



NAVAL POSTGRADUATE SCHOOL

MONTEREY, CALIFORNIA

THESIS

**BLUEPRINTS FOR DISASTER: BALANCING SECRECY
AND TRANSPARENCY OF GOVERNMENT
CONTINUITY PLANS**

by

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September 2016

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REPORT DOCUMENTATION PAGE			Form Approved OMB No. 0704-0188	
Public reporting burden for this collection of information is estimated to average 1 hour per response, including the time for reviewing instruction, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Washington headquarters Services, Directorate for Information Operations and Reports, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202-4302, and to the Office of Management and Budget, Paperwork Reduction Project (0704-0188) Washington, DC 20503.				
1. AGENCY USE ONLY (Leave blank)	2. REPORT DATE September 2016	3. REPORT TYPE AND DATES COVERED Master's thesis		
4. TITLE AND SUBTITLE BLUEPRINTS FOR DISASTER: BALANCING SECRECY AND TRANSPARENCY OF GOVERNMENT CONTINUITY PLANS			5. FUNDING NUMBERS	
6. AUTHOR(S) Stephen Scott Vollbrecht				
7. PERFORMING ORGANIZATION NAME(S) AND ADDRESS(ES) Naval Postgraduate School Monterey, CA 93943-5000			8. PERFORMING ORGANIZATION REPORT NUMBER	
9. SPONSORING /MONITORING AGENCY NAME(S) AND ADDRESS(ES) N/A			10. SPONSORING / MONITORING AGENCY REPORT NUMBER	
11. SUPPLEMENTARY NOTES The views expressed in this thesis are those of the author and do not reflect the official policy or position of the Department of Defense or the U.S. Government. IRB protocol number ____ N/A ____.				
12a. DISTRIBUTION / AVAILABILITY STATEMENT Approved for public release. Distribution is unlimited.			12b. DISTRIBUTION CODE	
13. ABSTRACT (maximum 200 words) On one hand, it is readily assumed that the government must keep some information secret for the security of the state and the safety of people; on the other, as the ultimate sovereign, the people require access to information through government transparency. One area where this tension between secrecy and transparency is highly pertinent is continuity of operations plans. Continuity plans contain highly sensitive information that, if not protected from disclosure under open records laws, may reveal vulnerabilities for potential exploitation by malicious actors. How can confidentiality and disclosure needs for government information in continuity of operations plans be reconciled? Using a hybrid method that includes historical, legal, political, and disciplinary research and contextual analysis, this thesis investigates the tension between the meaning and goals of secrecy and transparency in the political context, analyzes exposures in the current legal and practical frameworks, and considers approaches for balancing the legitimate interests of secrecy and transparency in achieving security and accountability. Based on analysis and application, this thesis proposes a practical solution in the form of a uniform protective security approach for confidentiality and disclosure through a modified understanding of risk and a specific responsive risk-balancing model.				
14. SUBJECT TERMS continuity of operations plans (COOP), business continuity, secrecy, confidentiality, transparency, mediated transparency, accountability, open government, open records, freedom of information, Freedom of Information Act (FOIA), protective security, risk management, Presidential Policy Directive 21 (PPD-21), National Security Presidential Directive 51 (NSPD-51)			15. NUMBER OF PAGES 163	
			16. PRICE CODE	
17. SECURITY CLASSIFICATION OF REPORT Unclassified	18. SECURITY CLASSIFICATION OF THIS PAGE Unclassified	19. SECURITY CLASSIFICATION OF ABSTRACT Unclassified	20. LIMITATION OF ABSTRACT UU	

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**BLUEPRINTS FOR DISASTER: BALANCING SECRECY AND
TRANSPARENCY OF GOVERNMENT CONTINUITY PLANS**

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Submitted in partial fulfillment of the
requirements for the degree of

**MASTER OF ARTS IN SECURITY STUDIES
(HOMELAND SECURITY AND DEFENSE)**

from the

**NAVAL POSTGRADUATE SCHOOL
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ABSTRACT

On one hand, it is readily assumed that the government must keep some information secret for the security of the state and the safety of people; on the other, as the ultimate sovereign, the people require access to information through government transparency. One area where this tension between secrecy and transparency is highly pertinent is continuity of operations plans. Continuity plans contain highly sensitive information that, if not protected from disclosure under open records laws, may reveal vulnerabilities for potential exploitation by malicious actors. How can confidentiality and disclosure needs for government information in continuity of operations plans be reconciled? Using a hybrid method that includes historical, legal, political, and disciplinary research and contextual analysis, this thesis investigates the tension between the meaning and goals of secrecy and transparency in the political context, analyzes exposures in the current legal and practical frameworks, and considers approaches for balancing the legitimate interests of secrecy and transparency in achieving security and accountability. Based on analysis and application, this thesis proposes a practical solution in the form of a uniform protective security approach for confidentiality and disclosure through a modified understanding of risk and a specific responsive risk-balancing model.

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LIST OF ACRONYMS AND ABBREVIATIONS

AS/NZS 4360	Australia Standard/New Zealand Standard 4360
BCP	business continuity planning
BCM	business continuity management
CIA	Central Intelligence Agency
CIIA	Critical Infrastructure Information Act of 2002
CGCs	continuity guidance circulars
CPG	Comprehensive Preparedness Guide 101
COOP	continuity of operations
DHS	Department of Homeland Security
DOD	Department of Defense
FCDs	federal continuity directives
FCD-1/CGC-1	Federal Continuity Directive 1 / Continuity Guidance Circular 1
FCD-2/CGC-2	Federal Continuity Directive 2 / Continuity Guidance Circular 2
FEMA	Federal Emergency Management Agency
FOIA	Freedom of Information Act
FOUO	For Official Use Only
HSPD-20	Homeland Security Policy Directive-20
ISO 31000	International Organization for Standardization 31000
ISOO	Information Security Oversight Office
LGOIMA	Local Government Official Information and Meetings Act of 1987 (New Zealand)
NARA	National Archives and Records Administration
NCPIP	National Continuity Policy Implementation Plan
NSC	National Security Council
NSPD-51	National Security Presidential Directive 51
OGIS	Office of Government Information Services
SORM	State Office of Risk Management (Texas)
OIA	Official Information Act of 1982 (New Zealand)

PPD-21	Presidential Policy Directive 21
SLTT	state, local, tribal, and territorial
SWOT	strengths, weaknesses, opportunities, threats
THIRA	threat and hazard identification and risk assessment

EXECUTIVE SUMMARY

Focusing primarily on succession planning and continuity of government in the event of a catastrophe, continuity planning has been a part of the preparedness landscape since at least the Cold War.¹ After the terrorist attacks of September 11, 2001, the government specifically mandated that all federal agencies have a continuity of operations (COOP) plan.² To be viable and effective, a COOP plan has to be highly detailed, and complete. As a result, these plans can contain particularly sensitive data that reveal strategies, personnel, and resources needed to continue the essential functions that protect life, property, vital information, and support continuity of government operations.

The public has an interest in knowing whether and how well its government is prepared to respond in the event of disaster. However, when made public, information in these plans can be reverse engineered, not only to purposefully endanger the lives and privacy of federal and state employees but also to expose agencies to initial and secondary attack or disruption.

There is no demonstrable universal agreement, clear delineation, nor detailed federal guidance respecting the confidentiality of COOP plans. The confidentiality of certain matters related to national security and law enforcement are procedurally addressed through most freedom of information laws. However, there is a dearth of analysis of the conflicts between maintaining confidentiality or disclosing specific content of agency continuity plans under existing requirements of open records.

Therefore, this thesis addresses the need for a uniform policy for protecting this information while balancing the public's right to know. This thesis

¹ Harold C. Relyea, *Continuity of Operations (COOP) in the Executive Branch: Background and Issues for Congress* (CRS Report No. RS21089) (Washington, DC: Congressional Research Service, 2005), <https://www.fas.org/sgp/crs/secretary/RL32752.pdf>.

² White House, *National Security Presidential Directive-51/Homeland Security Presidential Directive-20 (NSPD-51/HSPD-20)* (Washington, DC: White House, 2007), <http://fas.org/irp/offdocs/nspd/nspd-51.htm>.

answers the question: How can confidentiality and disclosure needs for government information in continuity of information plans be reconciled?

To address the question, Chapter II briefly addresses continuity of operations and the intersection of secrecy and transparency as political and ethical concepts. Chapter III considers the current legal and practical frameworks respecting secrecy and transparency with regard to open government law and policy. Chapter IV reviews contextual approaches to resolving the philosophical and practical tensions between confidentiality and disclosure through the concept of protective security, and as implemented in the state of Texas.

Chapter V then proposes a model framework based upon the analysis of the literature, law, concepts, and applications relevant to secrecy and transparency objectives. The resulting model is based on the concept of protective security (a holistic approach to information classification and disclosure processes) with a risk management focus, which I refer to as risk balancing.

The risk balancing model is designed upon three interdependent aspects: a foundational risk management framework, an expanded definition of risk, and a focus on generative thought. The application of the principles, framework, processes, and outcomes set forth in the proposed model result in a protective security approach that balances secrecy and transparency by ensuring that two primary goals of those concepts, security and accountability, are simultaneously achieved, while also resulting in efficiency and increased efficacy.

I. INTRODUCTION

This thesis answers the question: How can confidentiality and disclosure needs for government information in continuity of information plans be reconciled?

A. BACKGROUND

The United States is a nation founded on the concepts of self-government, that government is responsible for the people, and accountable to the people. The inherent tensions between secrecy and transparency, concepts that appear to be in binary opposition, is a vexing problem in the theory of the democratic state. How can the conflict between the control of sensitive information and the public's need to know the activities of its government be resolved? On the one hand, it is readily assumed, either through maintenance or expansion of authority or power, that state actors must control certain types of information for the security of the state and the safety of people. On the other hand, the contemporary democratic state is based upon an equally pedigreed assumption that despotism, corruption, and collusion of and by state actors must be countered through oversight of the public as the ultimate sovereign.³ The grey area between these two assumptions is complex and subject to the rhetoric of the extremes. As Aftergood notes:

There is no disagreement in any domain that robust public access to government information is an essential characteristic of a vital democracy. Nor, on the other hand, is there any dispute that some types of government information require protection on national

³ Louis Brandeis is routinely quoted in this context: "Publicity is justly commended as a remedy for social and industrial diseases. Sunlight is said to be the best of disinfectants; electric light the most efficient policeman." Louis D. Brandeis, "Other People's Money (1913)," Brandeis School of Law, accessed January 31, 2016, <https://louisville.edu/law/library/special-collections/the-louis-d.-brandeis-collection/other-peoples-money-chapter-v>.

security grounds. Beyond these points, however, consensus gives way to confusion, inertia, and the weight of past practice.⁴

Balancing the interests of the public in a secure state, while at the same time ensuring the maximum visibility of the state apparatus, is a uniquely dependent analysis and cannot easily be constrained through a static or simplistic calculus. An understanding of the fundamental objectives of secrecy and revelation, of transparency and discretion, is therefore necessary to formulate targeted solutions to specific issues through a consistent and flexible framework.

In this thesis, I consider the conflict between secrecy and transparency specifically in the context of government continuity of operations plans. Drawing on research and my direct experience with the state of Texas,⁵ I propose the application of a risk balancing model for achieving secrecy and transparency objectives within a statutory confidentiality and disclosure framework for state and federal continuity planning.

B. PROBLEM SPACE

In the event of a catastrophe or disaster, consequences of an incident may interrupt essential operations of government entities. The practical effect of these events is an adverse impact on the clients of government entities, whether these are other governmental units or the general public. To prepare for such interruptions, government entities have various available protocols for plans to

⁴ Steven Aftergood, "Reducing Government Secrecy: Finding What Works," *Yale Law & Policy Review* 27, no. 2 (2009): 404.

⁵ The author is the current State Risk Manager for Texas (SORM) and Executive Director of the State Office of Risk Management, serving from 2001 in prior capacities as Deputy General Counsel, General Counsel, and Deputy Executive Director.

respond to those events and resume essential functions, each with a potentially different emphasis and level of detail and complexity.⁶

In this thesis, I consider continuity of operations plans. As defined in the *National Continuity Policy Implementation Plan* (NCPIP),⁷ a continuity of operations (COOP) plan is essentially a blueprint for the implementation and management of continuing essential operations in the event of a crisis. The Federal Emergency Management Agency (FEMA) promulgates COOP standards applicable to the federal government, but it also provides guidelines that can be used by state, local, tribal, and territorial entities. In essence, these plans are detailed instruction guides for continuing operations.

To be viable and effective, a COOP plan has to be highly detailed and complete. As a result, these plans can contain particularly sensitive data that reveal the vulnerabilities, sensitivities, specific strategies, personnel, and resources needed to continue essential government functions that protect life, property, vital information, and continued operations. As discussed herein, the confidentiality of certain matters related to national security and law enforcement are procedurally addressed through most freedom of information laws, but there is no universal policy agreement or clear legal delineation respecting the interplay of confidentiality (secrecy) and disclosure (transparency) of continuity of operations plans.

When made public, information in these plans can be reverse engineered, not only to purposefully endanger the lives and privacy of federal and state employees, but also to expose agencies to initial and secondary attack or disruption. The public also has an interest in knowing whether and how well its

⁶ Examples of available plans in use include, but are not limited to, business continuity plans, continuity of operations plans, continuity of government plans, crisis communications plans, critical infrastructure protection plans, cyber incident response plans, disaster recovery plans, information system contingency plans, emergency operations plans, occupant emergency plans, and others.

⁷ Homeland Security Council, *National Continuity Policy Implementation Plan* (Washington, DC: Homeland Security Council, 2007), <http://www.fema.gov/media-library-data/1384886826028-729844d3fd23ff85d94d52186c85748f/NCPIP.pdf>.

government is prepared to respond in the event of disaster. Therefore, this thesis addresses the need for a uniform policy for protecting this information while balancing the public's right to know.

C. SIGNIFICANCE OF RESEARCH

Continuity planning ensures that government entities are preparing for and strengthening homeland security for resiliency against deliberate and non-deliberate catastrophes or attacks. The existence of these continuity plans should serve to raise the level of confidence for the general public in the government's ability to respond to crises. Government transparency has a similar public objective to help to ensure accountability and that important information is made available to the community about government operations and readiness, whether in a crisis or in general. However, the public disclosure of continuity planning information may reduce security, and thus the public's ultimate confidence in the ability of government entities to continue operations in service of that same public.

The philosophical debate is one of secrecy versus transparency.⁸ However, there is a deficiency of academic research specifically addressing the need for confidentiality of government continuity of operations plans. Most major literature on the topic of government information disclosure centers on the concept of open government in the form of freedom of information policies or specifically with respect to confidentiality of information in the form of withholding (or, alternatively, classification or redaction) on the basis of national security or law enforcement exceptions.

I argue that a uniform and effective statutory confidentiality approach is required to ensure the appropriate balance is struck between maintaining necessary secrecy and encouraging appropriate transparency for continuity of

⁸ Clare Birchall, "Introduction to 'Secrecy and Transparency: The Politics of Opacity and Openness,'" *Theory, Culture & Society* 28, no. 7–8 (2011): 7–25, <http://tcs.sagepub.com/content/28/7-8/7.short>.

operations concerns. This research is significant in that it proposes a model framework to be used by all levels of government to achieve an appropriate balance between secrecy and transparency, specifically in continuity planning.

D. METHOD

The following sections describe the object, selection, limits, output, and structure of this thesis:

(1) Object

There is no demonstrable universal agreement or clear delineation respecting the confidentiality of COOP plans. This thesis analyzes the tension between secrecy and transparency in the continuity planning context within federal and state jurisdictions and proposes a risk management balancing approach.

(2) Selection

Secrecy and transparency concepts are generalized policy considerations involving political science, philosophy, and ethics, among other domains. After an abbreviated contextual review of relevant historical and contemporary normative and concept literature as well as general open government law and continuity of operations planning concepts, an analysis of open government legal application is considered, including a brief comparative analysis of state jurisdictional issues. This is followed by a discussion of the risk balancing method used by the state of Texas.

(3) Limits

This thesis analyzes the contextual tension in political secrecy and transparency theory but will primarily address practical statutory and regulatory approaches respecting government continuity plan confidentiality. The conceptual modeling for solutions respecting COOP may be extendable in other domains, but those are not within the immediate scope of the thesis.

(4) Output

It is expected this research will result in a model strategic framework that can be used by government(s) to provide transparency and accountability while ensuring ongoing security and confidentiality of sensitive continuity information. The primary audiences for this research are federal, state, local, tribal, and territorial policymakers and stakeholders from the general public and the private sectors.

(5) Structure

Chapter II briefly addresses continuity of operations and the intersection of secrecy and transparency as both political and ethical concepts. Chapter III considers the current legal and practical frameworks respecting secrecy and transparency with regard to open government law and policy. Chapter IV reviews contextual approaches to resolving the philosophical and practical tensions between confidentiality and disclosure through the concept of protective security, and in the state of Texas. Chapter V proposes a model framework appropriate for application at the federal, state, local, tribal, and territorial levels.

II. REVIEW: LITERATURE AND CONSTRUCTS

After a general overview of continuity and continuity planning, this chapter briefly addresses secrecy and transparency as political and ethical concepts, along with appropriate conditions for the succeeding analysis. This section is not intended as an exhaustive review of extended specialized literature, nor does it purport to be a full deconstructive analysis or resolution of inherent tensions identified herein. Rather, this overview is for the purpose of delineating context for the succeeding analysis on open government mechanisms, continuity of operations goals and exposures, implemented approaches, and final recommendations for balancing secrecy and transparency in government continuity of operations planning.

A. CONTINUITY

Fore-warned, fore-armed; to be prepared is half the victory.

—Miguel de Cervantes⁹

Continuity planning, focusing primarily on succession planning and continuity of government in the event of a catastrophe,¹⁰ has been a part of the preparedness landscape since at least the Cold War; however, it was not until after the terrorist attacks of September 11, 2001 that the government specifically mandated all federal agencies have a COOP plan.¹¹ The Federal Emergency Management Agency (FEMA) was tasked with COOP standardization and issued *Federal Continuity Directive 1/Continuity Guidance Circular 1* (FCD-1/CGC-1) as

⁹ Cervantes continues, “I know, by experience, that I have enemies both visible and invisible, and I know not when, nor from what quarter, nor at what time, nor in what shape, they may attack me.” Miguel de Cervantes Saavedra, *Adventures of Don Quixote de la Mancha*, trans. Charles Jarvis (London: G. Rutledge & Co., 1856).

¹⁰ Harold C. Relyea, *Continuity of Operations (COOP) in the Executive Branch: Background and Issues for Congress* (CRS Report No. RS21089) (Washington, DC: Congressional Research Service, 2005), <https://www.fas.org/sgp/crs/secrecy/RL32752.pdf>.

¹¹ White House, *National Security Presidential Directive-51/Homeland Security Presidential Directives-20 (NSPD-51/HSPD-20)* (Washington, DC: White House, 2007), <http://fas.org/irp/offdocs/nspd/nspd-51.htm>.

guidance for federal and non-federal entities in 2009, followed by *Federal Continuity Directive 2/Continuity Guidance Circular 2* (FCD-2/CGC-2) in 2010.

Continuity plans are required to contain detailed strategies, personnel, and resources needed to continue the essential functions that protect life, property, vital information, and support continuity of government operations. In summary, a minimum viable COOP plan must contain the following information:

1. The most critical self-identified operations of an entity (essential functions).
2. Identification of who assumes critical offices during an emergency (orders of succession).
3. Identification of who has authority to make decisions at all levels of an entity, where, and for how long (delegations of authority).
4. Secondary or alternate locations where continuity activities will take place (continuity facilities).
5. Which individuals and entities will be part of or notified to support continuity activities and how (continuity communications).
6. The identification and actual location of electronic and hard copy documents, references, records, information systems, data management software, and equipment needed to support essential functions (vital records).
7. The employees and other personnel responsible to continuity operations (human resources).
8. Specific information on an entity's testing, training, and exercises (tests, training, and exercises).
9. How essential function responsibilities are transferred and to whom (devolution of control and direction).
10. Detailed information of resumption of normal operations at the primary facility or facilities (reconstitution).¹²

Specific appendices and annexes of continuity plans and associated supporting documentation contain detailed information on these core elements, as well as

¹² Federal Emergency Management Agency, "Continuity Capabilities," last modified November 12, 2015, <https://www.fema.gov/continuity-capabilities>.

additional vulnerability assessments, access controls and authorizations, and other related plans.

Not the NCPIP, the *National Security Presidential Directive-51* (NSPD-51)/*Homeland Security Policy Directive-20* (HSPD-20),¹³ nor the *Federal Continuity Directives* (FCDs) 1 and 2 for federal entities,¹⁴ nor the *Continuity Guidance Circulars* (CGCs) 1 and 2 for state, local, tribal, and territorial entities,¹⁵ nor even the *Comprehensive Preparedness Guide 101* (CPG)¹⁶ address the issue of confidentiality or protection of the continuity plans from public disclosure. At the federal level, the only document that purports to address confidentiality is FEMA's *Continuity of Operations Plan Template for Federal Departments and Agencies*, which suggests that agencies classify their plans as "For Official Use Only" (FOUO) and provides that portions of documents may be exempted under the Freedom of Information Act (FOIA).¹⁷

While FEMA references these FOUO notifications, authority for the assertion that COOP plans, or portions thereof, may be designated as FOUO is not furnished, nor is any philosophical or legal analysis provided for considering

¹³ White House, *NSPD-51/HSPD-20*.

¹⁴ Federal Emergency Management Agency, *Federal Continuity Directive 1* (Washington, DC: Federal Emergency Management Agency, 2012), <http://www.fema.gov/media-library-data/1386609058779-b084a7230663249ab1d6da4b6472e691/2012-Federal-Continuity-Directive1.pdf>; Federal Emergency Management Agency, *Federal Continuity Directive 2* (Washington, DC: Federal Emergency Management Agency, 2013), <http://www.fema.gov/media-library-data/1386609058811-b084a7230663249ab1d6da4b6472e691/FCD2-Signed-.July-2013.pdf>.

¹⁵ Federal Emergency Management Agency, *Continuity Guidance Circular 1* (Washington, DC: Federal Emergency Management Agency, 2013), <http://www.fema.gov/media-library-data/1386609058803-b084a7230663249ab1d6da4b6472e691/CGC-1-Signed-July-2013.pdf>; Federal Emergency Management Agency, *Continuity Guidance Circular 2* (Washington, DC: Federal Emergency Management Agency, 2013), <http://www.fema.gov/media-library-data/1386609058826-b084a7230663249ab1d6da4b6472e691/Continuity-Guidance-Circular2.pdf>.

¹⁶ Federal Emergency Management Agency, *Comprehensive Preparedness Guide 101* (Washington, DC: Federal Emergency Management Agency, 2013), https://www.fema.gov/media-library-data/20130726-1828-25045-0014/cpg_101_comprehensive_preparedness_guide_developing_and_maintaining_emergency_operations_plans_2010.pdf.

¹⁷ Federal Emergency Management Agency [FEMA], *Continuity of Operations Plan Template for Federal Departments and Agencies* (Washington, DC: Federal Emergency Management Agency, 2013), <http://www.fema.gov/media-library-data/1386609058805-b084a7230663249ab1d6da4b6472e691/COOP-Planning-Template.pdf>.

the conflicts between maintaining confidentiality or disclosing specific content of agency continuity plans under existing open records requirements. Before addressing this analysis, however, I first consider the underlying concepts of secrecy and transparency relevant to a political perspective as will be applied to government continuity of operations planning.

B. **SECRECY**

You see, a secret is not something untold. It's something which can't be told.

—Terence McKenna¹⁸

First, what is secrecy? Generally, something that is secret is defined as “[n]ot known or seen or not meant to be known or seen by others.”¹⁹ Depending on whether one has the information or lacks it, desires it or is burdened by it, a secret can be something of power, of weakness, of pride, of shame, or any number of other asymmetries. A secret, by its very nature, implies a fundamental separation or disparity in content, context, knowledge, knowability, or control. In seeking a balance between secrecy and transparency, how are we to understand the nature of secrecy in government and the tensions it evokes with the aims of transparency?

Understanding the secret as a political concept is, of course, a fundamental starting point to the inquiry of transparency, and in particular its application to security concerns like continuity planning. In this section, I briefly outline three conceptual constructs of secrecy, with a focus on government secrecy: technique, type, and taxonomy. A significant amount of sociological, psychological, political, and other scholarship has considered the nature of the secret (as content) and secrecy (as process) at both the individual and

¹⁸ “Terence McKenna—Under The Teaching Tree,” YouTube video, posted July 10, 2011, <https://www.youtube.com/watch?v=0HpIyFQxzgU>. The comment is at 48:02-48:09.

¹⁹ *Oxford Dictionary*, s.v., “Secret,” http://www.oxforddictionaries.com/us/definition/american_english/secret.

community levels.²⁰ This scoping is not intended as an exhaustive review of this literature, and it is specifically constrained to frame three relevant perspectives helpful in the context of balancing secrecy and transparency in the political sphere, as applied here to continuity of operations planning.

1. As Technique

A first useful construct in understanding political secrecy are the logics, or systems, of secrecy as suggested persuasively by Eva Horn as *mysterium*, *secretum*, and *arcanum*.²¹ *Mysterium* describes information that is deeply enigmatic or even unknowable—a theological or providential knowledge reserved only for the chosen in the sense of a sacred approbation or of something creating fascination or wonder.²² In a political context, power may be professed from divine knowledge, but that underlying knowledge, by its very nature, is publicly inaccessible.²³ In contrast, the second more secular concept of *secretum* describes access to general rather than divine knowledge and, most importantly, emphasizes a relationship between the known and unknown, or who knows and who does not.²⁴ A secret in this framework is an exclusion from knowing of a secret or knowing its content but not an unknowability. The third secrecy dimension, most important here, is exemplified in the *arcanum*. Unlike *mysterium*, as an inaccessibility of the knowledge itself, or *secretum*, as a relationship between who knows and who does not, *arcanum* is essentially

²⁰ For other excellent discussions of the philosophies and analyses of secrets and secrecy generally, see Sissela Bok, *Secrets: On the Ethics of Concealment and Revelation* (New York: Vantage Books, 1989); Georg Simmel, “The Secret and the Secret Society,” *American Journal of Sociology* 11, no. 4 (1906): 441–4498, <http://www.d.umn.edu/cla/faculty/jhamlin/4111/Readings/SimmelSecrecy.pdf>; Eviatar Zerubavel, *The Elephant in the Room: Silence and Denial in Everyday Life* (Oxford: Oxford University Press, 2006).

²¹ Eva Horn, “Logics of Political Secrecy,” *Theory, Culture & Society* 28, no. 7–8 (2011): 108, doi:10.1177/0263276411424583.

²² Tanya Marie Luhmann, “The Magic of Secrecy,” *Ethos* 17, no. 2 (1989): 131–165.

²³ Horn, “Logics of Political Secrecy,” 108.

²⁴ *Ibid.*, 109.

procedural.²⁵ Thus, in the political context, secrets of the modern secular state are capable of being both understood and revealed. In essence, the *arcantum* is the fundamental dimension of political secrecy applied through the discretion of representative governing. In this context, it is the *arcantum*, which illustrates the nature of state secrecy and defines the parameters within which any proposed balancing solutions must exist.

2. As Type

The second construct for understanding the secret in the political context is a typification of potential categories of government secrecy. In the context of government, Aftergood identifies three potential types of state secrecy:

1. “Security secrecy” (wherein disclosure would undoubtedly threaten the security of the country).
2. “Bureaucratic secrecy” (wherein information that could potentially cause harm is kept secret out of an abundance of caution).
3. “Political secrecy” (wherein information is kept secret to avoid accountability or controversy or for other selfish reasons, such as avoiding embarrassment).²⁶

In considering continuity of operations, it is security and bureaucratic secrecy that are the primary typifications, with the last type, political secrecy, relevant insofar as accountability is addressed.²⁷

3. As Taxonomy

The third relevant secrecy construct deals with a continuum of secrecy. Pozen notes that the criticism levied against the “unknown unknown” remarks

²⁵ In tracing the origin of and applying the concept of *arcantum imperii*, Horn observes that the state secret “concerns something that precedes the decision between truth and falsehood or justice and injustice: namely, the decision between silence and speaking.” Horn, “Logics of Political Secrecy,” 107.

²⁶ Aftergood, “Reducing Government Secrecy,” 402–403.

²⁷ Some acknowledgement of political secrecy is necessary in consideration of transparency aims; however, this is not a primary focus in this thesis, given the nature of the continuity documentation addressed.

made by Donald Rumsfeld in 2002²⁸ actually overlooks an important secrecy taxonomy.²⁹ Building on the work of Scheppele,³⁰ Pozen categorizes secrets in terms of depth, identifying two essential poles of secrets: *deep secrets* (where the existence of a secret and the act of concealing it are both hidden) and *shallow secrets* (where the existence of a secret and the act of concealing it are both known).³¹ These two poles lay at the ends of a continuum of government secrecy, wherein Horn's *arcanum imperii* is manifest as technique, and the considerations of Aftergood's secrecy typology can be most fully considered. While some scholars have argued that shallow secrecy also represents a significant threat, particularly in the area of illegal acts,³² Pozen maintains it is the deep secret that represents the most significant danger.³³ The important issue in this construct is the delineation between keeping the existence of a secret itself a secret or withholding the information itself, but not the knowledge of its existence. Respecting continuity planning, it is Pozen's shallow secret that is our inquiry.

Having now specifically framed three relevant dimensions of government secrecy to this continuity planning inquiry—technique, type, and taxonomy—I

²⁸ Responding to questions about Iraq and weapons of mass destruction, Rumsfeld famously replied, "[T]here are known knowns; there are things we know we know. We also know there are known unknowns; that is to say we know there are some things we do not know. But there are also unknown unknowns—the ones we don't know we don't know." "Secretary Rumsfeld and Gen. Myers," Department of Defense News Briefing, February 12, 2002, <http://archive.defense.gov/Transcripts/Transcript.aspx?TranscriptID=2636>.

²⁹ David E. Pozen "Deep Secrecy," *Stanford Law Review* 62, no. 2 (2010): 259.

³⁰ Kim Lane Scheppele, *Legal Secrets: Equality and Efficiency in the Common Law* (Chicago: University of Chicago Press, 1988), 21–22, 75–79, 84–85.

³¹ Pozen "Deep Secrecy," 260. See also Heidi Kitrosser, "Secrecy and Separated Powers: Executive Privilege Revisited," *Iowa Law Review* 92, no. 2 (2007): 489, 514–15, 542–43. Additionally, contrast a corollary concept of dark secrecy respecting Aftergood's third reputational category. Vikand Anand and Christopher C. Rosen, "The Ethics of Organizational Secrets," *Journal of Management Inquiry* 17, no. 2 (2008): 97–101, doi: 10.1177/1056492607312785; Carl Keane, "Don't Ask, Don't Tell. Secrets—Their Use and Abuse in Organizations," *Journal of Management Inquiry* 17, no. 2 (2008): 107–110.

³² Jenny-Brooke Condon "Illegal Secrets," *Washington University Law Review* 91, no. 5 (2014): 1099–1168, http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2509328.

³³ In fact, Rumsfeld seems to intuitively acknowledge this: "And if one looks throughout the history of our country and other free countries, it is the latter category [of unknown unknowns] that tend to be the difficult ones." "Secretary Rumsfeld and Gen. Myers," Department of Defense News Briefing.

now move briefly to the revelation of information through the theory and mechanism of transparency.

C. TRANSPARENCY

[T]he more strictly we are watched, the better we behave.

—Jeremy Bentham³⁴

What is transparency? Definitionally, something that is transparent “allow[s] light to pass through so that objects behind can be distinctly seen.”³⁵ As with secrecy, the political and social implications here defy easy categorization, but framing the scope of consideration is necessary when considering the application of transparency to continuity planning. Birchall traces the lineage of the concept of government transparency from Kant and Rousseau to Bentham, and in the United States, to Wilson and Brandeis among others.³⁶ Hood traces transparency’s lineage even further, in ideals as far back as ancient China and Greece.³⁷ At its most succinct, Fenster describes the logic of transparency as follows:

³⁴ Jeremy Bentham, “Farming Defended,” quoted in Michael Quinn, ed., *Writings on the Poor Laws* (Oxford: Oxford University Press, 2001), 276, 277.

