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Statewide Impact *Changes– 2006 General Session
Title 63, Chapter 2, Government Records Access and Management Act
Summary of 18 Key Changes

***Each bill is effective on May 1, 2006, except H.B. 258 which became effective on February 6, 2006**

Key Change	Bill Language
<p>1. Modifies the definition of a record to exclude a personal note or personal communication prepared or received by an employee or officer of a governmental entity in the employee's or officer's private capacity</p>	<p>"(b) "Record" does not mean: <u>(i) a personal note or personal communication prepared or received by an employee or officer of a governmental entity in the employee's or officer's private capacity;</u>" <i>H.B. 12 amendment to Section 63-2-103</i></p>
<p>2. Provides that a telephone number or similar code used to access a mobile communication device used by a public employee or officer is not classified as a record if an alternate number for contacting the employee or officer is designated as a public record</p>	<p>"(b) "Record" does not mean: ... <u>(xi) a telephone number or similar code used to access a mobile communication device that is used by an employee or officer of a governmental entity, provided that the employee or officer of the government entity has designated at least one business telephone number that is a public record as provided in Section 63-2-301;</u>" <i>H.B. 258 and H.B. 188 amendments to Section 63-2-103</i></p>

Key Change	Bill Language
<p>3. Provides that in response to a request, a governmental entity is not required to:</p> <ul style="list-style-type: none"> • compile, format, manipulate, package, summarize, or tailor information; • provide a record in a particular format, medium, or program; or • under certain circumstances, fulfill a person's records request if the information requested is accessible in a public publication produced by the governmental entity 	<p>"(8) (a) [A] <u>In response to a request, a governmental entity is not required to:</u></p> <p><u>(i) create a record [in response to a request.];</u></p> <p><u>(ii) compile, format, manipulate, package, summarize, or tailor information;</u></p> <p><u>(iii) provide a record in a particular format, medium, or program not currently maintained by the governmental entity ;</u></p> <p><u>(iv) fulfill a person's records request if the request unreasonably duplicates prior records requests from that person; or</u></p> <p><u>(v) fill a person's records request if:</u></p> <p><u>(A) the record requested is accessible in the identical physical form and content in a public publication or product produced by the governmental entity receiving the request;</u></p> <p><u>(B) the governmental entity provides the person requesting the record with the public publication or product; and</u></p> <p><u>(C) the governmental entity specifies where the record can be found in the public publication or product."</u></p> <p><i>H.B. 28 amendment to Section 63-2-201</i></p>
<p>4. Allows rather than requires a governmental entity to provide a record in a particular form if the governmental entity determines it is able to do so without unreasonably interfering with its duties</p>	<p>"(b) Upon request, a governmental entity [shall] <u>may provide a record in a particular [format] form under Subsection (8)(a)(ii) or (iii) if:</u></p> <p><u>(i) the governmental entity determines it is able to do so without unreasonably interfering with the governmental entity's duties and responsibilities;..."</u></p> <p><i>H.B. 28 amendment to Section 63-2-201</i></p>

Key Change	Bill Language
<p>5. Allows a governmental entity to disclose information protected under item 9 below if:</p> <ul style="list-style-type: none"> • the head of the governmental entity determines that the disclosure is mutually beneficial to the subject of the record, the governmental entity, and to the public because it serves a public purpose related to public safety or consumer protection; and • the person who receives the record agrees not to use or allow its use for advertising or solicitation purposes 	<p><u>"(c) In addition to the disclosure under Subsection (5)(b), a governmental entity may disclose a record that is protected under Subsection 63-2-304(51) if:</u></p> <p><u>(i) the head of the governmental entity, or a designee, determines that the disclosure:</u></p> <p><u>(A) is mutually beneficial to:</u></p> <p><u>(I) the subject of the record;</u></p> <p><u>(II) the governmental entity; and</u></p> <p><u>(III) the public; and</u></p> <p><u>(B) serves a public purpose related to:</u></p> <p><u>(I) public safety; or</u></p> <p><u>(II) consumer protection; and</u></p> <p><u>(ii) the person who receives the record from the governmental entity agrees not to use or allow the use of the record for advertising or solicitation purposes."</u></p> <p><i>H.B. 28 amendment to Section 63-2-201</i></p>
<p>6. Requires that a person making a request for a record shall submit the request to the governmental entity that prepared, owns, or retains the record and prohibits a governmental entity that has received a record as a shared record from another governmental entity for auditing purposes from providing the record</p>	<p><u>"(2) (a) Subject to Subsection (2)(b), a person making a request for a record shall submit the request to the governmental entity that prepares, owns, or retains the record.</u></p> <p><u>(b) In response to a request for a record, a governmental entity may not provide a record that it has received under Section 63-2-206 as a shared record if the record was shared for the purpose of auditing, if the governmental entity is authorized by state statute to conduct an audit.</u></p> <p><u>(c) If a governmental entity is prohibited from providing a record under Subsection (2)(b), it shall:</u></p> <p><u>(i) deny the records request; and</u></p> <p><u>(ii) inform the person making the request that records requests must be submitted to the governmental entity that prepares, owns, or retains the record."</u></p> <p><i>S.B. 190 amendment to Section 63-2-204</i></p>

