

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

A Bill

HOUSE BILL 1691

5
6 By: Representative Leding

7 Filed with: House Committee on Judiciary
8 pursuant to A.C.A. §10-3-217.

9 For An Act To Be Entitled

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

17 18 19 Subtitle

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

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

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

30 CHAPTER 43

31 INFORMATION PRACTICES ACT OF 2015

32 25-43-101. Title.

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

35
36 25-43-102. Legislative intent.

1 The General Assembly finds:

2 (1) The right to privacy is a personal and fundamental right
3 protected by Article 2, Section 2 of the Arkansas Constitution;

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

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

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

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

15
16 25-43-103. Definitions.

17 As used in this chapter:

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

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

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

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

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

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

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

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

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

4 (A) An individual's name, Social Security number, physical
5 description, home address, home telephone number, cellular telephone number,
6 email address, education, financial matters, medical history, and employment
7 history; and

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

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

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

18
19 25-43-104. Content of records.

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

23 (1) The Arkansas Constitution;

24 (2) Arkansas law; or

25 (3) Federal law.

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

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

34 (B) If the source of the personal information is an
35 agency, governmental entity, or other organization such as a corporation or
36 association, an agency may meet the requirements of subdivision (c)(1) of

1 this section by maintaining the name of the agency, governmental entity, or
2 organization as long as the smallest reasonably identifiable unit of the
3 agency, governmental entity, or organization is named.

4 (2) If an agency electronically collects personal information,
5 the agency shall retain the source or any intermediate form of the
6 information, if either are created or possessed by the agency, unless the
7 source is the data subject that has requested that the information be
8 discarded or the data subject has received a copy of the source document.

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

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

15
16 25-43-105. Notice.

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

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

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

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

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

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

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

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

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

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

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

9 (d) This section does not apply to:

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

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

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

21
22 25-43-106. Maintenance of records.

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

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

29
30 25-43-107. Contracts for the operation or maintenance of records.

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

34
35 25-43-108. Rules of conduct.

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

- 5 (1) Other rules and procedures adopted under this chapter; and
- 6 (2) The remedies and penalties for noncompliance.

7
8 25-43-109. Safeguards.

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

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

15
16 25-43-110. Designation of employee responsible for agency compliance.

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

19
20 25-43-111. Periodic review of personal information.

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

24
25 25-43-112. Personal information.

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

- 29 (1) To the individual to whom the personal information pertains;
- 30 (2) With the prior written voluntary consent of the individual
31 to whom the record pertains if that consent has been obtained not more than
32 thirty (30) days before the disclosure or within a time limit agreed to by
33 the individual in the written consent;
- 34 (3) To the appointed guardian of the individual or a person
35 representing the individual if it can be proven with reasonable clarity
36 through the possession of agency forms, documents, or correspondence that the

1 person is the authorized representative of the individual to whom the
2 personal information pertains;

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

6 (A) Relevant and necessary in the ordinary course of the
7 performance of their official duties; and

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

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

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

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

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

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

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

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

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

4 (11) To a person pursuant to a subpoena, court order, or other
5 compulsory legal process if, before the disclosure, the agency reasonably
6 attempts to notify the individual to whom the record pertains and if the
7 notification is not prohibited by law;

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

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

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

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

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

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

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

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

32 (17) To a committee of the General Assembly or to a member of
33 the General Assembly, or the member's staff when authorized in writing by the
34 member, where the member has permission to obtain the personal information
35 from the individual to whom it pertains or where the member provides

1 reasonable assurance that he or she is acting on behalf of the individual;
2 and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

26 (b) This section does not require the disclosure of personal
27 information to the individual to whom the personal information pertains when
28 that personal information may otherwise be withheld as set forth under § 25-
29 43-124.

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

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

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

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

6 (A) Name;

7 (B) Address;

8 (C) Telephone number; and

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

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

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

16
17 25-43-113. Accounting for disclosure to law enforcement or regulatory
18 agency.

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

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

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

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

30 (1) The date of disclosure;

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

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

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

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

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

11
12 25-43-114. Motor vehicles.

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

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

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

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

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

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

34 (d) This section does not apply to:

35 (1) A governmental entity;

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

3 (3) A court of competent jurisdiction.

4
5 25-43-115. Correction of errors.

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

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

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

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

17
18 25-43-116. Agencies owning, licensing, or maintaining computerized
19 data including personal information.

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

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

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

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

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

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

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

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

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

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

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

19 (a) The date of the breach;

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

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

23 (iv) The date of the notice;

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

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

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

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

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

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

3 (3) In the case of a breach of the security of the system
4 involving personal information under this section for an online account, and
5 no other personal information under this section, the agency may comply with
6 this section by providing the security breach notification in electronic or
7 other form that directs the individual whose personal information has been
8 breached to promptly change his or her password and security question or
9 answer, as applicable, or to take other steps appropriate to protect the
10 online account with the agency and all other online accounts for which the
11 individual uses the same user name or email address and password or security
12 question or answer.

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

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

18 (B) Notice under this section.

