an employee?

A. Yes. Opinion of 6-10-74.

Q. Can a governing board of a public entity go into executive session to discuss general salary matters or to set policy and criteria for filling positions?

A. No. Opinion Nos. 77-144 and 87-80.

Q. Are there any restrictions on media attendance at public agency meetings?

A. Although the purpose of the FOIA is to ensure the free and open transaction of all government business, it does not give license to members of the media, or others, to disrupt public meetings or otherwise usurp the authority that the people have given to those elected to carry out the duties of government. Members of the media may not attend executive sessions. Opinion of 2-23-81.

Q. Does the FOIA require that information obtainable from public records be collected and compiled in the particular format requested by an individual seeking access to those records?

A. No. Opinion No. 91-208.

Q. Does the FOIA require any affirmative action on the part of a public agency other than providing a place to work and those files that the individual has requested to see?

A. No. Opinion of 6-10-79.

Q. Would a meeting between the head of a public entity and members of his or her staff be subject to the FOIA?

A. No. Opinion No. 77-35.

Q. Does a public employee have a right to examine his own personnel file?

A. Yes. Ark. Code Ann. § 25-19-105 (c) (2).

Q. Are personnel records subject to public disclosure?

A. Yes, except to the extent that disclosure would constitute a "clearly unwarranted invasion of personal privacy." Ark. Code Ann. § 25-19-105 (b)(10). The public's interest in disclosure is weighed against the individual's privacy interest. *Young v. Rice*, 308 Ark. 593, 826 S.W.2d 252 (1992). Revealing "intimate details" of a person's life gives rise to a substantial privacy interest. *Young*.

Q. Are health reports of public employees open under the FOIA?

A. No. Ark. Code Ann. § 25-19-105 (b) (2).

Q. After a public meeting is adjourned, can it be reconvened immediately if a quorum is present for the new meeting?

A. No, because it is a special meeting and the members would not be able to give the required two hours notice. Ark. Code Ann. § 25-19-101, et seq.

Q. Can information about the salaries of employees of organizations subject to the FOIA be legally withheld from the public by an entity that is subject to the FOIA?

A. No. Opinion No. 83-8

Q. Under the FOIA, are Social Security numbers of public employees listed in personnel records confidential?

A. Yes. Opinion No. 94-198.

Q. Is a public meeting of a governing board/entity subject to live broadcast by the media attending and may a private citizen videotape the meeting?

A. Yes, subject to reasonable limitations. Opinion Nos. 77-86 and; 83-213.

Q. Is a committee meeting open to the public if it is called by a non-committee member? If so, who must notify the press?

A. Generally, yes, the meetings are open to the public. Opinion No. 84-91. In the event of emergency or special meetings, the person calling the meeting shall notify the press. Ark. Code Ann. § 25-19-106.

Q. Is the three (3) day period to retrieve records three working days or three calendar days?

A. Three working days if the record is in active use or storage. Ark. Code Ann. § 25-19-105(e) (Cum. Supp. 1991).

Q. If a private company receives a public grant does the public have a right to examine the application (which may or may not include personal and /or financial statements)?

A. Generally yes. Opinion No. 85-100. but see Ark. Code Ann § 25-19-105(b)(9)(A) (competitive advantage).

Q. Who may ask for an executive session?

A. Only a member of the governing body in question. Opinion No. 87-478.

Q. Is a governmental agency under any statutory obligation to compile or create a record to satisfy a FOIA request if no such record currently exists?

A. No. Opinion No. 87-211 and 91-208.

Q. Are statements given as part of an inquiry into an allegation of sexual harassment and reprimands arising from the investigation subject to public inspection?

A. Not unless and until the employee is suspended or terminated, if the statements and reprimands constitute actions of the employees within the scope of their employment and thus are classified as exempted job performance records; the statements can then only be released if they formed a basis for the decision to suspend or terminate and if there is a compelling public interest in their disclosure. Opinion No. 88-162; Ark. Code Ann §25-19-105(c)(2) (Cum. Supp. 1991).

Q. Are files containing the applications of successful as well as unsuccessful job candidates subject to disclosure under FOIA?

A. Generally, yes. Opinions Nos. 87-108 and 90-248

Q. Can a custodian of the records charge a requester a fee for the time spent satisfying a FOIA request?

A. No; however, a reasonable fee for the photocopies is permissible. Opinion No. 88-354.

COUNTY GOVERNMENT

The following questions and answers pertain to matters peculiar to county government.

Q. Does the FOIA allow inspection and copying of active investigative files maintained by a County Sheriff's department?

A. No. Opinion No. 90-305.

Q. Are county juvenile court orders subject to inspection under the FOIA?

A. Yes, unless exempted by court order (Ark. Code Ann. § 9-27-309 (a)); but Ark. Code Ann § 9-27-348 prohibits publication of information by the news media whereby the identity of a juvenile who is the subject of a juvenile court proceeding can be ascertained without written order of the juvenile court.

Q. Is a meeting of the county Election Commission open under the FOIA?

A. Yes. Opinion No. 75-99 and Opinion of 10-16-72.

Q. Are current tax assessments public records?

A. Generally, yes. Opinion of 8-19-80; but the "competitive advantage" exemption must be recognized. Opinion 87-194.

Q. Are "exit" conferences between state auditors and county officials and/or school administrators required to be open to the public (media)?

A. No. Opinion No. 84-207. These meetings are not conducted by a governing body.

Q. Does a Justice of the Peace have the same access to documents as a county judge?

A. Yes. Opinion No. 85-100.

Q. Can a county industrial board meet in executive session to discuss possible new industries?

A. No. Ark. Code Ann. § 25-19-106.

Q. May a County Judge, County Sheriff, County Clerk, Circuit Clerk, and County Assessor meet without violating the open meetings provision of the FOIA?

A. Yes, because this group does not comprise a governing body. Opinion No. 87-288.

Q. Is there a right of public participation with respect to county quorum court meetings?

A. Yes. Under Ark. Code Ann. § 14-14-109(b), the quorum court must allow citizens a "reasonable opportunity to participate prior to a final decision."

Q. Must the contents of a State Police investigation be disclosed to the news media after the investigation is closed, is not continuing and is not part of a larger investigation?

A. Yes. Opinion No. 90-305.

MUNICIPAL GOVERNMENT

The following questions and answers pertain to matters peculiar to municipal government.

Q. Do meetings and deliberations of a municipal planning and zoning commission fall within the FOIA requirement of public meetings?

A. Yes. Opinion of 2-5-80.

Q. Must a City Council furnish copies of its meeting minutes to the public?

A. No, but a citizen may copy them. Opinion of 11-2-79.

Q. Is a city-owned corporation that provides utility services subject to the requirements of the FOIA?

A. Yes. Opinion No. 77-156.

Q. Is a Municipal Civil Service Commission subject to the open meetings requirements under the FOIA?

A. Yes. Opinion No. 88-058.

Q. Can the mayor and city council meet in a closed session with the city attorney?

A. No. Ark. Code Ann. § 25-19-106

Q. If two city council members meet to discuss matters on which foreseeable action will be taken, is the FOIA violated?

A. Yes. See, City Council of El Dorado v. El Dorado Broadcasting Co., 260 Ark. 821, 544 S.W.2d 206 (1976).; Opinion No. 91-225.

STATE GOVERNMENT

The following questions and answers pertain to matters peculiar to state government.

Q. Is a State Board whose rules specify meeting dates, required to publish those meeting dates prior to each meeting?

A. No. Opinion No. 81-30.

Q. Can the Alcoholic Beverage Control Board deliberate in private concerning the issuance of a license?

A. No. Opinion No. 79-144.

Q. Can a committee, board, or commission meet in private to determine action relating to the reprimand of state licensed professionals (physicians, nurses, real estate agents, etc.)?

A. No. Opinion No. 84-91. Only public officers or employees will be discussed in private. The mere fact that one is licensed by the state does not render that person a public officer or employee.

PUBLIC SCHOOLS

The following questions and answers pertain to matters peculiar to local public school districts.

Q. Can a school board meet to discuss the renewal of a teacher's contract in the teacher's absence?

A. Yes. Opinion of 4-25-79.

Q. Can a superintendent and/or principal meet with the school board in executive session to discuss the possible dismissal of an employee?

A. Yes. Act 1201 of 1976.

Q. Can a school board in executive session discuss matters other than specific (see Act) personnel matters?

A. No. Opinion of 5-7-79.

Q. Can a school board meet in executive session for the purpose of discussing or considering the appointment of persons to a special committee for the purpose of assisting the school board in executing functions with which it is charged?

A. No. Opinion No. 74-39.

Q. When a school district employs an architect to design a building, may a report concerning the architect's performance be discussed in executive session?

A. No. Opinions of 11-19-79.

Q. Can a school relying on Arkansas privacy law, refuse to give educational records to the federal Office of Civil Rights of the Department of Health, Education and Welfare?

A. No. Opinion of 11-7-79.

Q. Can a school official withhold from the public a report prepared by the North Central Association of Colleges and Schools?

A. No. Opinion of 5-19-78.

Q. Are annual negotiation meetings between administrative personnel and Classroom Teachers Association representatives, absent the presence of school board members, open to the public?

A. No. Opinion No. 79-169.

Q. Are meetings of student government (Student Government Association) subject to the FOIA?

A. Yes, if the body is funded by public funds. Opinion No. 78-63. See also Opinion No. 96-086.

Q. Can the minutes of the meetings of the school board be kept at the home of the board secretary?

A. Yes, as long as the custodian complies with the FOIA. Opinion of 7-2-73.

Q. Can a school district require notice (i.e. 48 hours) before specific records sought can be examined?

A. No. Opinion No. 82-122.

Q. May an executive session be held to discuss student discipline matters?

A. Yes, but only if an appeal of the disciplinary action of the student is pending, and if the parent or guardian of the pupil requests the closed session. Opinion No. 87-478; Ark. Code Ann. § 6-18-507.

Q. Can a school board go into executive session with all principals and assistant principals present?

A. No. Opinion No. 88-082.

Q. May the governing body of a state university go into executive session for the purpose of setting the policy and criteria to be utilized in the search for a new president?

A. No. Opinion No. 87-80.

Q. Must the performance evaluations that school board members perform on themselves be kept confidential?

A. No. Opinion No. 87-361.

GENERAL PUBLIC

The following questions and answers pertain to matters peculiar to the general public.

Q. May private citizens request notification of meeting times of public boards?

A. Yes. Opinion of 10-4-71; but see also, Opinion No. 81-30.

Q. Does a landowner have a right to see a copy of the Real Estate appraisal made on his property by a condemning authority?

A. Yes. Opinion No. 80-21.

Q. Is the mere receipt of public funds sufficient to bring a private corporation within the FOIA?

A. No. The plain language of the act seems to require more than public funds; such as intent and time involved. See Opinion No. 93-154 and City of Fayetteville v. Edmark, 304 Ark. 179, 801 S.W.2d 275 (1990).

Q. Is a private entity subject to the FOIA where it receives public funds and carries on public business or is otherwise intertwined with the activities of a public entity?

A. Yes. See North Central Association of Colleges & Schools v. Troutt Bros., Inc., 261 Ark. 378, 548 S.W.2d 825 (1977) and Rehab Hosp. Services Corp. v. Delta-Hills Health Systems Agency, 285 Ark. 397, 687 S.W.2d 840 (1985). The inquiry should focus on whether there is a symbiotic relationship between the private entity and the state or local government. When the activities of a private organization and the government become intertwined, the private organization may well render itself part of the government for FOIA purposes. See Opinion Nos. 83-163 and 91-282.

Q. Does FOIA apply to a private entity that is paid from public funds for services rendered to a government agency?

A. Yes, in some instances. The question seems to be whether the private entity is the "functional equivalent" of government employees. City of Fayetteville v. Edmark, 304 Ark. 179, 801 S.W.2d 275 (1990).

Q. Are all of the records of such a private entity subject to the FOIA?

A. Probably not. The FOIA applies to records [and meetings] relevant to the task performed on behalf of the public agency in that instance. Edmark; Opinion No. 95-121.]

Q. Is the public allowed access to arrest records of persons apprehended and taken into custody?

A. Generally, yes. Opinion Nos. 86-020 and 87-115. However, access to Arkansas Crime Information System criminal records is restricted. Opinion No. 91-111; Ark. Code Ann. § 12-12-211.

Q. Can the hospital attorney attend executive sessions of the board if he or she is also a board member?

A. Yes. Ark. Code Ann. § 25-19-106. The attorney may attend as a board member, but not as the board's attorney.

Q. Although a property owners' association is normally composed of private owners, may it still fall within the FOIA if it receives public funds and it uses those funds to carry out a governmental function?

A. Yes. Opinion No. 85-29.

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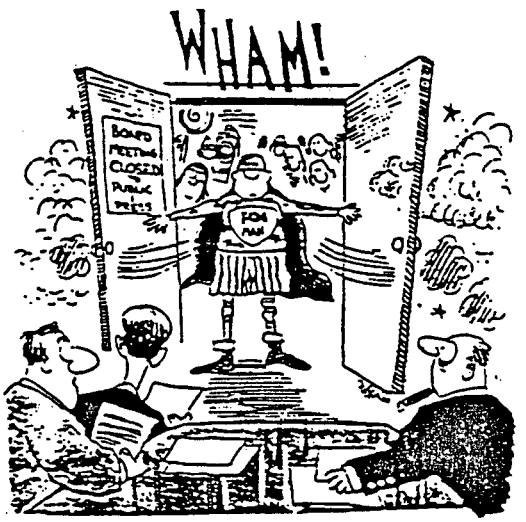

EXCEPTIONS TO THE ARKANSAS FOIA

The Arkansas Freedom of Information Act is not all inclusive; that is, other state statutes contain provisions allowing for, in effect, exemptions or exceptions to both the open records and open meetings provisions of the FOIA. Some of these include:

OPEN RECORDS

Ark. Code Ann. 5-55-104 (Records of Medicaid Recipients - No person shall be eligible to receive any payment from the Arkansas Medicaid Program unless he has in writing authorized the Commissioner of the Department of Human Services to examine all records for the purpose of investigating whether any person may have committed the crime of Medicaid fraud, or for use or for potential use in any legal, administrative, or judicial proceeding. The Attorney General and the prosecuting attorneys shall be allowed access to all records. Records obtained shall be classified as confidential information and shall not be subject to outside review or release except when used by any government entity in any legal, administrative, or judicial proceeding.)

Ark. Code Ann. 6-15-505 (Home schooling records -Personally identifiable standardized achievement test scores of students enrolled in a home school program shall be confidential and shall not be released without the consent of the parent.)

Ark. Code Ann. 9-9-217 (Uniform Adoption Act - Records pertaining to adoption are subject to inspection only upon consent of the court and all interested persons; or in exceptional cases, only upon an order of the court for good cause shown.)

Ark. Code Ann. 9-9-506 (Voluntary adoption registry -The information acquired by any mutual consent voluntary adoption registry shall not be disclosed.)

Ark. Code Ann. 9-28-207 (Court's report on juvenile committed to Division of Youth Services - Information relating to the committing offense is exclusively for the benefit of a youth services center and shall not be disclosed by the officials of the center without written authorization of the sentencing court.)

Ark. Code Ann. 10-3-305 (Records of Legislative Council - All records, reports, and other matters before the committee or in the Office of the Director of the Bureau of Legislative Research shall at all times during business hours be open to reasonable public inspection, except as to those which the Council has determined should be privileged.)

Ark. Code Ann. 10-4-115, 205 (Working papers of Division of Legislative Audit - All working papers, including notes, memoranda, preliminary drafts of audit reports, and other data gathered in the preparation of audit reports by the Division of Legislative Audit are exempt from all provisions of the Arkansas FOIA and are not to be considered public documents for purposes of inspection or copying under the FOIA.)

Ark. Code Ann. 11-10-314 (Certain records of Employment Security Division - Except as otherwise provided, information obtained by the director from any employing unit or individual, and any determination as to the rights or status of the employer or individual made by the director shall be held confidential and shall be protected by government privilege.)

Ark. Code Ann. 12-12-211 (Arkansas Crime Information Center. The Center shall make criminal records on persons available only to criminal justice agencies in their official capacity, to regulatory agencies with specific statutory authority of access, and to any person or his attorney who has reason to believe that a criminal history record is being kept on him, or wherein the criminal defendant is charged with either a misdemeanor or felony; Child Enforcement Unit of Department of Human Services - It shall be unlawful, except for the purpose of performing the duties of the Child Support Enforcement Unit in the securing of information regarding the address or whereabouts of any deserting parent from whom the unit is charged with collecting child support, or upon court order, for any person to disclose information obtained under this subsection. Upon conviction any person violating this section shall be guilty of a Class A misdemeanor.)

Ark. Code Ann. 12-12-515, 516 (Records concerning child abuse investigations - Records made pursuant to this subchapter, as well as any other information obtained, and reports written or photographs taken concerning such reports in the possession of the Department of Human Services, as well as information concerning individuals assisted by the State of Arkansas as part of the state's adoption, foster care, or children's protective services programs, shall be confidential and may be used or disclosed only for purposes specifically set out [see text of statute]; Unless an investigation of a report conducted pursuant to this subchapter determines there is some credible evidence of alleged abuse, sexual abuse, or neglect, all information identifying the subject of the report shall be expunged from the central registry.)

Ark. Code Ann. 16-10-305 (Complaints filed with Judicial Ethics Committee and investigative records of staff -All complaints filed with the Judicial Ethics Committee and the investigation of the complaints by the director and his staff, and the preliminary review of the complaints by the committee, shall be confidential.)

Ark. Code Ann. 16-85-408 (Indictment issued against person not in confinement - When an indictment for any offense known to the laws of this State shall be found against a person not in actual confinement or held by recognizance to answer thereto, the indictment shall not be open to the inspection of any person except the judge and clerk of the court and the prosecuting attorney, except in the discharge of any official duty, until the defendant has been arrested.)

Ark. Code Ann. 16-90-601 - 604 (Expunging records of minor nonviolent first offenders and minor felony offenders subsequently pardoned - The order of the court expunging a record of minor nonviolent first offenders and minor felony offenders subsequently pardoned shall require that the records relating to the convictions which are kept in the regular course of business by law enforcement agencies and judicial officials shall be sealed, sequestered, and treated as confidential and that the records shall be available only to law enforcement and judicial officials.)

Ark. Code Ann. 16-93-202 (Presentence reports, preparole reports, and supervision histories of Parole Board - A presentence report, a preparole report, and a supervision history obtained in the discharge of official duty by any member or employee of the Parole Board shall be privileged and shall not be disclosed, directly or indirectly, to any person other than the Parole Board, a court or others entitled under this chapter to receive the information. However, the Parole Board or court, at its discretion, may permit the inspection of the report, or parts thereof, by persons having a proper interest therein, whenever the interest or welfare of the person involved make that action desirable or helpful.)

Ark. Code Ann. 17-93-104 (Reports of physician misconduct submitted to State Medical Board - Any reports, information, or records received and maintained by the board pursuant to this section, including any such material received or developed by the board during an investigation or hearing, shall be strictly confidential. The board may only disclose any such confidential information in certain situations (see text of statute.)

Ark. Code Ann. 20-9-304 (Certain records of State Board of Health - All information, interviews, reports, statements, memoranda, or other data of the State Board of Health, Arkansas Medical Society, Allied Medical Societies, or in-hospital staff committees of licensed hospitals, but not the original medical records pertaining to the patients, used in the course of medical studies for the purposes of reducing morbidity or mortality, as provided in this section, shall be strictly confidential and shall be used only for medical research. In all events, the identify of the person whose condition or treatment has been studied shall be confidential and shall not be revealed under any circumstances.)

Ark. Code Ann. 20-14-506 (Personally identifiable information in program for handicapped children - The right to confidentiality of personally identifiable information shall be protected through procedures such as appropriate access lists, sign-offs, and procedures for handling records.)

Ark. Code Ann. 20-15-205 (Arkansas Regional Cancer Registry - Any information, data, and reports with respect to a case of malignant disease which are furnished to, or procured by, the Arkansas Regional Cancer Registry or any hospital cancer registry in this state which regularly furnishes data on malignant diseases to the Director of the Department of Health shall be confidential and shall be used only for statistical, scientific, and medical research for the purpose of reducing morbidity or mortality of malignant diseases.)

Ark. Code Ann. 20-16-207 (Certain records of Arkansas Reproductive Health Monitoring System - The system is expressly exempted and prohibited from supplying any information by individual name or other personal identif ier or in a form other than a statistical report or other appropriate form which protects the confidentiality of individuals except to any state agency or department which originally supplied the information to the system unless both the originating agency and the system grant release of this information for a specific purpose.)

Ark. Code Ann. 20-16-501, 504 (Venereal disease records of Department of Health's Division of Health Maintenance -Any person who determines by laboratory examination that a specimen derived from a human body yields microscopical, cultural, serological, or other evidence suggestive of specific venereal diseases enumerated [see text of statute) shall notify the Department of Health's Division of Health Maintenance, of such findings. All laboratory notifications are confidential and shall not be opened for inspection by anyone except public health personnel.)

Ark. Code Ann. 20-18-304, 305 (Birth certificates, death certificates, other vital records - It shall be unlawful for any person to permit inspection of or disclose information contained in vital records or to issue a copy of all or part of the record except as authorized by this chapter and by regulation or by order of a court of competent jurisdiction. The State Registrar shall not permit searching of the file and records of the division by any person other than by the authorized employees of the division and shall not furnish lists of birth or death for commercial purposes. The State Registrar shall upon receipt of written application issue a certified

copy of a vital record in his custody or a part thereof to any applicant having a direct and tangible interest in the vital record.)

Ark. Code Ann. 20-46-103 (Certain records of State Board of Health, Arkansas Medical Society - All information, interviews, reports, statements, memoranda, or other data of the State Board of Health, the Arkansas Medical Society and Allied Medical Societies, or from in-hospital staff committees of licensed hospitals, but not the original medical records pertaining to the patients, which are used in the course of medical studies for the purpose of reducing morbidity or mortality, shall be strictly confidential and shall be used only for medical research. In all events, the identity of the person whose conditions or treatment has been studied shall be confidential and shall not be revealed under any circumstances.)

Ark. Code Ann. 20-46-104 (Certain records of State Hospital - It is unlawful for any person to give away or otherwise to disclose to any person who is not engaged in research and study at the State Hospital and its divisions any of the records, reports, statements, notes or other information which name or otherwise identify any person or any confidential records.)

Ark. Code Ann. 20-64-807 (Records in voluntary commitment proceedings for narcotics addicts - The records and files of voluntary commitment proceedings shall be open to inspection only to the person named in the petition for commitment or his counsel and by public officials, judicial officers, county health officers, and other medical officers authorized.)

Ark. Code Ann. 23-31-101 (Bank examination records of State Bank Department - The following records of the State Bank Department shall be deemed confidential and shall not be exhibited or revealed to the public: all bank examination reports filed with the State Bank Department; all records disclosing information obtained from examinations; investigation and reports revealing facts concerning a bank or its customers; and all personal financial statements submitted to the State Bank Department for any purpose.)

Ark. Code Ann. 23-61-205 (Examination and investigation reports of Insurance Commissioner - The Commissioner may withhold from public inspection any examination or investigation report for so long as he deems necessary to protect the person examined from unwarranted injury or if deemed to be in the public interest.)

Ark. Code Ann. 27-19-501, 510 (Accident report filed by driver - The driver of a vehicle of a type subject to registration under the motor vehicle laws of this state which is in any matter involved in an accident within this state, which accident has resulted in damage to the property of one person in excess of $250 or in bodily injury, or in the death of, any person, shall within 30 days after such accident, report the accident on a form approved by the Director of the Department of Finance and Administration. Accident reports and supplemental information in connection therewith required under this subchapter may be examined by any person named in the report or his representative designated in writing but shall not be opened to general public inspection, nor shall copying of lists of accident reports be permitted.)

Ark. Code Ann. 27-50-906, 907 (Records of convictions of moving traffic violations - No driver record shall be reported by the Office of Driver Services to any individual, except duly authorized officials of the office, unless a copy of the report and the name of the individual or organization which has received the report is sent to the driver named in the report therein. Information such as medi-

cal reports or other personal information shall not be a part of any written report the Office of Driver Services may provide nor shall the office allow any person to copy or reproduce any such records.)

Regulation 1991-7 Disclosable Tax Information (The Commissioner of Revenue for the Revenue Division of the Department of Finance and Administration may disclose the name of any tax taxpayer and the amount of any tax credit, rebate, discount, or commission received by the taxpayer under certain circumstances [see text of statute].)

OPEN MEETINGS

Ark. Code Ann. 6-17-1509 (School board hearing Under Teacher Fair Dismissal Act - A teacher who receives a notice of recommended termination or non-renewal may file a written request with the board of directors of the district for a hearing. The hearing shall be private unless the teacher shall request that the hearing be public.)

Ark. Code Ann. 6-18-507 (School board hearing of appeal by suspended student - All school district board meetings entertaining appeals by suspended students shall be conducted in executive session if requested by the parent or guardian of the student, provided that after hearing all testimony and debate, the school board shall conclude the executive session and reconvene in public session to vote on such appeal.)

Ark. Code Ann. 9-9-217 (Adoption hearings - All adoption hearings shall be held in closed court without admittance of any person other than the central officers of the court, the parties, their witnesses, counsel, persons who have not previously consented to the adoption but are required to consent, and representatives of the agencies present to perform their official duties.)

Ark. Code Ann. 9-27-309 (Judicial proceedings involving juveniles - All records may be closed and confidential within the discretion of the court.)

Ark. Code Ann. 16-10-305, 306 (Preliminary meetings to review complaints and deliberations of Judicial Ethics Committee - All complaints filed with the Judicial Ethics Committee and the investigation of the complaints by the director and his staff, and the preliminary review of the complaints by the committee, shall be confidential. If, as a result of such preliminary review by the Judicial Ethics Committee, a determination is made that a formal investigation of the charge or complaint shall be made, the committee shall enter an order setting forth a time and place for a formal public hearing in regard to the complaint and setting forth the names of the person to appear at the hearing.)

Ark. Code Ann. 16-13-318 (Domestic relations cases - The Chancery Courts shall, upon application of all litigants to a divorce action, proceeding for alimony or separate maintenance, proceeding touching the maintenance or custody of children, proceeding for annulment of marriage, adoption proceeding, or any other proceeding pertaining to domestic relations, hear the case or matter in privacy. To this end, the Chancellors are empowered to exclude from any such hearing and from the courtroom all individuals other than litigants, their counsel, and the officers of the court.)

RELATED FEDERAL ACTS

Below are summaries of three Federal Acts which relate to Freedom of Information. If you need the complete acts, contact the Arkansas Attorney General's Office or the Arkansas Press Association.

FEDERAL FREEDOM OF INFORMATION ACT
5 U.S.C.A. § 552

Under this section, all federal agency records are disclosable to any member of the public who requests and "reasonably describes" them. The section creates a liberal disclosure requirement limited only by specific exemptions which are narrowly constructed. The exemptions include personnel and medical files and similar files, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. Factors to consider in determining whether a private entity may be considered an agency for purposes of this section include whether the entity's regular operations are subject to substantial federal control or supervision, whether it has independent legal decision-making authority, whether it has independent authority to purform specific governmental functions, and to what extent the government has financial involvement with the entity.

FEDERAL PRIVACY ACT
5 U.S.C.A. § 552A

The Privacy Act protects citizens against improper disclosure of information about them that may be held by government agencies. The main purpose of the section is to forbid disclosure unless it is required by section 552 of this title (the federal Freedom of Information Act). Absent written consent by an individual, any disclosure of information covered by this section is prohibited, unless narrowly construed exceptions.

FEDERAL FAMILY EDUCATION AND PRIVACY RIGHTS ACT
20 U.S.C.A. § 1232G

This section prevents disclosure by federally or state supported educational programs or institutions of curtain information about students which is deemed confidential. While students and their parents retain the right to access the student's educational records, a written consent to disclosure of records to the public is required of either the parent or the student himself if the student is eighteen years or older. The subsection know as the Buckley Amendment (20 U.S.C., Sec. 1232g (b)(1)) provides that no funds shall be made available under any applicable program to any educational agency or institution which has a policy or practice of releasing, or providing access to, any personally identifiable information in education records unless furnished in compliance with a judical order. There is an exception which allows state and local educational officials access to records necessary in connection with audit and evaluation of educational programs.

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How to notify public bodies

We strongly recommend that at the beginning of every year each individual newspaper, radio or television station send a notification letter to all public bodies in its coverage area, similar to the following:

Dear Mayor Public Servant:

This is to request that our (newspaper, radio or television station) be notified of the dates, times and places of all regular and special meetings of the (name of body).

This request is made in accordance with the Freedom of Information Act. The FOI Act requires that the time, date and place of all regular and special meetings be furnished to anyone who requests the information. Specifically, it states:

"Except as otherwise provided by law, all meetings, formal and informal, special or regular, of the governing bodies of all municipalities, counties, townships, and school districts, and all boards, bureaus, commissions or organizations of the State of Arkansas, except Grand Juries, supported wholly or in part by public funds, or expending public funds, shall be public meetings."

Further, the FOI Act also requires that at least two (2) hours notice be given of an emergency or special meeting, to media which have requested to be so notified, "in order that the public shall have a representative at the meetings."

This letter is our formal request for notification. It has been written so you will have the request on file. We will keep a copy on file in our office.

We look forward to working with you as we both serve the public. Please call if you have questions.

Sincerely,
Ima Editor

Mail the letter to at least the chairman. But consider sending it to every member of every public body. Better yet, hand-deliver it to them to make sure they get it.

We also recommend that you attend a meeting of each body and make your notification request orally, in public. Let the members of the body and the general public see and hear your commitment to open meetings. This also would tell citizens their rights and responsibilities regarding the FOIA – "The People's Law."

On the back is a sample statement which reporters and citizens might use to object to closed meetings.

DCD(SP08)

CHM

Arkansas Department of Health
Division of
RADIATION CONTROL & EMERGENCY MANAGEMENT
Little Rock, Arkansas

FACSIMILE TRANSMITTAL SHEET

ADH Main Fax: (501) 661-2468
DRCEM Phone: (501) 661-2301

• • • • • •

To: Paul Lohaus, Director, State Programs
U.S. Nuclear Regulatory Commission
Rockville, Maryland
Verify: (301) 415-2326

Date: February 17, 1999

Fax No.: (301) 415-3502

From: Bernie Bevill, Supervisor
Div. of Rad. Cont. & Em. Manage.
Little Rock, Arkansas

Comments:

Please find attached the State of Arkansas' response related to SP-98-097 regarding the protection of allegers. Last Friday afternoon, I reviewed this matter with Lloyd Bolling. This fax does not contain all of the Freedom of Information Action Booklet. A copy of that particular booklet will come to via Mail. If you have ANY questions related this matter, please call us.

Bernie

P.S.
Congratulations your New job!!
Good luck

SP-A-4
SP-AG-3

Arkansas Department of Health

4815 West Markham Street • Little Rock, Arkansas 72205-3867 • Telephone (501) 661-2000
Sandra B. Nichols, M.D., Director • Mike Huckabee, Governor

-VIA U.S. MAIL & FAX-

February 17, 1999

Mr. Paul Lohaus, Director
Office of State Programs
U.S. Nuclear Regulatory Commission
Washington, D.C. 20665-0001

Dear Mr. Lohaus:

In an electronic mail letter dated December 9, 1998, Mr. Richard L. Bangart requested confirmation from the Department that the State of Arkansas' policy for 'The Protection of the Identity of Allegers From Public Disclosure' is the same as the U.S. Nuclear Regulatory Commission's policy. The Arkansas Rules and Regulations for Control of Sources of Ionizing Radiation has provisions for the withholding of the names of workers who make allegations related to violations in the work place. (Reference RH-2807.a.) Yet, this particular regulation appears to be in conflict with the Arkansas Freedom of Information Act (FOIA), A.C.A. 25-19-101, et seq. (Repl. 1996). Therefore, the State of Arkansas may not have the ability to protect the identity of allegers from public disclosure once their name(s) become part of any public document.

Paragraph RH-2807.a. states that:

a. Any worker or representative of workers who believes that a violation of the Act, these Regulations or license conditions exists or has occurred in work under a license or registration with regard to radiological working conditions in which the worker is engaged, may request an inspection by giving notice of the alleged violation to the Department. Any such notice shall be in writing, shall set forth the specific grounds for the notice and shall be signed by the worker or representative of the workers. A copy shall be provided to the licensee or registrant by the Department no later than at the time of the inspection except that, upon the request of the worker giving such notice, his/her name and the name of individuals referred to therein shall not appear in such copy or on any record published, released or made available by the Department, except for good cause shown.

-Continued-

Letter to Paul Lohaus
RE: The Protection of the
Identity of Allegers
From Public Disclosure
February 17, 1998

A copy of the "Arkansas Freedom of Information Handbook" is attached for your information and reference. This "Handbook" details the Arkansas Freedom of Information Act (FOIA). Reference may be made to pages 6 and 7 of this "Handbook" where the eleven exemptions to the FOIA contained in A.C.A. 25-19-105(b) are given. Review indicates that none appear to be relevant to the protection of allegers unless the Department has brought a law enforcement agency into investigate suspected criminal activity (Exemption #6) or the Department's documents are protected from disclosure by order or rule of court (Exemption #8).

If you have ANY questions related to this letter, please call me. My telephone number is (501) 661-2301.

Sincerely,

David D. Snellings, Jr., CHP, Director
Division of Radiation Control &
Emergency Management Programs
Arkansas Department of Health

Attachment

cc: Bolling (NRC)

25-19-104. Penalty.

Any person who negligently violates any of the provisions of this chapter shall be guilty of a misdemeanor and shall be punished by a fine of not more than two hundred dollars ($200) or thirty (30) days in jail, or both, or a sentence of appropriate public service or education, or both.

25-19-105. Examination and copying of public records.

(a) Except as otherwise specifically provided by this section or by laws specifically enacted to provide otherwise, all public records shall be open to inspection and copying by any citizen of the State of Arkansas during the regular business hours of the custodian of the records.

EXEMPTIONS:

(b) It is the specific intent of this section that the following shall not be deemed to be made open to the public under the provisions of this chapter:

(1) State income tax returns;

(2) Medical records; scholastic records, and adoption records;

(3) The site files and records maintained by the Arkansas Historic Preservation Program and the Arkansas Archeological Survey;

(4) Grand jury minutes;

(5) Unpublished drafts of judicial or quasi-judicial opinions and decisions;

(6) Undisclosed investigations by law enforcement agencies of suspected criminal activity;

(7) Unpublished memoranda, working papers, and correspondence of the Governor, members of the General Assembly, Supreme Court Justices, and the Attorney General;

(8) Documents which are protected from disclosure by order or rule of court;

(9) (a)Files which, if disclosed, would give advantage to competitors or bidders; and (b) records maintained by the Arkansas Industrial Development Commission related to any business entity's planning, site location, expansion, operations, or product development/marketing, unless approval for release of such records is granted by the business entity; provided, however, this exemption shall not be applicable to any records of expenditures or grants made or administered by the Arkansas Industrial Development Commission and otherwise disclosable under the provisions of this chapter;

(10) Personnel records to the extent that disclosure would constitute a clearly unwarranted invasion of personal privacy.

(11) The identity of law enforcement officers currently working undercover with their agency and identified in the Arkansas Minimum Standards Office as an undercover officer. Records of the number of undercover officers an agency lists are not exempt from this chapter.

(c)(1) However, all employee evaluation or job performance records, including preliminary notes and other materials, shall be open to public inspection only upon final administrative resolution of any suspension or termination proceeding at which the records form a basis for the decision to suspend or terminate the employee and if there is a compelling public interest in their disclosure.

(2) Any personnel or evaluation records exempt from disclosure under this chapter shall nonetheless be made available to the person about whom the records are maintained or to that person's designated representative.

(3)(A) Upon receiving a request for the examination or copying of personnel or evaluation records, the custodian of the records shall, within twenty-four (24) hours of the receipt of the request, determine whether the records are exempt from disclosure and make efforts to the fullest extent possible to notify the person making the request and the subject of the records of that decision.

(B) If the subject of the records cannot be contacted in person or by telephone within the twenty-four hour period, the custodian shall send written notice via overnight mail to the subject of the records at his last known address. Either the custodian, requester, or the subject of the records may immediately seek an opinion from the Attorney General who, within three (3) working days of receipt of the request, shall issue an opinion stating whether the decision is consistent with this chapter. In the event of a review by the Attorney General, the custodian shall not disclose the records until the Attorney General has issued his opinion.

(C) However, nothing in this subsection shall be construed to prevent the requester or the subject of the records from seeking judicial review of the custodian's decision or the decision of the Attorney General.

(d) Reasonable access to public records and reasonable comforts and facilities for the full exercise of the right to inspect and copy those records shall not be denied to any citizen.

(e) If a public record is in active use or storage and, therefore, not available at the time a citizen asks

to examine it, the custodian shall certify this fact in writing to the applicant and set a date and hour within three (3) working days, at which time the record will be available for the exercise of the right given by this chapter.

25-19-106. Open public meetings.

(a) Except as otherwise specifically provided by law, all meetings, formal or informal, special or regular, of the governing bodies of all municipalities, counties, townships, and school districts and all boards, bureaus, commissions, or organizations of the State of Arkansas, except grand juries, supported wholly or in part by public funds or expending public funds, shall be public meetings.

(b)(1) The time and place of each regular meeting shall be furnished to anyone who requests the information.

(2) In the event of emergency or special meetings, the person calling the meeting shall notify the representatives of the newspapers, radio stations, and television stations, if any, located in the county in which the meeting is to be held, and any news media located elsewhere which cover regular meetings of the governing body, and which have requested to be so notified of emergency or special meetings, of the time, place, and date of the meeting. Notification shall be made at least two (2) hours before the meeting takes place in order that the public shall have representatives at the meeting.

(c)(1) Executive sessions will be permitted only for the purpose of considering employment, appointment, promotion, demotion, disciplining, or resignation of any public officer or employee.

(2)(A) Only the person holding the top administrative position in the public agency, department, or office involved, the immediate supervisor of the employee involved; and the employee may be present at the executive session when so requested by the governing body, board, commission, or other public body holding the executive session.

(B) Any person being interviewed for the top administrative position in the public agency, department, or office involved may be present at the executive session when so requested by the governing board, commission, or other public body holding the executive session.

(3) Executive sessions must never be called for the purpose of defeating the reason or the spirit of this chapter.

(4) No resolution, ordinance, rule, contract, regulation, or motion considered or arrived at in executive session will be legal unless, following the executive session, the public body reconvenes in public session and presents and votes on the resolution, ordinance, rule, contract, regulation, or motion.

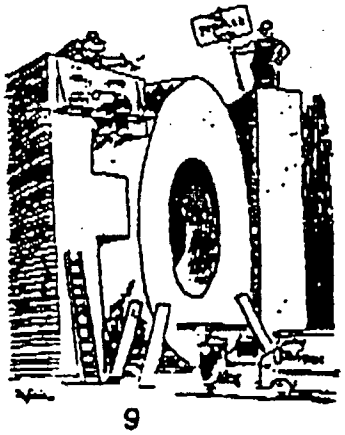
25-19-107. Appeal from denial of rights - Attorney fees.

(a) Any citizen denied the rights granted to him by this chapter may appeal immediately from the denial to the Pulaski County Circuit Court or to the circuit court of the residence of the aggrieved party, if an agency of the state is involved, or to any of the circuit courts of the appropriate judicial districts when an agency of a county, municipality, township, or school district, or a private organization supported by or expending public funds, is involved.

(b) Upon written application of the person denied the rights provided for in this chapter, or any interested party, it shall be mandatory upon the circuit court having jurisdiction to fix and assess a day the petition is to be heard within seven (7) days of the date of the application of the petitioner, and to hear and determine the case.

(c) Those who refuse to comply with the orders of the court shall be found guilty of contempt of court.

(d) In any action to enforce the rights granted by this chapter, or in any appeal therefrom, the court shall assess against the defendant reasonable attorney fees and other litigation expenses reasonably incurred by a plaintiff who has substantially prevailed unless the court finds that the position of the defendant was substantially justified or that other circumstances make an award of these expenses unjust. However, no expenses shall be assessed against the State of Arkansas or any of its agencies or departments. If the defendant has substantially prevailed in the action, the court may assess expenses against the plaintiff only upon a finding that the action was initiated primarily for frivolous or dilatory purposes.



#7

From: "Bunn, Don (RHB)" <dbunn@rhb.dhs.cahwnet.gov>
To: "'phl@nrc.gov'" <phl@nrc.gov>, "'chm@nrc.gov'" <ch...
Date: Wed, Jan 20, 1999 11:28 AM
Subject: SP-98-097

In response to your inquiry regarding Californias laws and regulations for the protection of the idenity of individuals who bring complaints or allegations against licensees the following is submitted: <<nrc protection of identity_.doc>> If you have difficulty downloading these documents we will mail you hard copies upon request. If you have any questions or comments please phone me @ 916 323 2756. Thank you

CC: "Bailey, Edgar" <ebailey@rhb.dhs.cahwnet.gov>, "Ew...

RE: The Protection of the Identity of Allegers from Public Disclosure

You have requested information about whether California law and policy is similar to that applicable to the Nuclear Regulatory Commission with respect to the disclosure outside the agency of the identify of an individual who makes allegations.

If a request for an inspection is made to the California Department of Health Services by a "worker" or "representative of workers", the worker's identity will not be disclosed if he so requests "except for good cause shown." (Title 17, California Code of Regulations, section 30254(h).) The Radiologic Health Branch's complaint form asks the complainant if he or she wishes his identity to remain "confidential." The regulations do not define "good cause." The worker's identity is exempt from disclosure to the public under the California counterpart to the Freedom of Information Act, the Public Records Act (Gov. Code, secs. 6254(k).) That exemption also covers records prohibited from disclosure by federal law.

A copy of the relevant regulation, Public Records Act and complaint form used by the Radiologic Health Branch are attached.

§ 30254. Inspection.

(a) Each user shall afford to the Department or other official agency specifically designated by the Department, at all reasonable times, opportunity to inspect materials, machines, activities, facilities, premises, and records pursuant to these regulations.
(b) During an inspection, inspectors may consult privately with workers as specified below. The user may accompany inspectors during other phases of an inspection.
(1) Inspectors may consult privately with workers concerning matters of occupational radiation protection and other matters related to applicable provisions of Department regulations and licenses to the extent the inspectors deem necessary for the conduct of an effective and thorough inspection.
(2) During the course of an inspection any worker may bring privately to the attention of the inspectors, either orally or in writing, any past or present condition which he has reason to believe may have contributed to or caused any violation of the Radiation Control Law, these regulations, or license condition, or any unnecessary exposure of an individual to radiation from licensed radioactive material or a registered radiation machine under the user's control. Any such notice in writing shall comply with the requirements of subsection (h) hereof.
(3) The provision of paragraph (b)(2) of this section shall not be interpreted as authorization to disregard instructions pursuant to Section 30255(b)(1)
(c) If, at the time of inspection, an individual has been authorized by the workers to represent them during inspections, the user shall notify the inspectors of such authorization and shall give the workers' representative an opportunity to accompany the inspectors during the inspection of physical working conditions.
(d) Each worker's representative shall be routinely engaged in work under control of the user and shall have received instructions as specified in Section 30280(b)(1).
(e) Different representatives of users and workers may accompany the inspectors during different phases of an inspection if there is no resulting interference with the conduct of the inspection. However, only one workers' representative at a time may accompany the inspectors.
(f) With the approval of the user and the workers' representative, an individual who is not routinely engaged in work under control of the user, for example, a consultant to the user or to the workers' representative, shall be afforded the opportunity to accompany inspectors during the inspection of physical working conditions.
(g) Notwithstanding the other provisions of this section, inspectors are authorized to refuse to permit accompaniment by an individual who deliberately interferes with a fair and orderly inspection. With regard to any area containing proprietary information, the workers' representative for that area shall be an individual previously authorized by the user to enter that area.
(h) Any worker or representative of workers who believes that a violation of the Radiation Control Law, these regulations or license conditions exists, or has occurred in work under a license or registration with regard to radiological working conditions in which the worker is engaged, may request an inspection by giving notice of the alleged violation to the Department or other official agency specifically designated by the Department. Any such notice shall be in writing, shall set forth the specific grounds for the notice, and shall be signed by the worker or representative of the workers. A copy shall be provided to the user by the Department no later

than at the time of inspection except that, upon the request of the worker giving such notice, his name and the name of individuals referred to therein shall not appear in such copy or on any record published, released, or made available by the Department except for good cause shown.