³⁵ Oxford Dictionary, s.v. “Transparency,” http://www.oxforddictionaries.com/us/definition/american_english/transparent.

³⁶ Birchall, “Introduction to ‘Secrecy and Transparency,’” 8.

³⁷ Christopher Hood, “Transparency in Historical Perspective,” in *Transparency. The Key to Better Governance?*, ed. Christopher Hood, and David Heald, 3–23 (Oxford: Oxford University Press, 2006).

Government institutions operate at a distance from those they serve. To be held accountable and to perform well, the institutions must be visible to the public. But in the normal course of their bureaucratic operation, public organizations—sometimes inadvertently, sometimes willfully; sometimes with good intent, sometimes with unethical or illegal intent—create institutional impediments that obstruct external observation. These obstructions must be removed in order for the institutions to be visible and, ultimately, transparent.³⁸

For the purposes of relevancy above, I have framed secrecy's scope based on three relevant constructs: technique, type, and taxonomy. Drawing largely on Schauer's analysis in *Transparency in Three Dimensions*,³⁹ I now consider transparency by focusing on three constructs that are helpful in the context of balancing secrecy and transparency in the political sphere, as applied to continuity of operations planning: democracy, regulation, and epistemology.⁴⁰

1. As Democracy

As democracy, transparency is what Schauer calls the “embodiment of public control.”⁴¹ Echoing Brandeis, Aftergood observes that transparency “is essential to the vitality of democratic governance.”⁴² Whether transparency is codified under the banner of sunshine, freedom of information, open government, public information, or some other terminology, the policies, preambles, and statutes each recite a fundamental philosophy that transparency itself is an

³⁸ Mark Fenster, “Seeing the State: Transparency as Metaphor,” *Administrative Law Review* 62, no. 3 (2010): 619, http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1562762.

³⁹ Frederick Schauer, “Transparency in Three Dimensions,” *University of Illinois Law Review* 2011, no. 4 (2011): 1339, http://heinonline.org/hol/cgi-bin/get_pdf.cgi?handle=hein.journals/unilllr2011§ion=47.

⁴⁰ The three dimensions referenced by Schauer are the variables that define and outline the degree of transparency: 1) who has the information, 2) what the information is, and 3) who wants the information. The three constructs emphasized here are part of an analysis therein exploring the general goals of transparency, identified as democracy, regulation, efficiency, and epistemology. I exclude efficiency herein as a primarily market focus, but elements could be applicable in other domains. Schauer, “Transparency in Three Dimensions.”

⁴¹ *Ibid.*, 1349.

⁴² Aftergood, “Reducing Government Secrecy,” 399.

underlying tenet of democracy.⁴³ In fact, these concepts are arguably tied to the very birth and evolution of the nation, from the Declaration of Independence to the Constitution, and in certain correspondence of Madison,⁴⁴ Lincoln's Gettysburg Address,⁴⁵ and scores of others.⁴⁶ In essence and highly relevant to any balancing inquiry, the concept of transparency in terms of visibility of governance is inextricably interwoven into the very essence of the American political experiment.

⁴³ For example, see Title 5, Texas Government Code, Chapter 552 (§ 552.001, Policy; Construction): (a) Under the fundamental philosophy of the American constitutional form of representative government that adheres to the principle that government is the servant and not the master of the people, it is the policy of this state that each person is entitled, unless otherwise expressly provided by law, at all times to complete information about the affairs of government and the official acts of public officials and employees. The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may retain control over the instruments they have created.)

Also see *Statement by the President upon Signing S. 1160* (San Antonio, TX: Office of the White House Press Secretary, July 4, 1966), <http://nsarchive.gwu.edu/NSAEBB/NSAEBB194/Document%2037.pdf> It states, "This [FOIA] legislation springs from one of our most essential principles: a democracy works best when the people have all the information that the security of the nation permits." The latter example is quite interesting, and subsequent statements have been substantially more enthusiastic.

⁴⁴ The following is very often quoted: "A popular Government, without popular information, or the means of acquiring it, is but a Prologue to a Farce or a Tragedy; or, perhaps both. Knowledge will forever govern ignorance: And a people who mean to be their own governors, must arm themselves with the power which knowledge gives." Letter from James Madison to W. T. Barry (Aug. 4, 1822), quoted in Saul K. Padover, ed., *The Complete Madison: His Basic Writings* (New York: Harper & Brothers, 1953), 337.

Interestingly and despite routine invocation of this historical support, some scholars point out that Madison was *not* actually addressing transparency but rather referring to the need for public education. Michael Doyle, "Misquoting Madison," *Legal Affairs*, July–August 2002, https://www.legalaffairs.org/issues/July-August-2002/scene_doyle_julaug2002.msp, 16–18.

⁴⁵ The recognizable phrase "government of the people, by the people, and for the people" condenses the concept of representational government as opposed to state sovereignties (or despotism) succinctly. According to some scholars, the phrasing was taken from a sermon in which Lincoln highlighted the following phrase: "Democracy is direct self-government, over all the people, for all the people, by all the people." William H. Herndon and Jesse W. Welk, *Abraham Lincoln: The True Story of a Great Life*, Vol. II (New York: D. Appleton and Company, 1892), 65.

⁴⁶ Horn, "Logics of Political Secrecy," 108.

2. As Regulation

There are two notable facets to understanding transparency as regulation or control. The first, as a technical (or technocratic) concept,⁴⁷ is effectuated by laws and procedures⁴⁸ and second, as a metaphorical concept, effectuated by an actor regulating his or her own behavior.⁴⁹ Thus, transparency is a means for controlling behavior by mandating the technical disclosure of decisions and actions, and it is intrinsically tied to a metaphorical form of potential shaming of actors, theoretically ensuring that inappropriate behavior is avoided because of the knowledge that those actions will be subject to public scrutiny.

3. As Epistemology

Drawing on his own work and others in free speech theory, Schauer also argues that another aim of transparency is related to the marketplace of ideas—to “facilitate the identification of truth (and falsity) and consequently produce more knowledge and greater progress.”⁵⁰ In this modern construct, transparency becomes not just a mechanism but also an independent theory of knowledge through evolution from freedom of information, as an extension of freedom of

⁴⁷ According to Fenster, “[Transparency] constitutes a technical concept that, when properly implemented in law and regulation, produces goods deemed essential for a democratic society: an effective administrative state; a knowledgeable citizenry that can hold the government accountable; and an active, deliberative polis.” Fenster, “Seeing the State,” 628.

⁴⁸ According to Fenster, “In implementing this understanding of the concept, constitutions and legislatures impose transparency through legal and administrative commands and institutional design...” Fenster, “Seeing the State,” 628.

⁴⁹ Schauer, “Transparency in Three Dimensions,” 1347–1348. Schauer argues information is a form of power, and therefore awareness that information will be disclosed influences, or regulates, behavior.

⁵⁰ *Ibid.*, 1350. Schauer invokes a broad coalition from Milton, Mill, and Holmes to the modern open source movement in support of this proposition, and explains “The free availability of information inclines towards knowledge, it is said, even if it does not guarantee it, and thus the claim is that transparency is somewhere between a highly desirable and a necessary pathway on the road to truth.” See also Condon, “Illegal Secrets.”

speech and expression, and ultimately to a fundamental human right.⁵¹ Transparency takes on existential proportions, wherein secrecy can be cast as a threat to human progress itself, and those mechanisms for ensuring information is free become philosophically and morally imperative.⁵² It is in this context that the tensions between secrecy and transparency become their most strained and where balancing interests of confidentiality and disclosure become most complex.

D. CONDITIONS

Two final comments on scoping from a construct and definitional standpoint are in order before moving on to the legal and balancing analysis in subsequent chapters.

1. Inapposite Opposites

First, where I have concluded the scoping discussion above draws a potentially stark contrast between secrecy and transparency, implying that they are (in essence, and at least for some) *antonyms*. For the purposes here, it is important to clarify that I am not assuming and do not consider them to be so. One essential element of this thesis in suggesting that balancing the two concepts is possible is precisely because they are not fundamental antitheses. A focus on this caveat is especially critical at the outset. As Hansen, Christensen, and Flyverbom observe:

⁵¹ See, for example, the 2003 Geneva Declaration of Principles from the UN World Summit on the Information Society. It affirms freedom of expression as a universal right and identifying access to information and knowledge as essential elements of society. The fascinating intersection of information and information tools in the modern age has had significant impact on the development of transparency theory and its initiatives but is outside the scope of this focused thesis. United Nations World Summit on the Information Society, *Declaration of Principles: Building the Information Society: a global challenge in the new Millennium* (Document WSIS-03/GENEVA/DOC/4-E), 2003, http://www.itu.int/dms_pub/itu-s/md/03/wsis/doc/S03-WSIS-DOC-0004!!PDF-E.pdf.

⁵² According to Birchall, "Open government is the new mantra and *modus operandi*. It's championed not only for the access to, and participation in, governance it affords the public, but for the 'transparency capital' it bestows upon the organization or individual advocating it. Transparency has become a sign of cultural (as well as moral) authority." Birchall, "Introduction to 'Secrecy and Transparency,'" 8–9.

Crucially, the issue of transparency when considered a family resemblance concept is that it has no single essence that unifies all its different usages. Also, the language games in which the transparency concept is invested are simultaneously sites for the mobilization of powerful antonyms such as opacity, concealment, distortion, manipulation, secrecy, closure, mistrust, red tape, inefficiency, corruption, and privacy.⁵³

Therefore, it should be made clear that in balancing secrecy and transparency herein, I consider the concepts to be inapposite opposites, and where the goals and objectives of confidentiality and disclosure conflict is precisely where the balancing method proposed is focused. My purpose in defining the breadth of those aims is to illustrate how the framework and solutions address those inherent conflicts.

2. **Accountability**

Second, it bears further emphasis that I draw a necessary distinction between transparency and accountability as a salient condition of the proposed model.⁵⁴ These concepts are clearly related,⁵⁵ but it is important to note that they are not, for all purposes, the same idea or even the same paradigm.⁵⁶ Given the emphasis in broader transparency theory on holding public entities accountable, it is necessary here to draw a working distinction between transparency as a

⁵³ The same, of course, can be said of secrecy. Hans Krause Hansen, Lars Thøger Christensen, and Mikkel Flyverbom, "Introduction: Logics of Transparency in Late Modernity Paradoxes, Mediation and Governance," *European Journal of Social Theory* 18, no. 2 (2015): 119, <http://est.sagepub.com/content/18/2/117.short>.

⁵⁴ Identifying the use of transparency term a largely synonymous with accountability in the research domain. Carolyn Ball, "What Is Transparency?," *Public Integrity* 11, no. 4 (2009): 299.

⁵⁵ The literature is replete with discussion in which transparency and accountability are referenced either synonymously or in tandem. According to Senator Richard Shelby, "Transparency and accountability in government are two principles crucial to securing the public trust." Richard Shelby, "Accountability and Transparency: Public Access to Federally Funded Research Data," *Harvard Journal on Legislation* 37, no. 1 (2000): 369, 370.

⁵⁶ According to Samaha, "[C]ore elements in a genuine program of popular accountability need a system for disclosing information about government [emphasis added]." Here, Samaha illustrates a critical distinction between transparency as a mechanism and accountability as a result, as well as acknowledges the importance of process. Adam M. Samaha, "Government Secrets, Constitutional Law, and Platforms for Judicial Intervention," *UCLA Law Review* 53, rev. 909 (2006): 909, 917.

process or concept and accountability as a goal or an effect. I do not seek to resolve here a bright line distinction between the two except to recognize a relational distinction and that the interrelationship may be viewed in a very similar manner to the secrecy/transparency tension. For example, Hood observes that both are presumed to be aspects of good governance but posits three different possible theoretical relationships between transparency and accountability: Siamese twins (entwined as one inseparable whole), matching parts (complementary, and conditioned upon one another), or awkward couple (separable and sometimes at odds with one another).⁵⁷ This distinction becomes highly relevant in considering the mechanisms for ensuring accountability goals from within the transparency mechanism but should not be confused herein or conflated as the same concept.⁵⁸

With the relevant constructs outlined and the foregoing clarifications disclosed, I now move to the consideration of the current legal and practical frameworks respecting secrecy and transparency in the continuity planning context.

⁵⁷ Christopher Hood “Accountability and Transparency: Siamese Twins, Matching Parts, Awkward Couple?” *West European Politics* 33, no 5 (2010): 990, doi:10.1080/01402382.2010.486122.

⁵⁸ Nor can it be claimed that complete transparency per se correlates with public perception of accountability. As noted here, transparency and accountability are undeniably related, but should not be confused as the same thing. As will be further discussed later in looking to New Zealand for lessons regarding strong confidentiality protections existing in concert with broad open government aspirations, we see that it is ranked at fourth on Transparency International’s Corruption Perceptions Index for 2015 (indicating a high level of confidence in openness and accountability), well ahead of the United States at sixteenth. Transparency International, “Corruption Perceptions Index 2015,” 2015, <http://www.transparency.org/cpi2015#results-table>. Transparency International measures multiple factors for corruption perception, including access to information. See Transparency International, “Access to Information,” accessed September 5, 2015, <http://www.transparency.org/topic/detail/accesstoinformation>.

III. ANALYSIS: LAW AND POLICY

In the event of a catastrophe or disaster, consequences of an incident may substantially interrupt essential operations of government entities. The practical effect of these events is a potential adverse impact on the ultimate clients of the entity, whether other governmental units or the general public. As defined in the NCPIP, a continuity of operations plan is designed to address that potential by providing a blueprint for the implementation and management of continuing essential federal operations in the event of such a crisis. In the right hands, these plans are technical schematics of government operations containing essential and detailed information necessary for continued functioning. In the wrong hands, this information can be used to systematically and dramatically dismantle those operations.

This chapter focuses primarily at the federal level for general analysis, with notations as appropriate to the state level. It concludes with a final review of state level open records correlations.

A. EXPOSURES

The fundamental design of a COOP plan lends itself to dangerous vulnerabilities should the plan be available to the public. The obvious ability to reverse engineer the sensitive data and information poses a significant threat to endangering privacy and lives, and creating additional exposures to federal and state entities and employees.⁵⁹ There are a number of possibilities for a malicious party or parties. For instance, they could target both the primary facility, as well as identified secondary and tertiary continuity facilities in a coordinated

⁵⁹ I note here that rather than espionage or leaking of sensitive data, it is the legal dissemination of confidential information that is the focus of consideration here. This thesis does not address the involuntary disclosure of sensitive or classified information, vis-a-vis malicious intent, whistleblowing, or *Wikileaks*-type disclosures. Rather, this discussion pertains to required and voluntary disclosure, illustrated by Schauer: "Secrecy, privacy, anonymity, and confidentiality also have their virtues, and we can all understand why transparency is a far more desirable attribute for sunroom windows than it is for bathroom doors." Schauer, "Transparency in Three Dimensions," 1342.

attack to ensure essential functions could not be resumed. Other possibilities include identifying and targeting key individuals to disrupt necessary decision making and command structures, or perpetrators identifying vulnerabilities for exploitation, including targeting vital information sources and repositories, physical or digital. Still another possibility is purposefully disrupting co-location or dependency relationships with both other government entities and necessary support entities (contractors, emergency vendors, etc.). Finally, other malicious acts could be undertaken to interrupt, delay, or terminate performance.

It is often simply assumed that the information in continuity plans is protected because it is potentially sensitive, and there appear to be available protections in place. I argue that this assumption bears far closer scrutiny.

1. The Law and Continuity

FOIA was enacted in 1966 as a replacement for the Administrative Procedure Act.⁶⁰ There are nine exemptions specified in the FOIA, and three law enforcement related exclusions.⁶¹ Of these exemptions and exclusions, none specifically and unambiguously apply to continuity plans or the breadth of all potentially sensitive data contained within those plans. Instead, an analysis of whether any of the exemptions may apply in certain circumstances is crucial for each specific case.

As discussed above, federal guidance does not directly address the issue of confidentiality or protection of continuity plans from public disclosure. At the federal level, the only document that purports to address confidentiality is FEMA's *Continuity of Operations Plan Template for Federal Departments and Agencies*.⁶² While FEMA references FOUO notifications, the authority for the

⁶⁰ Freedom of Information Act, Pub. L. No. 89-554, 80 Stat. 383 (1966).

⁶¹ "5 United States Code §552," Government Printing Office, 2014, <http://www.gpo.gov/fdsys/pkg/USCODE-2014-title5/html/USCODE-2014-title5-part1-chap5-subchapII-sec552.htm>.

⁶² As noted, FEMA suggests that agencies classify their plans as "For Official Use Only" (FOUO) and provides that portions of documents may be exempted under the Freedom of Information Act. FEMA, *Continuity of Operations Plan Template*.

assertion that COOP plans or portions thereof to be designated as FOUO is not furnished. Any such designation must be determined to have been made appropriately. Given this reference to classification, it appears authority is being asserted by FEMA pursuant to FOIA Exemption 1. That exemption states:

(b) This section does not apply to matters that are—

(1)(A) specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy and (B) are in fact properly classified pursuant to such Executive order....⁶³

Therefore, the initial questions to ask are whether continuity of operations plans meet this national defense or foreign policy interest standard and, if so, whether they have been properly classified pursuant to executive order. Even assuming affirmative responses to these questions, a second and largely overlooked question is whether there is a distinction between COOP as a national security or homeland security concern. Since they are required pursuant to the *Directive on National Continuity Policy* (NSPD-51/HSPD-20),⁶⁴ could a FOIA exemption properly apply to general agency COOP plans?⁶⁵

B. EXAMINATION

Freedom of information requests are made directly to federal agencies for disclosure of information, and requestors appeal agency determinations to the agency itself. If dissatisfied, the requestor may appeal to a court for a final determination. In the United States, there is no central information office or final arbiter to process, oversee, or make uniform determinations regarding FOIA disclosures. However, there is the Office of Government Information Services

⁶³ “5 United States Code §552,” Government Printing Office.

⁶⁴ White House, *NSPD-51/HSPD-20*.

⁶⁵ The instant analysis is applicable only to FOIA. Regarding the several states, the same confidentiality (privacy/security) statement section is provided in the non-federal template, despite non-applicability of the FOIA. State continuity directives and open records/public information laws vary widely both in the breadth of mandated continuity planning and in the scope of information covered and available exemptions. FEMA, *Continuity of Operations Plan Template*. See also Appendix A.

(OGIS) and the Information Security Oversight Office (ISOO). The OGIS, like an ombudsman, mediates disputes between requestors and agencies,⁶⁶ and ISOO, part of the National Archives and Records Administration (NARA), standardizes classified and controlled unclassified information management.⁶⁷ Ultimately, the determination of what is and is not subject to disclosure ends up the subject of a lawsuit and the resolution of withholding or disclosure is far from predetermined or precise respecting continuity of operations, as discussed above.

1. National Security

At first blush, a COOP plan does not appear on its face to be in the direct interest of national defense or foreign policy. However, FOIA Exemption 1 is commonly known as the “national security” exemption. National security, as it is known today, can be traced to Truman and the Cold War threat with the passage of the National Security Act of 1947, which among other aspects created the Department of Defense, the National Security Council, and the Central Intelligence Agency (CIA).⁶⁸ In an environment of global unease at that time, the focus of national security was highly targeted toward military defense and foreign intelligence, and it was used for classification purposes in executive orders.⁶⁹

In 1966, responding to media and public pressures, FOIA was passed over Johnson’s overt recalcitrance.⁷⁰ It replaces provisions of the Administrative Procedure Act, which had allowed government information to be withheld to

⁶⁶ Office of Government Information Services, “The Office of Government Information Services,” accessed June 31, 2016, <https://ogis.archives.gov/>.

⁶⁷ It is outside of the scope of this limited review to discuss at length the CUI process and procedural developments; however, the ISOO has proposed federal rules to be incorporated as 32 CFR 2002 to address standardization. Information Security Oversight Office, “The Information Security Oversight Office (ISOO),” accessed June 31, 2016, <https://www.archives.gov/isoo/>. See also 80 Fed. Reg. 89 (May 8, 2015), <https://www.gpo.gov/fdsys/pkg/FR-2015-05-08/pdf/2015-10260.pdf>.

⁶⁸ National Security Act of 1947, Public L. No. 235, 61 Stat. 496 (1947).

⁶⁹ Exec. Order. No. 10,290, 3 C.F.R. 790 (September 27, 1951).

⁷⁰ The final issued statement, *Statement by the President upon Signing S. 1160*, is available at <http://nsarchive.gwu.edu/NSAEBB/NSAEBB194/Document%2037.pdf>. For a brief history of politics surrounding the passage of FOIA, see National Security Archive, “Freedom of Information at 40,” July 4, 2006, <http://nsarchive.gwu.edu/NSAEBB/NSAEBB194/>.

protect “any function of the United States requiring secrecy in the public interest.”⁷¹ As noted, Exemption 1 of FOIA refers specifically to national defense and foreign relations, not to national security, and it is specific respecting necessary classification pursuant to executive order. In 1974, Nixon attempted to walk back some of the FOIA inroads respecting disclosure, but continued to use this national security phrasing, specifically as a collective reference to the national defense and foreign policy exception.⁷²

This tradition continues today at the executive and agency levels (including the Department of Justice) as a kind of blanket shorthand for Exemption 1.⁷³ This shorthand is not without definitional import and thereby arguable interpretive precedent, but it remains that it is not the authentic statutory language, nor notably was the distinction without a difference to Congress at the time.⁷⁴

2. Exemption by Classification

Nonetheless, assuming national defense and foreign affairs could be properly justified under the inclusive banner of national security for the purposes of meeting Exemption 1, could a COOP plan thereby be properly classified pursuant to executive order?

Current Executive Order 13526, Classified National Security Information, provides:

⁷¹ Administrative Procedure Act of June 11, 1946, ch. 324, § 3, 60 Stat. 238 (1946).

⁷² Exec. Order No. 11,652, 3 C.F.R. 339 (March 8, 1972); 50 U.S.C. 401, at 3678 (Supp. IV) (1974).

⁷³ See Department of Justice, *Exemption 1* (Washington, DC: Department of Justice, 2014), https://www.justice.gov/sites/default/files/oip/legacy/2014/07/23/exemption1_1.pdf.

⁷⁴ Representative John Moss (a vocal champion of FOIA), noted after the passage of FOIA: “We decided to use [national] defense and then go on directly to a specific field, foreign policy, not national security, because we were convinced that national security would be so broadly construed as to be a catchall for that everything, that it was like having no qualifications of any kind.” *Hearings on United States Government Information Policies and Practices-Security Classification Problems Involving Subsection (b)(1) of the Freedom of Information Act*, 92nd Cong. (1972), 2485.

Section 1.1. Classification Standards. (a) Information may be originally classified under the terms of this order *only if all of the following conditions are met*:

(1) an original classification authority is classifying the information;

(2) the information is owned by, produced by or for, or is under the control of the United States Government

(3) *the information falls within one or more of the categories of information listed in section 1.4 of this order, and*

(4) the original classification authority determines that the unauthorized disclosure of the information *reasonably could be expected to result in damage to the national security*, which includes defense against transnational terrorism, and the original classification authority is *able to identify or describe the damage* [emphasis added].⁷⁵

Section 1.4 of the executive order lists the following categories:

Sec. 1.4. Classification Categories. Information shall not be considered for classification unless its unauthorized disclosure could reasonably be expected to cause identifiable or describable damage to the national security in accordance with section 1.2 of this order, and it pertains to one or more of the following:

(a) military plans, weapons systems, or operations;

(b) foreign government information;

(c) intelligence activities (including covert action), intelligence sources or methods, or cryptology;

(d) foreign relations or foreign activities of the United States, including confidential sources;

(e) scientific, technological, or economic matters relating to the national security;

(f) United States government programs for safeguarding nuclear materials or facilities;

⁷⁵ White House Office of Press Secretary, "Executive Order 13526 Classified National Security Information," press release, December 29, 2009, <https://www.whitehouse.gov/the-press-office/executive-order-classified-national-security-information>.

(g) *vulnerabilities or capabilities of systems, installations, infrastructures, projects, plans, or protection services relating to the national security* [emphasis added]; or

(h) the development, production, or use of weapons of mass destruction.⁷⁶

Of these categories, 1.4(g) has the potential to incorporate general continuity plans evolving from the homeland security project, but, again, the subject information is required to be specifically related to national security and delimited to vulnerabilities and capabilities. This creates another circular dilemma.⁷⁷

3. Homeland Security

The foundational question must be addressed, then, of whether the concept of homeland security is the same as, incorporates, is incorporated in, or is separate from, the concept of national security. In the aftermath of the September 11 attacks, President Bush issued Executive Order 13228, creating the cabinet level Office of Homeland Security and the Homeland Security Council and outlining expectations for a new homeland security focus.⁷⁸ The order drew a distinction between foreign security and domestic security concerns “within the United States,” established the separate Homeland Security Council alongside the existing National Security Council, and outlined an advisory relationship with the extant national security apparatus, such as the CIA.⁷⁹ Thus, the national defense/foreign relation function of the existing national security apparatus was retained with a new domestic security function created as a new homeland

⁷⁶ Ibid.

⁷⁷ Even assuming the tenuous applicability of FOIA and other existing open records exemption arguments, the United States lacks a cohesive policy for integrating classification schema with freedom of information laws, exacerbating ambiguity and convoluting the underlying perceived tensions between secrecy and transparency. John Fitzpatrick [Director, ISOO], and Melanie Pustay, [Director, DOJ], *Revised Guidance regarding Controlled Unclassified Information and the Freedom of Information Act* [memorandum], Information Security Oversight Office, July 3, 2014, <https://www.archives.gov/cui/registry/policy-guidance/registry-documents/2014-doj-oip-cui-joint-issuance-on-foia.pdf>.

⁷⁸ “Executive Order 13228 of October 8, 2001,” 2001, Federation of American Scientists, <http://fas.org/irp/offdocs/eo/eo-13228.htm>.

⁷⁹ Ibid.

security apparatus. This was later modified with the creation of the Department of Homeland Security under the Homeland Security Act of 2002.⁸⁰

As Morag observes, the concept of homeland security is “uniquely American” and is distinguishable based on its domestic versus foreign focus.⁸¹ Where homeland security developed in relation to terrorism and continuity concerns within the borders of the United States, national security had developed long before in response to Cold War era concerns in global affairs. Thus, as a purely logical simplification (and necessarily where the arguments above are accepted), I define national security as national defense/foreign relations, and homeland security as homeland defense/domestic relations. The concepts are, of course, far more amorphous, and interrelated in such a way that defies such easy categorization. There is one country, but there are innumerable threats. What is the difference between the nation and the homeland?

4. Exemption by Statute

One last matter lends further support to the claim that continuity plans are not clearly protected under Exemption 1 of FOIA, or made confidential by classification schema applicable thereto. However, this recognition actually results in the opening of another avenue of a potential solution respecting COOP plans.

The Homeland Security Act of 2002 contains the Critical Infrastructure Information Act of 2002 (CIIA),⁸² which exempts homeland security-related critical infrastructure information through application of Exemption 3 of FOIA:

(b) This section does not apply to matters that are—

(3) specifically exempted from disclosure by statute (other than section 552b of this title), provided that such statute (A) requires

⁸⁰ Homeland Security Act of 2002, Public L. No. 107–296 (2002).

⁸¹ Nadav Morag, “Does Homeland Security Exist Outside the United States?,” *Homeland Security Affairs* 7 (September 2011), <https://www.hsaj.org/articles/69>.

⁸² Homeland Security Act of 2002, Public L. No. 107–296 (2002).

that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or (B) establishes particular criteria for withholding or refers to particular types of matters to be withheld⁸³

Critical infrastructure has been variously defined, but is broadly incorporated by reference as described by the USA PATRIOT Act of 2001 as:

[S]ystems and assets, whether physical or virtual, so vital to the United States that the incapacity or destruction of such systems and assets would have a debilitating impact on security, national economic security, national public health or safety, or any combination of these matters.⁸⁴

There are 16 sectors of critical infrastructure identified by PPD-21, *Presidential Policy Directive—Critical Infrastructure Security and Resilience*: chemical; commercial facilities; communications; critical manufacturing; dams; defense industrial base; emergency services; food and agriculture; government facilities; healthcare and public health; information technology; nuclear reactors, materials, and waste; transportation systems; and water and wastewater systems.⁸⁵

The Homeland Security Act defines critical infrastructure information as:

[I]nformation not customarily in the public domain and related to the security of critical infrastructure or protected systems—(A) actual, potential, or threatened interference with, attack on, compromise of, or incapacitation of critical infrastructure or protected systems by either physical or computer-based attack or other similar conduct (including misuse of or unauthorized access to all types of communications and data transmission systems) that violates federal, state, or local law, harms interstate commerce of the United States, or threatens public health and safety; (B) the ability of critical infrastructure or protected systems to resist such

⁸³ “5 United States Code §552,” Government Printing Office.

⁸⁴ Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT) Act of 2001, Pub. L. No. 107–56 (2001).

⁸⁵ White House Office of Press Secretary, “Presidential Policy Directive—Critical Infrastructure Security and Resilience, press release, February 12, 2013, <https://www.whitehouse.gov/the-press-office/2013/02/12/presidential-policy-directive-critical-infrastructure-security-and-resil>.

interference, compromise, or incapacitation, including any planned or past assessment, projection or estimate of the vulnerability of critical infrastructure or a protected system, including security testing, risk evaluation thereto, risk management planning, or risk audit; or (C) any planned or past operational problem or solution regarding critical infrastructure...including repair, recovery, reconstruction, insurance, or continuity to the extent it relates to such interference, compromise, or incapacitation.⁸⁶

Applying these provisions specifically to general continuity plans, a federal entity wholly within in a critical infrastructure sector might arguably be exempt under Exemption 3 of FOIA, but only as to the information specified and only to the extent of relationship to attack or conduct along with other limitations above. Three observations are therefore notable at this stage of the analysis.

First, the determination that it was necessary to explicitly exempt critical infrastructure information from disclosure under FOIA makes clear that all homeland security-related information was not *pro forma* contained within the national security exception, otherwise such a carve-out would not have been necessary. Second, the debate respecting how to protect critical infrastructure information reported to the government and address the concerns of transparency advocates about a government “shroud of secrecy” has a clear corollary to and is illustrative of the issues considered here.⁸⁷ Third, and most important to my recommendations, qualifying critical infrastructure information is protected by a statutory exemption, not by using national security and classification. This is important because this statutory exemption approach suggests one viable potential mechanism for a potential balancing solution to the secrecy/transparency tension.

At this point, it should be entirely clear that this analysis is principally, and intentionally, illustrative. Beyond the difficulty of determining what either national

⁸⁶ Homeland Security Act of 2002, Public L. No. 107–296 (2002).

⁸⁷ See Gina Marie Stevens, *Homeland Security Act of 2002: Critical Infrastructure Information Act* (CRS Report No. RL31762) (Washington: DC: Congressional Research Services, 2003), <https://www.fas.org/sgp/crs/RL31762.pdf>. It discusses the provisions of the act and the conflict between securing sensitive information and open government concerns underlying the act.

security or homeland security actually *is*, and what information may or may not be arguably contained within critical infrastructure information designation, what this analysis fundamentally demonstrates is the existence of essential uncertainty and ambiguity respecting what information is intended to be exempted under FOIA and other open records provisions, especially respecting continuity of operations.⁸⁸

Before moving to the considerations of potential approaches to addressing these exposures and ambiguities, I address one further matter in the next section. Since most of the preceding analysis focuses primarily on the federal aspect of freedom of information protection, but because the final recommendations herein are intended to apply to both the federal and non-federal domain, I briefly address the non-federal domain.

C. NON-FEDERAL

Of course, the situation threatens to become even more convoluted at the state, local, tribal, and territorial levels. There are a myriad different open records laws in the several states. Each has its own set of jurisdictional approaches and scoping issues involving various exemptions, exceptions, exclusions, and requirements, even before consideration of the labyrinthine intersection of federal and state law in the national and homeland security domains.

Included in the appendices are a jurisdictional sampling of state and territorial laws respecting continuity planning and open government regulations,⁸⁹ followed by a summation of which of those laws might be applied in a COOP

⁸⁸ It bears some emphasis that the Department of Homeland Security *does not* list examples of use for Exemption 1 on its FOIA exemption page. However, DHS does note that critical infrastructure information may be withheld under Exemption 3, which exempts from disclosure information that other statutes make confidential (in this case, the Critical Infrastructure Information Act of 2002), the subject of the following section. Department of Homeland Security, "FOIA Exemptions," September 24, 2015, <https://www.dhs.gov/foia-exemptions>.

