

1 State of Arkansas
2 90th General Assembly
3 Regular Session, 2015
4

A Bill

HOUSE BILL 1691

5 By: Representative Leding
6

For An Act To Be Entitled

8 AN ACT TO CREATE THE INFORMATION PRACTICES ACT OF
9 2015; TO PROTECT THE RIGHT TO PRIVACY; TO GIVE AN
10 INDIVIDUAL ACCESS TO CERTAIN GOVERNMENT RECORDS ABOUT
11 HIMSELF OR HERSELF; TO PROTECT AN INDIVIDUAL FROM
12 DISSEMINATION OF HIS OR HER PERSONAL INFORMATION BY
13 THE GOVERNMENT; TO CREATE A CAUSE OF ACTION; TO
14 CREATE A CRIMINAL OFFENSE; AND FOR OTHER PURPOSES.
15

Subtitle

16
17
18 TO CREATE THE INFORMATION PRACTICES ACT
19 OF 2015; TO PROTECT THE RIGHT TO PRIVACY
20 TO RESTRICT ACCESS TO CERTAIN GOVERNMENT
21 RECORDS CONTAINING PERSONAL INFORMATION.
22
23

24 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
25

26 SECTION 1. Arkansas Code Title 25 is amended to add an additional
27 chapter to read as follows:

CHAPTER 43

INFORMATION PRACTICES ACT OF 2015

28
29
30 25-43-101. Title.

31 This chapter shall be known and may be cited as the "Information
32 Practices Act of 2015".
33

34 25-43-102. Legislative intent.

35 The General Assembly finds:

36 (1) The right to privacy is a personal and fundamental right



1 protected by Article 2, Section 2 of the Arkansas Constitution;

2 (2) All individuals have a right to privacy in information
3 pertaining to them;

4 (3) The right to privacy is being threatened by the
5 indiscriminate collection, maintenance, and dissemination of personal
6 information and the lack of effective laws and legal remedies;

7 (4) The increasing use of computers and other sophisticated
8 information technology has greatly magnified the potential risk to individual
9 privacy that can occur from the maintenance of personal information; and

10 (5) In order to protect the privacy of individuals, it is
11 necessary that the maintenance and dissemination of personal information be
12 subject to strict limits.

13
14 25-43-103. Definitions.

15 As used in this chapter:

16 (1) "Agency" means a board, commission, department, officer, or
17 other authority of the government of the State of Arkansas, whether within,
18 or subject to review by, another agency, except the General Assembly, the
19 courts, and Governor;

20 (2)(A) "Commercial purpose" means a purpose which has financial
21 gain as a major objective.

22 (B) "Commercial purpose" does not include the gathering or
23 dissemination of newsworthy facts by a publisher or broadcaster;

24 (3) "Disclose" means to release, transfer, disseminate, or
25 otherwise communicate all or any part of a record orally, in writing, or by
26 electronic means or any other means to a person or entity;

27 (4) "Governmental entity" means a branch of the federal
28 government or local government;

29 (5) "Individual" means a natural person;

30 (6) "Maintain" means retain, acquire, use, or disclose;

31 (7) "Person" means an individual, corporation, partnership,
32 limited liability company, firm, or association;

33 (8) "Personal information" means information that is maintained
34 by an agency that identifies or describes an individual, including without
35 limitation:

36 (A) An individual's name, Social Security number, physical

1 description, home address, home telephone number, cellular telephone number,
2 email address, education, financial matters, medical history, and employment
3 history; and

4 (B) Statements made by or attributed to an individual;

5 (9) "Record" means a file or grouping of information about an
6 individual that is maintained by an agency for reference to an identifying
7 particular such as the individual's name, photograph, finger or voice print,
8 or a number or symbol assigned to the individual; and

9 (10) "System of records" means one (1) or more records, which
10 pertain to one (1) or more individuals, which are maintained by an agency,
11 from which information is retrieved by the name of an individual or by some
12 identifying number, symbol, or other identifying particular assigned to the
13 individual.

14
15 25-43-104. Content of records.

16 (a) An agency shall maintain personal information in its records only
17 if the personal information is relevant and necessary to accomplish a purpose
18 of the agency required or authorized by:

19 (1) The Arkansas Constitution;

20 (2) Arkansas law; or

21 (3) Federal law.

22 (b) An agency shall collect personal information to the greatest
23 extent practicable directly from the individual who is the subject of the
24 information rather than from another source.

25 (c)(1)(A) When collecting personal information, an agency shall
26 maintain the source or sources of the information, unless the source is the
27 data subject or if he or she has received a source of the source document,
28 including without limitation the name of a source who is an individual acting
29 in his or her own private or individual capacity.

30 (B) If the source of the personal information is an
31 agency, governmental entity, or other organization such as a corporation or
32 association, an agency may meet the requirements of subdivision (c)(1) of
33 this section by maintaining the name of the agency, governmental entity, or
34 organization as long as the smallest reasonably identifiable unit of the
35 agency, governmental entity, or organization is named.