(i) If, upon receipt of such notice, the Chief, Radiologic Health Branch, of the Department, determines that the complaint meets the requirements set forth in subsection (h) hereof, and that there are reasonable grounds to believe that the alleged violation exists or has occurred, he shall cause an inspection to be made as soon as practicable, to determine if such alleged violation exists or has occurred. Inspections pursuant to this section need not be limited to matters referred to in the complaint.

(j) No user shall discharge or in any manner discriminate against any worker because such worker has filed any complaint or instituted or caused to be instituted any proceeding under these regulations or has testified or is about to testify in any such proceeding or because of the exercise by such worker on behalf of himself or others of any option afforded by this section.

(k) If the Chief, Radiologic Health Branch, of the Department, determines with respect to a complaint under subsection (h) hereof that an inspection is not warranted because there are no reasonable grounds to believe that a violation exists or has occurred, the complainant shall be notified in writing of such determination. The complainant may obtain review of such determination by submitting a written statement of position to the Director of the Department, who will provide the user with a copy of such statement by certified mail, excluding, at the request of the complainant, the name of the complainant. The user may submit an opposing written statement of position with the Director of the Department who will provide the complainant with a copy of such statement by certified mail. Upon the request of the complainant, the Director of the Department, or his designee, may hold an informal conference in which the complainant and the user may orally present their views. An informal conference may also be held at the request of the user, but disclosure of
the identity of the complainant will be made only following receipt of written authorization from the complainant. After considering all written or oral views presented, the Director of the Department shall affirm, modify, or reverse the determination of the Chief, Radiologic Health Branch, of the Department, and furnish the complainant and the user a written notification of his decision and the reason therefor.

(l) If the Department determines that an inspection is not warranted because the requirements of subsection (h) here of have not been met, it shall notify the complainant in writing of such determination. Such determination shall be without prejudice to the filing of a new complaint meeting the requirements of subsection (h) hereof.

Note: Authority cited: Sections 208 and 25811, Health and Safety Code. Reference: Sections 25801, 25802, 25811 and 25815, Health and Safety Code.

CALIFORNIA CODES
GOVERNMENT CODE
SECTION 6250-6270

6250. In enacting this chapter, the Legislature, mindful of the right of individuals to privacy, finds and declares that access to information concerning the conduct of the people's business is a fundamental and necessary right of every person in this state.

6251. This chapter shall be known and may be cited as the California Public Records Act.

6252. As used in this chapter:

(a) "State agency" means every state office, officer, department, division, bureau, board, and commission or other state body or agency, except those agencies provided for in Article IV (except Section 20 thereof) or Article VI of the California Constitution.

(b) "Local agency" includes a county; city, whether general law or chartered; city and county; school district; municipal corporation; district; political subdivision; or any board, commission or agency thereof; other local public agency; or nonprofit entities that are legislative bodies of a local agency pursuant to subdivisions (c) and (d) of Section 54952.

(c) "Person" includes any natural person, corporation, partnership, limited liability company, firm, or association.

(d) "Public agency" means any state or local agency.

(e) "Public records" includes any writing containing information relating to the conduct of the public's business prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics. "Public records" in the custody of, or maintained by, the Governor's office means any writing prepared on or after January 6, 1975.

(f) "Writing" means handwriting, typewriting, printing, photostating, photographing, and every other means of recording upon any form of communication or representation, including letters, words, pictures, sounds, or symbols, or combination thereof, and all

papers, maps, magnetic or paper tapes, photographic films and prints, magnetic or punched cards, discs, drums, and other documents.

(g) "Member of the public" means any person, except a member, agent, officer, or employee of a federal, state, or local agency acting within the scope of his or her membership, agency, office, or employment.

6252.5. Notwithstanding the definition of "member of the public" in Section 6252, an elected member or officer of any state or local agency is entitled to access to public records of that agency on the same basis as any other person. Nothing in this section shall limit the ability of elected members or officers to access public records permitted by law in the administration of their duties.

This section does not constitute a change in, but is declaratory of, existing law.

6253. (a) Public records are open to inspection at all times during the office hours of the state or local agency and every person has a right to inspect any public record, except as hereafter provided. Any reasonably segregable portion of a record shall be available for inspection by any person requesting the record after deletion of the portions that are exempted by law.

(b) Except with respect to public records exempt from disclosure by express provisions of law, each state or local agency, upon a request for a copy of records that reasonably describes an identifiable record or records, shall make the records promptly available to any person, upon payment of fees covering direct costs of duplication, or a statutory fee, if applicable. Upon request, an exact copy shall be provided unless impracticable to do so. Computer data shall be provided in a form determined by the agency.

(c) Each agency, upon a request for a copy of records shall, within 10 days from receipt of the request, determine whether the request, in whole or in part, seeks copies of disclosable public records in the possession of the agency and shall promptly notify the person making the request of the determination and the reasons therefor. In unusual circumstances, the time limit prescribed in this section may be extended by written notice by the head of the agency or his or her designee to the person making the request setting forth the reasons for the extension and the date on which a determination is expected to be dispatched. No notice shall specify a date that would result in an extension for more than 14 days. As used in this section, "unusual circumstances" means, but only to the

extent reasonably necessary to the proper processing of the particular request:

(1) The need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request.

(2) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request.

(3) The need for consultation, which shall be conducted with all practicable speed, with another agency having substantial interest in the determination of the request or among two or more components of the agency having substantial subject matter interest therein.

(d) Nothing in this chapter shall be construed to permit an agency to obstruct the inspection or copying of public records. Any notification of denial of any request for records shall set forth the names and titles or positions of each person responsible for the denial.

(e) Except as otherwise prohibited by law, a state or local agency may adopt requirements for itself that allow for faster, more efficient, or greater access to records than prescribed by the minimum standards set forth in this chapter.

6253.4. (a) Every agency may adopt regulations stating the procedures to be followed when making its records available in accordance with this section.

The following state and local bodies shall establish written guidelines for accessibility of records. A copy of these guidelines shall be posted in a conspicuous public place at the offices of these bodies, and a copy of the guidelines shall be available upon request free of charge to any person requesting that body's records:

Department of Motor Vehicles
Department of Consumer Affairs
Department of Transportation
Department of Real Estate
Department of Corrections
Department of the Youth Authority
Department of Justice
Department of Insurance
Department of Corporations
Secretary of State
State Air Resources Board
Department of Water Resources
Department of Parks and Recreation

San Francisco Bay Conservation and Development Commission
State Board of Equalization
State Department of Health Services
Employment Development Department
State Department of Social Services
State Department of Mental Health
State Department of Developmental Services
State Department of Alcohol and Drug Abuse
Office of Statewide Health Planning and Development
Public Employees' Retirement System
Teachers' Retirement Board
Department of Industrial Relations
Department of General Services
Department of Veterans Affairs
Public Utilities Commission
California Coastal Commission
State Water Resources Control Board
San Francisco Bay Area Rapid Transit District
All regional water quality control boards
Los Angeles County Air Pollution Control District
Bay Area Air Pollution Control District
Golden Gate Bridge, Highway and Transportation District
Department of Toxic Substances Control
Office of Environmental Health Hazard Assessment

(b) Guidelines and regulations adopted pursuant to this section shall be consistent with all other sections of this chapter and shall reflect the intention of the Legislature to make the records accessible to the public. The guidelines and regulations adopted pursuant to this section shall not operate to limit the hours public records are open for inspection as prescribed in Section 6253.

6253.5. Notwithstanding Sections 6252 and 6253, statewide, county, city, and district initiative, referendum, and recall petitions, petitions circulated pursuant to Section 5091 of the Education Code, petitions for the reorganization of school districts submitted pursuant to Article 1 (commencing with Section 35700) of Chapter 4 of Part 21 of the Education Code, petitions for the reorganization of community college districts submitted pursuant to Part 46 (commencing with Section 74000) of the Education Code and all memoranda prepared by the county elections officials in the examination of the petitions indicating which registered voters have signed particular petitions shall not be deemed to be public records and shall not be

open to inspection except by the public officer or public employees who have the duty of receiving, examining or preserving the petitions or who are responsible for the preparation of that memoranda and, if the petition is found to be insufficient, by the proponents of the petition and the representatives of the proponents as may be designated by the proponents in writing in order to determine which signatures were disqualified and the reasons therefor. However, the Attorney General, the Secretary of State, the Fair Political Practices Commission, a district attorney, a school district or a community college district attorney, and a city attorney shall be permitted to examine the material upon approval of the appropriate superior court.

If the proponents of a petition are permitted to examine the petition and memoranda, the examination shall commence not later than 21 days after certification of insufficiency.

(a) As used in this section, "petition" shall mean any petition to which a registered voter has affixed his or her signature.

(b) As used in this section "proponents of the petition" means the following:

(1) For statewide initiative and referendum measures, the person or persons who submit a draft of a petition proposing the measure to the Attorney General with a request that he or she prepare a title and summary of the chief purpose and points of the proposed measure.

(2) For other initiative and referenda on measures, the person or persons who publish a notice of intention to circulate petitions, or, where publication is not required, who file petitions with the elections official.

(3) For recall measures, the person or persons defined in Section 343 of the Elections **Code**.

(4) For petitions circulated pursuant to Section 5091 of the Education **Code**, the person or persons having charge of the petition who submit the petition to the county superintendent of schools.

(5) For petitions circulated pursuant to Article 1 (commencing with Section 35700) of Chapter 4 of Part 21 of the Education **Code**, the person or persons designated as chief petitioners under Section 35701 of the Education **Code**.

(6) For petitions circulated pursuant to Part 46 (commencing with Section 74000) of the Education **Code**, the person or persons designated as chief petitioners under Sections 74102, 74133, and 74152 of the Education **Code**.

6253.6. (a) Notwithstanding the provisions of Sections 6252 and

6253, information compiled by public officers or public employees revealing the identity of persons who have requested bilingual ballots or ballot pamphlets, made in accordance with any federal or state law, or other data that would reveal the identity of the requester, shall not be deemed to be public records and shall not be provided to any person other than public officers or public employees who are responsible for receiving those requests and processing the same.

(b) Nothing contained in subdivision (a) shall be construed as prohibiting any person who is otherwise authorized by law from examining election materials, including, but not limited to, affidavits of registration, provided that requests for bilingual ballots or ballot pamphlets shall be subject to the restrictions contained in subdivision (a).

6253.7. (a) Notwithstanding any other provision of law, a local agency may, by rule or order, exempt partially or completely from any requirement to make available for public inspection any contracts negotiated by the local agency to provide gas transmission or storage services, if the local agency finds that the exemption is in the public interest. In determining whether to grant an exemption, the local agency may consider factors including, but not limited to, customers' interests in confidentiality and shall require a level of disclosure that is comparable to that which is required by federal or state law for competitors.

(b) This section shall remain in effect only until January 1, 2001, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 2001, deletes or extends that date.

6254. Except as provided in Sections 6254.7 and 6254.13, nothing in this chapter shall be construed to require disclosure of records that are any of the following:

(a) Preliminary drafts, notes, or interagency or intra-agency memoranda that are not retained by the public agency in the ordinary course of business, provided that the public interest in withholding those records clearly outweighs the public interest in disclosure.

(b) Records pertaining to pending litigation to which the public agency is a party, or to claims made pursuant to Division 3.6 (commencing with Section 810), until the pending litigation or claim has been finally adjudicated or otherwise settled.

(c) Personnel, medical, or similar files, the disclosure of which

would constitute an unwarranted invasion of personal privacy.

(d) Contained in or related to:

(1) Applications filed with any state agency responsible for the regulation or supervision of the issuance of securities or of financial institutions, including, but not limited to, banks, savings and loan associations, industrial loan companies, credit unions, and insurance companies.

(2) Examination, operating, or condition reports prepared by, on behalf of, or for the use of, any state agency referred to in paragraph (1).

(3) Preliminary drafts, notes, or interagency or intra-agency communications prepared by, on behalf of, or for the use of, any state agency referred to in paragraph (1).

(4) Information received in confidence by any state agency referred to in paragraph (1).

(e) Geological and geophysical data, plant production data, and similar information relating to utility systems development, or market or crop reports, which are obtained in confidence from any person.

(f) Records of complaints to, or investigations conducted by, or records of intelligence information or security procedures of, the office of the Attorney General and the Department of Justice, and any state or local police agency, or any investigatory or security files compiled by any other state or local police agency, or any investigatory or security files compiled by any other state or local agency for correctional, law enforcement, or licensing purposes, except that state and local law enforcement agencies shall disclose the names and addresses of persons involved in, or witnesses other than confidential informants to, the incident, the description of any property involved, the date, time, and location of the incident, all diagrams, statements of the parties involved in the incident, the statements of all witnesses, other than confidential informants, to the victims of an incident, or an authorized representative thereof, an insurance carrier against which a claim has been or might be made, and any person suffering bodily injury or property damage or loss, as the result of the incident caused by arson, burglary, fire, explosion, larceny, robbery, carjacking, vandalism, vehicle theft, or a crime as defined by subdivision (c) of Section 13960, unless the disclosure would endanger the safety of a witness or other person involved in the investigation, or unless disclosure would endanger the successful completion of the investigation or a related investigation. However, nothing in this division shall require the disclosure of that portion of those investigative files that reflect the analysis or conclusions of the investigating officer.

Other provisions of this subdivision notwithstanding, state and

local law enforcement agencies shall make public the following information, except to the extent that disclosure of a particular item of information would endanger the safety of a person involved in an investigation or would endanger the successful completion of the investigation or a related investigation:

(1) The full name and occupation of every individual arrested by the agency, the individual's physical description including date of birth, color of eyes and hair, sex, height and weight, the time and date of arrest, the time and date of booking, the location of the arrest, the factual circumstances surrounding the arrest, the amount of bail set, the time and manner of release or the location where the individual is currently being held, and all charges the individual is being held upon, including any outstanding warrants from other jurisdictions and parole or probation holds.

(2) Subject to the restrictions imposed by Section 841.5 of the Penal **Code**, the time, substance, and location of all complaints or requests for assistance received by the agency and the time and nature of the response thereto, including, to the extent the information regarding crimes alleged or committed or any other incident investigated is recorded, the time, date, and location of occurrence, the time and date of the report, the name and age of the victim, the factual circumstances surrounding the crime or incident, and a general description of any injuries, property, or weapons involved. The name of a victim of any crime defined by Section 220, 261, 262, 264, 264.1, 273a, 273d, 273.5, 286, 288, 288a, 289, 422.6, 422.7, 422.75, or 646.9 of the Penal **Code** may be withheld at the victim's request, or at the request of the victim's parent or guardian if the victim is a minor. When a person is the victim of more than one crime, information disclosing that the person is a victim of a crime defined by Section 220, 261, 262, 264, 264.1, 273a, 273d, 286, 288, 288a, 289, 422.6, 422.7, 422.75, or 646.9 of the Penal **Code** may be deleted at the request of the victim, or the victim' s parent or guardian if the victim is a minor, in making the report of the crime, or of any crime or incident accompanying the crime, available to the public in compliance with the requirements of this paragraph.

(3) Subject to the restrictions of Section 841.5 of the Penal **Code** and this subdivision, the current address of every individual arrested by the agency and the current address of the victim of a crime, where the requester declares under penalty of perjury that the request is made for a scholarly, journalistic, political, or governmental purpose, or that the request is made for investigation purposes by a licensed private investigator as described in Chapter 11.3 (commencing with Section 7512) of Division 3 of the Business and Professions Code, except that the address of the victim of any crime

defined by Section 220, 261, 262, 264, 264.1, 273a, 273d, 273.5, 286, 288, 288a, 289, 422.6, 422.7, 422.75, or 646.9 of the Penal Code shall remain confidential. Address information obtained pursuant to this paragraph shall not be used directly or indirectly to sell a product or service to any individual or group of individuals, and the requester shall execute a declaration to that effect under penalty of perjury.

(g) Test questions, scoring keys, and other examination data used to administer a licensing examination, examination for employment, or academic examination, except as provided for in Chapter 3 (commencing with Section 99150) of Part 65 of the Education Code.

(h) The contents of real estate appraisals or engineering or feasibility estimates and evaluations made for or by the state or local agency relative to the acquisition of property, or to prospective public supply and construction contracts, until all of the property has been acquired or all of the contract agreement obtained. However, the law of eminent domain shall not be affected by this provision.

(i) Information required from any taxpayer in connection with the collection of local taxes that is received in confidence and the disclosure of the information to other persons would result in unfair competitive disadvantage to the person supplying the information.

(j) Library circulation records kept for the purpose of identifying the borrower of items available in libraries, and library and museum materials made or acquired and presented solely for reference or exhibition purposes. The exemption in this subdivision shall not apply to records of fines imposed on the borrowers.

(k) Records the disclosure of which is exempted or prohibited pursuant to federal or state law, including, but not limited to, provisions of the Evidence Code relating to privilege.

(l) Correspondence of and to the Governor or employees of the Governor's office or in the custody of or maintained by the Governor' s legal affairs secretary, provided that public records shall not be transferred to the custody of the Governor's legal affairs secretary to evade the disclosure provisions of this chapter.

(m) In the custody of or maintained by the Legislative Counsel, except those records in the public data base maintained by the Legislative Counsel that are described in Section 10248.

(n) Statements of personal worth or personal financial data required by a licensing agency and filed by an applicant with the licensing agency to establish his or her personal qualification for the license, certificate, or permit applied for.

(o) Financial data contained in applications for financing under Division 27 (commencing with Section 44500) of the Health and Safety Code, where an authorized officer of the California Pollution Control

Financing Authority determines that disclosure of the financial data would be competitively injurious to the applicant and the data is required in order to obtain guarantees from the United States Small Business Administration. The California Pollution Control Financing Authority shall adopt rules for review of individual requests for confidentiality under this section and for making available to the public those portions of an application which are subject to disclosure under this chapter.

(p) Records of state agencies related to activities governed by Chapter 10.3 (commencing with Section 3512), Chapter 10.5 (commencing with Section 3525), and Chapter 12 (commencing with Section 3560) of Division 4 of Title 1, that reveal a state agency's deliberative processes, impressions, evaluations, opinions, recommendations, meeting minutes, research, work products, theories, or strategy, or that provide instruction, advice, or training to employees who do not have full collective bargaining and representation rights under these chapters. Nothing in this subdivision shall be construed to limit the disclosure duties of a state agency with respect to any other records relating to the activities governed by the employee relations acts referred to in this subdivision.

(q) Records of state agencies related to activities governed by Articles 2.6 (commencing with Section 14081), 2.8 (commencing with Section 14087.5), and 2.91 (commencing with Section 14089) of Chapter 7 of Part 3 of Division 9 of the Welfare and Institutions Code, that reveal the special negotiator's deliberative processes, discussions, communications, or any other portion of the negotiations with providers of health care services, impressions, opinions, recommendations, meeting minutes, research, work product, theories, or strategy, or that provide instruction, advice, or training to employees.

Except for the portion of a contract containing the rates of payment, contracts for inpatient services entered into pursuant to these articles, on or after April 1, 1984, shall be open to inspection one year after they are fully executed. In the event that a contract for inpatient services that is entered into prior to April 1, 1984, is amended on or after April 1, 1984, the amendment, except for any portion containing the rates of payment, shall be open to inspection one year after it is fully executed. If the California Medical Assistance Commission enters into contracts with health care providers for other than inpatient hospital services, those contracts shall be open to inspection one year after they are fully executed.

Three years after a contract or amendment is open to inspection under this subdivision, the portion of the contract or amendment containing the rates of payment shall be open to inspection.

Notwithstanding any other provision of law, the entire contract or amendment shall be open to inspection by the Joint Legislative Audit Committee. The Joint Legislative Audit Committee shall maintain the confidentiality of the contracts and amendments until the time a contract or amendment is fully open to inspection by the public.

(r) Records of Native American graves, cemeteries, and sacred places maintained by the Native American Heritage Commission.

(s) A final accreditation report of the Joint Commission on Accreditation of Hospitals that has been transmitted to the State Department of Health Services pursuant to subdivision (b) of Section 1282 of the Health and Safety Code.

(t) Records of a local hospital district, formed pursuant to Division 23 (commencing with Section 32000) of the Health and Safety Code, or the records of a municipal hospital, formed pursuant to Article 7 (commencing with Section 37600) or Article 8 (commencing with Section 37650) of Chapter 5 of Division 3 of Title 4 of this code, that relate to any contract with an insurer or nonprofit hospital service plan for inpatient or outpatient services for alternative rates pursuant to Section 10133 or 11512 of the Insurance Code. However, the record shall be open to inspection within one year after the contract is fully executed.

(u) (1) Information contained in applications for licenses to carry firearms issued pursuant to Section 12050 of the Penal Code by the sheriff of a county or the chief or other head of a municipal police department that indicates when or where the applicant is vulnerable to attack or that concerns the applicant's medical or psychological history or that of members of his or her family.

(2) The home address and telephone number of peace officers, judges, court commissioners, and magistrates that are set forth in applications for licenses to carry firearms issued pursuant to Section 12050 of the Penal Code by the sheriff of a county or the chief or other head of a municipal police department.

(3) The home address and telephone number of peace officers, judges, court commissioners, and magistrates that are set forth in licenses to carry firearms issued pursuant to Section 12050 of the Penal Code by the sheriff of a county or the chief or other head of a municipal police department.

(v) (1) Records of the Major Risk Medical Insurance Program related to activities governed by Part 6.3 (commencing with Section 12695), and Part 6.5 (commencing with Section 12700), of Division 2 of the Insurance Code, and that reveal the deliberative processes, discussions, communications, or any other portion of the negotiations with health plans, or the impressions, opinions, recommendations, meeting minutes, research, work product, theories, or strategy of the board or its staff, or records that provide instructions, advice, or

training to employees.

(2) (A) Except for the portion of a contract that contains the rates of payment, contracts for health coverage entered into pursuant to Part 6.3 (commencing with Section 12695), or Part 6.5 (commencing with Section 12700), of Division 2 of the Insurance Code, on or after July 1, 1991, shall be open to inspection one year after they have been fully executed.

(B) In the event that a contract for health coverage that is entered into prior to July 1, 1991, is amended on or after July 1, 1991, the amendment, except for any portion containing the rates of payment shall be open to inspection one year after the amendment has been fully executed.

(3) Three years after a contract or amendment is open to inspection pursuant to this subdivision, the portion of the contract or amendment containing the rates of payment shall be open to inspection.

(4) Notwithstanding any other provision of law, the entire contract or amendments to a contract shall be open to inspection by the Joint Legislative Audit Committee. The Joint Legislative Audit Committee shall maintain the confidentiality of the contracts and amendments thereto, until the contract or amendments to a contract is open to inspection pursuant to paragraph (3).

(w) (1) Records of the Major Risk Medical Insurance Program related to activities governed by Chapter 14 (commencing with Section 10700) of Part 2 of Division 2 of the Insurance Code, and that reveal the deliberative processes, discussions, communications, or any other portion of the negotiations with health plans, or the impressions, opinions, recommendations, meeting minutes, research, work product, theories, or strategy of the board or its staff, or records that provide instructions, advice, or training to employees.

(2) Except for the portion of a contract that contains the rates of payment, contracts for health coverage entered into pursuant to Chapter 14 (commencing with Section 10700) of Part 2 of Division 2 of the Insurance Code, on or after January 1, 1993, shall be open to inspection one year after they have been fully executed.

(3) Notwithstanding any other provision of law, the entire contract or amendments to a contract shall be open to inspection by the Joint Legislative Audit Committee. The Joint Legislative Audit Committee shall maintain the confidentiality of the contracts and amendments thereto, until the contract or amendments to a contract is open to inspection pursuant to paragraph (2).

(x) Financial data contained in applications for registration, or registration renewal, as a service contractor filed with the Director of the Department of Consumer Affairs pursuant to Chapter 20

(commencing with Section 9800) of Division 3 of the Business and Professions Code, for the purpose of establishing the service contractor's net worth, or, financial data regarding the funded accounts held in escrow for service contracts held in force in this state by a service contractor.

(y) (1) Records of the Managed Risk Medical Insurance Board related to activities governed by Part 6.2 (commencing with Section 12693) of Division 2 of the Insurance Code, and that reveal the deliberative processes, discussions, communications, or any other portion of the negotiations with health plans, or the impressions, opinions, recommendations, meeting minutes, research, work product, theories, or strategy of the board or its staff, or records that provide instructions, advice, or training to employees.

(2) (A) Except for the portion of a contract that contains the rates of payment, contracts entered into pursuant to Part 6.2 (commencing with Section 12693) of Division 2 of the Insurance Code, on or after January 1, 1998, shall be open to inspection one year after they have been fully executed.

(B) In the event that a contract entered into pursuant to Part 6.2 (commencing with Section 12693) of Division 2 of the Insurance Code is amended, the amendment shall be open to inspection one year after the amendment has been fully executed.

(3) Three years after a contract or amendment is open to inspection pursuant to this subdivision, the portion of the contract or amendment containing the rates of payment shall be open to inspection.

(4) Notwithstanding any other provision of law, the entire contract or amendments to a contract shall be open to inspection by the Joint Legislative Audit Committee. The Joint Legislative Audit Committee shall maintain the confidentiality of the contracts and amendments thereto until the contract or amendments to a contract are open to inspection pursuant to paragraph (2) or (3).

(z) Records obtained pursuant to paragraph (2) of subdivision (c) of Section 2891.1 of the Public Utilities Code.

Nothing in this section prevents any agency from opening its records concerning the administration of the agency to public inspection, unless disclosure is otherwise prohibited by law.

Nothing in this section prevents any health facility from disclosing to a certified bargaining agent relevant financing information pursuant to Section 8 of the National Labor Relations Act.

6254.1. (a) Except as provided in Section 6254.7, nothing in this

chapter requires disclosure of records that are the residence address of any person contained in the records of the Department of Housing and Community Development, if the person has requested confidentiality of that information, in accordance with Section 18081 of the Health and Safety Code.

(b) Nothing in this chapter requires the disclosure of the residence or mailing address of any person in any record of the Department of Motor Vehicles except in accordance with Section 1808.21 of the Vehicle Code.

(c) Nothing in this chapter requires the disclosure of the results of a test undertaken pursuant to Section 12804.8 of the Vehicle Code.

6254.2. (a) Nothing in this chapter exempts from public disclosure the same categories of pesticide safety and efficacy information that are disclosable under paragraph (1) of subsection (d) of Section 10 of the federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. Sec. 136h(d)(1)), if the individual requesting the information is not an officer, employee, or agent specified in subdivision (h) and signs the affirmation specified in subdivision (h).

(b) The Director of Pesticide Regulation, upon his or her initiative, or upon receipt of a request pursuant to this chapter for the release of data submitted and designated as a trade secret by a registrant or applicant, shall determine whether any or all of the data so submitted is a properly designated trade secret. In order to assure that the interested public has an opportunity to obtain and review pesticide safety and efficacy data and to comment prior to the expiration of the public comment period on a proposed pesticide registration, the director shall provide notice to interested persons when an application for registration enters the registration evaluation process.

(c) If the director determines that the data is not a trade secret, the director shall notify the registrant or applicant by certified mail.

(d) The registrant or applicant shall have 30 days after receipt of this notification to provide the director with a complete justification and statement of the grounds on which the trade secret privilege is claimed. This justification and statement shall be submitted by certified mail.

(e) The director shall determine whether the data is protected as a trade secret within 15 days after receipt of the justification and statement or, if no justification and statement is filed, within 45 days of the original notice. The director shall notify the

registrant or applicant and any party who has requested the data pursuant to this chapter of that determination by certified mail. If the director determines that the data is not protected as a trade secret, the final notice shall also specify a date, not sooner than 15 days after the date of mailing of the final notice, when the data shall be available to any person requesting information pursuant to subdivision (a).

(f) "Trade secret" means data that is nondisclosable under paragraph (1) of subsection (d) of Section 10 of the federal Insecticide, Fungicide, and Rodenticide Act.

(g) This section shall be operative only so long as, and to the extent that, enforcement of paragraph (1) of subsection (d) of Section 10 of the federal Insecticide, Fungicide, and Rodenticide Act has not been enjoined by federal court order, and shall become inoperative if an unappealable federal court judgment or decision becomes final that holds that paragraph invalid, to the extent of the invalidity.

(h) The director shall not knowingly disclose information submitted to the state by an applicant or registrant pursuant to Article 4 (commencing with Section 12811) of Chapter 2 of Division 7 of the Food and Agricultural Code to any officer, employee, or agent of any business or other entity engaged in the production, sale, or distribution of pesticides in countries other than the United States or in countries in addition to the United States, or to any other person who intends to deliver this information to any foreign or multi-national business or entity, unless the applicant or registrant consents to the disclosure. To implement this subdivision, the director shall require the following affirmation to be signed by the person who requests such information :

AFFIRMATION OF STATUS

This affirmation is required by Section 6254.2 of the Government Code.

I have requested access to information submitted to the Department of Pesticide Regulation (or previously submitted to the Department of Food and Agriculture) by a pesticide applicant or registrant pursuant to the California Food and Agricultural Code. I hereby affirm all of the following statements:

(1) I do not seek access to the information for purposes of delivering it or offering it for sale to any business or other entity, including the business or entity of which I am an officer, employee, or agent engaged in the production, sale, or distribution of pesticides in countries other than the United States or in countries in addition to the United States, or to the officers,

employees, or agents of such a business or entity.

(2) I will not purposefully deliver or negligently cause the data to be delivered to a business or entity specified in paragraph (1) or its officers, employees, or agents.

I am aware that I may be subject to criminal penalties under Section 118 of the Penal Code if I make any statement of material facts knowing that the statement is false or if I willfully conceal any material fact.

_____

Name of Requester Name of Requester's Organization

_____

Signature of Requester Address of Requester

_____ _____

Date Request No. Telephone Number of Requester

_____

Name, Address, and Telephone Number of Requester's Client, if the requester has requested access to the information on behalf of someone other than the requester or the requester's organization listed above.

(i) Notwithstanding any other provision of this section, the director may disclose information submitted by an applicant or registrant to any person in connection with a public proceeding conducted under law or regulation, if the director determines that the information is needed to determine whether a pesticide, or any ingredient of any pesticide, causes unreasonable adverse effects on health or the environment.

(j) The director shall maintain records of the names of persons to whom data is disclosed pursuant to this section and the persons or organizations they represent and shall inform the applicant or registrant of the names and the affiliation of these persons.

(k) Section 118 of the Penal Code applies to any affirmation made pursuant to this section.

(l) Any officer or employee of the state or former officer or

employee of the state who, because of this employment or official position, obtains possession of, or has access to, material which is prohibited from disclosure by this section, and who, knowing that disclosure of this material is prohibited by this section, willfully discloses the material in any manner to any person not entitled to receive it, shall, upon conviction, be punished by a fine of not more than ten thousand dollars ($10,000), or by imprisonment in the county jail for not more than one year, or by both fine and imprisonment.

For purposes of this subdivision, any contractor with the state who is furnished information pursuant to this section, or any employee of any contractor, shall be considered an employee of the state.

(m) This section does not prohibit any person from maintaining a civil action for wrongful disclosure of trade secrets.

(n) The director may limit an individual to one request per month pursuant to this section if the director determines that a person has made a frivolous request within the past 12-month period.

6254.20. Nothing in this chapter shall be construed to require the disclosure of records that relate to electronically collected personal information, as defined by Section 11015.5, received, collected, or compiled by a state agency.

6254.21. (a) No state or local agency shall post the home address or telephone number of any elected or appointed official on the Internet without first obtaining the written permission of that individual.

(b) For purposes of this section "elected or appointed official" includes, but is not limited to, all of the following:

(1) State constitutional officers.
(2) Members of the Legislature.
(3) Judges and court commissioners.
(4) District attorneys.
(5) Public defenders.
(6) Members of a city council.
(7) Members of a board of supervisors.
(8) Appointees of the Governor.
(9) Appointees of the Legislature.
(10) Mayors.
(11) City attorneys.

(12) Police chiefs and sheriffs.

6254.25. Nothing in this chapter or any other provision of law shall require the disclosure of a memorandum submitted to a state body or to the legislative body of a local agency by its legal counsel pursuant to subdivision (q) of Section 11126 or Section 54956.9 until the pending litigation has been finally adjudicated or otherwise settled. The memorandum shall be protected by the attorney work-product privilege until the pending litigation has been finally adjudicated or otherwise settled.

6254.3. (a) The home addresses and home telephone numbers of state employees and employees of a school district or county office of education shall not be deemed to be public records and shall not be open to public inspection, except that disclosure of that information may be made as follows:

(1) To an agent, or a family member of the individual to whom the information pertains.

(2) To an officer or employee of another state agency, school district, or county office of education when necessary for the performance of its official duties.

(3) To an employee organization pursuant to regulations and decisions of the Public Employment Relations Board, except that the home addresses and home telephone numbers of employees performing law enforcement-related functions shall not be disclosed.

(4) To an agent or employee of a health benefit plan providing health services or administering claims for health services to state, school districts, and county office of education employees and their enrolled dependents, for the purpose of providing the health services or administering claims for employees and their enrolled dependents.

(b) Upon written request of any employee, a state agency, school district, or county office of education shall not disclose the employee's home address or home telephone number pursuant to paragraph (3) of subdivision (a) and an agency shall remove the employee's home address and home telephone number from any mailing list maintained by the agency, except if the list is used exclusively by the agency to contact the employee.

6254.4. (a) The home address, telephone number, precinct number, or

other number specified by the Secretary of State for voter registration purposes, and prior registration information shown on the voter registration card for all registered voters is confidential, and shall not be disclosed to any person, except pursuant to Sections 2194 and 2194.5 of the Elections Code.

(b) For purposes of this section, "home address" means street address only, and does not include an individual's city or post office address.

(c) The California driver's license number or California identification card number shown on a voter registration card of a registered voter is confidential and shall not be disclosed to any person.

6254.5. Notwithstanding any other provisions of the law, whenever a state or local agency discloses a public record which is otherwise exempt from this chapter, to any member of the public, this disclosure shall constitute a waiver of the exemptions specified in Sections 6254, 6254.7, or other similar provisions of law. For purposes of this section, "agency" includes a member, agent, officer, or employee of the agency acting within the scope of his or her membership, agency, office, or employment.

This section, however, shall not apply to disclosures:

(a) Made pursuant to the Information Practices Act (commencing with Section 1798 of the Civil Code) or discovery proceedings.

(b) Made through other legal proceedings or as otherwise required by law.

(c) Within the scope of disclosure of a statute which limits disclosure of specified writings to certain purposes.

(d) Not required by law, and prohibited by formal action of an elected legislative body of the local agency which retains the writings.

(e) Made to any governmental agency which agrees to treat the disclosed material as confidential. Only persons authorized in writing by the person in charge of the agency shall be permitted to obtain the information. Any information obtained by the agency shall only be used for purposes which are consistent with existing law.

(f) Of records relating to a financial institution or an affiliate thereof, if the disclosures are made to the financial institution or affiliate by a state agency responsible for the regulation or supervision of the financial institution or affiliate.

(g) Of records relating to any person that is subject to the jurisdiction of the Department of Corporations, if the disclosures are made to the person that is the subject of the records for the

purpose of corrective action by that person, or if a corporation, to an officer, director, or other key personnel of the corporation for the purpose of corrective action, or to any other person to the extent necessary to obtain information from that person for the purpose of an investigation by the Department of Corporations.

(h) Made by the Commissioner of Financial Institutions under Section 1909, 8009, or 18396 of the Financial Code.

6254.6. Whenever a city and county or a joint powers agency, pursuant to a mandatory statute or charter provision to collect private industry wage data for salary setting purposes, or a contract entered to implement that mandate, is provided this data by the federal Bureau of Labor Statistics on the basis that the identity of private industry employers shall remain confidential, the identity of the employers shall not be open to the public or be admitted as evidence in any action or special proceeding.

6254.7. (a) All information, analyses, plans, or specifications that disclose the nature, extent, quantity, or degree of air contaminants or other pollution which any article, machine, equipment, or other contrivance will produce, which any air pollution control district or air quality management district, or any other state or local agency or district, requires any applicant to provide before the applicant builds, erects, alters, replaces, operates, sells, rents, or uses the article, machine, equipment, or other contrivance, are public records.

(b) All air or other pollution monitoring data, including data compiled from stationary sources, are public records.

(c) All records of notices and orders directed to the owner of any building of violations of housing or building codes, ordinances, statutes, or regulations which constitute violations of standards provided in Section 1941.1 of the Civil Code, and records of subsequent action with respect to those notices and orders, are public records.

(d) Except as otherwise provided in subdivision (e) and Chapter 3 (commencing with Section 99150) of Part 65 of the Education Code, trade secrets are not public records under this section. "Trade secrets," as used in this section, may include, but are not limited to, any formula, plan, pattern, process, tool, mechanism, compound, procedure, production data, or compilation of information which is not patented, which is known only to certain individuals within a

commercial concern who are using it to fabricate, produce, or compound an article of trade or a service having commercial value and which gives its user an opportunity to obtain a business advantage over competitors who do not know or use it.

(e) Notwithstanding any other provision of law, all air pollution emission data, including those emission data which constitute trade secrets as defined in subdivision (d), are public records. Data used to calculate emission data are not emission data for the purposes of this subdivision and data which constitute trade secrets and which are used to calculate emission data are not public records.

(f) Data used to calculate the costs of obtaining emissions offsets are not public records. At the time that an air pollution control district or air quality management district issues a permit to construct to an applicant who is required to obtain offsets pursuant to district rules and regulations, data obtained from the applicant consisting of the year the offset transaction occurred, the amount of offsets purchased, by pollutant, and the total cost, by pollutant, of the offsets purchased is a public record. If an application is denied, the data shall not be a public record.

6254.8. Every employment contract between a state or local agency and any public official or public employee is a public record which is not subject to the provisions of Sections 6254 and 6255.

6254.9. (a) Computer software developed by a state or local agency is not itself a public record under this chapter. The agency may sell, lease, or license the software for commercial or noncommercial use.

(b) As used in this section, "computer software" includes computer mapping systems, computer programs, and computer graphics systems.

(c) This section shall not be construed to create an implied warranty on the part of the State of California or any local agency for errors, omissions, or other defects in any computer software as provided pursuant to this section.

(d) Nothing in this section is intended to affect the public record status of information merely because it is stored in a computer. Public records stored in a computer shall be disclosed as required by this chapter.

(e) Nothing in this section is intended to limit any copyright protections.

6254.10. Nothing in this chapter requires disclosure of records that relate to archeological site information maintained by the Department of Parks and Recreation, the State Historical Resources Commission, or the State Lands Commission.

6254.11. Nothing in this chapter requires the disclosure of records that relate to volatile organic compounds or chemical substances information received or compiled by an air pollution control officer pursuant to Section 42303.2 of the Health and Safety Code.

6254.12. Any information reported to the North American Securities Administrators Association/National Association of Securities Dealers' Central Registration Depository and compiled as disciplinary records which are made available to the Department of Corporations through a computer system, shall constitute a public record. Notwithstanding any other provision of law, the Department of Corporations may disclose that information and the current license status and the year of issuance of the license of a broker-dealer upon written or oral request pursuant to Section 25247 of the Corporations Code.

6254.13. Notwithstanding Section 6254, upon the request of any Member of the Legislature or upon request of the Governor or his or her designee, test questions or materials that would be used to administer an examination and are provided by the State Department of Education and administered as part of a statewide testing program of pupils enrolled in the public schools shall be disclosed to the requester. These questions or materials may not include an individual examination that has been administered to a pupil and scored. The requester may not take physical possession of the questions or materials, but may view the questions or materials at a location selected by the department. Upon viewing this information, the requester shall keep the materials that he or she has seen confidential.

6254.14. (a) Except as provided in Sections 6254 and 6254.7,

nothing in this chapter shall be construed to require disclosure of records of the Department of Corrections that relate to health care services contract negotiations, and that reveal the deliberative processes, discussions, communications, or any other portion of the negotiations, including, but not limited to, records related to those negotiations such as meeting minutes, research, work product, theories, or strategy of the department, or its staff, or members of the California Medical Assistance Commission, or its staff, who act in consultation with, or on behalf of, the department.

Except for the portion of a contract that contains the rates of payment, contracts for health services entered into by the Department of Corrections or the California Medical Assistance Commission on or after July 1, 1993, shall be open to inspection one year after they are fully executed. In the event that a contract for health services that is entered into prior to July 1, 1993, is amended on or after July 1, 1993, the amendment, except for any portion containing rates of payment, shall be open to inspection one year after it is fully executed.

Three years after a contract or amendment is open to inspection under this subdivision, the portion of the contract or amendment containing the rates of payment shall be open to inspection.

Notwithstanding any other provision of law, the entire contract or amendment shall be open to inspection by the Joint Legislative Audit Committee and the Bureau of State Audits. The Joint Legislative Audit Committee and the Bureau of State Audits shall maintain the confidentiality of the contracts and amendments until the contract or amendment is fully open to inspection by the public.

It is the intent of the Legislature that confidentiality of health care provider contracts, and of the contracting process as provided in this subdivision, is intended to protect the competitive nature of the negotiation process, and shall not affect public access to other information relating to the delivery of health care services.

(b) The inspection authority and confidentiality requirements established in subdivisions (q), (v), and (w) of Section 6254 for the Legislative Audit Committee shall also apply to the Bureau of State Audits.

6254.15. Nothing in this chapter shall be construed to require the disclosure of records that are any of the following: corporate financial records, corporate proprietary information including trade secrets, and information relating to siting within the state furnished to a government agency by a private company for the purpose of permitting the agency to work with the company in retaining,

locating, or expanding a facility within California. Except as provided below, incentives offered by state or local government agencies, if any, shall be disclosed upon communication to the agency or the public of a decision to stay, locate, relocate, or expand, by a company, or upon application by that company to a governmental agency for a general plan amendment, rezone, use permit, building permit, or any other permit, whichever occurs first.

The agency shall delete, prior to disclosure to the public, information that is exempt pursuant to this section from any record describing state or local incentives offered by an agency to a private business to retain, locate, relocate, or expand the business within California.

6254.16. Nothing in this chapter shall be construed to require the disclosure of the name, credit history, utility usage data, home address, or telephone number of utility customers of local agencies, except that disclosure of name, utility usage data, and the home address of utility customers of local agencies shall be made available upon request as follows:

(a) To an agent or authorized family member of the person to whom the information pertains.

(b) To an officer or employee of another governmental agency when necessary for the performance of its official duties.

(c) Upon court order or the request of a law enforcement agency relative to an ongoing investigation.

(d) Upon determination by the local agency that the utility customer who is the subject of the request has used utility services in a manner inconsistent with applicable local utility usage policies.

(e) Upon determination by the local agency that the utility customer who is the subject of the request is an elected or appointed official with authority to determine the utility usage policies of the local agency, provided that the home address of an appointed official shall not be disclosed without his or her consent.

(f) Upon determination by the local agency that the public interest in disclosure of the information clearly outweighs the public interest in nondisclosure.

6255. The agency shall justify withholding any record by demonstrating that the record in question is exempt under express provisions of this chapter or that on the facts of the particular

case the public interest served by not making the record public clearly outweighs the public interest served by disclosure of the record.

6257.5. This chapter does not allow limitations on access to a public record based upon the purpose for which the record is being requested, if the record is otherwise subject to disclosure.

6258. Any person may institute proceedings for injunctive or declarative relief or writ of mandate in any court of competent jurisdiction to enforce his or her right to inspect or to receive a copy of any public record or class of public records under this chapter. The times for responsive pleadings and for hearings in these proceedings shall be set by the judge of the court with the object of securing a decision as to these matters at the earliest possible time.

