

HJR 21 - Study of Personal Information Ownership

*For the State Administration and Veterans' Affairs Interim Committee
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Government Information: Exceptions to the Montana Information Technology Act

Purpose and Scope

This issue brief responds to the State Administration and Veterans' Affairs Interim Committee's Feb. 10, 2016, request for further research about which agencies are excepted from the Montana Information Technology Act.

This brief covers the following:

- Montana Information Technology Act.
- Governmental Internet Information Privacy Act.
- Exceptions.

Montana Information Technology Act

Overview

[Title 2, chapter 17, part 5.](#)

The Montana Information Technology Act was enacted in 2001. It contained numerous new sections of law and amended several laws that already existed. The act was introduced as Senate Bill 131 and sponsored by Sen. Mike Taylor (R - Proctor).

The preamble stated:

WHEREAS, the Legislature finds that information technology is becoming a critical component of the methods used by state agencies in providing information and services to Montana citizens; and

WHEREAS, the cost for information technology is increasing both in absolute and relative terms in agency budgets; and

WHEREAS, information technology, in order to be deployed most effectively, must be carefully managed and coordinated throughout state agencies.

The new provisions included sections on the following:

- Articulating the policy intent of the Legislature.
- Providing for a Chief Information Officer.
- Establishing the Information Technology Board.
- Requiring a statewide strategic IT plan and biennial report.
- Requiring agency IT plans.
- Providing new duties for the Dept. of Administration related to IT.
- Authorizing case-by-case exceptions.
- Granting specific exceptions for the University System, the Office of Public Instruction, the Montana National Guard, and the Criminal Justice Information Network.
- Providing for legislative and judicial branch IT plans to be shared with the Dept. of Admin.
- Providing for an IT project budget summary.
- Rulemaking instructions.
- Definitions.

The amendments to existing law simply ensure integration of the laws with the new statutes.

There have been a few amendments to the act since 2001.

Privacy Provisions

2-17-505. Policy.

This section states in part:

(1) It is the policy of the state that information technology be used to improve the quality of life of Montana citizens by providing educational opportunities, creating quality jobs and a favorable business climate, improving government, and **protecting individual privacy and the privacy of the information** contained within information technology systems.
[emphasis added]

....

(4) The following principles must guide the development of state information technology resources:

(a) There are statewide information technology policies, standards, procedures, and guidelines applicable to all state agencies and other entities using the state network.

(b) Mitigation of risks is a priority in order to **protect individual privacy and the privacy of information** contained within information technology systems as they become more interconnected and as the liabilities stemming from the risk to information technology, also known as cyber risk, have increased.

Governmental Internet Information Privacy Act

Overview

[Sections 2-17-550 through 2-17-553](#)

The Governmental Internet Information Privacy Act was also enacted in 2001, but under a separate bill from the Montana Information Technology Act. The Governmental Internet Information Privacy Act was enacted under House Bill 281, sponsored by Rep. Monica Lindeen (D-Huntley). It was codified in the same statutory part as the Montana Information Technology Act, Part 5, so the privacy act is also administered by the state IT division under the chief information officer.

Specific Provisions

2-17-550. Short title. Sections 2-17-550 through 2-17-553 may be cited as the "Governmental Internet Information Privacy Act".

2-17-551. Definitions. As used in 2-17-550 through 2-17-553, the following definitions apply:

(1) "Collect" means the gathering of personally identifiable information about a user of an internet service, online service, or website by or on behalf of the provider or operator of that service or website by any means, direct or indirect, active or passive, including:

(a) an online request for the information by the provider or operator, regardless of how the information is transmitted to the provider or operator;

(b) the use of an online service to gather the information; or

(c) tracking or use of any identifying code linked to a user of a service or website, including the use of cookies.

(2) "Governmental entity" means the state and political subdivisions of the state.

(3) "Government website operator" or "operator" means a governmental entity that operates a website located on the internet or an online service and that collects or maintains personal information from or about the users of or visitors to the website or online service or on whose behalf information is collected or maintained.

(4) "Internet" means, collectively, the myriad of computer and telecommunications facilities, including equipment and operating software, that comprise the interconnected worldwide network of networks that use the transmission control protocol/internet protocol or any predecessor or successor protocols to communicate information of all kinds by wire or radio.

(5) "Online" means any activity regulated by 2-17-550 through 2-17-553 that is effected by active or passive use of an internet connection, regardless of the medium by or through which the connection is established.

