

CHAPTER 6 PUBLIC RECORDS

Law Review Articles:

The Right to Participate and the Right to Know in Montana, Snyder, 66 Mont. L. Rev. 297 (2005).

Part 1 Public Records Generally

Law Review Articles:

Placing Court Records Online: Balancing the Public and Private Interests, Sudbeck, 27 Just. Sys. J. 268 (2006).

Agency E-Mail and the Public Records Laws--Is the Fox Now Guarding the Henhouse?, Bryan & Reynolds, 33 Stetson L. Rev. 649 (2004).

Disappearing Fee Awards and Civil Enforcement of Public Records Laws, Hull, 52 U. Kan. L. Rev. 721 (2004).

Struggling With the Application of the Freedom of Information Act to Computerized Government Records, Dillon, 13 J. Marshall J. Computer & Info. L. 123 (1994).

2-6-101. Definitions. (1) Writings are of two kinds:

(a) public; and

(b) private.

(2) Public writings are:

(a) the written acts or records of the acts of the sovereign authority, of official bodies and tribunals, and of public officers, legislative, judicial, and executive, whether of this state, of the United States, of a sister state, or of a foreign country, except records that are constitutionally protected from disclosure;

(b) public records, kept in this state, of private writings, including electronic mail, except as provided in 22-1-1103 and 22-3-807 and except for records that are constitutionally protected from disclosure.

(3) Public writings are divided into four classes:

(a) laws;

(b) judicial records;

(c) other official documents;

(d) public records, kept in this state, of private writings, including electronic mail.

(4) All other writings are private.

History: En. Secs. 3170, 3171, 3172, 3182, C. Civ. Proc. 1895; re-en. Secs. 7895, 7896, 7897, 7900, Rev. C. 1907; re-en. Secs. 10539, 10540, 10541, 10544, R.C.M. 1921; Cal. C. Civ. Proc. Secs. 1887, 1888, 1889, 1894; re-en. Secs. 10539, 10540, 10541, 10544, R.C.M. 1935; R.C.M. 1947, 93-1001-1, 93-1001-2, 93-1001-3, 93-1001-6; amd. Sec. 4, Ch. 476, L. 1985; amd. Sec. 11, Ch. 748, L. 1991; amd. Sec. 1, Ch. 485, L. 1999; amd. Sec. 2, Ch. 77, L. 2001.

Compiler's Comments:

2001 Amendment: Chapter 77 in (2)(b) and (3)(d) after "writings" inserted "including electronic mail". Amendment effective July 1, 2001.

1999 Amendment: Chapter 485 in (2)(a) and (2)(b) at end inserted exception clause. Amendment effective October 1, 1999.

Severability: Section 4, Ch. 485, L. 1999, was a severability clause.

1991 Amendment: In (2)(b) inserted reference to 22-3-807. Amendment effective July 1, 1991.

1985 Amendment: In (2)(b) at end inserted exception clause.

Case Notes:

Dissemination of Incomplete Document Used to Make Decision -- Right to Participate Entails Complying With Right to Know: A school district assembled a group of people to research and advise the

district on the closure of schools, and a member of the group summarized the closure research information on a computer-generated spreadsheet and delivered various versions of the spreadsheet to various people and groups. The version given the school district contained a system rating the schools and explaining the rating system, but the group of parents that plaintiff belonged to was given a version not containing the rating system when a member of the group requested a copy. The school district told the group that a spreadsheet comparing the schools did not exist. The spreadsheet was a document of a public body subject to public inspection prior to the time that the school district's board met and used the spreadsheet to help determine which schools to close. The school district violated plaintiff's right to examine public documents. At a minimum, the "reasonable opportunity" standard articulated in Art. II, sec. 8, Mont. Const., and 2-3-111 for the right to participate demands compliance with the right to know contained in Art. II, sec. 9, Mont. Const. When the school district violated plaintiff's right to know, it reduced what should have been a genuine interchange into a mere formality. Bryan could and did voice her opinion to the school district, but did so without the ratings information contained on the version of the spreadsheet used by the school district. Therefore, the school district also violated her Art. II, sec. 8, Mont. Const., right of participation. The Supreme Court stated that this violation tainted the entire process from start to finish and ruled that the school district's closure decision was void. The court stated that on remand, the school district should allow plaintiff an opportunity to rebut the closure decision and should then reexamine the decision and affirm or modify it. *Bryan v. Yellowstone County Elementary School District No. 2*, 2002 MT 264, 312 M 257, 60 P3d 381 (2002).

Standing of Parent When Information on Proposed School Closure Requested by Another: School district parents, including Bryan, worked in concert to rebut a school closure recommendation, delegating duties among themselves. Schroeder, but not Bryan, requested information from the school authorities, which was not received. Bryan sued as a result of the school closure. That Bryan did not personally request the information did not prevent her from having standing to claim a violation of Art. II, sec. 9, Mont. Const. *Bryan v. Yellowstone County Elementary School District No. 2*, 2002 MT 264, 312 M 257, 60 P3d 381 (2002).

Public Hearing -- Public Document: Plaintiffs filed a libel action against the state of Montana, its agents, and its agencies for alleged libelous statements published in various Montana newspapers. The newspaper articles were based on a letter written by a state employee and submitted into evidence in a relicensure hearing. The District Court granted summary judgment for defendants, and the Supreme Court affirmed. When the letter was submitted into evidence in a public hearing, it became a public writing. All statements made by defendants were communications made in the proper discharge of their official duties. Plaintiffs did not sustain their burden of proof that genuine issues of material fact existed to be tried; therefore, defendants were entitled to summary judgment as a matter of law. *Denny Driscoll Boys Home v. St.*, 227 M 177, 737 P2d 1150, 44 St. Rep. 991 (1987).

Preliminary Court Pleadings -- Public's Right to Know: In a defamation case, an affirmative defense based on the privilege under 27-1-804(4) extends to newspaper accounts of preliminary pleadings. The Supreme Court acknowledged that the public has a right to know what happens in the judicial system, including the filing of civil suits. *Cox v. Lee Enterprises, Inc.*, 222 M 527, 723 P2d 238, 43 St. Rep. 1476 (1986), followed, with respect to Commission on Practice investigation, in *Lence v. Hagadone Inv.*, 258 M 433, 853 P2d 1230, 50 St. Rep. 601 (1993).

Land Records: A certified copy of portions of the minutes of the State Board of Land Commissioners relating to lands involved in a boundary action and reciting, in effect, that the federal government survey thereof had been incorrectly made, that the Board had ordered a resurvey by the state engineer, that adjustments were made to correct acreage inaccuracies in outstanding land contracts, etc., was admissible as an exhibit under this section and 93-1001-5, R.C.M. 1947 (now 2-6-102), as copies of public records. *Nemitz v. Reckards*, 98 M 229, 38 P2d 980 (1934).

Requirement for Report: A public officer cannot by incorporating in a report something the law does not require to be incorporated therein make the writing admissible in evidence as a public writing. *St. v. Yegen*, 74 M 126, 238 P 603 (1925), distinguished in *St. v. Ray*, 88 M 436, 294 P 368 (1930).

Verification of Reports: Reports made to the State Bank Examiner (now State Banking Board, Department of Administration) by his deputies as to a private bank's financial condition, not verified or signed, were not admissible in evidence in a prosecution of the owner for receiving deposits while the bank was insolvent as public writings in the absence of proof of their contents. *St. v. Yegen*, 74 M 126, 238 P 603 (1925).

Attorney General Opinions:

Retirees of Teachers' Retirement System -- Disclosure of Benefits: The individual rights of privacy in the amounts of retirement benefits of members of the Montana Teachers' Retirement System do not clearly exceed the public's right to know. Retirement benefits are paid with public funds and, therefore, disclosure is subject to the public's interest in how pension funds are calculated and how taxpayer funds are spent. 54 A.G. Op. 3 (2011).

Lists of Destroyed Personal Property Not Subject to Disclosure: Lists of destroyed personal property, generated by an individual for no governmental function or purpose and not as the result of the fulfillment of a public employee's duty or for documenting government business, do not constitute public writings or records subject to disclosure laws. 45 A.G. Op. 17 (1993).

Buyer's Affidavit and Certification Subject to Public Disclosure: The buyer's affidavit and certification submitted to the Board of Housing pursuant to the mortgage credit certificate program is subject to public disclosure. 43 A.G. Op. 25 (1989).

Property Record Cards -- Public Inspection: The Department of Revenue may not withhold property record cards from public inspection. Although property record cards might not be "public writings", 2-6-102, concerning "public writings", is not controlling with respect to questions of public access. 39 A.G. Op. 17 (1981).

2-6-102. Citizens entitled to inspect and copy public writings. (1) Every citizen has a right to inspect and take a copy of any public writings of this state, except as provided in 22-1-1103, 22-3-807, or subsection (3) of this section and as otherwise expressly provided by statute.

(2) Every public officer having the custody of a public writing that a citizen has a right to inspect is bound to give the citizen on demand a certified copy of it, on payment of the legal fees for the copy, and the copy is admissible as evidence in like cases and with like effect as the original writing. The certified copy provision of this subsection does not apply to the public record of electronic mail provided in an electronic format.

(3) Records and materials that are constitutionally protected from disclosure are not subject to the provisions of this section. Information that is constitutionally protected from disclosure is information in which there is an individual privacy interest that clearly exceeds the merits of public disclosure, including legitimate trade secrets, as defined in 30-14-402, and matters related to individual or public safety.

(4) A public officer may withhold from public scrutiny information relating to individual privacy or individual or public safety or security of public facilities, including jails, correctional facilities, private correctional facilities, and prisons, if release of the information may jeopardize the safety of facility personnel, the public, or inmates of a facility. Security features that may be protected under this section include but are not limited to architectural floor plans, blueprints, designs, drawings, building materials, alarms system plans, surveillance techniques, and facility staffing plans, including staff numbers and locations. A public officer may not withhold from public scrutiny any more information than is required to protect an individual privacy interest or safety or security interest.

History: En. Secs. 3180, 3181, C. Civ. Proc. 1895; re-en. Secs. 7898, 7899, Rev. C. 1907; re-en. Secs. 10542, 10543, R.C.M. 1921; Cal. C. Civ. Proc. Secs. 1892, 1893; re-en. Secs. 10542, 10543, R.C.M. 1935; R.C.M. 1947, 93-1001-4, 93-1001-5; amd. Sec. 5, Ch. 476, L. 1985; amd. Sec. 12, Ch. 748, L. 1991; amd. Sec. 2, Ch. 485, L. 1999; amd. Sec. 3, Ch. 77, L. 2001.

Compiler's Comments:

2001 Amendment: Chapter 77 in (2) inserted second sentence providing that the certified copy provision does not apply to the public record of electronic mail in an electronic format. Amendment effective July 1, 2001.

1999 Amendment: Chapter 485 in (1) inserted "or subsection (3) of this section"; inserted (3) regarding records, materials, and information constitutionally protected from disclosure; inserted (4) authorizing public officer to withhold certain information from public scrutiny; and made minor changes in style. Amendment effective October 1, 1999.

Severability: Section 4, Ch. 485, L. 1999, was a severability clause.

1991 Amendment: In (1) inserted reference to 22-3-807. Amendment effective July 1, 1991.

1985 Amendment: In (1) after "except", inserted "as provided in 22-1-1103 and".

Cross References:

Right to examine documents, Art. II, sec. 9, Mont. Const.

Minutes of meetings -- available subject to right of individual privacy, 2-3-212.

Records of officers open to public inspection, 2-6-104.
Settlement of claim against government -- governmental portion open to public inspection, 2-9-303,
2-9-304.
Election materials not public until canvassed, 13-15-301.
Ownership of public obligations -- no inspection, 17-5-1106.
Records of Medical Legal Panel confidential, 27-6-703.
Attachment -- filing not public until writ returned, 27-18-111.

Case Notes:

Publicly Filed Floodplain Study Not Considered Trade Secret -- Denial of Injunction to Prohibit Copying of Study Proper: Plaintiff conducted a floodplain study that was filed with the city of Kalispell as part of a property development permit request. Owners of nearby property sought to review and copy the study. The city allowed review of the study, but the request for a copy was denied without permission of plaintiff. Plaintiff denied the copy request and sought an injunction to prohibit the city from providing copies of the study, but the request for an injunction was denied, so plaintiff appealed, citing trade secrets and copyright protection. The Supreme Court noted that a trade secret must be the subject of reasonable efforts to maintain its secrecy. However, the study document was readily ascertainable by anyone who wished to view it, so plaintiff could not argue that the study was a confidential trade secret. Further, plaintiff failed to show that the contemplated use of the data would violate copyright law. Last, plaintiff argued that the District Court failed to engage in the constitutional balancing analysis required in this section, but the Supreme Court held that plaintiff did not establish any individual privacy or property interest that could be balanced against the merits of public disclosure. Thus, denial of the injunction request was affirmed. *Billmayer v. Kalispell*, 2007 MT 116, 337 M 242, 160 P3d 869 (2007).