36 (2) If an agency electronically collects personal information,

1 the agency shall retain the source or any intermediate form of the
2 information, if either are created or possessed by the agency, unless the
3 source is the data subject that has requested that the information be
4 discarded or the data subject has received a copy of the source document.

5 (3)(A) An agency shall maintain the source or sources of the
6 personal information in a readily identifiable form so as to be able to
7 provide it to the data subject when they inspect a record.

8 (B) Subdivision (c)(3)(A) of this section shall not apply
9 if the source or sources of the personal information are exempt from
10 disclosure under this chapter.

11
12 25-43-105. Notice.

13 (a) An agency shall use a form to collect personal information from an
14 individual that shall include the following:

15 (1) The name of the agency and the division within the agency
16 that is requesting the information;

17 (2) The title, business address, and telephone number of the
18 agency official who is responsible for the system of records and who shall,
19 upon request, inform an individual regarding the location of his or her
20 records and the categories of any persons who use the information in those
21 records;

22 (3) The authority, whether granted by statute, rule, or
23 executive order which authorizes the maintenance of the information;

24 (4) Whether submission of each item of information is mandatory
25 or voluntary;

26 (5) The consequences, if any, of not providing all or any part
27 of the requested information;

28 (6) The principal purpose or purposes within the agency for
29 which the information will be used;

30 (7) Any known or foreseeable disclosures which may be made of
31 the information; and

32 (8) The individual's right of access to records containing
33 personal information which are maintained by the agency.

34 (b) If contact with the individual is of a regularly recurring nature,
35 an initial notice followed by a periodic notice of not more than one-year
36 intervals shall satisfy the requirements of subsection (a) of this section.

1 (c) Notification to an individual of the availability of the notice in
2 annual tax-related pamphlets or booklets provided to the individual shall
3 satisfy the requirements of subsection (a) of this section.

4 (d) This section does not apply to:

5 (1) An enforcement document issued by an employee of a law
6 enforcement agency in the performance of his or her duties when the violator
7 is provided an exact copy of the document;

8 (2) An accident report available to a party of interest under
9 Arkansas law; or

10 (3) An agency requirement for an individual to provide his or
11 her name, identifying number, photograph, address, or similar identifying
12 information if the information is used only for the purpose of identification
13 and communication with the individual by the agency, except that requirements
14 for an individual's Social Security number shall conform with applicable
15 federal law.

16
17 25-43-106. Maintenance of records.

18 (a) To the maximum extent possible, if an agency uses a record to make
19 a determination about an individual, the agency shall maintain the record
20 with accuracy, relevance, timeliness, and completeness.

21 (b) If an agency transfers a record outside of state government, it
22 shall correct, update, withhold, or delete any portion of a record that it
23 knows or has reason to believe is inaccurate or untimely.

24
25 25-43-107. Contracts for the operation or maintenance of records.

26 If an agency contracts with a party for the operation or maintenance of
27 records containing personal information to accomplish an agency function, the
28 requirements of this chapter apply to those records.

29
30 25-43-108. Rules of conduct.

31 An agency shall establish rules of conduct for persons involved in the
32 design, development, operation, disclosure, or maintenance of records
33 containing personal information and instruct each person with respect to the
34 rules the requirements of this chapter, including without limitation:

35 (1) Other rules and procedures adopted under this chapter; and

36 (2) The remedies and penalties for noncompliance.

1
2 25-43-109. Safeguards.

3 An agency shall establish appropriate and reasonable administrative,
4 technical, and physical safeguards to:

5 (1) Ensure compliance with this chapter;

6 (2) Ensure the security and confidentiality of records; and

7 (3) Protect against anticipated threats or hazards to security
8 or integrity of the records which could result in an injury.

9
10 25-43-110. Designation of employee responsible for agency compliance.

11 An agency shall designate an agency employee to be responsible for
12 ensuring that the agency complies with all provisions of this chapter.

13
14 25-43-111. Periodic review of personal information.

15 The Department of Finance and Administration shall review all personal
16 information in its possession every five (5) years to determine whether it
17 should continue to be exempt from access under § 25-43-124.

18
19 25-43-112. Personal information.

20 (a) An agency shall not disclose any personal information in a manner
21 that would link the personal information disclosed to the individual to whom
22 it pertains unless the personal information is disclosed:

23 (1) To the individual to whom the personal information pertains;

24 (2) With the prior written voluntary consent of the individual
25 to whom the record pertains if that consent has been obtained not more than
26 thirty (30) days before the disclosure or within a time limit agreed to by
27 the individual in the written consent;

28 (3) To the appointed guardian of the individual or a person
29 representing the individual if it can be proven with reasonable clarity
30 through the possession of agency forms, documents, or correspondence that the
31 person is the authorized representative of the individual to whom the
32 personal information pertains;

33 (4) To an officer, employee, attorney, agent, or authorized
34 volunteer of the agency having custody of the personal information if the
35 disclosure is:

36 (A) Relevant and necessary in the ordinary course of the

1 performance of their official duties; and

2 (B) Related to the purpose for which the information was
3 acquired;

4 (5)(A) To a person or another agency if the transfer is
5 necessary for the transferee agency to perform its constitutional or
6 statutory duties and the use is compatible with a purpose for which the
7 personal information was collected and the use or transfer is accounted for
8 under this chapter.

