

Stricken language would be deleted from and underlined language would be added to present law.

State of Arkansas
90th General Assembly
Regular Session, 2015

A Bill

HOUSE BILL 1691

By: Representative Leding

For An Act To Be Entitled

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

Subtitle

TO CREATE THE INFORMATION PRACTICES ACT OF 2015; TO PROTECT THE RIGHT TO PRIVACY TO RESTRICT ACCESS TO CERTAIN GOVERNMENT RECORDS CONTAINING PERSONAL INFORMATION.

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

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

CHAPTER 43

INFORMATION PRACTICES ACT OF 2015

25-43-101. Title.

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

25-43-102. Legislative intent.

The General Assembly finds:

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



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

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

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

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

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

25-43-103. Definitions.

As used in this chapter:

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

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

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

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

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

(5) "Individual" means a natural person;

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

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

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

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

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

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

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

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

25-43-104. Content of records.

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

- (1) The Arkansas Constitution;
- (2) Arkansas law; or
- (3) Federal law.

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

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

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

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

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

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

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

25-43-105. Notice.

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

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

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

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

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

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

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

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

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

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

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

(d) This section does not apply to:

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

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

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

25-43-106. Maintenance of records.

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

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

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

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

25-43-108. Rules of conduct.

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

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

(2) The remedies and penalties for noncompliance.

25-43-109. Safeguards.

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

- (1) Ensure compliance with this chapter;
- (2) Ensure the security and confidentiality of records; and
- (3) Protect against anticipated threats or hazards to security or integrity of the records which could result in an injury.

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

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

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

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

25-43-112. Personal information.

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

- (1) To the individual to whom the personal information pertains;
- (2) With the prior written voluntary consent of the individual to whom the record pertains if that consent has been obtained not more than thirty (30) days before the disclosure or within a time limit agreed to by the individual in the written consent;
- (3) To the appointed guardian of the individual or a person representing the individual if it can be proven with reasonable clarity through the possession of agency forms, documents, or correspondence that the person is the authorized representative of the individual to whom the personal information pertains;
- (4) To an officer, employee, attorney, agent, or authorized volunteer of the agency having custody of the personal information if the disclosure is:

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

performance of their official duties; and

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

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

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

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

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

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

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

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

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

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

notification is not prohibited by law;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

information.

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

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

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

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

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

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

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

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

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

(A) Name;

(B) Address;

(C) Telephone number; and

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

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

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

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

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

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

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

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

(1) The date of disclosure;

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

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

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

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

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

25-43-114. Motor vehicles.

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

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

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

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

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

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

(d) This section does not apply to:

(1) A governmental entity;

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

(3) A court of competent jurisdiction.

25-43-115. Correction of errors.

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

if:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) The date of the breach;

(b) The estimated date of the breach; or

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

(iv) The date of the notice;

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

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

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

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

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

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

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

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

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

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

(B) Notice under this section.

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

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

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

(g) As used in this section:

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

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

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

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

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

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

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

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

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

(A) Written notice;

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

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

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

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

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

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

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

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

(a) Social Security number; or

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

(c) Account number, credit or debit card

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

(d) Medical information; and

(e) Health insurance information; or

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

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

25-43-117. Regulations or guidelines.

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

25-43-118. Maintenance of records.

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

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

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

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

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

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

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

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

(2) Disclosing the contents of a record.

25-43-119. Copies of records.

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

(b) The fee shall not:

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

(2) Exceed ten cents (10¢) per page.

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

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

(A) Concerns the individual; or

(B) References the individual.

(2) The inspection shall be within:

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

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

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

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

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

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

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

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

reasonably comprehensible to the general public.

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

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

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

25-43-121. Amendment of records.

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

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

(2) Inform the individual of the:

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

(B) Reason for the denial;

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

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

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

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

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

(A) The head of the agency; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(B) A grievance or complaint; and

(C) A suspected civil offense;

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

(A) For employment, appointment, or promotion;

(B) That is a prerequisite to licensure; or

(C) To determine scholastic aptitude;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(B) The order:

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

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

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

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

(B) Seek a new order under this section.

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

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

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

25-43-127. Redaction of records.

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

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

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

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

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

this chapter; and

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

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

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

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

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

(A) The complainant resides;

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

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

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

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

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

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

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

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

acting in his or her official capacity; and

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

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

(1) May order special or general damages; and

(2) Shall award:

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

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

25-43-130. False pretenses – Misdemeanor.

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

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

An agency shall not:

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

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

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

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

25-42-133. Liens or encumbrances.

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

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