Release of Redacted Student Disciplinary Records Not Violative of Family Educational Rights and Privacy Act: A Cut Bank newspaper sought redacted student disciplinary records related to school board actions following a BB gun incident at a local school. The District Court held that the federal Family Educational Rights and Privacy Act of 1974 (FERPA), 20 U.S.C. 1232(g), prohibited the school board from releasing the names of the students, any violations committed, and any action imposed without the consent of the students and their parents. The Supreme Court disagreed. The newspaper specifically requested that students' names be redacted from the disciplinary records and thus sought no information that would personally identify any students involved. Because FERPA does not prohibit disclosure of records that do not reveal personally identifying information, there was no basis under FERPA for the board's refusal to release the redacted public documents to the newspaper, nor was the newspaper's request clearly outweighed by any privacy interest at issue. The newspaper was therefore entitled to a redacted copy of the board's disciplinary records regarding disciplinary measures imposed on the students, and the District Court was reversed. *Bd. of Trustees, Cut Bank Pub. Schools v. Cut Bank Pioneer Press*, 2007 MT 115, 337 M 229, 160 P3d 482 (2007).

Public Service Commission Rules Creating Impermissible Presumption of Confidentiality in Trade Secrets: Several media organizations sought access to power company documents filed with the Public Service Commission. Applying its administrative rules, the Commission evaluated the power company's claims of confidentiality against basic trade secret law, found that the company had met the initial burden of establishing trade secrets, and concluded that because the media had presented no evidence or argument to the contrary, the company information was entitled to constitutional protection as a matter of law. The Supreme Court disagreed. To the extent that the Commission's rules relied on mere company representations that the information contained trade secrets, the Commission unconstitutionally shifted the initial burden of proof to the public to challenge the confidentiality claims, creating a presumption of confidentiality that directly conflicted with the public's right to view public records and the Commission's duty to make its records available to the public. The court held that a nonhuman entity seeking protective measures for alleged confidential materials filed with a governmental regulating agency must support its claim with a supporting affidavit making a prima facie showing that the materials constitute property rights that are protected by due process. Further, the showing must be more than conclusory and specific enough for the Commission, any objecting parties, and reviewing authorities to clearly understand the nature and basis of the confidentiality claim. The agency then must review the materials at the time of filing, in accordance with 30-14-402(4)(b) and supporting case law, and make an independent determination whether the materials are in fact property rights entitled to due process protection. To the extent that

Commission rules required less, the court directed revision of Commission rules to comport with this holding. *Great Falls Tribune v. Mont. Pub. Serv. Comm'n*, 2003 MT 359, 319 M 38, 82 P3d 876 (2003).

Dissemination of Incomplete Document Used to Make Decision -- Right to Participate Entails Complying With Right to Know: A school district assembled a group of people to research and advise the district on the closure of schools, and a member of the group summarized the closure research information on a computer-generated spreadsheet and delivered various versions of the spreadsheet to various people and groups. The version given the school district contained a system rating the schools and explaining the rating system, but the group of parents that plaintiff belonged to was given a version not containing the rating system when a member of the group requested a copy. The school district told the group that a spreadsheet comparing the schools did not exist. The spreadsheet was a document of a public body subject to public inspection prior to the time that the school district's board met and used the spreadsheet to help determine which schools to close. The school district violated plaintiff's right to examine public documents. At a minimum, the "reasonable opportunity" standard articulated in Art. II, sec. 8, Mont. Const., and 2-3-111 for the right to participate demands compliance with the right to know contained in Art. II, sec. 9, Mont. Const. When the school district violated plaintiff's right to know, it reduced what should have been a genuine interchange into a mere formality. Bryan could and did voice her opinion to the school district, but did so without the ratings information contained on the version of the spreadsheet used by the school district. Therefore, the school district also violated her Art. II, sec. 8, Mont. Const., right of participation. The Supreme Court stated that this violation tainted the entire process from start to finish and ruled that the school district's closure decision was void. The court stated that on remand, the school district should allow plaintiff an opportunity to rebut the closure decision and should then reexamine the decision and affirm or modify it. *Bryan v. Yellowstone County Elementary School District No. 2*, 2002 MT 264, 312 M 257, 60 P3d 381 (2002).

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Unconstitutionality of Department of Revenue Rule Concerning Confidentiality of Coal Severance Tax Information: Plaintiffs sought information regarding coal severance tax payments that had been routinely supplied to the Department of Revenue by coal mine operators prior to adoption of ARM 42.2.701 (now repealed), which declared certain information, such as tax returns that taxpayers are required to submit to the Department and Department-prepared documents that identify taxpayers, to be confidential. Plaintiffs challenged the rule on grounds that it violated constitutional and statutory rights to public information. The Department asserted that the rule was adopted to protect taxpayers' constitutional right to privacy and to inform the public of the Department's procedures regarding the confidentiality of tax information. The District Court found that the rule was adopted after balancing the public's right to know with the coal producers' right to privacy and that the producers had a reasonable and ongoing expectation of privacy that outweighed the public's right to know. On appeal, the Supreme Court disagreed, finding ARM 42.2.701 (now repealed) unconstitutional on its face. The rule presumes a wholesale constitutionally protected right to privacy for all taxpayers that prevails over public disclosure without balancing the taxpayers' right to privacy with the public's right to know. Prior to adoption of the rule, coal producers did not have an actual or subjective expectation of privacy in revenue information submitted to the Department. After the rule was adopted, the producers could assert a subjective expectation of privacy. However, based on a facially unconstitutional rule, the expectation was not one society would be willing to recognize as reasonable, especially when the information had been routinely available for nearly 20 years before ARM 42.2.701 (now repealed) was adopted. Neither prong of the two-part privacy test in *Great Falls Tribune Co., Inc. v. Day*, 1998 MT 133, 289 M 155, 959 P2d 508 (1998), having been met, a constitutionally protected privacy interest in the information was ruled out. *Assoc. Press, Inc. v. Dept. of Revenue*, 2000 MT 160, 300 M 233, 4 P3d 5, 57 St. Rep. 657 (2000).

Economic Advantage Inadequate Reason for Denial of Public Right to Observe Government Deliberations in Corrections Vendor Process: A newspaper company sought to restrain the Department of Corrections from excluding the public from meetings of the committee that reviewed proposals for operating private prison facilities. The District Court held that the public had no right to observe the

negotiation phase of the committee's work, but that once negotiations were completed, the process by which the conclusions were arrived at must be open to public observation. Both parties appealed. The Supreme Court noted that as part of an Executive Branch agency, the Department and the committee were considered governmental bodies pursuant to 2-15-104 for purposes of procurement and that under the constitutional right to know, proposals submitted by private vendors were considered documents of a public body or agency that, under this section, the public has a right to inspect. Under the two-part test in *Missoulian v. Bd. of Regents*, 207 M 513, 675 P2d 962 (1984), the only exception to the constitutional provision arises when the demand of individual privacy clearly exceeds the merits of public disclosure. The state contended that the meetings at issue were closed for economic advantage, but economic advantage is neither a privacy interest nor a sufficient reason for denying the public the opportunity to observe deliberations of public bodies or to examine public documents, including proposals submitted to the public body by a vendor, unless the proposal concerns a privacy interest involving legitimate trade secrets or individual safety. A public agency's desire for privacy does not provide an exception to the public's constitutional right to observe its government at work. To the extent that provisions in 18-4-304 or ARM 2.5.602 require exclusion of the public from the competitive bid process, those provisions are unconstitutional and unenforceable. *Great Falls Tribune Co., Inc. v. Day*, 1998 MT 133, 289 M 155, 959 P2d 508, 55 St. Rep. 524 (1998), following *Mtn. States Tel. & Tel. Co. v. Dept. of Public Service Regulation*, 194 M 277, 634 P2d 181 (1981), *State ex rel. Great Falls Tribune Co., Inc. v. District Court*, 238 M 310, 777 P2d 345 (1989), *Great Falls Tribune Co., Inc. v. Great Falls Pub. Schools*, 255 M 125, 841 P2d 502 (1992), and *Common Cause of Mont. v. Statutory Comm. to Nominate Candidates for Comm'r of Political Practices*, 263 M 324, 868 P2d 604 (1994). See also *Assoc. Press, Inc. v. Dept. of Revenue*, 2000 MT 160, 300 M 233, 4 P3d 5, 57 St. Rep. 657 (2000).

National Honor Society Records Not "Documents of Public Body" -- Writ of Mandate Properly Denied: The father of a high school student sought a writ of mandate to obtain names and rankings of teachers who evaluated the student and whose low rankings prevented the student from being admitted into the National Honor Society. The Supreme Court held that because the teachers acted voluntarily and the school did not keep records related to Honor Society membership, the documents sought were not "documents of a public body" as provided in the Montana Constitution. Therefore, the District Court's denial of the writ of mandate was correct. *Becky v. Butte-Silver Bow School District No. 1*, 274 M 131, 906 P2d 193, 52 St. Rep. 1154 (1995).

Affidavit -- Public Document: The provisions of Art. II, sec. 9, Mont. Const., apply to local government. The Clerk of the District Court is an office of local government. An affidavit filed with the Clerk of a District Court in support of a motion for leave to file a criminal charge or warrant is a document of a public body or agency of a subdivision of state government. *Assoc. Press v. St.*, 250 M 299, 820 P2d 421, 48 St. Rep. 958 (1991).

Request of Law Enforcement Records for School Project -- Information Beyond Public Reach: The District Court properly refused the request of a student who sought Sheriff's department information for a school project. Information requested included: (1) records of the daily log of phone calls; (2) case files of criminal investigations; (3) preemployment investigation reports; and (4) lists of arrested persons. Persons involved had an actual expectation of privacy, and the interests of society were furthered by recognition of the privacy interest as reasonable. The student had the right to view and record statistical information pursuant to 44-5-103, but the requested information was protected by the Montana Constitution and the Montana Criminal Justice Information Act of 1979 and was beyond the reach of the public sector. *Engrav v. Cragun*, 236 M 260, 769 P2d 1224, 46 St. Rep. 344 (1989).

Public Hearing -- Public Document: Plaintiffs filed a libel action against the state of Montana, its agents, and its agencies for alleged libelous statements published in various Montana newspapers. The newspaper articles were based on a letter written by a state employee and submitted into evidence in a relicensure hearing. The District Court granted summary judgment for defendants, and the Supreme Court affirmed. When the letter was submitted into evidence in a public hearing, it became a public writing. All statements made by defendants were communications made in the proper discharge of their official duties. Plaintiffs did not sustain their burden of proof that genuine issues of material fact existed to be tried; therefore, defendants were entitled to summary judgment as a matter of law. *Denny Driscoll Boys Home v. St.*, 227 M 177, 737 P2d 1150, 44 St. Rep. 991 (1987).

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including the filing of civil suits. *Cox v. Lee Enterprises, Inc.*, 222 M 527, 723 P2d 238, 43 St. Rep. 1476 (1986), followed, with respect to Commission on Practice investigation, in *Lence v. Hagadone Inv.*, 258 M 433, 853 P2d 1230, 50 St. Rep. 601 (1993).

Trade Secrets -- When to Be Disclosed and to Whom -- Protectable Property: A telephone utility was required to disclose trade secrets to the Public Service Commission (PSC) to aid in a decision on its rate increase request. The utility was entitled to a protective order preventing access to the secrets by the general public, but the Montana Consumer Counsel and any citizen whose interest related to the ratemaking function of the PSC could have access to the information. Use or disclosure of the trade secrets except for purposes of the ratemaking proceeding was prohibited. *Mtn. States Tel. & Tel. v. Dept. of Public Service Regulation*, 194 M 277, 634 P2d 181, 38 St. Rep. 1479 (1981). *Mtn. States* and its progeny were overruled to the extent that those decisions relied on the constitutional balancing test of the right to individual privacy against the public's right to examine documents or observe governmental deliberations as a basis of protecting trade secrets and other confidential proprietary information of nonhuman entities in *Great Falls Tribune v. Mont. Pub. Serv. Comm'n*, 2003 MT 359, 319 M 38, 82 P3d 876 (2003).