9 (B) A use is compatible under subdivision (a)(5)(A) of
10 this section if the use of the personal information requested is needed in an
11 investigation of unlawful activity under the jurisdiction of the requesting
12 agency or for licensing, certification, or regulatory purposes by that
13 agency;

14 (6) To a governmental entity when required by state or federal
15 law;

16 (7) To a person who has provided the agency with advance,
17 adequate written assurance that the personal information will be used solely
18 for statistical research or reporting purposes, but only if the personal
19 information to be disclosed is in a form that will not identify an
20 individual;

21 (8)(A) Under a determination by the agency that maintains the
22 personal information that compelling circumstances exist that affect the
23 health or safety of an individual, if upon the disclosure notification is
24 transmitted to the individual to whom the information pertains at his or her
25 last known address.

26 (B) Disclosure shall not be made under subdivision
27 (a)(8)(A) of this section if the disclosure is in conflict with other state
28 or federal laws;

29 (9) To the Arkansas History Commission as a record that has
30 sufficient historical or other value to warrant its continued preservation;

31 (10) To the Department of Finance and Administration to
32 determine whether the record has further administrative, legal, or fiscal
33 value;

34 (11) To a person pursuant to a subpoena, court order, or other
35 compulsory legal process if, before the disclosure, the agency reasonably
36 attempts to notify the individual to whom the record pertains and if the

1 notification is not prohibited by law;

2 (12) To a person pursuant to a search warrant;

3 (13) To a law enforcement or regulatory agency when required for
4 an investigation of unlawful activity or for licensing, certification, or
5 regulatory purposes, unless the disclosure is otherwise prohibited by law;

6 (14) To another person or governmental organization to the
7 extent necessary to obtain information from the person or governmental
8 organization as necessary for an investigation by the agency of a failure to
9 comply with a specific state law that the agency is responsible for
10 enforcing;

11 (15) To an adopted person regarding general background
12 information pertaining the adopted person's natural parents, so long as the
13 information does not include or reveal the identity of the person's natural
14 parents;

15 (16)(A) To a child or a grandchild of an adopted person so long
16 as the disclosure is limited to medically necessary information pertaining to
17 the adopted person's natural parents.

18 (B) Information under subdivision (a)(16)(A) of this
19 section, or the process for obtaining the information, shall not include or
20 reveal the identity of the natural parents.

21 (C)(i) The Department of Health shall adopt rules
22 governing the release of information under this subdivision (a)(16).

23 (ii) The rules shall require without limitation
24 licensed adoption agencies to provide the same services provided by the
25 department under this subdivision (a)(16);

26 (17) To a committee of the General Assembly or to a member of
27 the General Assembly, or the member's staff when authorized in writing by the
28 member, where the member has permission to obtain the personal information
29 from the individual to whom it pertains or where the member provides
30 reasonable assurance that he or she is acting on behalf of the individual;
31 and

32 (18)(A) To a nonprofit educational institution, or, in the case
33 of education-related data, another nonprofit entity conducting scientific
34 research provided the request for information is approved by the Department
35 of Human Services or an institutional review board, as authorized in
36 subdivisions (a)(18)(E) and (F) of this section.

1 (B) The approval required under this subdivision (a)(18)
2 shall include a review and determination that all the following criteria have
3 been satisfied:

4 (i) The researcher has provided a plan sufficient to
5 protect personal information from improper use and disclosures, including
6 sufficient administrative, physical, and technical safeguards to protect
7 personal information from reasonable anticipated threats to the security or
8 confidentiality of the personal information;

9 (ii) The researcher has provided a sufficient plan
10 to destroy or return all personal information as soon as it is no longer
11 needed for the research project, unless the researcher has demonstrated an
12 ongoing need for the personal information for the research project and has
13 provided a long-term plan sufficient to protect the confidentiality of that
14 personal information; and

15 (iii) The researcher has provided sufficient written
16 assurances that the personal information will not be reused or disclosed to
17 any other person or entity, or used in any manner, not approved in the
18 research protocol, except as required by law or for authorized oversight of
19 the research project.

20 (C) The Department of Human Services or institutional
21 review board shall, at a minimum, accomplish all of the following as part of
22 its review and approval of the research project for the purpose of protecting
23 personal information held in agency databases:

24 (i) Determine whether the requested personal
25 information is needed to conduct the research;

26 (ii) Permit access to personal information only if
27 it is needed for the research project;

28 (iii) Permit access only to the minimum necessary
29 personal information needed for the research project;

30 (iv) Require the assignment of unique subject codes
31 that are not derived from personal information in lieu of Social Security
32 numbers if the research can still be conducted without Social Security
33 numbers; and

34 (v) If feasible, and if cost, time, and technical
35 expertise permit, require the agency to conduct a portion of the data
36 processing for the researcher to minimize the release of personal

1 information.

2 (D) Reasonable costs to the agency associated with the
3 agency's process of protecting personal information under the conditions of
4 Department of Health approval may be billed to the researcher, including, but
5 not limited to, the agency's costs for conducting a portion of the data
6 processing for the researcher, removing personal information, encrypting or
7 otherwise securing personal information, or assigning subject codes.