⁸⁹ See Appendix A.

confidentiality or withholding analysis.⁹⁰ My conclusions from this research is as follows:

1. Where protections are provided, like FOIA, those protections are delimited to portions of records. Disclosure relies upon redaction practices, which may expose sensitive information through lack of standardization and error, and which further, through the process of redaction, frustrates the scope of transparency theory.
2. Jurisdictional provisions contain an unnecessarily limited qualification of justification (e.g., where withholding is justified by reference to “criminal terrorist acts”) and further constrained in both intent (e.g., “disruption”) and *mens rea* (e.g., “manifest indifference”). These provisions appear to provide clarity through justification of withholding, but they do not resolve a determination of confidentiality prior to information about the nature and intent of an unknown actor.
3. Jurisdictional provisions include conditional requirements for anticipatory consequence (e.g., “substantial likelihood”). Again, whether an event or intent has a particular consequence is an unknown prior to the action.
4. State laws are constrained specificity to identified aspects of suspected-known harmful information (e.g., personally identifiable information, vulnerability assessments, information technology information). These subset details, while providing some constraints on protectable data, leave open by exclusion other subset details.
5. Lack of specificity in the types and quality of documentation within the scope of the disclosure exceptions and the variability of plan implementations amplifies the exposure of non-specific subsets.⁹¹

As can be seen in the variability of application and contingent nature of confidentiality protections, this interpretive reliance introduces a fundamental ambiguity. This ambiguity increases the potential of substantial resource costs

⁹⁰ See Appendix B.

⁹¹ The tentative conclusions here, and the draft research upon which those conclusions are based, is the subject of a separate but related analysis regarding continuity oversight operations of the State Office of Risk Management. That data and its interpretation is included here for full disclosure and to ensure a balanced consideration of state and federal emphasis, and is not intended or claimed to be authoritative or final. I gratefully acknowledge here the assistance of K. M. in the compilation and verification of the sampling dataset.

(financial, regulatory, legal, and time), in addition to exposing government entities and the general public to significant harm. On balance, as at the federal level, a number of these existing laws may be interpreted on a case-by-case basis to be broad enough to protect some aspects of COOP plans, depending on content and application; some leave little doubt of the immense exposure of potential damaging sensitive information subject to dissemination; and all, save one, are ambiguous.

The one statute than leaves no doubt as to the protection of continuity plans is in the state of Texas. The basis and implementation of its model is the subject of the next chapter.

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IV. CONCEPT: PROTECTIVE SECURITY AND RISK BALANCING

We have no future because our present is too volatile. We have only risk management. The spinning of the given moment's scenarios. Pattern recognition.

—William Gibson⁹²

In considering the tensions between the concepts of secrecy and transparency in the context of current statutory approaches respecting COOP, the state of Texas, utilizing a risk balancing model, implemented a statutory solution based on the concept of protective security. The basis and implementation of this model is the subject of this chapter.

A. BACKGROUND

As noted above, FEMA promulgates COOP standards applicable to the federal government, but it also provides guidelines that can be used by state, local, tribal, and territorial entities. The central agency in Texas with general oversight responsibility for continuity of operations in the state enterprise is the State Office of Risk Management (SORM).⁹³ In 2007, the 80th Texas Legislature passed Senate Bill 908, which mandated that all Texas state agencies to work with SORM to develop business continuity plans.⁹⁴ As at the federal level, these

⁹² William Gibson, *Pattern Recognition* (New York: Penguin Putnam, 2002).

⁹³ The State Office of Risk Management was created in 1997 by the 75th Texas Legislature by House Bill 2133, merging the responsibilities of the Risk Management Division of the Texas Workers' Compensation Commission under Chapter 412, Texas Labor Code, with the duties of the Workers' Compensation Division of the Attorney General's Office under Chapter 501, Texas Labor Code. SORM's responsibilities have been expanded by the Texas Legislature over time, including in 2001, when the 77th Texas Legislature passed House Bill 1203, expanding SORM's mission to include serving as a full service risk and insurance service manager to reduce property and liability losses, later expanded to include oversight of continuity of operations for the state. Texas Legislature Online, "An Act," accessed September 1, 2016, <http://www.capitol.state.tx.us/tlodocs/75R/billtext/html/HB02133F.htm>.

⁹⁴ Texas Legislature Online, "S.B. No. 908, an Act," accessed September 1, 2016, <http://www.capitol.state.tx.us/tlodocs/80R/billtext/pdf/SB00908F.pdf>

plans were eventually required in response to concerns raised after the events of September 11, 2001. They have a similar focus as evinced in the NCPIP and other federal government efforts to keep agencies operational in the event of “disruptions to production, finance, administration, or other essential operations.”⁹⁵ The State Office of Risk Management was tasked with assisting in development and receiving and reviewing each of these plans for compliance.⁹⁶ However, two issues with the legislation delayed immediate implementation of the statutory provisions. First, the bill did not establish a specific or single statewide standard applicable to all entities; and second, relevant here, confidentiality of the plans was not addressed by the law.

After significant study and statewide negotiation and coordination, the leadership of the Texas Department of Public Safety (which includes the Texas Office of Homeland Security and the Texas Department of Emergency Management), the Texas Department of Information Resources, and the State Office of Risk Management jointly issued the *Texas State Agency Continuity Planning Policy Guidance Letter* in 2013.⁹⁷ Distributed to all state entities, this advisory document identifies COOP as the *de facto* state standard and includes an interim position on confidentiality of those plans.⁹⁸

Thereafter, long-term efforts were undertaken by a number of state officials, including the author, to resolve these outstanding standards and

⁹⁵ Ibid.

⁹⁶ Ibid.

⁹⁷ Steve McCraw, Karen Robinson, and Jonathan Bow, “Texas State Agency Continuity Planning Policy Guidance Letter,” Texas Department of Public Safety, October 24, 2013, [https://www.sorm.state.tx.us/sorm-cms/uploads/2013/11/Texas%20State%20Agency%20Continuity%20Planning%20Policy%20Guidance%20Letter%20\(10-24-2013\).pdf](https://www.sorm.state.tx.us/sorm-cms/uploads/2013/11/Texas%20State%20Agency%20Continuity%20Planning%20Policy%20Guidance%20Letter%20(10-24-2013).pdf).

⁹⁸ According to the “Texas State Agency Continuity Planning Policy Guidance Letter,” “Due to their sensitive nature, state agency continuity plans and supporting documents should be labeled ‘For Official Use Only.’ § 552.101 of the Texas Government Code exempts information from public disclosure if considered to be confidential by law, either constitutional, statutory, or by judicial decision. Chapter 418 of the Texas Government Code provides that certain information, including information relating to risk or vulnerability assessments, critical infrastructure, and security systems, is confidential in specific circumstances.” McCraw, Robinson, and Bow, “Texas State Agency,” 3.

confidentiality matters through legislative consideration. In 2015, the 84th Texas Legislature passed House Bill 1832, officially establishing the state standard as COOP and formally exempting those plans from disclosure under Chapter 552, Texas Government Code (the Texas version of FOIA). To do so, it was necessary to understand how similar issues have been framed and addressed elsewhere and to look for instructive lessons in developing appropriate solutions for Texas. This concept was ultimately identified as protective security.

B. PROTECTIVE SECURITY

The corollary to COOP in many jurisdictions, like in Texas initially, is commonly known as business continuity planning (BCP) or business continuity management (BCM).⁹⁹ Based on similar intent regarding continuity and freedom of information, but a differing implementation, I selected New Zealand as a representative international comparative model that was relevant to the issues under consideration in Texas.

Business continuity management in New Zealand is part of its governance mandatory requirements¹⁰⁰ for a protective security requirements framework,¹⁰¹ required to ensure that critical services and associated assets remain available to assure the “health, safety, security, and economic wellbeing” of New Zealand and the effective functioning of government.¹⁰² As in Texas and with the United

⁹⁹ Note: In the United States, the COOP distinction is made to denote the government-based focus of continuity planning regarding the continuation of essential public services versus a private-based BCP focus of business continuation (inclusive of revenue/profit protection). This distinction is not merely semantic, and it is notable for its framing.

¹⁰⁰ Protective Security Requirements [New Zealand], “Summary of Governance Mandatory Requirements Summary” [GOVT 10], access July 2, 2016, <https://protectivesecurity.govt.nz/home/mandatory-requirements/summary-of-governance-mandatory-requirements#GOV10>.

¹⁰¹ Protective Security Requirements [New Zealand], “What You Need to Know,” accessed July 1, 2016, <https://protectivesecurity.govt.nz/home/what-you-need-to-know/>.

¹⁰² Ibid.

States' federal approach, continuity management is a required policy for all New Zealand government entities.¹⁰³

Two acts in New Zealand govern access to government information. The first is the Official Information Act of 1982 (OIA), which applies to ministers and central government agencies), and the other is the Local Government Official Information and Meetings Act of 1987 (LGOIMA), which applies to local government agencies. New Zealand replaced the Official Secrets Act of 1951 with the Official Information Act of 1982 (the New Zealand version of the United States' FOIA).¹⁰⁴ The move ostensibly reversed the government position on the release of government information, which had been theretofore categorized an offense,¹⁰⁵ and it established a reverse presumption that "information shall be made available unless there is good reason for withholding it."¹⁰⁶

This principle of availability is the central tenet of the OIA and of transparency theory, and on the surface, it is shared with the United States'

¹⁰³ Protective Security Requirements [New Zealand], "Strategic Security Objectives, Core Policies and the Mandatory Requirements for Agencies, Section 3.9, Business Continuity Management," accessed July 1, 2016, <https://protectivesecurity.government.nz/home/what-you-need-to-do/strategic-security-objectives-core-policies-and-the-mandatory-requirements-for-agencies/#business-continuity-management>.

¹⁰⁴ Steven Price, *The Official Information Act 1982: A Window on Government or Curtains Drawn?* (Wellington, New Zealand: Victoria University of Wellington, 2005), http://www.medialawjournal.co.nz/downloads/OP_Price.pdf.

¹⁰⁵ Government of New Zealand, *New Zealand Official Secrets Act, 1951*, http://www.nzlii.org/nz/legis/hist_act/osa19511951n77183.pdf. Note: As in the United States, local jurisdictions have slightly different requirements, in this case specifically under the New Zealand Local Government Official Information and Meetings Act of 1987. Parliamentary Counsel Office, "New Zealand Legislation," accessed July 1, 2016, http://legislation.govt.nz/act/public/1987/0174/latest/DLM122242.html?search=ts_act%40bill%40regulation%40deemedreg_official+information_resel_25_a&p=1.

However, with each state overseeing its own individual FOI/open records legislation, the United States is not centralized for this purpose. It is outside the scope of this review to discuss the complexities of the United States federal, state, local, tribal and territorial interplay, though it is to be noted that this complication is highly significant for any potential national policy revision.

¹⁰⁶ New Zealand Legislation, "New Zealand Official Information Act, Section 5, Principle of Availability," accessed July 6, 2016, <http://www.legislation.govt.nz/act/public/1982/0156/latest/whole.html#DLM65363>.

current position both in the FOIA and at executive level policy directive.¹⁰⁷ However, with regard to the subject of continuity, New Zealand's approach sought to balance secrecy and transparency in a different way than the United States has by utilizing the concept of protective security¹⁰⁸ and authoritatively tying continuity to risk analysis and security risk management. In this manner, continuity plans (as well as other government information respecting operational security) in New Zealand are not as susceptible to the same disclosure U.S. agencies are that would compromise the security of personnel, essential equipment, services, and systems, or otherwise impact the ability of government to perform its essential functions.

C. RISK BALANCING

A comprehensive protective security framework in Texas would have represented an immense change in state governance and required significant time and resources for full resolution. Nor would addressing the matter of classification have been an immediately effective approach from a purely state perspective, since, as in Texas, classification systems are variant and not universally implemented.¹⁰⁹ Therefore, SORM applied a risk management approach, similar to that underlying the New Zealand model, with a specific focus on determining a balance between secrecy and transparency in continuity of operations planning.¹¹⁰

¹⁰⁷ White House, *Memorandum for the Heads of Executive Departments and Agencies* (Washington, DC: White House, 2009), <https://www.whitehouse.gov/the-press-office/transparency-and-open-government>.

¹⁰⁸ This concept is also common to the British, Australian, and other territories in the general government operations context, but is primarily used in the United States to refer to physical security and military defense applications.

¹⁰⁹ See for example, Texas Department of Information Resources, *Data Classification Guide* (Austin, TX: Texas Department of Information Resources, 2014), <http://publishingext.dir.texas.gov/portal/internal/resources/DocumentLibrary/Data%20Classification%20Guide.docx>.

¹¹⁰ As noted above, the author is the current Risk Manager for the state of Texas and Executive Director of the State of Risk Management, responsible for overall continuity of operations planning oversight in Texas.

1. Framework

Underscoring the New Zealand protective security approach is the Australia Standard/New Zealand Standard 4360 (AS/NZS 4360) risk management standard,¹¹¹ thereafter refined, adopted, and published as International Organization for Standardization (ISO) 31000:2009 by the ISO in Geneva in 2009 to address the nature of, process for, and benefits from risk management activities.¹¹² Hundreds of experts from 28 countries worked more than four years to develop consensus-based principles, a framework, a process for managing risk, and agreement upon a consistent vocabulary.¹¹³ The final ISO standard and its related vocabulary manuscript (known as ISO Guide 73:2009), set forth the principles, framework, and processes for enterprise risk management based on a persistent, generic, risk agnostic, and scalable methodology; it is intended to be applied to any type of risk without regard to industry or sector.¹¹⁴

It is not merely the specifics of the risk management tools and analyses employed by ISO 31000 that made it the chosen standard, although the New Zealand experience provided ample support for my utilization of the standard in multiple domains.¹¹⁵ Rather, it is something far more foundational and relevant to balancing considerations: the definition of risk itself.

¹¹¹ A risk management standard is essentially a guide for how to approach managing risks systemically, and generally consists of a set of principles, a framework, and processes. Examples of more common standards include ISO 31000:2009; IRM/Alarm/AIRMIC 2002; ISO/IEC 31010:2009; COSO 2004; and OCEG “Red Book” 2.0: 2009. Institute of Risk Management, “Risk Management Standards,” accessed June 26, 2015, <https://www.theirm.org/knowledge-and-resources/risk-management-standards/>

¹¹² International Organization for Standardization, *ISO 31000:2009, Risk Management—Principles and Guidelines* (Geneva: International Organization for Standardization, 2009).

¹¹³ Grant Purdy, “ISO 31000:2009—Setting a New Standard for Risk Management: Perspective,” *Risk Analysis* 30, no. 6 (2010): 881–886, doi:10.1111/j.1539-6924.2010.01442.x.

¹¹⁴ International Organization for Standardization, *ISO 31000:2009*; Matthew Leitch, “ISO 31000:2009—The New International Standard on Risk Management,” *Risk Analysis* 30, no. 6 (2010): 887–892.

¹¹⁵ Current efforts by the SORM to adopt ISO 31000 as the risk management standard for the state of Texas are in development stages and is the immediate internal standard for all SORM operations.

2. Risk

Risk is typically defined in terms of a downside, or as a hazard, a threat, or a vulnerability. This downside understanding of risk is especially apparent in the domain of homeland security. The Department of Homeland Security *DHS Risk Lexicon* defines risk as the “potential for an *unwanted outcome* [emphasis added] resulting from an incident, event, or occurrence, as determined by its likelihood and the associated consequences.”¹¹⁶

The downside risks are relatively easy to understand in the disclosure of COOP information, which I have categorized in my work as three general types: primary, secondary, and opportunistic. I define them as follows:

1. In *primary disruption* an actor obtains continuity information through open records requests at the federal and/or state levels, compiles relevant information regarding personnel, vulnerabilities, and contingencies, and initiates a causative event for disruption.
2. In *secondary disruption* an actor obtains continuity information through open records requests at the federal and/or state levels and acts in response to an event (e.g., taking advantage of a natural disaster, or a non-affiliated, third-party attack).
3. In *opportunistic disruption* an actor obtains continuity information through proactive publication by a government entity as a general transparency initiative, rather than a direct request, and that information is then used to incite, initiate, or exacerbate disruption.¹¹⁷

However, understanding the plausible downside scenarios should not end the inquiry when seeking to balance secrecy and transparency tensions. There are dangers in a one-dimensional analysis based on downside concerns. The questions we ask and the solutions we design may be tacitly linked only to

¹¹⁶ The *DHS Risk Lexicon* also includes an extended definition that defines risk as the “potential for an *adverse outcome* assessed as a function of *threats, vulnerabilities, and consequences* associated with an *incident, event, or occurrence* [emphasis added]” Department of Homeland Security, *DHS Risk Lexicon*, s.v. “risk,” 2010 edition.

¹¹⁷ These categories describe the plausible scenarios that have framed my professional discussions and legislative testimony regarding COOP exposures, primarily during the 84th Legislative Session in Texas in 2015 but also dating to the passage of the original 2007 legislation mandating that all Texas state agencies produce and maintain continuity plans. Texas Legislature Online, “S.B. No. 908, an Act.”

traditional risk management treatments, which deemphasizes innovative or generative solutions that may have upsides and ignores the underlying value of information disclosure.¹¹⁸ This type of binary consideration is especially apparent in the presumed secrecy/transparency dichotomy and the pendulum-like swing from secrecy to disclosure.

Rather than traditional risk approaches, ISO Guide 73:2009 defines risk as the “*effect of uncertainty on objectives* [emphasis added].”¹¹⁹ Unlike that of DHS and other risk management definitions, the ISO definition is generalized and neutrally focused on uncertainty. While Leitch claims that the ISO definition of risk may be so broad as to be unclear, suggesting that a more mathematical precision should be striven for,¹²⁰ Purdy counters that it is precisely this breadth that is necessary, explaining:

The ISO 31000 definition of risk shifts emphasis from past preoccupations with the possibility of an event (something happens) to the possibility of an effect and, in particular, an effect on objectives.

When risk is defined like this, it reveals more clearly that managing risk is, quite simply, a process of optimization that makes the achievement of objectives more likely. Risk treatment is then concerned with changing the magnitude and likelihood of consequences, both positive and negative, to achieve a net increase in benefit. Controls then are the outcomes of risk treatment, whose purpose is to modify risk.¹²¹

¹¹⁸ DHS defines enterprise risk management as a: “...comprehensive approach to risk management that engages organizational systems and processes together to improve the quality of decision making for managing risks that may hinder an organization’s ability to achieve its objectives.” This approach is consistent with DHS’s conceptualization of risk as something that “hinders” objectives, and identifies the purpose of risk management as making decisions that specifically address downsides. Texas Legislature Online, “S.B. No. 908, an Act.”

¹¹⁹ International Organization for Standardization, *ISO Guide 73, Risk Management—Vocabulary* (Geneva: International Organization for Standardization, 2009).

¹²⁰ Leitch, “ISO 31000:2009,” 887–892.

¹²¹ Purdy, “ISO 31000:2009.”

Most government risk management policy is focused on events and circumstances that “are likely to bring the greatest harm.”¹²² This understanding of risk is not intended to concentrate efforts on upsides or opportunity or to focus on effects rather than events. In other words, we are only seeing one side of the story.

3. Generativity

To move beyond rhetoric and traditional antithetical balancing models between secrecy and transparency in government, I approached the balancing strategy first by reconsidering the nature of risk, including both positive and negative outcomes. The traditional risk management focus on the downside may be best described by what Barrett and Fry, building on the work of Cooperrider, call a “deficit discourse.”¹²³ Deficit discourse focuses on the negative, and such an approach prevents us “from being creative, innovative, and collaborative in the corporate and social arenas that most need renewal or transformation.”¹²⁴ The authors claim that deficit discourse leads to the following potentially dysfunctional effects:

1. Fragmentation (a reliance upon expertise, based on a primarily problem-solving mindset).
2. Invisibility of possibility (hopelessness, or a focus on expediency versus opportunity).
3. Self-fulfilling deficit prophecies (moving in the direction of the discourse).
4. Over-dependence on experts and hierarchy (stifling new thought or creativity).

¹²² Department of Homeland Security, *Risk Management Fundamentals* (Washington, DC: Department of Homeland Security, 2011).

¹²³ Frank Barrett and Ronald Fry, *Appreciative Inquiry: A Positive Approach to Building Cooperative Capacity* (Chagrin Falls, OH: Taos Institute, 2005), Kindle edition. The authors expanded upon David Cooperrider, “Appreciative Inquiry: A Methodology for Advancing Social Innovation” (PhD. Diss., Case Western, 1985).

¹²⁴ Barrett and Fry, *Appreciative Inquiry*, Kindle location, 262.

5. Exhaustion and visionless voice (focusing on problems creates stress and diminishes curiosity).
6. Spirals of separation (blame).¹²⁵

In many ways, these effects seem to track what we commonly describe as bureaucracy. Instead, to avoid these pitfalls, Barrett and Fry recommend a generative process¹²⁶ called appreciative inquiry in which the focus is “crafting questions that support a system’s capacity to apprehend, anticipate, and heighten positive potential.”¹²⁷ Such an approach is necessitated in considering protective security because risk is not only the potential for a negative outcome but also an opportunity for a positive outcome.

4. Solutions

To address these issues, I proposed legal protections specifically for COOP that differ from other jurisdictions by utilizing a risk balanced framework that considers what specific information has a public benefit (positive effect) under the premise of transparent government, and what information has a component appropriate for withholding (negative effect) under protective security. The open records statutory implementation is framed as follows:

Sec. 552.156. Exception: Confidentiality of Continuity of Operations Plan. (a) Except as otherwise provided by this section, the following information is excepted from disclosure under this chapter:

- (1) a continuity of operations plan developed under Section 412.054, Labor Code; and
- (2) all records written, produced, collected, assembled, or maintained as part of the development or review of a continuity of operations plan developed under Section 412.054, Labor Code.

¹²⁵ Ibid., Kindle location 345–409.

¹²⁶ Gervase R. Bushe, “Generative Process, Generative Outcome: The Transformational Potential of Appreciative Inquiry,” in *Organizational Generativity: The Appreciative Inquiry Summit and a Scholarship of Transformation* (Advances in Appreciative Inquiry, Vol. 4), ed. David L. Cooperrider, Danielle P. Zandee, Lindsey N. Godwin, Michael Avital & B. Boland, 89–113 (Bingley, UK: Emerald Group Publishing Limited, 2013).

¹²⁷ Barrett and Fry, *Appreciative Inquiry*, Kindle location 446.

(b) Forms, standards, and other instructional, informational, or planning materials adopted by the office to provide guidance or assistance to a state agency in developing a continuity of operations plan under Section 412.054, Labor Code, are public information subject to disclosure under this chapter.

(c) A governmental body may disclose or make available information that is confidential under this section to another governmental body or a federal agency.

(d) Disclosing information to another governmental body or a federal agency under this section does not waive or affect the confidentiality of that information.¹²⁸

The risk balancing model results the entirety of the completed COOP plan and attendant records, in both development and review, wholly confidential (eliminating classification requirements for withholding). The exemption is defined with particularity and is unambiguous. This is **specific exemption**.¹²⁹

In turn, this protection of sensitive data is balanced by the requirement that forms, standards, and other instructional, informational, or planning materials used by the state remain in the public domain (eliminating redaction requirements for disclosure). It is further linked to oversight, reporting, and accountability requirements by the State Office of Risk Management. This is **mediated transparency**.¹³⁰

These two elements, form the basis for the secrecy/transparency risk balancing solution in Texas. The risk balancing model for arriving at these specific solutions proposed in the next chapter.

¹²⁸ Texas Legislature Online, "H. B. NO. 1832," accessed July 24, 2016, <http://www.capitol.state.tx.us/tlodocs/84R/billtext/html/HB01832F.htm>. As a related concern often raised in confidentiality considerations, but not directly applicable to the subject matter here, these provisions also address information sharing and confidentiality retention with state and federal partner entities.

¹²⁹ To further ensure specificity, in Texas the provision is included in both the open government law (Chap. 552, Texas Government Code) as a delineated exception, as well as included as a referential confidentiality provision in legislation applicable directly to the State Office of Risk Management (Chap. 412, Texas Labor Code). See Appendix B, § C.

¹³⁰ For an overview of mediated transparency, or transparency by proxy, see Hansen, Christensen, and Flyverbom, "Introduction," 121–123.

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V. APPLICATION: DESIGN AND RECOMMENDATION OF MODEL

Problems are best solved not on the level where they appear to occur but on the next level above them.

—David Hawkins¹³¹

It may be expediently tempting to think of secrecy and transparency as opposites, or alternatively, to acknowledge any oppositional relationship as a sort of philosophical yin and yang. Yet, excepting the extremities of rhetoric, neither secrecy nor transparency can be so easily categorized. As described by Wing-Tsit Chan:

In simple terms, the [yin and yang] doctrine teaches that all things and events are products of two elements, forces, or principles: yin, which is negative, passive, weak, and destructive, and yang, which is positive, active, strong, and constructive.¹³²

Thus, we see in application of the preceding discussion that what we are balancing is not the singular or *exclusionary* values of the concepts of secrecy and transparency (which are each themselves complex admixtures), but rather the subset of the *positive* risk aspects or the opportunities of each.¹³³ In

¹³¹ According to Hawkins, “Problems are best solved by transcending them and looking at them from a higher viewpoint. At the higher level, the problems automatically resolve themselves because of that shift in point of view, or one might see there was no problem at all.” David R. Hawkins, *Healing and Recovery* (Sedona, AZ: Veritas Publishing, 2009), 176.

¹³² The frequency of discussions of the yin/yang concept from individuals responding in conversation and correspondence regarding balancing considerations lends some brief discussion here, at minimum, to include and put the concept in context within the instant arguments. Wing-Tsit Chan, *A Source Book in Chinese Philosophy* (Princeton, NJ: Princeton University Press, 2008), 244.

¹³³ I argue that there is, in fact, a yin and yang to balance, but it is far deeper than the secrecy and transparency terms themselves. This is the purpose of portions of Chapter II in describing the polysemic constructs inherent in the terminology. While another area of study altogether, it is important here to also acknowledge as an underlying linguistic recognition that words are imbued with expanded meaning by their very use—they become symbols and metaphors, incorporating all manner of objectives and beliefs. Karl E. Weick, *Sensemaking in Organizations* (Thousand Oaks, CA: Sage, 1995); Dvora Yanow *Constructing Race and Ethnicity* (Armonk, NY: M.E. Sharpe, 2003).

summary, this is the foundation of the model that follows: through an application of a new definition of risk and the technique of risk balancing, it is possible to move perceived opposition from between the *concepts* to between the anticipatory *effects* of those concepts and to create a mechanism for the unambiguous expression of a balancing theory.

A. RISK BALANCING MODEL DESIGN

As applied to balancing secrecy (distinguished here as a mechanism for the effect/outcome of security) and transparency (distinguished here as a mechanism for the effect/outcome of accountability), as well as building on the inherent structure of ISO 31000 and other standards, there are four aspects of the risk balancing model proposed: principles, framework, process, and outcomes.

1. Principles

The principles are basic characteristics of a system and the foundation from which the rest of a model is built, like the roots of a tree. Incorporated in the risk balancing model proposed here is an adoption by reference of the 11 general risk management principles underlying the ISO 31000 standard:

1. Risk management creates and protects value.
2. Risk management is an integral part of all organizational processes.
3. Risk management is part of decision making.
4. Risk management explicitly addresses uncertainty.
5. Risk management is systematic, structured, and timely.
6. Risk management is based on the best available information.
7. Risk management is tailored.
8. Risk management takes human and cultural factors into account.
9. Risk management is transparent and inclusive.

10. Risk management is dynamic, iterative, and responsive to change.
11. Risk management facilitates continual improvement of the organization.¹³⁴

By expanding the application of risk management approaches to balancing considerations in secrecy and transparency objectives between complex intersections of multiple organizations—as constituencies¹³⁵—the proposed model incorporates one additional principle: *risk management reduces uncertainty by maximizing positive outcomes*.

In this way, the existing ISO 31000 framework and processes may be used to expand to balancing considerations between multiple groups on a wide array of larger political, social, philosophical, and practical issues, including continuity of operations planning and the secrecy/transparency tension. This principle supports three key elements of the overall balancing model discussed herein: reducing ambiguity, emphasizing generative solution thinking, and expanding toward a broader focus of protective security for continuity of operations planning.

2. Framework

The framework is the general structure of a system and supporting body of the whole, like the bole of a tree. In considering the balancing of secrecy and transparency of government continuity plans, applying a risk management framework allows for the use of a wealth of risk identification and evaluation tools and techniques available in the domain,¹³⁶ and it provides for consistent and repeatable techniques for balancing considerations across jurisdictions (and

¹³⁴ International Organization for Standardization, *ISO 31000:2009*.

¹³⁵ Rather than risk management focusing solely on the implementing entity, this model expands the principles to incorporate consideration of constituencies, including but not limited to government as a whole, individual agencies, partners, legislators, the public, and experts and advocates in the range of security and transparency domains.

¹³⁶ A few of those techniques of potential benefit include strengths, weaknesses, opportunities, and threats (SWOT) analyses; heat mapping; and a multitude of other approaches and variants well outside the scope of the instant focus. See, generally, David Vose, *Risk Analysis: A Quantitative Guide* (Trenton, NJ: John Wiley & Sons, 2008).

specific applications). The ISO 31000 standard, with its expanded definition of risk, allows for the balancing of both positive and negative effects of considered treatments, and it is ideal for this application. While the intent of this thesis is not to incorporate a full analysis and description of the ISO 31000 framework itself, in summary, it includes five elements:

1. Mandate and commitment.
2. Design of framework for managing risk.
3. Implementing risk management.
4. Monitoring and review of the framework.
5. Continual improvement of the framework.¹³⁷

In essence, the framework describes the interrelationships between risk management activities as a cyclical and ongoing process of iteration and mutual interdependency. This framework ensures continual attention, and therefore responsiveness to changing circumstance, rather than relying upon static analysis and decision making.¹³⁸ Such an approach is especially relevant in considering the potential responsiveness of any proposed risk balancing model to changing social and political conditions, including the possibility of both deliberate acts (such as terrorist attacks, sabotage/espionage, targeted disruptions) and non-deliberate events (such as natural disasters, climate-related effects, social expectations, economic and political repercussions).

3. Process

Processes are the actions within a system, moving outward and through one another like the multiple branches of a tree. As with principles and framework, building upon the ISO 31000 model begins with a description of the general risk management process:

¹³⁷ International Organization for Standardization, *ISO 31000:2009*.

¹³⁸ Aftergood, "Reducing Government Secrecy."

1. Communication and consultation.
2. Establishing the context.
3. Risk assessment (consisting of risk identification, risk analysis, and risk evaluation).
4. Risk treatment.
5. Monitoring and review.¹³⁹

This process system, like the framework discussed above, is cyclical and an ongoing process of iteration and mutual interdependency. The process is arguably sufficiently flexible to accommodate the balancing analysis proposed, but to be specific to the additional principle included above, the risk treatment options (discussed below) would also then include the potential for risk balancing.

Under an expanded definition of risk, not limited to events or to threats, hazards, perils, or vulnerabilities, the available distinct risk treatments are already significantly expanded within ISO 31000. Traditional risk treatment options typically include only four main risk treatments, described by Dorfman as avoidance, mitigation (“controlling” in DHS terms), transfer, and/or retention (“accepting” in DHS terms).¹⁴⁰ As described by the ISO standard, those options are substantially extended to include:

1. Avoiding the risk by deciding not to start or continue with the activity that gives rise to the risk.
2. Taking or increasing the risk in order to pursue an opportunity.
3. Removing the risk source.
4. Changing the likelihood.
5. Changing the consequences.

¹³⁹ International Organization for Standardization, *ISO 31000:2009*.

¹⁴⁰ See Mark S. Dorfman, *Introduction to Risk Management and Insurance* (9th ed.) (Englewood Cliffs, NJ: Prentice Hall, 2007).

6. Sharing the risk with another party or parties (including contracts and risk financing).
7. Retaining the risk by informed decision.¹⁴¹

The proposed model would further expand this treatment set, then, by including an additional risk treatment option of *balancing risk to maximize positive effect*.