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

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

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

33 (g) As used in this section:

34 (1)(A) "Breach of the security of the system" means the
35 unauthorized acquisition of computerized data that compromises the security,

1 confidentiality, or integrity of personal information maintained by the
2 agency.

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

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

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

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

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

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

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

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

21 (A) Written notice;

22 (B) Electronic notice, if the notice provided is
23 consistent with the provisions regarding electronic records and signatures
24 set forth in the Electronic Signatures in Global and National Commerce Act,
25 15 U.S.C. § 7001 et seq., as existing on January 1, 2015;

26 (C)(i) Substitute notice, if the agency demonstrates that
27 the cost of providing notice would exceed two hundred fifty thousand dollars
28 (\$250,000), or that the affected class of subject persons to be notified
29 exceeds five hundred thousand (500,000), or the agency does not have
30 sufficient contact information.

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

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

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

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

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

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

7 (a) Social Security number; or

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

11 (c) Account number, credit or debit card
12 number, in combination with any required security code, access code, or
13 password that would permit access to an individual's financial account;

14 (d) Medical information; and

15 (e) Health insurance information; or

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

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

22
23 25-43-117. Regulations or guidelines.

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

27
28 25-43-118. Maintenance of records.

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

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

34 (c) Unless the individual has received a notice under this subsection
35 from the agency during the year before the request, the notice sent to the

1 individual which indicates that the agency maintains a record concerning that
2 individual shall include without limitation the:

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

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

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

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

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

11 and

12 (2) Disclosing the contents of a record.

13
14 25-43-119. Copies of records.

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

17 (b) The fee shall not:

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

19 and

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

21
22 25-43-120. Inspection of personal information in records and
23 accounting.

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

27 (A) Concerns the individual; or

28 (B) References the individual.

29 (2) The inspection shall be within:

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

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

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

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

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

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

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

13 (c) The agency shall present the information in the record in a form
14 reasonably comprehensible to the general public.

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

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

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

25
26 25-43-121. Amendment of records.

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

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

32 (2) Inform the individual of the:

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

34 (B) Reason for the denial;

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

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

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

8
9 25-43-122. Denial of amendment of records – Review and dispute.

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

12 (A) The head of the agency; or

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

14 (2) The review shall be completed and a final determination
15 shall be made no later than thirty (30) days after the request for review
16 unless the head of the agency extends such review no more than thirty (30)
17 days for good cause.

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

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

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

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

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

31
32 25-43-123. Promises or understandings concerning the confidentiality
33 of a source.

34 (a) If confidential source information was received before the
35 enactment date of this act or with the promise to keep the identity of the
36 source of the information confidential and the source is not in a supervisory

1 position with respect to the individual to whom the record containing the
2 confidential source information pertains, the agency shall not identify the
3 source of the confidential source information.

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

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

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

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

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

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

16 (B) Status as adoptive parents;

17 (C) Receipt of state contracts; or

18 (D) Licensing.

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

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

23
24 25-43-124. Nondisclosure of personal information to an individual to
25 whom information pertains.

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

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

30 (A) Identifying data;

31 (B) Notations of arrests; and

32 (C) The nature and disposition of criminal charges,
33 sentencing, confinement, release, and parole and probation status;

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

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

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

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

6 (B) A grievance or complaint; and

7 (C) A suspected civil offense;

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

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

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

12 (C) To determine scholastic aptitude;

13 (6) Pertains to the physical or psychological condition of the
14 individual and the agency determines that disclosure would be detrimental to
15 the individual unless upon the individual's written authorization the
16 information is disclosed to a licensed medical practitioner or psychologist
17 designated by the individual; or

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

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

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

24
25 25-43-125. Procedure pursuant to a finding of exemption from access.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

26 (B) The order:

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

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

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

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

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

34
35 25-43-126. Disclosure of personal information relating to others.

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

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

6
7 25-43-127. Redaction of records.

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

11
12 25-43-128. Civil actions against agencies and injunction.

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

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

16 (1) The agency must prove they have acted in compliance with
17 this chapter; and

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

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

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

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

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

29 (A) The complainant resides;

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

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

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

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

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

11
12 25-43-129. Intentional disclosure of personal information – Civil
13 action.

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

17 (1) Is not an employee of the state or local government agency
18 acting in his or her official capacity; and

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

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

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

25 (2) Shall award:

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

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

30
31 25-43-130. False pretenses – Misdemeanor.

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

1 25-43-131. Distribution of name and address for commercial purposes –
2 Prohibited.

3 An agency shall not:

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

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

7
8 25-43-132. Mailing and contact information lists – Removal of
9 information.

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

15
16 25-42-133. Liens or encumbrances.

17 If an agency has recorded a document creating a lien or encumbrance on
18 real property in favor of the state, this chapter shall not prohibit the
19 agency from disclosing information relating to the identity of the person
20 against whom the lien or encumbrance has been recorded for the purpose of
21 distinguishing the person from another person bearing the same or a similar
22 name.

23
24
25 Referred by the Arkansas House of Representatives

26 Prepared by: VJF