8 (E) The Department of Health may enter into written
9 agreements to enable other institutional review boards to provide the data
10 security approvals required by this subdivision, provided the data security
11 requirements set forth in this subdivision are satisfied.

12 (F)(i) Pursuant to subdivision (a)(18)(D) of this section,
13 the Department of Health shall enter into a written agreement with the
14 institutional review board.

15 (ii) The agreement shall authorize that board to
16 provide the data security approvals required by this subdivision, provided
17 the data security requirements set forth in this subdivision and applicable
18 Arkansas law are satisfied.

19 (b) This section does not require the disclosure of personal
20 information to the individual to whom the personal information pertains when
21 that personal information may otherwise be withheld as set forth under § 25-
22 43-124.

23 (c)(1) Personal information may be disclosed to a city or county or a
24 law enforcement officer employed by a city or county if a written request is
25 made to a city or county law enforcement agency and the personal information
26 is needed to assist in the screening of an application for, or acquisition
27 of, a beneficial interest in a lease or other property interest.

28 (2) Criminal history information shall be disclosed as provided
29 under § 12-12-1001 et seq.

30 (d)(1) Personal information shall be disclosed to the protection and
31 advocacy agency designated by the Governor in compliance with federal law to
32 protect and advocate for the rights of people with disabilities.

33 (2) Personal information disclosed under this subsection shall
34 include:

35 (A) Name;

36 (B) Address;

1 (C) Telephone number; and

2 (D) Any other information necessary to identify the person
3 whose consent is necessary to:

4 (i) Enable the protection and advocacy agency to
5 exercise its authority and investigate incidents of abuse or neglect of
6 people with disabilities; or

7 (ii) Obtain access to records to which the agency is
8 entitled under Arkansas law.

9
10 25-43-113. Accounting for disclosure to law enforcement or regulatory
11 agency.

12 (a) An agency shall keep an accurate accounting of the date, nature,
13 and purpose of the disclosure of a record under § 25-43-112(8), (11), (12),
14 (13), or (14).

15 (b) An agency shall keep an accurate accounting of the date, nature,
16 and purpose of the disclosure of a record under § 23-43-112(5) and (6) unless
17 notice of the type of disclosure has been provided under this chapter.

18 (c) An accurate accounting under this section shall include the name,
19 title, and business address of the person or agency to whom the disclosure
20 was made.

21 (d) For a disclosure under § 25-43-112(13), it shall be sufficient for
22 a law enforcement or regulatory agency to record:

23 (1) The date of disclosure;

24 (2) The law enforcement or regulatory agency requesting the
25 disclosure; and

26 (3) Whether the purpose of the disclosure is for an
27 investigation of unlawful activity under the jurisdiction of the requesting
28 agency or for licensing, certification, or regulatory purposes by that
29 agency.

30 (e) Routine disclosures of information pertaining to crimes,
31 offenders, and suspected offenders to law enforcement or regulatory agencies
32 of federal, state, and local government are disclosures under § 23-43-112(5)
33 for the purpose of meeting the requirements of this section.

34 (f)(1) An agency shall retain an accounting under this section for at
35 least three (3) years after the disclosure for which the accounting is made
36 or until the record is destroyed, whichever is shorter.

1 (2) This section shall not be construed to require retention of
2 the original documents for a three-year period so long as an agency otherwise
3 complies with the requirements of this section.

4
5 25-43-114. Motor vehicles.

6 (a) With respect to the sale of information concerning the
7 registration of any vehicle or the sale of information from the files of
8 drivers' licenses, the Office of Motor Vehicles shall establish by rule
9 administrative procedures under which a person making a request for
10 information shall be required to identify himself or herself and state the
11 reason for making the request.

12 (b) The administrative procedures under subsection (a) of this section
13 shall provide for:

14 (1) Verification of the name and address of the person making a
15 request for the personal information as it determines is necessary in order
16 to ensure that the name and address of the person are his or her true name
17 and address;

18 (2) Notification to the person to whom the personal information
19 primarily relates, as to what personal information was provided and to whom
20 it was provided; and

21 (3) A reasonable period of time for which a record of the
22 personal information under subdivisions (b)(1) and (2) of this section shall
23 be maintained.

24 (c) The administrative procedures under subsection (a) of this section
25 may provide for a ten-day delay in the release of the requested personal
26 information.

27 (d) This section does not apply to:

28 (1) A governmental entity;

29 (2) A person who has applied for and been issued a requestor
30 code by the office; and

31 (3) A court of competent jurisdiction.

32
33 25-43-115. Correction of errors.

34 Each agency shall inform a person or agency to whom a record containing
35 personal information has been disclosed during the preceding three (3) years
36 of any correction of an error or notation of dispute made under this chapter

1 if:

2 (1) An accounting of the disclosure is required by this chapter
3 and the accounting has not been destroyed pursuant to this chapter;

4 (2) The personal information provides the name of the person or
5 agency to whom the disclosure was made; or

6 (3) The person who is the subject of the disclosed record
7 provides the name of the person or agency to whom the personal information
8 was disclosed.