6259. (a) Whenever it is made to appear by verified petition to the superior court of the county where the records or some part thereof are situated that certain public records are being improperly withheld from a member of the public, the court shall order the officer or person charged with withholding the records to disclose the public record or show cause why he or she should not do so. The court shall decide the case after examining the record in camera, if permitted by subdivision (b) of Section 915 of the Evidence Code, papers filed by the parties and any oral argument and additional evidence as the court may allow.

(b) If the court finds that the public official's decision to refuse disclosure is not justified under Section 6254 or 6255, he or she shall order the public official to make the record public. If the judge determines that the public official was justified in refusing to make the record public, he or she shall return the item to the public official without disclosing its content with an order supporting the decision refusing disclosure.

(c) In an action filed on or after January 1, 1991, an order of the court, either directing disclosure by a public official or supporting the decision of the public official refusing disclosure, is not a final judgment or order within the meaning of Section 904.1 of the Code of Civil Procedure from which an appeal may be taken, but shall be immediately reviewable by petition to the appellate court

for the issuance of an extraordinary writ. Upon entry of any order pursuant to this section, a party shall, in order to obtain review of the order, file a petition within 20 days after service upon him or her of a written notice of entry of the order, or within such further time not exceeding an additional 20 days as the trial court may for good cause allow. If the notice is served by mail, the period within which to file the petition shall be increased by five days. A stay of an order or judgment shall not be granted unless the petitioning party demonstrates it will otherwise sustain irreparable damage and probable success on the merits. Any person who fails to obey the order of the court shall be cited to show cause why he or she is not in contempt of court.

(d) The court shall award court costs and reasonable attorney fees to the plaintiff should the plaintiff prevail in litigation filed pursuant to this section. The costs and fees shall be paid by the public agency of which the public official is a member or employee and shall not become a personal liability of the public official. If the court finds that the plaintiff's case is clearly frivolous, it shall award court costs and reasonable attorney fees to the public agency.

6260. The provisions of this chapter shall not be deemed in any manner to affect the status of judicial records as it existed immediately prior to the effective date of this section, nor to affect the rights of litigants, including parties to administrative proceedings, under the laws of discovery of this state, nor to limit or impair any rights of discovery in a criminal case.

6261. Notwithstanding Section 6252, an itemized statement of the total expenditures and disbursement of any agency provided for in Article VI of the California Constitution shall be open for inspection.

6262. The exemption of records of complaints to, or investigations conducted by, any state or local agency for licensing purposes under subdivision (f) of Section 6254 shall not apply when a request for inspection of such records is made by a district attorney.

6263. A state or local agency shall allow an inspection or copying of any public record or class of public records not exempted by this chapter when requested by a district attorney.

6264. The district attorney may petition a court of competent jurisdiction to require a state or local agency to allow him to inspect or receive a copy of any public record or class of public records not exempted by this chapter when the agency fails or refuses to allow inspection or copying within 10 working days of a request. The court may require a public agency to permit inspection or copying by the district attorney unless the public interest or good cause in withholding such records clearly outweighs the public interest in disclosure.

6265. Disclosure of records to a district attorney under the provisions of this chapter shall effect no change in the status of the records under any other provision of law.

6267. All registration and circulation records of any library which is in whole or in part supported by public funds shall remain confidential and shall not be disclosed to any person, local agency, or state agency except as follows:

(a) By a person acting within the scope of his or her duties within the administration of the library.

(b) By a person authorized, in writing, by the individual to whom the records pertain, to inspect the records.

(c) By order of the appropriate superior court.

As used in this section, the term "registration records" includes any information which a library requires a patron to provide in order to become eligible to borrow books and other materials, and the term "circulation records" includes any information which identifies the patrons borrowing particular books and other material.

This section shall not apply to statistical reports of registration and circulation nor to records of fines collected by the library.

6268. Public records, as defined in Section 6252, in the custody or control of the Governor when he or she leaves office, either

voluntarily or involuntarily, shall, as soon as is practical, be transferred to the State Archives. Notwithstanding any other provision of law, the Governor, by written instrument, the terms of which shall be made public, may restrict public access to any of the transferred public records, or any other writings he or she may transfer, which have not already been made accessible to the public. With respect to public records, public access, as otherwise provided for by this chapter, shall not be restricted for a period greater than 50 years or the death of the Governor, whichever is later, nor shall there be any restriction whatsoever with respect to enrolled bill files, press releases, speech files, or writings relating to applications for clemency or extradition in cases which have been closed for a period of at least 25 years. Subject to any restrictions permitted by this section, the Secretary of State, as custodian of the State Archives, shall make all such public records and other writings available to the public as otherwise provided for in this chapter.

Except as to enrolled bill files, press releases, speech files, or writings relating to applications for clemency or extradition, this section shall not apply to public records or other writings in the direct custody or control of any Governor who held office between 1974 and 1988 at the time of leaving office, except to the extent that that Governor may voluntarily transfer those records or other writings to the State Archives.

Notwithstanding any other provision of law, the public records and other writings of any Governor who held office between 1974 and 1988 may be transferred to any educational or research institution in California provided that with respect to public records, public access, as otherwise provided for by this chapter, shall not be restricted for a period greater than 50 years or the death of the Governor, whichever is later. No records or writings may be transferred pursuant to this paragraph unless the institution receiving them agrees to maintain, and does maintain, the materials according to commonly accepted archival standards. No public records transferred shall be destroyed by that institution without first receiving the written approval of the Secretary of State, as custodian of the State Archives, who may require that the records be placed in the State Archives rather than being destroyed. An institution receiving those records or writings shall allow the Secretary of State, as custodian of the State Archives, to copy, at state expense, and to make available to the public, any and all public records, and inventories, indices, or finding aids relating to those records, which the institution makes available to the public generally. Copies of those records in the custody of the State Archives shall be given the same legal effect as is given to the

originals.

6270. (a) Notwithstanding any other provision of law, no state or local agency shall sell, exchange, furnish, or otherwise provide a public record subject to disclosure pursuant to this chapter to a private entity in a manner that prevents a state or local agency from providing the record directly pursuant to this chapter. Nothing in this section requires a state or local agency to use the State Printer to print public records. Nothing in this section prevents the destruction of records pursuant to law.

(b) This section shall not apply to contracts entered into prior to January 1, 1996, between the County of Santa Clara and a private entity for the provision of public records subject to disclosure under this chapter.

State of California—Health and Welfare Agency

RADIOLOGIC HEALTH BRANCH

Departm
Radiologic H
714 P Street
Sacramento,

RADIATION SAFETY COMPLAINT
(Violation of Regulations or License or Unsafe Conditions)

This form may be used by an employee, his representative or an employer of a directly involved e notify the Department of violation of radiation control regulations or license conditions or unsafe with respect to any source of radiation. Mail or hand deliver form to the Department after com signing.

Complainant's Name _____ (Type or Print)

Position _____

Address _____ (Street)

_____ (City) (Zip Code)

Telephone ( ) _____ (Home) ( ) _____ (Office)

For Office Use Only

Office _____ by _____

Telephone ☐ Written ☐

ASSIGNMENT:

Investigation file # _____

(date received) M

Agency _____

Inspector _____

(Review will be responsibility of above agency/person)

Complainant (Check one)

☐ Employee ☐ Employee's Representative _____ (Name of your organization) ☐ Other _____

Believes that a radiation safety violation or unsafe condition at the following place of employment exists:

Employer's Name _____ Telephone ( )

Address _____

1. Kind of business _____

2. Specify the particular building or worksite where the violation or unsafe condition is located.

_____

_____

3. Specify the name and phone number of employer's agent(s) in charge _____

_____

The Violation or Unsafe Condition: Describe briefly the radiation safety violation or unsafe conditi including the approximate number of persons exposed to or th violation or unsafe condition.

_____

_____

_____

_____

5. If known, name and/or list the radiation control regulation sections and/or license conditions wl violated: _____

6. To your knowledge have these violations or unsafe conditions been considered by any government agei
☐ Yes ☐ No

(a) If so, state the name of the agency _____

(b) Approximate date it was so considered _____

7. Is a complaint, alleging the same violations or unsafe conditions, being filed with any other governmen If so, give the name and address of each agency _____

8. Have you (or anyone you know) called these violations or unsafe conditions to the attention or discu employer or any representative thereof? ☐ Yes ☐ No

To your knowledge, have these violations or unsafe conditions been the subject of any union/manage
☐ Yes ☐ No

If yes, give the results thereof, including any efforts by management to correct the violations or ur

9. Confidentiality:
(a) I permit the Department to disclose my name ☐ Yes ☐ No

(b) I permit the Department to disclose the information herein ☐ Yes ☐ No

10. I hereby certify that the above, to the best of my knowledge, is true and correct.

Date _____ _____
Complainant's Signature

City _____

11. For Office Use Only:

(a) Serviced _____ _____ _____
Date Inspector Date

(b) Requirements written ☐ Yes ☐ No

(c) Complaint acknowledged ☐ Letter ☐ Telephone

#5

STATE OF COLORADO

Roy Romer, Governor
Patti Shwayder, Executive Director

Dedicated to protecting and improving the health and environment of the people of Colorado

4300 Cherry Creek Dr. S.
Denver, Colorado 80246-1530
Phone (303) 692-2000
Located in Glendale, Colorado

Laboratory and Radiation Services Division
8100 Lowry Blvd.
Denver CO 80220-6928
(303) 692-3090

http://www.cdphe.state.co.us

Colorado Department
of Public Health
and Environment

January 6, 1999

Cardelia H. Maupin
Office of State Programs (03D23)
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001

RE: SP-98-097 - PROTECTION OF THE IDENTITY OF ALLEGERS

Colorado does not have any specific statutory or regulatory provisions that would allow us to withhold an alleger's identity with respect to radioactive materials. In the last situation we had, we were able to protect an alleger in nuclear medicine under the Clinical Laboratory Improvements Act (CLIA) regulations since the individual was also performing studies covered under that statute.

Per your request, enclosed is a copy of Colorado's Open Records Act. If you have any questions, please contact Jake Jacobi at (303) 692-3036.

Robert M. Quillin, Director
Laboratory and Radiation Services Division

RQ: wj

enclosures: as stated

OSP
JAN 12 1999

24-72-202 - Definitions.

As used in this part 2, unless the context otherwise requires:

(1) "Correspondence" means a communication that is sent to or received by one or more specifically identified individuals and that is or can be produced in written form, including, without limitation:

(a) Communications sent via U.S. mail;

(b) Communications sent via private courier;

(c) Communications sent via electronic mail.

(1.1) "Custodian" means and includes the official custodian or any authorized person having personal custody and control of the public records in question.

(1.2) "Electronic mail" means an electronic message that is transmitted between two or more computers or electronic terminals, whether or not the message is converted to hard copy format after receipt and whether or not the message is viewed upon transmission or stored for later retrieval. "Electronic mail" includes electronic messages that are transmitted through a local, regional, or global computer network.

(1.3) "Executive position" means any nonelective employment position with a state agency, institution, or political subdivision, except employment positions in the state personnel system or employment positions in a classified system or civil service system of an institution or political subdivision.

(1.5) "Institution" includes but is not limited to every state institution of higher education, whether established by the state constitution or by law, and every governing board thereof. In particular, the term includes the university of Colorado, the regents thereof, and any other state institution of higher education or governing board referred to by the provisions of section 5 of article VIII of the state constitution.

(1.7) "Local government-financed entity" shall have the same meaning as provided in section 29-1-901 (1), C.R.S.

(2) "Official custodian" means and includes any officer or employee of the state, of any agency, institution, or political subdivision of the state, or of any local government-financed entity who is responsible for the maintenance, care, and keeping of public records, regardless of whether the records are in his or her actual personal custody and control.

(3) "Person" means and includes any natural person, corporation, limited liability company, partnership, firm, or association.

(4) "Person in interest" means and includes the person who is the subject of a record or any

representative designated by said person; except that, if the subject of the record is under legal disability, "person in interest" means and includes his parent or duly appointed legal representative.

(4.5) "Personnel files" means and includes home addresses, telephone numbers, financial information, and other information maintained because of the employer-employee relationship, and other documents specifically exempt from disclosure under this part 2 or any other provision of law. "Personnel files" does not include applications of past or current employees, employment agreements, any amount paid or benefit provided incident to termination of employment, performance ratings, final sabbatical reports required under section 23-5-123, C.R.S., or any compensation, including expense allowances and benefits, paid to employees by the state, its agencies, institutions, or political subdivisions.

(5) "Political subdivision" means and includes every county, city and county, city, town, school district, special district, and housing authority within this state.

(6) (a) (I) "Public records" means and includes all writings made, maintained, or kept by the state, any agency, institution, or political subdivision of the state, or that are described in section 29-1-902, C.R.S., and held by any local government-financed entity for use in the exercise of functions required or authorized by law or administrative rule or involving the receipt or expenditure of public funds.

(II) "Public records" includes the correspondence of elected officials, except to the extent that such correspondence is:

(A) Work product;

(B) Without a demonstrable connection to the exercise of functions required or authorized by law or administrative rule and does not involve the receipt or expenditure of public funds;

(C) A communication from a constituent to an elected official that clearly implies by its nature or content that the constituent expects that it is confidential or a communication from the elected official in response to such a communication from a constituent; or

(D) Subject to nondisclosure as required in section 24-72-204 (1).

(III) The acceptance by a public official or employee of compensation for services rendered, or the use by such official or employee of publicly owned equipment or supplies, shall not be construed to convert a writing that is not otherwise a "public record" into a "public record".

(b) "Public records" does not include:

(I) Criminal justice records that are subject to the provisions of part 3 of this article;

(II) Work product prepared for elected officials. However, elected officials may release, or authorize the release of, all or any part of work product prepared for them.

(III) Data, information, and records relating to the Colorado prepaid postsecondary education expense trust fund established in section 23-3.1-206.7 (5), C.R.S.

(6.5) (a) "Work product" means and includes all intra- or inter-agency advisory or deliberative

materials assembled for the benefit of elected officials, which materials express an opinion or are deliberative in nature and are communicated for the purpose of assisting such elected officials in reaching a decision within the scope of their authority. Such materials include, but are not limited to:

(I) Notes and memoranda that relate to or serve as background information for such decisions;

(II) Preliminary drafts and discussion copies of documents that express a decision by an elected official.

(b) "Work product" also includes all documents relating to the drafting of bills or amendments, pursuant to section 2-3-505 (2) (b), C.R.S., but it does not include the final version of documents prepared or assembled pursuant to section 2-3-505 (2) (c), C.R.S. "Work product" also includes all research projects conducted by staff of legislative council pursuant to section 2-3-304 (1), C.R.S., if the research is requested by a member of the general assembly and identified by the member as being in connection with pending or proposed legislation or amendments thereto. However, the final product of any such research project shall become a public record unless the member specifically requests that it remain work product. In addition, if such a research project is requested by a member of the general assembly and the project is not identified as being in connection with pending or proposed legislation or amendments thereto, the final product shall become a public record.

(c) "Work product" does not include:

(I) Any final version of a document that expresses a final decision by an elected official;

(II) Any final version of a fiscal or performance audit report or similar document the purpose of which is to investigate, track, or account for the operation or management of a public entity or the expenditure of public money, together with the final version of any supporting material attached to such final report or document;

(III) Any final accounting or final financial record or report;

(IV) Any materials that would otherwise constitute work product if such materials are produced and distributed in a public meeting or cited and identified in the text of the final version of a document that expresses a decision by an elected official.

(d) (I) In addition, "work product" does not include any final version of a document prepared or assembled for an elected official that consists solely of factual information compiled from public sources. The final version of such a document shall be a public record. These documents include, but are not limited to:

(A) Comparisons of existing laws, ordinances, rules, or regulations with the provisions of any bill, amendment, or proposed law, ordinance, rule, or regulation; comparisons of any bills, amendments, or proposed laws, ordinances, rules, or regulations with other bills, amendments, or proposed laws, ordinances, rules, or regulations; comparisons of different versions of bills, amendments, or proposed laws, ordinances, rules, or regulations; and comparisons of the laws, ordinances, rules, or regulations of the jurisdiction of the elected official with the laws, ordinances, rules, or regulations of other jurisdictions;

(B) Compilations of existing public information, statistics, or data;

(C) Compilations or explanations of general areas or bodies of law, ordinances, rules, or regulations, legislative history, or legislative policy.

(II) This paragraph (d) shall not apply to documents prepared or assembled for members of the general assembly pursuant to paragraph (b) of this subsection (6.5).

(7) "Writings" means and includes all books, papers, maps, photographs, cards, tapes, recordings, or other documentary materials, regardless of physical form or characteristics. "Writings" includes digitally stored data, including without limitation electronic mail messages, but does not include computer software.

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24-72-203 - Public records open to inspection.

(1)(a) All public records shall be open for inspection by any person at reasonable times, except as provided in this part 2 or as otherwise provided by law, but the official custodian of any public records may make such rules with reference to the inspection of such records as are reasonably necessary for the protection of such records and the prevention of unnecessary interference with the regular discharge of the duties of the custodian or the custodian's office.

(b) Where public records are kept only in miniaturized or digital form, whether on magnetic or optical disks, tapes, microfilm, microfiche, or otherwise, the official custodian shall:

(I) Adopt a policy regarding the retention, archiving, and destruction of such records; and

(II) Take such measures as are necessary to assist the public in locating any specific public records sought and to ensure public access to the public records without unreasonable delay or unreasonable cost. Such measures may include, without limitation, the availability of viewing stations for public records kept on microfiche; the provision of portable disk copies of computer files; or direct electronic access via on-line bulletin boards or other means.

(2) (a) If the public records requested are not in the custody or control of the person to whom application is made, such person shall forthwith notify the applicant of this fact, in writing if requested by the applicant. In such notification, the person shall state in detail to the best of the person's knowledge and belief the reason for the absence of the records from the person's custody or control, the location of the records, and what person then has custody or control of the records.

(b) If an official custodian has custody of correspondence sent by or received by an elected official, the official custodian shall consult with the elected official prior to allowing inspection of the correspondence for the purpose of determining whether the correspondence is a public record.

(3) (a) If the public records requested are in the custody and control of the person to whom application is made but are in active use, in storage, or otherwise not readily available at the time an applicant asks to examine them, the custodian shall forthwith notify the applicant of this fact, in writing if requested by the applicant. If requested by the applicant, the custodian shall set a date and hour at which time the records will be available for inspection.

(b) The date and hour set for the inspection of records not readily available at the time of the request shall be within a reasonable time after the request. As used in this subsection (3), a "reasonable time" shall be presumed to be three working days or less. Such period may be extended if extenuating circumstances exist. However, such period of extension shall not exceed seven days. A finding that extenuating circumstances exist shall be made in writing by the custodian and shall be provided to the person making the request within the three-day period. Extenuating circumstances shall apply only when:

(I) A broadly stated request is made that encompasses all or substantially all of a large category of records and the request is without sufficient specificity to allow the custodian reasonably to prepare or gather the records within the three-day period; or

(II) A broadly stated request is made that encompasses all or substantially all of a large category of records and the agency is unable to prepare or gather the records within the three-day period because:

(A) The agency needs to devote all or substantially all of its resources to meeting an impending deadline or period of peak demand that is either unique or not predicted to recur more frequently than once a month; or

(B) In the case of the general assembly or its staff or service agencies, the general assembly is in session.

(c) In no event can extenuating circumstances apply to a request that relates to a single, specifically identified document.

(4) Nothing in this article shall preclude the state or any of its agencies, institutions, or political subdivisions from obtaining and enforcing trademark or copyright protection for any public record, and the state and its agencies, institutions, and political subdivisions are hereby specifically authorized to obtain and enforce such protection in accordance with the applicable federal law; except that this authorization shall not restrict public access to or fair use of copyrighted materials and shall not apply to writings which are merely lists or other compilations.

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24-72-204 - Allowance or denial of inspection - grounds - procedure - appeal.

(1) The custodian of any public records shall allow any person the right of inspection of such records or any portion thereof except on one or more of the following grounds or as provided in subsection (2) or (3) of this section:

(a) Such inspection would be contrary to any state statute.

(b) Such inspection would be contrary to any federal statute or regulation issued thereunder having the force and effect of law.

(c) Such inspection is prohibited by rules promulgated by the supreme court or by the order of any court.

(2) (a) The custodian may deny the right of inspection of the following records, unless otherwise provided by law, on the ground that disclosure to the applicant would be contrary to the public interest:

(I) Any records of the investigations conducted by any sheriff, prosecuting attorney, or police department, any records of the intelligence information or security procedures of any sheriff, prosecuting attorney, or police department, or any investigatory files compiled for any other law enforcement purpose;

(II) Test questions, scoring keys, and other examination data pertaining to administration of a licensing examination, examination for employment, or academic examination; except that written promotional examinations and the scores or results thereof conducted pursuant to the state personnel system or any similar system shall be available for inspection, but not copying or reproduction, by the person in interest after the conducting and grading of any such examination;

(III) The specific details of bona fide research projects being conducted by a state institution, including, without limitation, research projects undertaken by staff or service agencies of the general assembly or the office of the governor in connection with pending or anticipated legislation;

(IV) The contents of real estate appraisals made for the state or a political subdivision thereof relative to the acquisition of property or any interest in property for public use, until such time as title to the property or property interest has passed to the state or political subdivision; except that the contents of such appraisal shall be available to the owner of the property, if a condemning authority determines that it intends to acquire said property as provided in section 38-1-121, C.R.S., relating to eminent domain proceedings, but, in any case, the contents of such appraisal shall be available to the owner under this section no later than one year after the condemning authority receives said appraisal; and except as provided by the Colorado rules of civil procedure. If condemnation proceedings are instituted to acquire any such property, any owner of such property who has received the contents of any appraisal pursuant to this section shall, upon receipt thereof, make available to said state or political subdivision a copy of the contents of any appraisal which the owner has obtained relative to the proposed acquisition of the property;

(V) Any market analysis data generated by the department of transportation's bid analysis and management system for the confidential use of the department of transportation in awarding contracts for construction or for the purchase of goods or services and any records, documents, and automated systems prepared for the bid analysis and management system; and

(VI) Photographs filed with, maintained by, or prepared by the department of revenue pursuant to section 42-2-121 (2) (c) (I) (F), C.R.S. Copies of photographs, electronically stored photographs, or digitized images may be sold by the department of revenue under section 42-1-206 (3), C.R.S., for the purpose of prevention of fraud.

(b) If the right of inspection of any record falling within any of the classifications listed in this subsection (2) is allowed to any officer or employee of any newspaper, radio station, television station, or other person or agency in the business of public dissemination of news or current events, it shall be allowed to all such news media.

(3) (a) The custodian shall deny the right of inspection of the following records, unless otherwise provided by law; except that any of the following records, other than letters of reference concerning employment, licensing, or issuance of permits, shall be available to the person in interest under this subsection (3):

(I) Medical, mental health, sociological, and scholastic achievement data on individual persons, other than scholastic achievement data submitted as part of finalists' records as set forth in subparagraph (XI) of this paragraph (a) and exclusive of coroners' autopsy reports and group scholastic achievement data from which individuals cannot be identified; but either the custodian or the person in interest may request a professionally qualified person, who shall be furnished by the said custodian, to be present to interpret the records;

(II) (A) Personnel files; but such files shall be available to the person in interest and to the duly elected and appointed public officials who supervise such person's work.

(B) The provisions of this subparagraph (II) shall not be interpreted to prevent the public inspection or copying of any employment contract or any information regarding amounts paid or benefits provided under any settlement agreement pursuant to the provisions of article 19 of this title.

(III) Letters of reference;

(IV) Trade secrets, privileged information, and confidential commercial, financial, geological, or geophysical data furnished by or obtained from any person;

(V) Library and museum material contributed by private persons, to the extent of any limitations placed thereon as conditions of such contributions;

(VI) Addresses and telephone numbers of students in any public elementary or secondary school;

(VII) Library records disclosing the identity of a user as prohibited by section 24-90-119;

(VIII) Repealed.

(IX) Addresses, telephone numbers, and personal financial information of past or present users of public utilities, public facilities, or recreational or cultural services which are owned and operated by the state, its agencies, institutions, or political subdivisions; except that, nothing in this subparagraph (IX) shall prohibit the custodian of records from transmitting such data to any peace officer, as defined in section 18-1-901 (3) (l) (I), (3) (l) (II), and (3) (l) (III), C.R.S., acting within the scope of such officer's authority and in furtherance of such officer's duties, who makes a request to the custodian to inspect such records and who provides evidence satisfactory to the custodian that the inspection is reasonably related to such peace officer's authority and duties. Nothing in this subparagraph (IX) shall be construed to prohibit the publication of such information in an aggregate or statistical form so classified as to prevent the identification, location, or habits of individuals.

(X) (A) Any records of sexual harassment complaints and investigations which are maintained pursuant to any rule of the general assembly on a sexual harassment policy, whether or not such records are maintained as part of a personnel file; except that, an administrative agency investigating the complaint may, upon a showing of necessity to the custodian of records, gain access to

information necessary to the investigation of such a complaint.

(B) A person in interest under this subparagraph (X) includes the person making a complaint and the person whose conduct is the subject of such a complaint.

(C) A person in interest may make a record maintained pursuant to this subparagraph (X) available for public inspection when such record supports the contention that a publicly reported, written, printed, or spoken allegation of sexual harassment against such person is false.

(XI) (A) Records submitted by or on behalf of an applicant or candidate for an executive position as defined in section 24-72-202 (1.3) who is not a finalist if the applicant or candidate makes a written request that the records be kept confidential at the time of submission of the records. For purposes of this subparagraph (XI), "finalist" means an applicant or candidate for an executive position who is chosen for an interview or who is still being considered for the position twenty-one days prior to making the appointment, whichever comes first; except that, if six or fewer applicants or candidates are competing for the executive position, "finalist" means all applicants or candidates.

(B) The provisions of this subparagraph (XI) shall not be construed to prohibit the public inspection or copying of any records submitted by or on behalf of a finalist; except that letters of reference or medical, psychological, and sociological data concerning finalists shall not be made available for public inspection or copying.

(C) The provisions of this subparagraph (XI) shall apply to employment selection processes for all executive positions, including, but not limited to, selection processes conducted or assisted by private persons or firms at the request of a state agency, institution, or political subdivision.

(XII) Any record indicating that a person has obtained distinguishing license plates or an identifying placard for persons with disabilities under section 42-3-121, C.R.S., or any other motor vehicle record that would reveal the presence of a disability.

(b) Nothing in this subsection (3) shall prohibit the custodian of records from transmitting data concerning the scholastic achievement of any student to any prospective employer of such student, nor shall anything in this subsection (3) prohibit the custodian of records from making available for inspection, from making copies, print-outs, or photographs of, or from transmitting data concerning the scholastic achievement or medical, psychological, or sociological information of any student to any law enforcement agency of this state, of any other state, or of the United States where such student is under investigation by such agency and the agency shows that such data is necessary for the investigation.

(c) Nothing in this subsection (3) shall prohibit the custodian of the records of a school, including any institution of higher education, or a school district from transmitting data concerning standardized tests, scholastic achievement, disciplinary information involving a student, or medical, psychological, or sociological information of any student to the custodian of such records in any other such school or school district to which such student moves, transfers, or makes application for transfer, and the written permission of such student or his or her parent or guardian shall not be required therefor. No state educational institution shall be prohibited from transmitting data concerning standardized tests or scholastic achievement of any student to the custodian of such records in the school, including any state educational institution, or school district in which such student was previously enrolled, and the written permission of such student or his or her parent or guardian shall not be required therefor.

(d) The provisions of this paragraph (d) shall apply to all public schools and school districts that receive funds under article 54 of title 22, C.R.S. Notwithstanding the provisions of subparagraph (VI) of paragraph (a) of this subsection (3), under policies adopted by the local board of education, the names, addresses, and home telephone numbers of students in any secondary school shall be released to a recruiting officer for any branch of the United States armed forces who requests such information, subject to the following:

(I) Each local board of education shall adopt a policy to govern the release of the names, addresses, and home telephone numbers of secondary school students to military recruiting officers that provides that such information shall be released to recruiting officers unless a student submits a request, in writing, that such information not be released.

(II) The directory information requested by a recruiting officer shall be released by the local board of education within ninety days of the date of the request.

(III) The local board of education shall comply with any applicable provisions of the federal "Family Education Rights and Privacy Act of 1974" (FERPA), 20 U.S.C. section 1232g, and the federal regulations cited thereunder relating to the release of student information by educational institutions that receive federal funds.

(IV) Actual direct expenses incurred in furnishing this information shall be paid for by the requesting service and shall be reasonable and customary.

(V) The recruiting officer shall use the data released for the purpose of providing information to students regarding military service and shall not use it for any other purpose or release such data to any person or organization other than individuals within the recruiting services of the armed forces.

(3.5) (a) Effective January 1, 1992, any individual who meets the requirements of this subsection (3.5) may request that the address of such individual included in any public records concerning that individual which are required to be made, maintained, or kept pursuant to the following sections be kept confidential:

(I) Sections 1-2-227 and 1-2-301, C.R.S.;

(II) Sections 42-1-210, 42-2-119, 42-2-121, and 42-3-112, C.R.S.;

(III) Section 24-6-202.

(b) (I) An individual may make the request of confidentiality allowed by this subsection (3.5) if such individual has reason to believe that such individual, or any member of such individual's immediate family who resides in the same household as such individual, will be exposed to criminal harassment as prohibited in section 18-9-111, C.R.S., or otherwise be in danger of bodily harm, if such individual's address is not kept confidential in accordance with this subsection (3.5).

(II) A request of confidentiality with respect to records described in subparagraphs (I) and (II) of paragraph (a) of this subsection (3.5) shall be made in person in the office of the county clerk and recorder of the county where the individual making the request resides. Requests shall be made on application forms approved by the secretary of state and the executive director of the department of revenue, after consultation with county clerk and recorders. The application form shall provide

space for the applicant to provide his or her name and address, date of birth, driver's license number, if the applicant has a driver's license, identification card number, if the applicant has an identification card issued pursuant to part 3 of article 2 of title 42, C.R.S., registration number or plate number, if the applicant is the owner of record of a vehicle registered pursuant to article 3 of title 42, C.R.S., and any other identifying information determined by the executive director of the department of revenue to be necessary to carry out the provisions of this subsection (3.5). In addition, an affirmation shall be printed on the form, in the area immediately above a line for the applicant's signature and the date, stating the following: "I swear or affirm, under penalty of perjury, that I have reason to believe that I, or a member of my immediate family who resides in my household, will be exposed to criminal harassment, or otherwise be in danger of bodily harm, if my address is not kept confidential." Immediately below the signature line, there shall be printed a notice, in a type that is larger than the other information contained on the form, that the applicant may be prosecuted for perjury in the second degree under section 18-8-503, C.R.S., if the applicant signs such affirmation and does not believe such affirmation to be true.

(III) The county clerk and recorder of each county shall provide an opportunity for any individual to make the request of confidentiality allowed by this subsection (3.5) in person at the time such individual makes application to the county clerk and recorder to register to vote or to make any change in such individual's registration, at the time such individual applies at the office of the county clerk and recorder for registration or renewal of registration of a vehicle pursuant to article 3 of title 42, C.R.S., and at any other time during normal business hours of the office of the county clerk and recorder. The county clerk and recorder shall forward a copy of each completed application to the department of revenue and to the secretary of state for purposes of the records maintained by them pursuant to subparagraphs (I) and (II) of paragraph (a) of this subsection (3.5). The county clerk and recorder shall collect a processing fee in the amount of five dollars for each driver's license and vehicle included by the application. If voter registration records are included in the application, the processing fee shall include an additional five dollars, of which amount two dollars and fifty cents shall be transmitted to the secretary of state for the purpose of offsetting the secretary of state's costs of processing applications forwarded to the secretary of state pursuant to this subparagraph (III). All processing fees received by the secretary of state pursuant to this subparagraph (III) shall be transmitted to the state treasurer, who shall credit the same to the department of state cash fund. All processing fees collected by the county clerk and recorder for the inclusion of driver's licenses in applications shall be transmitted to the state treasurer, who shall credit the same to the highway users tax fund.

(IV) The secretary of state shall provide an opportunity for any individual to make the request of confidentiality allowed by paragraph (a) of this subsection (3.5), with respect to the records described in subparagraph (III) of paragraph (a) of this subsection (3.5). The secretary of state may charge a processing fee, not to exceed five dollars, for each such request. All processing fees collected by the secretary of state pursuant to this subparagraph (IV) or subparagraph (III) of this paragraph (b) shall be transmitted to the state treasurer, who shall credit the same to the department of state cash fund.

(V) Notwithstanding the amount specified for any fee in subparagraph (III) or (IV) of this paragraph (b), the secretary of state by rule or as otherwise provided by law may reduce the amount of one or more of the fees credited to the department of state cash fund and the executive director of the department of revenue by rule or as otherwise provided by law may reduce the amount of one or more of the fees credited to the highway users tax fund if necessary pursuant to section 24-75-402 (3), to reduce the uncommitted reserves of the fund to which all or any portion of one or more of the fees is credited. After the uncommitted reserves of the fund are sufficiently reduced, the

secretary of state or the executive director, whichever is appropriate, by rule or as otherwise provided by law may increase the amount of one or more of the fees as provided in section 24-75-402 (4).

(c) The custodian of any records described in paragraph (a) of this subsection (3.5) which concern an individual who has made a request of confidentiality pursuant to this subsection (3.5) and paid any required processing fee shall deny the right of inspection of the individual's address contained in such records on the ground that disclosure would be contrary to the public interest; except that such custodian shall allow the inspection of such records by such individual, by any person authorized in writing by such individual, and by any individual employed by one of the following entities who makes a request to the custodian to inspect such records and who provides evidence satisfactory to the custodian that the inspection is reasonably related to the authorized purpose of the employing entity:

(I) A criminal justice agency, as defined by section 24-72-302 (3);

(II) An agency of the United States, the state of Colorado, or of any political subdivision or authority thereof;

(III) A person required to obtain such individual's address in order to comply with federal or state law or regulations adopted pursuant thereto;

(IV) An insurance company which has a valid certificate of authority to transact insurance business in Colorado as required in section 10-3-105 (1), C.R.S.;

(V) A collection agency which has a valid license as required by section 12-14-115 (1), C.R.S.;

(VI) A supervised lender licensed pursuant to section 5-3-503, C.R.S.;

(VII) A bank as defined in section 11-1-102 (2), C.R.S., an industrial bank as defined in section 11-22-101 (1), C.R.S., a trust company as defined in section 11-23-102 (4), C.R.S., a credit union as defined in section 11-30-101 (1), C.R.S., a domestic savings and loan association as defined in section 11-40-102 (5), C.R.S., a foreign savings and loan association as defined in section 11-40-102 (8), C.R.S., or a broker-dealer as defined in section 11-51-201 (2), C.R.S.;

(VIII) An attorney licensed to practice law in Colorado or his representative authorized in writing to inspect such records on behalf of the attorney;

(IX) A manufacturer of any vehicle required to be registered pursuant to the provisions of article 3 of title 42, C.R.S., or a designated agent of such manufacturer. Such inspection shall be allowed only for the purpose of identifying, locating, and notifying the registered owners of such vehicles in the event of a product recall or product advisory and may also be allowed for statistical purposes where such address is not disclosed by such manufacturer or designated agent. No person who obtains the address of an individual pursuant to this subparagraph (IX) shall disclose such information, except as necessary to accomplish said purposes.

(d) Notwithstanding any provisions of this subsection (3.5) to the contrary, any person who appears in person in the office of any custodian of records described in paragraph (a) of this subsection (3.5) and who presents documentary evidence satisfactory to the custodian that such person is a duly accredited representative of the news media may verify the address of an individual

whose address is otherwise protected from inspection in accordance with this subsection (3.5). Such verification shall be limited to the custodian confirming or denying that the address of an individual as known to the representative of the news media is the address of the individual as shown by the records of the custodian.

(e) No person shall make any false statement in requesting any information pursuant to paragraph (a) or (b) of this subsection (3.5).

(f) Any request of confidentiality made pursuant to this subsection (3.5) shall be kept confidential and shall not be open to inspection as a public record unless a written release is executed by the person who made the request.

(4) If the custodian denies access to any public record, the applicant may request a written statement of the grounds for the denial, which statement shall cite the law or regulation under which access is denied and shall be furnished forthwith to the applicant.

(5) Any person denied the right to inspect any record covered by this part 2 may apply to the district court of the district wherein the record is found for an order directing the custodian of such record to show cause why he should not permit the inspection of such record. Hearing on such application shall be held at the earliest practical time. Unless the court finds that the denial of the right of inspection was proper, it shall order the custodian to permit such inspection and, upon a finding that the denial was arbitrary or capricious, it may order the custodian personally to pay the applicant's court costs and attorney fees in an amount to be determined by the court.

(6) (a) If, in the opinion of the official custodian of any public record, disclosure of the contents of said record would do substantial injury to the public interest, notwithstanding the fact that said record might otherwise be available to public inspection, the official custodian may apply to the district court of the district in which such record is located for an order permitting him or her to restrict such disclosure. Hearing on such application shall be held at the earliest practical time. After hearing, the court may issue such an order upon a finding that disclosure would cause substantial injury to the public interest. In such action the burden of proof shall be upon the custodian. The person seeking permission to examine the record shall have notice of said hearing served upon him or her in the manner provided for service of process by the Colorado rules of civil procedure and shall have the right to appear and be heard.

(b) In defense against an application for an order under subsection (5) of this section, the custodian may raise any issue that could have been raised by the custodian in an application under paragraph (a) of this subsection (6).

(7) In addition to any other requirement or restriction, the department of revenue or a designated agent of the department may allow inspection of information contained in a driver's license application under section 42-2-107, C.R.S., a driver's license renewal application under section 42-2-118, C.R.S., a duplicate driver's license application under section 42-2-117, C.R.S., a commercial driver's license application under section 42-2-404, C.R.S., an identification card application under section 42-2-302, C.R.S., a motor vehicle title application under section 42-6-103, C.R.S., a motor vehicle registration application under section 42-3-112, C.R.S., or other official record or document maintained by the department under section 42-2-121, C.R.S., to a requestor, other than a person in interest or a federal, state, or local government agency carrying out its official functions, only upon obtaining a completed requestor release form under section 42-1-206 (1) (b), C.R.S. If the requestor release form indicates that the requestor will use information contained in

records, requested individually, or in bulk, for any purpose other than a purpose authorized by law, including an authorized use under the federal "Driver's Privacy Protection Act of 1994", 18 U.S.C. sec. 2721, et seq., or the lawful use of the records by the press and news media in gathering news information, the department or agent shall deny inspection of any motor vehicle or driver record for which a confidentiality request form has been filed pursuant to section 42-2-121 (4), C.R.S.

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January 15, 1999

Paul H. Lohaus, Deputy Director
Office of State Programs (03H20)
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Dear Mr. Lohaus:

In All Agreement States letter SP-98-097 NRC requested information from all the Agreement States on their ability to protect allegation information, especially the identity of allegers from public disclosure. NRC specifically requested information regarding State laws, procedures or policies regarding the disclosure of an alleger's identity. The following outline the essential points:

(1) Generally speaking, the Georgia Open Records Act, O.C.G.A. Section 50-18-70 et seq. ("the Act") requires that all public documents be made available for inspection and copying unless specifically exempted from disclosure under the ACT. The exemptions from disclosure are found at O.C.G.A. Section 50-18-72.

(2) Given the nature of the information NRC inquired about (i.e., the identity of an "alleger"---same as a complainant) it would appear that the only exemptions that may be applicable are those found at O.C.G.A. Section 50-18-72 (a)(`1), (3), and (4) which read " *[P]ublic disclosure shall not be required for records that are (1) [S]pecifically required by the federal government to be kept confidential;...(3) [E]xcept as otherwise provided by law, records compiled for law enforcement or prosecution purposes to the extent that production of such records would disclose the identity of a confidential source, disclose confidential investigative or prosection material which would endanger the life or physical safety of any person or persons, or disclose the existence of a confidential surveillance or investigation; (4) [R]ecords of law enforcement, prosecution, or regulatory agencies in any pending investigation or prosecution of criminal or unlawful activity other than initial police arrest reports, accident reports, and incident reports; provided, however, that an investigation or prosection shall no longer be deemed to be pending when all direct litigation involving said investigation and prosecution has become final or otherwise terminated..."*

(3) Based on the above, NRC is advised that we will be required to disclose the identity of an alleger if documents maintained by us contain same, unless it clearly falls within one of the above exemptions. With respect to the exemption in par. (a)(2), NRC would need to provide us with a specific federal law, rule or regulation that prohibits us from disclosing the identity of the alleger. Our opinion is that an internal policy of NRC to not disclose such information would not be sufficient to support our not disclosing such information. Rather, we would need to have specific federal legal authority that prohibits such disclosure. With respect to the exemptions set forth in (a)(3) and (4), we would need to receive from NRC, at the time they forward the identity of the alleger to us, sufficient facts that put the information clearly within the breadth of the exemption; if such information is not received, the information would be subject to disclosure if not within (a)(2) above. Unfortunately, non-disclosure would be subject to disclosure if not within (a)(2) above. Unfortunately, non-disclosure

determinations with respect to pars (a)(3) and (4) will need to be made on a case-by-case basis.

(4) Further we would have an obligation to not disclose the identity of an alleger, unless compelled by court order should we become aware of information, from NRC or other sources, indicating that the alleger may be placed in danger if his identity were disclosed.

If you should have any questions regarding this matter, please do not hesitate to contact me at (404) 362-2675.

Sincerely,

Thomas E. Hill, Manager
Radioactive Materials Program

DCD(SP07) PHL #3 SCD CHM

STATE OF ILLINOIS
DEPARTMENT OF NUCLEAR SAFETY
1035 OUTER PARK DRIVE
SPRINGFIELD, ILLINOIS 62704
217-785-9900
217-782-6133 (TDD)

Jim Edgar
Governor

Thomas W. Ortciger
Director

December 31, 1998

JAN 5 1999
OSP

Mr. Richard L. Bangart, Director
Office of State Programs
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001

RE: SP-98-097, The Protection of the Identity of Allegers From Public Disclosure

Dear Mr. Bangart:

Your letter of December 9, 1998, regarding the above referenced subject, inquired as to whether Illinois' policy regarding protection of an alleger's identity is similar to NRC's, as described in your letter. You also requested information regarding Illinois' laws, procedures or policies regarding disclosure of an alleger's identity.

The practices of the Illinois Department of Nuclear Safety (IDNS) regarding protection of allegers' identities are consistent with NRC's policies, as set forth in your letter, although the practices have not been formalized in a written policy. In many instances, allegations are anonymous so there is no issue of protecting identity.

Most public bodies in Illinois, including IDNS, are subject to the requirements of the Illinois Freedom of Information Act. That Act is based on the federal Freedom of Information Act, and federal case law is consulted in interpreting the Illinois Act. The Illinois Act does, however, contain more express exemptions from disclosure than appear in the federal Act. Exemptions under the Illinois Act appear in Section 7 of the Act. Provisions of that Section, which are pertinent to your inquiry, are as follows:

§ 7. Exemptions. (1) The following shall be exempt from inspection and copying:

recyclable

SP-A-4
SP-A6-8

***

(b) Information that, if disclosed, would constitute a clearly unwarranted invasion of personal privacy, unless the disclosure is consented to in writing by the individual subjects of the information. The disclosure of information that bears on the public duties of public employees and officials shall not be considered an invasion of personal privacy. Information exempted under this subsection (b) shall include but is not limited to:

***

(v) information revealing the identity of persons who file complaints with or provide information to administrative, investigative, law enforcement or penal agencies; provided, however, that identification of witnesses to traffic accidents, traffic accident reports, and rescue reports may be provided by agencies of local government, except in a case for which a criminal investigation is ongoing, without constituting a clearly unwarranted per se invasion of personal privacy under this subsection.