(6) "Personally identifiable information" means individually identifiable information about an individual collected online, including:

(a) a first and last name;

(b) a residence or other physical address, including a street name and name of a city or town;

(c) an e-mail address;

(d) a telephone number;

(e) a social security number; or

(f) unique identifying information that an internet service provider or a government website operator collects and combines with any information described in subsections (6)(a) through (6)(e).

(7) "Political subdivision" means any county, city, municipal corporation, school district, or other political subdivision or public corporation.

(8) "State" means the state of Montana or any office, department, agency, authority, commission, board, institution, hospital, college, university, or other instrumentality of the state.

2-17-552. Collection of personally identifiable information -- requirements.

(1) A government website operator may not collect personally identifiable information online from a website user unless the operator complies with the provisions of this section.

(2) A government website operator shall ensure that the website:

(a) identifies who operates the website;

(b) provides the address and telephone number at which the operator may be contacted as well as an electronic means for contacting the operator; and

(c) generally describes the operator's information practices, including policies to protect the privacy of the user and the steps taken to protect the security of the collected information.

(3) In addition to the requirements of subsection (2), if the personally identifiable information may be used for a purpose other than the express purpose of the website or may be given or sold to a third party, except as required by law, then the operator shall ensure that the website includes:

(a) a clear and conspicuous notice to the user that the information collected could be used for other than the purposes of the website;

(b) a general description of the types of third parties that may obtain the information; and

(c) a clear, conspicuous, and easily understood online procedure requiring an affirmative expression of the user's permission before the information is collected.

2-17-553. No change of privacy right or public right to know. Sections 2-17-550 through 2-17-553 are not intended to expand or restrict the individual right of privacy or the public right to know or to change the rights and obligations of persons, state agencies, or local governments that are otherwise provided by law.

State government privacy policy
Department of Administration website <http://doa.mt.gov/>
See also the attachment.

Exceptions

Overview

There are no exceptions to the Governmental Internet Privacy Act.

The only exceptions are related to main Montana Information Technology Act (SB 131 in 2001) and are:

- the case-by-case exceptions to the statewide IT standards;
- the specific exceptions for the U-System, OPI, the Montana National Guard, and the Criminal Justice Information Network; and
- the legislative and judicial branches.

Specific Sections

The specific sections (along with the legislative history of the sections) that related to the exceptions are provided below.

NOTE: The bold in the following section highlights the specific provisions from which the U-System and/or OPI are excepted.

2-17-512. Powers and duties of department. (1) The department is responsible for carrying out the planning and program responsibilities for information technology for state government, except the national guard. The department shall:

- (a) encourage and foster the development of new and innovative information technology within state government;
- (b) promote, coordinate, and approve the development and sharing of shared information technology application software, management systems, and information that provide similar functions for multiple state agencies;
- (c) cooperate with the office of economic development to promote economic development initiatives based on information technology;
- (d) establish and enforce a state strategic information technology plan as provided for in 2-17-521;**
- (e) establish and enforce statewide information technology policies and standards;**
- (f) review and approve state agency information technology plans provided for in 2-17-523;**
- (g) coordinate with the office of budget and program planning to evaluate budget requests that include information technology resources. The department shall make recommendations to the office of budget and program**

planning for the approval or disapproval of information technology budget requests, including an estimate of the useful life of the asset proposed for purchase and whether the amount should be expensed or capitalized, based on state accounting policy established by the department. An unfavorable recommendation must be based on a determination that the request is not provided for in the approved agency information technology plan provided for in 2-17-523.

- (h) staff the information technology board provided for in 2-15-1021;
- (i) fund the administrative costs of the information technology board provided for in 2-15-1021;
- (j) review the use of information technology resources for all state agencies;
- (k) review and approve state agency specifications and procurement methods for the acquisition of information technology resources;**
- (l) review, approve, and sign all state agency contracts and shall review and approve other formal agreements for information technology resources provided by the private sector and other government entities;**
- (m) operate and maintain a central computer center for the use of state government, political subdivisions, and other participating entities under terms and conditions established by the department;
- (n) operate and maintain a statewide telecommunications network for the use of state government, political subdivisions, and other participating entities under terms and conditions established by the department;
- (o) ensure that the statewide telecommunications network is properly maintained. The department may establish a centralized maintenance program for the statewide telecommunications network.
- (p) coordinate public safety communications on behalf of public and private safety agencies as provided for in 2-17-543 through 2-17-545;
- (q) manage the state 9-1-1 program as provided for in Title 10, chapter 4, part 3;
- (r) provide electronic access to information and services of the state as provided for in 2-17-532;
- (s) provide assistance to the legislature, the judiciary, the governor, and state agencies relative to state and interstate information technology matters;
- (t) establish rates and other charges for services provided by the department;
- (u) accept federal funds granted by congress or by executive order and gifts, grants, and donations for any purpose of this section;**
- (v) dispose of personal property owned by it in a manner provided by law when, in the judgment of the department, the disposal best promotes the purposes for which the department is established;
- (w) implement this part and all other laws for the use of information technology in state government;