9
10 25-43-116. Agencies owning, licensing, or maintaining computerized
11 data including personal information.

12 (a)(1) An agency that owns or licenses computerized data that includes
13 personal information shall disclose any breach of the security of the system
14 following discovery or notification of the breach in the security of the data
15 to any resident of Arkansas whose unencrypted personal information was, or is
16 reasonably believed to have been, acquired by an unauthorized person.

17 (2) The disclosure shall be made in the most expedient time
18 possible and without unreasonable delay, consistent with the legitimate needs
19 of law enforcement, as provided in this section, or any measures necessary to
20 determine the scope of the breach and restore the reasonable integrity of the
21 data system.

22 (b) An agency that maintains computerized data that includes personal
23 information that the agency does not own shall notify the owner or licensee
24 of the personal information of any breach of the security of the data
25 immediately following discovery, if the personal information was, or is
26 reasonably believed to have been, acquired by an unauthorized person.

27 (c)(1) The notification required by this section may be delayed if a
28 law enforcement agency determines that the notification will impede a
29 criminal investigation.

30 (2) The notification required by this section shall be made
31 after the law enforcement agency determines that it will not compromise the
32 investigation.

33 (d)(1) An agency that is required to issue a security breach
34 notification under this section shall meet all of the following requirements:

35 (1)(A) The security breach notification shall be written in
36 plain language;

1 (B) The security breach notification shall include, at a
2 minimum, the following information:

3 (i) The name and contact information of the reporting
4 agency subject to this section;

5 (ii) A list of the types of personal information
6 that were or are reasonably believed to have been the subject of a breach;

7 (iii) If the information is possible to determine at
8 the time the notice is provided, then any of the following:

9 (a) The date of the breach;

10 (b) The estimated date of the breach; or

11 (c) The date range within which the breach
12 occurred;

13 (iv) The date of the notice;

14 (v) Whether the notification was delayed as a result
15 of a law enforcement investigation, if that personal information is possible
16 to determine at the time the notice is provided;

17 (vi) A general description of the breach incident,
18 if that information is possible to determine at the time the notice is
19 provided; and

20 (vii) The toll-free telephone numbers and addresses
21 of the major credit reporting agencies, if the breach exposed a Social
22 Security number or a driver's license or Arkansas identification card number.

23 (2) At the discretion of the agency, the security breach
24 notification may also include any of the following:

25 (A) Personal information about what the agency has done to
26 protect individuals whose information has been breached; and

27 (B) Advice on steps that the person whose personal
28 information has been breached may take to protect himself or herself.

29 (3) In the case of a breach of the security of the system
30 involving personal information under this section for an online account, and
31 no other personal information under this section, the agency may comply with
32 this section by providing the security breach notification in electronic or
33 other form that directs the individual whose personal information has been
34 breached to promptly change his or her password and security question or
35 answer, as applicable, or to take other steps appropriate to protect the
36 online account with the agency and all other online accounts for which the

1 individual uses the same user name or email address and password or security
2 question or answer.

3 (4) If there is a breach of the security of the system involving
4 personal information under this section for login credentials of an email
5 account furnished by the agency, the agency shall provide:

6 (A) The security breach notification to that email
7 address; and

8 (B) Notice under this section.

9 (e) An agency that maintains its own notification procedures as part
10 of an information security policy for the treatment of personal information
11 and is otherwise consistent with the timing requirements of this part shall
12 be deemed to be in compliance with the notification requirements of this
13 section if it notifies subject individuals in accordance with its policies in
14 the event of a breach of security of the system.

15 (f)(1) An agency that is required to issue a security breach
16 notification pursuant to this section to more than five hundred (500)
17 Arkansas residents as a result of a single breach of the security system
18 shall electronically submit a single sample copy of that security breach
19 notification, excluding any personally identifiable information, to the
20 Attorney General.

21 (2) A single sample copy of a security breach notification shall
22 be exempt from the Freedom of Information Act of 1967, § 25-19-101 et seq.

23 (g) As used in this section:

24 (1)(A) "Breach of the security of the system" means the
25 unauthorized acquisition of computerized data that compromises the security,
26 confidentiality, or integrity of personal information maintained by the
27 agency.

28 (B) Good faith acquisition of personal information by an
29 employee or agent of the agency for the purposes of the agency is not a
30 breach of the security of the system provided that the personal information
31 is not used or subject to further unauthorized disclosure; and

32 (2)(A) "Health insurance information" means an individual's:

33 (i) Health insurance policy number or subscriber
34 identification number;

35 (ii) A unique identifier used by a health insurer to
36 identify the individual; or

1 (iii) Any information in an individual's application
2 and claims history.