***

(c) Records compiled by any public body for administrative enforcement proceedings and any law enforcement or correctional agency for law enforcement purposes or for internal matters of a public body, but only to the extent that disclosure would:

(i) interfere with pending or actually and reasonably contemplated law enforcement proceedings conducted by any law enforcement or correctional agency;
(ii) interfere with pending administrative enforcement proceedings conducted by any public body;
(iii) deprive a person of a fair trial or an impartial hearing;
(iv) unavoidably disclose the identity of a confidential source or confidential information furnished only by the confidential source;
(v) disclose unique or specialized investigative techniques other than those generally used and known or disclose internal documents of correctional agencies related to detection, observation or investigation of incidents of crime or misconduct;

(vi) constitute an invasion of personal privacy under subsection (b) of this Section;
(vii) endanger the life or physical safety of law enforcement personnel or any other person; or
(viii) obstruct an ongoing criminal investigation.

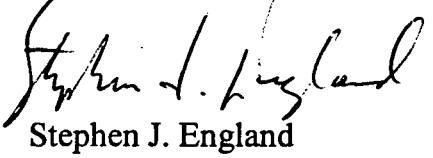
5 ILCS 140/7.

Illinois law does not require specific labeling to protect an alleger's identity. The NRC label, "Sensitive Allegation Material" is sufficient to alert Department staff to the nature of the material. The same treatment would be accorded to correspondence from an alleger who requested that the alleger's identity not be disclosed.

The issue of protection of allegers' identities also arises under 10 C.F.R. §19.16(a), and its Illinois counterpart at 32 Ill. Adm. Code 400.160(a). That provision allows a worker or a representative of workers to request an inspection by giving notice of an alleged violation to the regulatory agency. A copy of the notice is to be provided to the licensee "no later than the time of the inspection except that, upon the request of the worker giving such notice, his name and the name of individuals referred to therein shall not appear in such copy ... ." In some situations, redaction of the workers' names may not be sufficient to protect their identities. We suggest that NRC also reconsider the requirements of 10 C.F.R. §19.16(a) as it reviews the issue of protecting allegers' identities.

Please contact me at 217/524-5652 if you have any further questions regarding Illinois law or IDNS' practices regarding protection of allegers' identities.

Sincerely,



Stephen J. England
Chief Legal Counsel

SJE/fw

cc Paul Eastvold

DCD (SP07)

PHL #4
SCD
CHM
LAB/ASPO

STATE OF IOWA

TERRY E. BRANSTAD, GOVERNOR

DEPARTMENT OF PUBLIC HEALTH
CHRISTOPHER G. ATCHISON, DIRECTOR

January 4, 1999

Richard L. Bangart, Director
Office of State Programs (03D23)
US Nuclear Regulatory Commission
Washington, DC 20555

Dear Mr. Bangart:

Subject: THE PROTECTION OF THE IDENTITY OF ALLEGERS FROM PUBLIC DISCLOSURE

Your transmittal of Agreement Program Information (SP-98-07) requested that the Iowa Department of Public Health (IDPH) identify the pertinent state law, procedure and/or policy regarding public disclosure of the identity of allegers. To comply with your request, I have attached the relevant portions of the Code of Iowa, Iowa Administrative Code and IDPH rules.

To summarize the information, persons requesting that their identity not be disclosed will remain anonymous unless there are overriding issues that warrant disclosure. In the past, the NRC has refused to identify allegers to IDPH despite the fact that this agency was tasked with investigating the allegation. The policy of non-disclosure therefore extends to information shared with the NRC.

If you have any questions concerning this matter, please contact me or George F. Johns, Jr. at (515) 242-6280.

Sincerely,

Donald A. Flater

Donald A. Flater, Chief
Bureau of Radiological Health
(515) 281-3478

cc: Cardelia H. Maupin

99 JAN 13 PM 3:28
OSP

SP-A-4
SP-AG-A

LUCAS STATE OFFICE BUILDING / 321 E. 12TH ST. / DES MOINES, IOWA 50319-0075
DEAF RELAY (HEARING OR SPEECH IMPAIRED) 1-800-735-2942 / INTERNET: HTTP://IDPH.STATE.IA.US/

FAMILY & COMM. HEALTH	HEALTH PROTECTION	PLANNING & ADMINISTRATION	SUBSTANCE ABUSE & HEALTH PROMOTION	DIRECTOR'S OFFICE
515-291-3931	515-281-5643	515-281-5787	515-281-3641	515-281-5604
FAX/515-242-6384	FAX/515-281-4529	FAX/515-281-4958	FAX/515-281-4535	FAX/515-281-4958

Code of Iowa – Chapter 22 Examination of Records

22.7 Confidential records.

The following public records shall be kept confidential, unless otherwise ordered by a court, by the lawful custodian of the records, or by another person duly authorized to release such information:

18. Communications not required by law, rule, or procedure that are made to a government body or to any of its employees by identified persons outside of government, to the extent that the government body receiving those communications from such persons outside of government could reasonably believe that those persons would be discouraged from making them to that government body if they were available for general public examination. Notwithstanding this provision:

a. The communication is a public record to the extent that the person outside of government making that communication consents to its treatment as a public record.

b. Information contained in the communication is a public record to the extent that it can be disclosed without directly or indirectly indicating the identity of the person outside of government making it or enabling others to ascertain the identity of that person.

c. Information contained in the communication is a public record to the extent that it indicates the date, time, specific location, and immediate facts and circumstances surrounding the occurrence of a crime or other illegal act, except to the extent that its disclosure would plainly and seriously jeopardize a continuing investigation or pose a clear and present danger to the, safety of any person. In any action challenging the failure of the lawful custodian to disclose any particular information of the kind enumerated in this paragraph, the burden of proof is on the lawful custodian to demonstrate that the disclosure of that information would jeopardize such an investigation or would pose such a clear and present danger.

Iowa Administrative Code
Chapter 175 Fair Information Practices and Public Records

175.13(17A,22) Availability of records.

175.13(l) General. Agency records are open for public inspection and copying subject, to supervision unless otherwise provided by rule or law.

175.13(2) Confidential records. The following records may be withheld from public inspection. Records are listed by category, according to the legal basis for withholding them from public inspection.

e. Radioactive materials licensee files of the Radiological Health program, which are kept confidential by terms of an agreement with the federal Nuclear Regulatory Commission pursuant to Iowa Code section 136C.11.

136C.11 Federal-state agreements

1. The governor, on behalf of the state, may enter into an agreement with the United States nuclear regulatory commission pursuant to section 274b of the Atomic Energy Act of 1954, as amended to July 1, 1984, providing for the discontinuation of certain federal licensing and related regulatory authority over byproduct, source, and special nuclear material and the assumption of regulatory authority over these materials by the state.

2. A person who, on the effective date of an agreement made under subsection 1, possesses a license issued by the United States nuclear regulatory commission for radioactive material that comes under the agreement is considered to possess the license required under this chapter. The license shall expire either ninety days after receipt from the department of a notice of expiration of the license, or on the date of expiration specified in the license issued by the nuclear regulatory commission, whichever is earlier.

641-40.115(136C) Requests by workers for inspections.

40.115(1) Any worker or representative of workers believing that a violation of the Act, these rules, or license conditions exists or has occurred in work under a license or registration with regard to radiological working conditions in which the worker is engaged may request an inspection by giving notice of the alleged violation to the Bureau of Radiological Health, Iowa Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319–0075. Any such notice shall be in writing, shall set forth the specific grounds for the notice, and shall be signed by the worker or representative of the workers. A copy shall be provided to the licensee or registrant by the Bureau of Radiological Health, no later than at the time of inspection except that, upon the request of the worker giving such notice, such worker's name and the name of individuals referred to therein shall not appear in such copy or on any record published, released, or made available by the Agency, except for good cause shown.

#12 Kansas

FROM THE OFFICE OF:

Kansas Department of Health & Environment
Division of Environment
Bureau of Air and Radiation
Radiation Control Program
Forbes Field, Bldg. 283
Topeka, KS 66620

FOR INFORMATION ON:

Radon Information/Publications Request
(785) 296-6183 OR 1-800-693-5343
Radiation Control Program
(785) 296-1560
Radiation Control Program FAX
(785) 296-0984

Facsimile Transmittal Form

Date: 2 / 11 / 99

To: Lloyd Bolling / NRC

Phone: _____ FAX: 301-415-3502

From: Vick Cooper

Phone: _____ FAX: 785-296-0984

Number of Pages (Including Cover Page): 5

Comments:

Lloyd Bolling <lab@nrc.gov> on 02/10/99 09:49:54 AM

To: Victor Cooper/Kdhe, dsnellings@mail.doh.state.ar.us, eqrad.bsinclai@state.ut.us
cc:
Subject: Request for Response on All Agreement States Letter

Gentlemen:

May I please have your response, ASAP, to All Agreement States letter SP-98-097 regarding "protecting the identity of allegers from public disclosure". The letter may be accessed on the OSP Website at:

(http://www.hsrd.ornl.gov/nrc/home.html)

Thanks,
Lloyd

- att1.eml

301-415-3502

K.S.A. 45-221(a)(5) and (11).
Kansas Open Records Act Provisions

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f names and addresses de-
37.

Laws, journals and public information; records open to public; registration of attorneys. 87-168.

Disclosure of voter registration lists; lists on computers. 88-152.

Unlawful use of names derived from public records. 89-47.

Board of education clerk; appointment and duties; custody of records; public records. 90-89.

CASE ANNOTATIONS

1. Provisions of this act not retroactive; due to repeal of 45-201 et seq. and enactment hereof, personnel files specifically excepted. Tew v. Topeka Police & Fire Civ. Serv. Comm'n, 237 K. 96, 102, 105, 697 P.2d 1279 (1985).

2. Certification pursuant hereto protects agency disclosing information from criminal penalty under 21-3914. State Dept. of SRS v. Public Employee Relations Board, 249 K. 163, 171, 815 P.2d 66 (1991).

45-221. Certain records not required to be open; separation of open and closed information required; statistics and records over 70 years old open. (a) Except to the extent disclosure is otherwise required by law, a public agency shall not be required to disclose:

(1) Records the disclosure of which is specifically prohibited or restricted by federal law, state statute or rule of the Kansas supreme court or the disclosure of which is prohibited or restricted pursuant to specific authorization of federal law, state statute or rule of the Kansas supreme court to restrict or prohibit disclosure.

(2) Records which are privileged under the rules of evidence, unless the holder of the privilege consents to the disclosure.

(3) Medical, psychiatric, psychological or alcoholism or drug dependency treatment records which pertain to identifiable patients.

(4) Personnel records, performance ratings or individually identifiable records pertaining to employees or applicants for employment, except that this exemption shall not apply to the names, positions, salaries and lengths of service of officers and employees of public agencies once they are employed as such.

(5) Information which would reveal the identity of any undercover agent or any informant reporting a specific violation of law.

(6) Letters of reference or recommendation pertaining to the character or qualifications of an identifiable individual.

(7) Library, archive and museum materials contributed by private persons, to the extent of any limitations imposed as conditions of the contribution.

(8) Information which would reveal the identity of an individual who lawfully makes a donation to a public agency, if anonymity of the donor is a condition of the donation.

(9) Testing and examination materials, before the test or examination is given or if it is to be given again, or records of individual test or examination scores, other than records which show only passage or failure and not specific scores.

(10) Criminal investigation records, except that the district court, in an action brought pursuant to K.S.A. 45-222, and amendments thereto, may order disclosure of such records, subject to such conditions as the court may impose, if the court finds that disclosure:

(A) Is in the public interest;

(B) would not interfere with any prospective law enforcement action;

(C) would not reveal the identity of any confidential source or undercover agent;

(D) would not reveal confidential investigative techniques or procedures not known to the general public; and

(E) would not endanger the life or physical safety of any person.

(11) Records of agencies involved in administrative adjudication or civil litigation, compiled in the process of detecting or investigating violations of civil law or administrative rules and regulations, if disclosure would interfere with a prospective administrative adjudication or civil litigation or reveal the identity of a confidential source or undercover agent.

(12) Records of emergency or security information or procedures of a public agency, or plans, drawings, specifications or related information for any building or facility which is used for purposes requiring security measures in or around the building or facility or which is used for the generation or transmission of power, water, fuels or communications, if disclosure would jeopardize security of the public agency, building or facility.

(13) The contents of appraisals or engineering or feasibility estimates or evaluations made by or for a public agency relative to the acquisition of property, prior to the award of formal contracts therefor.

(14) Correspondence between a public agency and a private individual, other than correspondence which is intended to give notice of an action, policy or determination relating to any regulatory, supervisory or enforcement responsibility of the public agency or which is widely distributed to the public by a public agency and is not specifically in response to communications from such a private individual.

- Disclosure is necessary pursuant to an order of a court or NRC adjudicatory authority or to inform Congress or State or Federal agencies in furtherance of NRC responsibilities under law or public trust.

- Disclosure is necessary in furtherance of a wrongdoing investigation, including an investigation of harassment and intimidation allegation.

- Disclosure is necessary to support a hearing on an enforcement matter.

- The alleger has taken actions that are inconsistent with and override the purpose of protecting the alleger's identity.

Is your State's policy with regard to protecting alleger's identity similar to that of the NRC described above? Please provide information regarding your State's laws, procedures or policies regarding the disclosure of an alleger's identity. For example, some States require specific labeling of allegation material received from the NRC in order to withhold documents in accordance with individual State public disclosure laws. We request information about whether your State laws contain requirements for labeling, or whether specific labeling would assist in meeting the intent of the NRC label, "Sensitive Allegation Material," and the protection of an alleger's identity. In addition, a copy of the pertinent State law, procedure and/or policy regarding the public disclosure of this information is requested.

We would appreciate a response to this letter by January 22, 1999. If you have questions regarding this correspondence, please contact me, or the individual named below.

POINT OF CONTACT:	Cardelia H. Maupin
TELEPHONE:	(301) 415-2312
FAX:	(301) 415-3502
INTERNET:	CHM@NRC.GOV

This information request has been approved by OMB 3150-0029, expiration April 30, 2001. The estimated burden per response to comply with this voluntary collection request is 3 hours. Forward any comments regarding the burden estimate to the Information and Records Branch (T-6 F33), U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, and to the Paperwork Reduction Project (3150-0052), Office of Management and Budget, Washington, DC 20503. If a document does not display a currently valid OMB control number, the NRC may not conduct or sponsor, and a person is not required to respond to, a collection of information.

Richard L. Bangart, Director
Office of State Programs

(SP-98-097, December 1998, Program, Identity of Allegers)
DATED: DECEMBER 9, 1998 SIGNED BY: RICHARD L. BANGART

ALL AGREEMENT STATES
MINNESOTA, OHIO, OKLAHOMA, PENNSYLVANIA, AND WISCONSIN

TRANSMITTAL OF STATE AGREEMENTS PROGRAM INFORMATION (SP-98-097)

Your attention is invited to the following:

INCIDENT AND EVENT INFORMATION.....

PROGRAM MANAGEMENT INFORMATION...XX THE PROTECTION OF THE IDENTITY OF ALLEGERS FROM PUBLIC DISCLOSURE

TRAINING COURSE INFORMATION.....

TECHNICAL INFORMATION.....

OTHER INFORMATION.....

Supplementary information: As part of our process of referring allegations to Agreement States, we provide as much information as we can. When authorized by the alleger or when disclosure is necessary because of an overriding safety issue, we will provide the name and other personal information concerning the alleger. Our expectation is that there would be limited distribution of such documents and that the State would have the legal authority and would make all reasonable efforts to protect the identity of the alleger. However, some questions have been raised regarding the legal authority of some Agreement States to protect this information. For example, recently, an Agreement State requested that when we refer allegations that we clearly mark the package and documents with the statement, "Please keep confidential." The State indicated that without these markings that their regulations would require that all documents be released to the public, which may include the alleger's identity. However, under the Nuclear Regulatory Commission (NRC) regulations and practices, the term "confidential" has a very specific meaning and most allegation-related documents are not classified as confidential. Therefore, we are seeking information from all the Agreement States on their ability to protect allegation information, especially the identity of allegers from public disclosure.

The NRC policy with regard to the disclosure of an alleger's identity, as noted in Management Directive 8.8, Management of Allegations, is that the NRC intends to take all reasonable efforts not to disclose the identity of an alleger outside the agency, including the purging of names and other potential identifiers of allegers in information provided under the Freedom of Information Act, to the extent consistent with the act. There are limited instances in which the NRC discloses an alleger's identity. They are:

- The alleger has clearly indicated no objection to being identified.
- Disclosure is necessary because of an overriding safety issue.

DCD (SP08)

PHL
SCD
CHM
JHM/ASPO

#9

State of Louisiana

Department of Environmental Quality

M.J. "MIKE" FOSTER, JR.
GOVERNOR

J. DALE GIVENS
SECRETARY

OSP
99 JAN 29 PM 4:33

January 13, 1999

Cardelia H. Maupin
U.S. Nuclear Regulatory Commission
Office of State Programs
Washington, D.C.

RE: Identity Protection

Dear Ms. Maupin:

The staff has discussed with our legal division the issue of maintaining as confidential the identity of a person who makes an allegation. Louisiana Revised Statutes 30:2030 "Confidential Information" provides that all Department records and information, including those obtained by investigation, shall be available to the public, unless nondisclosure is requested in writing, and such information is determined by the Department to require confidentiality. Such information may be classified as confidential if the Secretary makes a written determination that confidentiality is necessary to prevent impairment of an ongoing investigation or prejudice to the final decision regarding a violation.

The above exception to public availability of all information requires that the Secretary of the Department of Environmental Quality (DEQ) designate the information as confidential, based on a written request for confidentiality made in accordance with DEQ regulations (LAC 33:I. Chapter 5). Simply marking information as "Confidential" or "Sensitive Allegation Material" has no effect. Although a declaration of confidentiality can prevent the release of some information, it is not certain that this would include purging specific names or words from documents. From a practical standpoint, anything in our documents, or even handwritten notes, must be released.

In addition, Louisiana Revised Statutes 30:2027 provides in part that retaliatory action can not be taken against an employee, acting in good faith. Copies of Louisiana Revised Statutes 30:2030 and 30:2027 are attached.

The Department does investigate anonymous complaints. As such, the name of the person making an allegation does not appear in records that might be requested by the public. Also, our investigators advise anonymous allegers and those who request confidentiality that every reasonable effort will be made to protect their identity; however, the Department cannot guarantee that their identity will remain confidential once an

SP-A-4
SP-AG-12

OFFICE OF AIR QUALITY AND RADIATION PROTECTION . P.O. BOX 82135 . BATON ROUGE, LOUISIANA 70884-2135
RADIATION PROTECTION DIVISION . TELEPHONE (504) 765-0160 . FAX (504) 765-0220
AN EQUAL OPPORTUNITY EMPLOYER

recycled paper

investigation is launched. Our experience is that licensees often figure out who reported them, once investigations are underway.

If we can provide additional information, please call Michael Henry, Assistant Administrator, at (225) 765-0160.

Sincerely,

Ronald Wascom

Ronald Wascom
Division Administrator

by reason of the filing of a complaint as provided in R.S. 30:2026 hereof, other than the payment of costs of the hearing as provided in R.S. 30:2026.

Acts 1979, No. 449, §1, eff. Jan. 1, 1980. Amended by Acts 1980, No. 194, §5.

§2030. Confidential information

A.(1) Department records and information obtained under this Subtitle, or by any rule, regulation, order, license, or permit term or condition adopted or issued hereunder, or by any investigation authorized thereby, shall be available to the public, unless nondisclosure is requested in writing, and such information is determined by the department to require confidentiality. Such information may be classified as confidential by the department if the secretary makes a written determination that confidentiality is necessary to:

(a) Prevent impairment of an ongoing investigation or prejudice to the final decision regarding a violation; or

(b) Protect trade secrets, proprietary secrets and information, and commercial or financial information.

(2) However, such nondisclosure shall not apply to necessary use by duly authorized officers or employees of state or federal government in carrying out their responsibilities under this Subtitle or applicable federal law, and air emission data or discharges to surface and ground waters and the location and identification of any buried waste materials shall be not construed as confidential information.

B. The department shall adopt such regulations as are necessary to effectively implement this Section in strict accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

C. Any employee of the department or any former employee of the department or any authorized contractor acting as a representative of the secretary or the department who is convicted of intentional disclosure or conspiracy to disclose trade secrets or other information which has been determined to be confidential pursuant to regulations applicable hereto is guilty of a misdemeanor and upon conviction shall be punished by a fine of not more than one thousand dollars, imprisonment for up to one year, or both.

Acts 1979, No. 449, §1, eff. Jan. 1, 1980. Amended by Acts 1981, No. 702, §1, eff. July 23, 1981; Acts 1982, No. 323, §1; Acts 1983, No. 97, §1, eff. Feb. 1, 1984; Acts 1986, No. 347, §1, eff. June 30, 1986; Acts 1993, No. 570, §1.

§2031. Donations or assistance for pollution sources

A. It is declared to be the public policy of the state to expedite the investigation, testing, containment, cleanup, and abatement of pollution sources, and to that end the secretary is authorized to accept and receive grants, donations, or other forms of assistance from private sources which are provided to the state for those purposes and dedicated to a specific designated pollution source. Such grants, donations, or monetary assistance shall be deposited in accordance with R.S. 30:2015 and R.S. 30:2205, unless their terms and conditions require otherwise, as contemplated by Article VII, Section 9(A)(1) of the Constitution of Louisiana.

B. Any private monies received by the secretary under this Section conditioned upon their being escrowed or not being deposited in the state treasury shall be deposited in an interest-bearing account within the state. Such monies shall be expended by the secretary for services and activities at the designated pollution source consistent with this Section and the terms and conditions of their grant or donation and shall not be considered public funds under R.S. 39:1482.

C. The secretary shall be exempt from the provisions of R.S. 39:1481-1526 in the expenditure of private grants for procurement of services in accordance with the terms and conditions of such grants; however, the attorney general shall approve as to legal effect any contracts for services. The secretary shall incur no liability to any person in the expenditure of grants for procurement of services, except to the donor for acts or omissions in violation of the express terms and conditions of the grant or donation as accepted.

D. The enforcement, procedures, and remedies herein provided for shall be in addition to any such procedures and remedies authorized under the laws of this state.

Acts 1979, No. 449, §1, eff. Jan. 1, 1980. Amended by Acts 1980, No. 194, §5; Acts 1980, No. 748, §4; Acts 1981, No. 702, §1, eff. July 23, 1981; Acts 1983, No. 97, §1, eff. Feb. 1, 1984; Acts 1993, No. 344, §1; Acts 1993, No. 452, §1.

§2027. Environmental violations reported by employees; reprisals prohibited

A. No firm, business, private or public corporation, partnership, individual employer, or federal, state, or local governmental agency shall act in a retaliatory manner against an employee, acting in good faith, who does any of the following:

(1) Discloses, or threatens to disclose, to a supervisor or to a public body an activity, policy, practice of the employer, or another employer with whom there is a business relationship, that the employee reasonably believes is in violation of an environmental law, rule, or regulation.

(2) Provides information to, or testifies before any public body conducting an investigation, hearing, or inquiry into any environmental violation by the employer, or another employer with whom there is a business relationship, of an environmental law, rule, or regulation.

B.(1) Any employee against whom any action is taken as a result of acting under Subsection A of this Section may commence a civil action in a district court of the employee's parish of domicile, and shall recover from his employer triple damages resulting from the action taken against him and all costs of preparing, filing, prosecuting, appealing, or otherwise conducting a law suit, including attorney's fees, if the court finds that Subsection A of this Section has been violated. In addition, the employee shall be entitled to all other civil and criminal remedies available under any other state, federal, or local law.

(2)(a) The term "action is taken" shall include firing, layoff, lockout, loss of promotion, loss of raise, loss of present position, loss of job duties or responsibilities, imposition of onerous duties or responsibilities, or any other action or inaction the court finds was taken as a result of a report of an environmental violation.

(b) "Damages" for the purposes of this Section shall include, but not be limited to, lost wages, lost anticipated wage due to wage increase, or loss of anticipated wages which would have resulted from a lost promotion, any property lost as a result of lost wages, lost benefits, and any physical or emotional damages resulting therefrom.

C. This Section shall have no application to any employee who, acting without direction from his employer or his agent, deliberately violates any provision of this Subtitle or of the regulations, or permit or license terms and conditions in pursuance thereof.

Added by Acts 1981, No. 280, §1; Acts 1991, No. 959, §1.

§2028. Environmental training programs

The secretary may develop environmental training programs to further the provisions of this Subtitle and to cooperate with facilities to implement training programs for employees which assist in the understanding of the rules and regulations as it pertains to compliance and the reporting as required by all applicable provisions of such regulations.

Added by Acts 1983, No. 551, §1.

§2029. Complainants bond; liability

A complaint alleging a violation of this Subtitle, filed as provided in R.S. 30:2026 hereof, shall have attached the personal bond of the complainant in the sum of one hundred dollars, conditioned upon the payment of costs of the hearing held on the complaint in the event the court determines a violation of this Subtitle has not occurred nor is occurring. No liability whatsoever shall be incurred by the complainant

#23 DCD (SP05) PHL SCO CHM RLB/ASPO

The Commonwealth of Massachusetts
Executive Office of Health and Human Services
Department of Public Health
Radiation Control Program
174 Portland Street, 5th Floor, Boston, MA 02114
(617) 727-6214 (617) 727-2098 - Fax

ARGEO PAUL CELLUCCI
GOVERNOR

JANE SWIFT
LIEUTENANT GOVERNOR

WILLIAM D. O'LEARY
SECRETARY

HOWARD K. KOH, MD, MPH
COMMISSIONER

March 22, 1999

99 MAR 24 PM 4:50

OSP

Richard L. Blanton
Office of State Programs
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Dear Mr. Blanton: Dick

This letter is in response to your e-mail on Tuesday March 9, 1999, concerning SP-98-097, December 9, 1998, Program, Identity of Allegers.

Please accept our apologies for not responding promptly to this information request. We had forwarded this request to our legal counsel for interpretation and have just received his response dated March 19, 1999 (attached). It appears that our laws require that the identity of allegers, who do not want their identity revealed to the public, must be withheld from public release. Therefore, their identity is exempt from our public records law, and the lawyer has made a suggestion to ensure confidentiality in allegations sent to the Department of Public Health from the Nuclear Regulatory Commission that a statement be included referring to Massachusetts' statutes.

SP-AG-30

We trust the above satisfactorily answers your request and if you have any questions regarding this letter, I can be reached at 617-727-6214.

Sincerely,

Bob

Robert M. Hallisey, Director
Radiation Control Program

:pjd

Attachment (1)

cc: Cardelia Maupin
Salifu Dakubu
Agostino Savastano
Jim Ballin

ARGEO PAUL CELLUCCI
GOVERNOR

JANE SWIFT
LIEUTENANT GOVERNOR

WILLIAM D. O'LEARY
SECRETARY

HOWARD K. KOH, MD, MPH
COMMISSIONER

The Commonwealth of Massachusetts
Executive Office of Health and Human Services
Department of Public Health
250 Washington Street, Boston, MA 02108-4619

Office of the General Counsel
Second Floor (617) 624-5220

RECEIVED
99 MAR 22 PM 1:02
RADIATION CONTROL
PROGRAM

MEMORANDUM

TO: Salifu Dakubu and Agostino Savastano
Radiation Control Program

FROM: Jim Ballin
Office of the General Counsel

RE: The Protection of the Identity of Allegers from Public Disclosure

DATE: March 19, 1999

This is in response to your memorandum of March 9, 1999, concerning the legal protection of allegers from public disclosure under Massachusetts law. Your inquiry was based on a letter from the Nuclear Regulatory Commission (NRC) which requested information on the protection of the identity of allegers or complainants from public disclosure under state law.

Massachusetts General Laws require all public records to made available to the public for inspection and copying (M.G.L. c. 66 §10). A "public record" is broadly defined in M.G.L. c. 4 §7 cl. 26, but is limited by numerous exceptions, one of which exempts from the definition of public record:

> investigatory materials necessarily compiled out of the public view by law enforcement or other investigatory officials the disclosure of which materials would probably so prejudice the possibility of effective law enforcement that such disclosure would not be in the public interest. M.G.L. c. 4 §7 (26)(f).

In a letter dated September 3, 1991 (copy attached), James W. Igoe, the Supervisor of Public Records at the Office of the Secretary of State, provided an opinion interpreting the scope of this exemption. In particular, on page 2 Mr. Igoe states that this specific exemption is designed to "protect sources of

information so that individual citizens will come forward and speak freely with officials about matters under investigation in the future." He concludes: "Thus, any information which would directly or indirectly identify voluntary witnesses or complainants is exempt from disclosure and may be segregated prior to release of the remainder of the material."

In the situation described by the NRC, allegers of violations of Department of Public Health radiation control regulations may provide critical information in the investigation of violations and any subsequent enforcement actions. The identity of allegers or complainants who do not want their identity made known to the public must be withheld from public release in order to ensure that allergers are willing to provide valuable information to investigators concerning potential health and safety violations or other regulatory violations. It is also essential that the identity of allegers remain confidential even after an investigation is complete to ensure the future voluntary cooperation of allegers.

It is my opinion that any identifying information on allegers is exempt from the public records law and, therefore, may be withheld by the Department from public disclosure, even after an investigation is complete. To ensure that identifying information sent by the NRC to the Department is maintained confidential, you may want to request that the NRC label any documents with identifying information on an alleger with the statement: "This document contains identifying information on an alleger and is exempt from public release pursuant to M.G.L. c. 4 §7 (26)(f)."

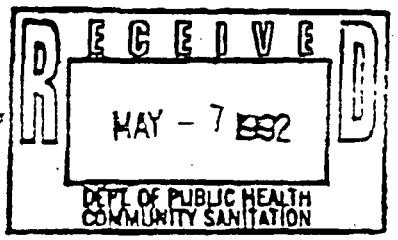
If you have any questions concerning this memo, please contact me at 624-5220.

cc: Robert Hallisey

The Commonwealth of Massachusetts

Office of the Secretary of State
Michael Joseph Connolly, Secretary

ames W. Igoe
eputy Secretary of State
upervisor of Public Records



September 3, 1991
SPR91/254

Jeffrey M. Hull
Assistant Town Manager
Town of Wilmington
12 Glen Road
Wilmington, Massachusetts 01887

Dear Mr. Hull:

Pursuant to 950 C.M.R. 32.07, I am in receipt of your request for an advisory opinion. Specifically, you ask whether complaints to town boards, which subsequently may be pursued in court, are public records subject to the mandatory disclosure provision of the Public Records Law.

"Public records" is broadly defined to include all documentary materials or data made or received by any officer or employee of any town of the Commonwealth, unless falling within a statutory exemption. G. L. c. 4, § 7(26)(a)-(l) (1990 ed.). The statutory exemptions are strictly and narrowly construed. Attorney General v. Assistant Commissioner of the Real Property Department, 380 Mass. 623, 625 (1980); Attorney General v. Board of Assessors of Woburn, 375 Mass. 430, 432 (1978). Public records, and any non-exempt, segregable portions thereof, are subject to mandatory disclosure upon request. G. L. c. 66, § 10(a) (1990 ed.); Reinstein v. Police Commissioner of Boston, 378 Mass. 281, 289-90 (1979) (none of the statutory exemptions provide a blanket exemption from disclosure). Moreover, there is a presumption that all government documents are public records. G. L. c. 66, § 10(c) (1990 ed.); 950 C.M.R. 32.08(4). Therefore, it is the burden of the record custodian to demonstrate that an exemption applies in order to withhold the disclosure of a requested document. 950 C.M.R. 32.08(1).

Since the Board of Health and other town agencies cited investigate complaints, the investigatory exemption merits consideration. It applies to:

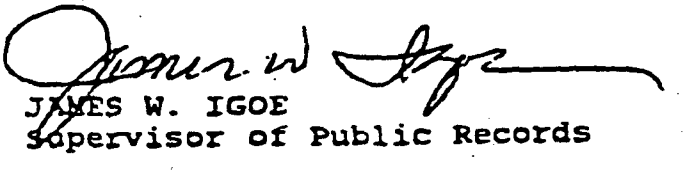
> investigatory materials necessarily compiled out of the public view by law enforcement or other investigatory officials the disclosure of which materials would probably so prejudice the possibility of effective law enforcement that such disclosure would not be in the public interest.
>
> G. L. c. 4, § 7(26)(f) (1990 ed.).

The general purpose of the investigatory exemption is the avoidance of premature disclosure of the Commonwealth's case prior to trial and the prevention of disclosure of confidential investigative techniques and procedures. Bougas v. Chief of Police of Lexington, 371 Mass. 59, 62 (1976). There is no blanket exemption, however, for records created or maintained by investigative officials. Id. at 65; Reinstein, 378 Mass. at 289-90. Therefore, as a custodian, you must demonstrate a specific prejudice to investigative efforts in order to withhold the substance of a complaint pursuant to the investigatory exemption.

The exemption is also designed, however, to protect sources of information so that individual citizens will come forward and speak freely with officials about matters under investigation in the future. Id. Consequently, there is no requirement that an investigative agency demonstrate prejudice to an on-going investigation to withhold the identities of complainants, informants, or voluntary witnesses. Reinstein, 378 Mass. at 290 n.18; see N.L.R.B. v. Robbins Tire and Rubber Company, 937 U.S. 214, 224 (1978) (witness statements read in an unfair labor practice case are exempt without an inquiry into prejudice to a particular case); Center for National Policy Review on Race and Urban Issues v. Weinberger, 502 F.2d 370, 373 (D.C. Cir. 1974). Thus, any information which would directly or indirectly identify voluntary witnesses or complainants is exempt from disclosure and may be segregated prior to release of the remainder of the material.

If our office can be of any further assistance, please contact us.

Very truly yours,



JAMES W. IGOE
Supervisor of Public Records

JWI/js

KENNY C. GUINN
[redacted]
Governor

CHARLOTTE CRAWFORD
Director

#14

YVONNE SYLVA
Administrator

MARY E. GUINAN, M.D., Ph.D.
State Health Officer

PHL
SCD
KPH, ASPO
CHM

STATE OF NEVADA
DEPARTMENT OF HUMAN RESOURCES
HEALTH DIVISION
BUREAU OF HEALTH PROTECTION SERVICES

☐ Bureau Administration
1179 Fairview Drive
Suite 201
Carson City, NV 89701-5405
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Fax (702) 687-5197

☐ Public Health Engineering
1179 Fairview Drive
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(702) 687-4754

☒ Radiological Health
1179 Fairview Drive
Suite 102
Carson City, NV 89701-5405
(702) 687-5394
Fax (702) 687-5751

☐ Environmental Health
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C[redacted]y, NV 89701-5405
([redacted]750

☐ Health Protection Services
620 Belrose Street
Suite A
Las Vegas, NV 89107
Engineering and Food
(702) 486-5068
Radiological Health
(702) 486-5280
Fax (702) 486-5024

☐ Health Protection Services
850 Elm Street
Elko, NV 89801-3349
(702) 753-1138/1140

☐ Health Protection Services
475 W. Haskell Street
Room 38
Winnemucca, NV 89445
(702) 623-6588

☐ Health Protection Services
155 N. Taylor Street
Suite 199
Fallon, NV 89406-3324
(702) 423-2281

☐ Health Protection Services
P.O. Box 939
Ely, NV 89301-0939
(702) 289-3325

☐ Health Protection Services
P.O. Box 667
Tonopah, NV 89049-0667
(70[redacted]997

February 16, 1999

Paul H. Lohaus, Acting Director
Office of State Programs
U.S. Regulatory Commission
Washington, D.C. 20555

Dear Mr. Lohaus:

In response to the recent question about confidentiality of persons making complaints and allegations to this office, staff offers the following response:

1. Nevada Revised Statutes require that requests for confidentiality must be related to matters, which are declared trade secrets or national security issues.

2. The Nevada Administrative Code 459 permits a licensee's employee, who makes a complaint, to request that his name and the name of the persons referred to in the complaint not be disclosed, released or made available by the division.

If you have any questions, please contact me at (775) 687-5394 x 276.

Sincerely,

Stanley R. Marshall, Supervisor,
Radiological Health Section
Deputy Food and Drug Commissioner
Bureau of Health Protection Services

sm\adm\lohausfeb16ltr

SP-AG-17

(O)-3507

#19

From: "Dennis P O'Dowd" <dodowd@dhhs.state.nh.us>
To: OWFN_DO owf1_po(KPH)
Date: Tue, Mar 2, 1999 10:09 AM
Subject: Response to SP-98-097

Mr. Hsueh,

This is in response to your inquiry by telephone last week on whether this office can withhold from public view the identity of an alleger when such information is forwarded to us by the U.S. Nuclear Regulatory Commission.

New Hampshire's "Right to Know Law", RSA 91-A:5 entitled "Access to Public Records and Meetings" does allow for some information to be withheld from public disclosure. Specifically, such items as records pertaining to internal personnel practices, information labeled as "confidential", writings which reflect personal thoughts which do not necessarily reflect the position of the Agency, etc. "are exempt from the provisions of this Chapter."

Therefore, our preference would be to have any documents which NRC clearly wants to have withheld from public disclosure label as "Confidential."

Should you require additional information relative to this matter, please let me know.

Dennis O'Dowd, Supervisor
Radioactive Material Section
Bureau of Radiological Health

CC: "Diane E Tefft" <dtefft@dhhs.state.nh.us>

NEW YORK CITY DEPARTMENT OF HEALTH
BUREAU OF RADIOLOGICAL HEALTH
2 LAFAYETTE STREET, 11TH FLOOR
NEW YORK, NY 10007
TELEPHONE: (212)676-1552
FAX: (212)676-1548

FACSIMILE TRANSMITTAL SHEET

TO: Kathy Schneider NRC State Programs	FROM: Mr. Gene Miskin
COMPANY:	DATE: June 2, 1999
FAX NUMBER: (301)415-3502	TOTAL NO. OF PAGES INCLUDING COVER:
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NOTES/COMMENTS:

This is NYC Response to SP-97-065

From: William Spadaro
To: 2LAF.PO2LAF.GMISKIN
Date: 4/28/99 2:39PM
Subject: "Protection of Alleger's Identity" by Radiological Health Bureau

Per our discussion yesterday, I reviewed NYSERDA letter of January 28, 1999, concerning the operation of the Freedom of Information Law (New York State Public Officers Law). I substantially agree with NYSERDA analysis. With regard to complainants and whistleblowers of any kind, (in NRC parlance, "allegers,"), the Department's practice is to withhold identifying information invoking F.O.I.L. section 87(2), as an unwarranted invasion of personal privacy. Exceptions to this practice may arise in the same limited instances mentioned with regard to "NRC policy," i.e., consent, overriding public health issue, court order, subpoena, need in criminal or civil enforcement matter, unfounded harassment. In the case of a denial of identifying information to a requester, there is a right to appeal. Again, the appeal of a denial of an alleger's identity would generally be denied, without exceptional facts. An appeal from a denied F.O.I.L. appeal would have to be taken in New York State Supreme Court, in a mandamus proceeding under Article 78 of the Civil Practice Law & Rules. Although, in the absence of facts it is difficult to give assurances of the Department's future position in a particular matter, it is probable that we would generally resist such a proceeding in meritorious cases. In general, we would comply with court orders requiring requiring disclosure.

CC: WLOPEZ, RWINDHOL

#11

E. Benjamin Nelson
Governor

STATE of NEBRASKA
Department of Health and Human Services Regulation and Licensure
Public Health Assurance Division
X-RAY PROGRAM
301 Centennial Mall South
P.O. Box 95007
Lincoln, Nebraska 68509-5007

Phone: 402-471-0563 **FAX No.:** 402-471-0169

DELIVER TO: Kevin Hsueh
Location: NRC State Programs
FAX No.: 301-415-3502
Subject:
Total Number of Pages (including cover page): ~~16~~ 17
Comments: Here also is another reference in our rules.

Date: ~~2-10-99~~ 11th
Sent by: Trudy Hill

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010.05E Different representatives of licensees or registrants and workers may accompany the inspectors during different phases of an inspection if there is no resulting interference with the conduct of the inspection. However, only one workers' representative at a time may accompany the inspectors.

010.05F With the approval of the licensee or registrant and the workers' representative, an individual who is not routinely engaged in work under control of the licensee or registrant, for example, a consultant to the licensee or registrant or to the workers' representative, shall be afforded the opportunity to accompany Agency inspectors during the inspection of physical working conditions.

010.05G Notwithstanding the other provisions of 010.05, Agency inspectors are authorized to refuse to permit accompaniment by any individual who deliberately interferes with a fair and orderly inspection. With regard to any area containing proprietary information, the workers' representative for that area shall be an individual previously authorized by the licensee or registrant to enter that area.

010.06 Consultation with Workers During Inspections.

010.06A Agency inspectors may consult privately with workers concerning matters of occupational radiation protection and other matters related to applicable provisions of these regulations and licenses to the extent the inspectors deem necessary for the conduct of an effective and thorough inspection.

010.06B During the course of an inspection any worker may bring privately to the attention of the inspectors, either orally or in writing, any past or present condition which the worker has reason to believe may have contributed to or caused any violation of the Act, these regulations, or license condition, or any unnecessary exposure of an individual to sources of radiation under the licensee's or registrant's control. Any such notice in writing shall comply with the requirements of 010.07A.

010.06C The provisions of 010.06B shall not be interpreted as authorization to disregard instructions pursuant to 010.03.

010.07 Requests by Workers for Inspections.

010.07A Any worker or representative of workers who believes that a violation of the Act, these regulations or license conditions exists or has occurred in work under a license or registration to radiological working conditions in which the worker is engaged, may request an inspection by giving notice of the alleged violation to the Agency. Any such notice shall be in writing, shall set forth the specific grounds for the notice, and shall be signed by the worker or representative of the workers. A copy shall be provided to the licensee or registrant by the Agency no later than at the time of inspection except that, upon the request of the worker giving such notice, his name and the name of individuals referred to therein shall not appear in such copy or on any record published, released, or made available by the Agency, except for good cause shown.

010.07B If, upon receipt of such notice, the Agency determines that the complaint meets the requirements set forth in 010.07A, and that there are reasonable grounds to believe that the alleged violation exists or has occurred, he shall cause an inspection to be made as soon as practicable, to determine if such alleged violation exists or has occurred. Inspections pursuant to 010.07 need not be limited to matters referred to in the complaint.

STATE OF NEBRASKA
HEALTH AND HUMAN SERVICES
REGULATION AND LICENSURE

Radioactive Materials Program Procedure No. 4.01

Management of Allegations

Prepared By: George H. Smith **Date** 12/11/98
George H. Smith, CHP

Reviewed By: Cheryl K. Rogers **Date** 12/15/98
Cheryl K. Rogers, Program Manager

Approved By: M. Sue Semerena **Date** 12/15/98
Sue Semerena, Section Administrator
E mbb

Effective Date: 12/15/98

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1.0 PURPOSE

1.1 Applicability

The purpose of this procedure is to assure that an allegation is properly evaluated, and, documented; and, if appropriate; a licensee evaluation or RMP inspection conducted; inspection or evaluation results documented; and, appropriate enforcement action implemented. Where possible, the identity of the individual making an allegation(s) shall be protected.

1.2 References

1.2.1 NRC Management Directive 8.8, "Management of Allegations"

1.2.2 NRC Handbook 8.8, "Management of Allegations"
Handbook 8.8 contains detailed guidelines and procedures for the management and processing of allegations.

1.2.3 NRC Inspection Manual, Chapter 2800, "Materials Inspection Program", April, 1995

1.2.4 Radioactive Materials Program Procedure, No. 3.05, "Enforcement, Escalated Enforcement, and Administrative Actions",

1.2.5 Title 180, Nebraska Administrative Code, Chapter 1, Regulations for Control of Radiation-Ionizing

1.3 Computer Based Letters, Forms, and Reports

1.3.1 Allegation Management System (AMS)

1.3.2 Blank report forms and log.

1.4 Hardcopy Files

1.4.1 Allegation File (AF)

1.5 Definitions

1.5.1 Allegation means a declaration, statement or assertion of impropriety or inadequacy associated with Radioactive Materials Program (RMP) regulated activities, the validity of which has not been established. This term includes all concerns identified by individuals or organizations

regarding activities at a licensee's or applicant's facility. Excluded from this definition are inadequacies provided to RMP staff members by licensee's managers acting in their official capacity.