Selective Service Records: Evidence introduced by the state to show that defendant was over 18 years of age in the form of a record of the office of the local selective service board required to be kept by law, showing that defendant, a resident of another state the Governor of which held possession of the original, was registered under the Federal Service Act, was admissible under this section and section 93-1001-2, R.C.M. 1947 (now 2-6-101), there having been no objection made that the record related to a person other than defendant. *St. v. Kocher*, 112 M 511, 119 P2d 35 (1941).

Land Records: A certified copy of portions of the minutes of the State Board of Land Commissioners relating to lands involved in a boundary action and reciting, in effect, that the federal government survey thereof had been incorrectly made, that the Board had ordered a resurvey by the state engineer, that adjustments were made to correct acreage inaccuracies in outstanding land contracts, etc., was admissible as an exhibit under section 93-1001-2, R.C.M. 1947 (now 2-6-101), and this section as copies of public records. *Nemitz v. Reckards*, 98 M 229, 38 P2d 980 (1934).

Attorney General Opinions:

District Court Clerk Not Authorized to Charge Nonparty State Agency for Copies and Certification of Public Records: Access to and fees for copying public court records are not absolute and are controlled by state law. Fees allowed by law are enumerated in 25-1-201, and the collection of those fees is mandatory. Fees for preparing copies and for certification of documents are also specified in that section. Section 25-10-405 clarifies that fees are collectible from state agencies that are a party to an action but has no effect in cases in which the agency is not a litigant. In those cases, the rule in 7-4-2516 applies, exempting agencies of state and county government from paying official fees. Therefore, a Clerk of District Court may not charge a nonparty state agency for copies and certification of public District Court records. 47 A.G. Op. 3 (1997).

Lists of Destroyed Personal Property Not Subject to Disclosure: Lists of destroyed personal property, generated by an individual for no governmental function or purpose and not as the result of the fulfillment of a public employee's duty or for documenting government business, do not constitute public writings or records subject to disclosure laws. 45 A.G. Op. 17 (1993).

Property Record Cards -- Public Inspection: The Department of Revenue may not withhold property record cards from public inspection. Although property record cards might not be "public writings", 2-6-102, concerning "public writings", is not controlling with respect to questions of public access. 39 A.G. Op. 17 (1981).

Right to Know: The Board of Nurses (now Board of Nursing) must issue lists of registered nurses and licensed practical nurses to members of the public who wish to purchase them. 35 A.G. Op. 27 (1973).

2-6-103. Filing and copying fees. (1) The secretary of state shall charge and collect fees for filing and copying services.

(2) A member of the legislature or state or county officer may not be charged for any search relative to matters appertaining to the duties of the member's office or for a certified copy of any law or resolution passed by the legislature relative to the member's official duties.

(3) The secretary of state may not charge a fee, other than the fees authorized in 2-6-110, for providing electronic information.

(4) Fees must be collected in advance and, when collected by the secretary of state, are not refundable.

(5) Fees authorized by this section must be set and deposited in accordance with 2-15-405.

History: En. Sec. 410, Pol. C. 1895; amd. Sec. 1, p. 47, L. 1899; amd. Sec. 1, Ch. 127, L. 1903; amd. Sec. 1, Ch. 74, L. 1905; re-en. Sec. 165, Rev. C. 1907; amd. Sec. 1, Ch. 91, L. 1921; re-en. Sec. 145, R.C.M. 1921; Cal. Pol. C. Sec. 416; amd. Sec. 1, Ch. 50, L. 1935; re-en. Sec. 145, R.C.M. 1935; amd. Sec. 1, Ch. 116, L. 1961; amd. Sec. 141, Ch. 300, L. 1967; amd. Sec. 3, Ch. 185, L. 1971; amd. Sec. 1, Ch. 137, L. 1974; R.C.M. 1947, 25-102; amd. Sec. 5, Ch. 184, L. 1979; amd. Sec. 18, Ch. 429, L. 1979; amd. Sec. 2, Ch. 254, L. 1991; amd. Sec. 2, Ch. 411, L. 1993; amd. Sec. 1, Ch. 406, L. 1997; amd. Sec. 1, Ch. 125, L. 1999; amd. Sec. 6, Ch. 396, L. 2001.

Compiler's Comments:

2001 Amendment: Chapter 396 in (1) after "state" deleted "for services performed in the office" and after "fees" deleted "commensurate with costs"; at end of (4) deleted "and must be deposited into an account in the proprietary fund to the credit of the secretary of state. All income and interest earned on money in the account must be credited to the account"; and inserted (5) requiring fees to be set and deposited in accordance with 2-15-405. Amendment effective July 1, 2001.

1999 Amendment: Chapter 125 in (4) at end of first sentence after "deposited into" substituted "an account in the proprietary fund to the credit of the secretary of state" for "a proprietary fund" and inserted second sentence requiring credit of income and interest to the account; and made minor changes in style. Amendment effective July 1, 1999.

1997 Amendment: Chapter 406 in (1) substituted "commensurate with costs for filing and copying services" for language specifying dollar amount of fee for various services (see 1997 Session Law for former text); in (4), at end, substituted "into a proprietary fund" for "pursuant to 17-6-105"; deleted (5) that read: "(5) Within 120 days following the end of each fiscal year, the secretary of state shall deposit into the general fund from the proprietary fund any revenue collected in the proprietary fund during the prior fiscal year that is in excess of the amount appropriated from the proprietary fund for the current year"; and made minor changes in style. Amendment effective April 28, 1997.

1993 Amendment: Chapter 411 in (4), after "state", inserted "are not refundable"; inserted (5) requiring the deposit into the general fund of revenue in the proprietary fund that exceeds the amount appropriated from the proprietary fund for the current year; and made minor changes in style. Amendment effective July 1, 1993.

1991 Amendment: Inserted (3) regarding fees chargeable for providing electronic information.

Administrative Rules:

ARM 44.5.121 Miscellaneous fees.

Title 44, chapter 14, subchapter 3, ARM Records and information management -- fees.

2-6-104. Records of officers open to public inspection. Except as provided in 27-18-111 and 42-6-101, the public records and other matters, except records that are constitutionally protected from disclosure, in the office of any officer are at all times during office hours open to the inspection of any person.

History: En. Sec. 1136, Pol. C. 1895; re-en. Sec. 438, Rev. C. 1907; re-en. Sec. 455, R.C.M. 1921; Cal. Pol. C. Sec. 1032; re-en. Sec. 455, R.C.M. 1935; amd. Sec. 1, Ch. 112, L. 1945; R.C.M. 1947, 59-512(part); amd. Sec. 157, Ch. 480, L. 1997; amd. Sec. 3, Ch. 485, L. 1999.

Compiler's Comments:

1999 Amendment: Chapter 485 in middle inserted exception clause. Amendment effective October 1, 1999.

Severability: Section 4, Ch. 485, L. 1999, was a severability clause.

1997 Amendment: Chapter 480 near beginning, after "provided in", substituted "27-18-111 and 42-6-101" for "40-8-126 and 27-18-111".

Applicability: Section 173, Ch. 480, L. 1997 provided: "(1) [Sections 1 through 156] [Title 42, chapters 1 through 8, chapter 8 renumbered in Title 52, chapter 8, part 1] apply to proceedings commenced on or after October 1, 1997.

(2) A petition for adoption filed prior to October 1, 1997, is governed by the law in effect at the time the petition was filed.

(3) The putative father registry requirements apply to children born on or after October 1, 1997."

Internal References: Section 27-18-111 pertains to nondisclosure of complaints involving attachments until after filing the return of service of attachment.

Cross References:

Citizen's right to examine documents, Art. II, sec. 9, Mont. Const.
Citizens entitled to inspect and copy public writings, 2-6-102.
Office hours, 2-16-117.
Ownership of public obligations -- no inspection, 17-5-1106.

Case Notes:

Affidavit -- Public Document: The provisions of Art. II, sec. 9, Mont. Const., apply to local government. The Clerk of the District Court is an office of local government. An affidavit filed with the Clerk of a District Court in support of a motion for leave to file a criminal charge or warrant is a document of a public body or agency of a subdivision of state government. *Assoc. Press v. St.*, 250 M 299, 820 P2d 421, 48 St. Rep. 958 (1991).

Trade Secrets -- When to Be Disclosed and to Whom -- Protectable Property: A telephone utility was required to disclose trade secrets to the Public Service Commission (PSC) to aid in a decision on its rate increase request. The utility was entitled to a protective order preventing access to the secrets by the general public, but the Montana Consumer Counsel and any citizen whose interest related to the ratemaking function of the PSC could have access to the information. Use or disclosure of the trade secrets except for purposes of the ratemaking proceeding was prohibited. *Mtn. States Tel. & Tel. v. Dept. of Public Service Regulation*, 194 M 277, 634 P2d 181, 38 St. Rep. 1479 (1981). *Mtn. States* and its progeny were overruled to the extent that those decisions relied on the constitutional balancing test of the right to individual privacy against the public's right to examine documents or observe governmental deliberations as a basis of protecting trade secrets and other confidential proprietary information of nonhuman entities in *Great Falls Tribune v. Mont. Pub. Serv. Comm'n*, 2003 MT 359, 319 M 38, 82 P3d 876 (2003).

Referendum Petitions: Whether referendum petitions delivered to Clerk and Recorder for certification to Secretary of State are "public records" and so open to inspection, they are at least "other matters in the office of any officer" within this section, and Clerk and Recorder will be compelled by mandamus to permit inspection of them. *State ex rel. Halloran v. McGrath*, 104 M 490, 67 P2d 838 (1937).

Attorney General Opinions:

Property Record Cards -- Public Inspection: The Department of Revenue may not withhold property record cards from public inspection. Although property record cards might not be "public writings", 2-6-102, concerning "public writings", is not controlling with respect to questions of public access. 39 A.G. Op. 17 (1981).

Public's Right to Know: The salaries of teachers and administrators of a public school district are subject to inspection by the public. 36 A.G. Op. 28 (1975).

2-6-105. Removal of public records. Any record, a transcript of which is admissible in evidence, must not be removed from the office where it is kept, except upon the order of a court or judge in cases where the inspection of the record is shown to be essential to the just determination of the cause or proceeding pending or where the court is held in the same building with such office.

History: En. Sec. 3240, C. Civ. Proc. 1895; re-en. Sec. 7953, Rev. C. 1907; re-en. Sec. 10597, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1950; re-en. Sec. 10597, R.C.M. 1935; R.C.M. 1947, 93-1101-20(part).

2-6-106. Possession of records. Each public officer is entitled to the possession of all books and papers pertaining to that office or in the custody of a former incumbent by virtue of that office.

History: En. Sec. 1120, Pol. C. 1895; re-en. Sec. 427, Rev. C. 1907; re-en. Sec. 460, R.C.M. 1921; Cal. Pol. C. Sec. 1014; re-en. Sec. 460, R.C.M. 1935; R.C.M. 1947, 59-530; Sec. 2-6-303(1), MCA 1979; redes. 2-6-106 by Code Commissioner, 1979; amd. Sec. 46, Ch. 61, L. 2007.

Compiler's Comments:

2007 Amendment: Chapter 61 made minor changes in style. Amendment effective October 1, 2007.

Cross References:

Public records -- property of state, 2-6-205.

2-6-107. Proceedings to compel delivery of records. If any person, whether a former incumbent or another person, refuses or neglects to deliver to the actual incumbent any such books or papers, such actual incumbent may apply, by complaint, to any district court or judge of the county where the person so refusing or neglecting resides and the court or judge must proceed in a summary way, after notice to the adverse party, to hear the allegations and proofs of the parties and to order any such books and papers to be delivered to the petitioners.

History: En. Sec. 1121, Pol. C. 1895; re-en. Sec. 428, Rev. C. 1907; re-en. Sec. 461, R.C.M. 1921; Cal. Pol. C. Sec. 1015; re-en. Sec. 461, R.C.M. 1935; R.C.M. 1947, 59-531; Sec. 2-6-305, MCA 1979; redes. 2-6-107 by Code Commissioner, 1979.

2-6-108. Attachment and warrant to enforce. The execution of the order and delivery of the books and papers may be enforced by attachment as for a witness and also, at the request of the plaintiff, by a warrant directed to the sheriff or a constable of the county, commanding the sheriff or constable to search for the books and papers and to take and deliver them to the plaintiff.

History: En. Sec. 1122, Pol. C. 1895; re-en. Sec. 429, Rev. C. 1907; re-en. Sec. 462, R.C.M. 1921; Cal. Pol. C. Sec. 1016; re-en. Sec. 462, R.C.M. 1935; R.C.M. 1947, 59-532; Sec. 2-6-306, MCA 1979; redes. 2-6-108 by Code Commissioner, 1979; amd. Sec. 47, Ch. 61, L. 2007.