Key Change	Bill Language
<p>7. Requires private contractors or private providers that receive private, controlled, or protected records while working with or assisting a governmental entity to provide written assurance that the confidentiality of the records will be maintained</p>	<p><u>"(b) A governmental entity may provide a private, controlled, or protected record or record series to a contractor or a private provider according to the requirements of Subsection (6)(b). ...</u> <u>(6) (b) A contractor or a private provider may receive information under this section only if:</u> <u>(i) the contractor or private provider's use of the record or record series produces a public benefit that outweighs the individual privacy right that protects the record or record series;</u> <u>(ii) the record or record series it requests:</u> <u>(A) is necessary for the performance of a contract with a governmental entity;</u> <u>(B) will only be used for the performance of the contract with the governmental entity;</u> <u>(C) will not be disclosed to any other person; and</u> <u>(D) will not be used for advertising or solicitation purposes; and</u> <u>(iii) the contractor or private provider gives written assurance to the governmental entity that is providing the record or record series that it will adhere to the restrictions of this Subsection (6)(b)."</u> <i>H.B. 28 amendment to Section 63-2-206</i></p>
<p>8. Provides that internal communications that are part of the deliberative process in connection with the preparation of legislation between members of the Legislature or the Legislature's staff are protected records, unless the communications give notice of legislative action or policy</p>	<p>"The following records are protected if properly classified by a governmental entity: ...<u>(19)(a)...</u> <u>(b) (i) an internal communication that is part of the deliberative process in connection with the preparation of legislation between:</u> <u>(A) members of a legislative body;</u> <u>(B) a member of a legislative body and a member of the legislative body's staff; or</u> <u>(C) members of a legislative body's staff; and</u> <u>(ii) notwithstanding Subsection (19)(b)(i), a communication that gives notice of legislative action or policy may not be classified as protected under this section;"</u> <i>H.B. 12 amendments to Section 63-2-304</i></p>

Key Change	Bill Language
<p>9. Provides that, in certain circumstances, a person's home address, home telephone number, or personal mobile phone number are protected records, if:</p> <ul style="list-style-type: none"> • the information is required to be provided in order to comply with a law; and • by complying with the law and due to the nature of the law the subject of the record has a reasonable expectation that the information will be protected 	<p>"The following records are protected if properly classified by a governmental entity: ... <u>(51) unless otherwise classified as public under Section 63-2-301 and except as provided under Section 41-1a-116, an individual's home address, home telephone number, or personal mobile phone number, if:</u> <u>(a) the individual is required to provide the information in order to comply with a law, ordinance, rule, or order of a government entity; and</u> <u>(b) the subject of the record has a reasonable expectation that this information will be kept confidential due to:</u> <u>(i) the nature of the law, ordinance, rule, or order; and</u> <u>(ii) the individual complying with the law, ordinance, rule, or order."</u> <i>H.B. 28 amendment to Section 63-2-304</i></p>
<p>10. Provides that, in response to a GRAMA request for the telephone number, email address, and street address of a current or former government employee, a governmental entity must provide an email address and is only required to provide a single telephone number, email address, and street address</p>	<p><u>"(1) As used in this section:</u> <u>(a) "Business address" means a single address of a governmental agency designated for the public to contact an employee or officer of the governmental agency.</u> <u>(b) "Business email address" means a single email address of a governmental agency designated for the public to contact an employee or officer of the governmental agency.</u> <u>(c) "Business telephone number" means a single telephone number of a governmental agency designated for the public to contact an employee or officer of the governmental agency.</u> [(1)] <u>(2) The following records are public...</u> <u>(b) [names] the name, gender, ... business [addresses] address, business email address, business telephone [numbers] number, ..."</u> <i>H.B. 258 amendments to Section 63-2-304</i></p>
<p>11. Permits the State Records Committee to:</p> <ul style="list-style-type: none"> • provide notice of a hearing date within 5 business days after receiving a notice of appeal (instead of 3); and • schedule a hearing within 52 days after receiving the notice of appeal (instead of 45) 	<p><u>"(4) (a) Except as provided in Subsection (4)(b), no later than [three] <u>five</u> business days after receiving a notice of appeal, the executive secretary of the records committee shall:</u> <u>(i) 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] <u>52</u> calendar days after the date the notice of appeal was filed except that the records committee may schedule an expedited hearing upon application of the petitioner and good cause shown;"</u> <i>H.B. 117 amendments to Section 63-2-403</i></p>