1.5.2 Alleger means an individual or organization who makes an allegation. The individual or organization may be a concerned private citizen, a public interest group, the news media, a licensee, a current or former employee of the licensee, vendor, or contractor, or a representative of a local, State or Federal Agency. The alleger may be known or anonymous.

1.5.3 Confidentiality means the attempt to protect data that could directly or otherwise identify an individual by name and/or the fact that a confidential source provided such information to the RMP.

1.5.4 Confidential Source means an individual who requests and to the extent possible is granted confidentiality in accordance with this procedure and who usually signs a "Nondisclosure Statement".

1.5.5 Inspection means, for purposes of this procedure, a special activity conducted by the program and used to evaluate and resolve an allegation.

1.5.6 Overriding Safety Issue means an immediate threat to public health, safety, or security, warranting immediate action by the licensee to evaluate and address the issue.

1.5.7 Requirement means something a person must comply with such as a statute, regulation, license condition or order.

1.5.8 Redaction means the process of ensuring that any HHS R&L document developed as a result of an allegation does not reveal the identity of the alleger.

1.5.9 Secure Files means files that are locked when not in use and for which access is controlled on a need-to-know basis.

1.5.10 Willfulness means a spectrum of violations ranging from deliberate intent to violate or falsify, to and including careless disregard for requirements. In determining the severity level of a violation involving willfulness consideration should be given to the position and responsibilities of the person involved, the significance of any underlying violation, the intent of the violator, and the economic or other advantage, if any gained.

1.5.11 Wrongdoing means either (a) an intentional violation of regulatory

requirements or (b) a violation resulting from careless disregard of or reckless indifference to regulatory requirements, or both.

1.5.12 Investigation means an activity conducted by a professional investigator to gather and evaluate testimonial, documentary, and physical evidence to assist the staff and legal department in resolving wrongdoing allegations.

2.0 RESPONSIBILITIES

2.1 HHS R&L Employees

Any HHS R&L employee receiving an allegation concerning a Radioactive Materials Program licensed facility should record the allegation, request the allegers name and telephone number, and immediately report the allegation to the Manager, RMP; the Section Administrator, the Division Director or, any RMP technical staff member.

2.2 Technical Staff Member

When designated as the Lead Inspector (LI) coordinates the processing of an allegation. Performs the inspection of the allegation and prepares all records and reports concerning the allegation.

2.3 Staff Assistant

Develops and implements the Allegation Management System (AMS) a secure computerized system that contains a summary of significant data pertinent to each allegation, and the Allegation File (AF) a secure file that contains the documentation concerning the allegation.

2.4 Manager, Radioactive Materials Program (RMP)

Develops and manages the implementation of the Allegation Management Program (AMP), manages the AMS and conducts periodic reviews of the program. Informs the Section Administrator of all AMP activity.

Recommends training for members of the RMP staff.

2.5 Section Administrator

Reviews and concurs or disagrees with recommendations made by the Manager, RMP. Informs the Division Director of the allegations and the Manager, RMP's recommendations.

2.6 Division Director

Informs the Agency Director of the allegations and the recommendations of the Manager, RMP and the Section Administrator.

2.7 Agency Director

If needed, authorizes the release of the identity of allegers and confidential sources. Directs the AMP, as appropriate.

3.0 PROCEDURE

3.1 Receiving An Allegation

3.1.1 General

Allegers may transmit allegations by telephone, mail, in person, and in person during routine inspections.
The alleger may or may not identify him/herself and may or may not request confidentiality.
The alleger shall be asked the source of their information and how they may be contacted.
The allegation should be recorded and promptly reported to management and not discussed with anyone else.
The alleger's identity or information that would reveal that identity, should be revealed to the staff only on a need-to-know basis; not be revealed outside of HHS R&L; and, stored in a secure place.

3.1.2 First Contact

Contact with the alleger should be earnest and professional.
The safety significance of an allegation should not affect the treatment of the alleger, although it may affect the timing of follow up actions.

The staff should first obtain as much information as possible from the alleger, including, but not limited to, the following:

a) The alleger's full name, position or relationship to the facility or activity involved, home mailing address, telephone number
b) the alleger's employer, the facility and activity involved
c) nature and details of the allegation
d) potential safety impact
e) how the alleger found out about the concern

f) other individuals that should be contacted for additional information
g) records that should be reviewed
h) whether the alleger raised the concerns with his/her management
- if not, why not
- if yes, what action has been taken
I) alleger's preference for method and time of subsequent contacts

If the allegation involves discrimination under Section 211 of the Energy Reorganization Act (age, sex, race, etc.) inform the alleger that he/she should contact the Nebraska Equal Opportunity Commission (NEOC).

If the alleger requests a nondisclosure statement before providing information follow the guidance in Section 3.2

If the alleger refuses to provide his/her name or other form of identification, document the allegation in as much detail as possible and advise the alleger that he/she may contact the Manager, RMP in 30 working days for information on the status of any actions being taken on the information supplied.

Allegations regarding suspected improper conduct by a HHS R&L employee shall be promptly reported to the Agency Director and further evaluation discontinued unless directed to continue.

3.2 Disclosure of Alleger's Identity.

An alleger, if known, should be informed, by telephone and letter, of the degree to which his/her identity can and will be protected.
A "Nondisclosure Statement" (Attachment 4.01-1) which should be offered to the alleger, contains a listing of circumstances where it may be necessary to reveal the alleger's identity.
If a "Nondisclosure Statement" has not been executed, the alleger should be informed of the contents of the statement.
Preferably the alleger is provided a copy of the statement.

A licensee may be told, if they ask, that an inspection or referral to the licensee, is based on an allegation.
Inspection-related documents should address relevant issues without acknowledging that the issue was raised in the context of an allegation.

Inspection reports and correspondence to licensees, other Agreement States, Federal Agencies (including NRC), other organizations or individuals should contain no information that could lead to the identification of the alleger or confidential source.

3.3 Controlling Allegations

3.3.1 Action by the Receiving Employee and the Manager, RMP

Any HHS R&L employee receiving an allegation concerning a Radioactive Materials Program licensed facility should record the allegation, request the allegers name and telephone number, and immediately report the allegation to one of the following: the Manager, RMP (MRMP); the Section Administrator, the Division Director; or, any RMP technical staff member.
If the information is received during an inspection, the allegation shall be promptly provided to the MRMP.

The MRMP shall appoint a member of the RMP's technical staff as the Lead Inspector (LI) for the allegation.(See subparagraph 3.3.2)

The MRMP assisted by the recipient, will document the allegation in the allegation management system (AMS).

The MRMP shall resolve all allegations as expeditiously as possible, considering the circumstances and the complexity of the issue raised.
The MRMP and/or the LI should do an immediate assessment to determine if there is an overriding safety issue.
As soon as possible but within 30 calendar days, the MRMP shall convene a review group, if appropriate, consisting of the MRMP; the Section Administrator or the Division Director; the LI; and, a member of the legal staff.
The review group shall review and screen the allegation for safety significance, and enter their findings into the AMS. Any discussion with the legal representative concerning suspected wrongdoing shall be documented, stamped confidential and filed separately. The Agency Director shall be briefed of the review group's findings and recommendations.

3.3.2 Evaluation by Lead Inspector

Allegation having relatively high safety significance should be addressed first and expeditiously, usually within no more than 30 calendar days.
Less significant allegations should be addressed as priorities and resources permit, but usually within 6 months of receipt.

The LI will review the documentation to determine whether the allegation involves a safety concern that requires immediate regulatory action

The LI should screen the allegation(s) using the following criteria:

a) Is there an immediate safety concern that must be quickly addressed?
b) Is the allegation a specific safety or quality issue or a generalized concern?
c) Has the staff previously addressed this issue or a similar issue?
d) Have a substantial number of allegations on similar concerns been entered in the AMS?
e) What is the time sensitivity of the allegation, and what immediate actions are necessary?
f) What is the potential for wrongdoing and will investigative assistance be needed?
g) Does the allegation package contain sufficient information for a thorough evaluation? If not, identify the additional information needed.
h) Can the issues be adequately addressed by a routine technical inspection? If not, determine the best way to address the issues.
I) Is the identity of the alleger necessary for a thorough evaluation?
j) Identify any peripheral issues that could develop
k) Are any licensing actions or enforcement actions pending that could be affected by the allegation? When an allegation involves a case with pending licensing action, the technical staff member working on the case should be promptly notified.
l) Can inspection resources be effectively utilized pursuing the issue or is the allegation too vague or frivolous?
m) Is further consideration of the allegation required? If not, inform the alleger in a courteous and diplomatic manner of the rationale for not considering it further.
n) Can licensee resources reasonably be used in resolving the allegation to conserve staff resources? See Section 3.4.
o) Does the allegation have the potential to require escalated enforcement action?

The LI should recommend a schedule for the resolution of each allegation that is consistent with the inspection schedule, if applicable. Additional resources such as professional investigators or legal counsel, should be identified if needed.

Follow up of allegations should focus not only on the particular allegation but on the overall area of concern, including the potential for generic implications and wrongdoing.

When a number of allegations point to indications of a broader problem, prompt action should be taken to broaden the scope of the inquiry to determine the extent of the problem.

3.4 Referral of Allegations to Licensees

As many allegations as possible should be referred to the licensee for resolution.

3.4.1 Prohibitions on Referrals

Referrals should not be considered if any of the following apply:

a) Information cannot be released to the licensee in sufficient detail without compromising the identity of the alleger or confidential source; unless, the alleger has no objection to his/her identity being released.

b) the licensee could compromise an inspection because of knowledge gained from the referral,

c) the allegation is made against the licensee's management or those parties who would normally receive and address the allegation,

d) the allegation is based on information received from a Federal agency that does not approve of the information being released in a referral.

If an allegation raises an overriding safety issue, the substance of the allegation will be released to the licensee regardless of the need to protect the identity of the alleger or the confidential source.

In this instance, the 30-day waiting period (see subsection 3.4.3 following) is waived if the alleger or confidential source cannot be reached in a timely manner.

3.4.2 Referral Criteria

Consideration should be given to the following when determining whether to refer an allegation(s) to a licensee:

a) Could the release of information bring harm to the alleger or confidential source?

b) Has the alleger or confidential source voiced objections to the release of the allegation to the licensee?

c) What is the licensee's history of allegations against it and past record in dealing with allegations, including the likelihood that the licensee will effectively investigate, document and resolve the allegation?

d) Has the alleger or confidential source already taken this concern to the licensee with unsatisfactory results?
If the answer is "yes", the concern is within HHS R&L's jurisdiction, and the alleger objects to the referral, the concern should not be referred to the licensee.

e) Are resources available to investigate the allegation(s)?

3.4.3 Informing the Alleger

All reasonable efforts should be made to inform allegers or confidential sources, before referring an allegation(s) to a licensee.
The notification may be given orally and subsequently documented in a letter.
The alleger or confidential source will be informed that the RMP will evaluate the licensee's activities and response and that they will be informed of the final disposition of the allegation.
If the alleger or confidential source cannot be reached by telephone, a letter will be used to inform him/her of the intent to refer the allegation to the licensee.
If the alleger or confidential source objects to the referral, or does not respond to the letter in 30 calendar days, and the factors described in sections 3.3.1, and 3.3.2 have been considered, a referral can be made despite the objections or lack of response.

3.4.4 Referral Letter

The referral letter from HHS R&L should inform the licensee of the concerns but not identify the alleger or confidential source; request the licensee to review the matter; and request a written report of the results of the review.
The expectations that the licensee's evaluation of the allegation will be thorough, objective, and of sufficient scope and depth to resolve the concerns, must be conveyed in the referral letter.

If the allegation was received in writing, the incoming alleger's letter should not be sent to the licensee.
The referral letter should summarize the concerns without providing information that could result in the licensee identifying the alleger.
A copy of information supplied by the alleger should not be included in the referral letter without written permission from the alleger or confidential source.

The referral letter may inform the licensee that the concern(s) was received as an allegation.

3.4.5 Licensee Response

HHS R&L should ensure that the licensee's response is adequate.
If the review conducted by the licensee was not thorough, it may be necessary for HHS R&L to inspect or investigate the licensee's conclusions and assertions.
The scope and depth of the verification should be predicated on many factors, such as, but not limited to, past performance of the licensee, safety significance, and the level of management involved.

Examples of how to judge the adequacy of a response follow:

a) Was the evaluation conducted by an entity independent of the organization in which the alleged event occurred?
b) Was the evaluator competent in the specific functional area in which the alleged event occurred?
c) Was the evaluation of adequate depth to establish the scope of the problem?
d) Was the scope of the evaluation sufficient to establish that the alleged event or problem was not a systemic defect?
e) If the allegation was substantiated did the evaluation consider the root cause and generic implications of the allegation?
f) Was the licensee's corrective action sufficient to prevent, alleviate, or correct deficiencies in both the specific and generic instances, and in the short and long term?

If the licensee's response is considered to be adequate, the response will be incorporated in the closeout letter to the alleger or confidential source and documented in the AMS.

If the licensee's response is considered to not be adequate the allegation remains an open issue.

3.5 Inspections

If the allegation cannot be transferred to the licensee (See subsection 3.4.1); is not resolved by the licensee; or, involves possible wrongdoing (willfulness) an inspection shall be performed, preferably by the LI.
The inspection may be included in a routine inspection or may involve only the allegation(s).

The following techniques should be utilized when inspecting an allegation:

a) inspect the issue not the alleger or confidential source,
b) avoid prejudgment,
c) don't communicate that the specific issue was raised by an alleger or confidential source (See subsection 3.4.4),
d) take extensive notes and obtain copies of pertinent records, if possible,
e) interview licensee employees about pertinent procedures and activities, and
f) verify the licensee's assertions.

The results of inspections of allegations shall be recorded in a written report.

Any recommended enforcement action shall be handled in accordance with RMPP No. 3.05 "Enforcement, Escalated Enforcement and Administrative Actions".

4.0 RECORDS

4.1 Hardcopy

The Allegation File (AF) a secure file that contains the hardcopy documentation concerning the allegation.

4.2 Computer Based

The Allegation Management System (AMS) a secure computerized system that contains a summary of significant data pertinent to each allegation.

5.0 ATTACHMENTS TO RMPP No. 4.01

4.01-1 "Nondisclosure Statement" - Example

"Nondisclosure Statement"

I have information that I wish to provide in confidence to the Nebraska Department of Health and Human Services, Regulation and Licensure (HHS R&L). I request that HHS R&L not reveal that I am the source of the information.

During the course of an inquiry or investigation, the HHS R&L will make its best effort to avoid actions that would clearly be expected to result in disclosure of my identity.

My identity may be divulged outside the HHS R&L in the following situations:

(I) When disclosure is necessary because of an overriding safety issue. The HHS R&L staff will attempt to contact me prior to any disclosure.

(2) When a court orders such disclosure.

(3) When required by HHS R&L adjudicatory proceedings.

(4) In response to a legislative request. While such a request will be handled on a case-by-case basis, HHS R&L will make its best efforts to limit the disclosure to the extent possible.

(5) When requested by a Federal or State agency in furtherance of its statutory responsibilities, and HHS R&L finds that furtherance of the public interest requires such release.

(6) When the Nebraska Attorney General, the Office of Investigations (OI), the Department of Justice (DOJ), or a local or state law enforcement agency are pursuing an investigation, my identity may be disclosed without my knowledge or consent.

(7) When I have taken actions that are inconsistent with and override the purpose of protecting my identity.

My identity will be withheld from HHS R&L staff, except on a need-to-know basis. Consequently, I acknowledge that if I have further contacts with HHS R&L personnel, I cannot expect that those people will be cognizant of my desire to remain anonymous, and it will be my responsibility to bring that point to their attention if I desire similar treatment for the information provided to them.

I have read and fully understand the information above.

Date

Name

Address

RHB2
PHL
SCD
CHM

DCD(SPOL) #1

NORTH CAROLINA DEPARTMENT OF
ENVIRONMENT AND NATURAL RESOURCES
DIVISION OF RADIATION PROTECTION

NCDENR

JAMES B. HUNT JR.
GOVERNOR

WAYNE MCDEVITT
SECRETARY

RICHARD M. FRY
DIRECTOR

December 11, 1998

Richard L. Bangart, Director
Office of State Programs
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Dear Mr. Bangart:

This is in reply to your December 9, 1998 letter (SP-98-097) concerning the protection of the identity of allegers from public disclosure.

In general the North Carolina policy is similar to that of the NRC as described in your letter. It is our practice to broadly define "any worker or representative of workers" as used in Rule 15A NCAC 11 .1007 to cover any allegation, including the name of the alleger, we receive. This way we have investigated all allegations and at the same time protected the identity of the alleger with similar exceptions as outlined in your letter.

Enclosed is a copy of Rule .1007 from the N.C. Regulations for Protection Against Radiation and a copy of the North Carolina statutes dealing with confidential information. We have not made any clear distinction between the strict application of G.S. 104E-29 of the N.C. Radiation Protection Act and the confidential treatment of the names of allegers as you described.

Should you need any additional information regarding this matter, please feel free to contact me.

Sincerely,

RM Fry

Richard M. Fry

cc: Cardelia H. Maupin

Enclosures (2)

98 DEC 15 AM 8:52
OSP

3825 BARRETT DR. RALEIGH, NORTH CAROLINA 27609-7221
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SP-A-4
SP-AG-21

individual who deliberately interferes with a fair and orderly inspection. With regard to any area containing proprietary information, the workers' representative for that area shall be an individual previously authorized by the licensee or registrant to enter that area.

History Note: Statutory Authority G.S. 104E-7; 104E-10; 104E-11;
Eff. February 1, 1980.

.1006 CONSULTATION WITH WORKERS

(a) Agency inspectors may consult privately with workers concerning matters of occupational radiation protection and other matters related to applicable provisions of this Chapter and licenses to the extent the inspectors deem necessary for the conduct of an effective and thorough inspection.

(b) During the course of an inspection any worker may bring privately to the attention of the inspectors, either orally or in writing, any past or present condition which he has reason to believe may have contributed to or caused any violation of the Act, provisions of this Chapter, or license condition, or any unnecessary exposure of an individual to radiation from licensed radioactive material or a registered radiation machine under the licensee's or registrant's control. Any such notice in writing shall comply with the requirements of Rule .1007 of this Section.

(c) The provisions of Paragraph (b) of this Rule shall not be interpreted as authorization to disregard instructions pursuant to Rule .1003 of this Section.

History Note: Statutory Authority G.S. 104E-7; 104E-10;
Eff. February 1, 1980;
Amended Eff. May 1, 1993.

.1007 REQUESTS FOR INSPECTIONS

(a) Any worker or representative of workers who believes that a violation of the Act, provisions of this Chapter or license conditions exists or has occurred in work under a license or registration with regard to radiological working conditions in which the worker is engaged, may request an inspection by giving notice of the alleged violation to the Director of the Division of Radiation Protection, P.O. Box 27687, Raleigh, North Carolina 27611-7687. Any such notice shall be in writing, shall set forth the specified grounds for the notice, and shall be signed by the worker or representative of the workers. A copy shall be provided to the licensee or registrant by the Director of the Division of Radiation Protection no later than at the time of inspection except that, upon request of the worker giving such notice, his name and the name of individuals referred to therein shall not appear in such copy or on any record published, released, or made available by the agency, except for good cause shown.

(b) If, upon receipt of such notice, the Director of the Division of Radiation Protection determines that the complaint meets the requirements set forth in Paragraph (a) of this Rule and that there are reasonable grounds to believe that the alleged violation exists or has occurred, he shall cause an inspection to be made as soon as practicable, to determine if such alleged violation exists or has occurred. Inspections pursuant to this Rule need not be limited to matters referred to in the complaint.

(c) No licensee or registrant shall discharge or in any manner discriminate against any worker because such worker has filed any complaint or instituted or caused to be instituted any proceeding under this Chapter or has testified or is about to testify in any such proceeding or because of the exercise by such worker on behalf of himself or others of any option afforded by this Section.

History Note: Statutory Authority G.S. 104E-7; 104E-10;
Eff. February 1, 1980;
Amended Eff. May 1, 1992; November 1, 1989.

.1008 INSPECTIONS NOT WARRANTED

(a) If the Director of the Division of Radiation Protection determines, with respect to a complaint under Rule .1007 of this Section that an inspection is not warranted because there are no reasonable grounds to believe that a violation exists or has occurred, the Director of the Division of Radiation Protection shall notify the complainant in writing of such determination. The complainant may obtain review of such determination by submitting a written statement of position with the Secretary, Department of Environment, Health, and Natural Resources, P.O. Box 27687, Raleigh, North Carolina 27611-7687, who will provide the licensee or registrant with a copy of such statement by certified mail, excluding, at the request of the complainant, the name of the complainant. The licensee or registrant may submit an opposing written statement of position with the Secretary, Department of Environment, Health, and Natural Resources who will provide the complainant with a copy of such statement by certified mail. Upon the request of the complainant, the Secretary, Department of Environment, Health, and Natural Resources may hold an informal conference in which the complainant and the licensee or registrant may orally present their views. An informal conference may also be held at the request of the licensee or registrant, but disclosure of the identity of the complainant will be made only following receipt of written authorization from the complainant. After considering all written or oral views presented, the Secretary, Department of Environment, Health, and Natural Resources shall affirm, modify, or reverse the determination of the Director of the Division of Radiation Protection and furnish the complainant and the licensee or registrant a written notification of his decision and the reason therefor.

(b) If the Director of the Division of Radiation Protection determines that an inspection is not warranted because the requirements of Rule .1007(a) of this Section have not been met, he shall notify the complainant in writing of such determination. Such determination shall be without prejudice to the filing of a new complaint meeting the requirements of Rule .1007(a) of this Section.

History Note: Statutory Authority G.S. 104E-7; 104E-10;
Eff. February 1, 1980;
Amended Eff. May 1, 1992; November 1, 1989.

§ 104E-27. Volume reduction required.

(a) The Commission shall develop and adopt rules which require generators of low-level radioactive waste to implement best management practices, including prevention, minimization, reduction, segregation, and hold-for-decay storage, as a condition of access to the low-level radioactive waste disposal facility.

(b) No license for access to the disposal facility operated pursuant to Chapter 104G of the General Statutes shall be issued unless the Commission certifies to the Low-Level Radioactive Waste Management Authority that the generator is reducing waste volume to the extent technologically and economically feasible.

(c) The Department shall periodically review the State's comprehensive low-level radioactive waste management system and make recommendations to the Governor, cognizant State agencies, and the General Assembly on ways to improve waste management; reduce the amount of waste generated; and minimize the amount of low-level radioactive waste which must be disposed of. (1987, c. 850, s. 15.1; 1993, c. 501, s. 5.)

Effect of Amendments. — The 1993 amendment, effective July 23, 1993, added subsection (c).

§ 104E-28. Limited liability for volunteers in low-level radioactive waste abatement.

Part 5 of Article 21A of Chapter 143 of the General Statutes shall apply to civil liability and penalties pursuant to this Chapter. (1987, c. 269, s. 4.)

§ 104E-29. Confidential information protected.

(a) The following information received or prepared by the Department in the course of carrying out its duties and responsibilities under this Chapter is confidential information and shall not be subject to disclosure under G.S. 132-6:

(1) Information which the Secretary determines is entitled to confidential treatment pursuant to G.S. 132-1.2. If the Secretary determines that information received by the Department is not entitled to confidential treatment, the Secretary shall inform the person who provided the information of that determination at the time such determination is made. The Secretary may refuse to accept or may return any information that is claimed to be confidential that the Secretary determines is not entitled to confidential treatment.

(2) Information that is confidential under any provision of federal or state law.

(3) Information compiled in anticipation of enforcement or criminal proceedings, but only to the extent disclosure could reasonably be expected to interfere with the institution of such proceedings.

(b) Confidential information may be disclosed to officers, employees, or authorized representatives of federal or state agencies if such disclosure is necessary to carry out a proper function of the

Department or the requesting agency or when relevant in any proceeding under this Chapter.

(c) **(Effective until January 1, 1995)** Except as provided in subsection (b) of this section or as otherwise provided by law, any officer or employee of the State who knowingly discloses information designated as confidential under this section shall be guilty of a misdemeanor punishable by a fine of not more than five hundred dollars ($500.00) or imprisonment for not more than two years or both and shall be removed from office or discharged from employment.

(c) **(Effective January 1, 1995)** Except as provided in subsection (b) of this section or as otherwise provided by law, any officer or employee of the State who knowingly discloses information designated as confidential under this section shall be guilty of a Class 1 misdemeanor and shall be removed from office or discharged from employment. (1991, c. 745, s. 1; 1993, c. 539, s. 686.)

Section Set Out Twice. — The first version of subsection (c) set out above is effective until January 1, 1995. The second version of subsection (c) set out above is effective Janaury 1, 1995.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359 provides: "Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions." Section 1359 of Chapter 539 provides that the act becomes effective January 1, 1995.

Effect of Amendments. — The 1993 amendment, effective January 1, 1995, and applicable to offenses occurring on or after that date, substituted "Class 1 misdemeanor" for "misdemeanor punishable by a fine of not more than five hundred dollars ($500.00) or imprisonment for not more than two years or both" in subsection (c).

§ 104E-29(c) is set out twice. See subsection headings for effective dates.

App. 1, 284 S.E.2d 542 (1981); North Carolina Press Ass'n v. Spangler, 87 N.C. App. 169, 360 S.E.2d 138 (1987).

§ 132-1.2. Confidential information.

Nothing in this Article shall be construed to require or authorize a public agency to disclose any information which:

(1) Constitutes a "trade secret" as defined in G.S. 66-152(3);

(2) Is the property of a private "person" as defined in G.S. 66-152(2);

(3) Is disclosed or furnished to the public agency in connection with the owner's performance of a public contract or in connection with a bid, application, proposal, industrial development project, or in compliance with laws, regulations, rules, or ordinances of the United States, the State, or political subdivisions of the State; and

(4) Is designated or indicated as "confidential" or as a "trade secret" at the time of its initial disclosure to the public agency. (1989, c. 269; 1991, c. 745, s. 3.)

CASE NOTES

The addition of the language "or indicated" acts to clarify the otherwise ambiguous word "designated." As such, any application of this section either before or after 1991, should interpret the word "designated" as meaning "designated or indicated." North Carolina Elec. Membership Corp. v. North Carolina Dep't of Economic & Community Dev., 108 N.C. App. 711, 425 S.E.2d 440 (1993).

Information Held Confidential. — Documents containing valuable business information such as projections by a cooperative electric membership corporation of electric rates for sales to its members and its methodologies for forecasting such price information, which was alleged to be of actual value to its competitors and would cause irreparable competitive harm to the corporation, were protected from disclosure by injunction under this Act. North Carolina Elec. Membership Corp. v. North Carolina Dep't of Economic & Community Dev., 108 N.C. App. 711, 425 S.E.2d 440 (1993).

Applied in S.E.T.A. UNC-CH, Inc. v. Huffines, 107 N.C. App. 440, 420 S.E.2d 674 (1992).

§ 132-1.3. Settlements made by or on behalf of public agencies, public officials, or public employees; public records.

(a) Public records, as defined in G.S. 132-1, shall include all settlement documents in any suit, administrative proceeding or arbitration instituted against any agency of North Carolina government or its subdivisions, as defined in G.S. 132-1, in connection with or arising out of such agency's official actions, duties or responsibilities, except in an action for medical malpractice against a hospital facility. No agency of North Carolina government or its subdivisions, nor any counsel, insurance company or other representative acting on behalf of such agency, shall approve, accept or enter into any settlement of any such suit, arbitration or proceeding if the settlement provides that its terms and conditions shall be confidential, except in an action for medical malpractice against a hospital facility. No settlement document sealed under subsection (b) of this section shall be open for public inspection.

§§ 66-147 through 66-151: Reserved for future codification purposes.

ARTICLE 24.

Trade Secrets Protection Act.

§ 66-152. Definitions.

As used in this Article, unless the context requires otherwise:

(1) "Misappropriation" means acquisition, disclosure, or use of a trade secret of another without express or implied authority or consent, unless such trade secret was arrived at by independent development, reverse engineering, or was obtained from another person with a right to disclose the trade secret.

(2) "Person" means an individual, corporation, government, governmental subdivision or agency, business trust, estate, trust, partnership, association, joint venture, or any other legal or commercial entity.

(3) "Trade secret" means business or technical information, including but not limited to a formula, pattern, program, device, compilation of information, method, technique, or process that:

a. Derives independent actual or potential commercial value from not being generally known or readily ascertainable through independent development or reverse engineering by persons who can obtain economic value from its disclosure or use; and

b. Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

The existence of a trade secret shall not be negated merely because the information comprising the trade secret has also been developed, used, or owned independently by more than one person, or licensed to other persons. (1981, c. 890, s. 1.)

Legal Periodicals. — For survey of 1981 commercial law, see 60 N.C.L. Rev. 1238 (1982).

For article discussing the North Carolina Trade Secrets Protection Act, see 18 Wake Forest L. Rev. 823 (1982).

For comment, "The Incompatibility of Copyright and Computer Software: An Economic Evaluation and a Proposal for a Market-Place Solution," see 66 N.C.L. Rev. 977 (1988).

CASE NOTES

Animals in Research Projects. — What type and how many animals are going to be used in a particular research project is not a trade secret, nor is whether surgery is going to be performed or the type of anesthesia to be used. Pre and post operative procedures are not trade secrets, nor is how the animal's pain and discomfort are to be minimized nor the method of euthanasia, if any. S.E.T.A. Unc-Ch, Inc. v. Huffines, 101 N.C. App. 292, 399 S.E.2d 340 (1991).

Applied in Moore v. American Barmag Corp., 710 F. Supp. 1050 (W.D.N.C. 1989).

Cited in Western Steer-Mom 'N' Pop's, Inc. v. FMT Invs., Inc., 578 F. Supp. 260 (W.D.N.C. 1984); Industrial Innovators, Inc. v. Myrick-White, Inc., 99 N.C. App. 42, 392 S.E.2d 425 (1990).

From: Roger Suppes <RSUPPES@GW.ODH.State.OH.US>
To: OWFN_DO.owf1_po(RLB)
Date: Fri, Mar 12, 1999 11:57 AM
Subject: Alleger Response

Per ORC 149.43 an alleger's identity may be protected if the record pertains to a criminal, civil, or is a matter that is of an administrative nature, and if the the document is released, it would create a high probability of disclosing a confidential source. The investigation must have been initiated upon a specific suspicion of wrong doing.

If you have additional questions, please contact me.

CC: GATED.nrcsmtp("ROWEN@GW.ODH.State.OH.US","CRAY@GW....

#16

State of Oregon
Health Division
Radiation Protection Services
(503)731-4014
FAX: (503)731-4081

FAX

This fax **may contain confidential information**. If you receive this FAX in ERROR, would you please take a moment to call us? Thank you.

DATE: 2/17/99

TO: Tom O'Brien - NRC

FROM: Terry Lindsey, Acting Mgr RML

PAGES (including this cover page): 5

Message: In Response To SP-98-097, Here IS A COPY OF RPS Policy RC-50-30 REGARDING ALLEGATIONS. Sorry We missed The deadline on 1/22/99. Thank you for your patience.

Terry D. Lindsey

OREGON STATE HEALTH DIVISION
Department of Human Resources
Radiation Protection Services
POLICIES AND PROCEDURES MANUAL

OFFICE	SUBJECT	NUMBER		
RADIATION PROTECTION SERVICES CEHS POLICY AND PROCEDURE	Policy for resolution and execution of allegations.	RC	50	30
		ISSUE/REVISION DATE October 19, 1998		
OBJECTIVE: To ensure confidentiality and quality reporting of allegations.				
APPROVED: Ray D'Paul		DATE: November 24, 1998		

Purpose: To ensure proper and timely resolution of allegations that fall within the purview of the Agency.

Scope: To implement the Nuclear Regulatory Commission's (NRC) policy statement on confidentiality[1] to ensure that allegations are properly and timely executed.

Policy The Materials Program tracks all incidents and allegations that are reported to Radiation Protection Services (RPS). Allegations will be reviewed pursuant to NRC Management Directive 8.8.

Definitions

A. "Incident" applied to an event that may have caused, or threatens to cause conditions described in 10 CFR 20.2202 (old 20.403), 10 CFR 30.50, 10 CFR 40.60, or 10 CFR 70.50.

B. "Allegation" means a declaration, statement, or assertion of impropriety or inadequacy associated with regulated activities, the validity of which has not been established. This term includes all concerns identified by sources such as the media, individuals or organizations, and technical audit efforts from Federal, State or local government offices regarding activities at a licensee's site. Excluded from this definition are matters being handled by more formal processes such as petitions, hearing boards, appeal boards, and so forth.

C. "Alleger" means an individual or organization making an allegation. The individual or organization may be a private citizen, a public interest group, news media, a licensee, vendor or contractor employee, or a representative of a local, State, or Federal agency.

[1]See section K of NRC Management Directive 8.8 regarding confidentiality.

Scope of Allegation Actions

A. Ensure that actions taken in response to incidents or allegations are appropriate, well coordinated, and timely.

B. Ensure that written reports adequately document the essential elements of follow up activities, and that they are written in appropriate regulatory language, dispatched on a timely basis, and require appropriate licensee response in a stated time period.

Granting Confidentiality

The Radiation Protection Section Manager or delegatee may authorize and sign a confidentiality agreement between the Agency and a person who wishes to provide information to the Agency in confidence. Individuals to whom this authority has been granted should not exercise this authority until they have been briefed on, and are familiar with, the agency's policy for considering and granting confidentiality. Requests for confidentiality should be coordinated through the RPS Manager or delegatee.

Part III of NRC Management Directive (MD) 8.8 discusses the NRC's policy for granting confidentiality. The form for granting confidentiality is attached to MD 8.8 as an exhibit. The following is a summary of this policy:

1. The NRC (the Commission) does not believe that confidentiality should be granted to all individuals who provide information to the NRC or granted routinely, particularly in light of the identity protection afforded all allegers. The Commission believes that confidentiality should be granted only when necessary to acquire information related to the Commission's responsibilities or when warranted by special circumstances.

2. Those authorized to grant confidentiality must consider the information discussed in MD 8.8, III(B)(1) before making the decision. The Agency must assure that this information is discussed with the caller before the request is approved or disapproved. The grantor of the confidentiality approval or disapproval need not be directly involved in discussions with the caller.

3. If the Agency approves granting confidentiality to a caller, the information in MD 8.8, III(B)(3) should be discussed with the caller and arrangements made to have a confidentiality agreement signed by the caller and the Agency. MD 8.8 provides that confidentiality may be temporarily given orally when it is impossible or inappropriate to sign a confidentiality agreement, and that the confidentiality agreement should be signed within approximately two weeks. If confidentiality is granted orally, the Agency should document it.

4. Pursuant to MD 8.8, III(B)(7), all denials of requests for confidentiality must be approved by management. The manager who granted confidentiality may approve withdrawal of it based on a written request from the confidential source MD 8.8, (III)(D). Decisions to revoke confidentiality after it has been granted can be made only by Agency management pursuant to MD 8.8 (III)(C).

5. The Agency shall maintain all confidentiality agreements and for assuring that all allegation files involving confidential sources are maintained and marked in accordance with the guidance in MD 8.8 and Allegation Guidance Memorandum 96-01.

Resolution and Documentation of Allegations

1. Employees assigned the responsibility to review and resolve allegations should make all reasonable efforts to ascertain whether an allegation has merit. The effort expended should be based on the specificity of the available information and the significance of the allegation, assuming it is true. When in doubt, inspectors should seek guidance from management regarding the degree of effort that should be expended on any particular allegation or set of allegations.

2. Inspectors following up on allegations should be familiar with MD 8.8, I.A, *Identity of Allegers* and *Confidential Sources*. In addition, inspectors should be sensitive to taking any actions that are not specifically authorized by the Agency. For example, it is inappropriate for an inspector to contact a licensee's employee concerns program to determine if a particular concern was brought to the attention of the licensee unless that has been authorized.

3. Documentation of allegation resolution can be accomplished in a variety of formats. For example, internal memoranda, investigation reports, inspection reports, technical papers, and Safety Evaluation Reports have all been used successfully. For most allegations followed up by inspection, either a memorandum or inspection report is preferable. Importantly, allegation closure documentation must specifically address each concern identified on the itemized list of concerns that is maintained in the allegation file. In addition, all documents that are provided to the licensee and become part of the public domain should not discuss the fact that an inspection or investigation was prompted by allegations and should contain no information that would tend to identify a particular alleger to a licensee.

4. If an inspection report is used to document closure of an allegation, the resolution of the allegation should be supported by inspection findings, without referencing the fact that an allegation resulted in the inspection or providing any information that might compromise the identity of an alleger.

5. If the nature of the allegation is so specific that documentation of inspection findings would compromise the identity of an alleger, then resolution documentation should be communicated in a separate document to management or the Agency.

6. All allegation documentation should remain focused on *whether the allegations were substantiated or not*, and *refrain from comments about the alleger*, the motivation of the alleger, or any *perceived* lack of significance of the concerns identified to the Agency.

7. The Agency shall be given the opportunity to concur in all inspection reports dealing with the review or closure of allegations and, if appropriate, the Agency will initiate correspondence to provide a copy of completed inspection report(s) to the alleger.

8. Allegations should be resolved and closed, by letter to the alleger if applicable, within a reasonable length of time. In those cases where the alleger does not agree with the Agency's resolution of the allegation, the alleger's response shall be brought to the Agency for discussion of follow-up action. In addition, prior to sending the alleger a follow-up response to any such disagreement, the Agency will contact the alleger, advise the alleger of the proposed response, and give the alleger an opportunity to comment. If the alleger continues to disagree with the resolution of the allegation, the proposed response should be considered by the Agency prior to final closure.

C:\POLICIES\POLICY50.30 11/24/98-1:48

#18

From: "Jim Peterson" <PETERSJK@columb54.dhec.state.sc.us>
To: OWFN_DO.owf1_po(LJR2)
Date: Thu, Feb 18, 1999 3:33 PM
Subject: protection of alleger's identity -Forwarded

Lance,
I consulted with our legal office concerning SP-98-097. The response is as attached. If you need a more formal response as in the form of a letter, please let me know. Thanks.

From: "Sam L. Finklea" <FINKLESL@columb20.dhec.state.sc.us>
To: GATED.nrcsmtp("PETERSJK@columb54.dhec.state.sc.us"...
Date: Wed, Feb 17, 1999 2:48 PM
Subject: protection of alleger's identity

The Freedom of Information Act requires disclosure of state agency records, with certain exemptions:

SC Stat. Ann. § 30-4-40 (Cum. Supp. 1998). Matters exempt from disclosure.

(a) A public body may but is not required to exempt from disclosure the following information:
(1) Trade secrets, ...
(2) Information of a personal nature where the public disclosure thereof would constitute unreasonable invasion of personal privacy. ....
(3) Records of law enforcement and public safety agencies not otherwise available by law that were compiled in the process of detecting and investigating crime if the disclosure of the information would harm the agency by:
(A) Disclosing identity of informants not otherwise known;
(B) The premature release of information to be used in a prospective law enforcement action;
(C) Disclosing investigatory techniques not otherwise known outside the government;

DCD (SP05)

RLS2 #2
PHL
SCD
CHM

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

DEPARTMENT OF HEALTH

Safe and Healthy Lives in Safe and Healthy Communities

R: SP-98-097

22 December 1998

Richard L. Bangart, Director
Office of State Programs
United States Nuclear Regulatory Commission
Washington, DC 20555-0001

Dear Mr. Bangart:

Your inquiry regarding R.I. State laws as they pertain to protecting an "alleger" has been referred to me for response.

The State of Rhode Island has an "Open Records" statute, Section 38-2-1 et seq. of the R.I. General Laws. A copy of the Act is enclosed herewith. Generally speaking, records compiled by State agencies in the investigation of an illegal act are confidential until such time as a final action has been taken. Once the investigation has been completed and the subject case goes on for hearing, or is otherwise settled, the file and hearing are accessible to the public, including the identities of complaining witnesses. As a departure from the general rule of accessibility, if the complaining individual comes within one of the exemptions from public disclosure, then his/her name and other identifying data may be redacted. For records which might be exempt from disclosure, I call your attention to Section 38-2-2 (4), as amended. Any request for exemption should be received by the agency in writing.

If you have further questions, please feel free to contact our office.

Very truly yours,

(MEM)

Maureen A. Hobson

Maureen A. Hobson, Esq.
Deputy Chief Legal Counsel
(Legal Services)
(401) 222-2135

98 DEC 28 PM 3:09

OSP

MAH:caa
Enclosures
cc: Marie Stoeckel

CANNON BUILDING, Three Capitol Hill, Providence, Rhode Island 02908-5097
Telecommunication Device for the Deaf (TDD): 277-2506

SP-A-4
SP-AG-24

38-1-11. Assistance of the public records administration program. — The public records administration program of the department of administration shall have the right to examine the condition of public records and shall give advice and assistance to public officials in the solution of their problems of preserving, creating, filing, and making available the public records in their custody. When requested by the program, public officials shall assist the program in the preparation of records control schedules of public records in their custody approved by the head of the agency having custody of the records. Upon review and approval of the schedules by the program, the program shall, subject to the availability of necessary space, staff, and other facilities for those purposes, make available space in its record center for the filing of semi-current records so scheduled and in its public records repository for noncurrent records of permanent value and shall render such other assistance as needed, including the microfilming of records so scheduled.

History of Section.
P.L. 1981, ch. 353, § 4.

Cross References. Public records administration program, § 38-3-3.

CHAPTER 2

ACCESS TO PUBLIC RECORDS

SECTION.	
38-2-1.	Purpose.
38-2-2.	Definitions.
38-2-3.	Right to inspect and copy records — Duty to maintain minutes of meetings — Procedures for access.
38-2-4.	Cost.
38-2-5.	Effect of chapter on broader agency publication — Existing rights — Judicial records and proceedings.
38-2-6.	Commercial use of public records.
38-2-7.	Denial of access.
38-2-8.	Administrative appeals.
38-2-9.	Jurisdiction of superior court.
38-2-10.	Burden of proof.
38-2-11.	Right supplemental.
38-2-12.	Severability.
38-2-13.	Records access continuing.
38-2-14.	Financial information relating to settlement of legal claims.

38-2-1. Purpose. — The public's right to access to records pertaining to the policy making responsibilities of government and the individual's right to dignity and privacy are both recognized to be principles of the utmost importance in a free society. The purpose of this chapter is to facilitate public access to governmental records which pertain to the policy making functions of public bodies and/or are relevant to the public health, safety, and welfare. It is also the intent of this chapter to protect from disclosure information about particular individuals maintained in the files of public bodies when disclosure would constitute an unwarranted invasion of personal privacy.

History of Section.
P.L. 1979, ch. 202, § 1.

Cross References. Hazardous waste management facilities, siting and impact agreements and related documents, public access, § 23-19.7-12.

Comparative Legislation. Access to public records:

Conn. Gen. Stat. § 1-19 et seq.
Mass. Ann. Laws ch. 66, § 10.

NOTES TO DECISIONS

ANALYSIS

1. In general.
2. Balancing of rights.

1. In General.

The underlying policy of the Access to Public Records Act favors the free flow and disclosure of information to the public. However, the Legislature did not intend to empower the press and the public with carte blanche to demand all records held by public agencies. Providence Journal Co. v. Sundlun, 616 A.2d 1131 (R.I. 1992).

2. Balancing of Rights.

Right of privacy of officers accused of police brutality did not outweigh right of public to know their identity so as to prevent release, pursuant to records-access law, of reports of hearing examiners investigating accusations of police brutality. The Rake v. Gorodetsky, 452 A.2d 1144 (R.I. 1982).

Collateral References. State Freedom of Information Act requests: right to receive information in particular medium or format. 86 A.L.R.4th 786.

What constitutes "final opinion" or "order" of federal administrative agency required to be made available for public inspection and copying within meaning of 5 USCS § 552(a)(2)(A). 114 A.L.R. Fed. 287.