Compiler's Comments:

2007 Amendment: Chapter 61 made minor changes in style. Amendment effective October 1, 2007.

2-6-109. Prohibition on distribution or sale of mailing lists -- exceptions -- penalty. (1) Except as provided in subsections (3) through (9), in order to protect the privacy of those who deal with state and local government:

(a) an agency may not distribute or sell for use as a mailing list any list of persons without first securing the permission of those on the list; and

(b) a list of persons prepared by the agency may not be used as a mailing list except by the agency or another agency without first securing the permission of those on the list.

(2) As used in this section, "agency" means any board, bureau, commission, department, division, authority, or officer of the state or a local government.

(3) This section does not prevent an individual from compiling a mailing list by examination of records that are otherwise open to public inspection.

(4) This section does not apply to the lists of:

(a) registered electors and the new voter lists provided for in 13-2-115;

(b) the names of employees governed by Title 39, chapter 31;

(c) persons holding driver's licenses or Montana identification cards provided for under 61-5-127;

(d) persons holding professional or occupational licenses governed by Title 23, chapter 3; Title 37, chapters 1 through 4, 6 through 29, 31, 34 through 36, 40, 47, 48, 50, 51, 53, 54, 60, 65 through 69, 72, and 73; and Title 50, chapters 39, 72, 74, and 76; or

(e) persons certified as claims examiners under 39-71-320.

(5) This section does not prevent an agency from providing a list to persons providing prelicensing or continuing educational courses subject to state law or subject to Title 33, chapter 17.

(6) This section does not apply to the right of access by Montana law enforcement agencies.

(7) This section does not apply to a corporate information list developed by the secretary of state containing the name, address, registered agent, officers, and directors of business, nonprofit, religious, professional, and close corporations authorized to do business in this state.

(8) This section does not apply to the use by the public employees' retirement board of a mailing list of board-administered retirement system participants to send materials on behalf of a retiree organization formed for board-administered retirement system participants and with tax-exempt status under section 501(c)(4) of the Internal Revenue Code, as amended, for a fee determined by rules of the board, provided that the mailing list is not released to the organization.

(9) This section does not apply to a public school providing lists of graduating students to representatives of the armed forces of the United States or to the national guard for the purposes of recruitment.

(10) A person violating the provisions of subsection (1)(b) is guilty of a misdemeanor.

History: En. Sec. 1, Ch. 606, L. 1979; amd. Sec. 6, Ch. 683, L. 1985; amd. Sec. 1, Ch. 663, L. 1989; amd. Sec. 2, Ch. 289, L. 1991; amd. Sec. 1, Ch. 379, L. 1995; amd. Sec. 1, Ch. 412, L. 1995; amd. Sec. 1, Ch. 364, L. 1997; amd. Sec. 4, Ch. 370, L. 1997; amd. Sec. 126, Ch. 305, L. 1999; amd. Sec. 1, Ch. 319, L. 2001; amd. Sec. 11, Ch. 363, L. 2001; amd. Sec. 2, Ch. 441, L. 2003; amd. Sec. 1, Ch. 149, L. 2007; amd. Sec. 3, Ch. 125, L. 2009.

Compiler's Comments:

2009 Amendment: Chapter 125 in (4)(d) after "34" substituted "through 36" for "35" and following "73" deleted "and 76"; inserted (4)(e) concerning claims examiners; and made minor changes in style. Amendment effective July 1, 2009.

Preamble: The preamble attached to Ch. 125, L. 2009, provided: "WHEREAS, section 39-71-105, MCA, states that it is public policy for the workers' compensation system to provide protections for employees that are at "reasonably constant rates" for employers; and

WHEREAS, over time the types of occupations, persons, and businesses that are exempt from the coverage requirements of the Workers' Compensation Act have continually expanded; and

WHEREAS, solvency of the workers' compensation system requires a broad base of coverage."

2007 Amendment: Chapter 149 in (3) after "examination of" substituted "records" for "original documents or applications"; in (4) at end after "61-5-127" inserted "or to lists of persons holding professional or occupational licenses governed by Title 23, chapter 3; Title 37, chapters 1 through 4, 6 through 29, 31, 34, 35, 40, 47, 48, 50, 51, 53, 54, 60, 65 through 69, 72, 73, and 76; and Title 50, chapters 39, 72, 74, and 76"; and made minor changes in style. Amendment effective October 1, 2007.

Extension of Effective Date: Section 1, Ch. 99, L. 2005, amended sec. 9, Ch. 441, L. 2003, by extending the effective date imposed by Ch. 441 to October 1, 2007. Effective March 24, 2005.

Applicability Date Extended: Section 2, Ch. 99, L. 2005, amended sec. 10, Ch. 441, L. 2003, to read: "[This act] applies to combined jury lists compiled partly from the lists submitted under [section 1] [61-5-127] by the department of justice to the clerks of the district courts on and after the second Monday of May 2008." Amendment effective March 24, 2005.

2003 Amendment: Chapter 441 in (4) at end after "chapter 31" inserted "or to lists of persons holding driver's licenses or Montana identification cards provided for under 61-5-127"; and made minor changes in style. Amendment effective October 1, 2005.

Applicability: Section 10, Ch. 441, L. 2003, provided: "[This act] applies to combined jury lists compiled partly from the lists submitted under [section 1] [61-5-127] by the department of justice to the clerks of the district courts on and after the second Monday of May 2006."

2001 Amendments -- Composite Section: Chapter 319 in (1) substituted reference to subsection (9) for reference to subsection (8); inserted (9) relating to lists of graduating high school students to be used for military recruitment; and made minor changes in style. Amendment effective October 1, 2001.

Chapter 363 in (4) after "13-2-115" deleted "and 13-38-103" and at end deleted "or to lists of persons holding driver's licenses provided for under 61-5-126"; at end of (6) deleted "or, by purchase or otherwise, of public records dealing with motor vehicle registration"; and made minor changes in style. Amendment effective April 23, 2001.

1999 Amendment: Chapter 305 at beginning of (3) deleted "Except as provided in 30-9-403". Amendment effective July 1, 2001.

1997 Amendments: Chapter 364 in (5), near middle, substituted "state law or" for "Title 20, chapter 30, or specifically exempted from that chapter as provided in 20-30-102, or".

Chapter 370 in (8), near middle after "on behalf of a", substituted "retiree organization formed for board-administered retirement system participants and" for "third party", after "section" substituted "501(c)(4)" for "501(c)(3)", and at end substituted "organization" for "third party". Amendment effective April 23, 1997.

1995 Amendments: Chapter 379 in (5), at end, inserted "or subject to Title 33, chapter 17"; and made minor changes in style.

Chapter 412 inserted (8) exempting from this section the Public Employees' Retirement Board's use of mailing lists of retirement system participants to send material on behalf of a third party under certain conditions; adjusted subsection references; and made minor changes in style. Amendment effective April 13, 1995.

Severability: Section 99, Ch. 379, L. 1995, was a severability clause.

Section 28, Ch. 412, L. 1995, was a severability clause.

1991 Amendment: In (1) changed subsection reference; and inserted (7) regarding sale of corporate information list by Secretary of State.

1991 Statement of Intent: The statement of intent to Ch. 289, L. 1991, provided: "A statement of intent is required for this bill because [section 1] [2-15-403] authorizes the secretary of state to adopt rules setting fees to be charged for the sale of the corporate information list. It is the intent of the legislature that the fees should be commensurate with the costs of producing the list. Existing fees may be modified to the extent necessary to conform to this statement of intent and [section 1] [2-15-403]."

1989 Amendment: At end of (4) inserted "or to lists of persons holding driver's licenses provided for under 61-5-126".

Severability: Section 5, Ch. 663, L. 1989, was a severability clause.

1985 Amendment: In (3) at beginning inserted exception clause. Amendment effective July 1, 1986 (sec. 10, Ch. 683, L. 1985).

Internal References: Section 13-2-115 refers to preparation of voter registration lists. Section 13-38-103 (now repealed) referred to a list, provided by the Department of Justice from its driver's license file, of persons who have reached or will reach voting age by date of next election.

Cross References:

Right of privacy, Art. II, sec. 10, Mont. Const.

Misdemeanor -- no penalty specified, 46-18-212.

Administrative Rules:

ARM 2.43.1406 through 2.43.1408 mailings to retirement system participants on behalf of nonprofit organizations.

Attorney General Opinions:

Prohibition Against Distribution of Mailing Lists Applicable Both to Lists of Individuals and Corporations: The prohibition against the distribution of mailing lists by state agencies applies to mailing lists of both individual persons and corporations. 43 A.G. Op. 73 (1990), overruling in part a contrary holding in 38 A.G. Op. 59 (1979).

Original Documents Submitted to Retirement Division Not Subject to Public Inspection for Mailing List Purposes: Original documents submitted by applicants to the Public Employees' Retirement Division of the Department of Administration contain private information about third parties and thus are not open to public inspection for the purpose of compiling a mailing list. 42 A.G. Op. 64 (1988).

State Agency Lists as Mailing Lists: Agencies are prohibited from distributing a list of persons only if the intended use of such list is for unsolicited mass mailings, house calls or distributions, or telephone calls. The prohibition pertains only to lists of natural persons, not businesses, corporations, governmental agencies, or other associations. Agencies are not required to affirmatively ascertain the intended use for which the list is sought; a clear written disclaimer from the agency as to the proscriptions and penalty is sufficient. 38 A.G. Op. 59 (1979), overruled with regard to applicability to corporations in 43 A.G. Op. 73 (1990).

2-6-110. Electronic information and nonprint records -- public access -- fees. (1) (a) Except as provided by law, each person is entitled to a copy of public information compiled, created, or otherwise in the custody of public agencies that is in electronic format or other nonprint media, including but not limited to videotapes, photographs, microfilm, film, or computer disk, subject to the same restrictions applicable to the information in printed form. All restrictions relating to confidentiality, privacy, business secrets, and copyright are applicable to the electronic or nonprint information.

(b) The provisions of subsection (1)(a) do not apply to collections of the Montana historical society established pursuant to 22-3-101.

(2) Except as provided by law and subject to subsection (3), an agency may charge a fee, not to exceed:

(a) the agency's actual cost of purchasing the electronic media used for transferring data, if the person requesting the information does not provide the media;

(b) expenses incurred by the agency as a result of mainframe and midtier processing charges;

(c) expenses incurred by the agency for providing online computer access to the person requesting access;

(d) other out-of-pocket expenses directly associated with the request for information, including the retrieval or production of electronic mail; and

(e) the hourly market rate for an administrative assistant in pay band 3 of the broadband pay plan, as provided for in 2-18-301, in the current fiscal year for each hour, or fraction of an hour, after one-half hour of copying service has been provided.

(3) (a) In addition to the allowable fees in subsection (2), the department of revenue may charge an additional fee as reimbursement for the cost of developing and maintaining the property valuation and assessment system database from which the information is requested. The fee must be charged to persons, federal agencies, state agencies, and other entities requesting the database or any part of the database from any department property valuation and assessment system. The fee may not be charged to the governor's office of budget and program planning, the state tax appeal board, or any legislative agency or committee.

(b) The department of revenue may not charge a fee for information provided from any department property valuation and assessment system database to a local taxing jurisdiction for use in taxation and other governmental functions or to an individual taxpayer concerning the taxpayer's property.

(c) All fees received by the department of revenue under subsection (2) and this subsection (3) must be deposited in a state special revenue fund as provided in 15-1-521.

(d) Fees charged by the secretary of state pursuant to this section must be set and deposited in accordance with 2-15-405.

(4) For the purposes of this section, the term "agency" has the meaning provided in 2-3-102 but includes legislative, judicial, and state military agencies.

(5) An agency may not charge more than the amount provided under subsection (2) for providing a copy of an existing nonprint record.

(6) Subject to 15-1-103, an agency shall ensure that a copy of information provided to a requester is of a quality that reflects the condition of the original if requested by the requester.

(7) This section does not authorize the release of electronic security codes giving access to private information.

History: En. Sec. 1, Ch. 254, L. 1991; amd. Sec. 10, Ch. 640, L. 1993; amd. Sec. 1, Ch. 27, Sp. L. November 1993; amd. Sec. 2, Ch. 4, L. 1995; amd. Sec. 1, Ch. 484, L. 1995; amd. Sec. 1, Ch. 405, L. 1999; amd. Sec. 4, Ch. 77, L. 2001; amd. Sec. 7, Ch. 396, L. 2001; amd. Sec. 1, Ch. 81, L. 2007; amd. Sec. 1, Ch. 206, L. 2011.