4. Outcomes

The outcomes are the results of a system, both culminating and recursive as essential to sustaining the system as a whole, like the leaves of a tree. There are multiple levels of outcome in the proposed model from the macro to the granular. First, the model supports and relies upon an inclusive generative approach through appreciative inquiry for determining aspirational end states (positive potential), based on a redefinition of risk as a being both positive and negative effect. Second, the model supports a consideration of protective security as a concept for the balancing of secrecy and transparency through the application of a risk management framework. Third, the model allows for procedural solutions that, when taken together, provide a viable risk balancing treatment. Specific to the analysis of balancing secrecy and transparency in continuity of operations plans in Texas, those solutions are specific exemption and mediated transparency.

As described here, *specific exemption* provides precise and unambiguous protection of continuity of operations plans via statutory exception. Whether built in to open records statutes as a direct exclusion, or in other law as a referential exception, specific exemption addresses the constructs outlined in Chapter II. It does so by acknowledging the existence of the information, negating vagueness and uncertainty respecting classification or redaction, and increasing completeness and viability of continuity plans through confidence in the confidentiality of included sensitive information. In addition, *mediated transparency* supports these security-based goals and increases opportunity for

¹⁴¹ International Organization for Standardization, *ISO 31000:2009*.

public knowledge and confidence. It does so by ensuring that a third party is auditing and substantiating the appropriateness and completeness of government resiliency efforts in continuity planning as a representative of the broader body public. This approach requires reporting to that public both the standards upon which validation determinations are made (expectations), as well as the actual compliance and performance of government actors (accountability).

B. BENEFITS OF THE MODEL

Taken together, the application of the principles, framework, processes, and outcomes of the proposed model therefore result in a protective security approach that balances secrecy and transparency by ensuring that two primary *goals* of those concepts, security and accountability, are simultaneously achieved, while also resulting in efficiency and increased efficacy. Thus, positive effect is ideally maximized, while negative risk is reduced, for all constituencies, using a risk balancing approach targeted to achieve that specific result. The three most important benefits identified here are uniformity, dynamism, and extendibility.

(1) Uniformity

Among other positive attributes, the benefits of any standardization are quality and repeatability.¹⁴² Specifically in the domain of sensitive information withholding and disclosure, the ambiguity and variances between jurisdictional implementations and bases advocates strongly for a uniform approach that can be applied objectively and consistently, in particular with regard to the much larger societal and political expectations of secrecy and transparency. This approach itself can meet certain aims of transparency in enhancing public trust.

¹⁴² For other business, consumer, and government benefits of standardization, see generally International Organization for Standardization, “Benefits of International Standards,” accessed September 2, 2016, <http://www.iso.org/iso/home/standards/benefitsofstandards.htm>.

(2) Dynamism

The risk management methods advocated herein are designed to be agile and responsive, and this means that current environment monitoring and constant feedback are the hallmarks of a system of risk identification, analysis, evaluation, and treatment. It necessarily also means that the proposed outputs are not prescribed. As a result, the model can be applied across multiple domains and jurisdictional realities, facilitating tailored solutions to the specifics of the environment in which it is applied.

(3) Extendibility

The proposed model is not constrained by its construction solely to the secrecy and transparency balancing consideration or COOP. While outside the delimited scope of the analysis and application, this model, like ISO 31000, is designed to be scalable and extendable. Thus, other balancing considerations in other domains may also be addressed utilizing the model. In any domain where multiple positive outcomes are present, oppositeness may be more properly understood as opposition. Unlike antithesis, this latter state may be resolved through balancing. This includes but is not limited to concerns as varied and specific as policy, legislation, economics, and funding.¹⁴³

C. RECOMMENDATION

Based on the research herein and the author's experience in Texas, this thesis recommends that federal, state, territorial, tribal, and local governments refocus considerations of secrecy and transparency through a protective security approach and a uniform risk balancing model. By implementing this recommendation and utilizing the proposed model, subject to appropriate modifications respecting existing jurisdictional law, I argue that government

¹⁴³ One readily accessible example might be the DHS/FEMA threat and hazard identification and risk assessment (THIRA) process, wherein significant funding determinations may be made with notable emphasis on downside (negative) risks. See Federal Emergency Management Agency, "Threat and Hazard Identification and Risk Assessment," accessed August 26, 2016, <https://www.fema.gov/threat-and-hazard-identification-and-risk-assessment>.

should be able to strike an appropriate balance between providing detailed public information, while also protecting sensitive information contained in continuity plans.

I do not argue that the specifics of the Texas implementation in Chapter IV are the best practice or the most complete implementation available, nor that it should be replicated in other jurisdictions without full analysis and application of the matters identified here. While statutory exemption and mediated transparency are the outputs from my own analysis and application of the model, the model itself does not prescribe this specific solution. The outputs of the model are dependent upon inquiry. The generative process and engagement of the model allows for other viable solutions to be identified, appropriate to the circumstances and environment already in place in other jurisdictions. Wholesale change of entire government structures is not required for implementation of this model but a change in thinking is.

Thus, it is the model used for this calculus that is the focus of these recommendations. As amended, the risk management structures and practices outlined in ISO 31000 should be strongly considered in the United States at the federal, state, local, tribal, and territorial levels to address the inherent tension between secrecy and transparency theory in the modern democratic application. In addition, absent specific protection under existing law, they should protect the vulnerabilities, sensitivities, strategies, personnel, and resources needed to continue the essential functions of government addressed in continuity of operations plans.

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VI. CONCLUSION

I have argued that by understanding the fundamental constructs, and thus the relevant objectives, of secrecy and transparency, it is possible to formulate a targeted solution to the issue of confidentiality and disclosure of continuity of operations plans by using a consistent and flexible risk management model. As noted, there is very little specific academic research on the specific issue of balancing secrecy and transparency of continuity of operations plans, and the thesis is necessarily targeted to the purpose of generating a beginning point for the discussion of possible approaches, to provide an example of use, and to finding objective replicable bases for that balancing. This is the proposed model.

In designing and proposing this model I have addressed how balancing secrecy and transparency in continuity planning may be achieved. In doing so, my focus here is thus constrained. However, I would be remiss if I did not acknowledge my deeper reasons for doing so. In closing, I return to a necessary component of that analysis: why.

Beyond the evident calculus of analysis to practical application, my broader intentions in producing this thesis, despite the necessary limitations identified at the outset, are threefold:

- First, to encourage further scholarship related to the use of expanded risk management techniques in problem-solving for significant national and homeland security matters;
- Second, to advance the boundaries and challenges for the general discipline of risk management; and
- Third, to contribute to ensuring both ongoing security and the advancement of freedoms and self-determination in the United States.

It is to this last point that I devote these final words. In advocating for a balancing method that produces the most possible positive outcomes for the broadest constituencies, I am not concerned only with secrecy or with transparency, but also for what those concepts ultimately represent in this country.

The theory of our political system is that the ultimate sovereignty is in the people, from whom springs all legitimate authority.

—Thomas Cooley¹⁴⁴

As I framed the tension at the outset, we are justified in the assumption of the necessity of controlling certain types of information for the security of the state and safety of the people. We are equally justified in the expectation that despotism, corruption, and collusion of and by state actors must be countered through oversight of the public as the ultimate sovereign. Yet, making government open and accessible need not come at the expense of reasonable and adequate protective security mechanisms, nor should protectionism or fear outweigh the role of the people in a vital American democracy.¹⁴⁵

It has been a guiding principle behind this analysis that balance is not only advisable, it is required and essential. It is that very balancing that constitutes our political and social experiment writ large. The inherent tensions between oppositional forces are not meant to be removed, nor should they be. To do so, on either account, achieves only tyranny in the guise of expediency. It is in the balancing that tension becomes tensile strength. It is my final hope that this thesis contributes, in some small part, to that strength.

¹⁴⁴ Thomas M. Cooley, "Treatise on the Constitutional Limitations which Rest upon the Legislative Power of the States of the American Union...#28," 1908, <https://books.google.com/books?id=nRUTAAAYAAJ>, 28.

¹⁴⁵ As Aftergood succinctly observes, "The alternative to indiscriminate secrecy is not indiscriminate openness." Nor, obviously, its converse. Aftergood, "Reducing Government Secrecy," 415.

APPENDIX A. SAMPLING OF STATE AND TERRITORIAL LAWS RESPECTING CONTINUITY PLANNING AND OPEN GOVERNMENT REGULATION

The research notes here are a sampling of information from other states and territories with regard to continuity of operations requirements and applicable open government statutes. This information is provided as context for understanding the complexity and differentiation of jurisdictional applications, and is not represented here as conclusive or complete. Where appropriate, statutory references and links are provided within the note summaries.

State or Territory COOP Agency Link	COOP or Closely Analogous Statute	Confidentiality Statute for COOP or Closely Analogous Statute	Comments/Continuations
<p>Alabama</p> <p>http://ema.alabama.gov</p> <p>http://www.adph.org/pandemicflu/index.asp?id=2070</p>	<p>No statutorily-required COOP plans found for state government as a whole. Code of AL. § 29–3-1 re: continuity of operation of the legislature via Emergency Interim Succession Act.</p> <p>Alabama Dept. Public Health and AEMA Joint Memo to All State Agency Heads or Emergency Preparedness Managers: http://www.adph.org/pandemicflu/assets/ADPH-AEMA_PI_AH_COOP_JtLtr_102109.pdf</p> <p>State of Alabama Emergency Operations Plan: http://ema.alabama.gov/filelibrary/Alabama_EOP.pdf</p> <p>Alabama State Hazard Mitigation Plan: http://ema.alabama.gov/filelibrary/AL%20Standard%20State%20Mitigation%20Plan.pdf</p> <p>Preparedness Flu and All-</p>	<p>Article 3 Inspection and Copying of Records, Code of Ala. § 36–12-40. Citizens’ rights—Exceptions. Notwithstanding the foregoing, records concerning security plans, procedures, assessments, measures, or systems, and any other records relating to, or having an impact upon, the security or safety of persons, structures, facilities, or other infrastructures, including without limitation information concerning critical infrastructure (as defined at 42 U.S.C.S. § 5195c(e) as amended) and critical energy infrastructure information (as defined at 18 C.F.R. § 388.113(c)(1) as amended), the public disclosure of which could reasonably be expected to be detrimental to the public safety or welfare, and records the disclosure of which would otherwise be detrimental to the best interests of the public shall be exempted from this section.</p>	

State or Territory COOP Agency Link	COOP or Closely Analogous Statute	Confidentiality Statute for COOP or Closely Analogous Statute	Comments/Continuations
	<p>Hazard Emergency Memo of 4/10/2009 from Ala. governor</p> <p>Directs all state entities to use FEMA Circular 1 as guidance for COOP/COG plans:</p> <p>http://www.adph.org/ALPHTN/assets/103009gov.pdf</p>		
<p>Alaska</p> <p>https://ready.alaska.gov/Plans/Continuity</p>	<p>Alaska Stat. § 44.99.007 Emergency transfer of seat of government Alaska Stat. § 26.20.025 Creation and duties of the Alaska division of homeland security and emergency management.</p> <p>A § 26.23.040. Homeland security duties of the Alaska div of homeland security and emergency management (a) The Alaska division of homeland security and emergency management shall prepare and maintain a state emergency plan and keep it current. The plan may include provisions for (5) recommendations for (C) other preventive and preparedness measures designed to eliminate or reduce disasters or their impact; (10) coordination of</p>	<p>Alaska Stat. § 40.25.120 Public records; exceptions; certified copies: exception (10) records or information pertaining to a plan, program, or procedures for establishing, maintaining, or restoring security in the state, or to a detailed description or evaluation of systems, facilities, or infrastructure in the state, but only to the extent that the production of the records or information (A) could reasonably be expected to interfere with the implementation or enforcement of the security plan, program, or procedures; (B) would disclose confidential guidelines for investigations or enforcement and the disclosure could reasonably be expected to risk circumvention of the law; or (C) could reasonably be expected to endanger the life or physical safety of an individual or to present a real and substantial risk to the public health and welfare;</p>	<p>§. 26.23.040 (con't) (7) establish a register of persons with types of training and skills important in disaster prevention, preparedness, response, and recovery;</p> <p>(8) prepare, for issuance by the governor, orders, proclamations, and regulations as necessary or appropriate in coping with disasters;</p> <p>(9) cooperate with the federal government and any public or private agency or entity in achieving any purpose of this chapter and in implementing programs for disaster prevention, preparedness, response, and recovery;</p> <p>§ 26.23.040 § 44.99.007. Emergency transfer of seat of government When, due to an emergency resulting from the effects of enemy attack or an imminent enemy attack, it becomes imprudent, inexpedient, or impossible to</p>

State or Territory COOP Agency Link	COOP or Closely Analogous Statute	Confidentiality Statute for COOP or Closely Analogous Statute	Comments/Continuations
	<p>the state emergency plan with the disaster plans of the federal government; (11) other matters necessary to carry out the purposes of this chapter. (d) The state emergency plan or any part of it may be incorporated in regulations or orders of the Alaska division of homeland security and emergency management. Regulations and orders of the Alaska division of homeland security and emergency management have the force and effect of law. (e) The Alaska division of homeland security and emergency management shall (6) plan and make arrangements for the availability and use of any private facilities, services, and property and, if necessary and if in fact used, provide for payment for use under terms and conditions agreed upon by the parties; (con't in comments)</p>		<p>conduct the affairs of state government at the normal location of the state capital, the governor shall, as often as the exigencies of the situation require, declare by proclamation an emergency temporary location(s) for the seat of government at a place or places, inside or outside the state, that would not normally be considered military target sites and that the governor may consider advisable under the circumstances. The governor shall take such action and issue such orders as may be necessary for an orderly transition to the emergency temp location or locations. The temp location or locations shall remain the emergency seat of government until the emergency is declared to be ended by the governor and the seat of government is returned to its normal location.</p> <p>Alaska Division of Homeland Security and Emergency Management's COOP Plan</p> <p>https://www.ak-prepared.com/plans/Continuity/ SOA%20DHSEM%20COOP%20June%202014.pdf</p>

State or Territory COOP Agency Link	COOP or Closely Analogous Statute	Confidentiality Statute for COOP or Closely Analogous Statute	Comments/Continuations
<p>Arizona https://azcoop.gov/</p>	<p>Under Arizona (AZ) Executive Order 2013–06 Continuity of Operations and Continuity of Government Planning, each state agency is required to have a COOP plan. Link to Ex Order: http://www.dem.azdema.gov/preparedness/docs/coop/Exec_Order_2013_06.pdf</p> <p>Arizona State (A.R.S.) Constitution. Art. IV, Pt. 2, § 25; A.R.S. § 38–381 et seq re: county and state legislative operation only.</p> <p>A.R.S. Const. Art. IV, Pt. 2, § 25 (2015)</p> <p>§ 25. Continuity of governmental operations in emergency</p> <p>§ 25. The legislature, in order to insure continuity of State and local governmental operations in periods of emergency resulting from disasters caused by enemy attack, shall have the power</p>	<p>A.R.S. §39-121 et seq. AZ public records statutes. §39-126. Federal risk assessments of infrastructure; confidentiality: Nothing in this chapter requires the disclosure of a risk assessment that is performed by or on behalf of a federal agency to evaluate critical energy, water or telecommunications infrastructure to determine its vulnerability to sabotage or attack. §41-4255. [AZ DHS’s security allocation and expenditure legislative and governor’s] report: “The department may redact sensitive information contained in the report if necessary” [from copy of AZ DHS’s copy of this report provided to AZ secretary of state].</p> <p>A.R.S. §41-1801 Definitions for critical infrastructure and related info which includes emergency response plans.</p> <p>§41-4273. Reporting requirements; confidentiality for fuel facilities.</p>	<p>A.R.S. Chapter 41 AZ Dept. of Homeland Security, § 41–4254. Department duties: The department shall: 8. Conduct preparedness training exercises to put state disaster plans into practice and identify shortcomings in the plans. 9. Assist in the development of regional response plans, including collaborative efforts with other states. 10. Partner with and involve the private sector in preparedness efforts. See also AZ Dept. of Emergency Management: http://www.dem.azdema.gov/preparedness/planning.html</p> <p>“We assist agencies in developing and maintaining their COOP program using a FEMA guidance compliant COOP planning and review process. As part of the process the Continuity of Operations Planning Program staff will provide updates and will periodically review state agencies’ COOP plans to ensure they are current, effective and responsive in maintaining organizational readiness.”</p>

State or Territory COOP Agency Link	COOP or Closely Analogous Statute	Confidentiality Statute for COOP or Closely Analogous Statute	Comments/Continuations
	<p>and the immediate duty to:</p> <ol style="list-style-type: none"> 1. Provide for prompt and temporary succession to the powers and duties of public offices, of whatever nature and whether filled by election or appointment, the incumbents of which may become unavailable for carrying on the powers and duties of such offices. 2. Adopt such other measures as may be necessary and proper for insuring the continuity of governmental operations. <p>In the exercise of the powers hereby conferred, the legislature shall in all respects conform to the requirements of this constitution except to the extent that in the judgment of the legislature so to do would be impracticable or would admit of undue delay.</p>		
<p>Arkansas https://acoop.arkansas.gov/_layouts/COOPLogin.aspx?ReturnUrl=%2f</p>	<p>A.C.A. § 21–1-302 (2015) Legislative intent re: Additional officers who can exercise the powers and discharge the duties of governor; Emergency interim</p>	<p>A.C.A. § 25–19-101 et seq. AR FIOA. A.C.A. § 25–19-105 Examination and copying of public records only exempts risk and vulnerability/security assessments and emergency response and recovery records for Ark Dept.</p>	<p>The AR COOP program home page requires a password and ID for access: https://acoop.arkansas.gov/_layouts/COOPLogin.aspx?ReturnUrl=%2f IT COOP for Arkansas link:</p>

State or Territory COOP Agency Link	COOP or Closely Analogous Statute	Confidentiality Statute for COOP or Closely Analogous Statute	Comments/Continuations
	<p>succession to state and political subdivisions government offices; special emergency judges</p> <p>§ 25-4-105. Department of Information Systems— General powers and duties include Implementing systems to ensure the security of state data and state data processing assets, to provide for disaster recovery and continuity of operations to the state agencies served.</p>	<p>Human Services (b) (17) and water utilities (b)(18). § 25-19-103 Definitions: (9) "Vulnerability assessment" means an assessment of the vulnerability of a public water system to a terrorist attack or other intentional acts intended to substantially disrupt the ability of the public water system to provide a safe and reliable supply of drinking water as required by the Public Health Security and Bioterrorism Preparedness and Response Act of 2002, Pub. L. No. 107-188.</p>	<p>http://www.dis.arkansas.gov/security/Pages/ContinuityofOperationsProgram.aspx Ark COOP slide show: http://www.dis.arkansas.gov/security/Documents/Program_Overview.pdf</p>
<p>California http://www.caloes.ca.gov/cal-oes-divisions/planning-preparedness/continuity-planning</p>	<p>CA Gov Code § 8560. "Emergency plans;" "State Emergency Plan" include COOP/CA Gov Code § 8609: may use volunteers in emergency plan implementation</p>	<p>CA Gov Code § 6254 Records exempt from disclosure requirements including: (aa) A document prepared by or for a state or local agency that assesses its vulnerability to terrorist attack or other criminal acts intended to disrupt the public agency's operations and that is for distribution or consideration in a closed session; (ab) Critical infrastructure information, as defined in § 131(3) of Title 6 of the United States Code, that is voluntarily submitted to the California Emergency Management Agency for use by that office, including the identity of the person who or entity that voluntarily submitted the</p>	<p>Continuity Planning Guidance (2015) state publication:</p> <p>http://www.google.com/url?sa=t&rct=j&q=&esrc=s&frm=1&source=web&cd=4&cad=rja&uact=8&ved=0ahUKEwiL38awwdfLAhUIg4MKHXmWDmYQFggvMAM&url=http%3A%2F%2Fwww.caloes.ca.gov%2FPlanningPreparednessSite%2FDocuments%2F2015_Continuity_Guidance-Oct2015.docx&usg=AFQjCNGLf6b5ejq189PTRVO-Gm60EpUxFA Continuity planning publication</p>

State or Territory COOP Agency Link	COOP or Closely Analogous Statute	Confidentiality Statute for COOP or Closely Analogous Statute	Comments/Continuations
		information.	(2014): http://www.caloes.ca.gov/PlanningPreparednessSite/Documents/ContinuityPlanningExecutive%20Summary_2014.pdf
<p>Colorado</p> <p>http://dhsem.state.co.us/preparedness/planning/continuity-operations</p>	<p>C.R.S. § 24–33.5-1609 requires Colorado DPS to adopt rules for state agency development of COOPs using FEMA circulars 65, 66, and 67 as guidelines. C.R.S. § 24–33.5-704 requires each dept. that admins a publicly-funded safety net program to develop a COOP. Colorado DPS COOP rules: 8 CCR 1507–40 & 41. 8 CCR 1507–40. Continuity of State Government Operations.</p> <p>Authority to promulgate rules and regulations</p> <p>The Div. of Homeland Security and Emergency Management (DSHEM) is authorized by the provisions of § 24–33.5-1609, C.R.S., to adopt rules and regulations for the continuity of state government operations to provide guidance to state</p>	<p>C.R.S. 24–72-204 Allowance or denial of inspection—grounds—procedure—appeal—definitions</p> <p>(2) (a) (VIII) (A) The custodian may deny the right of inspection of the following records, unless otherwise provided by law, on the ground that disclosure to the applicant would be contrary to the public interest: “Specialized details of security arrangements.” Note: “security arrangements” is not defined under the § 24–72-202. entitled Definitions.</p> <p>§ 24–33.5-1604. Duties and powers of the division [Division of Homeland Security and Emergency Management]</p> <p>(II) The terrorism preparedness plans constitute specialized details of security arrangements for purposes of § 24–72-204 (2) (a) (VIII).</p>	

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	<p>departments and agencies in developing viable and executable contingency plans for continuity of operations. In adopting such rules and regulations the director shall use as general guidelines the plans published by the FEMA, and in the rules promulgated thereunder.</p> <p>Purpose</p> <p>A. These rules and regulations provide for the creation and adoption of the planning guidance necessary for state agencies to use in developing viable and executable continuity of operations plan (COOP).</p>		
<p>Connecticut</p> <p>http://www.ct.gov/demhs/cwp/view.asp?a=1928&q=553608&demhsNav= 51600 </p>	<p>CT. Constitution. Art. XI., Sec. 3 (2011) § 3: In order to insure continuity in operation of state and local governments in a period of emergency resulting from disaster caused by enemy attack, the general assembly shall provide by law for the prompt and temporary succession to the powers and duties of all public offices, the incumbents of which may become unavailable for</p>	<p>Conn. Ann. Statutes FIOA Title 1, Chapter 14. Conn. Gen. Stat. § 1–210 Access to public records. Exempt records. (b) Nothing in the FIOA shall... require disclosure of: (19) Records when there are reasonable grounds to believe disclosure may result in a safety risk, including the risk of harm to any person, any government-owned or leased institution or facility or any fixture or appurtenance and equipment attached to, or contained in, such institution or facility, except that such records shall be</p>	<p>(con't) (C) by the executive director of the Joint Committee on Legislative Management, with respect to records concerning the Legislative Department. As used in this section, "government-owned or leased institution or facility" includes, but is not limited to, an institution or facility owned or leased by a public service company, as defined in § 16–1, a certified telecommunications provider, as defined in § 16–1, a water company, as defined in § 25–</p>

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	<p>carrying on their powers and duties. https://www.cga.ct.gov/asp/Content/constitutions/CTConstitution.htm Title 28 of the General Statutes of Connecticut entitled Civil preparedness and emergency services contains emergency management statutes but there is no mention of "continuity."</p>	<p>disclosed to a law enforcement agency upon the request of the law enforcement agency. Such reasonable grounds shall be determined (A) (i) by the commissioner of administrative services, after consultation with the chief executive officer of an executive branch state agency, with respect to records concerning such agency; and (ii) by the commissioner of emergency services and public protection, after consultation with the chief executive officer of a municipal, district or regional agency, with respect to records concerning such agency; (B) by the chief court administrator with respect to records concerning the Judicial Department; and (con't in comments)</p>	<p>32a, or a municipal utility that furnishes electric, gas or water service, but does not include an institution or facility owned or leased by the federal government, and "chief executive officer" includes, but is not limited to, an agency head, department head, executive director or chief executive officer. Such records include, but are not limited to: (i) Security manuals or reports; (viii)</p> <p>Emergency plans and emergency preparedness, response, recovery and mitigation plans, including plans provided by a person to a state agency or a local emergency management agency or official; and State Agency All Hazards Continuity of Operations Plan (COOP) Guidance and Plan Template, 2014:</p> <p>http://www.google.com/url?sa=t&rct=j&q=&esrc=s&frm=1&source=web&cd=3&ved=0ahUKEwi1vp-y0NfLAhUsuIMKHSxEBPcQFggIMAI&url=http%3A%2F%2Fwww.ct.gov%2Fdemhs%2Flib%2Fdemhs%2Fepi%2F2014%2Fallhazardstemplate.docx&usg=AFQjCNH__DW1gBmiSkHCycm2tGaV_u9d5A</p>

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<p>Delaware</p> <p>http://dti.delaware.gov/information/coop.shtml</p>	<p>Del. Constitution. art XVII, § 1 (2015)</p> <p>§ 1. Continuity of state and local governmental operations in periods of emergency resulting from disasters caused by enemy attack</p> <p>§ 1. The General Assembly, in order to insure continuity of state and local governmental operations in periods of emergency resulting from disasters caused by enemy attack, shall have the power and the immediate duty (1) to provide for prompt and temporary succession to the powers and duties of public offices whose succession is not otherwise provided for in this constitution, of whatever nature and whether filled by election or appointment, the incumbents of which may become unavailable for carrying on the powers and duties of such offices, and (2) to adopt such other measures as may be necessary and proper for insuring the continuity of governmental operations. In the exercise of</p>	<p>Title 29, CH 100 Delaware Freedom of Info Act. Del. 29 Del. C. § 10002.</p> <p>Definitions (l) "Public record" is information of any kind. For purposes of this chapter, the following records shall not be deemed public: a. The following records, which, if copied or inspected, could jeopardize the security of any structure owned by the state or any of its pol subdivisions, or could facilitate the planning of a terrorist attack, or could endanger the life or physical safety of an individual: 1. Response procedures or plans prepared to prevent or respond to emergency situations, the disclosure of which would reveal vulnerability assessments, specific tactics, specific emergency procedures or specific security procedures. 4. Records prepared to prevent or respond to emergency situations identifying or describing the name, location, pharmaceutical cache, contents, capacity, equipment, physical features or capabilities of individual medical facilities, storage facilities, or laboratories established, maintained or regulated by the state or any of its pol subdivisions.</p>	<p>Ex Ord Nos 199 DEGR 1, June 2013 & 157 DEGR 1, December 2009: 6. That each executive department or agency shall develop plans to ensure continuity of operations during times of emergency, consistent with the requirements in the Plan or as may be promulgated by the Secretary through the Delaware Emergency Management Agency to ensure its ability to carry out essential government functions in the aftermath of a disaster or emergency. Title 29 § 7701. re: emergency relocation of government; 5. Those portions of records assembled, prepared or maintained to prevent, mitigate or respond to criminal acts, the public disclosure of which would have a substantial likelihood of threatening public safety.</p>

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	the powers hereby conferred the general assembly shall in all respects conform to the requirements of this constitution except to the extent that in the judgment of the general assembly so to do would be impracticable or would admit of undue delay.		
<p>Florida http://www.floridadisaster.org/internet_library.htm#COOP</p>	<p>Fla. Stat. § 252.365 requires each agency have “a comprehensive and effective program to ensure continuity of essential state functions under all circumstances.” Title IV. Fla. Stat. Chapter 22 Emergency Continuity of Government. Provides for emergency interim state and local government successors and judges only after an attack on the US. Office” includes all state and local offices. Fla. Constitution. Art. II, § 6 (2015) § 6. Enemy attack. In periods of emergency resulting from enemy attack the legislature shall have power to provide for prompt and temporary succession to the powers and duties of all public offices the incumbents of which may</p>	<p>Fla. Stat. § 252.905 (2015) Title XVII § 252.905. Emergency planning information; public records exemption. [Repealed October 2, 2019]</p> <p>(1) Any information furnished by a person or a business to the division for the purpose of being provided assistance with emergency planning is exempt from § 119.07(1) and § 24(a), Art. I of the state constitution.</p> <p>This exemption applies to information held by the division before, on, or after the effective date of this exemption.</p> <p>(2) This section is subject to the Open Government Sunset Review Act in accordance with s. 119.15, and shall stand repealed on October 2, 2019, unless reviewed and saved from repeal through reenactment by the legislature.</p> <p>http://www.leg.state.fl.us/statutes/index.cfm?App_mode=Display_Statute&</p>	<p>Fla. Stat. § 110.171: Telework may also be used as part of an agency’s continuity of operations plan where appropriate. Fla. Jud. Cir. Admin Ords, i.e., 15th Cir AO 2.205-6/09 In Re: Court Disaster and Emergency Procedures “Contemporaneous with the implementation of this order, the Court shall activate its Continuity of Operations Plan (‘COOP’).” 2nd and 6th Jud Dist. also have similar COOP Admin Ords. Note that the term “person” is not defined within Part II containing § 252.905 pertaining to Emergency Planning and Community Right to Know. However, “person” is defined in part IV pertaining to Accidental Release Prevention and Risk Management Planning as: “252.936 Definitions. As used in this part, the term:(11) “Person” means an individual, corporation, partnership, association, state or any agency or institution</p>

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	become unavailable to execute the functions of their offices, and to adopt such other measures as may be necessary and appropriate to insure the continuity of governmental operations during the emergency. In exercising these powers, the legislature may depart from other requirements of this constitution, but only to the extent necessary to meet the emergency.	Search_String=&URL=0100-0199/0119/Sections/0119.15.html	thereof, municipality, political subdivision of the state, and any agency, department, or instrumentality of the United States, and any officer, agent, or employee thereof, and, for the purposes of s. 252.941, any responsible corporate officer.
<p>Georgia</p> <p>http://www.gema.ga.gov/PlanPrepare/Pages/PlansMaps.aspx</p>	<p>Ga. Constitution. Art. III, § VI, Para. II (2015) (a) Without limitation of the powers granted under Paragraph I, the General Assembly shall have the power to provide by law for: (4) The continuity of state and local governments in periods of emergency resulting from disasters caused by enemy attack including but not limited to the suspension of all constitutional legislative rules during such emergency.</p> <p>O.C.G.A. § 38-3-52: all official acts required by law to be performed by any officer or agency are valid in an</p>	<p>O.C.G.A. § 50-18-72 entitled "When Public Disclosure Not Required" does not specifically include COOP-type nondisclosure provision. However, COOP plans may be included under the following: (25) (A) Records the disclosure of which would compromise security against sabotage or criminal or terrorist acts and the nondisclosure of which is necessary for the protection of life, safety, or public property, which shall be limited to the following:</p> <p>(i) Security plans and vulnerability assessments for any public utility, technology infrastructure, building, facility, function, or activity in effect at the time of the request for disclosure or pertaining to a plan or assessment in</p>	<p>(Con't) (iv) Any plan, blueprint, or other material which if made public could compromise security against sabotage, criminal, or terroristic acts; and</p> <p>(v) Records of any government sponsored programs concerning training relative to governmental security measures which would identify persons being trained or instructors or would reveal information described in divisions (i) through (iv) of this subparagraph.</p> <p>(C) As used in division (i) of subparagraph (A) of this paragraph, the term "activity" means deployment or surveillance strategies, actions mandated by changes in the federal</p>

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	<p>emergency (include manmade or natural causes or enemy attack) while at a temporary location or locations for the seat of government. Georgia Continuity of Government (COG) Plan link:</p> <p>http://www.gema.ga.gov/Plan%20Library/Georgia%20Continuity%20of%20Government%20-%20COG%20(2012).pdf</p>	<p>effect at such time;</p> <p>(ii) Any plan for protection against terrorist or other attacks that depends for its effectiveness in whole or in part upon a lack of general public knowledge of its details; (Con't in comments)</p>	<p>threat level, motorcades, contingency plans, proposed or alternative motorcade routes, executive and dignitary protection, planned responses to criminal or terrorist actions, after-action reports still in use, proposed or actual plans and responses to bioterrorism.</p> <p>Link to Georgia Emergency Operations Plan update January 2015:</p> <p>http://www.gema.ga.gov/Plan%20Library/GEOP%20-%20Base%20Plan%20(2015).pdf</p>
<p>Hawaii</p> <p>http://www.scd.hawaii.gov/planningguides.htm</p>	<p>HRS § 127A-12 Emergency management powers, in general (b) The governor may exercise the following powers pertaining to emergency management: (16) Order and direct government agencies, officials, officers, and employees of the State, to take such action and employ such measures for law enforcement, medical, health, firefighting, traffic control, warnings and signals, engineering, rescue, construction, emergency housing, other welfare, hospitalization, transportation,</p>	<p>HRS §92F-13. Government records; exceptions to general rule. This part shall not require disclosure of:</p> <p>(3) Government records that, by their nature, must be confidential in order for the government to avoid the frustration of a legitimate government function;</p>	<p>§ 130–1. Emergency seat of state government—in case of actual or threatened enemy attack. Hawaii Emergency Management Agency link:</p> <p>http://www.scd.hawaii.gov/coopguidance.htm</p>