When are government records "similar files" exempt from disclosure under Freedom of Information Act provision (5 USCS § 552(b)(6) exempting certain personnel, medical, and "similar" files. 106 A.L.R. Fed. 94.

38-2-2. Definitions. — As used in this chapter:

(1) "Agency" or "public body" shall mean any executive, legislative, judicial, regulatory, administrative body of the state, or any political subdivision thereof; including, but not limited to, any department, division, agency, commission, board, office, bureau, authority, any school, fire, or water district, or other agency of Rhode Island state or local government which exercises governmental functions, or any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency.

(2) "Chief administrative officer" means the highest authority of the public body as defined in subsection (a) of this section.

(3) "Public business" means any matter over which the public body has supervision, control, jurisdiction, or advisory power.

(4)(i) "Public record" or "public records" shall mean all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, or other material regardless of physical form or characteristics made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency. For the purposes of this chapter, the following records shall not be deemed public:

(A)(I) All records which are identifiable to an individual applicant for benefits, clients, patient, student, or employee; including, but not limited to, personnel, medical treatment, welfare, employment security, pupil records, all records relating to a client/attorney relationship and to a doctor/patient relationship, and all personal or medical information relating to an individual in any files, including informa-

tion relating to medical or psychological facts, personal finances, welfare, employment security, student performance, or information in personnel files maintained to hire, evaluate, promote, or discipline any employee of a public body; provided, however, with respect to employees, the name, gross salary, salary range, total cost of paid fringe benefits, gross amount received in overtime, and other remuneration in addition to salary, job title, job description, dates of employment and positions held with the state or municipality, work location, business telephone number, the city or town of residence, and date of termination shall be public.

(II) Notwithstanding the provisions of this section, or any other provision of the general laws to the contrary, the pension records of all persons who are either current or retired members of the retirement systems established by the general laws as well as all persons who become members of that retirement systems after June 17, 1991 shall be open for public inspection. "Pension records" as used in this section shall include all records containing information concerning pension and retirement benefits of current and retired members of the retirement systems established in title 8, title 36, title 42, and title 45 and future members of said systems, including all records concerning retirement credits purchased and the ability of any member of the retirement system to purchase retirement credits, but excluding all information regarding the medical condition of any person and all information identifying the member's designated beneficiary or beneficiaries.

(B) Trade secrets and commercial or financial information obtained from a person, firm, or corporation which is of a privileged or confidential nature.

(C) Child custody and adoption records, records of illegitimate births, and records of juvenile proceedings before the family court.

(D) All records maintained by law enforcement agencies for criminal law enforcement and all records relating to the detection and investigation of crime, including those maintained on any individual or compiled in the course of a criminal investigation by any law enforcement agency but only to the extent that the disclosure of the records or information (a) could reasonably be expected to interfere with investigations of criminal activity or with enforcement proceedings, (b) would deprive a person of a right to a fair trial or an impartial adjudication, (c) could reasonably be expected to constitute an unwarranted invasion of personal privacy, (d) could reasonably be expected to disclose the identity of a confidential source, including a state, local, or foreign agency or authority, or any private institution which furnished information on a confidential basis, or the information furnished by a confidential source, (e) would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions or (f) could reasonably be expected to endanger the life or physical safety of any individual; provided, however, records

relating to management and direction of a law enforcement agency and records reflecting the initial arrest of an adult and the charge or charges brought against an adult shall be public.

(E) Any records which would not be available by law or rule of court to an opposing party in litigation.

(F) Scientific and technological secrets and the security plans of military and law enforcement agencies, the disclosure of which would endanger the public welfare and security.

(G) Any records which disclose the identity of the contributor of a bona fide and lawful charitable contribution to the public body whenever public anonymity has been requested of the public body with respect to the contribution by the contributor.

(H) Reports and statements of strategy or negotiation involving labor negotiations or collective bargaining.

(I) Reports and statements of strategy or negotiation with respect to the investment or borrowing of public funds, until such time as those transactions are entered into.

(J) Any minutes of a meeting of a public body which are not required to be disclosed pursuant to chapter 46 of title 42.

(K) Preliminary drafts, notes, impressions, memoranda, working papers, and work products.

(L) Test questions, scoring keys, and other examination data used to administer a licensing examination, examination for employment or promotion, or academic examinations; provided, however, that a person shall have the right to review the results of his or her examination.

(M) Correspondence of or to elected officials with or relating to those they represent and correspondence of or to elected officials in their official capacities.

(N) The contents of real estate appraisals, engineering, or feasibility estimates and evaluations made for or by an agency relative to the acquisition of property or to prospective public supply and construction contracts, until such time as all of the property has been acquired or all proceedings or transactions have been terminated or abandoned; provided the law of eminent domain shall not be affected by this provision.

(O) All tax returns.

(P) All investigatory records of public bodies pertaining to possible violations of statute, rule, or regulation other than records of final actions taken provided that all records prior to formal notification of violations or noncompliance shall not be deemed to be public.

(Q) Records of individual test scores on professional certification and licensing examinations; provided, however, that a person shall have the right to review the results of his or her examination.

(R) Requests for advisory opinions until such time as the public body issues its opinion.

(S) Records, reports, opinions, information, and statements required to be kept confidential by federal or state law, rule, rule of court, regulation, or by state statute.

(T) Judicial bodies are included in the definition only in respect to their administrative function provided that records kept pursuant to the provisions of chapter 16 of title 8 are exempt from the operation of this chapter.

(U) Library records which by themselves or when examined with other public records, would reveal the identity of the library user requesting, checking out, or using any library materials.

(V) Printouts from telecommunication devices for the deaf or hearing and speech impaired.

(W) All records received by the insurance division of the department of business regulation from other states, either directly or through the National Association of Insurance Commissioners, if those records are accorded confidential treatment in that state. Nothing contained in this title or any other provision of law shall prevent or be construed as prohibiting the commissioner of insurance from disclosing otherwise confidential information to the insurance department of this or any other state or country, at any time, so long as the agency or office receiving the records agrees in writing to hold it confidential in a manner consistent with the laws of this state.

(ii) However, any reasonably segregable portion as determined by the chief administrative officer of the public body of a public record excluded by this section shall be available for public inspections after the deletion of the information which is the basis of the exclusion, if disclosure of the segregable portion does not violate the intent of this section.

(5) "Supervisor of the regulatory body" means the chief or head of a section having enforcement responsibility for a particular statute or set of rules and regulations within a regulatory agency.

History of Section.

P.L. 1979, ch. 202, § 1; P.L. 1980, ch. 269, § 1; P.L. 1981, ch. 353, § 5; P.L. 1982, ch. 416, § 1; P.L. 1984, ch. 372, § 2; P.L. 1986, ch. 203, § 1; P.L. 1991, ch. 208, § 1; P.L. 1991, ch. 263, § 1; P.L. 1995, ch. 112, § 1.

Reenactments. The 1997 Reenactment (P.L. 1997, ch. 326, § 1) rearranged the definitions into alphabetical order, redesignated the subdivisions, and substituted "June 17, 1991" for "the effective date of this act" in subdivision (4)(i)(A)(b), which substitution was first made by the compiler.

NOTES TO DECISIONS

ANALYSIS

1. Personnel records.
2. Records kept confidential pursuant to law or rule of court.
3. Tax records.
4. Nursing home financial data.
5. Records identifying state employees.
6. Records identifying "terminated" teachers.

1. Personnel Records.

Where procedure was established whereby any civilian complaint of police brutality was to be subject of evidentiary hearing before hearing officer, after which hearing a written finding of policeman's guilt or innocence was to be forwarded to police chief for his approval or rejection, finding was not a recommendation as to further personnel action but was a final action in itself, and thus was not subject to the personnel-record or investigatory-record exception. The Rake v. Gorodetsky, 452 A.2d 1144 (R.I. 1982).

Items of information could not be considered as coming under the "personnel records" exception merely by virtue of the fact that agency considered them to be personnel

records and maintained them in files designated as "personnel files." The Rake v. Gorodetsky, 452 A.2d 1144 (R.I. 1982).

Reports concerning civilian complaints of police brutality from which names of complainants and police officers had been deleted rendered such records as not "identifiable to an individual applicant" and thus as not coming under the personnel-records exception. The Rake v. Gorodetsky, 452 A.2d 1144 (R.I. 1982).

A management study of school operations, specifically relating to the job performance of a school principal, is exempted from public access under the personnel-records exception of this section. Pawtucket Teachers Alliance Local No. 920 v. Brady, 556 A.2d 556 (R.I. 1989).

The plaintiff's request for information that will uniquely identify state employees by name, address, and employment history directly contravenes the clear proscription set forth in this section against disclosure of all records which are identifiable to an individual employee, including personnel records. Providence Journal Co. v. Kane, 577 A.2d 661 (R.I. 1990).

2. Records Kept Confidential Pursuant to Law or Rule of Court.

Consent judgment of superior court pursuant to which a procedure was established for processing and hearing citizen complaints of police misconduct was not a "rule of court" under subsection (d)(19) and, regardless, did not by its terms require confidentiality of reports of hearings. The Rake v. Gorodetsky, 452 A.2d 1144 (R.I. 1982).

The exemption in subsection (d)(5) limits production of records pertaining to litigation under the Access to Public Records Act, 38-2-1 et seq., to those documents which would be subject to discovery under Super. Ct. R. Civ. P. 26 and 34. Hydron Labs., Inc. v. Department of Att'y Gen., 492 A.2d 135 (R.I. 1985).

As long as the court in which litigation is ongoing has made a determination, based on the law or upon rules of court, that a document will not be required to be disclosed, then that holding precludes production of those same documents under the Access to Public Records Act, 38-2-1 et seq., through application of § 38-2-2(d)(5). Hydron Labs., Inc. v. Department of Att'y Gen., 492 A.2d 135 (R.I. 1985).

This section does not provide a remedy to compel nondisclosure in the event that a public official or body is about to disclose material that might be entitled to an exemption under the provisions of this section. Rhode Island Fed'n of Teachers v. Sundlun, 595 A.2d 799 (R.I. 1991).

3. Tax Records.

A protective order of the public utilities commission which seeks to protect the confidentiality of requested tax documents through the use of in camera proceedings, but does not prevent the use of the information before the commission subject to the limitations set out in the order, does not deprive an aggrieved party of a meaningful public hearing or of some right to have the information made public. Town of New Shoreham v. Rhode Island Pub. Utils. Comm'n, 464 A.2d 730 (R.I. 1983).

4. Nursing Home Financial Data.

Financial data which a nursing home was required to report in order to receive medicaid funds is a public record within the meaning of this section, subject to deletion of detailed personnel information which would be identifiable to individual employees and tax returns before making the data available to the public. Charlesgate Nursing Center v. Bordeleau, 568 A.2d 775 (R.I. 1990).

5. Records Identifying State Employees.

Records revealing the names and positions of state employees who were scheduled to be laid off but never issued notices due to a subsequent agreement to pay cuts were exempt from disclosure pursuant to this section even though the lists did not reveal personal information about the employees. This section limits the public's access not only to personal information contained in an employee's personnel file but also to any record that identifies a particular employee. Providence Journal Co. v. Sundlun, 616 A.2d 1131 (R.I. 1992).

Records identifying the names of state employees scheduled for layoffs are subject to disclosure when termination becomes final. Under this section the public is entitled to know the identities of those employees who will be indefinitely released from the state-government payroll. Providence Journal Co. v. Sundlun, 616 A.2d 1131 (R.I. 1992).

6. Records Identifying "Terminated" Teachers.

The name of a teacher who receives notice of a layoff is exempt from disclosure under the Access to Public Records Act until that teacher's employment is actually terminated. Edward A. Sherman Publishing Co. v. Carpender, 659 A.2d 1117 (R.I. 1995).

Collateral References. Failed applicant's right of access to bar examination questions and answers. 57 A.L.R.4th 1212.

Liability for interference with physician-patient relationship. 87 A.L.R.4th 845.

Patient's right to disclose of his or her own medical records under state freedom of information act. 26 A.L.R.4th 701.

Payroll records of individual government employees as subject to disclosure to public. 100 A.L.R.3d 699.

Public welfare recipients, confidentiality of records as to. 54 A.L.R.3d 768.

What constitutes "final opinion" or "order" of federal administrative agency required to be made available for public inspection and copying within meaning of 5 USCS § 552(a)(2)(A). 114 A.L.R. Fed. 287.

What constitutes preliminary drafts or notes provided by or for state or local governmental agency, or intra-agency memorandums, exempt from disclosure or inspection under state freedom of information acts. 26 A.L.R.4th 639.

38-2-3. Right to inspect and copy records — Duty to maintain minutes of meetings — Procedures for access. — (a) Except as provided in § 38-2-2(4), all records maintained or kept on file by any public body, whether or not those records are required by any law or by any rule or regulation, shall be public records and every person shall have the right to inspect and/or copy those records at such reasonable time as may be determined by the custodian thereof.

(b) Each public body shall make, keep, and maintain written or recorded minutes of all meetings.

(c) Each public body shall establish procedures regarding access to public records.

(d) If a public record is in active use or in storage and, therefore, not available at the time a person requests access, the custodian shall so inform the person and make an appointment for the citizen to examine such records as expeditiously as they may be made available.

(e) Any public body which maintains its records in a computer storage system shall provide a printout of any data properly identified.

(f) Nothing in this section shall be construed as requiring a public body to reorganize, consolidate, or compile data not maintained by the public body in the form requested at the time the request to inspect the public records was made.

History of Section.

P.L. 1979, ch. 202, § 1; P.L. 1984, ch. 372, § 2; P.L. 1997, ch. 326, § 168.

Reenactments. The 1997 Reenactment (P.L. 1997, ch. 326, § 1) substituted "in this section" for "herein" in subsection (f).

Collateral References. Patient's right to disclose of his or her own medical records under state freedom of information act. 26 A.L.R.4th 701.

State Freedom of Information Act requests: right to receive information in particular medium or format. 86 A.L.R.4th 786.

38-2-4. Cost. — (a) Subject to the provisions of § 38-2-3, a public body must allow copies to be made or provide copies of public records. The cost per copied page of written public documents shall not exceed fifteen cents ($ .15) per page for documents copyable on common business or legal size paper.

(b) A reasonable charge may be made for the search or retrieval of documents. Hourly costs for a search and retrieval shall not exceed fifteen dollars ($15.00) per hour and no costs shall be charged for the first thirty (30) minutes of a search or retrieval.

(c) Copies of documents shall be provided and the search and retrieval of documents accomplished within a reasonable time after a request. A public body shall provide an estimate of the costs of a request for documents prior to providing copies.

History of Section.
P.L. 1979, ch. 202, § 1; P.L. 1986, ch. 416, § 1; P.L. 1991, ch. 263, § 1.

38-2-5. Effect of chapter on broader agency publication — Existing rights — Judicial records and proceedings. — Nothing in this chapter shall be:

(1) Construed as preventing any public body from opening its records concerning the administration of the body to public inspection;

(2) Construed as limiting the right of access as it existed prior to July 1, 1979, of an individual who is the subject of a record to the information contained herein; or

(3) Deemed in any manner to affect the status of judicial records as they existed prior to July 1, 1979, nor to affect the rights of litigants in either criminal or civil proceedings, including parties to administrative proceedings, under the laws of discovery of this state.

History of Section.
P.L. 1979, ch. 202, § 1.

Reenactments. The 1997 Reenactment (P.L. 1997, ch. 326, § 1) redesignated the subdivisions.

38-2-6. Commercial use of public records. — No person or business entity shall use information obtained from public records pursuant to this chapter to solicit for commercial purposes or to obtain a commercial advantage over the party furnishing that information to the public body. Anyone who knowingly and willfully violates the provision of this section shall, in addition to any civil liability, be punished by a fine of not more than five hundred dollars ($500) and/or imprisonment for no longer than one year.

History of Section.
P.L. 1979, ch. 202, § 1.

38-2-7. Denial of access. — (a) Any denial of the right to inspect or copy records provided for under this chapter shall be made to the person requesting the right by the public body official who has custody or control of the public record in writing giving the specific reasons for the denial within ten (10) business days of the request and indicating the procedures for appealing the denial.

(b) Failure to comply with a request to inspect or copy the public record within the ten (10) business day period shall be deemed to be a denial. Except that for good cause, this limit may be extended for a period not to exceed thirty (30) business days.

History of Section.
P.L. 1979, ch. 202, § 1; P.L. 1991, ch. 263, § 1.

38-2-8. Administrative appeals. — (a) Any person denied the right to inspect a record of a public body by the custodian of the record may petition the chief administrative officer of that public body for a review of the determinations made by his or her subordinate. The chief administrative officer shall make a final determination whether or not to allow public inspection within ten (10) business days after the submission of the review petition.

(b) If the chief administrative officer determines that the record is not subject to public inspection, the person seeking disclosure may file a complaint with the attorney general. The attorney general shall investigate the complaint and if the attorney general shall determine that the allegations of the complaint are meritorious, he or she may institute proceedings for injunctive or declaratory relief on behalf of the complainant in the superior court of the county where the record is maintained. Nothing within this section shall prohibit any individual from retaining private counsel for the purpose of instituting proceedings for injunctive or declaratory relief in the superior court of the county where the record is maintained.

History of Section.
P.L. 1979, ch. 202, § 1; P.L. 1981, ch. 279, § 2.

NOTES TO DECISIONS

1. In General.
This section provides a judicial remedy to a person or entity denied access to records alleged to be public records. The first remedy is an administrative appeal under subsection (a). The second remedy pursuant to subsection (b) would be to seek the aid of the attorney general in instituting proceedings for the injunctive or declaratory relief. This section also provides for a private action for injunctive or declaratory relief in the superior court of the county where the record is maintained. Rhode Island Fed'n of Teachers v. Sundlun, 595 A.2d 799 (R.I. 1991).

38-2-9. Jurisdiction of superior court. — (a) Jurisdiction to hear and determine civil actions brought under this chapter is hereby vested in the superior court.

(b) The court may examine any record which is the subject of a suit in camera to determine whether the record or any part thereof may be withheld from public inspection under the terms of this chapter.

(c) Actions brought under this chapter may be advanced on the calendar upon motion of the petitioner made in accordance with the rules of civil procedure of the superior court.

(d) The court may impose a civil fine not exceeding one thousand dollars ($1,000) against a public body or official found to have committed a willful violation of this chapter.

History of Section.
P.L. 1979, ch. 202, § 1; P.L. 1988, ch. 87, § 1; P.L. 1991, ch. 263, § 1.
Reenactments. The 1997 Reenactment (P.L. 1997, ch. 326, § 1) substituted "superior court" for "state courts" in the section heading.

NOTES TO DECISIONS

1. In General.
This section confers jurisdiction upon the superior court to determine whether the record or any part thereof may be withheld by a public body, and also authorizes the imposition of a civil fine against a public body found to have committed a willful violation of the chapter. Rhode Island Fed'n of Teachers v. Sundlun, 595 A.2d 799 (R.I. 1991).

38-2-10. Burden of proof. — In all actions brought under this chapter, the burden shall be on the public body to demonstrate that the record in dispute can be properly withheld from public inspection under the terms of this chapter.

History of Section.
P.L. 1979, ch. 202, § 1.

NOTES TO DECISIONS

1. In General.
This section imposes the burden of proof upon the public body to demonstrate that the record in dispute can be properly withheld from public inspection. No portion of the statute purports to provide a remedy for a person or an entity that seeks to prevent disclosure. Rhode Island Fed'n of Teachers v. Sundlun, 595 A.2d 799 (R.I. 1991).

38-2-11. Right supplemental. — The right of the public to inspect public records created by this chapter shall be in addition to any other right to inspect records maintained by public bodies.

History of Section.
P.L. 1979, ch. 202, § 1.

38-2-12. Severability. — If any provision of this chapter is held unconstitutional, the decision shall not affect the validity of the remainder of this chapter. If the application of this chapter to a particular record is held invalid, the decision shall not affect other applications of this chapter.

History of Section.
P.L. 1979, ch. 202, § 1.

38-2-13. Records access continuing. — All records initially deemed to be public records which any person may inspect and/or copy under the provisions of this chapter, shall continue to be so

deemed whether or not subsequent court action or investigations are held pertaining to the matters contained in the records.

History of Section.
P.L. 1986, ch. 345, § 1.

38-2-14. Financial information relating to settlement of legal claims. — Records reflecting the financial settlement by public bodies of any legal claims against a governmental entity shall be deemed public records.

History of Section.
P.L. 1991, ch. 263, § 2.

CHAPTER 3

PUBLIC RECORDS ADMINISTRATION

SECTION.		SECTION.	
38-3-1.	Short title.	38-3-5.1.	Reproduction of public records — Destruction of original records.
38-3-2.	Definitions.	38-3-6.	Public records custody and disposal.
38-3-3.	Public records administration program.	38-3-7.	Agency responsibilities.
38-3-4.	Duties of administrator.		
38-3-5.	Duties of program.		

38-3-1. Short title. — This chapter shall be known as the "Public Records Administration Act."

History of Section.
P.L. 1981, ch. 353, § 6.
Comparative Legislation. State library and public records:
Conn. Gen. Stat. § 11-8 et seq.
Mass. Ann. Laws ch. 66, § 1.

38-3-2. Definitions. — For the purpose of this chapter:

(1) "Agency" or "public body" shall mean any executive, legislative, judicial, regulatory, administrative body of the state, or any political subdivision thereof; including, but not limited to, any department, division, agency, commission, board, office, bureau, authority, any school, fire, or water district, or other agency of state or local government which exercises governmental functions, or any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency.

(2) "Records center" shall mean an establishment maintained by the program for the storage, processing, servicing, and security of public records that must be retained for varying periods of time but need not be retained in an agency's office equipment or space.

(3) "Records control schedule" shall mean the document establishing the official retention, maintenance, and disposal requirements for a series or type of record based on administrative, legal, fiscal, and historical values for the scheduled records.

(4) "Program" shall mean the public records administration program of the secretary of state.

(5) "Public record" or "public records" shall mean all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, or other material regardless of physical form or characteristics made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.

(6) "Public records repository" shall mean the establishment maintained by the program for preservation of those public records determined by the program to have permanent value warranting their continued preservation and which has been accepted by the program for transfer to its custody.

History of Section.
P.L. 1981, ch. 353, § 6; P.L. 1991, ch. 179, § 1.

Reenactments. The 1997 Reenactment (P.L. 1997, ch. 326, § 1) rearranged the definitions into alphabetical order.

38-3-3. Public records administration program. — (1) The public records administration program shall be organized as deemed necessary by the secretary of state for the proper discharge of its duties and responsibilities under this chapter. All personnel, furnishings, equipment, finances, property, and contractual arrangements of the public records administration shall be the responsibility of the secretary of state.

(2) There shall be a public records advisory commission consisting of seventeen (17) members, one of whom shall be a member of the senate chosen by the senate majority leader, one of whom shall be a member of the house of representatives chosen by the speaker of the house, six (6) of whom shall be chosen by the governor, and seven (7) of whom shall be chosen by the secretary of state. The secretary of state or designee shall serve as a permanent member of the commission. The state archivist shall serve as a permanent member of the commission. The appointments shall consist of persons who are qualified by training and experience with proven interest in historical records and public records management. In the first instance, five (5) members shall be appointed for a one year term, two (2) by the governor and three (3) by the secretary of state; five (5) members shall be appointed for a two (2) year term, one by the speaker of the house, one by the senate majority leader, two (2) by the governor, and one by the secretary of state; five (5) members shall be appointed for a three (3) year term, two (2) by the governor, and three (3) by the secretary of state. The members shall hold office until July 1, in the years in which their respective terms end. Thereafter, prior to July 1, successors shall be appointed to the commission to the members of the commission whose terms expired. Vacancy of a member shall be filled by appointment by the corresponding authority for the remainder of the unexpired terms.

(3) The secretary of state or designee shall serve as the chairperson of the commission. The state archivist or designee shall serve as the secretary of the commission with voting rights.

(4) It shall be the duty of the public records advisory commission to provide professional and technical assistance to the public records administration program, the state archives, and the local governments of the state in all matters relating to the administration of public records. Members of the commission shall serve without pay.

(5) The secretary of state may appoint an administrator of the program and shall establish his or her qualifications other than the professional competence required. The administrator shall coordinate, direct, and administer the activities and responsibilities of the program. The administrator shall serve at the pleasure of the secretary of state.

(6) The program may make and enter into contracts and agreements with other agencies, organizations, associations, corporations, and individuals, or federal agencies as it may determine are necessary, expedient, or incidental to the performance of its duties or the execution of its powers under this chapter.

(7) The program shall adopt rules and regulations deemed necessary to carry out its duties and responsibilities under this chapter which rules shall be binding on all agencies and persons affected thereby. The willful violation of any of the rules and regulations adopted by the program shall constitute a misdemeanor.

(8) The program may accept gifts, grants, bequests, loans, and endowments for purposes not inconsistent with its responsibilities under this chapter.

History of Section.
P.L. 1981, ch. 353, § 6; P.L. 1991, ch. 179, § 1.

Reenactments. The 1997 Reenactment (P.L. 1997, ch. 326, § 1) substituted "experience with" for "experience and possessed of" in the fourth sentence of subdivision (2).

38-3-4. Duties of administrator. — (a) It shall be the duty and responsibility of the administrator to render all services required by the program herein set forth that can advantageously and effectively be centralized. The office shall perform such other functions and duties as the secretary of state may direct.

(b) The administrator shall supervise, direct, and coordinate the activities of the program.

(c) The administrator shall be designated "the public records administrator".

History of Section.
P.L. 1981, ch. 353, § 6; P.L. 1991, ch. 179, § 1.

Reenactments. The 1997 Reenactment (P.L. 1997, ch. 326, § 1) redesignated the subsections.

Cross References. Appointment of public records administrator, § 38-3-3.

38-3-5. Duties of program. — It shall be the duty and responsibility of the public records administration program to:

(1) Establish and administer a public records management program, including the operation of a record center or centers, and appoint a director who will apply efficient and economical management methods relating to the creation, utilization, maintenance, retention, preservation, and disposal of records.

(2) Analyze, develop, establish, and coordinate standards, procedures, and techniques of record making and record keeping.

(3) Insure the maintenance and security of records which are deemed appropriate for preservation.

(4) Institute and maintain a training and information program in all phases of records management to bring to the attention of all agencies approved and current practices, methods, procedures, and devices for the efficient and economical management of records.

(5) Make available a centralized program of microfilming for the benefit of all agencies.

(6) Make continuous surveys of record keeping operations.

(7) Recommend improvements in current records management practices, including the use of space, equipment, supplies, and personnel in creating, maintaining, and servicing records.

(8)(i) Establish and maintain a program, in cooperation with each agency, for the selection and protection of public records considered essential to the operation of government and to the protection of the rights and privileges of citizens.

(ii) Make or to have made duplicates of essential records, or to designate existing record copies as essential records to be protected in the place and manner of safekeeping as prescribed by the program.

(iii) The duplicate of any record made pursuant to this chapter shall have the same force and effect for all purposes as the original record. A transcript, exemplification, or certified copy of the duplicate shall be deemed, for all purposes, to be the original record.

History of Section. P.L. 1981, ch. 353, § 6; P.L. 1990, ch. 492, § 10.

Reenactments. The 1997 Reenactment (P.L. 1997, ch. 326, § 1) redesignated the paragraphs in subdivision (8).

38-3-5.1. Reproduction of public records — Destruction of original records. — If any department or agency of government, in the regular course of business or activity, has kept or recorded any memorandum, writing, state tax returns, report, application, payment, entry, print, representation, or combination thereof, or any act, transaction, occurrence, or event, and, in the regular course of business, has caused any or all of the records to be recorded, copied, or reproduced by a photographic, photostatic, microfilm, micro-card, optical disk, miniature photographic, or other process which accurately reproduces or forms a durable medium for reproducing the original, the original may be destroyed in the regular course of business, provided the process meets standards established by the public records administration, and provided all the provisions of § 38-3-6 concerning disposal of public records are fulfilled. The

reproduction, when satisfactorily identified, shall be admissible in evidence as the original in any judicial or administrative proceeding whether or not the original exists or is available and an enlargement or facsimile of the reproduction shall be likewise admissible in evidence if the original is in existence and available for inspection under the direction of the court. The introduction of a reproduced record, enlargement, or facsimile into evidence shall not preclude the admission into evidence of the original. This section shall not be construed to exclude from introduction into evidence any document or copy thereof which is otherwise admissible under the Rhode Island general laws, as amended.

History of Section.
P.L. 1988, ch. 577, § 1.
Reenactments. The 1997 Reenactment (P.L. 1997, ch. 326, § 1) substituted "all of the records" for "all of the same" in the first sentence.

38-3-6. Public records custody and disposal. — (a) Each agency shall prepare and submit to the program, in accordance with the rules and regulations of the program, record control schedules for all public records in the custody of the agency.

(b) The offices of the attorney general and the auditor general will advise the program on the legal and fiscal values of records covered by proposed records control schedules.

(c) Those records which are determined by an agency not to be needed in the transaction of current business but which, for legal or fiscal requirements, must be retained for specific time periods beyond administrative needs, shall be sent to the records center. The records will be kept in the center until time for disposition as provided in record control schedules.

(d) Public records possessing permanent value as determined by approved records control schedules shall be transferred to the public records repository when no longer needed by an agency in transaction of current business.

(e) Title to any record placed in the records center shall remain in the agency placing the record in the center.

(f) Title to any record transferred to the public records repository, as authorized in this chapter, shall be vested in the program.

(g) The program shall preserve and administer such public records as shall be transferred to its custody according to approved conservation and security practices, and to permit them to be inspected, examined, and copied at reasonable times and under supervision of the program; provided that any record placed in keeping of the program under special terms or conditions restricting their use shall be made available only in accordance with the terms and conditions.

(h) Provide a public research room where, upon policies established by the program, the records in the public records repository may be studied.

(i) The program may make certified copies under seal of any records transferred to it upon the application of any person, and the

certificates, signed by the administrator or his or her designee, shall have the same force and effect as if made by the agency from which the records were received. The program may charge a reasonable fee for this service.

(j) No public record shall be destroyed or otherwise disposed of by any agency without prior notice to the program.

(k) The program shall adopt reasonable rules and regulations not inconsistent with this chapter relating to the destruction and disposal of records. The rules and regulations shall provide but not be limited to:

(1) Procedures for preparing and submitting record control schedules to the program.

(2) Procedures for the physical destruction or other disposal of records.

(3) Standards for the reproduction of records for security or with a view to the disposal of the original record.

(*l*) The program shall:

(1) Establish safeguards against unauthorized or unlawful removal or loss of records; and

(2) Initiate appropriate action to recover records removed unlawfully or without authorization.

(m) The program may prepare and publish handbooks, guides, indexes, and other literature directed toward encouraging the management, preservation, and uses of the state's public records resource.

History of Section.
P.L. 1981, ch. 353, § 6.

Reenactments. The 1997 Reenactment (P.L. 1997, ch. 326, § 1) redesignated the subsections and subdivisions.

38-3-7. Agency responsibilities. — It shall be the duty of each agency to:

(1) Cooperate with the program in complying with the provisions of this chapter.

(2) Establish and maintain an active and continuous program for the economical and efficient management of public records.

History of Section.
P.L. 1981, ch. 353, § 6.

DCD(SP03)
PDR(YES)

PHL
SCD
CHM
PML

STATE OF TENNESSEE
DEPARTMENT OF ENVIRONMENT AND CONSERVATION

DIVISION OF RADIOLOGICAL HEALTH
L & C Annex, 3rd Floor
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January 28, 1999

Mr. Paul H. Lohaus, Deputy Director
Office of State Programs
United States Nuclear Regulatory Commission
Washington, DC 20555-0001

99 FEB -8 AM 8:41
OSP

Re: SP-98-097 dated December 9, 1998
The Protection of the Identity of Allegers from Public Disclosure

Dear Mr. Lohaus:

Upon receiving the subject SP letter, my initial response was to think, "Haven't we already answered this question once?" I looked back in our files and found a letter dated October 31, 1997 (copy attached), which was in response to letter SP 97-065, concerning the ability of the Agreement States to withhold from public disclosure certain "pre-decisional" documents provided to the State. Upon review of this correspondence, it seemed that we had answered essentially the same question.

Not seeing how the answer to the current question could differ from that previous answer in any significant way, I contacted our Office of General Counsel, and provided copies of all the relevant documents for review by our attorney. OGC subsequently advised us that the letter dated October 31, 1997, is substantially relevant to SP-98-097.

In response to specific questions posed in SP-98-097:

- Request: Is your State's policy with regard to protecting alleger's identity similar to that of the NRC described above?

  Response: We will not attempt to elaborate on each and every point addressed in SP-98-097 and Management Directive 8.8, as we are confident that was not the NRC's intent. Our position is that the policy of the State of Tennessee is not incompatible with respect to any of the major objectives, which include protecting identity in accordance with the wishes of allegers, encouraging a mutual exchange of information from and with allegers, providing for the investigation and resolution of allegations, and doing all this in compliance with the requirements of the applicable "freedom of information" statute.

SP-AG-26; SP-A-4

We described in our letter of October 31, 1997, the "confidential file" system which we had implemented a number of years ago, and the limitations associated with it. We know that we cannot rely on that system for assurance of confidentiality. OGC has advised us that, were we to receive a request for all information on a subject for which any information had been placed in the "confidential file," we would be obligated by State law to reveal the existence of and to release that information.

When a higher level of assurance is desired, there are other steps we may take to protect "confidential" information. Paragraph 6 of the CAI procedure (copy attached) provides an alternative which may be used for this purpose. This places an additional burden on the alleger to deal with case identifiers, to maintain contact, and to provide "just in time" information for mailing purposes, but it allows us to communicate without maintaining records of the alleger's name, phone number, or address.

As a final point, we have identified a potential means, utilizing our "proprietary information" exclusion, which might serve to strengthen our current procedures. This is further discussed in the response to the next item.

- Request: Please provide information regarding your State's laws, procedures or policies regarding the disclosure of an alleger's identity. For example, some States require specific labeling of allegation material received from the NRC in order to withhold documents in accordance with individual State public disclosure laws. We request information about whether your State laws contain requirements for labeling, or whether specific labeling would assist in meeting the intent of the NRC label, "Sensitive Allegation Material," and the protection of an alleger's identity.

  Response: We have identified a potential means, described in the October 31, 1997, letter regarding "pre-decisional information," which may also serve to better ensure our ability to avert the disclosure of an alleger's identity. The utilization of a "proprietary information" exclusion, although unproven because it has not been tested by litigation, would appear to be helpful in strengthening our existing procedures.

  Among the few exclusions provided for by the Tennessee Open Records Act, "proprietary information" is the only category with relevance to protection of this type of information. Information to be protected under this provision would need to be identified as "Proprietary."

  A rule change regarding the definition of proprietary information would seem to be both necessary and possible. However, our OGC has indicated that, for such a rule change to be possible, the basis for NRC identity protection measures would need to be Federal law, not just NRC policy. We communicated this, with regard to pre-decisional information, to the

NRC in our letter of October 31, 1997, but have received no response. Before we decide whether to proceed with such a rule change, we request your response on this key question.

- Request: In addition, a copy of the pertinent State law, procedure and/or policy regarding the public disclosure of this information is requested.

  Response: The citation to the Tennessee Open Records Act is Tennessee Code Annotated (TCA) 10-7-503 through 506. Relevant State law for the Tennessee radiological health program is TCA 68-202-101 through 709. The TCA may be accessed through the internet at "http://www.lexislawpublishing.com/resources." We trust that our procedures and policies have been described in sufficient detail by this letter and the letter of October 31, 1997.

As previously indicated, we are willing to work with the NRC in any reasonable way permitted by State law to coordinate the adoption of policies and procedures consistent with the mandates of both State and Federal law and regulations. In the absence of a resolution satisfactory to both parties, the best alternative may be for the NRC to remain in a liaison role between the alleger and our agency.

Sincerely,

Lawrence E. Nanney
Deputy Director
Division of Radiological Health

Attachments:

October 31, 1997, letter
CAI Investigation Procedure

STATE OF TENNESSEE
DEPARTMENT OF ENVIRONMENT AND CONSERVATION

DIVISION OF RADIOLOGICAL HEALTH
L & C Annex, 3rd Floor
401 Church Street
Nashville, Tennessee 37243-1532
(615) 532-0364

October 31, 1997

Mr. Richard L. Bangart, Director
Office of State Programs
United States Nuclear Regulatory Commission
Washington, DC 20555-0001

Re: SP-97-065 dated September 12, 1997
Handling "Pre-Decisional Information" and Request for Confirmation

Dear Mr. Bangart:

In regard to the subject correspondence, it being clear that no simple, straightforward confirmation as requested would be possible, I referred your letter of September 12, 1997, to our Office of General Counsel (OGC) for evaluation and response. I will attempt to summarize OGC's response, but just in case NRC's counsel might wish to review this stated position, I will quote the statutory references and, to an extent, the commentary received from OGC.

In Tennessee's Public Records Act, TCA Section 10-7-503(b) provides that "...a government agency may promulgate rules...to maintain the confidentiality of...records required to be kept confidential by federal statute or regulation as a condition for the receipt of federal funds or for participation in a federally funded program." That provision is not operative because no Federal funding is involved in our program.

The confidentiality provision in the DRH's enabling legislation, TCA 68-202-217, provides that proprietary information, as defined by the Division's regulations, may be kept confidential. "State Regulations for Protection Against Radiation" (SRPAR) 1200-2-4-.10 does this, but does not include in the list of defined proprietary information the documents sought to be protected by the NRC. If this statute is to be relied upon, an appropriate amendment to the regulation is required.

At this point it is appropriate to quote our OGC to explain the necessity of and the proper method for doing this:

> Two issues are raised by reliance on the proprietary scheme. Proprietary, defined by Webster as "one that possesses, owns, or holds exclusive right to something," is normally thought of as being involved with the commerce. Furthermore, the statute and clearly the regulation, as now drawn, appear to contemplate commercial activity. These issues, however, I believe are overcome by a provision in the public records law.
>
> **Public Records--TCA 10-7-504 (b and c)**--Paragraph "c" provides that "Notwithstanding any provision of the law to the contrary, any confidential public record in existence more than seventy (70) years shall be open for public inspection by any person **unless disclosure of the record is specifically prohibited or restricted by federal law...**" Thus the real issue is for the NRC. Does federal law prohibit or restrict disclosure of predecisional documents or is it merely NRC's policy?
>
> If federal law restricts or prohibits disclosure then paragraph "b" can be tied to TCA 68-202-217. Paragraph "b" provides, "Any record designated 'confidential' shall be so treated by agencies..." The Commissioner would have to promulgate an amendment to 1200-2-4-.10 which would make clear that proprietary documents are also confidential and that predecisional documents provided by the NRC are proprietary.
>
> I therefore conclude three things:
>
> 1. No complete assurance can be given to the NRC since this matter has not been litigated.
>
> 2. If federal law prohibits or restricts disclosure of the subject documents the division can amend the rules and the likelihood the documents will remain confidential is high.
>
> 3. If federal law does not prohibit or restrict disclosure of the subject documents the division can amend the rules and the likelihood the documents will remain confidential is less certain.

Prior recognition of these issues had prompted us to set up a "confidential" file, in which we routinely place sensitive material, including such as that referenced in your letter and so identified, with a note concerning its location being placed in the operational files. This system

prevents inadvertent release and discourages casual perusal, but makes no attempt to hide such material and conveys no protection from a concerted effort to access that information. As a matter of interest, I am not aware that we have ever received any requests to review "confidential" materials so placed.

We will make every effort to work with you to explore further the extent of the NRC's concerns, and to identify available alternatives to resolve any concerns which may remain.

Sincerely,

Lawrence E. Nanney
Deputy Director
Division of Radiological Health

COMPLAINT / ALLEGATION / INCIDENT (CAI) EVENT INVESTIGATION PROCEDURE

1. If you receive notification of a CAI event, you should inform and consult with your supervisor or management, as appropriate, and determine a course of action (e.g., immediate site visit, phone inquiry, planned inspection, notification of other staff, referral to Regional EAC staff or another agency, no action necessary, etc.). During non-work hours, weekends, and holidays, it may be necessary that you make the decision on course of action. If the determination is made to respond immediately to the site, at least two persons should respond, if at all possible.

2. As soon as possible after taking any immediate actions necessary, the first technical staff member to receive notice of an event shall call the CAI Coordinator (see 7 below), give a brief identifying summary of the event (e. g., date of event, facility involved, location, what happened, status of event, action taken or planned), and obtain an event ID number. This ID number is to be used on any documentation regarding this event.

3. The CAI Coordinator will assign the next consecutive identifying number, enter the data into the computer, and advise the Deputy Director of the notification.

4. Significant events, defined as those that:
   - meet the NRC's Abnormal Occurrence (AO) criteria, or
   - require reporting to the Division within 24 hours or less, or
   - may attract media attention,

   should be promptly reported, as directed by the senior management involved, to the Department's Emergency Services Coordinator (ESC), Public Information Officer (PIO), the NRC Contact, and/or the EPA Regional Office Contact (see 8 below).

5. Each DRH staff member involved in an event shall prepare a written report documenting the activities in which (s)he was involved. All relevant information is to be documented, especially the names/addresses/phone numbers of all persons involved in the event. The TENNESSEE RADIOLOGICAL EVENT form provides a useful summary, and one should be completed in the initial phase of an event. Reports shall be forwarded to the CAI Coordinator, where they will be made a part of the file for each event.

6. In the case of a complaint or allegation, a response should be made to the complainant, if known to us, to provide information on the results of our investigation. The response to a written complaint/allegation should be in writing. The response to a verbal complaint/allegation may be made either verbally or in writing, however, if a verbal response is made, it should be documented in our files. With a few exceptions, State law requires, and Office of General Counsel opinions affirm, that any information in our files, whether working documents or finalized and approved documents, are open to the public. If a complainant who is known to us wishes to remain anonymous, there currently is no way to assure anonymity other than to refrain from making the complainant's identity a part of any record. That may somewhat complicate, but should not prevent, making either a verbal or written response.

7. Designated staff, with guidance from and in consultation with the Deputy Director, shall be responsible for maintaining the CAI report system. Currently established and defined roles and assignments are as follows:

CAI Coordinator - Jan Gregory - (615)532-0360

- maintain the CAI logging, tracking, and filing system
- prepare and distribute informational copies for the Deputy Director, Section Managers, and key involved staff.

CAI Specialist (interim) - Debra Shults - (615)532-0426

- periodically review CAI event files to assure full documentation and event closure
- maintain the NRC's Nuclear Materials Event Database (NMED) reporting system and prepare requested reports

8. Current contacts are as follows:

Tennessee Department of Environment and Conservation

• **ESC**	Frank Grubbs	Office	(615)532-0910
		Home	(931)552-6816
		Pager	(615)780-6636
Alternate ESC	David Randolph	Office	(615)532-0908
		Home	(615)643-4357
• **PIO**	Lola Potter	Office	(615)532-0288
		Home	(615)385-9657
		Pager	(800)538-5388
		Access #	128171

NRC Contact

• Washington, DC	Operations Center (24 Hr.)	FAX	(301)816-5151
		Voice	(301)816-5100
-or-			
• Atlanta	Richard Woodruff	Office	(404)562-4704

EPA Regional Office Contact (Atlanta)

• Paul Wagner	Office	(404)562-9100
-or-		
• Jon Richards	Office	(404)562-9139

DCD(SP08) # 21 PAL* CHM
SP-98-097
* w/b Enclo.

State of Utah
DEPARTMENT OF ENVIRONMENTAL QUALITY
DIVISION OF RADIATION CONTROL

Michael O. Leavitt
Governor
Dianne R. Nielson, Ph.D.
Executive Director
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168 North 1950 West
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(801) 536-4414 T.D.D.
www.deq.state.ut.us Web

March 8, 1999

Cardelia H. Maupin
Office of State Programs
Nuclear Regulatory Commission
Washington, D.C. 20555-0001

Dear Ms. Maupin:

This letter is provided in response to a request from Lloyd Bolling. He has asked that you be provided with the information identified in All Agreement States transmittal SP-98-097. While I believe that this information has been given by me through a telephone call to your office, I am happy to meet your needs.