Compiler's Comments:

2011 Amendment: Chapter 206 in (6) inserted "Subject to 15-1-103"; and made minor changes in style. Amendment effective January 1, 2012.

Retroactive Applicability: Section 4, Ch. 206, L. 2011, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to all tax records that exist on [the effective date of this section]." Section 3(2), Ch. 206, L. 2011, provided that this section is effective on passage and approval. Approved April 18, 2011.

2007 Amendment: Chapter 81 in (2)(e) near beginning inserted "market", inserted language regarding administrative assistant in pay band 3 of the broadband plan provided for in 2-18-301, and near middle after "fiscal year" deleted "for a state employee classified as grade 10, market salary, under 2-18-312". Amendment effective July 1, 2007.

2001 Amendments -- Composite Section: Chapter 77 in (1)(a) near beginning of first sentence before "information" inserted "public"; and in (2)(d) at end inserted "including the retrieval or production of electronic mail". Amendment effective July 1, 2001.

Chapter 396 in (2)(b) after "mainframe" inserted "and midtier"; and inserted (3)(d) requiring fees to be set and deposited in accordance with 2-15-405. Amendment effective July 1, 2001.

1999 Amendment: Chapter 405 in (1)(a) in first sentence inserted language regarding nonprint media and examples of nonprint media and in second sentence near end inserted "or nonprint"; inserted (1)(b) regarding collections of the Montana historical society; inserted (5) concerning charge under subsection (2); inserted (6) regarding quality of copy provided to requester; and made minor changes in style. Amendment effective October 1, 1999.

1995 Amendments -- Composite Section: Chapter 4 at end of (2)(a) deleted "or"; at end of (2)(d) inserted "and"; at beginning of (2)(e) substituted reference to grade 10, market salary, hourly rate for former language that read: "An agency may also charge an hourly fee" and deleted second sentence that read: "The hourly fee may not exceed the hourly rate for the current fiscal year for a state employee classified as grade 10, market salary, under 2-18-312"; adjusted subsection references; and made minor changes in style. Amendment effective July 1, 1995.

Chapter 484 inserted (2)(c) allowing a fee for providing online computer access; in (3)(a), at end of first sentence, substituted "property valuation and assessment system database from which the information is requested" for "computer-assisted mass appraisal system", in second sentence, near beginning after "persons", inserted "federal agencies, state agencies, and other entities" and at end substituted "any department property valuation and assessment system" for "the mass appraisal system", and inserted third sentence disallowing the charging of the fee to certain state entities; in (3)(b), near beginning after "department", inserted "of revenue" and after "provided from" substituted "any department property valuation and assessment system" for "this"; in (3)(c), after "department", inserted "of revenue" and after "under" inserted "subsection (2) and"; and made minor changes in style. Amendment effective April 14, 1995.

Because both chapters affected the subsection numbering of subsection (2), the codifier has changed the subsection numbering to reflect both chapters.

1993 Special Session Amendment: Chapter 27 in (2) inserted reference to subsection (4); and inserted (4) concerning fee for developing and maintaining computer-assisted mass appraisal system. Amendment effective January 1, 1994.

1993 Statement of Intent: The statement of intent attached to Ch. 27, Sp. L. November 1993, provided: "With the adoption of the 1972 Montana constitution, the state assumed responsibility for the appraisal, assessment, and valuation of property for property tax administration. Although the state was granted this new responsibility and authority by the constitution, county assessors were retained by local governments to assist the state in the assessment function, acting as agents of the department of revenue. Through the implementation and use of electronic data processing and other technological advances, many of the assessment functions previously performed by county assessors have changed dramatically.

Recognizing the need to make state and local government more responsive and efficient, it is the intent of the legislature that all appraisal and assessment duties relating to property taxation be assigned to the department of revenue. This action transfers from county assessors to the department the responsibility and authority to perform any assessment functions.

Acknowledging the talents and skills of county assessors, it is the intent of the legislature that current county assessors may choose to become employees of the department of revenue and that their respective counties may consolidate the office of county assessor with another county office.

If the current county assessor does not choose to become a state employee and the county chooses to retain the separate office of county assessor, the department of revenue shall, with the consent of the county assessor, contract with the county for the county assessor to perform specific duties as assigned by the department. If under this agreement the county assessor produces satisfactory work quality and output for the department, the department may continue the contract as long as the person currently serving as county assessor retains the position. The department may also contract for any successor county assessor in counties that retain the separate office of county assessor to perform duties assigned by the department.

It is further the intent of the legislature that all present deputy county assessors become employees of the department of revenue, with the same preferences and benefits as other state employees.

To allow for the efficient administration of the property tax appraisal and assessment, it is the intent of the legislature that the department of revenue use other efficiency measures, such as creating regional county appraisal and assessment offices, adjusting office hours of department field offices, and restructuring the organizational structure of the property assessment division.

The legislature grants to the department of revenue general rulemaking authority for the accomplishment of these administrative changes."

Applicability: Section 171(2), Ch. 27, Sp. L. November 1993, provided that the amendments to this section apply to tax years after December 31, 1993.

1993 Amendment: Chapter 640 in (3) substituted "market salary" for "step 2". Amendment effective July 1, 1993.

Cross References:

Right to know, Art. II, sec. 9, Mont. Const.

Administrative Rules:

ARM 44.14.301 through 44.14.309 Records and information management -- fees.

2-6-111. Custody and reproduction of records by secretary of state. (1) The secretary of state is charged with the custody of:

- (a) the enrolled copy of the constitution;
- (b) all the acts and resolutions passed by the legislature;
- (c) the journals of the legislature;
- (d) the great seal;
- (e) all books, records, parchments, maps, and papers kept or deposited in the secretary of state's office pursuant to law.

(2) All records included in subsection (1) may be kept and reproduced in accordance with rules adopted by the secretary of state in consultation with the state records committee provided for in 2-6-208.

(3) The state records committee created by 2-6-208 may approve the disposal of original records once those records are reproduced as provided for in subsection (2), unless disposal takes the form of transfer of records. Reproduction is not necessary for transferred records. The reproduction or certified copy of a record may be used in place of the original for all purposes, including as evidence in any court or proceeding, and has the same force and effect as the original record.

(4) The secretary of state shall prepare enlarged typed or photographic copies of the records whenever their production is required by law.

(5) At least two copies must be made of all records reproduced as provided for in subsection (2). The secretary of state shall place one copy in a fireproof storage place and shall retain the other copy in the office with suitable equipment for displaying a record by projection to not less than its original size and for preparing copies of the record for persons entitled to copies.

(6) All duplicates of records must be identified and indexed.

History: En. Sec. 400, Pol. C. 1895; re-en. Sec. 153, Rev. C. 1907; re-en. Sec. 133, R.C.M. 1921; Cal. Pol. C. Sec. 407; re-en. Sec. 133, R.C.M. 1935; R.C.M. 1947, 82-2201; amd. Sec. 1, Ch. 152, L. 1979; amd. Sec. 8, Ch. 467, L. 1987; amd. Sec. 1, Ch. 185, L. 1989; amd. Sec. 48, Ch. 61, L. 2007.

Compiler's Comments:

2007 Amendment: Chapter 61 made minor changes in style. Amendment effective October 1, 2007.

1989 Amendment: At end of (2) substituted "reproduced in accordance with rules adopted by the secretary of state in consultation with the state records committee provided for in 2-15-1013" for "recorded by photostatic or microphotographic means, microfilm, or any other mechanical process that produces a clear, accurate, and permanent duplicate of the original record in accordance with standards not less than those approved for permanent records by the American national standards institute"; and made minor changes in phraseology and grammar.

1989 Statement of Intent: The statement of intent attached to Ch. 185, L. 1989, provided: "A statement of intent is required for this bill because it permits the secretary of state to establish by rule methods for archiving documents filed in his office. Because the technology for archiving documents is developing quickly, it is necessary to provide the secretary of state with the flexibility for establishing the method of archiving.

The legislature intends that the rules require the storage of records in a manner that allows the retrieval of clear and accurate duplicates of the original document. The process must be quick and efficient for both reproducing the original and retrieving the duplicate. The process must have adequate safeguards to ensure that the stored documents will be preserved for many years.

The legislature intends that the rules permit the use of appropriate technology that meets these requirements. The rules must allow for the use of microfilm, photostatic or microphotographic means, computerized electronic disc, or other new technologies that may be developed. These rules may permit storage systems that allow public access through computer hookups as long as no person is able to tamper with the stored records."

1987 Amendment: In (1)(e), after "records", deleted "deeds".

Cross References:

Citizens entitled to inspect and copy public writings, 2-6-102.

Administrative Rules:

ARM 44.14.101 Records retained on digital media.

2-6-112. Concealment of public hazards prohibited -- concealment of information related to settlement or resolution of civil suits prohibited. (1) This section may be cited as the "Gus Barber Antisecrecy Act".

(2) As used in this section, "public hazard" means a device, instrument, or manufactured product, or a condition of a device, instrument, or manufactured product, that endangers public safety or health and has caused injury, as defined in 27-1-106.

(3) Except as provided in this section, a court may not enter a final order or judgment that has the purpose or effect of concealing a public hazard.

(4) Any portion of a final order or judgment entered or written final settlement agreement entered into that has the purpose or effect of concealing a public hazard is contrary to public policy, is void, and may not be enforced. This section does not prohibit the parties from keeping the monetary amount of a written final settlement agreement confidential.

(5) A party to civil litigation may not request, as a condition to the production of discovery, that another party stipulate to an order that would violate this section.

(6) This section does not apply to:

(a) trade secrets, as defined in 30-14-402, that are not pertinent to public hazards and that are protected pursuant to Title 30, chapter 14, part 4;

(b) other information that is confidential under state or federal law; or

(c) a health care provider, as defined in 27-6-103.

(7) Any affected person, including but not limited to a representative of the news media, has standing to contest a final order or judgment or written final settlement agreement that violates this section by motion in the court in which the case was filed.

(8) The court shall examine the disputed information or materials in camera. If the court finds that the information or materials or portions of the information or materials consist of information concerning a public hazard, the court shall allow disclosure of the information or materials. If allowing disclosure, the court shall allow disclosure of only that portion of the information or materials necessary or useful to the public concerning the public hazard.

(9) This section has no applicability to a protective order issued under Rule 26(c) of the Montana Rules of Civil Procedure or to any materials produced under the order. Any materials used as exhibits may be publicly disclosed pursuant to the provisions of subsections (7) and (8).

History: En. Sec. 1, Ch. 390, L. 2005.

Compiler's Comments:

Effective Date: Section 3, Ch. 390, L. 2005, provided: "[This act] is effective on passage and approval." Approved April 25, 2005.

Applicability: Section 4, Ch. 390, L. 2005, provided: "[This act] applies to causes of action filed after [the effective date of this act]." Effective April 25, 2005.

Part 2 Public Records Management

Administrative Rules:

Title 44, chapter 14, ARM Records Management Bureau of Secretary of State.

Collateral References:

State of Montana E-Mail Guidelines: A Management Guide for the Retention of E-Mail Records for Montana State Government, Mont. St. Records Comm., 2006.

A Strategic Plan for Electronic Records Management in Montana State Government, Mont. Secretary of State and Mont. Hist. Soc'y, Dec. 31, 2004.

2-6-201. Purpose. The purpose of this part is to create an effective records management program for executive branch agencies of the state of Montana and political subdivisions by establishing guidelines and procedures for the efficient and economical control of the creation, utilization, maintenance, and preservation of state and local records.

History: En. 82-3333 by Sec. 2, Ch. 339, L. 1977; R.C.M. 1947, 82-3333; amd. Sec. 5, Ch. 420, L. 1993.

Compiler's Comments:

1993 Amendment: Chapter 420 near middle, after "Montana", inserted "and political subdivisions" and at end, before "records", inserted "and local". Amendment effective April 20, 1993.

Administrative Rules:

- ARM 44.14.310 Fees for records center services.
- ARM 44.14.311 Fees for records center boxes.
- ARM 44.14.312 Fees for imaging services.

2-6-202. Definitions. As used in this part, the following definitions apply:

- (1) (a) "Public records" includes:
 - (i) any paper, correspondence, form, book, photograph, microfilm, magnetic tape, computer storage media, map, drawing, or other document, including copies of the record required by law to be kept as part of the official record, regardless of physical form or characteristics, that:
 - (A) has been made or received by a state agency to document the transaction of official business;
 - (B) is a public writing of a state agency pursuant to 2-6-101(2)(a); and
 - (C) is designated by the state records committee for retention pursuant to this part; and
 - (ii) all other records or documents required by law to be filed with or kept by any agency of the state of Montana.
- (b) The term includes electronic mail sent or received in connection with the transaction of official business.
- (c) The term does not include any paper, correspondence, form, book, photograph, microfilm, magnetic tape, computer storage media, map, drawing, or other type of document that is for reference purposes only, a preliminary draft, a telephone messaging slip, a routing slip, part of a stock of publications or of preprinted forms, or a superseded publication.