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	<p>water supply, public information, training, and other emergency functions as may be necessary, and utilize the services, materials, and facilities of the agencies and officers. All such agencies and officers shall cooperate with and extend their services, materials, and facilities to the governor as the governor may request; (19) Take any and all steps necessary or appropriate to carry out the purposes of this chapter notwithstanding that those powers in § 127A-13(a) may only be exercised during an emergency period.</p> <p>HRS § 127A-5. County emergency management agency requires county line of succession; § 107-25. Hawaii state building codes; requirements based upon “essential government facilities requiring COOP;” HRS § 342J-34 Standards for treatment, storage, or disposal facilities allows government to establish rules for COOP in hazmat waste.</p>		

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<p>Idaho http://bhs.idaho.gov/Pages/Plans/COOP_COG.aspx</p>	<p>Idaho Code (IC) § 67–5503. Definitions (a) “Emergency resources management plan” shall mean that plan prepared by the Idaho emergency resources planning committee, approved by fed office of emergency planning and adopted by the governor, which sets forth the organization, admin, and functions for the emergency management by the state government of essential resources and economic stabilization within the state. Such plan shall provide an emergency org and emergency admin policies and procedures for the conservation, allocation, distribution, and use of essential resources available to the state following a civil defense emergency such as an attack upon the US. IC § 46–1006. Powers and duties of chief and bureau (2) The bureau shall prepare, maintain and update a state disaster plan based on the principle of self-help at each level of government. The plan may</p>	<p>IC § 74–105. Records exempt from disclosure law enforcement records, investigatory records of agencies, evacuation and emergency response plans, worker’s comp.</p> <p>(4) (b) Records of buildings, facilities, infrastructures and systems held by or in the custody of any public agency only when the disclosure of such info would jeopardize the safety of persons or the public safety. Such records may include emergency evacuation, escape or other emergency response plans, vulnerability assessments, operations and security manuals, plans, blueprints or security codes. For purposes of this section “system” shall mean electrical, HVAC and telecomm systems.</p> <p>Idaho COOP Plan template link: http://www.google.com/url?sa=t&rct=j&q=&esrc=s&frm=1&source=web&cd=1&ved=0ahUKEwiOw_WbkP3LAhUsn4MKHWr9CxMQFggcMAA&url=http%3A%2F%2Fbhs.idaho.gov%2Fpages%2FPreparedness%2FPDF%2FCOOP%2520Plan%2520Template.doc&sg=AFQjCNFSyLFSg6gjKgpKqzeFRhia nv6QpQ&bvm=bv.118817766,d.amc</p> <p>Idaho COOP and emergency operations plan template link http://bhs.idaho.gov/Pages/Plans/</p>	<p>(con’t) Idaho Constitution. Art. III, § 27 Continuity of state and local governmental operations—provides COOP line of succession for state and local government in case of actual or threatened attack and power to “adopt such other measures as may be necessary and proper for so insuring the government COOP.”</p> <p>IC § 59–1402 Declaration of Policy—provides emergency interim succession powers for continuity of government in case of attack.</p> <p>§ 67–414. Declaration of policy—for special provisions for COOP of legislature. IC § 46–1008.</p> <p>The governor and disaster emergencies (5) In addition to any other powers conferred upon the governor by law, the governor may:</p> <p>(b) Utilize all resources of the state, including, but not limited to, those sums in the disaster emergency account as she or he shall deem necessary to pay expenses incurred during a declared state of disaster emergency; (c) Transfer the direction, personnel, or functions of state depts. and agencies or units thereof for the purpose of performing or facilitating emergency services;</p>

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	provide for: (k) Coordination of the state disaster plan with the disaster plans of the fed government. (6) The bureau shall: (d) Plan and make arrangements for the availability and use of any private facilities, services, and property and, if necessary and if in fact used, provide for payment for use under terms and conditions agreed upon; (f) Cooperate with the fed government and any public or private agency or entity in achieving any purpose of this act and in implementing programs for disaster prevention, preparation, response, and recovery; (con't in comments)	Documents/ Idaho%20Emergency%20Operations%20Plan.pdf	(d) Subject to any applicable requirements for compensation under § 46–1012, IC, commandeer or utilize any private property, real or personal, if he finds this necessary to cope with the disaster emergency; § 67–104. Validity of acts performed at emergency temporary location. During such time as the seat of government remains at such emergency temporary location(s), all official acts now or hereafter required by law to be performed at the seat of government by any officer, agency, department, or authority of this state, including the convening and meeting of the legislature in regular, extraordinary, or emergency session, shall be as valid and binding when performed at such emergency temporary location, or locations, as if performed at the normal location of the seat of government.
Illinois http://www.illinois.gov/ready/Pages/default.aspx	§ 20 ILCS 3305 et seq. Emergency Management Agency Act Requires each emergency services and disaster agency to prepare an emergency operations plan among other requirements. Illinois COOP Plan info links:	5 ILCS 140 et seq. III. FOIA. § 5 ILCS 140/7. Exemptions—(v) Vulnerability assessments, security measures, and response policies or plans that are designed to identify, prevent, or respond to potential attacks upon a community's population or systems, facilities, or installations, the destruction or	§ 5 ILCS 275/1 et seq. Emergency Interim Succession Act. § 20 ILCS 3305/1 et seq. Illinois Emergency Management Agency Act. § 5 ILCS 160/15b Essential records— Requires each head of a state agency to “Determine what records are “essential” for post-emergency

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	<p>http://www.illinois.gov/iema/LocalEMA/Pages/OtherResources.aspx#COOP</p> <p>Illinois emergency operations plan links:</p> <p>http://www.illinois.gov/iema/Preparedness/Pages/DisasterPlans.aspx</p>	<p>contamination of which would constitute a clear and present danger to the health or safety of the community, but only to the extent that disclosure could reasonably be expected to jeopardize the effectiveness of the measures or the safety of the personnel who implement them or the public. Information exempt under this item may include such things as details pertaining to the mobilization or deployment of personnel or equipment, to the operation of communication systems or protocols, or to tactical operations. § 5 ILCS 140/7.5. Statutory Exemptions (i) Information contained in a local emergency energy plan submitted to a municipality in accordance with a local emergency energy plan ordinance that is adopted under § 11–21.5-5 of the Illinois Municipal Code [65 ILCS 5/11-21.5-5].</p>	<p>government operations and provide for their protection and preservation” and usability. § 5 ILCS 195/1 et seq. Emergency Seat of Government Act—in case of actual or threatened attack provides for validity of government actions from temporary locations.</p>
<p>Indiana</p> <p>http://www.in.gov/dhs/3180.htm</p>	<p>IC § 10–14-2-4 Functions of State Emergency Management Agency for all state efforts for preparedness for, response to, mitigation of, and recovery from emergencies and disasters.</p> <p>IC 10–14-3-7 authorize and provide coordination of activities, cooperation and provide a disaster</p>	<p>I.C. § 5–14-3-1 Ind. Publ. Records Act (IPRA). 5–14-3-4. Exceptions (b) (19) A record or a part of a record, the public disclosure of which would have a reasonable likelihood of threatening public safety by exposing a vulnerability to terrorist attack. A record described under this subdivision includes:</p> <p>(B) vulnerability assessments;</p> <p>(C) risk planning documents;</p>	<p>(§ 5–14-3-4 con’t) (A) A record assembled, prepared, or maintained to prevent, mitigate, or respond to an act of terrorism under IC 35–47-12-1 or an act of agricultural terrorism under IC 35–47-12-2.</p> <p>(B) Vulnerability assessments.</p> <p>(C) Risk planning documents.</p> <p>(D) Needs assessments.</p>

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	<p>management system relating to disaster recovery; Burns Ind. Code Ann. IC 10–14-3-9. Emergency operations plan (a) The agency shall prepare and maintain a current state emergency operations plan. The plan may provide for the following: (12) Other necessary matters. 5–15-5.1-12. Critical records program requires state and local government to identify and protect through dispersal, duplication, or secure vault storage records that are essential to the continuity of state and local government operations. Ind. Monroe Circ. Ct. Rules Manual Rule LR53-AR00-0100. Executive organization. B. Presiding Judge of Board of Judges. shall: 11. Establish and maintain a plan for continuity of operations. IC § 4–1-3-1 et seq. re: all acts valid during government relocation caused by emergency from threatened or actual enemy attack.</p>	<p>(D) needs assessments (more); § 5–14-3-4 Exceptions to right to inspect public records—Time limitation on confidentiality of records—Destruction of public records. (b) Except as otherwise provided by subsection (a), the following public records shall be excepted from § 3 of this chapter at the discretion of a public agency: (19) A record or a part of a record, the public disclosure of which would have a reasonable likelihood of threatening public safety by exposing a vulnerability to terrorist attack. A record described under this subdivision includes the following: (con't in comments)</p>	<p>(E) Threat assessments. (F) Intelligence assessments. (G) Domestic preparedness strategies. (J) Infrastructure records that disclose the configuration of critical systems such as communication, electrical, ventilation, water, and wastewater systems.</p>
Iowa	Title 1, Subtitle 12 Iowa Code (IC) §29C.8 Powers and	Title 1, Subtitle 9 IC Ch. 22 Examination of Public Records. §22.7 Confidential	

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http://www.homelandsecurity.iowa.gov/county_EM/planning_training.html	<p>duties of director of Dept. of Homeland Security and Emergency Management include preparing an emergency plan and management program that includes recovery. §29C.10 Emergency management coordinator is responsible for development of emergency plan and serves on EM Commission. Iowa COOP plan template:</p> <p>https://www.legis.iowa.gov/docs/publications/ID/20112.pdf</p> <p>Iowa Admin Rules for Iowa Homeland Security and Emergency Management Chapter 605 recognizes the agency's duty of "preparedness" in § 605 IAC 1.1. The term "preparedness" includes "Continuity of Government" under the definition "Emergency Management" in § 605 IAC 1.2 definitions for Chapter 605.</p>	<p>records. 45. The critical asset protection plan or any part of the plan prepared pursuant to § 29C.8 and any information held by the department of homeland security and emergency management that was supplied to the department by a public or private agency or organization and used in the development of the critical asset protection plan to include, but not be limited to, surveys, lists, maps, or photographs. However, the director shall make the list of assets available for examination by any person. 50. Information concerning security procedures or emergency preparedness information developed and maintained by a government body for the protection of governmental employees, visitors to the government body, persons in the care, custody, or under the control of the government body, or property under the jurisdiction of the government body, if disclosure could reasonably be expected to jeopardize such employees, visitors, persons, or property. a. vulnerability assessments, security and response plans, etc.</p>	<p>http://www.documentsky.com/9751529402/</p>
<p>Kansas http://kansastag.gov/</p>	<p>Kan. Constitution. Art. 15, § 13 Continuity of state and local governmental</p>	<p>K.S.A. § 45–221. Certain records not required to be open; (a) (12) Records of emergency or security information or</p>	<p>(con't) K.S.A. § 48–1202 Statement of policy. Because of the existing possibility of attack upon the United</p>

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<p>KDEM.asp?PageID=473 https://kansascoop.boldplanning.com/</p>	<p>operations. Notwithstanding any general or special provision of this constitution, the legislature, in order to insure continuity of state and local governmental operations in periods of emergency resulting from disasters caused by enemy attack, shall have the power and the immediate duty (1) to provide for prompt and temporary succession to the powers and duties of public offices, of whatever nature and whether filled by election or appointment, the incumbents of which may become unavailable for carrying on the powers and duties of such offices, and (2) to adopt such other measures as may be necessary and proper for insuring the continuity of governmental operations including, but not limited to, the financing thereof. In the exercise of the powers hereby conferred the legislature shall in all respects conform to the requirements of this constitution except to the extent that in the judgment of the legislature so to do would</p>	<p>procedures of a public agency, or plans, drawings, specifications or related information for any building or facility.</p>	<p>States of unprecedented size and destructiveness, and in order, in the event of such an attack, to assure continuity of government through legally constituted leadership, authority and responsibility in offices of the government of the state and its political subdivisions; to provide for the effective operation of governments during an emergency; and to facilitate the early resumption of functions temporarily suspended, it is found and declared to be necessary to provide for additional officers who can exercise the powers and discharge the duties of governor; to provide for emergency interim succession to governmental offices of this state and its political subdivisions in the event the incumbents thereof (and their deputies, assistants or other subordinate officers authorized, pursuant to law, to exercise all of the powers and discharge the duties of such offices hereinafter referred to as deputies) are unavailable to perform the duties and functions of such offices; and to provide for special emergency judges who can exercise the powers and discharge the duties of judicial offices in the event regular judges are unavailable.</p>

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	<p>be impracticable or would admit of undue delay. (con't in comments)</p> <p>http://www.kansastag.gov/AdvHTML_doc_upload/2014%20KRP%20FINAL.pdf</p> <p>Kansas Response Plan 2014 at pg. 27–28: All state agencies are responsible for “Routinely updating and maintaining a continuity of operations plan (COOP).” State COOP annex at pg. 259–270.</p>		<p>http://www.kansastag.gov/AdvHTML_doc_upload/COOP_Charter.pdf</p> <p>Dec. 2007 3 page Charter establishing COOPing Committee for “state agency level.”</p>
<p>Kentucky</p> <p>http://kyem.ky.gov/programs/Pages/Planning.aspx</p>	<p>KRS § 39A.220. Agency emergency operations procedures.</p> <p>(1) Each agency, board, or commission of state government, unless the requirement is waived, in writing, by the director, shall develop agency emergency operations procedures which are consistent with and which meet the requirements of the KY Emergency Operations Plan. The agency emergency operations procedures shall be updated not less than yearly.</p>	<p>KRS § 61.878. Certain public records exempted from inspection except on order of court—Restriction of state employees to inspect personnel files prohibited (1) The following public records are excluded (except upon court order)...(m) 1. Public records the disclosure of which would have a reasonable likelihood of threatening the public safety by exposing a vulnerability in preventing, protecting against, mitigating, or responding to a terrorist act and limited to:</p> <p>a. Criticality lists resulting from consequence assessments; b. Vulnerability assessments; c. Antiterrorism protective measures and</p>	<p>(con't) (4) Each agency, board, or commission of state government shall train its employees with regard to the contents of the agency emergency operations procedures, and shall give any additional training necessary to implement the procedures during times of emergency or disaster.</p> <p>(5) Each agency, board, or commission of state government shall, upon request of the director, send an employee of the agency with full authority to take any action on behalf of the agency to the State Emergency Operations Center, area offices of the division, state</p>

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	<p>(2) Each agency, board, or commission of state government shall take those measures necessary to ensure that it can continue to operate during times of disaster or emergency, that it can protect its vital records, and that it has designated at least four persons, preferably by title, who may act for the agency, and for its major component operations, during an emergency or disaster if the primary person with the power to make necessary decisions is unavailable for any reason.</p> <p>(3) In carrying out the provisions of subsections (1) and (2) of this section, each agency, board, or commission of state government shall follow the general planning guidance of the division and the requirements of admin regs promulgated by the division. (con't in comments)</p>	<p>plans; d. Counterterrorism measures and plans; e. Security and response needs assessments.</p> <p>State EOP August 2014 @ pg 34: http://kyem.ky.gov/sitecontacts/Documents/State%20EOP.pdf</p> <p>It is the policy of Ky to respond to emergency and to ensure essential functions. To achieve, Ky has established a continuity of government (COG) plan. The exec, legislative and judicial branches will each establish a COOP that are supported by, and interface with, subordinate agency and departmental COOPs plans. The KYEM Planning Branch maintains the Commonwealth's COG Plan.</p> <p>http://kyem.ky.gov/programs/Pages/State-ESP-and-EOP.aspx</p>	<p>command posts or other designated location during periods of emergency or disaster.</p> <p>(6) As used in this section, agency, board, or commission means all agencies, unless the requirement is waived, in writing, by the director, listed in KRS 12.020, other state bodies created by executive order of the governor, the Legislative Research Commission, and the Court of Justice and its agencies. Title V 39A.010. Legislative intent—Necessity creates Division of Emergency Management in part to “ensure the continuity and effectiveness of government in time of emergency, disaster, or catastrophe.”</p> <p>Chapter 39D Continuity of Government KRS § 39D.010. Temporary seat of state government—Acts valid and binding. 39D.050. Preservation of essential state public records—Duties of Archives and Records Commission The state Archives and Records Commission shall establish a system for the preservation of essential state public records necessary for the continuity of governmental functions in the event of an emergency,</p>

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			disaster, or catastrophe.
<p>Louisiana http://gohsep.la.gov/PREPARE/PLANNING-OVERVIEW</p>	<p>§ 29:726. Governor's Office of Homeland Security and Emergency Preparedness; authority and responsibilities. E. The office shall...(24) Review annually the state continuity of government plan (25) Study the feasibility of pre-bidding of contracts to provide for disaster response services such as but not limited to transportation services for evacuation purposes, housing or temp and long-term shelter for evacuees, provision of emergency food supplies, water and ice, and debris removal and enter into such contracts deemed to be in the best interest of the state to preserve and protect life, health, safety, and property of all citizens.</p> <p>La. Constitution. Art. XII, § 11. Continuity of government. The legislation shall provide for orderly and temp continuity of state government, in periods of emergency, until normal processes of government can</p>	<p>LA Rev Stat §29:725.2. Confidentiality of cert records. A. (1) Notwithstanding any other provision of law to the contrary, records in the custody of the governor's Office of Homeland Security and Emergency Prep containing cert security sensitive info in R.S. § 44:3.1 and § 44:3.2 shall be confidential. (2) Such nondisclosure shall not apply to officers or employees of state, federal, or local government in carrying out their responsibilities as provided by applicable law. B. The provisions of this section shall not prevent any person from examining and copying any books, records, papers, accounts, or other documents of the governor's Office of Homeland Sec and Emergency Preps, except as provided in Subsection A of this section. Such records shall not be subject to the provisions of R.S. § 44:5. C. If a public record is applied for during an imminent threat of a disaster or emergency or during a disaster or emergency, the office shall immediately notify the requestor as to the reasons why such record shall not be immediately available. Title 44, Ch. 1. Public records La. R.S. § 44:4.1. Exceptions (none applicable): LA Rev Stat § 44:3.1 (see column left bottom) §3.1. Certain records pertaining to</p>	<p>La. R.S. § 24:62 Declaration of policy re: Emergency interim legislative succession to ensure continuity of government in time of attack. La. R.S. § 49:852. Statement of policy—to assure continuity of government in case of attack. La. R.S. § 49:206. Temporary absence of governor and lieutenant governor, order of those who shall act as governor. Link to COOP plan: http://gohsep.la.gov/RESOURCES/OVERVIEW/PUBLICATIONS</p> <p>COOP plan is only applicable to counties and municipalities but see @ pg. 1 "In Louisiana, State agencies that have Emergency Support Function responsibilities are required by governor's ex order to develop and maintain a COOP plan." Agencies with support functions link: http://gohsep.la.gov/RESPOND/SUPPORT-FUNCTIONS/Emerg-Support-Functions</p> <p>Governor's Ex Ord August 20, 2014, 40 Louisiana Register (LR) 1454, § 5: The head of each agency, and origin identified in § 4 (most of state government) of this order shall designate both an emergency</p>

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	<p>be requested in accordance with the constitution and laws of the state; for the prompt and temp succession to the powers and duties of public offices when incumbents become unavailable to perform their functions.</p> <p>§ 44:3.1. Certain records pertaining to terrorist-related activity. Nothing in this Ch. shall require disclosure of records containing security procedures, criminal intelligence info pertaining to terrorist-related activity, or threat or vulnerability assessments created, collected, or obtained in the prevention of terrorist-related activity, include physical security info, proprietary info, operational plans, and the analysis of such info, or internal security info.</p>	<p>terrorist-related activity.</p> <p>§3.2. Proprietary and trade secret info.</p>	<p>coordinator and an alternate coordinator to act on the department's behalf during an emergency, and furnish the director with their names and all phone numbers. The head shall also designate a COOP coordinator who will prepare and maintain plans, procedures, arrangements, and agreements to ensure that the org will continue to carry out its mission in an emergency or disaster. Nearly identical Ex Ords with a few different names for similar agencies at 34 LR 1779 Ex Ord BJ 08-32 Sept 20, 2008; 32 LR 1383 Ex Ord KBB 06-34 August 20, 2006; 31 LR 1932 Ex Ord KBB 05-18 August 20, 2005.</p>
<p>Maine http://www.maine.gov/mema/planning/index.shtml</p>	<p>1 M.R.S. § 762 Powers— During the period when the public business is being conducted at the emergency temporary location, or locations, the governing body and other officers of a political</p>	<p>1 M.R.S. § 402 Definitions. 3. Public Records. The term “public records” means...except: L. Records describing security plans, security procedures or risk assessments prepared specifically for the purpose of preventing or preparing for acts of terrorism, but only</p>	<p>Me. Constitution. Art. IX, § 17. Continuity of Government in case of enemy attack. § 17. Notwithstanding any general or special provision of this constitution, the legislature, in order to insure continuity of state and local governmental operations in</p>

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	<p>subdivision of this state shall have and possess and shall exercise, at such location, or locations, all of the executive, legislative and judicial powers and functions conferred upon such body and officers by or under the laws of this state. Such powers and functions may be exercised in the light of the exigencies of the emergency situation without regard to or compliance with time consuming procedures and formalities prescribed by law and pertaining thereto, and all acts of such body and officers shall be as valid and binding as if performed within the territorial limits of their political subdivision.</p>	<p>to the extent that release of information contained in the record could reasonably be expected to jeopardize the physical safety of government personnel or the public. Information contained in records covered by this paragraph may be disclosed to the Legislature or, in the case of a political or administrative subdivision, to municipal officials or board members under conditions that protect the information from further disclosure. For purposes of this paragraph, "terrorism" means conduct that is designed to cause serious bodily injury or substantial risk of bodily injury to multiple persons, substantial damage to multiple structures whether occupied or unoccupied or substantial physical damage sufficient to disrupt the normal functioning of a critical infrastructure;</p>	<p>periods of emergency resulting from disasters caused by enemy attack, shall have the power and the immediate duty to provide for prompt and temporary succession to the powers and duties of public offices, of whatever nature and whether filled by election or appointment, the incumbents of which may become unavailable for carrying on the powers and duties of such offices, and to adopt such other measures as may be necessary and proper for insuring the continuity of governmental operations including but not limited to the financing thereof. In the exercise of the powers hereby conferred the legislature shall in all respects conform to the requirements of this constitution except to the extent that in the judgment of the Legislature so to do would be impracticable or would admit of undue delay. Link to governor's COOP task force 2002</p> <p>http://www.state.me.us/newsletter/April2002/governor.htm</p> <p>Also referenced in FEMA "best practice" docs</p> <p>https://www.hSDL.org/?view&did=765439</p>

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<p>Maryland http://mema.maryland.gov/community/Pages/coop.aspx</p>	<p>See comments section—NO COOP plan statutes found for state government as a whole. But see Gov’s Ex Ord requiring COOP plans for state agency’s at link</p> <p>http://mgaleg.maryland.gov/Pubs/LegisLegal/2013-executive-orders.pdf</p> <p>Ex Ord 01.01.2013.06 Maryland Emergency Preparedness Program (MEPP) requires in part that</p> <p>“Each state agency shall: Develop and maintain documents necessary to support the MEPP, as requested by MEMA (Md Emergency Management Agency) and/or MSP, including, at a minimum, continuity of operations plans (COOP) that are updated bi-annually.”</p>	<p>Public Information Act Md. Public Safety Code Ann. § 4–352. Information related to emergency management (a) In general.—Subject to subsections (b) and (c) of this section, a custodian may deny inspection of: (1) response procedures or plans prepared to prevent or respond to emergency situations, the disclosure of which would reveal vulnerability assessments, specific tactics, specific emergency procedures, or specific security procedures; (3) records that: (i) are prepared to prevent or respond to emergency situations; (b) Circumstances under which denial permissible. The custodian may deny inspection of a part of a public record under subsection (a) of this section only to the extent that the inspection would: (1) jeopardize the security of any building, structure, or facility; (2) facilitate the planning of a terrorist attack; or (3) endanger the life or physical safety of an individual. § 4–351. Investigation; intelligence information; security procedures (b) Circumstances under which denial permissible. A custodian may deny inspection by a person in interest only to the extent that the inspection would: (7) endanger the life or physical safety of an individual.</p>	<p>§ 14–110.1 Emergency plans for human service facilities. (c) Procedures to be included in plan. An emergency plan shall include procedures that will be followed before, during, and after an emergency to address: (4) the continuity of operations, including: (i) procuring essential goods, equipment, and services; and (ii) relocation to alternate facilities. § 14–110.3. Emergency plans for kidney dialysis centers (c) Procedures to be included in plan. An emergency plan shall include policies and procedures that will be followed before, during, and after an emergency to address: (4) the continuity of operations, including procedures to secure access to essential goods, equipment, and dialysis services. Md. Rule 16–101 Administrative responsibility. § 14–112. Emergency expenditures; use of existing resources (a) Emergency expenditures. (1) Expenditures necessitated by emergencies shall first be made using money regularly appropriated to state and local agencies. (2) If the governor finds that regularly appropriated money is inadequate to cope with an emergency, the Board of Public</p>

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			Works may make contingency money available in accordance with the state budget. (c) Use of existing resources. (1) In carrying out this subtitle, the governor, director, and executive officers or governing bodies of the political subdivisions shall use the services, equipment, supplies, and facilities of existing agencies and units of the state and the political subdivisions to the maximum extent practicable.
<p>Massachusetts http://www.mass.gov/eopss/agencies/mema/resources/plans/</p>	<p>ALM Spec L ch. S140, § 1 Form of Compact. The purpose of this compact is to provide for mutual assistance between the states entering into this compact in managing any emergency disaster that is duly declared by the governor of the affected state, whether arising from natural disaster, technological hazard, manmade disaster, civil emergency aspects of resources shortages, community disorders, insurgency or enemy attack. Article III. Party State Responsibilities.</p> <p>A. It shall be the responsibility of each party state to</p>	<p>ALM GL ch. 66, § 10 Public Inspection. [Effective until January 1, 2017]; § 10. Public Record Request Procedure. [Effective January 1, 2017] (no appropriate FOIA-type exceptions that could cover any COOP plan found in Mass. statutes) Not related to records but relevant: ALM GL ch. 30A, § 21. Open Meeting Law Executive Session. (a) A public body may meet in executive session only for the following purposes:</p> <p>4. To discuss the deployment of security personnel or devices, or strategies with respect thereto;</p> <p>http://www.mass.gov/eopss/docs/mema/resources/plans/cemp/ma-cemp-base-plan-final-december-2013.pdf</p> <p>Mass. Comprehensive Emergency Management Plan/Dec 2013 @ pp. 4–16: “[a]ll state agencies within the</p>	<p>ALM Spec L ch. S31, § 20A Designated Substitutes for Commissioners and Department Heads. The commissioner or head of each executive or administrative department of the commonwealth, including the state secretary, the attorney general, the treasurer and receiver-general, and the auditor, and the director or head of each division in each such department, shall designate, by name or position, five persons in her or his respective department or division who shall exercise, successively, his or her duties in the event of his or her absence or disability. Each such designation shall be subject to approval by the governor and council and shall be in effect until revoked by the officer who made such</p>

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	<p>formulate procedural plans and programs for interstate cooperation in the performance of the responsibilities listed in this article. In formulating such plans, and in carrying them out, the party states, insofar as practical, shall:</p> <p>1. Review individual state hazards analyses and, to the extent reasonably possible, determine all those potential emergencies the party states might jointly suffer, whether due to natural disaster, technological hazard, manmade disaster, emergency aspects of resources shortages, civil disorders, insurgency, or enemy attack;</p> <p>2. Review party states' individual emergency plans and develop a plan that will determine the mechanism for the interstate management and provision of assistance concerning any potential emergency;</p> <p>see also ALM Spec L ch. S31, § 4. Powers and duties of</p>	<p>Executive Branch have developed internal COOPs in order to ensure that essential services and functions continue during and after an emergency with a minimum of disruption.</p>	<p>designation. Persons designated under this section to perform the duties of a department or division head in her or his absence or disability shall perform such duties only in succession to persons so authorized under any other provision of general or special law. ALM Constitution Amend Art. LXXXIII. General Court Authorized to Provide for Continuity of Government in Periods of Emergency. The general court shall have full power and authority to provide for prompt and temporary succession to the powers and duties of public offices, of whatever nature and whether filled by election or appointment, the incumbents of which may become unavailable for carrying on the powers and duties of such offices in periods of emergency resulting from disaster caused by enemy attack, and to adopt such other measures as may be necessary and proper for insuring continuity of the government of the commonwealth and the governments of its political subdivisions.</p>

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	governor, generally.		
<p>Michigan http://www.michigan.gov/dtmb/0,5552,7-150-9141_58786_58788---,00.html</p>	<p>§ 30.407a. Emergency management div; establishment (etc.); (2) The division shall prepare and maintain a Michigan emergency management plan that is a comprehensive plan that encompasses mitigation, preparedness, response, and recovery for this state. § 30.408. Emergency management coordinator; employment or appointment; duties; annexes to emergency management plan; cooperation of state agencies. § 8. (1) The director of each department of state government, and those agencies of state government required by the Michigan emergency management plan to provide an annex to that plan, shall serve as emergency management coordinator for their respective departments or agencies. Each director may appoint or employ a designated rep as emergency management coordinator, Each department or agency emergency</p>	<p>MCLS § 15.243. Exemptions from disclosure; public body (PB) as school district; withholding of information required by law or in possession of executive office. Sec. 13. (1) A PB may exempt from disclosure (u) Records of a PB's security measures, including security plans, security codes and combinations, passwords, passes, keys, and security procedures, to the extent that the records relate to the ongoing security of the PB. (y) Records or information of measures designed to protect the security or safety of persons or property, whether public or private, including, but not limited to, building, public works, and public water supply designs to the extent that those designs relate to the ongoing security measures of a PB, capabilities and plans for responding to a violation of the Michigan anti-terrorism act, chapter LXXXIII-A of the Michigan penal code, 1931 PA 328, MCL 750.543a to 750.543z, emergency response plans, risk planning documents, threat assessments, and domestic preparedness strategies, unless disclosure would not impair a PB's ability to protect the security or safety of persons or property or unless the public interest in disclosure outweighs the public interest in</p>	<p>Con't Act 442 of 1976 Freedom of Information Act MCLS § 15.232 § 15.232. Definitions. (d) "Public body" means any of the following: (ii) An agency, board, commission, or council in the legislative branch of the state government. MCLS Constitution. Art. IV, § 39. Continuity of government in emergencies. Sec. 39. In order to insure continuity of state and local governmental operations in periods of emergency only, resulting from disasters occurring in this state caused by enemy attack on the United States, the legislature may provide by law for prompt and temporary succession to the powers and duties of public offices, of whatever nature and whether filled by election or appointment, the incumbents of which may become unavailable for carrying on the powers and duties of such offices; and enact other laws necessary and proper for insuring the continuity of governmental operations. Notwithstanding the power conferred by this section, elections shall always be called as soon as possible to fill any vacancies in elective offices temporarily occupied by operation of any</p>