Enclosed is a copy of a section from our inspection policy and guidance manual. The section describes our actions to protect an alleger's identity. I believe that our policy seems to be similar to that used by the NRC. I have also enclosed a copy of Utah laws regarding the disclosure of an alleger's identity. You will note in sections 63-2-302(2)(e), 63-2-304(9)(d), and 63-2-304(31) that there are provisions in Utah law to protect certain records. With respect to your request for information about whether Utah laws contain requirements for labeling, I refer you to sections 63-2-302(2)(e) and 63-2-304(31).

If you have questions about this information, please contact me at (801) 536-4250.

Sincerely,

William J. Sinclair, Director
Division of Radiation Control

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OSP

SP-A-4
SP-AG-28

CHAPTER 2
GOVERNMENT RECORDS ACCESS AND MANAGEMENT ACT

Revision of Chapter. - Laws 1991, ch. 259 revised this chapter by repealing §§ 63-2-59 through 63-2-71, 63-2-73, 63-2-75 through 63-2-80, 63-2-84, and 63-2-85.1 through 63-2-89, as enacted by L. 1969, ch. 212, §§ 7, 9, 15, and 21; 1979, ch. 223, § 9; 1984, ch. 67, § 34; and 1985, ch. 86, § 11, and as last amended by L. 1981, ch. 257, §§ 6 and 7; 1985, ch. 86, §§ 1 to 10, 12 to 17, and 20 to 22; and 1987, ch. 92, §§ 110 and 111, relating to archives and records, and enacting §§ 63-2-101 through 63-2-909. Laws 1992, ch. 280, § 63, effective July 1, 1992, amended L. 1991, ch. 259, § 76 to make that act effective July 1, 1992.

Sections 63-2-1 to 63-2-58, relating to the former Department of Finance, were repealed by L. 1963, ch. 148, § 2; 1965, ch. 131, § 17; 1969, ch. 207, § 14; 1969, ch. 212, § 31; 1972, ch. 23, § 3; 1974, ch. 27, § 39; 1977, ch. 249, § 8; 1979, ch. 227, § 11; 1980, ch. 75, § 5; and 1981, ch. 257, § 13. For present provisions relating to the Division of Finance, see § 63A-3-101 et seq.

Part 1

General Provisions.

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63-2-103. Definitions.
63-2-104. Administrative Procedures Act not applicable.
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Part 2

Access to Records.

63-2-201. Right to inspect records and receive copies of records.
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63-2-203. Fees.
63-2-204. Requests - Time limit for response and extraordinary circumstances.
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Classification.

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Part 7

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63-2-702. Applicability to judiciary.
63-2-703. Applicability to the Legislature.

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Part 9

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Archives and Records Service.

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63-2-907. Right to replevin.
63-2-908. Inspection and summary of record series.
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PART 1
GENERAL PROVISIONS

63-2-101. Short title.

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

History: C. 1953, 63-2-101, enacted by L. 1991, ch. 259, § 8.

Administrative Rules. - This section is implemented by, interpreted by, or cited as authority for the following administrative rule(s): R13-2, R137-2, R270-4, R277-103, R642-100, R642-200.

COLLATERAL REFERENCES

Utah Law Review. - Recent Developments in Governmental Law, 1992 Utah L. Rev. 375.

Am. Jur. 2d. - 66 Am. Jur. 2d Records and Recording Laws §§ 1, 2.

C.J.S. - 76 C.J.S. Records §§ 1, 2.

A.L.R. - What constitutes "final opinion" or "order" of federal administrative agency required to be made available for public inspection and copying within meaning of 5 USCS § 552(a)(2)(A), 114 A.L.R. Fed. 287.

63-2-102. Legislative intent.

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

(a) the public's right of access to information concerning the conduct of the public's business; and

(b) the right of privacy in relation to personal data gathered by governmental entities.

(2) The Legislature also recognizes a public policy interest in allowing a government to restrict access to certain records, as specified in this chapter, for the public good.

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

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(a) promote the public's right of easy and reasonable access to unrestricted public records;

(b) specify those conditions under which the public interest in allowing restrictions on access to records may outweigh the public's interest in access;

(c) prevent abuse of confidentiality by governmental entities by permitting confidential treatment of records only as provided in this chapter;

(d) provide guidelines for both disclosure and restrictions on access to government records, which are based on the equitable weighing of the pertinent interests and which are consistent with nationwide standards of information practices;

(e) favor public access when, in the application of this act, countervailing interests are of equal weight; and

(f) establish fair and reasonable records management practices.

History: C. 1953, 63-2-102, enacted by L. 1991, ch. 259, § 9; 1992, ch. 280, § 14.

Administrative Rules. - This section is implemented by, interpreted by, or cited as authority for the following administrative rule(s): R137-2, R251-106, R277-103, R907-60.

Meaning of "this act". - The phrase "this act" means Laws 1991, ch. 259, which revised this chapter; see "Revision of Chapter" note under the chapter heading.

63-2-103. Definitions.

As used in this chapter:

(1) "Audit" means:

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

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

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

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

(4) (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

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

(5) (a) "Contractor" means:

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

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

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

(6) "Controlled record" means a record containing data on individuals that is controlled as provided by Section 63-2-303.

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

(8) "Government audit agency" means any governmental entity that conducts audits.

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

(i) executive department agencies of the state, the offices of the governor, lieutenant governor, state auditor, attorney general, and state treasurer, the Board of Pardons and Parole, the Board of Examiners, the National Guard, the Career Service Review Board, the State Board of Education, the State Board of Regents, and the State Archives;

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

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

(iv) any state-funded institution of higher education or public education; or

(v) any political subdivision of the state, but, if a political subdivision has adopted an ordinance or a policy relating to information practices pursuant to Section 63-2-701, this chapter shall apply to the political subdivision to the extent specified in Section 63-2-701 or as specified in any other section of this chapter that specifically refers to political subdivisions.

(b) "Governmental entity" also means every office, agency, board, bureau, committee, department, advisory board, or commission of the entities listed in Subsection (9)(a) that is funded or established by the government to carry out the public's business.

(10) "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.

(11) "Individual" means a human being.

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

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

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(ii) names of victims;

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

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

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

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

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

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

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

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

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

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

(18) (a) "Record" means all books, letters, documents, papers, maps, plans, photographs, films, cards, tapes, recordings, electronic data, or other documentary materials regardless of physical form or characteristics:

(i) which are prepared, owned, received, or retained by a governmental entity or political subdivision; and

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

(b) "Record" does not mean:

(i) temporary drafts or similar materials prepared for the originator's personal use or prepared by the originator for the personal use of an individual 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 or political subdivision;

(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) daily calendars and other personal notes prepared by the originator for the originator's personal use or for the personal use of an individual for whom he is working;

(viii) computer programs as defined in Subsection (4) that are developed or purchased by or

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for any governmental entity for its own use; or

(ix) notes or internal memoranda prepared as part of the deliberative process by a member of the judiciary, an administrative law judge, a member of the Board of Pardons and Parole, or a member of any other body charged by law with performing a quasi-judicial function.

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

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

(21) "Records officer" means the individual appointed by the chief administrative officer of each governmental entity, or the political subdivision to work with state archives in the care, maintenance, scheduling, designation, classification, disposal, and preservation of records.

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

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

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

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

History: C. 1953, 63-2-103, enacted by L. 1991, ch. 259, § 10; 1992, ch. 280, § 15; 1994, ch. 13, § 4.

Administrative Rules. - This section is implemented by, interpreted by, or cited as authority for the following administrative rule(s): R137-2, R277-103.

Amendment Notes. - The 1994 amendment, effective May 2, 1994, in Subsections (9)(a)(i) and (18)(a)(ix) substituted "Board of Pardons and Parole" for "Board of Pardons" and transposed Subsections (11) and (12), and likewise Subsections (14) and (15), to alphabetize the defined terms.

NOTES TO DECISIONS

Analysis

Governmental entity.
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- School board minutes.
- Survey questionnaire and responses.

Governmental entity.

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Former Chapter 2 and the Public and Private Writings Act (§ 78-26-1 et seq.) did not apply to the Utah State Bar because it is not a "state agency" or "public office" within the meaning of those provisions. Barnard v. Utah State Bar, 804 P.2d 526 (Utah 1991).

Public records.

Settlement agreements involving public entities are public documents. Society of Professional Journalists v. Briggs, 675 F. Supp. 1308 (D. Utah 1987).

Registers under merit system.

"Eligible register" and "promotional register" provided for under Deputy Sheriffs Merit System Act, § 17-30-1 et seq., are public records subject to public inspection. Deputy Sheriffs Mut. Aid Ass'n v. Salt Lake County Deputy Sheriffs Merit Sys. Comm., 24 Utah 2d 110, 466 P.2d 836 (1970).

Salaries of college employees.

The right of the public to know the salaries paid to college employees outweighs the right of privacy of the employees or of the institution to carry on its operations in secret. Redding v. Brady, 606 P.2d 1193 (Utah 1980);.

School records.

- School board minutes.

Notes taken at the meetings of a local board of education, which were later transcribed, approved, and placed in the journal, were not classifiable as a public writing, whereas the transcribed minutes, in final form, but awaiting only approval and placement in the journal, were a public writing. Conover v. Board of Educ., 1 Utah 2d 375, 267 P.2d 768 (1954).

When a clerk's untranscribed notes are not a public writing but his transcribed minutes are such a public writing, the minutes should be available to the public within a reasonable time. While "reasonable time" might vary, it would necessarily be before any important action was to take place. Conover v. Board of Educ., 1 Utah 2d 375, 267 P.2d 768 (1954).

- Survey questionnaire and responses.

School board's survey questionnaire concerning religious and racial discrimination at school and student responses thereto were "public records" and would be subject to inspection by an interested citizen unless they were confidential or of such a nature that it would be in public interest to prevent disclosure; in an action to compel disclosure, district court should have held an in camera inspection of the questionnaire and permitted disclosure unless it specifically found, on basis of its inspection, that it would be impossible to edit the questionnaire responses to preserve confidentiality and/or that release of documents in whole or in part would be clearly contrary to public interest. KUTV, Inc. v. Utah State Bd. of Educ., 689 P.2d 1357 (Utah 1984).

COLLATERAL REFERENCES

Utah Law Review. - Note, *Society of Professional Journalists v. Briggs*: Toward a Deferential Balancing Test for the Right of Access, 1989 Utah L. Rev. 787.

63-2-104. Administrative Procedures Act not applicable.

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Title 63, Chapter 46b, Administrative Procedures Act, does not apply to this chapter except as provided in Section 63-2-603.

History: C. 1953, 63-2-104, enacted by L. 1991, ch. 259, § 11; 1992, ch. 280, § 16.

Administrative Rules. - This section is implemented by, interpreted by, or cited as authority for the following administrative rule(s): R137-2, R277-103.

63-2-105. Confidentiality agreements.

If a governmental entity or political subdivision receives a request for a record that is subject to a confidentiality agreement executed before April 1, 1992, the law in effect at the time the agreement was executed, including late judicial interpretations of the law, shall govern access to the record, unless all parties to the confidentiality agreement agree in writing to be governed by the provisions of this chapter.

History: C. 1953, 63-2-105, enacted by L. 1992, ch. 280, § 17.

Administrative Rules. - This section is implemented by, interpreted by, or cited as authority for the following administrative rule(s): R137-2, R277-103.

PART 2
ACCESS TO RECORDS

63-2-201. Right to inspect records and receive copies of records.

(1) Every person has the right to inspect a public record free of charge, and the right to take a copy of a public record during normal working hours, subject to Sections 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 private, controlled, or protected under Sections 63-2-302, 63-2-303, and 63-2-304; and

(b) records to which access is restricted pursuant to court rule, another state statute, federal statute, or federal regulation, including records for which access is governed or restricted as a condition of participation in a state or federal program or for receiving state or federal funds.

(4) Only those records specified in Section 63-2-302, 63-2-303, or 63-2-304 may be classified private, controlled, or protected.

(5) (a) A governmental entity may not disclose a record that is private, controlled, or protected to any person except as provided in Subsection (5)(b), Section 63-2-202, or Section 63-2-206.

(b) A governmental entity may disclose records that are private under Subsection 63-2-302(2) or protected under Section 63-2-304 to persons other than those specified in Section 63-2-202 or 63-2-206 if the head of a governmental entity, or a designee, determines that there is no interest in restricting access to the record, or that the interests favoring access outweighs the interest favoring restriction of access.

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

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

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

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

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

(c) the person pays the lawful fees.

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

(b) Upon request, 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 its costs incurred in providing the record in the requested format in accordance with Section 63-2-203.

(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.

(9) If a person requests copies of 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.

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

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

(11) A governmental entity may not use the physical form, electronic or otherwise, in which a record is stored to deny, or unreasonably hinder the rights of persons to inspect and receive copies of a record under this chapter.

History: C. 1953, 63-2-201, enacted by L. 1991, ch. 259, § 12; 1992, ch. 280, § 18; 1994, ch. 194, § 1.

Administrative Rules. - This section is implemented by, interpreted by, or cited as authority for the following administrative rule(s): R137-2, R151-2, R277-103.

Amendment Notes. - The 1994 amendment, effective May 2, 1994, added "in accordance with Section 63-2-203" at the end of Subsection (8)(b)(ii) and made stylistic changes.

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COLLATERAL REFERENCES

A.L.R. - State freedom of information act requests: right to receive information in particular medium or format, 86 A.L.R.4th 786.

63-2-202. Access to private, controlled, and protected documents.

(1) Upon request, a governmental entity shall disclose a private record 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;

(ii) submits a notarized release from the subject of the record or his legal representative dated no more than 90 days before the date the request is made; or

(iii) if the record is a medical record described in Subsection 63-2-302(1)(b), is a health care provider, as defined in Subsection 26-33a-102(7), if releasing the record or information in the record is consistent with normal professional practice and medical ethics; or

(e) any person to whom the record must be provided pursuant to court order as provided in Subsection (7) or a legislative subpoena as provided in Title 36, Chapter 14.

(2) (a) Upon request, a governmental entity shall disclose a controlled record to:

(i) a physician, psychologist, certified social worker, insurance provider or agent, or a government public health agency upon submission of a release from the subject of the record that is dated no more than 90 days prior to the date the request is made and a signed acknowledgment of the terms of disclosure of controlled information as provided by Subsection (b); and

(ii) any person to whom the record must be disclosed pursuant to court order as provided in Subsection (7) or a legislative subpoena as provided in Title 36, Chapter 14.

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

(3) If there is more than one subject of a private or controlled record, the portion of the record that pertains to another subject shall be segregated from the portion that the requester is entitled to inspect.

(4) Upon request, a governmental entity shall disclose a protected record to:

(a) the person who submitted the record;

(b) any other individual who:

(i) has a power of attorney from all persons, governmental entities, or political subdivisions whose interests were sought to be protected by the protected classification; or

(ii) submits a notarized release from all persons, governmental entities, or political subdivisions whose interests were sought to be protected by the protected classification or from their legal representatives dated no more than 90 days prior to the date the request is made; or

(c) any person to whom the record must be provided pursuant to a court order as provided in Subsection (7) or a legislative subpoena as provided in Title 36, Chapter 14.

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

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

(7) A governmental entity shall disclose a record pursuant to the terms of a court order signed by a judge from a court of competent jurisdiction, provided that:

(a) the record deals with a matter in controversy over which the court has jurisdiction;

(b) the court has considered the merits of the request for access to the record; and

(c) the court has considered and, where appropriate, limited the requester's use and further disclosure of the record in order to protect privacy interests in the case of private or controlled records, business confidentiality interests in the case of records protected under Subsections 63-2-304(1) and (2), and privacy interests or the public interest in the case of other protected records;

(d) to the extent the record is properly classified private, controlled, or protected, the interests favoring access, considering limitations thereon, outweigh the interests favoring restriction of access; and

(e) where access is restricted by a rule, statute, or regulation referred to in Subsection 63-2-201(3)(b), the court has authority independent of this chapter to order disclosure.

(8) (a) A governmental entity may disclose or authorize disclosure of private or controlled records for research purposes if the governmental entity:

(i) determines that the research purpose cannot reasonably be accomplished without use or disclosure of the information to the researcher in individually identifiable form;

(ii) determines that the proposed research is bona fide, and that the value of the research outweighs the infringement upon personal privacy;

(iii) requires the researcher to assure the integrity, confidentiality, and security of the records and requires the removal or destruction of the individual identifiers associated with the records as soon as the purpose of the research project has been accomplished;

(iv) prohibits the researcher from disclosing the record in individually identifiable form, except as provided in Subsection (b), or from using the record for purposes other than the research approved by the governmental entity; and

(v) secures from the researcher a written statement of his understanding of and agreement to the conditions of this subsection and his understanding that violation of the terms of this subsection may subject him to criminal prosecution under Section 63-2-801.

(b) A researcher may disclose a record in individually identifiable form if the record is disclosed for the purpose of auditing or evaluating the research program and no subsequent use or disclosure of the record in individually identifiable form will be made by the auditor or evaluator except as provided by this section.

(c) A governmental entity may require indemnification as a condition of permitting research under this subsection.

(9) (a) Under Subsections 63-2-201(5)(b) and 63-2-401(6) a governmental entity may disclose records that are private under Section 63-2-302, or protected under Section 63-2-304 to persons other than those specified in this section.

(b) Under Subsection 63-2-403(11)(b) the Records Committee may require the disclosure of

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records that are private under Section 63-2-302, controlled under Section 63-2-303, or protected under Section 63-2-304 to persons other than those specified in this section.

(c) Under Subsection 63-2-404(8) the court may require the disclosure of records that are private under Section 63-2-302, controlled under Section 63-2-303, or protected under Section 63-2-304 to persons other than those specified in this section.

History: C. 1953, 63-2-202, enacted by L. 1991, ch. 259, § 13; 1992, ch. 280, § 19; 1994, ch. 312, § 2.

Administrative Rules. - This section is implemented by, interpreted by, or cited as authority for the following administrative rule(s): R137-2, R151-2, R277-103, R380-20.

Amendment Notes. - The 1994 amendment, effective May 2, 1994, added Subsection (1)(d)(iii), in Subsection (2)(a)(i) inserted "insurance provider or agent, or a government public health agency" and deleted "notarized" before "release," and made stylistic changes.

NOTES TO DECISIONS

Public's right of access.

In a defamation action by a police officer against a television station, where the City asked for a protective order preventing discovery of its police department personnel and internal affairs files, the trial court was required to balance the competing interests through an in camera examination of the materials for which the official information privilege was claimed. Madsen v. United Television, Inc., 801 P.2d 912 (Utah 1990).

63-2-203. Fees.

(1) A governmental entity may charge a reasonable fee to cover the governmental entity's actual cost of duplicating a record. This fee shall be approved by the governmental entity's executive officer.

(2) When a governmental entity compiles a record in a form other than that normally maintained by the governmental entity, the actual costs under this section may include the following:

(a) the cost of staff time for summarizing, compiling, or tailoring the record either into an organization or media to meet the person's request;

(b) the cost of staff time for search, retrieval, and other direct administrative costs for complying with a request. The hourly charge may not exceed the salary of the lowest paid employee who, in the discretion of the custodian of records, has the necessary skill and training to perform the request; provided, however, that no charge may be made for the first quarter hour of staff time; and

(c) in the case of fees for a record that is the result of computer output other than word processing, the actual incremental cost of providing the electronic services and products together with a reasonable portion of the costs associated with formatting or interfacing the information for particular users, and the administrative costs as set forth in Subsections (2)(a) and (b).

(3) Fees shall be established as follows:

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(a) Governmental entities with fees established by the Legislature shall establish the fees defined in Subsection (2), or other actual costs associated with this section through the budget process. Governmental entities with fees established by the Legislature may use the procedures of Section 63-38-3.2 to set fees until the Legislature establishes fees through the budget process. A fee set by a governmental entity in accordance with Section 63-38-3.2 expires on May 1, 1995.

(b) Political subdivisions shall establish fees by ordinance or written formal policy adopted by the governing body.

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

(4) A governmental entity may fulfill a record request without charge and is encouraged to do so when it determines that:

(a) releasing the record primarily benefits the public rather than a person;

(b) the individual requesting the record is the subject of the record, or an individual specified in Subsection 63-2-202(1) or (2); or

(c) the requester's legal rights are directly implicated by the information in the record, and the requester is impecunious.

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

(a) reviewing a record to determine whether it is subject to disclosure, except as permitted by Subsection (2)(b); or

(b) inspecting a record.

(6) (a) A person who believes that there has been an unreasonable denial of a fee waiver under Subsection (4) may appeal the denial in the same manner as a person appeals when inspection of a public record is denied under Section 63-2-205.

(b) The adjudicative body hearing the appeal has the same authority when a fee waiver or reduction is denied as it has when the inspection of a public record is denied.

(7) (a) All fees received under this section by a governmental entity subject to Subsection (3)(a) shall be retained by the governmental entity as a dedicated credit.

(b) Those funds shall be used to recover the actual cost and expenses incurred by the governmental entity in providing the requested record or record series.

(8) A governmental entity may require payment of past fees and future estimated fees before beginning to process a request if fees are expected to exceed $50, or if the requester has not paid fees from previous requests. Any prepaid amount in excess of fees due shall be returned to the requester.

(9) This section does not alter, repeal, or reduce fees established by other statutes or legislative acts.

History: C. 1953, 63-2-203, enacted by L. 1991, ch. 259, § 14; 1992, ch. 280, § 20; 1994, ch. 194, § 2; 1995, ch. 20, § 114.

Administrative Rules. - This section is implemented by, interpreted by, or cited as authority for the following administrative rule(s): R137-2, R277-103.

Amendment Notes. - The 1994 amendment, effective May 2, 1994, in Subsection (1) deleted "or compiling a record in a form other than that maintained by the governmental entity" from the end of the first sentence and added the second sentence; added Subsections (2) and (6), redesignating the other subsections accordingly; in Subsection (3)(a) substituted "the fees defined in Subsection (2), or other

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actual costs associated with this section" for "fees" in the first sentence and "May 1, 1995" for "April 26, 1993" in the third sentence; and in Subsection (5)(a) added "except as permitted by Subsection (2)(b)."

The 1995 amendment, effective May 1, 1995, substituted "Section 63-38-3.2" for "Subsection 63-38-3(3)" in two places in Subsection (3)(a).

63-2-204. Requests - Time limit for response and extraordinary circumstances.

(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, if available, and a description of the records requested that identifies the record with reasonable specificity.

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

(3) (a) As soon as reasonably possible, but no later than ten business days after receiving a written request, or five business days after receiving a written request if the requester demonstrates that expedited response to the record request benefits the public rather than the person, the governmental entity shall respond to the request by:

(i) approving the request and providing the record;

(ii) denying the request;

(iii) 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

(iv) notifying the requester that because of one of the extraordinary circumstances listed in Subsection (4), it cannot immediately approve or deny the request. The notice shall describe the circumstances relied upon and specify the date when the records will be available.

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

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

(a) another governmental entity is using the record, in which case the originating governmental entity shall promptly request that the governmental entity currently in possession return the record;

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

(c) 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 that require the governmental entity to seek legal counsel for the analysis of statutes, rules, ordinances, regulations, or case law;

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

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

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

(a) for claims under Subsection (4)(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 (4)(b), the originating governmental entity shall notify the requester when the record is available for inspection and copying;

(c) for claims under Subsections (4)(c), (d), and (e), the governmental entity shall:

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

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

(iii) complete the work and disclose those records that the requester is entitled to inspect as soon as reasonably possible;

(d) for claims under Subsection (4)(f), the governmental entity shall either approve or deny the request within five business days after the response time specified for the original request has expired;

(e) for claims under Subsection (4)(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 (4)(h), the governmental entity shall complete its programming and disclose the requested records as soon as reasonably possible.

(6) (a) If a request for access is submitted to an office of a governmental entity other than that specified by rule in accordance with Subsection (2), the office shall promptly forward the request to the appropriate office.

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

(7) 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.

History: C. 1953, 63-2-204, enacted by L. 1991, ch. 259, § 15; 1992, ch. 280, § 21.

Administrative Rules. - This section is implemented by, interpreted by, or cited as authority for the following administrative rule(s): R105-2, R137-2, R151-2, R182-1, R251-111, R277-103, R305-1, R355-1, R380-20, R495-810, R51-3, R590-151, R651-102, R657-29, R698-2, R767-1, R805-2.

63-2-205. Denials.

(1) If the governmental entity denies the request in whole or part, it shall provide a notice of denial to the requester either in person or by sending the notice 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

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that the description does not disclose private, controlled, or protected information or information exempt from disclosure under Subsection 63-2-201(3)(b);

(b) citations to the provisions of this chapter, court rule or order, 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, controlled, or protected information or information exempt from disclosure under Subsection 63-2-201(3)(b);

(c) a statement that the requester has the right to appeal the denial to the chief administrative officer of the governmental entity; and

(d) 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 for an appeal has expired or the end of the appeals process, including judicial appeal.

History: C. 1953, 63-2-205, enacted by L. 1991, ch. 259, § 16; 1992, ch. 280, § 22.

Administrative Rules. - This section is implemented by, interpreted by, or cited as authority for the following administrative rule(s): R137-2, R277-103.

63-2-206. Sharing records.

(1) A governmental entity may provide a record that is private, controlled, or protected to another governmental entity, a government-managed corporation, a political subdivision, the federal government, or another state if the requesting entity:

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

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

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

(d) is one that collects information for presentence, probationary, or parole purposes.

(2) A governmental entity may provide a private or controlled record or record series to another governmental entity, a political subdivision, a government-managed corporation, the federal government, or another state if the requesting entity provides written assurance:

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

(b) 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) 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 that is protected under Subsection 63-2-304(1) or (2) to another governmental entity, a political subdivision, a government-managed corporation, the federal government, or another state if:

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

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(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) (a) A governmental entity shall provide a private, controlled, or protected record to another governmental entity, a political subdivision, a government-managed corporation, the federal government, or another state if the requesting entity:

(i) is entitled by law to inspect the record;

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

(iii) is an entity described in Subsection 63-2-206(1)(a), (b), (c), or (d).

(b) Subsection (4)(a)(iii) applies only if the record is a record described in Subsection 63-2-304(4).

(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) if the recipient is not a governmental entity to which this chapter applies, obtain the recipient's written agreement which may be by mechanical or electronic transmission 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 may disclose a record to another state, the United States, or a foreign government for the reasons listed in Subsections (1), (2), and (3) without complying with the procedures of Subsection (2) or (5) if disclosure is authorized by executive agreement, treaty, federal statute, compact, federal regulation, or state statute.

(7) A governmental entity receiving a record under this section is subject to the same restrictions on disclosure of the material as the originating entity.

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

(9) The following records may not be shared under this section:

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

(c) records of publicly funded libraries as described in Subsection 63-2-302(1)(c).

(10) Records that may evidence or relate to a violation of law may be disclosed to a government prosecutor, peace officer, or auditor.

History: C. 1953, 63-2-206, enacted by L. 1991, ch. 259, § 17; 1992, ch. 228, § 2; 1992, ch. 280, § 23; 1997, ch. 234, § 3.

Administrative Rules. - This section is implemented by, interpreted by, or cited as authority for the following administrative rule(s): R137-2, R277-103.

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Amendment Notes. - The 1997 amendment, effective May 5, 1997, added Subsections (4)(a)(iii) and (4)(b) and made related redesignations.

63-2-207. Subpoenas - Court ordered disclosure for discovery.

(1) Subpoenas and other methods of discovery under the state or federal statutes or rules of civil, criminal, administrative, or legislative procedure are not written requests under Section 63-2-204.

(2) (a) (i) Except as otherwise provided in Subsection (2)(c), in judicial or administrative proceedings in which an individual is requesting discovery of records classified private, controlled, or protected under this chapter, or otherwise restricted from access by other statutes, the court, or an administrative law judge shall follow the procedure in Subsection 63-2-202(7) before ordering disclosure.

(ii) Until the court or an administrative law judge orders disclosure, these records are privileged from discovery.

(b) If, the court or administrative order requires disclosure, the terms of the order may limit the requester's further use and disclosure of the record in accordance with Subsection 63-2-202(7), in order to protect the privacy interests recognized in this chapter.

(c) Unless a court or administrative law judge imposes limitations in a restrictive order, this section does not limit the right to obtain:

(i) records through the procedures set forth in this chapter; or

(ii) medical records discoverable under state or federal court rules as authorized by Subsection 63-2-302(3).

History: C. 1953, 63-2-207, enacted by L. 1992, ch. 280, § 24; 1994, ch. 99, § 1; 1998, ch. 303, § 1.

Administrative Rules. - This section is implemented by, interpreted by, or cited as authority for the following administrative rule(s): R137-2, R277-103.

Amendment Notes. - The 1994 amendment, effective May 2, 1994, designated the former section as Subsection (1); deleted the former second sentence of Subsection (1) which read "Compliance with civil, criminal, administrative, and legislative discovery shall be governed by the applicable statutes and rules of procedure, not by this chapter"; and added Subsection (2).

The 1998 amendment, effective May 4, 1998, divided Subsection (2)(a), redesignating existing Subsection (2)(a) as (2)(a)(i) and adding the (2)(a)(ii) designation; in Subsection (2)(a)(i) added "except as otherwise provided in Subsection (2)(c)" at the beginning and substituted "chapter" for "act" in the middle; divided Subsection (2)(c), adding the (i) designation; added Subsection (2)(a)(ii); and made stylistic changes throughout the section.

PART 3
CLASSIFICATION

63-2-301. Records that must be disclosed.

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(1) The following records are public except to the extent they contain information expressly permitted to be treated confidentially under the provisions of Subsections 63-2-201(3)(b) and (6)(a):

(a) laws;

(b) names, gender, gross compensation, job titles, job descriptions, business addresses, business telephone numbers, number of hours worked per pay period, dates of employment, and relevant education, previous employment, and similar job qualifications of the governmental entity's former and present employees and officers excluding:

(i) undercover law enforcement personnel; and

(ii) investigative personnel if disclosure could reasonably be expected to impair the effectiveness of investigations or endanger any individual's safety;

(c) 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 that is private, controlled, or protected;

(d) final interpretations of statutes or rules by a governmental entity unless classified as protected as provided in Subsections 63-2-304(15), (16), and (17);

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

(f) judicial records unless a court orders the records to be restricted under the rules of civil or criminal procedure or unless the records are private under this chapter;

(g) records filed with or maintained by county recorders, clerks, treasurers, surveyors, zoning commissions, the Division of Forestry, Fire and State Lands, the School and Institutional Trust Lands Administration, the Division of Oil, Gas and Mining, the Division of Water Rights, or other governmental entities that give public notice of:

(i) titles or encumbrances to real property;

(ii) restrictions on the use of real property;

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

(iv) tax status for real and personal property;

(h) records of the Department of Commerce that evidence incorporations, mergers, name changes, and uniform commercial code filings;

(i) data on individuals that would otherwise be private under this chapter 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;

(j) documentation of the compensation that a governmental entity pays to a contractor or private provider; and

(k) summary data.

(2) The following records are normally public, but to the extent that a record is expressly exempt from disclosure, access may be restricted under Subsection 63-2-201(3)(b), Section 63-2-302, 63-2-303, or 63-2-304:

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

(b) records documenting a contractor's or private provider's compliance with the terms of a

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contract with a governmental entity;

(c) 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;

(d) contracts entered into by a governmental entity;

(e) any account, voucher, or contract that deals with the receipt or expenditure of funds by a governmental entity;

(f) records relating to government assistance or incentives publicly disclosed, contracted for, or given by a governmental entity, encouraging a person to expand or relocate a business in Utah, except as provided in Subsection 63-2-304(34);

(g) chronological logs and initial contact reports;

(h) 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;

(i) empirical data contained in drafts if:

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

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

(j) drafts that are circulated to anyone other than:

(i) a governmental entity;

(ii) a political subdivision;

(iii) 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;

(iv) a government-managed corporation; or

(v) a contractor or private provider;

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

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

(m) arrest warrants after issuance, except that, for good cause, a court may order restricted access to arrest warrants prior to service;

(n) search warrants after execution and filing of the return, except that a court, for good cause, may order restricted access to search warrants prior to trial;

(o) records that would disclose information relating to formal charges or disciplinary actions against a past or present governmental entity employee if:

(i) the disciplinary action has been completed and all time periods for administrative appeal have expired; and

(ii) the charges on which the disciplinary action was based were sustained;

(p) records maintained by the Division of Forestry, Fire and State Lands, the School and Institutional Trust Lands Administration, or the Division of Oil, Gas and Mining that evidence mineral production on government lands;

(q) final audit reports;

(r) occupational and professional licenses;

(s) business licenses; and

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(t) a notice of violation, a notice of agency action under Section 63-46b-3, or similar records used to initiate proceedings for discipline or sanctions against persons regulated by a governmental entity, but not including records that initiate employee discipline.

(3) The list of public records in this section is not exhaustive and should not be used to limit access to records.

History: C. 1953, 63-2-301, enacted by L. 1991, ch. 259, § 18; 1992, ch. 280, § 25; 1994, ch. 99, § 2; 1995, ch. 133, § 1; 1996, ch. 159, § 3.

Administrative Rules. - This section is implemented by, interpreted by, or cited as authority for the following administrative rule(s): R137-2, R277-103.

Amendment Notes. - The 1994 amendment, effective May 2, 1994, in Subsection (1)(b), inserted "from state appropriated funds."

The 1995 amendment, effective May 1, 1995, deleted "from state appropriated funds" after "compensation" in Subsection (1)(b) and changed "formal charges" to "charges on which the disciplinary action was based" in Subsection (2)(o)(ii).

The 1996 amendment, effective July 1, 1996, substituted "Division of Forestry, Fire and State Lands" for "Division of State Lands and Forestry" and added 'School and Institutional Trust Lands Administration" to the list of governmental entities set out in Subsections (1)(g) and (2)(p).

Cross-References. - Exemption for governmental records containing digital signature information, § 46-3-504.

NOTES TO DECISIONS

Judicial records.

Sealed depositions are "judicial records" and are presumptively public and subject to inspections. This statutory right of inspection can be restricted only for good cause shown under the protective order provision of Utah Rule of Civil Procedure 26(c). Carter v. Utah Power & Light Co., 800 P.2d 1095 (Utah 1990).

63-2-302. Private records.

(1) The following records are private:

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

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

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

(d) records received or generated for a Senate or House Ethics Committee concerning any alleged violation of the rules on legislative ethics, prior to the meeting, and after the meeting, if the ethics committee meeting was closed to the public;

(e) records received or generated for a Senate confirmation committee concerning character,

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professional competence, or physical or mental health of an individual:

(i) if prior to the meeting, the chair of the committee determines release of the records:

(A) reasonably could be expected to interfere with the investigation undertaken by the committee; or

(B) would create a danger of depriving a person of a right to a fair proceeding or impartial hearing;

(ii) after the meeting, if the meeting was closed to the public;

(f) records concerning a current or former employee of, or applicant for employment with, a governmental entity that would disclose that individual's home address, home telephone number, social security number, insurance coverage, marital status, or payroll deductions; and

(g) that part of a record indicating a person's social security number if provided under Section 31A-23-202, 31A-26-202, 58-1-301, 61-1-4, or 61-2-6.

(2) The following records are private if properly classified by a governmental entity:

(a) records concerning a current or former employee of, or applicant for employment with a governmental entity, including performance evaluations and personal status information such as race, religion, or disabilities, but not including records that are public under Subsection 63-2-301(1)(b) or 63-2-301(2)(o), or private under Subsection 63-2-302(1)(b);

(b) records describing an individual's finances, except that the following are public:

(i) records described in Subsection 63-2-301(1);

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

(iii) records that must be disclosed in accordance with another statute;

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

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

(e) records provided by the United States or by a government entity outside the state that are given with the requirement that the records be managed as private records, if the providing entity states in writing that the record would not be subject to public disclosure if retained by it.

(3) (a) As used in this Subsection (3), "medical records" means medical reports, records, statements, history, diagnosis, condition, treatment, and evaluation.

(b) Medical records in the possession of the University of Utah Hospital, its clinics, doctors, or affiliated entities are not private records or controlled records under Section 63-2-303 when the records are sought:

(i) in connection with any legal or administrative proceeding in which the patient's physical, mental, or emotional condition is an element of any claim or defense; or

(ii) after a patient's death, in any legal or administrative proceeding in which any party relies upon the condition as an element of the claim or defense.

(c) Medical records are subject to production in a legal or administrative proceeding according to state or federal statutes or rules of procedure and evidence as if the medical records were in the possession of a nongovernmental medical care provider.

History: C. 1953, 63-2-302, enacted by L. 1991, ch. 259, § 19; 1992, ch. 280, § 26; 1995, ch. 74, § 1; 1996, ch. 195, § 1; 1997, ch. 232, § 67; 1998, ch. 303, § 2.

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Administrative Rules. - This section is implemented by, interpreted by, or cited as authority for the following administrative rule(s): R137-2, R277-103, R277-104, R280-201, R746-500.

Amendment Notes. - The 1995 amendment, effective May 1, 1995, added "prior to the meeting, and after the meeting" to Subsection (1)(d), added Subsection (1)(e), and made related and stylistic changes.

The 1996 amendment, effective April 29, 1996, in Subsection (2)(d) substituted "a clearly unwarranted" for "an unwarranted" and made a punctuation change at the end of Subsection (2)(a).

The 1997 amendment, effective July 1, 1997, added Subsection (1)(g).

The 1998 amendment, effective May 4, 1998, added Subsection (3).

NOTES TO DECISIONS

Financial records.

In an action by a child support obligor against a collection agency for invasion of privacy, the agency could not use a public records defense, since any record of plaintiff's delinquent payments could not be disclosed under the Government Records Access and Management Act. Jones v. United States Child Support Recovery, 961 F. Supp. 1518 (D. Utah 1997).

COLLATERAL REFERENCES

Am. Jur. 2d. - 62 Am. Jur. 2d Privacy § 1 et seq.; 66 Am. Jur. 2d Records and Recording Laws §§ 27 to 30.

C.J.S. - 76 C.J.S. Records §§ 35 to 41; 77 C.J.S. Right of Privacy §§ 1 to 8.

A.L.R. - Public disclosure of person's indebtedness as violation of right to privacy, 33 A.L.R.3d 154.

Confidentiality of records as to recipients of public welfare, 54 A.L.R.3d 768.

Waiver or loss of right of privacy, 57 A.L.R.3d 16.

Juvenile court records, expungement of, 71 A.L.R.3d 753.

When are government records "personnel files" exempt from disclosure under Freedom of Information Act provision (5 USCS § 552 (b)(6)) exempting certain "personnel," medical, and similar files, 104 A.L.R. Fed. 757.

When are government records "similar files" exempt from disclosure under Freedom of Information Act provisions (5 USCS § 552(b)(6)) exempting certain personnel, medical, and "similar" files, 106 A.L.R. Fed. 94.

63-2-303. Controlled records.

A record is controlled if:
(1) the record contains medical, psychiatric, or psychological data about an individual;
(2) the governmental entity reasonably believes that:
(a) releasing the information in the record to the subject of the record would be detrimental to

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the subject's mental health or to the safety of any individual; or

(b) releasing the information would constitute a violation of normal professional practice and medical ethics; and

(3) the governmental entity has properly classified the record.

History: C. 1953, 63-2-303, enacted by L. 1991, ch. 259, § 20; 1992, ch. 280, § 27.

Administrative Rules. - This section is implemented by, interpreted by, or cited as authority for the following administrative rule(s): R137-2, R277-103, R277-104, R280-201, R512-75, R547-6, R746-500.

COLLATERAL REFERENCES

A.L.R. - When are government records "medical files" exempt from disclosure under Freedom of Information Act provision (5 USCS § 552 (b)(6)) exempting certain personnel, "medical," and similar files, 104 A.L.R. Fed. 734.

63-2-304. Protected records.

The following records are protected if properly classified by a governmental entity:

(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 information or nonindividual financial information obtained from a person if:

(a) disclosure of the information could reasonably be expected to 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 state economy;

(4) records the disclosure of which could cause commercial injury to, or confer a competitive advantage upon a potential or actual competitor of, a commercial project entity as defined in Subsection 11-13-3(3);

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

(6) 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 to or by a governmental entity after bidding has closed;

(7) records that would identify real property or the appraisal or estimated value of real or

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personal property, including intellectual 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 property on the best terms possible;

(b) the information has already been disclosed to persons not employed by or under a duty of confidentiality to the entity;

(c) in the case of records that would identify property, potential sellers of the described property have already learned of the governmental entity's plans to acquire the property; or

(d) in the case of records that would identify the appraisal or estimated value of property, the potential sellers have already learned of the governmental entity's estimated value of the property;

(8) records prepared in contemplation of sale, exchange, lease, rental, or other compensated transaction of real or personal property including intellectual property, which, if disclosed prior to completion of the transaction, would reveal the appraisal or estimated value of the subject property, unless:

(a) the public interest in access outweighs the interests in restricting access, including the governmental entity's interest in maximizing the financial benefit of the transaction; or

(b) when prepared by or on behalf of a governmental entity, appraisals or estimates of the value of the subject property have already been disclosed to persons not employed by or under a duty of confidentiality to the entity;

(9) records created or maintained for civil, criminal, or administrative enforcement purposes or audit purposes, or for discipline, licensing, certification, or registration purposes, if release of the records:

(a) reasonably could be expected to interfere with investigations undertaken for enforcement, discipline, licensing, certification, or registration purposes;

(b) reasonably could be expected to interfere with audits, disciplinary, or enforcement proceedings;

(c) would create a danger of depriving a person of a right to a fair trial or impartial hearing;

(d) reasonably could be expected to 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

(e) reasonably could be expected to disclose investigative or audit techniques, procedures, policies, or orders not generally known outside of government if disclosure would interfere with enforcement or audit efforts;

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

(11) records the disclosure of which would jeopardize the security of governmental property, governmental programs, or governmental record-keeping systems from damage, theft, or other appropriation or use contrary to law or public policy;

(12) records that, if disclosed, would jeopardize the security or safety of a correctional facility, or records relating to incarceration, treatment, probation, or parole, that would interfere with the control and supervision of an offender's incarceration, treatment, probation, or parole;

(13) records that, if disclosed, would reveal recommendations made to the Board of Pardons and Parole by an employee of or contractor for the Department of Corrections, the Board of

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Pardons and Parole, or the Department of Human Services that are based on the employee's or contractor's supervision, diagnosis, or treatment of any person within the board's jurisdiction;

(14) records and audit workpapers that identify audit, collection, and operational procedures and methods used by the State Tax Commission, if disclosure would interfere with audits or collections;

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

(16) records prepared by or on behalf of a governmental entity solely in anticipation of litigation that are not available under the rules of discovery;

(17) 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;

(18) 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;

(19) 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;

(20) (a) records in the custody or control of the Office of Legislative Research and General Counsel, that, if disclosed, would reveal a particular legislator's contemplated legislation or contemplated course of action before the legislator has elected to support the legislation or course of action, or made the legislation or course of action public; and

(b) for purposes of this subsection, a "Request For Legislation" submitted to the Office of Legislative Research and General Counsel is a public document unless a legislator submits the "Request For Legislation" with a request that it be maintained as a protected record until such time as the legislator elects to make the legislation or course of action public;

(21) 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;

(22) drafts, unless otherwise classified as public;

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

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

(25) records, other than personnel evaluations, that contain a personal recommendation concerning an individual if disclosure would constitute a clearly unwarranted invasion of personal privacy, or disclosure is not in the public interest;

(26) 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;

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

(28) records of a public institution of higher education regarding tenure evaluations, appointments, applications for admissions, retention decisions, and promotions, which could be properly discussed in a meeting closed in accordance with Title 52, Chapter 4, Open and Public

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Meetings, provided that records of the final decisions about tenure, appointments, retention, promotions, or those students admitted, may not be classified as protected under this section;

(29) records of the governor's office, including 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;

(30) 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;

(31) records provided by the United States or by a government entity outside the state that are given to the governmental entity with a requirement that they be managed as protected records if the providing entity certifies that the record would not be subject to public disclosure if retained by it;

(32) transcripts, minutes, or reports of the closed portion of a meeting of a public body except as provided in Section 52-4-7;

(33) records that would reveal the contents of settlement negotiations but not including final settlements or empirical data to the extent that they are not otherwise exempt from disclosure;

(34) memoranda prepared by staff and used in the decision-making process by an administrative law judge, a member of the Board of Pardons and Parole, or a member of any other body charged by law with performing a quasi-judicial function;

(35) records that would reveal negotiations regarding assistance or incentives offered by or requested from a governmental entity for the purpose of encouraging a person to expand or locate a business in Utah, but only if disclosure would result in actual economic harm to the person or place the governmental entity at a competitive disadvantage, but this section may not be used to restrict access to a record evidencing a final contract;

(36) materials to which access must be limited for purposes of securing or maintaining the governmental entity's proprietary protection of intellectual property rights including patents, copyrights, and trade secrets;

(37) the name of a donor or a prospective donor to a governmental entity, including a public institution of higher education, and other information concerning the donation that could reasonably be expected to reveal the identity of the donor, provided that:

(a) the donor requests anonymity in writing;

(b) any terms, conditions, restrictions, or privileges relating to the donation may not be classified protected by the governmental entity under this subsection; and

(c) except for public institutions of higher education, the governmental unit to which the donation is made is primarily engaged in educational, charitable, or artistic endeavors, and has no regulatory or legislative authority over the donor, a member of his immediate family, or any entity owned or controlled by the donor or his immediate family; and

(38) the following records of a public institution of education, which have been developed, discovered, or received by or on behalf of faculty, staff, employees, or students of the institution: unpublished lecture notes, unpublished research notes and data, unpublished manuscripts, creative works in process, scholarly correspondence, and confidential information contained in research proposals. Nothing in this subsection shall be construed to affect the ownership of a record.