Key Change	Bill Language
<p>12. Permits the State Records Committee to issue a signed order within 5 business days of a hearing date (instead of 3)</p>	<p>"(11) (a) No later than [three] <u>five</u> 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." <i>H.B. 117 amendments to Section 63-2-403</i></p>
<p>13. Provides that the State Records Committee's failure to issue a decision within 57 (instead of 35) days after the date the notice of appeal is filed constitutes a denial of the appeal</p>	<p>"(13) If the records committee fails to issue a decision within [35] <u>57</u> calendar 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 the petitioner considers the appeal denied." <i>H.B. 117 amendments to Section 63-2-403</i></p>
<p>14. Requires a governmental entity to give notice to persons who provide potentially private or controlled information as to how the information is currently used and shared</p>	<p>"(2) (a) [Upon request, each] A governmental entity shall [explain] <u>provide notice of the following to [an individual] a person that is asked to furnish information that could be classified as a private or controlled record:</u></p> <p style="padding-left: 40px;">[(a)] (i) the reasons the [individual] person is asked to furnish [to the governmental entity] <u>the information [that could be classified private or controlled];</u></p> <p style="padding-left: 40px;">[(b)] (ii) the intended uses of the information; [and]</p> <p style="padding-left: 40px;">[(c)] (iii) the consequences for refusing to provide the information[-]; <u>and</u></p> <p style="padding-left: 40px;">(iv) <u>the classes of persons and the governmental entities that currently:</u></p> <p style="padding-left: 80px;">(A) <u>share the information with the governmental entity; or</u></p> <p style="padding-left: 80px;">(B) <u>receive the information from the governmental entity on a regular or contractual basis.</u></p> <p style="padding-left: 40px;">(b) The notice shall be:</p> <p style="padding-left: 80px;">(i) <u>posted in a prominent place at all locations where the governmental entity collects the information; or</u></p> <p style="padding-left: 80px;">(ii) <u>included as part of the documents or forms that are used by the governmental entity to collect the information."</u></p> <p><i>H.B. 12 amendments to Section 63-2-601</i></p>

Key Change	Bill Language
<p>15. Clarifies that certain government entities shall submit records retention schedules for approval by the State Records Committee and provides that a government entity that does not submit a retention schedule for approval is governed by the model retention schedule maintained by the state archivist</p>	<p>"...<u>each governmental entity shall file with the State Records Committee a proposed schedule for the retention and disposition of each type of material that is defined as a record under this chapter.</u></p> <p><u>(b) After a retention schedule is reviewed and approved by the State Records Committee... the governmental entity shall maintain and destroy records in accordance with the retention schedule.</u></p> <p><u>(c) If a governmental entity subject to the provisions of this section has not received an approved retention schedule for a specific type of material that is classified as a record under this chapter, the model retention schedule maintained by the state archivist shall govern the retention and destruction of that type of material.</u>"</p> <p><i>H.B. 12 amendments to Section 63-2-604</i></p>
<p>16. Clarifies that the judiciary and the Legislature may set their own retention schedule, records management, notice, and amendment policies</p>	<p>"(b) The judiciary is not subject to [Part 5 of this chapter] <u>Parts 5, State Records Committee, and 6, Collection of Information and Accuracy of Records.</u>"</p> <p>"(2) (a) The Legislature and its staff offices are not subject to Section 63-2-203 or to Part 4 [or], <u>Appeals, 5 [of this chapter], State Records Committee, or 6, Collection of Information and Accuracy of Records.</u>"</p> <p><i>H.B. 12 amendments to Section 63-2-702 and 63-2-703</i></p>
<p>17. Provides that the improper use of a record is a class B misdemeanor</p>	<p>"(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], <u>provides a copy of, or improperly uses a private, controlled, or protected record [to any person] knowing that [such] the disclosure or use is prohibited under this chapter, is guilty of a class B misdemeanor.</u>"</p> <p><i>H.B. 28 amendment to Section 63-2-801</i></p>
<p>18. Requires the chief administrative officer of a governmental agency to ensure training is provided on GRAMA procedures and requirements to certain employees</p>	<p>"The chief administrative officer of each governmental entity shall:</p> <p>...</p> <p><u>(3) ensure that officers and employees of the governmental entity that receive or process records requests receive required training on the procedures and requirements of this chapter;</u>"</p> <p><i>H.B. 188 amendments to Section 63-2-903</i></p>

Prepared by the Office of Legislative Research and General Counsel, March 2006

Sources: H.B. 12 Amendments to Government Records Access and Management Act (Rep. D. Aagard)
H.B. 28 Access and Fee Amendments to Government Records Access and Management Act (Rep. D. Aagard)
H.B. 117 Grama Records Committee Appeal (Rep. C. Moss)
H.B. 188 Government Records Access and Management Act Revisions (Rep. C. Frank)
H.B. 258 Government Records Access and Management Act - Public Records (Rep. B. Ferry)
S.B. 190 Shared Government Records Amendments (Sen. M. Dmitrich)