(2) "State records committee" or "committee" means the state records committee provided for in 2-6-208.

History: (1)En. 82-3334 by Sec. 3, Ch. 339, L. 1977; Sec. 82-3334, R.C.M. 1947; (2)En. by Code Commissioner, 1979; R.C.M. 1947, 82-3334(1); amd. Sec. 5, Ch. 77, L. 2001; amd. Sec. 1, Ch. 30, L. 2003.

Compiler's Comments:

2003 Amendment: Chapter 30 in definition of public records in (a)(i) near middle after "including" deleted "all" and after "the record" inserted "required by law to be kept as part of the official record", in (a)(i)(A) near middle after "agency" substituted "to document" for "in connection with" and after "business and" deleted "preserved for informational value or as evidence of a transaction", inserted (a)(i)(B) concerning a public writing of a state agency, inserted (a)(i)(C) concerning a record designated by the state records committee for retention, and inserted (c) providing that a public record does not include any paper, correspondence, form, book, photograph, microfilm, magnetic tape, computer storage media, map, drawing, or other type of document that is for reference purposes only, a preliminary draft, a telephone messaging slip, a routing slip, part of a stock of publications or of preprinted forms, or a superseded publication; and made minor changes in style. Amendment effective October 1, 2003.

2001 Amendment: Chapter 77 in definition of public records inserted (b) to include certain electronic mail; and made minor changes in style. Amendment effective July 1, 2001.

Administrative Rules:

- ARM 44.14.310 Fees for records center services.
- ARM 44.14.311 Fees for records center boxes.
- ARM 44.14.312 Fees for imaging services.

Case Notes:

Title Insurer Not Obligated to Search City Engineer or Water Department Records -- Public Records as Properly Recorded Documents -- Reasonable Expectations Doctrine Inapplicable: The Millers sought to hold a title insurance company responsible for costs involved in relocating a neighbor's water and sewer lines that were discovered on the property. The lines were of record with the city engineer and the water department, but their existence was not recorded in the chain of title. The title insurance policy defined public records as "those records which by law impart constructive notice of matters relating to said land". The Supreme Court held that the definition was unambiguous and clearly related to records filed and docketed with the County Clerk and Recorder because it was proper recordation that imparted

constructive notice of matters relating to the property. Nothing in Montana recordation law required the title insurer to search city engineer or water department records. For the same reason, the Millers' attempt to apply the reasonable expectations doctrine also failed because the policy did not insure against loss or damage by reason of "easements, or claims of easements, not shown by the public records". *Miller v. Title Ins. Co. of Minn.*, 1999 MT 230, 296 M 115, 987 P2d 1151, 56 St. Rep. 908 (1999). See also *Am. Family Mut. Ins. Co. v. Livengood*, 1998 MT 329, 292 M 244, 970 P2d 1054, 55 St. Rep. 1336 (1998).

2-6-203. Secretary of state's powers and duties -- rulemaking authority. (1) In order to ensure the proper management and safeguarding of public records, the secretary of state shall:

- (a) establish guidelines for inventorying, cataloging, retaining, and transferring all public records of state agencies;
 - (b) review and analyze all state agency filing systems and procedures and approve filing system equipment requests;
 - (c) establish and operate the state records center, as authorized by appropriation, for the purpose of storing and servicing public records not retained in office space;
 - (d) gather and disseminate information on all phases of records management, including current practices, methods, procedures, and devices for the efficient and economical management of records;
 - (e) operate a central microfilm unit that will microfilm, on a cost recovery basis, all records approved for filming by the office of origin and the secretary of state;
 - (f) approve microfilming projects and microfilm equipment purchases undertaken by all state agencies; and
 - (g) adopt rules regarding management of public records.
- (2) Upon request, the secretary of state shall assist and advise in the establishment of records management procedures in the legislative and judicial branches of state government and shall, as required by them, provide services similar to those available to the executive branch.

History: (1)En. 82-3335 by Sec. 4, Ch. 339, L. 1977; Sec. 82-3335, R.C.M. 1947; (2)En. 82-3337 by Sec. 6, Ch. 339, L. 1977; Sec. 82-3337, R.C.M. 1947; R.C.M. 1947, 82-3335, 82-3337; amd. Sec. 1, Ch. 378, L. 1991; amd. Sec. 1, Ch. 170, L. 2011.

Compiler's Comments:

2011 Amendment: Chapter 170 inserted (1)(g) relating to rules; and made minor changes in style. Amendment effective October 1, 2011.

1991 Amendment: Throughout substituted references to Secretary of State for references to Department of Administration. Amendment effective July 1, 1991.

Administrative Rules:

- Title 44, chapter 14, ARM Records Management Bureau of Secretary of State.
- ARM 44.14.101 Records retained on digital media.
- ARM 44.14.310 Fees for records center services.
- ARM 44.14.311 Fees for records center boxes.
- ARM 44.14.312 Fees for imaging services.

2-6-204. State records committee approval. The committee shall approve, modify, or disapprove the recommendations on retention schedules of all public records to determine which documents not included in the provisions of this part are to be designated public records and approve agency requests to dispose of such public records.

History: En. 82-3338 by Sec. 7, Ch. 339, L. 1977; R.C.M. 1947, 82-3338(3).

2-6-205. Preservation of public records. All public records are and shall remain the property of the state. They shall be delivered by outgoing officials and employees to their successors and shall be preserved, stored, transferred, destroyed, or disposed of and otherwise managed only in accordance with the provisions of this part.

History: En. 82-3334 by Sec. 3, Ch. 339, L. 1977; R.C.M. 1947, 82-3334(2).

Cross References:

- Proceedings to compel delivery of records, 2-6-107.

2-6-206. Protection and storage of essential records. (1) In order to provide for the continuity and preservation of civil government, each elected and appointed officer of the executive branch shall designate certain public records as essential records needed for an emergency or for the reestablishment of normal operations after the emergency. A list of essential records must be forwarded to the secretary of state. The list must be reviewed from time to time by the elected or appointed officers to ensure its accuracy. Any changes or revisions must be forwarded to the secretary of state.

(2) Each elected and appointed officer of state government shall ensure that the security of essential records is accomplished by the most economical means possible. Protection and storage of essential records may be by vaulting, planned or natural dispersal of copies, storage in the state archives or in an alternative location provided pursuant to 2-6-211(2), or any other method approved by the secretary of state.

(3) Reproductions of essential records may be by photocopy, magnetic tape, microfilm, or other methods approved by the secretary of state.

History: En. 82-3341 by Sec. 10, Ch. 339, L. 1977; R.C.M. 1947, 82-3341; amd. Sec. 2, Ch. 378, L. 1991; amd. Sec. 2, Ch. 30, L. 2003.

Compiler's Comments:

2003 Amendment: Chapter 30 in (2) at beginning of second sentence after "Protection" inserted "and storage" and near middle after "archives" inserted "or in an alternative location provided pursuant to 2-6-211(2)"; and made minor changes in style. Amendment effective October 1, 2003.

1991 Amendment: Throughout substituted references to Secretary of State for references to Department of Administration. Amendment effective July 1, 1991.

Cross References:

Custody and preservation of records by Secretary of State, 2-6-111.

Preservation of records -- state archives, Title 22, ch. 3, part 2.

Administrative Rules:

ARM 44.14.101 Records retained on digital media.

ARM 44.14.310 Fees for records center services.

ARM 44.14.311 Fees for records center boxes.

ARM 44.14.312 Fees for imaging services.

2-6-207. Certified copies of public records. (1) The Montana historical society shall reproduce and certify copies of public records in its possession upon application of any citizen of this state.

(2) The certified copy of a public record has the same force in law as if made by the original custodian.

History: En. Sec. 1, Ch. 102, L. 1979.

Cross References:

Certified copies of official records, 2-6-307.

2-6-208. Records committee -- composition and meetings. (1) There is a committee to be known as the state records committee composed of representatives of:

(a) the department of administration;

(b) the legislative auditor;

(c) the attorney general;

(d) the secretary of state; and

(e) the Montana historical society.

(2) The representatives are to be designated by the head of the respective agencies, and their appointments must be submitted in writing to the secretary of state.

(3) The committee shall meet at least quarterly.

(4) Committee members shall serve without additional salary but are entitled to reimbursement for travel expense incurred while engaged in committee activities as provided for in 2-18-501 through 2-18-503. Expenses must be paid from the appropriations made for operation of their respective agencies.

(5) The state records committee is administered by the secretary of state, and the secretary of state's representative serves as the presiding officer for the committee.

History: En. 82-3338, by Sec. 7, Ch. 339, L. 1977; R.C.M. 1947, 82-3338(1), (2), (4); amd. Sec. 1, Ch. 218, L. 1989; amd. Sec. 7, Ch. 378, L. 1991; amd. Sec. 2, Ch. 170, L. 2011; Sec. 2-15-1013, MCA 2009; redes. 2-6-208 by Sec. 3, Ch. 170, L. 2011.

Compiler's Comments:

2011 Amendment: Chapter 170 inserted (5) relating to administration of state records committee; and made minor changes in style. Amendment effective October 1, 2011.

1991 Amendment: At end of (2) substituted "secretary of state" for "director of the department of administration". Amendment effective July 1, 1991.

1989 Amendment: Inserted (1)(d) including representative of Secretary of State on State Records Committee.

Cross References:

Public records management, Title 2, ch. 6, part 2.

Administrative Rules:

ARM 44.14.101 Records retained on digital media.

2-6-209 and 2-6-210 reserved.

2-6-211. Transfer and storage of public records. (1) All public records not required in the current operation of the office where they are made or kept and all records of each agency, commission, committee, or any other activity of the executive branch of state government that may be abolished or discontinued must be, in accordance with approved records retention schedules, either transferred to the state records center or transferred to the custody of the state archives if the records are considered to have permanent administrative or historical value.

(2) Subject to approval by the secretary of state pursuant to 2-6-206, the state records center and the state archives may store transferred permanent public records in locations other than in the buildings occupied by the state records center or the state archives when it is in the best interests of the state.

(3) When records are transferred to the state records center, the transferring agency does not lose its rights of control and access. The state records center is only a custodian of the agency records, and access is only by agency approval. Agency records for which the state records center acts as custodian may not be subpoenaed from the state records center but must be subpoenaed from the agency to which the records belong. Fees may be charged to cover the cost of records storage and servicing.

(4) If an agency does not wish to transfer records as provided in an approved retention schedule, the agency shall, within 30 days, notify the secretary of state and request a change in the schedule.

History: En. 82-3340 by Sec. 9, Ch. 339, L. 1977; R.C.M. 1947, 82-3340; amd. Sec. 3, Ch. 378, L. 1991; amd. Sec. 2, Ch. 6, Sp. L. January 1992; amd. Sec. 3, Ch. 30, L. 2003.

Compiler's Comments:

2003 Amendment: Chapter 30 inserted (2) allowing alternative storage of transferred permanent public records in locations other than the state records center or the state archives; in (3) near middle of first sentence before "agency" inserted "transferring"; and made minor changes in style. Amendment effective October 1, 2003.

1992 Special Session Amendment: Chapter 6 in (2) inserted last sentence requiring transfer of \$20,000 from the proprietary account to the general fund on or before June 30, 1993. Amendment effective January 21, 1992.

Effective Date -- Termination: Section 3, Ch. 6, Sp. L. January 1992, provided: "[This act] is effective on passage and approval [approved January 21, 1992] and terminates July 1, 1993."

1991 Amendment: In (3) substituted reference to Secretary of State for reference to Department of Administration. Amendment effective July 1, 1991.

Administrative Rules:

Title 44, chapter 14, subchapter 1, ARM Records retention.

ARM 44.14.101 Records retained on digital media.

2-6-212. Disposal of public records. (1) Except as provided in subsection (2), no public record may be disposed of or destroyed without the unanimous approval of the state records committee. When approval is required, a request for the disposal or destruction must be submitted to the state records committee by the agency concerned.

(2) The state records committee may by unanimous approval establish categories of records for which no disposal request is required, providing those records are retained for the designated retention period.

History: En. 82-3339 by Sec. 8, Ch. 339, L. 1977; R.C.M. 1947, 82-3339; amd. Sec. 1, Ch. 173, L. 1981.

Compiler's Comments:

1981 Amendment: Inserted "Except as provided in subsection (2)" at the beginning of (1); inserted (2) allowing categories of records for which no disposal request is required; and made changes to conform to the exception.