3 (B) "Health insurance information" includes without
4 limitation an appeals record concerning an application and claim;

5 (3) "Medical information" means any information regarding an
6 individual's medical history, mental or physical condition, or medical
7 treatment or diagnosis by a healthcare professional;

8 (4) "Notice" means notification provided by one (1) of the
9 following methods:

10 (A) Written notice;

11 (B) Electronic notice, if the notice provided is
12 consistent with the provisions regarding electronic records and signatures
13 set forth in the Electronic Signatures in Global and National Commerce Act,
14 15 U.S.C. § 7001 et seq., as existing on January 1, 2015;

15 (C)(i) Substitute notice, if the agency demonstrates that
16 the cost of providing notice would exceed two hundred fifty thousand dollars
17 (\$250,000), or that the affected class of subject persons to be notified
18 exceeds five hundred thousand (500,000), or the agency does not have
19 sufficient contact information.

20 (ii) Substitute notice shall consist of all of the
21 following:

22 (a) Email notice when the agency has an email
23 address for the subject persons;

24 (b) Conspicuous posting of the notice on the
25 agency's Internet website, if the agency maintains one;

26 (c) Notification to major statewide media and
27 the Office of Information Security within the Department of Technology; and

28 (5)(A) "Personal information" means either of the following:

29 (i) An individual's first name or first initial and
30 last name in combination with any one (1) or more of the following data
31 elements, when either the name or the data elements are not encrypted:

32 (a) Social Security number; or

33 (b) Driver's license number or Arkansas State
34 Cyber Security Office of the Department of Information Systems identification
35 card number;

36 (c) Account number, credit or debit card

1 number, in combination with any required security code, access code, or
2 password that would permit access to an individual's financial account;

3 (d) Medical information; and

4 (e) Health insurance information; or

5 (ii) A user name or email address, in combination
6 with a password or security question and answer that would permit access to
7 an online account.

8 (B) "Personal information" does not include publicly
9 available information that is lawfully made available to the general public
10 from federal, state, or local government records.

11
12 25-43-117. Regulations or guidelines.

13 An agency shall adopt rules specifying procedures to be followed in
14 order to fully implement each of the rights of individuals set forth in this
15 chapter.

16
17 25-43-118. Maintenance of records.

18 (a) Upon request and proper identification of the individual, an
19 agency shall notify an individual as to whether the agency maintains a record
20 about him or her.

21 (b) An agency shall take reasonable steps to assist the individual in
22 making his or her request sufficiently specific.

23 (c) Unless the individual has received a notice under this subsection
24 from the agency during the year before the request, the notice sent to the
25 individual which indicates that the agency maintains a record concerning that
26 individual shall include without limitation the:

27 (1) Title and business address of the agency official
28 responsible for maintaining the records;

29 (2) Procedures to be followed to gain access to the records; and

30 (3) Procedures to be followed for the individual to contest the
31 contents of the records.

32 (d) In implementing this section, an agency may specify by rule
33 reasonable times, places, and requirements for:

34 (1) Identifying an individual who requests access to a record;
35 and

36 (2) Disclosing the contents of a record.

1
2 25-43-119. Copies of records.

3 (a) An agency may establish a fee to be charged to an individual for
4 copying a record.

5 (b) The fee shall not:

6 (1) Include the cost of a search for and review of the record;
7 and

8 (2) Exceed ten cents (10¢) per page.

9
10 25-43-120. Inspection of personal information in records and
11 accounting.

12 (a)(1) Except as otherwise provided in this chapter, an agency shall
13 permit an individual upon request and proper identification to inspect all
14 the personal information in any record that is maintained by the agency and:

15 (A) Concerns the individual; or

16 (B) References the individual.

17 (2) The inspection shall be within:

18 (A) Thirty (30) days of the agency's receipt of the
19 request for records if the records are maintained at the agency's offices;
20 and

21 (B) Sixty (60) days of the agency's receipt of the request
22 for records if the requested records are in storage at another location
23 besides the agency's offices.

24 (3) Failure to respond within these time limits is a denial of
25 the request.

26 (b)(1) The agency shall within fifteen (15) days of the inspection
27 permit the individual to:

28 (A) Inspect all the personal information in the record;
29 and

30 (B) Have an exact copy made of all or any portion of the
31 record.

32 (2) The agency may allow the individual's agent to inspect the
33 record or obtain a copy of the record if the individual provides a written
34 statement authorizing disclosure of the individual's record to the other
35 person.

36 (c) The agency shall present the information in the record in a form

1 reasonably comprehensible to the general public.

2 (d) If an agency is unable to access a record by reference to name
3 only, or when access by name only would impose an unreasonable administrative
4 burden, the agency may require the individual to submit other identifying
5 information that will facilitate access to the record.

6 (e)(1) If an individual is entitled under this chapter to gain access
7 to the information in a record containing personal information and requests
8 that the information be provided by mail, a copy of the information shall be
9 provided to the individual by mail.

10 (2) The individual requesting the information shall pay the
11 price of postage.

12
13 25-43-121. Amendment of records.

14 (a) If an individual requests in writing an amendment to a record, the
15 agency shall within thirty (30) days of receipt of the request:

16 (1) Make each requested amendment to the record that the
17 individual states in his or her written request is not accurate, relevant,
18 timely, or complete and inform the individual of the amendments made; or

19 (2) Inform the individual of the:

20 (A) Denial of the request to amend the record;

21 (B) Reason for the denial;

22 (C) Procedures established by the agency for the
23 individual to request a review by the head of the agency or an official
24 specifically designated by the head of the agency of the denial to amend; and

25 (D) Name, title, and business address of the reviewing
26 official.