(x) report to the appropriate interim committee on a regular basis and to the legislature as provided in 5-11-210 on the information technology activities of the department; and

(y) represent the state with public and private entities on matters of information technology.

(2) If it is in the state's best interest, the department may contract with qualified private organizations, foundations, or individuals to carry out the purposes of this section.

(3) The director of the department shall appoint the chief information officer to assist in carrying out the department's information technology duties.

History: En. Sec. 6, Ch. 313, L. 2001; amd. Sec. 1, Ch. 92, L. 2003; amd. Sec. 5, Ch. 114, L. 2003; amd. Sec. 4, Ch. 106, L. 2015.

2-17-515. Granting exceptions to state agencies. Subject to 2-17-516, the department may grant exceptions to any policy, standard, or other requirement of this part if it is in the best interests of the state of Montana. The department shall inform the board, the office of budget and program planning, and the legislative finance committee of all exceptions that are granted and of the rationale for granting the exceptions. The department shall maintain written documentation that identifies the terms and conditions of the exception and the rationale for the exception.

History: En. Sec. 9, Ch. 313, L. 2001.

2-17-516. Exemptions -- university system -- office of public instruction -- national guard. (1) Unless the proposed activities would detrimentally affect the operation of the central computer center or the statewide telecommunications network, the office of public instruction is exempt from 2-17-512(1)(k) and (1)(l).

(2) Unless the proposed activities would detrimentally affect the operation of the central computer center or the statewide telecommunications network, the university system is exempt from:

- (a) the enforcement provisions of 2-17-512(1)(d) and (1)(e) and 2-17-514;
- (b) the approval provisions of 2-17-512(1)(f), 2-17-523, and 2-17-527;
- (c) the budget approval provisions of 2-17-512(1)(g); and
- (d) the provisions of 2-17-512(1)(k) and (1)(l).

(3) The department, upon notification of proposed activities by the university system or the office of public instruction, shall determine if the central computer center or the statewide telecommunications network would be detrimentally affected by the proposed activity.

(4) For purposes of this section, a proposed activity affects the operation of the central computer center or the statewide telecommunications network if it detrimentally affects the processing workload, reliability, cost of providing service, or support service requirements of the central computer center or the statewide telecommunications network.

(5) When reviewing proposed activities of the university system, the department shall consider and make reasonable allowances for the unique educational needs and characteristics and the welfare of the university system as determined by the board of regents.

(6) When reviewing proposed activities of the office of public instruction, the department shall consider and make reasonable allowances for the unique educational needs and characteristics of the office of public instruction to communicate and share data with school districts.

(7) Section 2-17-512(1)(u) may not be construed to prohibit the university system from accepting federal funds or gifts, grants, or donations related to information technology or telecommunications.

(8) The national guard, as defined in 10-1-101(3), is exempt from 2-17-512. History: En. Sec. 10, Ch. 313, L. 2001; amd. Sec. 2, Ch. 237, L. 2015.

2-17-517. Legislative and judicial branch information sharing. The legislative branch and the judicial branch shall provide their information technology plans to the department.

History: En. Sec. 11, Ch. 313, L. 2001.

2-17-546. Exemption of criminal justice information network -- exception. The provisions of this part do not apply to the criminal justice information network or its successor except for the provisions dealing with the purchase, maintenance, and allocation of telecommunication facilities. However, the department of justice shall cooperate with the department to coordinate the telecommunications networks of the state.

History: En. Sec. 9, Ch. 230, L. 1971; amd. Sec. 88, Ch. 326, L. 1974; R.C.M. 1947, 82-3331; amd. Sec. 28, Ch. 313, L. 2001; Sec. 2-17-306, MCA 1999; redes. 2-17-546 by Sec. 44(3), Ch. 313, L. 2001; amd. Sec. 2, Ch. 55, L. 2015.