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History: C. 1953, 63-2-304, enacted by L. 1991, ch. 259, § 21; 1992, ch. 228, § 3; 1992, ch. 280, § 28; 1994, ch. 13, § 5; 1994, ch. 114, § 1; 1995, ch. 133, § 2; 1996, ch. 79, § 81; 1997, ch. 234, § 4.

Administrative Rules. - This section is implemented by, interpreted by, or cited as authority for the following administrative rule(s): R137-2, R151-3, R277-103, R277-104, R280-201, R512-75, R746-500.

Amendment Notes. - The 1994 amendment by ch. 13, effective May 2, 1994, substituted "Board of Pardons and Parole" for "Board of Pardons" twice in Subsection (12) and once in Subsection (33); deleted "and" from the end of Subsection (29); and added "and" to the end of Subsection (36).

The 1994 amendment by ch. 114, effective May 2, 1994, redesignated former Subsection (19) as Subsection (19)(a); added Subsection (19)(b); and made stylistic changes.

The 1995 amendment, effective May 1, 1995, made a punctuation correction in Subsection (19)(b) and substituted "of the" for "reflecting" in Subsection (27).

The 1996 amendment, effective April 29, 1996, in Subsection (31) deleted "of the" after "52-4-7" and "Act" after "Meetings."

The 1997 amendment, effective May 5, 1997, added Subsection (4), renumbering accordingly, and deleted "Open and Public Meetings" from the end of Subsection (32).

63-2-305. Procedure to determine classification.

(1) If more than one provision of this chapter could 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 Subsection 63-2-302(2), Section 63-2-303, or 63-2-304 requires a governmental entity to classify a record as private, controlled, or protected.

History: C. 1953, 63-2-305, enacted by L. 1991, ch. 259, § 22; 1992, ch. 280, § 29.

Administrative Rules. - This section is implemented by, interpreted by, or cited as authority for the following administrative rule(s): R137-2, R277-103.

63-2-306. Duty to evaluate records and make designations and classifications.

(1) A governmental entity shall:

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

(b) designate those record series as provided by this chapter; and

(c) report the designations of its record series to the state archives.

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

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

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History: C. 1953, 63-2-306, enacted by L. 1991, ch. 259, § 23; 1992, ch. 280, § 30.

Administrative Rules. - This section is implemented by, interpreted by, or cited as authority for the following administrative rule(s): R137-2, R277-103.

63-2-307. Segregation of records.

Notwithstanding any other provision in this chapter, if a governmental entity receives a request for access to a record that contains both information that the requester is entitled to inspect and information that the requester is not entitled to inspect under this chapter, and, if the information the requester is entitled to inspect is intelligible, the governmental entity:

(1) shall allow access to information in the record that the requester is entitled to inspect under this chapter; and

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

History: C. 1953, 63-2-307, enacted by L. 1991, ch. 259, § 24; 1992, ch. 280, § 31.

Administrative Rules. - This section is implemented by, interpreted by, or cited as authority for the following administrative rule(s): R137-2, R277-103.

63-2-308. Business confidentiality claims.

(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 classified public or if the governmental entity determines that the record should be released after balancing interests under Subsection 63-2-201(5)(b) or Subsection 63-2-401(6).

(2) Except as provided by court order, 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. This subsection does not apply where the claimant, after notice, has waived the claim by not appealing or intervening before the records committee.

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

History: C. 1953, 63-2-308, enacted by L. 1991, ch. 259, § 25; 1992, ch. 280, § 32.

Administrative Rules. - This section is implemented by, interpreted by, or cited as authority for the following administrative rule(s): R137-2, R151-2, R277-103.

PART 4

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APPEALS

63-2-401. Appeal to head of governmental entity.

(1) (a) Any person aggrieved by a governmental entity's access 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.

(b) If a governmental entity claims extraordinary circumstances and specifies the date when the records will be available under Subsection 63-2-204(3), and, if the requester believes the extraordinary circumstances do not exist or that the time specified is unreasonable, the requester may appeal the governmental entity's claim of extraordinary circumstances or date for compliance within 30 days after notification of a claim of extraordinary circumstances by the governmental entity, despite the lack of a "determination" or its equivalent under Subsection 63-2-204(7).

(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) (a) If the appeal involves a record that is the subject of a business confidentiality claim under Section 63-2-308, the chief administrative officer shall:

(i) send notice of the requester's appeal to the business confidentiality claimant within three business days after receiving notice, except that if notice under this section must be given to more than 35 persons, it shall be given as soon as reasonably possible; and

(ii) send notice of the business confidentiality claim and the schedule for the chief administrative officer's determination to the requester within three business days after receiving notice of the requester's appeal.

(b) The claimant shall have seven business days after notice is sent by the administrative officer to submit further support for the claim of business confidentiality.

(5) (a) The chief administrative officer shall make a determination on the appeal within the following period of time:

(i) within five business days after the chief administrative officer's receipt of the notice of appeal; or

(ii) within twelve business days after the governmental entity sends the requester's notice of appeal to a person who submitted a claim of business confidentiality.

(b) If the chief administrative officer fails to make a determination within the time specified in Subsection (5)(a), the failure shall be considered the equivalent of an order denying the appeal.

(c) The provisions of this section notwithstanding, the parties participating in the proceeding may, by agreement, extend the time periods specified in this section.

(6) The chief administrative officer 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 under Section 63-2-302(2) or

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protected under Section 63-2-304 if the interests favoring access outweigh the interests favoring restriction of access.

(7) The governmental entity shall send written notice of the determination of the chief administrative officer to all participants. If the chief administrative officer affirms the denial in whole or in part, the denial shall include a statement that the requester has the right to appeal the denial to either the records committee or district court, the time limits for filing an appeal, and the name and business address of the executive secretary of the records committee.

(8) A person aggrieved by a governmental entity's classification or designation determination under this chapter, but who is not requesting access to the records, may appeal that determination using the procedures provided in this section. If a nonrequester is the only appellant, the procedures provided in this section shall apply, except that the determination on the appeal shall be made within 30 days after receiving the notice of appeal.

(9) The duties of the chief administrative officer under this section may be delegated.

History: C. 1953, 63-2-401, enacted by L. 1991, ch. 259, § 26; 1992, ch. 280, § 33.

Administrative Rules. - This section is implemented by, interpreted by, or cited as authority for the following administrative rule(s): R137-2, R151-2, R277-103.

63-2-402. Option for appealing a denial.

(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 chief administrative officer of a governmental entity under this chapter, including persons who did not participate in the governmental entity's proceeding, may appeal the determination to the records committee as provided in Section 63-2-403.

History: C. 1953, 63-2-402, enacted by L. 1991, ch. 259, § 27; 1992, ch. 280, § 34.

Administrative Rules. - This section is implemented by, interpreted by, or cited as authority for the following administrative rule(s): R137-2, R277-103.

63-2-403. Appeals to the records committee.

(1) A petitioner, including an aggrieved person who did not participate in the appeal to the governmental entity's chief administrative officer, may appeal to the records committee by filing a notice of appeal with the executive secretary no later than:

(a) 30 days after the chief administrative officer of the governmental entity has granted or denied the records request in whole or in part, including a denial under Subsection 63-2-204(7);

(b) 45 days after the original request for records if:

(i) the circumstances described in Subsection 63-2-401(1)(b) occur; and

(ii) the chief administrative officer failed to make a determination under Section 63-2-401.

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

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

(b) a copy of any denial of the records request; and

(c) 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 three business 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 at the next regularly scheduled committee meeting falling at least 14 days after the date the notice of appeal is filed but no longer than 45 days after the date the notice of appeal was filed provided, however, the records committee may schedule an expedited hearing upon application of the petitioner and good cause shown;

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

(c) send 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;

(iii) any person who made a business confidentiality claim under Section 63-2-308 for a record that is the subject of the appeal; and

(iv) all persons who participated in the proceedings before the governmental entity's chief administrative officer.

(5) (a) A written statement of facts, reasons, and legal authority in support of the governmental entity's position must be submitted to the executive secretary of the records committee not later than five business days before the hearing.

(b) 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) No later than ten business days after the notice of appeal is sent by the executive secretary, a person whose legal interests may be substantially affected by the proceeding may file a request for intervention before the records committee. Any written statement of facts, reasons, and legal authority in support of the intervener's position shall be filed with the request for intervention. The person seeking intervention shall provide copies of the statement to all parties to the proceedings before the records committee.

(7) The records committee shall hold a hearing within the period of time described in Subsection (4).

(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. However, if the committee is weighing the various interests under Subsection (11), the committee must review the disputed records. The review shall be 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

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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, controlled, or protected if the public interest favoring access outweighs the interest favoring restriction of access.

(c) In making a determination under Subsection (b), the records committee shall consider and, where appropriate, limit the requester's use and further disclosure of the record in order to protect privacy interests in the case of private or controlled records, business confidentiality interests in the case of records protected under Subsections 63-2-304(1) and (2), and privacy interests or the public interest in the case of other protected records.

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

(a) a statement of reasons for the decision, including citations to this chapter, court rule or order, another state statute, federal statute, or federal regulation that governs disclosure of the record, provided that the citations do not disclose private, controlled, 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, controlled, or protected information or information exempt from disclosure under Subsection 63-2-201(3)(b);

(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.

History: C. 1953, 63-2-403, enacted by L. 1991, ch. 259, § 28; 1992, ch. 280, § 35; 1995, ch. 133, § 3.

Administrative Rules. - This section is implemented by, interpreted by, or cited as authority for the following administrative rule(s): R137-2, R277-103.

Amendment Notes. - The 1995 amendment, effective May 1, 1995, rewrote Subsection (4)(a), changing the requirements for scheduling an appeals hearing; subdivided and rewrote Subsection (5), making the submission of the statement mandatory and changing the time period from ten days to five days; changed the time period in Subsection (7) to reflect the change in Subsection (4); and added the second sentence in Subsection (9)(a).

63-2-404. Judicial review.

(1) (a) Any party to a proceeding before the records committee may petition for judicial review by the district court of the records committee's order.

(b) The petition shall be filed no later than 30 days after the date of the records committee's

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order.

(c) The records committee is a necessary party to the petition for judicial review.

(d) The executive secretary of the records committee shall be served with notice of the petition in accordance with the Utah Rules of Civil Procedure.

(2) (a) 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).

(b) The requester shall file a petition no later than:

(i) 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;

(ii) 35 days after the original request if the governmental entity failed to respond to the request; or

(iii) 45 days after the original request for records if:

(A) the circumstances described in Subsection 63-2-401(1)(b) occur; and

(B) the chief administrative officer failed to make a determination under Section 63-2-401.

(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. The review shall be 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) (a) 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, controlled, or protected if the interest favoring access outweighs the interest favoring restriction of access.

(b) The court shall consider and, where appropriate, limit the requester's use and further disclosure of the record in order to protect privacy interests in the case of private or controlled records, business confidentiality interests in the case of records protected under Subsections 63-2-304(1) and (2), and privacy interests or the public interest in the case of other protected records.

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History: C. 1953, 63-2-404, enacted by L. 1991, ch. 259, § 29; 1992, ch. 280, § 36; 1995, ch. 133, § 4.

Administrative Rules. - This section is implemented by, interpreted by, or cited as authority for the following administrative rule(s): R137-2, R277-103.

Amendment Notes. - The 1995 amendment, effective May 1, 1995, subdivided Subsection (1) and added Subsections (1)(c) and (1)(d).

63-2-405. Confidential treatment of records for which no exemption applies.

(1) A court may, on appeal or in a declaratory or other action, order the confidential treatment of records for which no exemption from disclosure applies if:

(a) there are compelling interests favoring restriction of access to the record; and

(b) the interests favoring restriction of access clearly outweigh the interests favoring access.

(2) If a governmental entity requests a court to restrict access to a record under this section, the court shall require the governmental entity to pay the reasonable attorneys' fees incurred by the lead party in opposing the governmental entity's request, if:

(a) the court finds that no statutory or constitutional exemption from disclosure could reasonably apply to the record in question; and

(b) the court denies confidential treatment under this section.

(3) This section does not apply to records that are specifically required to be public under statutory provisions outside of this chapter or under Section 63-2-301, except as provided in Subsection (4).

(4) (a) Access to drafts and empirical data in drafts may be limited under this section, but the court may consider, in its evaluation of interests favoring restriction of access, only those interests that relate to the underlying information, and not to the deliberative nature of the record.

(b) Access to original data in a computer program may be limited under this section, but the court may consider, in its evaluation of interests favoring restriction of access, only those interests that relate to the underlying information, and not to the status of that data as part of a computer program.

History: C. 1953, 63-2-405, enacted by L. 1992, ch. 280, § 37.

Administrative Rules. - This section is implemented by, interpreted by, or cited as authority for the following administrative rule(s): R137-2, R277-103.

PART 5
STATE RECORDS COMMITTEE

63-2-501. State Records Committee created - Membership - Expenses.

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

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(a) an individual in the private sector whose profession requires him to create or manage records that if created by a governmental entity would be private or controlled;

(b) the state auditor or the auditor's designee;

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

(d) the governor or the governor's designee;

(e) one citizen member;

(f) one elected official representing political subdivisions; and

(g) one individual representing the news media.

(2) The members specified in Subsections (1)(a), (e), (f), and (g) shall be appointed by the governor with the advice and consent of the Senate.

(3) (a) Except as required by Subsection (b), as terms of current committee members expire, the governor shall appoint each new member or reappointed member to a four-year term.

(b) Notwithstanding the requirements of Subsection (a), the governor shall, at the time of appointment or reappointment, adjust the length of terms to ensure that the terms of committee members are staggered so that approximately half of the committee is appointed every two years.

(c) Each appointed member is eligible for reappointment for one additional term.

(4) When a vacancy occurs in the membership for any reason, the replacement shall be appointed for the unexpired term.

(5) (a) (i) Members who are not government employees shall receive no compensation or benefits for their services, but may receive per diem and expenses incurred in the performance of the member's official duties at the rates established by the Division of Finance under Sections 63A-3-106 and 63A-3-107.

(ii) Members may decline to receive per diem and expenses for their service.

(b) (i) State government officer and employee members who do not receive salary, per diem, or expenses from their agency for their service may receive per diem and expenses incurred in the performance of their official duties from the committee at the rates established by the Division of Finance under Sections 63A-3-106 and 63A-3-107.

(ii) State government officer and employee members may decline to receive per diem and expenses for their service.

(c) (i) Local government members who do not receive salary, per diem, or expenses from the entity that they represent for their service may receive per diem and expenses incurred in the performance of their official duties at the rates established by the Division of Finance under Sections 63A-3-106 and 63A-3-107.

(ii) Local government members may decline to receive per diem and expenses for their service.

History: C. 1953, 63-2-501, enacted by L. 1991, ch. 259, § 30; 1992, ch. 280, § 38; 1994, ch. 99, § 3; 1996, ch. 194, § 15; 1996, ch. 243, § 127.

Administrative Rules. - This section is implemented by, interpreted by, or cited as authority for the following administrative rule(s): R137-2, R277-103.

Amendment Notes. - The 1994 amendment, effective May 2, 1994, in Subsection (1)(b), added "or the auditor's designee."

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The 1996 amendment by ch. 194, effective April 29, 1996, added "with the advice and consent of the Senate" in Subsection (2).

The 1996 amendment by ch. 243, effective April 29, 1996, rewrote Subsection (2), revising provisions relating to terms of members; redesignated former Subsection (2)(c) as Subsection (3)(c); deleted former Subsection (2)(d), relating to filling vacancies; and added Subsections (3)(a), (3)(b), (4), and (5).

This section is set out as reconciled by the Office of Legislative Research and General Counsel.

Coordination clause. - Laws 1996, ch. 194 and ch. 243 both amended this section; ch. 194, § 27 provides that the amendments in ch. 194 supersede any conflicting amendments in ch. 243.

63-2-502. State Records Committee - Duties.

(1) The records committee shall:
(a) meet at least once every three months;
(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 Title 63, Chapter 46a, Utah Administrative Rulemaking Act; and
(b) by order, after notice and hearing, reassign classification and designation for any record series by a governmental entity if the governmental entity's classification or designation is inconsistent with this chapter.
(3) The records committee shall annually appoint an executive secretary to the records committee. The executive secretary may not serve as a voting member of the 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, the individual in the private sector, and the representative of the news media shall receive a per diem as established by the Division of Finance in Section 63A-3-106.
(7) If the records committee reassigns the classification or designation of a record or record series under Subsection (2)(b), any affected governmental entity or any other interested person may appeal the reclassification or redesignation to the district court. The district court shall hear the matter de novo.
(8) The Office of the Attorney General shall provide counsel to the records committee and shall review proposed retention schedules.

History: C. 1953, 63-2-502, enacted by L. 1991, ch. 259, § 31; 1992, ch. 280, § 39; 1994, ch. 12, § 79; 1995, ch. 133, § 5.

Administrative Rules. - This section is implemented by, interpreted by, or cited as authority for the following administrative rule(s): R137-2, R277-103.

Amendment Notes. - The 1994 amendment, effective May 2, 1994, substituted "Section 63A-3-106" for "Section 63-1-14.5" in Subsection (6) and made a punctuation change.

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The 1995 amendment, effective May 1, 1995, rewrote Subsection (3), adding the second sentence and substituting the annual appointment provision for an automatic appointment of the state archivist.

PART 6
ACCURACY OF RECORDS

63-2-601. Rights of individuals on whom data is maintained.

(1) (a) Each governmental entity shall file with the state archivist a statement explaining the purposes for which record series designated private or controlled are collected and used by that governmental entity.

(b) That statement is a public record.

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

(a) the reasons the individual is asked to furnish to the governmental entity information that could be classified private or controlled;

(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 or controlled records for purposes other than those given in the statement filed with the state archivist under Subsection (1) or for purposes other than those for which another governmental entity could use the record under Section 63-2-206.

History: C. 1953, 63-2-601, enacted by L. 1991, ch. 259, § 32; 1992, ch. 280, § 40.

Administrative Rules. - This section is implemented by, interpreted by, or cited as authority for the following administrative rule(s): R137-2, R277-103.

63-2-602. Disclosure to subject of records - Context of use.

When providing records under Subsection 63-2-202(1) or when providing public records about an individual to the persons specified in Subsection 63-2-202(1), a governmental entity shall, upon request, disclose the context in which the record is used.

History: C. 1953, 63-2-602, enacted by L. 1991, ch. 259, § 33; 1992, ch. 280, § 41.

Administrative Rules. - This section is implemented by, interpreted by, or cited as authority for the following administrative rule(s): R137-2, R277-103.

63-2-603. Requests to amend a record - Appeals.

(1) Proceedings of state agencies under this section shall be governed by Title 63, Chapter 46b, Administrative Procedures Act.

(2) (a) Subject to Subsection (8), an individual may contest the accuracy or completeness of any public, or private, or protected record concerning him by requesting the governmental entity to amend the record. However, this section does not affect the right of access to private or

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protected records.

(b) The request shall contain the following information:

(i) the requester's name, mailing address, and daytime telephone number; and

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

(3) The governmental entity shall issue an order either approving or denying the request to amend as provided in Title 63, Chapter 46b, Administrative Procedures Act, or, if the act does not apply, no later than 30 days after receipt of the request.

(4) If the governmental entity approves the request, 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.

(5) If the governmental entity denies the request, it shall:

(a) inform the requester in writing; and

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

(6) (a) If a governmental entity denies a request to amend a record, the requester may submit a written statement contesting the information in the record.

(b) The governmental entity shall:

(i) file the requester'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

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

(7) The requester may appeal the denial of the request to amend a record pursuant to the Administrative Procedures Act or, if that act does not apply, to district court.

(8) 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.

History: C. 1953, 63-2-603, enacted by L. 1991, ch. 259, § 34; 1992, ch. 280, § 42.

Administrative Rules. - This section is implemented by, interpreted by, or cited as authority for the following administrative rule(s): R137-2, R151-2, R277-103, R512-70, R512-75.

PART 7
APPLICABILITY TO POLITICAL SUBDIVISIONS, THE JUDICIARY, AND THE LEGISLATURE

63-2-701. Political subdivisions may adopt ordinances in compliance with chapter.

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

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

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

(d) Notwithstanding the adoption of an ordinance or policy, each political subdivision is subject to Parts 1 and 3, and Sections 63-2-201, 63-2-202, 63-2-205, 63-2-206, 63-2-601, 63-2-602, 63-2-905, and 63-2-907.

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

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

(g) The report required by Subsection (f) is notification to state archives of the political subdivision's retention schedules, designations, and classifications. The report is not subject to approval by state archives. If state archives determines that a different retention schedule is needed for state purposes, state archives shall notify the political subdivision of the state's retention schedule for the records and shall maintain the records if requested to do so under Subsection 63-2-905(2).

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

(a) provide standards for the classification and designation of the records of the political subdivision as public, private, controlled, or protected in accordance with Part 3 of this chapter;

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

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

(d) provide standards for the management and retention of the records of the political subdivision comparable to Section 63-2-903.

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

(b) In establishing response times for access requests and time limits for appeals, the political subdivision may establish reasonable time frames different than those set out in Section 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) (a) The political subdivision shall establish an appeals process for persons aggrieved by classification, designation or access decisions.

(b) The policy or ordinance shall provide for:

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

(ii) a separate appeals board composed of members of the governing body and the public, appointed 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 Sections 63-2-402 and 63-2-404.

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

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History: C. 1953, 63-2-701, enacted by L. 1991, ch. 259, § 35; 1992, ch. 280, § 43; 1994, ch. 99, § 4.

Administrative Rules. - This section is implemented by, interpreted by, or cited as authority for the following administrative rule(s): R137-2, R277-103.

Amendment Notes. - The 1994 amendment, effective May 2, 1994, added Subsection (1)(g).

63-2-702. Applicability to judiciary.

(1) The judiciary is subject to the provisions of this chapter except as provided in this section.

(2) (a) The judiciary is not subject to Part 4 of this chapter except as provided in Subsection (5).

(b) The judiciary is not subject to Part 5 of this chapter.

(c) The judiciary is subject to only the following sections in Part 9 of this chapter: Sections 63-2-905 and 63-2-906.

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

(4) Substantially consistent with the provisions of this chapter, the Judicial Council shall:

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

(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; and

(c) provide standards for the management and retention of judicial records substantially consistent with Section 63-2-903.

(5) Rules governing appeals from denials of requests for access shall substantially comply with the time limits provided in Section 63-2-204 and Part 4 of this chapter.

(6) 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.

History: C. 1953, 63-2-702, enacted by L. 1991, ch. 259, § 36; 1992, ch. 280, § 44.

Administrative Rules. - This section is implemented by, interpreted by, or cited as authority for the following administrative rule(s): R137-2, R277-103.

Cross-References. - Court record management, Rule 4-201 et seq., Code of Judicial Administration.

Record retention, Appx. F, Code of Judicial Administration.

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63-2-703. Applicability to the Legislature.

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

(2) (a) The Legislature and its staff offices are not subject to Section 63-2-203 or to Part 4 or 5 of this chapter.

(b) The Legislature is subject to only the following sections in Part 9 of this chapter: Sections 63-2-902, 63-2-906, and 63-2-909.

(3) The Legislature, through the Legislative Management Committee, shall establish policies to handle requests for records and fees and may establish an appellate board to hear appeals from denials of access.

(4) Policies shall include reasonable times for responding to access requests consistent with the provisions of Part 2 of this chapter, fees, and reasonable time limits for appeals.

(5) 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.

History: C. 1953, 63-2-703, enacted by L. 1991, ch. 259, § 37; 1992, ch. 228, § 4; 1992, ch. 280, § 45.

Administrative Rules. - This section is implemented by, interpreted by, or cited as authority for the following administrative rule(s): R137-2, R277-103.

PART 8
REMEDIES

63-2-801. Criminal penalties.

(1) (a) A public employee or other person who has lawful access to any private, controlled, or protected record under this chapter, and who intentionally discloses or provides a copy of a private, controlled, or protected record to any person knowing that such disclosure is prohibited, is guilty of a class B misdemeanor.

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

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

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

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

(3) A public employee who intentionally refuses to release a record the disclosure of which the employee knows is required by law or by final unappealed order from a governmental entity, the records committee, or a court, is guilty of a class B misdemeanor.

History: C. 1953, 63-2-801, enacted by L. 1991, ch. 259, § 38; 1992, ch. 280, § 46.

Administrative Rules. - This section is implemented by, interpreted by, or cited as authority for the following administrative rule(s): R137-2, R277-103.

Cross-References. - Sentencing for misdemeanors, §§ 76-3-201, 76-3-204, 76-3-301.

63-2-802. Injunction - Attorneys' fees.

(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.

(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 governmental entity or political subdivision a statement of position that adequately explains the basis for the requester's position.

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

History: C. 1953, 63-2-802, enacted by L. 1991, ch. 259, § 39; 1992, ch. 280, § 47.

Administrative Rules. - This section is implemented by, interpreted by, or cited as authority for the following administrative rule(s): R137-2, R277-103.

63-2-803. No liability for certain decisions of a governmental entity or a political subdivision.

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Neither the governmental entity or political subdivision, nor any officer or employee of the governmental entity or political subdivision, 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.

History: C. 1953, 63-2-803, enacted by L. 1991, ch. 259, § 40; 1992, ch. 280, § 48.

Administrative Rules. - This section is implemented by, interpreted by, or cited as authority for the following administrative rule(s): R137-2, R277-103.

63-2-804. Disciplinary action.

A governmental entity or political subdivision may take disciplinary action which may include suspension or discharge against any employee of the governmental entity or political subdivision who intentionally violates any provision of this chapter.

History: C. 1953, 63-2-804, enacted by L. 1992, ch. 280, § 49.

Administrative Rules. - This section is implemented by, interpreted by, or cited as authority for the following administrative rule(s): R137-2, R277-103.

PART 9
ARCHIVES AND RECORDS SERVICE

63-2-901. Division of Archives and Records Service created - Duties.

(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, use, maintenance, retention, preservation, disclosure, and disposal of records and documents;

(c) establish standards, procedures, and techniques for the effective management and physical care of records;

(d) conduct surveys of office operations and recommend improvements in current records management practices, including the use of space, equipment, automation, and supplies used in creating, maintaining, storing, and servicing records;

(e) establish standards for the preparation of schedules providing for the retention of records of continuing value and for the prompt and orderly disposal of state records no longer possessing sufficient administrative, historical, legal, or fiscal value to warrant further retention;

(f) establish, maintain, and operate centralized 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

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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 for a person requesting access to a record.

(3) The state archives may:

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

(b) establish a forms management program.

(4) The executive director of the Department of Administrative Services may direct the state archives to administer other functions or services consistent with this chapter.

History: C. 1953, 63-2-901, enacted by L. 1991, ch. 259, § 41; 1992, ch. 280, § 50.

Administrative Rules. - This section is implemented by, interpreted by, or cited as authority for the following administrative rule(s): R137-2, R277-103.

63-2-902. State archivist - Duties.

(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;

(e) Indian war records; and

(f) 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.

History: C. 1953, 63-2-902, enacted by L. 1991, ch. 259, § 42; 1996, ch. 31, § 1.

Administrative Rules. - This section is implemented by, interpreted by, or cited as authority for the following administrative rule(s): R137-2, R277-103.

Amendment Notes. - The 1996 amendment, effective April 29, 1996, added Subsection (2)(e) and redesignated former Subsection (2)(e) as (f).

63-2-903. Duties of governmental entities.

The chief administrative officer of each governmental entity shall:

(1) establish and maintain an active, continuing program for the economical and efficient

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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, designation, 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;

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

(7) report to the state archives the designation of record series that it maintains;

(8) report to the state archives the classification of each record series that is classified; and

(9) establish and report to the state archives retention schedules for objects that the governmental entity determines are not records under Subsection 63-2-301(18), but that have historical or evidentiary value.

History: C. 1953, 63-2-903, enacted by L. 1991, ch. 259, § 43; 1992, ch. 280, § 51.

Administrative Rules. - This section is implemented by, interpreted by, or cited as authority for the following administrative rule(s): R137-2, R277-103.

63-2-904. Rulemaking authority.

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

(2) A governmental entity that includes divisions, boards, departments, committees, commissions, or other subparts that fall within the definition of a governmental entity under this chapter, may, by rule, specify at which level the requirements specified in this chapter shall be undertaken.

History: C. 1953, 63-2-904, enacted by L. 1991, ch. 259, § 44; 1992, ch. 280, § 52.

Administrative Rules. - This section is implemented by, interpreted by, or cited as authority for the following administrative rule(s): R105-2, R137-2, R182-1, R251-111, R277-103, R355-1, R380-20, R590-151, R767-1, R805-2.

63-2-905. Records declared property of the state - Disposition.

(1) All records created or maintained by a governmental entity of the state are the property of the state and shall not be mutilated, destroyed, or otherwise damaged or disposed of, in whole or

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part, except as provided in this chapter.

(2) (a) Except as provided in Subsection (b), all records created or maintained by a political subdivision of the state are the property of the state and shall not be mutilated, destroyed, or otherwise damaged or disposed of, in whole or in part, except as provided in this chapter.

(b) Records which constitute a valuable intellectual property shall be the property of the political subdivision.

(c) The state archives may, upon request from a political subdivision, take custody of any record series of the political subdivision. A political subdivision which no longer wishes to maintain custody of a record which must be retained under the political subdivision's retention schedule or the state archive's retention schedule shall transfer it to the state archives for safekeeping and management.

(3) It is unlawful for a governmental entity or political subdivision to intentionally mutilate, destroy, or otherwise damage or dispose of a record series knowing that such mutilation, destruction, or damage is in contravention of the political subdivision's or the state archive's properly adopted retention schedule.

History: C. 1953, 63-2-905, enacted by L. 1991, ch. 259, § 45; 1992, ch. 280, § 53; 1994, ch. 99, § 5.

Administrative Rules. - This section is implemented by, interpreted by, or cited as authority for the following administrative rule(s): R137-2, R277-103.

Amendment Notes. - The 1994 amendment, effective May 2, 1994, in Subsection (2)(c) substituted "political subdivision's retention schedule or the state archive's retention schedule" for "approved retention schedule"; and, in Subsection (3) inserted "intentionally," "knowing that such mutilation, destruction, or damage is" and "political subdivision's or the state archive's."

63-2-906. Certified and microphotographed copies.

(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 governmental entity, 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.

History: C. 1953, 63-2-906, enacted by L. 1991, ch. 259, § 46; 1992, ch. 280, § 54.

Administrative Rules. - This section is implemented by, interpreted by, or cited as authority for the following administrative rule(s): R137-2, R277-103.

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63-2-907. Right to replevin.

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.

History: C. 1953, 63-2-907, enacted by L. 1991, ch. 259, § 47.

Administrative Rules. - This section is implemented by, interpreted by, or cited as authority for the following administrative rule(s): R137-2, R277-103.

63-2-908. Inspection and summary of record series.

The state archives shall provide for public inspection of the title and a summary description of each record series.

History: C. 1953, 63-2-908, enacted by L. 1991, ch. 259, § 48; 1992, ch. 280, § 55; 1997, ch. 135, § 8.

Administrative Rules. - This section is implemented by, interpreted by, or cited as authority for the following administrative rule(s): R137-2, R277-103.

Amendment Notes. - The 1997 amendment, effective May 5, 1997, deleted Subsection (2), which required preparation of an annual report to the Legislature and Governor, and made former Subsection (1) the undesignated provision.

63-2-909. Records made public after 75 years.

(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 record's 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 Title 67, Chapter 4a, Unclaimed Property Act.

History: C. 1953, 63-2-909, enacted by L. 1991, ch. 259, § 49; 1995, ch. 198, § 9.

Administrative Rules. - This section is implemented by, interpreted by, or cited as authority for the following administrative rule(s): R137-2, R277-103.

Amendment Notes. - The 1995 amendment, effective May 1, 1995, changed "Title 78, Chapter 44" to "Title 67, Chapter 4a" and deleted "Uniform" before "Unclaimed" in Subsection (2).

Meaning of "this act". - The phrase "this act" in Subsection (1) means Laws 1991, ch. 259, which enacted this chapter.

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DEPARTMENT OF ENVIRONMENTAL QUALITY
DIVISION OF RADIATION CONTROL
P.O. BOX 144850
SALT LAKE CITY, UTAH 84114-4850

review an allegation unless instructed to do so by the Section Manager or the Division Director. The inspection should not focus too narrowly on the issues raised in the allegation, but should include the general area of the licensee's program within which the alleged activities occurred or failed to occur.

Matters of confidentiality are preferably settled prior to the inspection, and the inspector should clearly understand the alleger's confidentiality status and the alleger's feelings regarding the possibility of revealing his/her identity. The inspector should also be aware of procedures used to safeguard allegation documents, to communicate with the alleger and the licensee. Note however, that because of safety concerns or urgency dictated by other considerations, the Section Manager or Director may decide to send an inspector before confidentiality issues are resolved.

7.00 SPECIFIC GUIDANCE - Allegations/Investigations

7.01 Confidentiality

Allegers are granted confidentiality only in non-routine cases where it is deemed necessary for purposes of resolving the allegation. Nevertheless, the identity of the alleger should be protected as much as possible, even when confidentiality is not granted. Any information connected with the allegation should be provided to other persons, within or outside the Division of Radiation Control (DRC), only on a need-to-know basis. Files should be secured when not in use, and any documents that are released for general use should be redacted. Exceptions to the above are those cases in which it is clearly documented that the alleger has no objection to making his/her identity known, and releasing the alleger's identity would significantly facilitate review and resolution of the allegation.

7.02 Document Security

To help maintain anonymity, the inspector should avoid taking any documents that contain information that may reveal the nature of the inspection or the identity of the alleger, unless it is considered important to the conduct of the inspection. In addition, care should be taken to assure that documents about the allegation are protected from inadvertent disclosure. Documents related to an allegation in which confidentiality was formally granted must be kept in a secure file cabinet or safe, and access to such documents granted only on a need-to-know basis, as determined by the Division Director or Section Manager.

7.03 Origin of Concerns and "Off-the-Record" Statements

Should the licensee ask whether the inspection is being conducted in response to an allegation, the inspector should inform the licensee that the inspection includes a review of concerns which the DRC has with regard to the licensee's facility or operations. The inspector should decline to comment further on the origin of the concerns. The inspector should also remember that "off-the-record" Statements

with licensee personnel are not acceptable. Any information provided, including that which is considered by the informant to be "off-the-record", may be used by DRC in resolving the allegation or for any other purpose.

7.04 Instrumentation for Incident Investigation

Preparation for an incident investigation is similar to preparation for an inspection. The file must be carefully reviewed to determine the types and quantities of radioactive materials potentially involved and then all equipment deemed necessary for the investigation should be assembled. This equipment should be sufficient to ensure that the investigation is conducted safely and thoroughly.

7.05 Conducting an Incident Investigation

Each incident must be considered on an individual basis. After notifying the facility management upon arrival (if possible, and depending on the immediate steps needed to protect the public health and safety), the inspector should make a preliminary assessment of the situation at the incident site. The first consideration is to protect the employees and the public from any radiation hazard. Should a radiation hazard exist, assure that the area is secure and escalation of the hazard is not probable. If it is obvious that no radiation hazard has existed or does exist, documentation of this is still necessary.

7.06 Advisory Role of Inspector

After the immediate health and safety problems have been addressed, the inspector's role should be advisory only. The licensee, registrant, or local emergency response personnel is responsible for performing any corrective action. It is important to consider the consequences of all possible recovery operations in order to select the best solution with regard to the circumstances surrounding the hazard. When a course of action for recovery has been determined, monitor the procedures to ensure they are conducted within the ALARA concept.

7.07 Determination of Nature and Severity of Hazard

At this time, interview personnel involved to determine the nature and severity of the hazard and to determine possible corrective actions. These interviews should be performed as soon as possible to assure complete, independent, observations are obtained from all parties. Photocopies of pertinent records should also be acquired whenever possible. If the inspector suspects that criminal practices have occurred, the Section Manager must be contacted and arrangements made for law enforcement personnel to be notified.

#13 CHM

From: "Frazee, Terry" <tcf0303@doh.wa.gov>
To: TWFN_DO.twf1_po(PHL,DMS4)
Date: Wed, Mar 10, 1999 8:36 PM
Subject: Fwd: Response to NRC's Public Disclosure Inquiry

This is a follow-up to SP-98-097. Please also refer to my e-mail message to you dated February 12, 1999. As indicated at that time, this message contains the assessment of our Assistant Attorney General on the matter of Washington Department of Health's authority to withhold information concerning the identity of a person who submits an allegation to the NRC regarding a licensee's alleged violation of applicable regulations.

When the allegation involves a DOH licensee, NRC forwards the allegations to DOH for further investigation. NRC has been hesitant to provide DOH with the information identifying the alleger because of concerns regarding disclosure. However, it is our position that we need the name of the alleger in order to conduct the investigation.

SP-98-097 also asked for documentation. The Revised Code of Washington citations referenced below can be found by following the INTERNET links from our homepage (see my signature block below). The DOH Policy referenced below can be faxed to you if needed. The following statement is set forth in a format similar to that used in the email, dated September 10, 1997, which was sent to NRC in response to its previous public disclosure inquiry.

Response to NRC:

Your letter asks for information regarding the Washington State Department of Health's ("WDOH") authority to protect certain information from public disclosure when NRC provides the information to WDOH. Specifically, you have asked about Washington law and WDOH policy concerning disclosure of the identity of a person who alleges that a radioactive materials licensee is in violation of applicable regulations. You have also
asked whether specific labeling of the allegation information by NRC would assist WDOH in protecting the alleger's identity. With respect to NRC's position concerning disclosure, you have stated that it is NRC's intent, except in certain limited circumstances, not to disclose the identity of an alleger, to the extent consistent with the Freedom of Information Act.

When WDOH receives allegation information from NRC, we will also make all reasonable efforts to protect the identity of the alleger, to the extent consistent with the Washington State Public Records Act, RCW 42.17.290 et seq. Under Washington law disclosure is strongly favored and no general personal privacy exemption exists. However, the Public Records Act contains a number of permissive exemptions from disclosure including a basis for protecting the identity of persons who file complaints. To the extent that disclosure would violate a person's privacy or impair a vital government interest, the Public Records Act permits exemption from disclosure of the following:

"Information revealing the identity of persons who are witnesses to or victims of crime or who file complaints with investigative, law

enforcement, or penology agencies....if disclosure would endanger any person's life, physical safety, or property. If at the time a complaint is filed the complainant, victim, or witness indicates a desire for disclosure or nondisclosure, such desire shall govern....
RCW 42.17.310(1)(e); 42.17.310(2).

WDOH's Public Disclosure Policy/Procedure (17.003) includes guidance which provides that the agency with which the records originated should be
consulted when a public disclosure request for those records is received.

Any documentation that NRC can provide to WDOH concerning the alleger's desire for nondisclosure of his or her identity or concerns regarding the person's life, physical safety, or property would be of use to WDOH in protecting the alleger's identity from disclosure. If WDOH receives a public disclosure request for allegation records, it will evaluate all relevant information concerning protection of the alleger's identity and will seek to protect the person's identity from disclosure to the extent permitted by law. In addition, WDOH will notify and consult with NRC regarding the request. WDOH may also notify the alleger who, if he or she chooses to, can seek court protection of the records pursuant to RCW 42.17.330.

The balance of the allegation documents, not containing identifying information, will be available to the requesting party unless another exemption applies. A second permissive exemption contained within the Public Records Act which might be applicable permits exemption from disclosure, to the extent that disclosure would violate a person's privacy or impair a vital government interest, of the following:

"Specific intelligence information and specific investigative records compiled by investigative, law enforcement, and penology agencies, and state agencies vested with the responsibility to discipline members of any profession, the nondisclosure of which is essential to effective law enforcement or for the protection of any person's right to privacy...."
RCW 42.17.310(1)(d); 42.17.310(2).

The Washington courts have interpreted this provision in a number of cases and have found, for instance, that when an investigation is complete, records revealing the "raw facts" of the investigation may be available. If WDOH receives a public disclosure request for records regarding allegations, it will evaluate the applicability of this exemption to the record in whole or in part.

Please be aware that there is of course no guarantee that any denial by WDOH of a public disclosure request will not be successfully challenged in a court of law. If you have any questions, please contact us.

****

This message from: Terry Frazee tcf0303@doh.wa.gov

Quick ways to reach me:
Voice = 360-236-3221
FAX = 360-236-2255

Also, visit our Home Page at
--> http://www.doh.wa.gov/ehp/rp

CC: GATED.nrcsmtp("lilial@atg.wa.gov")

#13

CM.
Here is a preliminary response from Washington.
Dennis
2/18/99

From: "Frazee, Terry" <tcf0303@doh.wa.gov>
To: TWFN_DO.twf1_po(DMS4,PHL)
Date: Fri, Feb 12, 1999 6:53 PM
Subject: SP-98-097

This is to let you know that we will have comments for you on the issue of "protecting the identity of allegers from public disclosure" as requested by your Office of State Programs letter SP-98-097. I have faxed a copy of the letter to our Assistant Attorney General for review and preparation of a reply. In the meantime, please recall that we have responded to a previous SP letter on this subject. We also have voiced our concern that failure to fully divulge allegation information (including the identity of the alleger) that is received by NRC but actually falling within state jurisdiction, hampers our ability to effectively and efficiently investigate the allegation.

Gary Robertson indicates that this is currently an issue with an allegation concerning Dawn Mining. NRC has "described" the allegation but has not provided the alleger's letter and the specific photographs that serve as the basis for the allegation. Without this "hard evidence" it is hard to proceed in a credible fashion.

I discussed this with Gary and he questions the existence of these photographs and wondered why NRC did not send the redacted letter to him instead of an NRC summary only.

While our program staff fully believes that we can protect the identity of the alleger, our legal staff sees nuances of law that give us cause to wonder whether NRC would be immune to the same type of court order that might require us to divulge information. We worry about a court order, do you? If so, do you expect us to have a "higher standard"?

****

This message from: Terry Frazee tcf0303@doh.wa.gov

Quick ways to reach me:
Voice = 360-236-3221
FAX = 360-236-2255

Also, visit our Home Page at
--> http://www.doh.wa.gov/ehp/rp

CC: GATED.nrcsmtp("lilial@atg.wa.gov")