27 (b) This section does not apply to a record evidencing property
28 rights.

29
30 25-43-122. Denial of amendment of records – Review and dispute.

31 (a)(1) If an individual disagrees with an agency's denial of a request
32 to amend a record, the individual may request a review of the denial by:

33 (A) The head of the agency; or

34 (B) An official designated by the head of such agency.

35 (2) The review shall be completed and a final determination
36 shall be made no later than thirty (30) days after the request for review

1 unless the head of the agency extends such review no more than thirty (30)
2 days for good cause.

3 (b)(1) If after review the reviewing official denies the request to
4 amend the record, the individual may file with the agency a statement of
5 reasonable length stating the reasons for the individual's disagreement.

6 (2) If an individual has filed a statement of disagreement under
7 this subsection, the agency shall:

8 (A) Clearly note any portion of the record which is
9 disputed; and

10 (B) Make copies of the individual's statement of
11 disagreement and copies of a concise statement of the agency's reasons for
12 not making the amendment available to any individual or agency the disputed
13 record is disclosed to.

14 (c) This section does not apply to a record evidencing property
15 rights.

16
17 25-43-123. Promises or understandings concerning the confidentiality
18 of a source.

19 (a) If confidential source information was received before the
20 enactment date of this act or with the promise to keep the identity of the
21 source of the information confidential and the source is not in a supervisory
22 position with respect to the individual to whom the record containing the
23 confidential source information pertains, the agency shall not identify the
24 source of the confidential source information.

25 (b) The agency may provide the requesting individual with a:

26 (1) Copy of the confidential source information with the source
27 redacted from the copy; or

28 (2) Summary of the substance of the confidential source
29 information.

30 (c) "Supervisory position" does not include a chairperson of an
31 academic department of an institution of higher education.

32 (d)(1) As used in this section, "confidential source information"
33 means information compiled for the purpose of determining suitability,
34 eligibility, or qualifications for:

35 (A) Employment, advancement, renewal of appointment, or
36 promotion;

- 1 (B) Status as adoptive parents;
- 2 (C) Receipt of state contracts; or
- 3 (D) Licensing.

4 (2) "Confidential source information includes without limitation
 5 a letter of recommendation.

6 (e) This section does not apply to a record evidencing property
 7 rights.

8

9 25-43-124. Nondisclosure of personal information to an individual to
 10 whom information pertains.

11 (a) An agency may withhold personal information from an individual to
 12 whom the information pertains if the information:

13 (1) Is compiled for the purpose of identifying individual
 14 criminal offenders and alleged offenders and consists only of:

- 15 (A) Identifying data;
- 16 (B) Notations of arrests; and
- 17 (C) The nature and disposition of criminal charges,

18 sentencing, confinement, release, and parole and probation status;

19 (2) Is compiled for the purpose of a criminal investigation;

20 (3) Is contained in a record that could identify an individual
 21 and is compiled in the process of enforcement of the criminal laws;

22 (4) If the information is withheld to prevent an investigation
 23 that may be compromised, is maintained for the purpose of an investigation
 24 of:

25 (A) An individual's fitness for licensure or public
 26 employment;

27 (B) A grievance or complaint; and

28 (C) A suspected civil offense;

29 (5) Would compromise the objectivity or fairness of a
 30 competitive examination:

31 (A) For employment, appointment, or promotion;

32 (B) That is a prerequisite to licensure; or

33 (C) To determine scholastic aptitude;

34 (6) Pertains to the physical or psychological condition of the
 35 individual and the agency determines that disclosure would be detrimental to
 36 the individual unless upon the individual's written authorization the

1 information is disclosed to a licensed medical practitioner or psychologist
2 designated by the individual; or

3 (7) Is required by law to be withheld from the individual to
4 whom it pertains.

5 (b) The identity of an individual who provided information for the
6 investigation may be withheld under § 25-43-123.

7 (c) This section does not deny an individual access to information
8 relating to him or her if access is allowed by another law.

9
10 25-43-125. Procedure pursuant to a finding of exemption from access.

11 (a) Except as provided in subsection (c) of this section, if the
12 agency determines that information requested under § 25-43-120 is exempt
13 from access, it shall inform the individual in writing of the agency's
14 finding that disclosure is not required by law.

15 (b)(1) Except as provided in subsection (c) of this section, each
16 agency shall:

17 (A) Review the agency's determination that information is
18 exempt from access under § 25-43-120 within thirty (30) days of the receipt
19 of a request by an individual directly affected by the determination; and

20 (B) Inform the individual in writing of the findings of
21 the review.

22 (2) The review shall be conducted by the head of the agency or
23 an official specifically designated by the head of the agency.

24 (c)(1) The agency may petition the Pulaski County Circuit Court or the
25 circuit court with jurisdiction in the circuit in which the request is
26 maintained to issue an ex parte order authorizing the agency to respond to
27 the individual that no record is maintained if the agency believes that
28 compliance with subsection (a) of this section would:

29 (A) Interfere with attempts to apprehend a person who is
30 wanted for committing a crime;

31 (B) Interfere with attempts to prevent the commission of a
32 crime; or

33 (C) Endanger the life of an informant or other person
34 submitting information contained in the record.