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	<p>management coordinator shall act as liaison between her or his department or agency and the emergency management div of the department in all matters of emergency management, include the activation of the Michigan emergency management plan. Each department or agency of state government specified in the Michigan emergency management plan shall prepare and continuously update an annex to the plan providing for the delivery of emergency management activities by that agency... The emergency management coordinator shall represent the agency head in the drafting and updating.</p>	<p>nondisclosure in the particular instance.</p>	<p>legislation enacted pursuant to the provisions of this section.</p> <p>See also (applicable to state agencies) Local Continuity Planning Handbook 2012, Planning and Program Development Section Michigan Department of State Police Emergency Management & Homeland Security Division:</p> <p>http://www.michigan.gov/documents/msp/Local_Continuity_Planning_Handbook_-_Pub_110a_-_Final_Edition_March_2012_380695_7.pdf MDSP-EMHSD home page: http://www.michigan.gov/msp/0,4643,7-123-72297_60152---,00.html</p>
<p>Minnesota https://dps.mn.gov/divisions/hsem/Pages/homeland-security-advisory-committee.aspx</p>	<p>Minn. Stat. § 12.09 Duties of Division of Emergency Management Subd. 2. State emergency plan. The division shall develop and maintain a comprehensive state emergency operations plan and emergency management program in accord with §</p>	<p>Minn. Stat. § 13.37 General Nonpublic Data Subdivision 1. Definitions. As used in this section, the following terms have the meanings given them. (a) "Security info" means government data the disclosure of which the responsible authority determines would be likely to substantially jeopardize the security of info, possessions, individuals or property</p>	<p>Minn. Constitution., Art. V, Sec. 5. Succession to offices of governor and lieutenant governor. In case a vacancy occurs from any cause whatever in the office of governor, the LT governor shall be governor during such vacancy. The compensation of the LT governor shall be prescribed by law. The last</p>

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	<p>12.21, subdivision 3, clause (2), and ensure that other state emergency plans that may be developed are coordinated and consistent with the comprehensive state emergency operations plan. Subd. 10. Emergency management training.</p> <p>Minn. Stat. § 12B.25 Eligibility Criteria; Considerations Subdivision 1. Payment required; eligibility criteria. The director, serving as the governor's authorized representative, may enter into grant agreements with eligible applicants to provide state financial assistance made available as a result of a disaster that satisfies all of the following criteria:</p> <p>Minn. Stat. § 12.11 State Director; Personnel Subdivision 1. Division created in Department of Public Safety.</p> <p>A Division of Emergency Management is established within the Department of Public Safety under the supervision and control of the</p>	<p>against theft, tampering, improper use, attempted escape, illegal disclosure, trespass, or physical injury. "Security information" includes checking account numbers, internet communication service accounts info or similar accounts info, and global positioning system locations. Minn. Stat. § 13.43 Personnel Data Subd. 17. Continuity of operations—Personal home contact information may be used to ensure that an employee can be reached in the event of an emergency or other disruption affecting COO of a government entity. An employee's personal home contact information may be shared with another government entity in the event of an emergency or other disruption to ensure COO of either government entity.</p>	<p>elected presiding officer of the senate shall become LT governor in case a vacancy occurs in that office. In case the governor is unable to discharge the powers and duties of her or his office, the same devolves on the lieutenant governor.</p> <p>The legislature may provide by law for the case of the removal, death, resignation, or inability both of the governor and lieutenant governor to discharge the duties of governor and may provide by law for continuity of government in periods of emergency resulting from disasters caused by enemy attack in this state, including but not limited to, succession to the powers and duties of public office and change of the seat of government. Link to 11/21/13 governor's Ex Ord 13–13 assigning emergency response & COOP duties to state agencies:</p> <p>https://mn.gov/governor/assets/EO-13-13.pdf_tcm1055-93864.pdf</p> <p>Ex Ord 15–14 Implementation of and putting DPS in charge of MN Continuity of Government Plan:</p> <p>https://mn.gov/governor/assets/2015_07_13_EO_15_14.pdf_tcm1055-94951.pdf</p>

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	governor and a state director of emergency management. The commissioner of public safety shall appoint the state director, who shall not hold any other state office.		<p>2015 Emergency Ops Plan (COOP @ pg BP 16–18):</p> <p>https://dps.mn.gov/divisions/hsem/all-hazards-planning/Documents/2015-meop-official.pdf</p> <p>Each agency must designate member of Homeland Security Advisory Committee (HSAC) per Ex Ord 15–13: home page for HSAC:</p> <p>https://dps.mn.gov/divisions/hsem/homeland-security/Pages/homeland-security-advisory-committee.aspx</p>
<p>Mississippi http://www.msema.org/emergency-plans/</p>	<p>Miss. Code Ann. § 33–15-14. Preparation and maintenance of state comprehensive emergency management plan (1) The agency is responsible for maintaining a comprehensive statewide program of emergency management. The agency is responsible for coordination with efforts of the fed government with other departments and agencies of state government, with county and municipal governments and school boards and with private agencies that have a role in emergency management. (2) In</p>	<p>Miss. Code Ann. § 25–61-11 Records exempted or privileged by law [Effective until January 1, 2016, this section will read:] The provisions of this chapter shall not be construed to conflict with, amend, repeal or supersede any constitutional or statutory law or decision of a court of this state or the United States which at the time of this chapter is effective or thereafter specifically declares a public record to be confidential or privileged, or provides that a public record shall be exempt from the provisions of this chapter.</p> <p>Effective from and after January 1, 2016, this section will read: The provisions of this chapter shall not be construed to conflict with, amend, repeal or supersede any constitutional law,</p>	<p>(con't) (iii) Include a post disaster response and recovery component that includes specific regional and interregional planning provisions and promotes intergovernmental coordination of post disaster response and recovery activities. This component must provide for post disaster response and recovery strategies according to whether a disaster is minor, major or catastrophic. The post disaster response and recovery component must, at a minimum: establish the structure of the state's post disaster response and recovery org; establish procedures for activating the state's plan; set forth policies used to guide post disaster response and recovery</p>

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	<p>performing its duties under this article, the agency shall:</p> <p>(a) Work with the governor, or his/her representative, in preparing a state comprehensive emergency management plan of this state, which shall be integrated into and coordinated with the emergency management plans of the federal government and of other states to the fullest possible extent, and to coordinate the preparation of plans and programs for emergency management by the political subdivisions of the state, such local plans to be integrated into and coordinated with the emergency plan and program of this state. The plan must contain provisions to ensure that the state is prepared for emergencies and minor, major and catastrophic disasters, and the agency shall work closely with local governments and agencies and orgs with emergency management responsibilities in preparing and maintaining the plan. The State Comprehensive</p>	<p>state or federal statutory law, or decision of a court of this state or the United States which at the time of this chapter is effective or thereafter specifically declares a public record to be confidential or privileged, or provides that a public record shall be exempt from the provisions of this chapter. Emergency management plan link: http://www.msema.org/emergency-plans/state-cemp/</p>	<p>activities; describe the chain of command during the post disaster response and recovery period; describe initial and continuous post-disaster response and recovery actions; identify the roles and responsibilities of each involved agency and org; provide for a comprehensive communications plan; establish procedures for monitoring mutual aid agreements; provide for rapid impact assessment teams; ensure the availability of an effective statewide urban search and rescue program coordinated with the fire services; ensure the existence of a comprehensive statewide medical care and relief plan administered by the State Dept. of Health; and establish systems for coordinating volunteers and accepting and distributing donated funds and goods. (vii) Establish guidelines and schedules for annual exercises that evaluate the ability of the state and its political subdivision to respond. 2. The agency shall prepare an interim post-disaster response and recovery component that substantially complies with the provisions of this paragraph (a). (j) Review periodically emergency operating procedures of state agencies and recommend</p>

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	Emergency Management Plan will be operations oriented and: (con't in comments)		revisions.
<p>Missouri http://sema.dps.mo.gov/programs/all-hazards_planning.php</p>	<p>Title 5 § 44.010. R.S. Mo. Definitions (13) "Planning," activities of the state and local emergency management agency in the formulation of emergency management plans to be used in time of emergency; § 44.022. Powers and duties of governor 1. The governor shall have general direction and control of the state emergency management agency, and shall be responsible for the carrying out of the provisions of § 44.010 to § 44.130.</p> <p>Link to Missouri state agency COOP planning as found under "publications" link at SEMA All-Hazard Planning Program web page (linked in margin):</p> <p>http://sema.dps.mo.gov/newspubs/publications/ Note that Missouri relies heavily on FEMA documents and publications for both COOP and emergency management.</p>	<p>§ 109.180 R.S. Mo. Public records open to inspection—refusal to permit inspection, penalty Except as otherwise provided by law, all state, county and municipal records kept pursuant to statute or ordinance shall at all reasonable times be open for a personal inspection by any citizen of Missouri, and those in charge of the records shall not refuse the privilege to any citizen.</p> <p>Any official who violates the provisions of this section shall be subject to removal or impeachment and in addition shall be deemed guilty of a misdemeanor and upon conviction shall be punished by a fine not exceeding one hundred dollars, or by confinement in the county jail not exceeding 90 days, or by both the fine and the confinement.</p> <p>§ 109.280. Agency heads may determine nature and form of records—confidential records to be so treated Nothing in §109.200 to §109.310 shall be construed to divest agency heads of the authority to determine the nature and form of the records required in the administration of their several departments, or to compel the removal of records deemed necessary by them</p>	<p>Mo. Constitution. Art. III, § 46(a) (2015) § 46(a). Emergency duties and powers of assembly on enemy attack. The General Assembly, in order to insure continuity of state and local governmental operations in periods of emergency only resulting from disasters occurring in this state caused by enemy attack on the US, shall have the power to such extent as the General Assembly deems advisable. In the event there occurs in this state a disaster caused by enemy attack on the US, the General Assembly shall immediately convene in the City of Jefferson or in such place as designated by joint proclamation of the highest presiding officers of each house, and shall have power (1) To provide by legislative enactment for prompt and temporary succession to the powers and duties of public offices, of whatever nature and whether filled by election or appointment, the incumbents of which may become unavailable for carrying on the powers and duties of such offices, and (2) To adopt by legislative enactment such other legislation as</p>

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		<p>in the performance of their statutory duties.</p> <p>Any records made confidential by law shall be so treated in the state or local records center and archives.</p>	<p>may be necessary and proper for insuring the continuity of governmental operations.</p> <p>Notwithstanding the power conferred by this section of the constitution, elections shall always be called as soon as possible to fill any elective vacancies in any office temporarily occupied by operation of any legislation enacted pursuant to the provisions of this section.</p>
<p>Montana</p> <p>http://mt.gov/government/statedir/agency/doa.mcp/continuity@mt.gov</p>	<p>§ 10–3-601 MCA Citation of part. This part may be cited as “The Continuity in Government Act.”</p> <p>§ 10–3-602 Filling vacancy in governorship. § 10–3-603–605 re: filling other vacancies. § 10–3-606 Quorum requirement § 10–3-607 & 608 Relocating seat of state & local government § 10–3-609 part inoperative upon convening of legislature</p> <p>Montana Continuity of Government Plan (2007):</p> <p>http://montanadma.org/sites/default/files/Final%20COG%203-13-2007.pdf</p> <p>Ex Summary: “Dept. of</p>	<p>HB 123 eff 10/1/15 2–6—MCA Definitions (1) “Confidential info” includes info that is: (c) necessary to maintain the security and integrity of secure facilities or info systems owned by or serving the state; and (d) designated as confidential by statute or through judicial decisions, findings, or orders. (4) “Essential record” means a public record immediately necessary to: (a) respond to an emergency or disaster; (b) begin recovery or reestablishment of operations during and after an emergency or disaster; (11) “Public info” means info...except for confidential info that must be protected against public disclosure under applicable law. § 3. Access to public information safety and security exceptions (2) A public officer may w/hold from public scrutiny info relating to</p>	<p>HB 123 eff 10/1/15 2–6—MCA Protection and Storage of Essential Records. (1) To provide for the continuity and preservation of civil government, each public officer shall designate certain public records as essential records. The list must be continually maintained by the public officers to ensure its accuracy. Each public officer shall collaborate with the appropriate continuity of government programs to ensure essential records are identified and maintained. (2) Each public officer shall ensure essential records are efficiently and effectively secured. Each public officer shall look to the guidance provided by the state records committee or the local government records committee in choosing appropriate methods to</p>

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	<p>Administration is lead agency for continuity of government.”</p> <p>Montana Emergency Response Framework (2012):</p> <p>http://montanadma.org/sites/default/files/MERF_2012_v1.2_0.pdf</p> <p>On page 20: “State agencies will have their own comprehensive emergency management programs to: Establish procedures for continuity of government.”</p>	<p>individual or public safety or the security of public facilities, including public schools, jails, correctional facilities, private correctional facilities, and prisons, if release of the info jeopardizes the safety of facility personnel, the public, students in a public school, or inmates of a facility. A public officer may not withhold from public scrutiny any more info than is required to protect individual or public safety or the security of public facilities.</p>	<p>protect, store, back up, and recover essential records. § 2–16-513</p> <p>Succession in case of termination or incapacitation of primary successors. (1) If, because of an enemy attack upon the United States, the governor, lieutenant governor, president pro tempore of the senate, and speaker of the house are killed or rendered unable to serve as governor, the senior member of the legislature shall act as governor. § 3–5-405 Change of place of holding court in emergency. Mont. Constitution, Art. III § 2 Continuity of government. The seat of government shall be in Helena, except during periods of emergency resulting from disasters or enemy attack. The legislature may enact laws to insure the continuity of government during a period of emergency without regard for other provisions of the constitution. They shall be effective only during the period of emergency that affects a particular office or governmental operation.</p>
<p>Nebraska</p> <p>https://nema.nebraska.gov/preparedness/nebraska-continuity-</p>	<p>R.R.S. Neb. § 81–829.40. Governor; Powers and Duties. (6) the governor may: (a) Suspend the provisions of any regulatory statute prescribing the procedures for conduct of</p>	<p>R.R.S. Neb. § 84–712.05. Records which may be w/held from the public; enumerated. (8) Info solely pertaining to protection of the security of public property and persons on or within public property, such as specific, unique</p>	<p>R.R.S. Neb § 72–701.05. Emergency seat of state government; designation, when; plans and preparations; governor; adopt. (2) Prior to any such attack...planning and prep may</p>

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government-plan	<p>state business or the orders, rules, or regulations of any state agency if strict compliance with the provisions of any statute, order, rule, or regulation would in any way prevent, hinder, or delay necessary action in coping with the disaster, emergency, or civil defense emergency; (b) Utilize all available resources of the state government and of each political subdivision of the state as are reasonably necessary to cope with the disaster, emergency, or civil defense emergency; (c) Transfer the direction, personnel, or functions of state agencies or units thereof for the purpose of performing emergency management.</p> <p>R.R.S. Neb. § 81–829.42 governor’s emergency program; established (5) When a state of emergency is proclaimed...shall have authority to expend funds for purposes including (b) Employing for the duration additional personnel and procuring all necessary</p>	<p>vulnerability assessments or specific, unique response plans, either of which is intended to prevent or mitigate criminal acts the public disclosure of which would create a substantial likelihood of endangering public safety or property; computer; guard schedules; lock combinations; or public utility infrastructure specifications or design drawings the public disclosure of which would create a substantial likelihood of endangering public safety or property, unless otherwise provided by state or federal law.</p> <p>Nebraska Continuity of Government Plan link: https://nema.nebraska.gov/sites/nema.nebraska.gov/files/doc/ne-cog-plan.pdf</p>	<p>include... (c) storing and stockpiling, at or near the tentative location(s), of essential supplies and equipment, and vital records or duplicates thereof which would be necessary to permit the continuity of the governmental operations of the state in an emergency. R.R.S. Neb § 84–1102. Declaration of policy. Because of the existing possibility of an attack of unprecedented size and destructiveness upon the US; and in order, in the event of such an attack, to assure continuity of government through legally constituted leadership, authority, and responsibility in offices of government of the state and in the governments of all political subdivisions in the state; to provide for the effective operations of governments during an emergency; and to facilitate the early resumption of functions temporarily suspended; the Legislature finds and declares it to be necessary to provide for emergency interim succession to governmental offices of all types of this state and of its various political subdivisions in the event the incumbents thereof are or become unavailable to perform the functions and duties of such offices; and to enable the governing bodies or the</p>

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	<p>appliances, supplies, and equipment; (c) Performing services for and furnishing materials and supplies to state government agencies and local governments with for performance of any duties enjoined by law upon such agencies and local governments which they are unable to perform because of extreme climatic phenomena and receiving reimbursement in whole or in part from such agencies and local governments able to pay therefor under such terms and conditions as may be agreed.</p>		<p>electors of political subdivision in the state to invoke the provisions of § 84–1101 to § 84–1116 therein. Ne. Constitution. Art. III, § 29. Legislative authority in emergency due to enemy attack upon US. (d) The determination, selection, reproduction, preservation, and dispersal of public records necessary to the continuity of governmental operations in the event of enemy attack or imminent threat thereof; and (e) Such other measures and procedures as may be necessary and proper for insuring the COOP in the event of enemy attack or imminent threat thereof.</p>
<p>Nevada http://nvstatecoop.org/home.html http://dem.nv.gov/about/Planning_Section/</p>	<p>Nev. Rev. Stat. Ann. Title 19 § 239C.250. Response plans of political subdivisions: Confidentiality. § 239C.260 Plan for continuation of state and local governmental operations in event of catastrophic emergency. This statute is for line of succession and vacancy appointments but has been interpreted as requiring full COOP plans for state and local governments but the statute referenced as</p>	<p>Nev. Rev. Stat. Ann. § 239.010. Public books and public records open to inspection; confidential info in public books and records; 1. Except as otherwise provided in this section and [400 statutes listed] and unless otherwise declared by law to be confidential, all public books and public records of a governmental entity must be open at all times during office hours to inspection by any person, and may be fully copied or an abstract or memorandum may be prepared from those public books and public records. § 239C.210 Confidentiality of certain docs,</p>	<p>Nev. Rev. Stat. Ann. 239C.010. Legislative declaration. The legislature hereby declares that: 6. It is within the public interest that the legislature enact provisions to: (c) Ensure the continuity of government in the event of a terrorist attack. § 239C.260. Plan for continuation of state and local governmental operations in event of catastrophic emergency. 2. In the event that this state or a portion of this state is stricken by a catastrophic emergency of such magnitude that, in the opinion of the governor or, in</p>

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	<p>authority, § 239C.250, only refers to pol subdivisions. see e.g., pg. 12 of Nevada's COOP and COG Project:</p> <p>http://www.nvstatecoop.org/images/NHSC_Coop-COG_Project_Brief_v2-AK.pdf</p> <p>Nevada COOP contractor:</p> <p>https://nevada.boldplanning.com</p> <p>§ 239C.250. Response plans of political subdivisions: Confidentiality. 2. The response plan required by subsection 1 must include: (h) Plans for the continuity of the operations and services of the political subdivision, which plans must be consistent with the provisions of NRS 239C.260.</p>	<p>records or other items of info upon declaration of governor; penalties; decennial review. A document, record or other item of info described in subsection 2 that is prepared and maintained for the purpose of preventing or responding to an act of terrorism is confidential, not subject to subpoena or discovery, 2. The types of documents, records or other items of information subject to executive order pursuant to subsection 1 are as follows: (g) Vulnerability assessments and emergency response plans of utilities, public entities and private businesses in this state.</p>	<p>the absence of the governor, the lieutenant governor, the existing provisions of the Nevada Constitution and the statutes of this State relating to the filling of vacancies in office are not able to provide for a sufficiently expedient continuity of government and temporary succession of power as a result of vacancies in office created by the catastrophic emergency, the provisions of subsections 3 to 11, inclusive, apply. Nev. Constitution. Art. 4, § 37 Continuity of government in case of enemy attack; succession to public offices; legislative quorum requirements; relocation of seat of government. The legislation in order to insure continuity of state and local governmental operations in periods of emergency resulting from disasters caused by enemy attack, shall have the power and the immediate duty to provide for immediate and temporary succession to the powers and duties of public offices...and to adopt such other measures as may be necessary and proper for insuring the continuity of governmental operations, include changes in quorum requirements in the legislature and the relocation of the seat of government. In the exercise</p>

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			of the powers hereby conferred, the legislature shall conform to the requirements of this constitution except to the extent that in the judgment of the legislature so to do would be impracticable or would admit of undue delay.
<p>New Hampshire http://www.nh.gov/safety/divisions/hsem/aboutus.html http://www.nh.gov/safety/divisions/hsem/emacademy.html</p>	<p>RSA Title 1, 21-P:5-a. director of homeland security and emergency management. II. The director of homeland security and emergency management, under the supervision of the commissioner and the governor, shall devote full time and attention to overseeing the state-level planning, preparation, exercise, response to and mitigation of terrorist threats and incidents and natural and human-caused disasters. He or she shall serve as the state's primary contact with the federal Dept. of Homeland Security, and shall have authority to oversee and coordinate planning, response, and recovery efforts of all state agencies to terrorist events and natural and human-caused disasters</p>	<p>RSA Title VI 91-A:5 Exemptions. The following governmental records are exempted from the provisions of this chapter: VI. Records pertaining to matters relating to the preparation for and the carrying out of all emergency functions, including training to carry out such functions, developed by local or state safety officials that are directly intended to thwart a deliberate act that is intended to result in widespread or severe damage to property or widespread injury or loss of life. N.H. Emergency Op. Plan (2005) at pg. 30:</p> <p>http://www.nashuatelegraph.com/cms/sites/Telegraph/dt.common.streams.StreamServer.cls?STREAMOID=\$kw3tJgn\$sopnc6XBga4JXHyg97P7EfbeJDk0CIsq_7sfVAV9u\$PXvdHpQppp6Dn4Aw\$6wU9GSUcqt9hs3TFeZCn0vq69IZViKeqDZhqNLziaXiKG0K_ms4C2keQo54&CONTENTTYPE=application/pdf&CONTENTDISPOSITION=StateEO</p>	<p>RSA Title I, 4:47 4:47. Emergency Management Powers. The governor shall have emergency management authority as defined in RSA 21-P:35, V, and pursuant to such authority may exercise emergency management powers including: II. The power to provide for emergency lines of succession to such appointive offices in the state government as the governor in his or her discretion deems to be necessary to insure reasonable continuity of state government in the event of a disaster. N.H. Constitution. Pt. Second, Art. 5-a Art. 5-a. [Continuity of Government in Case of Enemy Attack.] Notwithstanding any general or special provision of this constitution, the general court, in order to insure continuity of state and local government operations in periods of emergency resulting from disasters caused by enemy attack, shall have the power and the immediate duty to</p>

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	<p>and wide-scale threats to public safety. He or she shall collaborate with the department of health and human services and shall coordinate the efforts of other state agencies in preventing and responding to epidemics and other significant threats to the public health. All state agencies shall and are authorized to cooperate with the director in carrying out his or her duties as enumerated in this section. § 21-P:5-b. Chief of Policy and Planning. The commissioner of safety shall nominate a chief of policy and planning for appointment by the governor, with the consent of the council. The chief of policy and planning shall serve at the pleasure of the commissioner and shall be qualified to hold that position by reason of education and experience and shall perform such duties as are assigned.</p>	<p>P.pdf</p> <p>On pg. 22: Each state agency will maintain provisions for...continuity of operations and government and preservation of records.</p> <p>On pg. 30: "Bureau of Emergency Management (BEM) will assist and coordinate with all state agencies developing, maintaining & exercising a COOP Plan outlining how essential services and functions will be maintained during emergencies /disasters."</p>	<p>provide for prompt and temporary succession to the powers and duties of public offices, of whatever nature and whether filled by election or appointment, the incumbents of which may become unavailable for carrying on the powers and duties of such offices, and to adopt such other measures as may be necessary and proper for insuring the continuity of governmental operations including but not limited to the financing thereof. In the exercise of the powers hereby conferred the general court shall in all respects conform to the requirements of this constitution except to the extent that in the judgment of the general court so to do would be impracticable or would admit of undue delay. New Hampshire Recovery Plan 2015:</p> <p>https://apps.nh.gov/blogs/hsem/wp-content/uploads/2015/08/NH-Disaster-Recovery-Plan-7-28-15_FINAL.pdf</p>
<p>New Jersey http://www.state.nj.us/</p>	<p>Only NJ COOP plan in statute is for Hi Ed see comments and confidentiality PIA sections N.J. Stat. § App.A:9-</p>	<p>N.J. Stat. Title 47. Public Records § 47:1A-1.1 Definitions. A government record shall not include the following information, which is deemed to be</p>	<p>N.J. Stat. § 18A:3B-69. Emergency operations plan for institution of higher education. The governing board of institution shall develop and</p>

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<p>njoem/index.html</p>	<p>43.1 State Emergency Operations Plan the State Office of Emergency Management shall adopt, no later than 12 months following the effective date of this act, a state emergency operations plan, including rules, regulations, and guidelines, that shall be reviewed and updated at least every two years. a. These plans shall include, but not be limited to, provisions which shall be developed in consultation with: Department of Agriculture & Department of Health and Senior Services.</p> <p>N.J. Stat. § App.A:9-68 Duties of task force...formulate proposals for plans relative to domestic security, development, implementation, and management of responses to terrorist attack or technological disaster, disaster remediation, recovery and response functions.</p> <p>NJ Directive 151 [sic— Labeled 51] of 11/03/10 signed by director of NJ Office of Emergency Management requires each state agency to</p>	<p>confidential for the purposes of P.L.1963, c.73 (C.47:1A-1 et seq.) as amended and supplemented: emergency or security information or procedures for any buildings or facility which, if disclosed, would jeopardize security of the building or facility or persons therein; security measures and surveillance techniques which, if disclosed, would create a risk to the safety of persons, property, electronic data or software; N.J. Stat. Subtitle 2.§ 18A:3B-69. Emergency operations plan for institutions of higher education e. Any plan prepared pursuant to this section shall not be considered a government record as defined in § 1 of P.L.1995, c.23 (C.47:1A-1.1) and shall not be available for public inspection, copying, or the purchase of copies. (§ 18A:3B-69 con't in comments).</p>	<p>coordinate an emergency operations plan to ensure the continuity of essential institution functions under all circumstances. The plan shall: (1) ID a baseline of prep for all potential emergencies, include pandemics, to establish a viable capability to perform essential functions during any emergency that disrupts normal operations; and (2) be coordination with state and local authorities include the State Office of Emergency Management, local LEOs, county and local health officers, county offices of emergency management, and other...b. The plan shall include: ID of essential functions, programs, & personnel; procedures; delegation of authorities and lines of succession; ID of alt facilities and related infrastructure, include communications; ID & protection of vital records and databases; and schedules and procedures for periodic tests, training, and exercises. The plan shall be consistent with the local emergency operations plan of the muni in which the institution is located. c. The governing board of the institution shall adopt and submit for review an emergency operations plan to...w/in 6 months of this act. The governing board shall review,</p>

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	<p>develop and maintain a COOP to ensure it can fulfill its responsibilities under the NJ State Emergency Ops Plan. The NJ Office of Emergency Management is designated repository for COOPs.</p> <p>http://www.state.nj.us/njoem/pdf/law_directive_151.PDF Note: Lots of dead links at NJ OEM</p>		<p>update, & resubmit the plan to the offices every five years. If an emergency incident occurs. during the five-year period, the plan shall be reviewed immediately. d. The Office of Homeland Security and Preparedness, the State Office of Emergency Management, the Dept. of Health, & the Sec of Higher Education shall review the emergency operations plan submitted by an institution of higher education per subsection c. and, when necessary, shall in coordination with other state agencies make recommendations for improving the plan...N.J. Stat. § 52:14A-2 Declaration of policy Because of the existing possibility of attack upon the US...emergency interim succession.</p> <p>N.J. Constitution., Art. IV, Sec. VI, Para 4. Succession to powers and duties of pub officers during periods of emergency CO government OP.</p>
<p>New Mexico http://www.nmdhsem.org/</p>	<p>N.M. Stat. Ann. Ch. 9, Art. 28 Homeland Security and Emergency Management Dept. Act § 9-28-5 Department duties. The department shall: E. establish security standard for state</p>	<p>N.M. Stat. Ann. § 14-2-1. Right to inspect public records; exceptions.</p> <p>A. Every person has a right to inspect public records of this state except: (7) tactical response plans or procedures prepared for or by the state</p>	<p>N.M. Stat. Ann. §12-11-2. Declaration of policy. The legislature declares that the possibility of an enemy attack of unprecedented destructiveness made possible by recent techno developments, and which may result in the death or</p>

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	<p>facilities and for protection of their occupants and develop plans for the continuity of state government operations in the event of a threat or act of terrorism or other natural or man-made disaster; G. coordinate state agency and local government plans for prevention, preparedness and response with a focus on an all-hazards approach; NM All-Hazard Emergency Operation Plan 2013, COOP at pages 3–7 link:</p> <p>http://www.nmdhsem.org/uploads/FileLinks/a2490675c2424f8b9cf532e694cef161/NM_EOP_November_2013_082014_with_all_signatures_copy.pdf</p> <p>Note that the NM COOP planner position is within the “Preparedness Bureau” per the staff directory</p> <p>http://www.nmdhsem.org/Staff_Directory.aspx</p>	<p>or a political subdivision of the state, the publication of which could reveal specific vulnerabilities, risk assessments or tactical emergency security procedures that could be used to facilitate the planning or execution of a terrorist attack.</p>	<p>inability [inability] to act on the part of a large number of the officers of the exec and judicial branches of state and local government, make it necessary to assure the continuity and effective operations of the exec and judicial offices of state and local government by providing for advance naming of officers to fill temp vacancies in certain offices, and that it is the legislative intent to provide that continuity in the Disaster Succession Act [12-11-1 NMSA 1978]. § 2 [Powers generally; disaster emergency procedure.] N.M. Constitution. Art. IV, Sec. 2 [Powers generally; disaster emergency procedure.] In addition to the powers herein enumerated, the legislature shall have all powers necessary to the legislature of a free state, including the power to enact reasonable and appropriate laws to guarantee the continuity and effective operations of state and local government by providing emergency procedure for use only during periods of disaster emergency. A disaster emergency is defined as a period when damage or injury to persons or property in this state, caused by enemy attack, is of such magnitude that a state of martial law is declared to exist in the</p>

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			state, and a disaster emergency is declared by the chief exec officer of the U.S. and the chief exec officer of this state, and the legislature has not declared by joint resolution that the disaster emergency is ended. Upon the declaration of a disaster emergency the chief exec of the state shall within 7 days call a special session of the legislature which shall remain in continuous session during the disaster emergency, and may recess from time to time for [not] more than 3 days.
<p>New York http://www.dhSES.ny.gov/planning/state/coop.cfm</p>	No state law COOP type statutes found.	<p>NY CLS Pub O § 87. Access to agency records 2. Each agency shall, in accordance with its published rules, make available for public inspection and copying all records, except that such agency may deny access to records or portions thereof that: (f) if disclosed could endanger the life or safety of any person; NY CLS Pub Ord, Article 6 Freedom of Information Law, § 86. Definitions as used in this article, unless the context requires otherwise: 5. "Critical infrastructure" means systems, assets, places or things, whether physical or virtual, so vital to the state that the disruption, incapacitation or destruction of such systems, assets, places or things could jeopardize the</p>	<p>NY CLS, Ch. 131, Art. I, § 3 Definitions 5. "Civil defense;" provisions for the continuity of state and local governments; and, when appropriate, the non-military evacuation of civil population); NY CLS, Ch. 131, Art. III, § 21 Powers and Duties of Commission. Because of the existing danger of disasters of unprecedented size and destructiveness resulting from attack and in order to insure that the preparations of the state will be adequate to deal with such disasters and generally to provide for the civil defense, and to assist other states and the federal government to achieve these objectives throughout</p>

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		<p>health, safety, welfare or security of the state, its residents or its economy. § 89. General provisions relating to access to records; certain cases 5. (1-a) A person or entity who submits...may, identify records that contain critical infrastructure info and request that the agency...except such info from disclosure.</p>	<p>the nation, the commission shall have the following powers and perform the following duties: 3. Adopt, promulgate, supplement, rescind, modify and make effective a comprehensive plan for the civil defense of the state, including but not limited to provisions for: C. Continuity of Government. n. Continuity of government of the state and of political subdivisions of the state. NY CLS Constitution Art III, § 25 § 25. [Succession to powers and duties of public offices during emergency] Notwithstanding any other provision of this constitution, the legislature, in order to insure continuity of state and local governmental operations in periods of emergency caused by enemy attack or by disasters (natural or otherwise), shall have the power and the immediate duty (1) to provide for prompt and temporary succession to the powers and duties of public offices, of whatever nature and whether filled by election or appointment, the incumbents of which may become unavailable for carrying on the powers and duties of such offices, and (2) to adopt such other measures as may be necessary and proper for insuring the continuity of governmental</p>