Statement of Intent: The statement of intent attached to SB 187 (Ch. 173, L. 1981) provided: "The intent is to have the State Records Committee create by rule categories of records of minor importance for which agencies would be relieved of the burden of repetitively submitting disposal requests; for example:

- (a) motor vehicle applications that are being microfilmed;
- (b) inactive teacher certification records that are being microfilmed;
- (c) interstate invoices in the statewide budget and accounting system."

2-6-213. Agency responsibilities and transfer schedules. Each executive branch agency of state government shall administer its records management function and shall:

- (1) coordinate all aspects of the agency records management function;
 - (2) manage the inventorying of all public records within the agency for disposition, scheduling, and transfer action in accordance with procedures prescribed by the secretary of state and the state records committee;
 - (3) analyze records inventory data, examine and compare divisional or unit inventories for duplication of records, and recommend to the secretary of state and the state records committee minimal retentions for all copies of public records within the agency;
 - (4) approve all records disposal requests that are submitted by the agency to the state records committee;
 - (5) review established records retention schedules to ensure that they are complete and current;
- and
- (6) officially designate an agency records custodian to manage the functions provided for in this section.

History: En. 82-3336 by Sec. 5, Ch. 339, L. 1977; R.C.M. 1947, 82-3336; amd. Sec. 4, Ch. 378, L. 1991; amd. Sec. 4, Ch. 30, L. 2003.

Compiler's Comments:

2003 Amendment: Chapter 30 inserted (6) requiring executive branch agencies to officially designate an agency records custodian to administer record management functions; and made minor changes in style. Amendment effective October 1, 2003.

1991 Amendment: In (1) and (2) substituted references to Secretary of State for references to Department of Administration. Amendment effective July 1, 1991.

Administrative Rules:

ARM 44.14.101 Records retained on digital media.

2-6-214. Department of administration -- powers and duties. (1) In order to ensure compatibility with the information technology systems of state government, the department of administration shall develop standards for technological compatibility for state agencies for records management equipment or systems used to electronically capture, store, or retrieve public records through computerized, optical, or other electronic methods.

(2) The department of administration shall approve all acquisitions of executive agency records management equipment or systems used to electronically capture, store, or retrieve public records through

computerized, optical, or other electronic methods to ensure compatibility with the standards developed under subsection (1).

(3) The department of administration is responsible for the management and operation of equipment, systems, facilities, or processes integral to the department's central computer center and statewide telecommunications system.

History: En. Sec. 8, Ch. 378, L. 1991; amd. Sec. 20, Ch. 313, L. 2001.

Compiler's Comments:

2001 Amendment: Chapter 313 in (1) near beginning substituted "information technology systems" for "computer and telecommunications systems"; and in (3) at end substituted "central computer center and statewide telecommunications system" for "central computer and telecommunications systems". Amendment effective July 1, 2001.

Effective Date: Section 10, Ch. 378, L. 1991, provided: "[This act] is effective July 1, 1991."

Administrative Rules:

ARM 44.14.101 Records retained on digital media.

Part 3 Records of Elected Executive Branch Officers

Cross References:

Right of department head to access to department's agencies and records before assuming position, 2-15-113.

2-6-301. Definitions. As used in this part, the following definitions apply:

(1) "Constitutionally designated and elected officials of the executive branch of government" means the governor, lieutenant governor, attorney general, secretary of state, superintendent of public instruction, and auditor.

(2) (a) "Official records" means any paper, correspondence, form, book, photograph, microfilm, magnetic tape, computer storage media, map, drawing, or other document, including all copies of the record, regardless of physical form or characteristics, that has been made or received by a constitutionally designated and elected official of the executive branch of government in transacting official duties and preserved for informational value or as evidence of a transaction.

(b) The term includes electronic mail sent or received in connection with the transaction of official duties.

History: En. 59-530.1 by Sec. 1, Ch. 441, L. 1977; R.C.M. 1947, 59-530.1; amd. Sec. 6, Ch. 77, L. 2001.

Compiler's Comments:

2001 Amendment: Chapter 77 in definition of official records inserted (b) to include certain electronic mail; and made minor changes in style. Amendment effective July 1, 2001.

2-6-302. Official records management -- powers and duties. In order to insure the proper management and safeguarding of official records, the Montana historical society shall:

(1) establish and operate the state archives as authorized by appropriation for the purpose of storing and servicing official records transferred to the custody of the state archives;

(2) in cooperation with the secretary of state, the local government records committee provided for in 2-6-402, and the state records committee provided for in 2-6-208, establish guidelines for the inventorying, cataloging, retention, and transfer of all official records;

(3) maintain and enforce restrictions on access to official records in the custody of the state archives in accordance with the provisions of this part;

(4) provide adequate housing and care of official records in the custody of the state archives to insure their proper preservation and use by the public;

(5) in accordance with the guidelines established pursuant to subsection (2), remove and destroy duplicate official records and official records of insignificant historical value from the records deposited in the state archives.

History: En. 59-530.3 by Sec. 3, Ch. 441, L. 1977; R.C.M. 1947, 59-530.3; amd. Sec. 6, Ch. 184, L. 1979; amd. Sec. 5, Ch. 378, L. 1991; amd. Sec. 6, Ch. 420, L. 1993.

Compiler's Comments:

1993 Amendment: Chapter 420 in (2) inserted reference to local government records committee; and made minor changes in style. Amendment effective April 20, 1993.

1991 Amendment: In (2) substituted reference to Secretary of State for reference to Department of Administration. Amendment effective July 1, 1991.

Cross References:

Preservation of records -- state archives, Title 22, ch. 3, part 2.

Administrative Rules:

ARM 44.14.101 Records retained on digital media.

2-6-303. Ownership of records -- transfer. (1) All official records remain the property of the state. They must be delivered by outgoing officials to their successors and must be preserved, stored, transferred, destroyed, or disposed of and otherwise managed only in accordance with the provisions of this part.

(2) A public officer may, with the concurrence of the Montana historical society, transfer to the state archives official records that the officer has been specifically directed by statute to preserve or keep in that office.

History: (1)En. 59-530.2 by Sec. 2, Ch. 441, L. 1977; Sec. 59-530.2, R.C.M. 1947; (2)En. Sec. 3, Ch. 102, L. 1979; amd. Sec. 49, Ch. 61, L. 2007.

Compiler's Comments:

2007 Amendment: Chapter 61 made minor changes in style. Amendment effective October 1, 2007.

Commissioner Correction: Former subsection (1) was renumbered 2-6-106 by the Code Commissioner, 1979, because the subject matter of that subsection relates to a broader category than executive branch officers.

Cross References:

Records of Secretary of State, 2-6-111.

Ownership of public records, 2-6-205.

2-6-304. Outgoing officials -- records management duties. (1) Within 2 years after the completion of the final term of office of a constitutionally designated and elected official of the executive branch of government, all of the official records not necessary to the current operation of that office are subject to storage, disposal, or transfer in accordance with the provisions of this part.

(2) All official records of a retiring constitutionally designated and elected official not necessary to the current operation of that office and considered worthy of preservation by the Montana historical society must be transferred to the custody of the state archives within that 2-year period.

(3) An outgoing official, in consultation with staff members of the Montana historical society, shall review official records and isolate any items of a purely personal nature. The personal papers are not subject to this part, but they may be deposited with the official papers at the official's discretion.

(4) An outgoing official, in consultation with staff members of the Montana historical society, may restrict access to certain segments of official records. Restrictions may not be longer than the lifetime of the depositing official. Restricted access may be imposed only to protect the confidentiality of personal information contained in the records. Restricted access may not be imposed unless the demand of individual privacy clearly exceeds the merits of public disclosure.

(5) Any question concerning the transfer or other status of official records arising between the state archives and an elected official's office must be decided by a four-fifths vote of the members of the state records committee.

History: En. 59-530.4 by Sec. 4, Ch. 441, L. 1977; R.C.M. 1947, 59-530.4; amd. Sec. 6, Ch. 378, L. 1991; amd. Sec. 50, Ch. 61, L. 2007.

Compiler's Comments:

2007 Amendment: Chapter 61 made minor changes in style. Amendment effective October 1, 2007.

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1991 Amendment: In (5) changed "three-fourths vote" to "four-fifths vote". Amendment effective July 1, 1991.

Cross References:

Right to examine public documents subject to demand for individual privacy, Art. II, sec. 9, Mont. Const.

Administrative Rules:

ARM 44.14.101 Records retained on digital media.

2-6-305. Renumbered 2-6-107. Code Commissioner, 1979.

2-6-306. Renumbered 2-6-108. Code Commissioner, 1979.

2-6-307. Certified copies of official records. (1) The Montana historical society shall reproduce and certify copies of official records in its possession upon application of any citizen of this state.

(2) The certified copy of an official record has the same force in law as if made by the original custodian.

History: En. Sec. 2, Ch. 102, L. 1979.

Cross References:

Certified copies of official records, 2-6-207.

Part 4 Local Government Records

Part Compiler's Comments:

Preamble: The preamble attached to Ch. 420, L. 1993, provided: "WHEREAS, proper maintenance and disposition of local government records are an essential function of government; and WHEREAS, certain local government records are of substantial historical value to the state and should be retained and preserved, rather than destroyed; and WHEREAS, coordination of local government recordkeeping policies and procedures will increase their effectiveness and efficiency; and WHEREAS, it is the view of the Legislature that these goals pertaining to local government records can be best accomplished through the creation of a state-level body; and WHEREAS, the Legislature of the State of Montana finds it desirable and appropriate to create a local government records committee."

Effective Date: Section 25, Ch. 420, L. 1993, provided: "[This act] [2-6-401 through 2-6-404] is effective on passage and approval." Approved April 20, 1993.

Administrative Rules:

Title 44, chapter 14, subchapter 2, ARM Local government records retention.

2-6-401. Definitions. For the purposes of this part, the following definitions apply:

(1) "Local government" means:

- (a) any city, town, county, consolidated city-county, or school district; and
- (b) any subdivision of an entity named in subsection (1)(a).

(2) (a) "Public records" includes:

(i) any paper, correspondence, form, book, photograph, microfilm, magnetic tape, computer storage media, map, drawing, or other document, including copies of the record required by law to be kept as part of the official record, regardless of physical form or characteristics, that:

(A) has been made or received by any local government to document the transaction of official business;

(B) is a public writing of the local government pursuant to 2-6-101(2)(a); and

(C) is designated for retention by the local government records committee established in 2-6-402; and

(ii) all other records or documents required by law to be filed with or kept by any local government in the state of Montana, except military discharge certificates filed under 7-4-2614.

(b) The term includes electronic mail sent or received in connection with the transaction of official duties.

(c) The term does not include any paper, correspondence, form, book, photograph, microfilm, magnetic tape, computer storage media, map, drawing, or other type of document that is for reference purposes only, a preliminary draft, a telephone messaging slip, a routing slip, part of a stock of publications or of preprinted forms, or a superseded publication.

(3) "Records custodian" means any individual responsible for the proper filing, storage, or safekeeping of any public records.

History: En. Sec. 1, Ch. 420, L. 1993; amd. Sec. 7, Ch. 77, L. 2001; amd. Sec. 5, Ch. 30, L. 2003; amd. Sec. 1, Ch. 116, L. 2003.

Compiler's Comments:

2003 Amendments -- Composite Section: Chapter 30 in definition of public records in (a)(i) near middle after "including" deleted "all" and after "the record" inserted "required by law to be kept as part of the official record", in (a)(i)(A) near middle after "government" substituted "to document" for "in connection with" and after "business and" deleted "preserved for informational value or as evidence of a transaction", inserted (a)(i)(B) concerning a public writing of the local government, inserted (a)(i)(C) concerning a record designated by the local government records committee for retention, and inserted (c) providing that a public record does not include any paper, correspondence, form, book, photograph, microfilm, magnetic tape, computer storage media, map, drawing, or other type of document that is for reference purposes only, a preliminary draft, a telephone messaging slip, a routing slip, part of a stock of publications or of preprinted forms, or a superseded publication; and made minor changes in style. Amendment effective October 1, 2003.

Chapter 116 at end of definition of public records in (a)(ii) inserted exception clause; and made minor changes in style. Amendment effective March 25, 2003.

2001 Amendment: Chapter 77 in definition of public records inserted (b) to include certain electronic mail; and made minor changes in style. Amendment effective July 1, 2001.