35 (2) A proceeding before the court under subdivision (c)(1) of
36 this section shall be in camera.

1 (3)(A) The judge shall issue an order authorizing the agency to
2 respond to the individual that no record is maintained by the agency if the
3 judge finds that there are reasonable grounds to believe that compliance with
4 subsection (a) of this section will:

5 (i) Interfere with attempts to apprehend an
6 individual who is wanted for committing a crime;

7 (ii) Interfere with attempts to prevent the
8 commission of a crime; or

9 (iii) Endanger the life of an informant or other
10 individual submitting information contained in the record.

11 (B) The order:

12 (i) Shall not be issued for longer than thirty (30)
13 days; and

14 (ii) May be renewed at thirty-day intervals.

15 (4) If a request pursuant to this section is received after the
16 expiration of the order, the agency shall:

17 (A) Respond pursuant to subsection (a) of this section; or

18 (B) Seek a new order under this section.

19
20 25-43-126. Disclosure of personal information relating to others.

21 (a) If an agency discloses information contained in a record to an
22 individual, the agency shall redact any personal information relating to
23 another individual that is contained in the record from the record.

24 (b) This section does not authorize withholding the identities of
25 sources except as provided under §§ 25-43-123 and 25-43-124.

26
27 25-43-127. Redaction of records.

28 An agency may redact information that is exempt from disclosure under
29 this chapter from the record before disclosing requested information to an
30 individual.

31
32 25-43-128. Civil actions against agencies and injunction.

33 (a) An individual may file a civil action against an agency if the
34 agency violates a provision of this chapter.

35 (b) If a civil action is filed under this section:

36 (1) The agency must prove they have acted in compliance with

1 this chapter; and

2 (2) If the court finds the agency to have violated this chapter,
3 the court may order the agency to disclose the records or otherwise comply
4 with the provision.

5 (c) If the court finds a knowing violation of this chapter by the
6 agency, the court may require the agency to pay:

7 (1) The complainant's reasonable attorneys fees and litigation
8 costs incurred as a result of the civil action under this section; and

9 (2) Actual damages sustained by the individual, including
10 damages for mental suffering.

11 (d)(1) An action under this section shall be brought in a circuit
12 court with jurisdiction in which:

13 (A) The complainant resides;

14 (B) The complainant has his or her principal place of
15 business; or

16 (C) The defendant agency's records are situated.

17 (2)(A) Except as provided under subdivision (d)(2)(B) of this
18 section, the action under this section shall be brought within two (2) years
19 of the date on which the cause of action arises.

20 (B) If the defendant agency has materially and willfully
21 misrepresented information that is material to the establishment of the
22 defendant agency's liability and that is required to be disclosed to an
23 individual who is the subject of the information, the action may be brought
24 at any time within two (2) years after discovery by the complainant of the
25 misrepresentation.

26 (e) The Attorney General or a prosecuting attorney with jurisdiction
27 may bring an action on behalf of the people of the State of Arkansas to
28 enjoin an agency from noncompliance with a provision of this chapter in
29 circuit court.

30
31 25-43-129. Intentional disclosure of personal information – Civil
32 action.

33 (a) An individual who has had personal information about him or her
34 released in violation of this chapter may bring a civil action against a
35 person who:

36 (1) Is not an employee of the state or local government agency

1 acting in his or her official capacity; and

2 (2) Intentionally discloses information not otherwise public
3 which he or she knew or should have known was obtained from personal
4 information maintained by a state agency.

5 (b) If the court finds a person to be in violation of this section,
6 the court:

7 (1) May order special or general damages; and

8 (2) Shall award:

9 (A) At least two thousand five hundred dollars (\$2,500) in
10 exemplary damages; and

11 (B) Attorney's fees and litigation costs reasonably
12 incurred in the suit.

13
14 25-43-130. False pretenses – Misdemeanor.

15 A person who knowingly requests or obtains a record containing personal
16 information from an agency in violation of this subchapter and under false
17 pretenses is guilty of Class A misdemeanor.

18
19 25-43-131. Distribution of name and address for commercial purposes –
20 Prohibited.

21 An agency shall not:

22 (1) Distribute an individual's name and address for commercial
23 purposes; or

24 (2) Sell or rent an individual's name and address.

25
26 25-43-132. Mailing and contact information lists – Removal of
27 information.

28 If an agency maintains a mailing or contact information list and an
29 individual requests that his or her name, address, and contact information be
30 removed from that mailing list the agency shall remove the requested
31 information from the list, unless the list is exclusively used by the agency
32 to directly contact the individual.

33
34 25-42-133. Liens or encumbrances.

35 If an agency has recorded a document creating a lien or encumbrance on
36 real property in favor of the state, this chapter shall not prohibit the

1 agency from disclosing information relating to the identity of the person
2 against whom the lien or encumbrance has been recorded for the purpose of
3 distinguishing the person from another person bearing the same or a similar
4 name.

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