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			operations. Nothing in this article shall be construed to limit in any way the power of the state to deal with emergencies arising from any cause.
<p>North Carolina http://www.ncdps.gov/Our-Organization/Emergency-Management</p>	<p>No NC COOP plan statutes but see N.C. Gen. Stat Ch. 166a. N C Management Emergency Act incl. § 166A-19.12. Powers of Division of Emergency Management: The Division Emergency Management shall (1) Coordinate activities of all State agencies for emergency management within the State, include planning, organizing, staffing, equipping, training, testing, and activating and managing the State Emergency Response Team and emergency management programs. (2) Prep and maintenance of state plans for emergencies. The state plans or any parts thereof may be incorporated into department regulations and into exec orders of the governor. (6) training programs (8) Coordination of the use of any private facilities, services, and property.</p>	<p>§132-1.7. Sensitive public security info (a) Public records, as defined in G.S. 132-1, shall not include info containing specific details of public security plans & arrangements or the detailed plans & drawings of public buildings & infrastructure facilities. (b) Public records as defined in G.S. 132-1 do not include plans to prevent or respond to terrorist activity, to the extent such records set forth vulnerability & risk assessments, potential targets, specific tactics, or specific security or emergency procedures, the disclosure of which would jeopardize the safety of governmental personnel or the general public or the security of any governmental facility, building, structure, or info storage system. (c) Info relating to the general adoption of public security plans & arrangements, and budgetary info concerning the authorization or expenditure of public funds to implement public security plans & arrangements, or for the construction, renovation, or repair of public buildings and infrastructure facilities shall be public records.</p> <p>§ 132-1.6. Emergency response plans.</p>	<p>N.C. Gen. Stat. § 143B-1000 Division of Emergency Management of the Dept. of Public Safety (b) The Division of Emergency Management shall have the following powers and duties: (2) To exercise the powers and duties conferred on it by Chapter 166A of the General Statutes. (3) To exercise any other powers vested by law. § 166A-19.10. Powers of the governor. § 166A-19.11. Powers of the Secretary of Public Safety. § 166A-19.30. Additional powers of the governor during state of emergency. (a) In addition to any other powers conferred upon the governor by law, during a gubernatorial or legislatively declared state of emergency, the governor shall have the following powers: (1) To utilize all available state resources as reasonably necessary to cope with an emergency, include the transfer and direction of personnel or functions of state agencies or units thereof for the purpose of performing or facilitating emergency services. (c) In addition...(2) Give to all</p>

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	<p>NC 2006 COOP Planning Manual (include instructions for state agencies)</p> <p>https://www.nccrimecontrol.org/div/em/documents/COOPPlanningManual2ed.pdf</p> <p>30 N.C. Reg. 717 Ex Ord 78 Sept 1, 2015: COOP Planning required for all NC state agencies link:</p> <p>https://www.nccrimecontrol.org/cit/ExecutiveOrders/McCroryEO78%20ContinuityofOperations.pdf</p> <p>See also prior executive orders requiring COOP for all NC state agencies: 22 N.C. Reg. 1 Ex Ord No. 118 July 2, 2007; 21 N.C. Reg. 1 Ex Ord No. 102 July 3, 2006.</p>	<p>Emergency response plans adopted by an institution of University of NC, a community college, or a public hospital as per G.S. 159–39 & the records related thereto are not public records & are not subject to inspection & exam under G.S. 132–6.</p>	<p>participating state and local agencies and officers such directions as may be necessary to assure coordination among them.</p> <p>See also Chapter 129. Public Buildings and Grounds § 147–33.2. Emergency war powers of the governor.</p> <p>NC 2010 COOP Plan [Intended mainly for EM COOP and @ pg 1 “example that other state agencies might use in preparing their own [COOP] plans”// also pg F-1 “agencies should have their own plans”]</p> <p>http://www.ncdps.gov/document/ncem%C2%A0continuity-operations-plan-2010 NC 2012 EM Plan</p> <p>https://ncdps.s3.amazonaws.com/s3fs-public/documents/files/NC_EOP_2012-FINAL%281%29.pdf</p> <p>List of NC EM docs</p> <p>http://www.ncdps.gov/Emergency-Management/Documents/Plans-Operations-Guides</p>
<p>North Dakota</p> <p>http://www.nd.gov/des/planning/</p>	<p>North Dakota (ND) Central Code (Cent. Code) § 37–17.1-06. State division of homeland security. The division of</p>	<p>ND Cent. Code, § 44–04-18.10 (2015) 44–04-18.10. Disclosure of public records. 1. A public entity may not deny a request for an open record on the</p>	<p>ND Constitution. Art. XI, § 7 [Emergency governmental operations] The legislative assembly, in order to ensure continuity of state</p>

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	<p>homeland security must have professional, technical, secretarial, and clerical employees as necessary for the performance of its functions. The director of the division shall fix the compensation of the staff in conformity with state merit system regulations and may make such expenditures within the appropriations therefor, or from other funds made available to the director for purposes of emergency management, as may be necessary to carry out the purposes of this chapter. ND Cent. Code, § 37–17.1-05. The governor and disasters or emergencies—Penalty. 6. In addition to any other powers conferred upon the governor by law, the governor may: b. Utilize all available resources of the state government as reasonably necessary to manage the disaster or emergency and of each political subdivision of the state.</p> <p>N.D. Cent. Code, Tit. 54, Ch. 54–48 Notes (2015) Chapter</p>	<p>ground that the record also contains confidential or closed information. 2. Subject to subsection 3 of § 44–04-18, if confidential or closed information is contained in an open record, a public entity shall permit inspection and receipt of copies of the information contained in the record that is not confidential or closed, but shall delete, excise, or otherwise withhold the confidential or closed information.</p> <p>§ 44–04-18. Access to public records— Electronically stored information. § 44–04-30. Records of fire departments and rural fire protection districts confidential. 2. Standard operating procedures written for emergency response, pre-fire action plans, plans of a building, pipeline, electrical system, or any other infrastructure plan in the hands of a fire department or rural fire protection district are exempt from § 44–04-18.</p>	<p>and local governmental operations in periods of emergency resulting from disasters caused by enemy attack, shall have the power and immediate duty (1) to provide for prompt and temporary succession to the powers and duties of public offices, of whatever nature and whether filled by election or appointment, the incumbents of which may become unavailable for carrying on the powers and duties of such offices, and (2) to adopt such other measures as may be necessary and proper for ensuring the continuity of governmental operations including, but not limited to, waiver of constitutional restrictions upon the place of transaction of governmental business, upon the calling of sessions of the legislative assembly, length of sessions, quorum and voting requirements, subjects of legislation and appropriation bill requirements, upon eligibility of legislators to hold other offices, residence requirements for legislators, and upon expenditures, loans or donations of public moneys. In the exercise of the powers hereby conferred the legislative assembly shall in all respects conform to the requirements of this constitution except to the extent that in the</p>

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	54–48 Continuity of Government, Legislative Assembly Notes [Repealed by S.L. 1985, ch. 579, § 1]		judgment of the legislative assembly so to do would be impracticable or would admit of undue delay. History: Source: Art. amd. 75, approved June 26, 1962 (S.L. 1961, ch. 409; 1963, ch. 445)
<p>Ohio</p> <p>http://ema.ohio.gov/Documents/Continuity_of_Operations.pdf</p>	<p>ORC Ann Chapter 5502: Dept. of Public Safety § 5502.01 General duties of department. (D) The department shall administer the laws governing the state emergency management agency and shall enforce all additional duties and responsibilities as prescribed in the Revised Code related to emergency management services. ORC Ann. § 5502.21 Definitions. “Emergency preparedness” including, without limitation: (2) The development of necessary plans and standard operating procedures for mitigation, preparation, response, and recovery purposes, including, without limitation, the development of supporting agreements and MOUs.</p> <p>§ 5502.22 Emergency management agency</p>	<p>ORC § 149.43 Availability of public records. (A) As used in this section: (2) “Confidential law enforcement investigatory record” means any record that pertains to a law enforcement matter of a criminal, quasi-criminal, civil, or administrative nature, but only to the extent that the release of the record would create a high probability of disclosure of any of the following: (d) Info that would endanger the life or physical safety of law enforcement personnel, a crime victim, a witness, or a confidential info source. § 149.433 Exemption of security and infrastructure records. (A) As used in this section:</p> <p>(3) “Security record” means: (a) used for protecting or maintaining the security of a public office against attack, interference, or sabotage; (b) ...or respond to acts of terrorism, including: (i) record containing specific and unique vulnerability assessments or specific and unique response plans either of which is intended to prevent or mitigate acts of terrorism... (B) A record kept by</p>	<p>ORC Ann. § 121.22 Meetings of public bodies to be public; exceptions. (G)...members of a public body may hold an executive session only on...any of the following matters: (6) Details relative to the security arrangements and emergency response protocols for a public body or a public office, if disclosure of the matters discussed could reasonably be expected to jeopardize the security of the public body or public office; § 4765.08 Statewide Plan; plan for regulation during disasters; coordination with emergency operations plan. The state board of emergency med, fire, and transportation services shall prepare a statewide emergency med services plan and shall revise the plan as necessary. Oh. Constitution. Art. II, § 42 Continuity of government operations in emergency caused by enemy attack. The General Assembly shall have the power and the immediate duty to pass laws to provide for prompt and temporary</p>

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	<p>established; cooperation with other agencies; use of fed funds. § 5502.25 Rules for emergency management. § 5502.28 Cooperation by state and local agencies; national incident management system adopted. (B) Every agency for emergency management established pursuant to sections 5502.21 to 5502.51 of the revised code and every political subdivision that has established a program for emergency management under § 5502.271 of the revised code, and the officers thereof, shall execute and enforce any emergency management orders and rules issued or adopted by the director of public safety.</p>	<p>a public office that is a security record or an infrastructure record is not a public record under § 149.43 of the Revised Code and is not subject to mandatory release or disclosure under that section. (con't in comments)</p>	<p>succession to the powers and duties of public offices, of whatever nature and whether filled by election or appointment, the incumbents of which may become unavailable for carrying on the powers and duties of such offices and to pass such other laws as may be necessary and proper for insuring the continuity of governmental operations in periods of emergency resulting from disasters caused by enemy attack. As enacted, Nov. 7, 1961. Title 1: State Government Chapter 161: Emergency Interim Government ORC Ann § 161.02 Effective only in the event of attack. § 161.01 to 161.29, inclusive, of the Revised Code shall be in effect only in the event that an attack upon the United States, as defined in § 161.01 of the Revised Code, has occurred, and shall remain in effect until terminated by joint resolution of the general assembly.</p>
<p>Oklahoma http://ok.gov/OEM/Programs_&_Services/Planning/index.html</p>	<p>63 Okl. St. § 683.4. Okla Dept. of Emergency Management— Powers and duties of director D. The director, subject to the direction and control of the governor, shall be the executive head of the department and shall serve as</p>	<p>Oklahoma Open Records Act 51 Okl. St. § 24A.28. Confidential info—Exceptions A. The following info may be kept confidential: 5. Info technology of a public body or public official but only if the info specifically identifies: f. business continuity and disaster planning, or response plans. D. 1. Public educational</p>	<p>Title 63. Public Health and Safety Ch 25. Emergency Interim Exec and Judicial Succession Act 63 Okl. St. § 685.1–685.11. Okl. Constitution. Art. V, § 63. COOP in periods of emergency The legislature, in order to insure state and local COOP in periods of emergency resulting from</p>

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	<p>the chief advisor to the governor on emergency management and shall: 2. Coordinate the activities of all organizations for emergency management within the state; 4. Develop and maintain a comprehensive all-hazards mitigation plan for this state; 5. Implement the Oklahoma Hazard Mitigation Program;</p> <p>63 Okl. St. § 683.8. Powers and Duties of Governor E. In addition to prevention measures included in the state and local comprehensive plans and programs for emergency management, the governor shall consider on a continuing basis steps that could be taken to mitigate the harmful consequences of emergencies and natural disasters. At the governor's direction and pursuant to any other authority specified by law, state agencies, including floodplain management, fire prevention, air quality, public works, land use shall make studies of matters related to potential to mitigate emergency and natural</p>	<p>institutions may keep confidential campus security plans. An institution or agency may in its discretion release info in the security plan in order to design or implement the plan. 25 Okl. St. § 307 (2015) Executive sessions. B. Executive sessions of public bodies will be permitted only for the purpose of: 9. Discussing the following: e.g., info technology of the public body but only if the discussion specifically identifies: (6) business continuity and disaster planning, or response plans; Note that the 2009 plan is shown on the OK EM agency web page:</p> <p>https://www.ok.gov/OEM/Programs_&_Services/Planning/State_Emergency_Operations_Plan_-_EOP.html</p> <p>"OK Emergency Operations Plan 2009 @ page BP5 2 &ESF #5.6., 7.3, 8.4" All state agencies shall establish internal rules of succession to insure continuity of government (COG) and COOP during times of disaster."</p>	<p>disasters caused by enemy attack or resulting from the imminent threat of such disasters, shall have the power and the immediate duty (1) to provide for prompt and temp succession to the powers and duties of public offices, of whatever nature and whether filled by election or appointment, the incumbents of which may become unavailable for carrying on the powers and duties of such offices; and (2) to adopt such other measures as may be necessary and proper for so insuring the COOP. In the exercise of the powers hereby conferred, the legislature shall in all respects conform to the requirements of this constitution. Title 74. State Government Ch 3a. Okla Homeland Security Act 74 Okl. St. § 51.1. Okla Office of Homeland Security. § 687.3. Duties of Dept. of Emergency Management A. Whenever a disaster makes it imprudent or impossible to conduct the affairs of state government at its seat in Okla City, the governor may proclaim temp locations for the seat of state government at any place he deems advisable, either inside or outside of the state. The governor may issue necessary orders for orderly transition of the affairs of</p>

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	<p>disasters. The governor shall make such recommendations to the legislature, to pol subdivisions and to other appropriate public and private entities as may facilitate measures for mitigation of the harmful consequences of emergencies and natural disasters.</p>		<p>government to any temp emergency or man-made disaster location, which remains the seat of state government until the Legislature establishes a new location, or until the emergency or man-made disaster is declared ended by the Legislature and the seat is returned to its normal location in Okla City. B. Any official act or meeting required to be performed at the seat of state government is valid when performed at a temp emergency or man-made disaster location under this section.</p>
<p>Oregon https://www.oregon.gov/OMD/OEM/Pages/plans_train/COOP.aspx</p>	<p>Title 32 ORS § 401.052 Responsibilities of Office of Emergency Management. (1) The Office of Emergency Management is established in the Oregon Military Dept (2) The office shall be responsible for: (a) Coordinating and facilitating private sector and governmental efforts to prevent, prepare for, respond to and recover from emergencies; and (b) Coordinating exercises and training, planning, preparedness, response, mitigation and recovery activities with state and local emergency services agencies</p>	<p>ORS § 192.501 Public records conditionally exempt from disclosure. The following public records are exempt from disclosure under ORS § 192.410 to § 192.505 unless the public interest requires disclosure in the particular instance: (18) Specific operational plans in connection with an anticipated threat to individual or public safety for deployment and use of personnel and equipment, prepared or used by a public body, if public disclosure of the plans would endanger an individual's life or physical safety or jeopardize a law enforcement activity. (23) Records or information that would reveal or otherwise identify security measures, or weaknesses or potential weaknesses in security measures, taken or</p>	<p>Title 32 ORS § 401.052 Responsibilities of Office of Emergency Management. (1) The Office of Emergency Management is established in the Oregon Military Dept. (2) The office shall be responsible for: (a) Coordinating and facilitating private sector and governmental efforts to prevent, prepare for, respond to and recover from emergencies; and (b) Coordinating exercises and training, planning, preparedness, response, mitigation and recovery activities with state and local emergency services agencies and orgs. (3) The office shall prepare a statewide emergency management plan and update the plan from time to time as</p>

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	<p>and orgs. (3) The office shall prepare a statewide emergency management plan and update the plan from time to time as necessary.401.088 Interagency agreements. The director of the Office of Emergency Management may enter into interagency agreements with other state agencies that the director determines are necessary to carry out the duties of the Office of Emergency Management.</p> <p>401.092 Duties of director; federal fire management assistance declaration; rules.(1) The director of the Office of Emergency Management is responsible for coordinating and facilitating exercises and training, emergency planning, preparedness, response, mitigation and recovery activities with the state and local emergency services agencies and orgs, and shall, with the approval of the Adjutant General or as directed by the governor: (a) Make rules; (b) Coordinate</p>	<p>recommended to be taken to protect: (a) An individual; (b) Buildings or other property; (c) Information processing, communication or telecommunication systems, including the information contained in the systems; or (d) Those operations of the Oregon State Lottery the security of which are subject to study and evaluation under ORS 461.180 (6).</p>	<p>necessary.401.088 Interagency agreements. The director of the Office of Emergency Management may enter into interagency agreements with other state agencies that the director determines are necessary to carry out the duties of the Office of Emergency Management.</p>

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	emergency services activities;(f) staff a state emergency ops center; (i) Establish task forces and advisory groups to assist. (con't in comments)		
<p>Pennsylvania</p> <p>http://www.portal.state.pa.us/portal/server.pt/community/continuity_of_government/406</p> <p>http://www.pema.pa.gov/Pages/2015-State-Emergency-Operations-Plan.aspx#.VmifQJ3naM8</p>	<p>Title 4. Admin Part I. Gov's Office Chapter 6. Subch MM. Continuity of Government Office 4 PA. Code § 6.481. Mission Continuity of Government Steering Committee is to ensure the ability of the commonwealth to continue to provide essential services during an emergency through its support of the Continuity of Government Office. § 6.482 (2015) § 6.482. Responsibilities. The Commonwealth Continuity of Government Steering Committee shall do the following: (1) Assess the level of continuity of government preparedness among commonwealth agencies. (2) Assess the ability of the executive, judicial and legislative branches to coordinate and continue the effective functioning of government during an</p>	<p>65 P.S. § 67.708. Exceptions for public records (b) (1) A record, the disclosure of which: (ii) would be reasonably likely to result in a substantial and demonstrable risk of physical harm to or the personal security of an individual.</p> <p>(2) A record maintained by an agency in connection with the military, homeland security, national defense, law enforcement or other public safety activity that, if disclosed, would be reasonably likely to jeopardize or threaten public safety or preparedness or public protection activity or a record that is designated classified by an appropriate federal or state military authority.</p> <p>(3) A record, the disclosure of which creates a reasonable likelihood of endangering the safety or the physical security of a building, public utility, resource, infrastructure, facility or information storage system, which may include:</p> <p>(i) documents or data relating to</p>	<p>Note that the Penn laws are divided into the Code and the Statutes, much like Texas Code and Texas Vernon's Civil Statutes. Title 35, Part V, Chapter 73, 35 Pa. C.S. § 7313. Powers and Duties. The agency shall have the following powers and duties: (1) To prepare, maintain and keep current Pennsylvania Emergency Management Plan for the prevention and minimization of injury and damage caused by disaster, prompt and effective response to disaster and disaster emergency relief and recovery. The plan may include provisions for: (i) Preparedness standards established by the FEMA. (iii) Assistance to commonwealth agencies, local government officials, schools and custodial child care facilities in designing emergency management plans and training programs. (iv) Organization of labor, chains of command, continuity of government in emergency situations and emergency ops principles. See also</p>

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	<p>emergency. (3) Approve and promote the annual priorities of the Continuity of Government Office (Office) for ensuring the coordination and maintenance of commonwealth operations during emergencies and disruptions. (4) Provide guidelines, oversight and policy direction for improving continuity of government and operations by the office. § 6.476. Cooperation by state agencies. Agencies under the governor's jurisdiction shall cooperate with and provide assistance and support as needed by the Office of Homeland Security and the governor's dept. chief of staff for public safety to carry out its functions effectively.</p> <p>Ex Ord 205.41 COOP Program 2/16/2011. Requires all state agencies to have a COOP plan and coordinator. link: http://www.oa.pa.gov/Policies/md/Documents/205_41.pdf</p>	<p>computer (IT); (ii) lists of infrastructure, (iii) building plans or infrastructure records that expose or create vulnerability; (4) IT record reasonably likely to jeopardize computer security.</p>	<p>Emergency Interim Executive and Judicial Succession Act of 1959 71 P.S. § 779.2 (approved 1959) and Title 46, Ch. 1 Legislature, Emergency Succession 46 P.S. § 145.2 (approved 1959), Title 53, Part III, Chapter 11, Subchapter C. Emergency Succession of Officers (in municipalities), 53 Pa.C.S. § 1132 (approved 1996); Ex Ord 2012—5 April 30, 2012: Establishes COOP steering committee for state government. link: http://www.portal.state.pa.us/portal/server.pt/gateway/PTARGS_0_2_785_708_0_43/http%3B/pubcontent.state.pa.us/publishedcontent/publish/global/files/executive_orders/2010_2019/2012_05.pdf</p>

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<p>Rhode Island http://www.riema.ri.gov/resources/business/prepare/continuityplanning.php</p>	<p>R.I. Gen. Laws Title 30. Military Affairs and Defense “Rhode Island Emergency Management Act” § 30–15-7. Governor’s General Powers. The governor shall be responsible for carrying out the provisions of this chapter and shall be primarily responsible for emergency management in the state. § 30–15-5. Emergency management preparedness agency created—Personnel—Facilities. (d) The director shall be responsible to the governor for carrying out the program for disaster preparedness of this state. § 30–15-10. Financing—Disaster emergency funding board established. (b) composed of the president of the senate, the speaker of the house, and the chairpersons of the senate and house finance committees. (c) If the governor finds that the demands placed upon these funds in coping with a particular disaster are</p>	<p>R.I. Gen. Laws § 38–2-2. Definitions. As used in this chapter: (4) “Public record” or “public records”... the following records shall not be deemed public: (F) Scientific and technological secrets and the security plans of military and law enforcement agencies, the disclosure of which would endanger the public welfare and security.</p>	<p>R.I. Gen. Laws § 30–15.1-1. Declaration—Transition of affairs Whenever a disaster, or anticipated disaster necessitates, the governor shall declare an emergency temporary location for the seat of government as advisable under the circumstances. § 30–15.1-2. Validity of acts performed at emergency location—shall be as valid and binding when performed at the emergency temporary location.</p> <p>Code of RI Rules (CRIR) 10 010 001 Emergency Ops Plan signed by governor 1 October 1987. Requires state and local governments to have an Emergency Ops Plan that includes provisions for “continuity of government.” Continuity of government is defined to include line of succession and preservation of records.</p>

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	unreasonably great, with the concurrence of the disaster emergency funding board, he or she may make funds available by transferring and expending moneys appropriated for other purposes or may borrow for a term not to exceed two years from the United States government or any other private source.		
<p>South Carolina http://www.scmd.org/planandprepare/plans</p>	<p>S.C. Code Ann. TITLE 25. Military, Civil Def and Vets Affairs CH. 1. Military Code Article 4. S. C. Emergency Management DIV § 25–1-420 (2014) S. C. Emergency Management Division of Office of Adjutant General; admin; duties. (a) coordinating all state, county, & muni agencies in developing a state emergency plan; (b) conducting a statewide prep program (c) establishing and maintaining a state emergency ops center (d) disseminating emergency info (e) establishing an incident management system incorporating the principles of the NIMS. § 25–1-430.</p>	<p>S.C. Code Ann.§ 30–4-30. Right to inspect or copy public records; fees; notification as to public availability of records; presumption upon failure to give notice; records to be available when requestor appears in person. (a) Any person has a right to inspect or copy any public record of a public body, except as otherwise provided by § 30–4-40, in accordance with reasonable rules concerning time and place of access. § 30–4-40. Matters exempt from disclosure. (a) (4) Matters specifically exempted from disclosure by statute or law. § 30–4-45. Information concerning safeguards and off-site consequence analyses; regulation of access; vulnerable zone defined. (A) nuke and hazmat (B)The director of each agency that is the custodian of information, the unrestricted release of which could</p>	<p>S.C. Emergency Ops Plan Basic Plan 2011 at page 43 and pages 67–69: It is the policy of the State of SC, in concert with FEMA Emergency Preps Procedures, to have in place a comprehensive program to ensure continuity of mission essential state emergency functions under all circumstances. (See the SC State Emergency Response Team COOP Plan, 2008) To support this policy the SC Emergency Management Division has implemented the COOP Program. http://scemd.org/files/Plans/SCEOP11/Basic%20Plan.pdf NOTE PER KM: good luck on finding the SC COOP web page.</p> <p>S.C. Hazard Mitigation Plan 2013 At pg 284 where disaster mitigation emergency management</p>

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	<p>Definitions. (a) "Emergency preparedness" means the extraordinary actions of government in preparing for and carrying out all functions and operations, required to prevent, minimize, and repair injury and damage resulting from a disaster of any origin. § 25-1-440. Additional powers and duties of governor during declared emergency. (a) The governor is empowered. (4) utilize all avail resources of state government as reasonably necessary to cope w/ the emergency; (5) transfer the direction, personnel, or functions of state departments, agencies, and commissions, or units thereof, for purposes of facilitating or performing emergency services as necessary or desirable; (b) The governor is responsible for the development and coordination of a sys of comprehensive emergency management that includes: (1) provisions for mitigation, prep, response, and recovery in anticipated and actual emergency</p>	<p>increase the risk of acts of terrorism may identify the info or compilations of info by notifying the Atty Gen in writing, and shall promulgate regulations in accordance with the Administrative Procedures Act, § 1-23-110 through § 1-23-120(a) and § 1-23-130, to regulate access to the information in accordance with the provisions of this section.</p>	<p>performance, homeland security and state funding grants are to be used for state agency COOP plan formulation:</p> <p>http://www.scemd.org/files/Mitigation/State_Hazard_Mitigation_Plan/1_SHMP_FINAL_2013.pdf</p> <p>But see also where SC governor's 2016 budget requested at pages 18 & 677 item (28) \$250K for COOP budget for SC Emergency Management Division of Adj General:</p> <p>http://www.governor.sc.gov/ExecutiveOffice/Documents/(2016.01.15)%20FY%202016-17%20Executive%20Budget%20(FC).pdf</p> <p>SC Emergency Management Division of Adj General Emergency Operations Plan:</p> <p>http://www.scemd.org/planandprepare/plans/emergency-operations-plan</p>

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	situations.		
<p>South Dakota</p> <p>https://dps.sd.gov/emergency_services/emergency_management/planning.aspx</p> <p>https://southdakotacoop.boldplanning.com/</p>	<p>§ 34–48A-11. Comprehensive plan prepared by adjutant general for emergency management of state. The secretary is directed to prepare a comprehensive plan and program for the emergency management of this state. The plan and program shall be integrated into and coordinated with the emergency management plans of the federal government and of other states to the fullest possible extent, and shall coordinate the prep of plans and programs for emergency management by the political subdivisions of this state, which shall be integrated into and coordinated with the emergency management plan and program of this state to the fullest possible extent. § 34–48A-12. Contents of Comprehensive Plan for Emergency Management of Stat [sic]. The secretary [DPS] may. (1) Procure supplies and equipment; (2) Cooperate with the federal government, or</p>	<p>S.D. Codified Laws § 34–48A-18. Confidentiality of contact lists and related info. The info provided pursuant to §§ 34–48A-13 to § 34–48A-18 [various emergency management contact lists], inclusive, shall remain confidential and may only be used for emergency purposes. § 1–27-1.5. Records exempt from disclosure— Personal data. The following records are not subject to § 1–27-1, 1–27-1.1, and 1–27-1.3: (8) Info solely pertaining to protection of the security of public or private property and persons on or within public or private property, such as specific, unique vulnerability assessments or specific, unique response plans, either of which is intended to prevent or mitigate criminal acts, emergency management or response, or public safety, the public disclosure of which would create a substantial likelihood of endangering public safety or property; (17) Any emergency or disaster response plans or protocols, safety or security audits or reviews, or lists of emergency or disaster response personnel or material; any location or listing of weapons or ammunition; nuclear, chemical, or biological agents; or other military or law</p>	<p>(con't) § 34–48-2. Request for assistance NIMS. In addition to the provisions of chapter 1–24 and chapter § 34–48A, any public agency or covered entity may request assistance from any other public agency or covered entity in order to preserve and protect the public health, safety, and welfare. The requesting agency and the deploying agency shall utilize the incident command sys of the NIMS. § 34–48-6. Personnel of deploying public agency retain authority, gain authority of similarly situated personnel of receiving agency. All personnel deployed by the deploying agency or covered entity retain all authority of the deploying agency or covered entity and are entitled to act with all authority available to similarly situated personnel of the agency or covered entity receiving assistance. S.D. Constitution. Article III, § 29 Legislative powers in emergency from enemy attack. Notwithstanding any general or special provisions of the constitution, in order to insure continuity of state and local governmental operations in periods of emergency resulting from disasters caused by enemy attack,</p>

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	any agency thereof, and to enter into agreements with any state of the U.S. or subdivisions thereof or with any private agency therein for the procurement of food, fuel, supplies, and equipment necessary for civilian use; (3) Provide for the distribution thereof to the inhabitants of this state in a manner consistent with the needs and requirements of the civil population; and(4) Institute training programs and public info programs, and take all other preparatory steps including the partial or full mobilization of emergency management orgs in advance of actual disaster, to ensure the furnishing of adequately trained and equipped forces of emergency management personnel in time of need. (con't in comments)	enforcement equipment or personnel.	the legislature shall have the power and the immediate duty (1) to provide for prompt and temporary succession to the powers and duties of public offices, and (2) to adopt such other measures as may be necessary and proper for insuring the continuity of governmental operations. S.D. Codified Laws § 1–30-1 Declaration of policy. Because of the existing possibility of attack upon the U.S. of unprecedented size and destructiveness, and in order, in the event of such an attack.
Tennessee http://www.tnema.org/sitemap.html	§ 58–2-101. Chapter definitions. “Agency” means the Tennessee emergency management agency (TEMA) (11) Emergency services	Tenn. Code Ann. § 10–7-504. Confidential records—Exceptions. (m) (1) Information and records that are directly related to the security of any government building shall be maintained as confidential and shall not be open to public inspection. For purposes of this	§ 58–2-108. Designation of emergency services coordinators. (a) At the direction of the governor, the head of each executive department and independent agency shall select from within such

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	<p>coordinator” or “ESC” is responsible for coordinating with the agency on emergency prep issues, preparing and maintaining emergency prep and post disaster response and recovery plans for their agency, maintaining rosters of personnel to assist in disaster operations, and coordinating appropriate training for agency personnel; (D) Recovery from emergencies by providing for the rapid and orderly start of restoration and rehabilitation of persons and property affected; and (F) Assistance in anticipation, recognition, appraisal, prevention, and mitigation of emergencies which may be caused or aggravated by inadequate planning for, and regulation of, public and private facilities and land use;</p> <p>(25) “TEMP” means Tenn emergency management plan.</p> <p>§ 58–2-106. Emergency management responsibilities and powers.</p> <p>(a) TEMA is responsible for</p>	<p>subsection (m), “government building” means any building that is owned, leased or controlled, in whole or in part, by the state of Tennessee or any county, municipality, city or other political subdivision of the state of Tennessee. Such information and records include, but are not limited to: (B) Security plans, including security-related contingency planning and emergency response plans; (C) Assessments of security vulnerability; (D) Information and records that would identify those areas of structural or operational vulnerability that would permit unlawful disruption to, or interference with, the services provided by a governmental entity;</p>	<p>department or agency a person to be designated as the emergency services coordinator (ESC) for the department or agency together with an alternate ESC.</p> <p>(b) The ESC is responsible for coordinating with TEMA and reporting to that agency on emergency preparedness issues, preparing and maintaining emergency preparedness and post-disaster response and recovery plans for their agency, maintaining rosters of personnel to assist in disaster operations, and coordinating appropriate training for agency personnel.</p> <p>(c) These individuals shall be responsible for ensuring that each state facility, such as a prison, office building, or university, has a disaster preparedness plan that is reviewed by the applicable local emergency management agency and approved by TEMA. October 2011 audit by Tenn Comptroller of Tenn EM Agcy COOP oversight, 37 pgs:</p> <p>http://www.comptroller.tn.gov/repository/SA/pa11048.pdf</p> <p>Note that the link to the Tenn EM Plan is not working:</p>