Case Notes:

National Honor Society Records Not "Documents of Public Body" -- Writ of Mandate Properly Denied: The father of a high school student sought a writ of mandate to obtain names and rankings of teachers who evaluated the student and whose low rankings prevented the student from being admitted into the National Honor Society. The Supreme Court held that because the teachers acted voluntarily and the school did not keep records related to Honor Society membership, the documents sought were not "documents of a public body" as provided in the Montana Constitution. Therefore, the District Court's denial of the writ of mandate was correct. *Becky v. Butte-Silver Bow School District No. 1*, 274 M 131, 906 P2d 193, 52 St. Rep. 1154 (1995).

2-6-402. Local government records committee -- creation. (1) There is a local government records committee.

(2) The committee consists of the following eight members:

(a) the state archivist;

(b) the state records manager;

(c) a representative of the department of administration;

(d) two local records custodians, appointed by the director of the Montana historical society;

(e) two additional local records custodians, appointed by the secretary of state; and

(f) a citizen representing the Montana state genealogical society, appointed by the secretary of state, who shall serve as a volunteer.

(3) Committee members subject to appointment shall hold office for a period of 2 years beginning on January 1 of the year following their appointment.

(4) Any vacancies must be filled in the same manner that they were filled originally.

(5) The committee shall elect a presiding officer and a vice presiding officer.

(6) The committee shall meet twice a year upon the call of the secretary of state or the presiding officer.

(7) Except as provided in subsection (2)(f), members of the committee not serving as part of their compensated government employment must be compensated in accordance with 2-18-501 through 2-18-503 for each day in committee attendance. Members who serve as part of their compensated government employment may not receive additional compensation, but the employing governmental entity shall furnish, in accordance with the prevailing per diem rates, a reasonable allowance for travel and other expenses incurred in attending committee meetings.

History: En. Sec. 2, Ch. 420, L. 1993; amd. Sec. 1, Ch. 179, L. 1995; amd. Sec. 2, Ch. 302, L. 2001; amd. Sec. 6, Ch. 483, L. 2001.

Compiler's Comments:

2001 Amendments -- Composite Section: Chapter 302 in introductory clause in (2) increased membership of local government records committee from seven to eight; inserted (2)(f) requiring a representative of the state genealogical society to be member of the records committee; at beginning of (7) inserted exception clause; and made minor changes in style. Amendment effective October 1, 2001.

Chapter 483 in (2)(c) at end substituted "administration" for "commerce". Amendment effective July 1, 2001.

1995 Amendment: Chapter 179 in (2)(c) substituted "a representative" for "the bureau chief of the local government services bureau"; and made minor changes in style. Amendment effective July 1, 1995.

2-6-403. Duties and responsibilities. (1) The local government records committee shall approve, modify, or disapprove proposals for local government records retention and disposition schedules.

(2) The local government records committee shall appoint a subcommittee, known as the local government records destruction subcommittee, to handle requests for disposal of records. The subcommittee consists of the state archivist and a representative of the department of administration. Unless specifically authorized by statute or by the retention and disposition schedule, a local government public record may not be destroyed or otherwise disposed of without the unanimous approval of the subcommittee. When approval is required, a request for the disposal or destruction of any local government records must be submitted to the subcommittee by the entity concerned. If there is not unanimous approval of the subcommittee, the issue of the disposition of a record must be referred to the local government records committee for approval. When approval is obtained from the subcommittee or from the local government records committee for the disposal of a record, the local government records committee shall consider the inclusion of a new category of record for which a disposal request is not required and shall update the schedule.

(3) The local government records committee shall establish a retention and disposition schedule for categories of records for which a disposal request is not required. The committee shall publish the retention and disposition schedules. Updates to those schedules, if any, must be published at least annually.

(4) The committee shall respond to requests for technical advice on matters relating to local government records.

(5) The committee shall provide leadership and coordination in matters affecting the records of multiple local governments.

History: En. Sec. 3, Ch. 420, L. 1993; amd. Sec. 2, Ch. 179, L. 1995; amd. Sec. 1, Ch. 323, L. 1997; amd. Sec. 7, Ch. 483, L. 2001.

Compiler's Comments:

2001 Amendment: Chapter 483 in (2) at end of second sentence substituted "administration" for "commerce"; deleted former (4) that read: "(4) The committee shall establish school records retention schedules by September 1, 1997"; and made minor changes in style. Amendment effective July 1, 2001.

1997 Amendment: Chapter 323 in (2), near beginning of first sentence before "committee", inserted "local government records", near beginning of third sentence inserted "or by the retention and disposition schedule", and at end inserted fifth and sixth sentences requiring the issue of disposition of a record to be referred to the records committee if there is not unanimous approval of the subcommittee and providing that when approval is obtained, the records committee shall consider the inclusion of a new category of record for which a disposal request is not required and shall update the schedule; in (3)

substituted "shall establish a retention and disposition schedule for categories of records for which a disposal request is not required" for "may by unanimous approval establish categories of records for which a disposal request is not required, providing that those records are retained for the designated retention period" and at end inserted "The committee shall publish the retention and disposition schedules. Updates to those schedules, if any, must be published at least annually"; inserted (4) requiring the committee to establish school records retention schedules by September 1, 1997; and made minor changes in style.

1995 Amendment: Chapter 179 in (2), in second sentence, substituted "a representative" for "the bureau chief of the local government services bureau". Amendment effective July 1, 1995.

Administrative Rules:

Title 44, chapter 14, subchapter 2, ARM Local government records retention.

2-6-404. Rulemaking authority. The secretary of state shall adopt rules to implement 2-6-402 and 2-6-403.

History: En. Sec. 4, Ch. 420, L. 1993.

Compiler's Comments:

1993 Statement of Intent: The statement of intent attached to Ch. 420, L. 1993, provided: "A statement of intent is required for this bill because [section 4] [2-6-404] grants rulemaking authority to the secretary of state.

It is the intent of the legislature that the secretary of state have authority to adopt rules to implement and enforce [section 3] [2-6-403], including specific authority to adopt rules regarding procedures and criteria:

- (1) for determining which local government records must be preserved because they presently or may at some point in the future have significant historical value;
- (2) for determining which local government records must be approved for destruction; and
- (3) for evaluating proposed schedules for retention and disposition of local government records."

Cross References:

Adoption and publication of rules, Title 2, ch. 4, part 3.

Administrative Rules:

Title 44, chapter 14, subchapter 2, ARM Local government records retention.

2-6-405. Destruction of local government public records prohibited prior to offering -- central registry -- notification. (1) A local government public record more than 10 years old may not be destroyed without it first being offered to the Montana historical society, the state archives, Montana public and private universities and colleges, local historical museums, local historical societies, Montana genealogical groups, and the general public.

(2) The availability of a public record to be destroyed must be noticed to the entities listed in subsection (1) at least 180 days prior to disposal.

(3) (a) Claimed records must be given to entities in the order of priority listed in subsection (1).

(b) All expenses for the removal of claimed records must be paid by the entity claiming the records.

(c) The local government records committee, provided for in 2-6-402, shall establish procedures by which public records must be offered and claimed pursuant to this section.

(d) The local government records committee shall develop and maintain a central registry of the entities identified in subsection (1) who are interested in receiving notice of the potential destruction of public records pursuant to this section. The registry must be constructed to allow a local government entity to notify the local government records committee when the entity intends to destroy documents covered under this section and that allows the local government records committee to subsequently notify the entities in the registry. A local government entity's notice to the local government records committee pursuant to this subsection and the record committee's notice to the entities listed on the registry fulfills the notification requirements of this section.

History: En. Sec. 1, Ch. 302, L. 2001.

Compiler's Comments:

Effective Date: This section is effective October 1, 2001.

Part 5

Agency Protection of Personal Information

Part Compiler's Comments:

Effective Date: This part is effective October 1, 2009.

2-6-501. Definitions. For the purposes of this part, the following definitions apply:

- (1) "Breach of the security of a data system" or "breach" means unauthorized acquisition of computerized data that:
 - (a) materially compromises the security, confidentiality, or integrity of the personal information maintained by a state agency or by a third party on behalf of the state agency; and
 - (b) causes or is reasonably believed to cause loss or injury to a person.
- (2) "Individual" means a human being.
- (3) "Person" means an individual, a partnership, a corporation, an association, or a public organization of any character.
- (4) (a) "Personal information" means a first name or first initial and last name in combination with any one or more of the following data elements when the name and the data elements are not encrypted:
 - (i) a social security number or tax identification number;
 - (ii) a driver's license number, an identification number issued pursuant to 61-12-501, a tribal identification number or enrollment number, or a similar identification number issued by any state, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, or American Samoa; or
 - (iii) an account number or credit or debit card number in combination with any required security code, access code, or password that would permit access to a person's financial account.(b) The term does not include publicly available information that is lawfully made available to the general public from federal, state, local, or tribal government records.
- (5) "Redaction" means the alteration of personal information contained within data to make all or a significant part of the data unreadable. The term includes truncation, which means that no more than the last four digits of an identification number are accessible as part of the data.
- (6) (a) "State agency" means an agency, authority, board, bureau, college, commission, committee, council, department, hospital, institution, office, university, or other instrumentality of the legislative or executive branch of state government. The term includes an employee of a state agency acting within the course and scope of employment.
 - (b) The term does not include an entity of the judicial branch.
- (7) "Third party" means:
 - (a) a person with a contractual obligation to perform a function for a state agency; or
 - (b) a state agency with a contractual or other obligation to perform a function for another state agency.

History: En. Sec. 1, Ch. 163, L. 2009.

2-6-502. Protection of social security numbers -- compliance. (1) Each state agency that maintains the social security number of an individual shall develop procedures to protect the social security number while enabling the state agency to use the social security number as necessary for the performance of its duties under federal or state law.

- (2) The procedures must include measures to:
 - (a) eliminate the unnecessary use of social security numbers;
 - (b) identify the person or state agency authorized to have access to a social security number;
 - (c) restrict access to social security numbers by unauthorized persons or state agencies;
 - (d) identify circumstances when redaction of social security numbers is appropriate;
 - (e) dispose of documents that contain social security numbers in a manner consistent with other record retention requirements applicable to the state agency;
 - (f) eliminate the unnecessary storage of social security numbers on portable devices; and

(g) protect data containing social security numbers if that data is on a portable device.

(3) Except as provided in 2-6-503, each state agency in existence on October 1, 2009, shall complete the requirements of this section by September 1, 2012. A state agency that is created after October 1, 2009, shall complete the requirements of this section within 1 year of its creation.

History: En. Sec. 2, Ch. 163, L. 2009.

2-6-503. Extensions. The chief information officer provided for in 2-17-511 may grant an extension to any state agency subject to the provisions of the Montana Information Technology Act provided for in Title 2, chapter 17, part 5. The chief information officer shall inform the information technology board, the office of budget and program planning, and the legislative finance committee of all extensions that are granted and of the rationale for granting the extensions. The chief information officer shall maintain written documentation that identifies the terms and conditions of each extension and the rationale for the extension.

History: En. Sec. 3, Ch. 163, L. 2009.

2-6-504. Notification of breach of security of data system. (1) (a) Upon discovery or notification of a breach of the security of a data system, a state agency that maintains computerized data containing personal information in the data system shall make reasonable efforts to notify any person whose unencrypted personal information was or is reasonably believed to have been acquired by an unauthorized person.

(b) The notification must be made without unreasonable delay, consistent with the legitimate needs of law enforcement as provided in subsection (3) or with any measures necessary to determine the scope of the breach and to restore the reasonable integrity of the data system.

(2) (a) A third party that receives personal information from a state agency and maintains that information in a computerized data system in order to perform a state agency function shall:

(i) notify the state agency immediately following discovery of the breach of the security of a data system if the personal information is reasonably believed to have been acquired by an unauthorized person; and

(ii) make reasonable efforts upon discovery or notification of a breach of the security of a data system to notify any person whose unencrypted personal information is reasonably believed to have been acquired by an unauthorized person as part of the breach of the security of a data system. This notification must be provided in the same manner as the notification required in subsection (1).

(b) A state agency notified of a breach by a third party has no independent duty to provide notification of the breach if the third party has provided notification of the breach in the manner required by subsection (2)(a) but shall provide notification if the third party fails to do so in a reasonable time and may recover from the third party its reasonable costs for providing the notice.

(3) The notification required by this section may be delayed if a law enforcement agency determines that the notification will impede a criminal investigation and requests a delay of notification. The notification required by this section must be made after the law enforcement agency determines that the notification will not compromise the investigation.

(4) All state agencies and third parties to whom personal information is disclosed by a state agency shall develop and maintain:

(a) an information security policy designed to safeguard personal information; and

(b) breach notification procedures that provide reasonable notice to individuals as provided in subsections (1) and (2).

History: En. Sec. 4, Ch. 163, L. 2009.