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	maintaining a comprehensive statewide program of emergency management. The agency is responsible for coordination with efforts of the federal government with other departments and agencies of state, county &, municipal governments and school building, and private agencies that have a role in emergency management. The director of the agency shall be the state coordinating officer (SCO) and the governor's authorized representative (GAR).		http://www.tnema.org/ema/preparedness/plans.html
<p>Texas</p> <p>https://www.sorm.state.tx.us/coop/texas-coop</p>	<p>§ 412.054. Continuity of Operations Plan (COOP)</p> <p>(a) Each state agency shall work with the office (SORM) to develop an agency-level COOP that outlines procedures to keep the agency operational in case of disruptions to production, finance, admin, or other essential operations. The plan must include detailed info regarding resumption of essential services after a catastrophe, including:</p>	<p>Tex Government C. § 552.156. Exception: Confidentiality of Continuity of Operations Plan (COOP). (a) Except as otherwise provided by this section, the following information is excepted from disclosure under this chapter: (1) a continuity of operations plan developed under § 412.054, Labor Code; and (2) all records written, produced, collected, assembled, or maintained as part of the development or review of a COOP developed under § 412.054, Labor Code. (b) Forms, standards, and other instructional, informational, or planning materials adopted by SORM to provide guidance or assistance to a state agency in developing a COOP under §</p>	<p>§ 412.054 (con't) (2) any records written, produced, collected, assembled, or maintained as part of the development or review of a COOP under this section. (d) Forms, standards, and other instructional, informational, or planning materials adopted by the office to provide guidance or assistance to a state agency in developing a COOP under this section are public info subject to disclosure under Chapter 552, Government Code. (e) A state agency may disclose or make available info that is confidential under this section to another state agency, a governmental body, or a</p>

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	<p>(1) coordination with public authorities;</p> <p>(2) management of media;</p> <p>(3) customer service delivery;</p> <p>(4) assessing immediate financial and operational needs; and</p> <p>(5) other services as determined by the office.</p> <p>(b) A COOP that meets the requirements of this section must be submitted by each state agency that is:</p> <p>(1) involved in the delivery of emergency services as a member of the governor's Emergency Management Council;</p> <p>(2) part of the State Data Center program; or</p> <p>(3) subject to this chapter or Chapter 501.</p> <p>(c) Except as otherwise provided by this section, the following info is confidential and is exempt from disclosure under Chapter 552,</p>	<p>412.054, Labor Code, are public info subject to disclosure under this chapter.</p> <p>(c) A governmental body may disclose or make available info that is confidential under this section to another governmental body or a federal agency.</p> <p>(d) Disclosing info to another governmental body or a federal agency under this section does not waive or affect the confidentiality of that info. See also Tex. Labor C. § 412.054(c)-(f). Continuity of Operations Plan & § 412.0128. Confidentiality of Information.</p>	<p>federal agency. (f) Disclosing info to another state agency, a governmental body, or a federal agency under this section does not waive or affect the confidentiality of that info.</p> <p>§ 412.011. Powers and Duties of Office. (f) The office shall work with each state agency to develop an agency-level COOP under § 412.054.</p> <p>(g) The office shall make available to each agency subject to § 412.054 guidelines and models for each element listed in § 412.054. The office shall assist the agency as necessary to ensure that:</p> <p>(1) agency staff understands each element of the COOP developed under § 412.054; and</p> <p>(2) each agency provides training and conducts testing and exercises that prepare the agency for implementing the plan.</p> <p>§ 412.032. Board's Report to Legislature. (a) Based on the recommendations of the director, the board shall report to each legislature relating to: (5) the COOP developed by state agencies under § 412.054. (5) an evaluation of continuity of</p>

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	Government Code: (1) a COOP developed under this section; and (Con't in comments)		operations plans developed by state agencies under § 412.054 for completeness and viability.
Utah http://dem.utah.gov/	Utah Code Ann. § 53–2a-104 Division [of Emergency Management, part of DPS] duties—Powers. (1) The division shall: (c) prepare, implement, and maintain programs and plans to provide for: (ii) prompt and effective response to and recovery from disasters; (v) assistance to local officials, state agencies, and the business and public sectors, in developing emergency action plans; (vii) coordination of emergency operations plans with emergency plans of the federal government; See also § 53–2a-801 et seq. Title. This part is known as the “Emergency Interim Succession Act	§ 63G-2-106. Records of security measures. The records of a governmental entity or political subdivision regarding security measures designed for the protection of persons or property, public or private, are not subject to this chapter [Chapter 2 Government Records Access and Management Act]. These records include: (1) security plans; (2) security codes and combinations, and passwords; (3) passes and keys; (4) security procedures; and (5) building and public works designs, to the extent that the records or information relate to the ongoing security measures of a public entity. Utah Code Ann. § 63G-2-305 Protected records. The following records are protected if properly classified by a governmental	(§ 63G-2-305 con'd) (13) records that, if disclosed, would jeopardize the security or safety of a correctional facility, or records relating to incarceration, treatment, probation, or parole, that would interfere with the control and supervision of an offender's incarceration, treatment, probation, or parole; (48) except to the extent that the record is exempt from this chapter pursuant to § 63G-2-106, records related to an emergency plan or program, a copy of which is provided to or prepared or maintained by the Division of Emergency Management, and the disclosure of which would jeopardize: (a) the safety of the general public; or (b) the security of: (i) governmental property; (ii) governmental programs; or

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		entity: (12) records the disclosure of which would jeopardize the security of governmental property, governmental programs, or governmental recordkeeping systems from damage, theft, or other appropriation or use contrary to law or public policy; (con't in comments)	(iii) the property of a private person who provides the Division of Emergency Management information; Utah DPS EM Continuity of Operation (COOP) Tabletop Exercise http://dem.utah.gov/coop/ Utah state agency COOP Tabletop Exercise to allow agencies to discuss and validate COOPs and capabilities after a serious incident, which causes agencies to activate their respective COOPs
Vermont http://bgs.vermont.gov/security/coop https://vermontcoop.boldplanning.com/ http://demhs.vermont.gov/plans/state	20 V.S.A. § 3a. Emergency management division; duties; budget (a) In addition to other duties required by law, the emergency management division shall: (1) Establish and define emergency planning zones and prepare and maintain a comprehensive state emergency management strategy that includes an emergency operations plan, establish and define emergency planning zones and prepare and maintain a radiological emergency	1 V.S.A. § 317. Definitions; public agency; public records and documents (c) The following public records are exempt from public inspection and copying: (32) With respect to publicly owned, managed, or leased structures, and only to the extent that release of info contained in the record would present a substantial likelihood of jeopardizing the safety of persons or the security of public property, final building plans, and as-built plans, including drafts of security systems within a facility, that depict the internal layout and structural elements of buildings, facilities, infrastructures, systems, or other structures owned, operated, or leased by an agency	20 V.S.A. § 31 (2016) § 31. State emergency response commission; duties The commission shall have authority to: (5) Review and comment on the comprehensive state emergency operations plan and local emergency planning committee response plans. (9) Coordinate statewide efforts and draft policies regarding planning, mitigation, preparedness, and response to all-hazards events to be approved by the commissioner. See also 29 V.S.A. § 171.

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	<p>response plan for use in those zones, and prepare an all-hazards mitigation plan in cooperation with other state, regional, and local agencies for use in such zones and in compliance with adopted federal standards for emergency management. The strategy shall be designed to protect the lives and property including domestic animals of persons within this state who might be threatened as the result of all-hazards and shall align state coordination structures, capabilities, and resources into a unified and multi-disciplined all-hazards approach to incident management.</p> <p>(3) Assist the state emergency response commission, the local emergency planning committees and the municipally established local orgs referred to in § 6 of this title in carrying out their designated emergency functions, including developing, implementing, and coordinating emergency response plans.</p>	<p>before, on, or after the effective date of this provision; emergency evacuation, escape, or other emergency response plans that have not been published for public use; and vulnerability assessments, operation and security manuals, plans, and security codes.</p>	<p>Responsibility for security</p> <p>(e) Under this section, the commissioner of buildings and general services is responsible for the protection of state facilities, the lands upon which the facilities are situated, and the occupants of those facilities, which is vital to sustaining the essential services of government in an emergency. The commissioner shall develop plans for continuity of government and continuity of operations as an addendum to the state emergency operations plan maintained by the department of public safety, division of emergency management and referenced in subdivision 8(b)(2) of Title 20.</p> <p>See also 20 V.S.A. § 181. Statement of policy re: Emergency Interim Succession to Offices.// http://demhs.vermont.gov/plans/state Vt Emergency Ops Plan 2013, @ SSF Annex 5 Tab B SEOP Operating Guidelines I pg. 17: "Each State agency, department and organization has a COOP." This plan is activated by the governor, in consultation with the commissioners of Dept. of Buildings and General Services and Dept. of Public Safety. The COG contains info from each agency COOP, include lines of</p>

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	(4) Provide admin support to the state emergency response commission. Cont in comments		succession, leadership contact info, essential functions, vital records and resources, and alternate facilities.
<p>Virginia</p> <p>http://www.vaemergency.gov/em-community/plans/2012COVEOP http://www.vaemergency.gov/webfm_send/517/COVEOP_2012_SA_1_Continuity_of_Government.pdf http://www.vaemergency.gov/em-community/plans/coop</p>	<p>Va. Code Ann. § 44–146.18 Dept. of Emergency Services continued as Dept. of Emergency Management; admin and operational control; coordinator and other personnel; powers and duties</p> <p>B. The Dept. of Emergency Management shall in the administration of emergency services and disaster prep programs: 7. Provide guidance and assistance to state agencies and units of local government in developing and maintaining emergency management and continuity of operations (COOP) programs, plans and systems;</p> <p>§ 44–146.17. Powers and duties of governor</p> <p>The governor shall have, the</p>	<p>Va. Code Ann. § 2.2-3705.2 Exclusions to application of chapter; records relating to public safety 4. Plans and info to prevent or respond to terrorist activity or cyber attacks, the disclosure of which would jeopardize the safety of any person, including (i) critical infrastructure sector or structural components; (ii) vulnerability assessments, operational, procedural, transportation, and tactical planning or training manuals, and staff meeting minutes or other records;</p>	<p>§ 44–146.17:2. Annual statewide drill</p> <p>The governor shall conduct an annual statewide drill on response to a large-scale disaster including, electrical power outages. Such drill shall include the participation of local governments, affected state agencies, public utilities, law-enforcement agencies, and other entities as determined by the governor. The governor shall submit a report to the General Assembly on the results of the drill by Nov. 30 of each year. The report shall be delivered to the chairs of the House Committee on Militia, Police and Public Safety and the Senate Committee on General Laws.</p> <p>§ 44–146.28. Authority of governor and agencies under her control in declared state of emergency</p> <p>(b) Public agencies under the supervision and control of the</p>

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	<p>following powers and duties:</p> <p>(1) S/he may adopt and implement the Commonwealth of Virginia Emergency Ops Plan, which provides for state-level emergency operations in response to any type of disaster or large-scale emergency affecting Virginia and that provides the needed framework within which more detailed emergency plans and procedures can be developed and maintained by state agencies, local governments and other orgs.</p> <p>(2) To appoint a state coordinator of emergency management and authorize the appointment or employment of other personnel as is necessary to carry out the provisions of this chapter, and to remove, in his/her discretion, any and all persons serving hereunder; See also Exec. Order No. 41 (2011)</p>		<p>governor may implement their emergency assignments without regard to normal procedures (except mandatory constitutional requirements) pertaining to the performance of public work, entering into contracts, incurring of obligations, employment of temp workers, rental of equip, purchase of supplies and materials and expenditures of public funds.</p> <p>§ 44-146.24. Cooperation of public agencies</p> <p>In carrying out the provisions of the chapter, the governor, the heads of state agencies, the local directors and governing bodies of the pol subdivision are directed to utilize the services, equip, supplies and facilities of existing departments, offices, and agencies of the Commonwealth and the pol subdivisions thereof to the maximum extent practicable consistent with state and local emergency operation plans. The officers and personnel of all such departments, offices, and agencies are directed to cooperate with and extend such services and facilities to the governor and to the State Dept. of Emergency Management upon request.</p>

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	<p>https://wayback.archive-it.org/1655/20111103212053/http://www.governor.virginia.gov/PolicyOffice/ExecutiveOrders/viewEO.cfm?eo=41</p>		
<p>Washington http://mil.wa.gov/other-links/state-agency-liasons-sals</p>	<p>See HB 1047, 2015 AN ACT Relating to the state agencies COOP planning requirements; http://app.leg.wa.gov/BillInfo/summary.aspx?bill=1047&year=2015</p> <p>Title 38 Militia and Military Affairs, Chapter 38.52, Emergency Management, Rev. Code Wash. (ARCW) § 38.52.010 Definitions. (17) “COOPing” means the internal effort of an org to assure that the capability exists to continue essential functions and services in response to a comprehensive array of potential emergencies or disasters.</p> <p>§38.52.020. Declaration of policy and purpose.</p> <p>(f) To provide for the prioritization, development, and exercise of COOPs by the state.</p>	<p>Rev. Code Wash. (ARCW) Chapter 42.56 Public Records Act, § 42.56.420. Security.</p> <p>The following info relating to security is exempt from disclosure under this chapter:</p> <p>(1) Those portions of records assembled, prepared, or maintained to prevent, mitigate, or respond to criminal terrorist acts, which are acts that significantly disrupt the conduct of government or of the general civilian population of the state or the U. S. and that manifest an extreme indifference to human life, the public disclosure of which would have a substantial likelihood of threatening public safety, consisting of:</p> <p>(a) Specific and unique vulnerability assessments or specific and unique response or deployment plans, including compiled underlying data collected in preparation of or essential to the assessments, or to the response or deployment plans; and</p>	<p>Rev. Code Wash. (ARCW) § 40.10.010. Essential records—Designation—List—Security and protection—Reproduction.</p> <p>In order to provide for the continuity and preservation of civil government, each elected and appointed officer of the state shall designate those public documents which are essential records of his or her office and needed in an emergency and for the reestablishment of normal operations after any such emergency. A list of such records shall be forwarded to the state archivist on forms prescribed by the state archivist. This list shall be reviewed at least annually by the elected or appointed officer to insure its completeness. Any changes or revisions following this review shall be forwarded to the state archivist. Each such elected and appointed officer of state government shall insure that the security of essential records of his or her office is by the</p>

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	<p>§38.52.030 director Comprehensive emergency management plan. (11) The director is responsible to the governor to lead the development and management of a program for interagency coordination & prioritization of COOP planning by state agencies. Each state agency is responsible for developing an organizational COOP that is updated and exercised annually in compliance with the program for interagency coordination of COOPing. Governor Mar 2013/ COOP Ex Ord link:</p> <p>http://www.wsdot.wa.gov/partners/InteragencyCOOPWorkgroup/docs/Governor%20directorective%2013-02.pdf</p> <p>HB 1047 – eff 7/24/2015 re: state agencies COOP requirements: http://lawfilesexternal.leg.wa.gov/biennium/2015-16/Pdf/Bill%20Reports/House/1047%20HBR%20FBR%2015</p>	<p>(b) Records not subject to public disclosure under federal law that are shared by federal or international agencies, and information prepared from national security briefings provided to state or local government officials related to domestic preparedness for acts of terrorism;</p>	<p>most economical means commensurate with adequate protection. Protection of essential records may be by vaulting, planned or natural dispersal of copies, or any other method approved by the state archivist. Reproductions of essential records may be by photo copy, magnetic tape, microfilm, or other method approved by the state archivist.</p> <p>http://www.wsdot.wa.gov/partners/InteragencyCOOPWorkgroup/</p> <p>The COOP planners are....a standing committee of continuity professionals established to promote the coordination of comprehensive and effective continuity activities across state agencies and to advise the office of the governor on issues of state government continuity.</p> <p>2016 final draft certified emergency management plan: http://mil.wa.gov/uploads/pdf/final-draft-wacemp-basic-plan-04-21-2016.pdf</p>

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<p>West Virginia http://www.dhsem.wv.gov/About/Pages/default.aspx</p>	<p>W. Va. Code § 15–5-5 (2015) General powers of the governor.</p> <p>In performing her/his duties under this article to affect its policy and purpose, the governor is further authorized and empowered:</p> <p>(2) To prepare and implement a comprehensive plan and program for the provision of emergency services in this state, such plan and program to be integrated into and coordinated with comparable plans of the fed government and of other states to the fullest possible extent, and to coordinate the prep of such plans and programs by the pol subdivision of this state, such plans to be integrated into and coordinated with the state plan and program to the fullest possible extent.</p> <p>(3) In accordance with such state plan and program, to procure supplies and equipment, to institute training and public info programs, to</p>	<p>W. Va. Code § 29B-1-4. Exemptions.</p> <p>(10) Those portions of records containing specific or unique vulnerability assessments or specific or unique response plans, data, databases and inventories of goods or materials collected or assembled to respond to terrorist acts; and communication codes or deployment plans of law-enforcement or emergency response personnel;</p> <p>(11) Specific intelligence information and specific investigative records dealing with terrorist acts or the threat of a terrorist act shared by and between federal and international law-enforcement agencies, state and local law-enforcement and other agencies within the Department of Military Affairs and Public Safety;</p> <p>(14) Security or disaster recovery plans, risk assessments, tests or the results of those tests;</p> <p>§ 15–5A-6. Powers and duties of the Office of Emergency Services.</p> <p>The Office of Emergency Services, as created by article five [§§ 15–5-1 et seq.], chapter 15 of the Code of W. Va., shall perform the admin duties of the state emergency response. The admin</p>	<p>(cont) (a) Receive, catalogue and organize info required to be submitted to the commission;</p> <p>(b) Utilize existing state response orgs, plans and facilities;</p> <p>(d) Coordinate with other state agencies on training for 1st responders and emergency svc personnel;</p> <p>(e) Respond to requests to the commission from the public for info pursuant to this act;</p> <p>(f) Perform such preliminary analysis and collect such information as may be required to enable the commission to fully review local emergency response plans; and</p> <p>§ 15–5A-5. Powers and duties of the [State Emerge Response] commission.</p> <p>The commission shall have and may exercise the following powers and duties:</p> <p>(a) Designate emergency planning districts;</p> <p>(f) Enter into cooperative arrangements with other state</p>

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	<p>take all other preparatory steps including the partial or full mobilization of emergency services orgs in advance of actual disaster and to ensure the furnishing of adequately trained and equipped emergency services personnel in time of need.</p> <p>(4) To make such studies and surveys of industries, resources and facilities in this State as may be necessary to ascertain the capabilities of the state for providing emergency services and to plan for the most efficient emergency use thereof.</p>	<p>duties to be performed by the Office of Emergency Services shall include, but shall not be limited to, the following: (con't in comments)</p>	<p>agencies designating specific responsibilities for state agencies to implement this article;</p> <p>(h) Promulgate rules for public info;</p> <p>(i) Promulgate procedural rules for confidential info; W. Va COG/COOP annex Jan 2016:</p> <p>http://www.dhsem.wv.gov/Resources/Documents/WV%20EOP%202016/SPT%2001%20-%20Continuity%20of%20Government%20FINAL%201-6-16.pdf</p>
<p>Wisconsin http://www.doa.state.wi.us/divisions/administrative-services/continuity-of-government</p>	<p>Wis. Stat. § 323.13. Adjutant general; duties and powers.</p> <p>(1) Ongoing Duties. The adjutant general shall do all of the following:</p> <p>(a) Serve as the governor's principal assistant for directing and coordinating emergency management activities.</p> <p>(b) Subject to approval by the governor, develop and adopt a state plan of emergency management for the security</p>	<p>General Organization of the State, Except the Judiciary</p> <p>Chapter 19. General Duties of Public Officials</p> <p>Subchapter II Public Records and Property</p> <p>Wis. Stat. §19.35. Access to records; fees.</p> <p>(1) Right to Inspection.</p> <p>The right to inspect or copy info in a record under this paragraph does not</p>	<p>Wis. Stat. § 323.02. Definitions.</p> <p>(2) "Administrator" means the administrator of the division.</p> <p>(8) "Emergency management" means all measures undertaken by or on behalf of the state and its subdivisions to do any of the following:</p> <p>(a) Prepare for and minimize the effect of a disaster or the imminent threat of a disaster.</p> <p>(b) Make repairs to or restore</p>

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	<p>of persons and property. In developing the plan, the adjutant general shall seek the advice of the administrator, shall seek the advice of the department of health services with respect to the emergency medical aspects of the plan, and shall seek the advice of the department of administration with respect to aspects of the plan related to computer or telecommunication systems. The plan shall specify equipment and personnel standards, and shall require the use of the incident command system, and specify the type of incident command system, by all emergency response agencies, including local health departments, during a state of emergency declared under s. 323.10 or 323.11.</p> <p>(c) Prescribe and carry out statewide training programs and exercises to develop emergency management proficiency, disseminate information, and coordinate emergency management</p>	<p>apply to any of the following:</p> <p>2. Any record containing personally identifiable info that, if disclosed, would do any of the following:</p> <p>c. Endanger the security, including the security of the population or staff, of any state prison under § 302.01, jail, as defined in § 165.85 (2) (bg), juvenile correctional facility, as defined in § 938.02 (10p), secured residential care center for children and youth, as defined in § 938.02 (15g), mental health institute, as defined in § 51.01 (12), c</p> <p>19.62. Definitions.</p> <p>In this subchapter:</p> <p>(5) "Personally identifiable info" means information that can be associated with a particular individual through one or more identifiers or other info or circumstances.</p>	<p>infrastructure or critical systems that are destroyed or damaged by a disaster.</p> <p>§ 323.12. Governor; Duties and Powers.</p> <p>(1) Ongoing duties.</p> <p>The governor shall do all of the following:</p> <p>(a) Review orders establishing or altering emergency management areas.</p> <p>(b) Review state emergency management plans and modifications to the plans.</p> <p>See also Chapter 323. Emergency Management</p> <p>Subchapter V Emergency Location and Continuity of Government</p> <p>Wis. Stat. § 323.50 to § 323.50 re: interim succession of state and local officers and locations</p>

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	programs.		
<p>Wyoming http://wyohomelandsecurity.state.wy.us/index.aspx</p>	<p>§ 19–13-104. Powers of governor generally; director, office of homeland security.</p> <p>(c) In performing his/her duties under this act, the governor may:</p> <p>(i) Make, amend and rescind the necessary orders, rules and regulations to carry out this act within the limits of the authority conferred upon her/him herein, with due consideration of the plans of the federal government. The governor may assign to a state agency any activity concerned with the mitigation of the effects of a disaster or national emergency of a nature related to the existing powers and duties of the agency, including interstate activities, and the agency shall undertake and carry out the activity on behalf of the state;</p> <p>(ii) Prepare a comprehensive homeland security plan and program for this state to be integrated into and</p>	<p>Wyo. Stat. § 16–4-203. Right of inspection; grounds for denial; access of news media; order permitting or restricting disclosure; exceptions.</p> <p>(b) The custodian may deny the right of inspection of the following records, unless otherwise provided by law, on the ground that disclosure would be contrary to the public interest:</p> <p>(vi) To the extent that the inspection would jeopardize the security of any structure owned, leased or operated by the state or any of its pol subdivisions, facilitate the planning of a terrorist attack or endanger the life or physical safety of an individual, including:</p> <p>(A) Vulnerability assessments, specific tactics, emergency procedures or security procedures contained in plans or procedures designed to prevent or respond to terrorist attacks or other security threats;</p> <p>(D) Records prepared to prevent or respond to terrorist attacks or other security threats identifying or describing the name, location, pharma cache, contents, capacity, equipment, physical features, or capabilities of individual medical facilities, storage facilities or labs established, maintained, or</p>	<p>§ 19–13-104 (con't). (iii) In accordance with the homeland security plan and program for this state, procure supplies and equipment, institute training programs and public info programs and take all other preparatory steps including the partial or full mobilization of homeland security orgs in advance of actual disaster, to insure the furnishing of adequately trained and equipped forces of homeland security personnel in time of need;</p> <p>(iv) Make such studies and surveys of the industries, resources and facilities in this state as necessary to ascertain the capabilities of the state and its pol subdivisions for meeting homeland security requirements, and to plan for the most efficient emergency use therefor; § 16–4-202. Right of inspection; rules and regulations; unavailability.</p> <p>(d) If a public record exists primarily or solely in an electronic format, the custodian of the record shall so inform the requester. Electronic record inspection and copying shall be subject to the following:</p>

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	<p>coordinated with the homeland security plans of the federal government and of other states to the fullest possible extent, and coordinate the preparation of plans and programs for homeland security by the pol subdivision of this state to be integrated into and coordinated with the homeland security plan and program of this state to the fullest possible extent;</p> <p>(Con't in comments)</p> <p>WY COOP (FEMA) documents: http://wyohomelandsecurity.state.wy.us/coopdocs.aspx</p>	<p>regulated by the state or any of its pol subdivisions.</p> <p>(new § 16–4-202 con't in comments)</p>	<p>(iv) An agency shall not be required to allow inspection or copying of a record in its electronic format if doing so would jeopardize or compromise the security or integrity of the original record or of any proprietary software in which it is maintained;</p> <p>(v) Nothing in this section shall prohibit the director of the office of homeland security from enacting any rules pursuant to her/his authority under W.S. 19–13-104(d)(v).</p> <p>Wy Response Plan Oct 2008: COOP at pg 14, 20–22: http://wyohomelandsecurity.state.wy.us/library/wyoming%20response%20plan_07.pdf</p>
<p>Washington, DC</p> <p>http://hsema.dc.gov/sites/default/files/dc/sites/hsema/page_content/attachments/District%20Response%20Plan%202015.pdf</p> <p>http://hsema.dc.gov/page/continuity-operations-planning</p>	<p>DC Code 2003–35 § 1–15-35. Reorg of Plan for the Office of Risk Management</p> <p>(c) The Risk Management Council shall:</p> <p>(10) Coordinate internal agency emergency response plan development and maintenance include plans for COOP in the event of any emergency, and definition of interaction points with the</p>	<p>DC Code § 2–534. Exemptions from disclosure.</p> <p>(a) The following matters may be exempt from disclosure under the provisions of this subchapter:</p> <p>(13) Information exempt from disclosure by § 7–2271.04;</p> <p>§ 7–2271.04. Confidentiality of proceedings.</p> <p>(a) Commission proceedings shall be</p>	<p>DC Code § 7–2302. Establishment of program of public emergency preparedness; publication.</p> <p>(a) The mayor may establish a program of public emergency prep that utilizes the services of all appropriate agencies (include the Homeland Security and Emergency Management Agency) and the program shall include, but not be limited to:</p> <p>(1) Development of a DC response</p>

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http://orm.dc.gov/publication/continuity-operations-template	<p>external District Emergency Response Plan coordinated by the Emergency Management Agency.</p> <p>DDC Code § 7–2205</p> <p>§ 7–2205. Powers and Duties.</p> <p>The Homeland Security and Emergency Management Agency is authorized and directed, subject to the direction and control of the mayor of the district:</p> <p>(1) To prepare a comprehensive plan and program for civil defense, such plan and program to be integrated into and coordinated with the civil defense plans of the federal government, and of nearby states and appropriate pol subdivisions;</p> <p>§ 7–2304. Issuance of emergency executive order; contents; actions of Mayor after issuance.</p> <p>(b) Upon the issuance of an emergency executive order the Mayor may:</p> <p>(6) Issue orders or regulations</p>	<p>closed to the public and shall not be subject to § 1–207.42 when the Committee is discussing specific public and private vulnerability assessments or where the information discussed would:</p> <p>(1) Reveal a trade secret or privileged or confidential commercial or financial information; or</p> <p>(2) Be detrimental to public safety.</p>	<p>plan which would:</p> <p>(A) Set forth a comprehensive and detailed D.C. state program for prep against, and assistance following, emergencies and major disasters, include provisions for assistance to individuals, businesses, and affected designated subdivisions of the DC; and (B) Including provisions for: Appointment and training of appropriate staffs; formulation of necessary regulations and procedures; and conduct of required exercises;</p> <p>(2) Post public emergency evaluations;</p> <p>(3) Periodic review of programs; and</p> <p>(4) Coordination of federal and state prep programs.</p> <p>(b) Except as provided in subsection (c) of this section, the Mayor shall publish in the D.C. Register, for notice and comment, any program or plan for public emergency prep prepared pursuant to this chapter. The publication shall, at a minimum, state the subject matter of the program or plan and the specific manner in which a complete copy can be obtained or reviewed and commented upon prior to the</p>

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	to control, restrict, allocate, or regulate the use, sale, production and distribution of food, fuel, clothing, and other commodities, materials, goods, services, and resources as required by the DC response plan or by any federal emergency plan;		transmittal of the plan or program to the Council of the DC. (c) Any specific response plan, and any specific vulnerability assessment, either of which is intended to prevent or to mitigate an act of terrorism, as that term is defined in § 22–3152(1), shall be exempt from the requirements in subsection (b) of this section.
Guam	10 GCA § 65A001 et seq. The Disaster Recovery Relief Act of 2002. Only on mention of COOP in any Guam statutes: § 20205. Powers and Duties of the Chief Technology Officer; Generally (10) direct the formulation and promulgation of policies, guidelines, standards and specifications for the development and maintenance of information technology and technical infrastructure, including, but not limited to: (F) technical and data standards for the connectivity, priorities and interoperability of technical infrastructure used for homeland security,	5 GCA §§ 10104 & 10108 Limitation on Right of Inspection include (b) Records of complaints to, or investigations conducted by, or records of intelligence information, or security procedures or information, of an agency or its personnel. & (j) Records specifically pertaining to security procedures, passwords, combinations, access codes, electronic or computer user I.D.s, policies or procedures on security.	

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	public safety and health, and systems reliability necessary to provide continuity of government operations in times of disaster or emergency. Various and dispersed emergency-related statutes including hiring of additional personnel § 4106 Personnel Rules. a		
Puerto Rico	25 L.P.R.A. § 172. Statement of public policy—creates the P.R. Emergency Management Agency, to coordinate all P.R, federal, municipal and private emergency plans and process offers of help. 25 L.P.R.A. § 172e. director—Authorities and powers. Emergency Management and Disaster Admin Powers include powers necessary to carry out duties: enforce duties, adoption of plans, Execute contracts, adopt regulations, Organize and train groups, Plan for all phases of emergency and disaster management, etc. § 172h. Appointment of interagency coordinators. Agency Emergency Coordinators shall (among other items) prepare an	3 L.P.R.A. Chapter 41, § 1001–1013, § 1002. Admin of Public Doc Program in Three Branches of Government and the Comptroller. Various Program Admins, i.e., P.R. comptroller, through regulations (rules), publish lists of public but confidential documents not subject to inspection.	25 L.P.R.A. § 162. Statement of policy & § 164 Emergency interim successors. Establishes a post-attack emergency line of succession for P.R. state agencies and public corporations. Unfortunately, Lexis/ Nexis only has Spanish versions of P.R. regulations: “Reglamentos Administrativos de Puerto Rico.” Only the rule titles are searchable as the rules are non-searchable pdf files—all in Spanish. PR COOP exercise 2012 link: https://www.atu.edu/research/professionaldevelopmentgrants/11-12/iherinalreportobservationofthemaremotollnationalcoopexerciseforthenationofpuertorico.pdf

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	emergency recovery plan to return the Island to its normal conditions as soon as possible.		

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APPENDIX B. SUMMATION OF LAWS POTENTIALLY APPLICABLE IN COOP CONFIDENTIALITY OR WITHHOLDING

The following categorizations of COOP plan confidentiality are summarized based on the information and resources identified in Appendix A:

A. States in Which Confidentiality or Open Record Statutes Would Likely Not Shield COOP-Related Information or Plans from Open Records Requests:

Arizona
Arkansas
California
Florida
Idaho
Massachusetts
Mississippi
Missouri
North Dakota
Rhode Island
Wisconsin

B. States Where Confidentiality or Open Record Statutes Might Plausibly Exclude COOP-Related Information or Plans from Disclosure as a Safety or Security-Type Open Records Exemption:

Alabama
Alaska
Colorado
Connecticut
Delaware
Georgia:
Hawaii
Illinois
Indiana
Iowa

Kansas
Kentucky
Louisiana
Maine
Maryland
Michigan
Minnesota
Montana
Nebraska
Nevada
New Hampshire
New Jersey
New Mexico
New York
North Carolina
Ohio
Oklahoma
Oregon
Pennsylvania
South Carolina
South Dakota
Tennessee
Utah
Vermont
Virginia
Washington
West Virginia
Wyoming
Washington, DC

C. States Where Confidentiality or Open Record Statutes Conclusively Exclude COOP-Related Information or Plans from Disclosure:

Texas

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