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**GOVERNMENT RECORDS ACCESS AND
MANAGEMENT ACT**

1998 GENERAL SESSION

STATE OF UTAH

Sponsor: John E. Swallow

AN ACT RELATING TO DISCLOSURE OF GOVERNMENT RECORDS; MODIFYING PROVISIONS GOVERNING DISCLOSURE OF CERTAIN MEDICAL RECORDS; AND MAKING TECHNICAL CORRECTIONS.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:

63-2-207, as last amended by Chapter 99, Laws of Utah 1994

63-2-302, as last amended by Chapter 232, Laws of Utah 1997

Be it enacted by the Legislature of the state of Utah:

Section 1. Section **63-2-207** is amended to read:

63-2-207. Subpoenas.

(1) Subpoenas and other methods of discovery under the state or federal statutes or rules of civil, criminal, administrative, or legislative procedure are not written requests under Section 63-2-204.

(2) (a) ~~[It]~~ (i) Except as provided in Subsection (2)(c), in judicial or administrative proceedings in which an individual is requesting discovery of records classified private, controlled, or protected under this [act] chapter, or otherwise restricted from access by other statutes, the court, or an administrative law judge shall follow the procedure in Subsection 63-2-202(7) before ordering disclosure.

(ii) Until the court or an administrative law judge orders disclosure, these records are privileged from discovery.

(b) If, the court or administrative order requires disclosure, the terms of the order may limit the requester's further use and disclosure of the record in accordance with Subsection 63-2-202(7),

1 in order to protect the privacy interests recognized in this [act] chapter.

2 (c) [This] Unless a court or administrative law judge imposes limitations in a restrictive
3 order, this section does not [otherwise] limit [a person's] the right to obtain:

4 (i) records through the procedures set forth in this chapter[~~unless the court or an~~
5 ~~administrative law judge includes such a limitation in its order.~~]; or

6 (ii) medical records discoverable under state or federal court rules as authorized by
7 Subsection 63-2-302(3).

8 Section 2. Section **63-2-302** is amended to read:

9 **63-2-302. Private records.**

10 (1) The following records are private:

11 (a) records concerning an individual's eligibility for unemployment insurance benefits,
12 social services, welfare benefits, or the determination of benefit levels;

13 (b) records containing data on individuals describing medical history, diagnosis, condition,
14 treatment, evaluation, or similar medical data;

15 (c) records of publicly funded libraries that when examined alone or with other records
16 identify a patron;

17 (d) records received or generated for a Senate or House Ethics Committee concerning any
18 alleged violation of the rules on legislative ethics, prior to the meeting, and after the meeting, if
19 the ethics committee meeting was closed to the public;

20 (e) records received or generated for a Senate confirmation committee concerning
21 character, professional competence, or physical or mental health of an individual:

22 (i) if prior to the meeting, the chair of the committee determines release of the records:

23 (A) reasonably could be expected to interfere with the investigation undertaken by the
24 committee; or

25 (B) would create a danger of depriving a person of a right to a fair proceeding or impartial
26 hearing;

27 (ii) after the meeting, if the meeting was closed to the public;

28 (f) records concerning a current or former employee of, or applicant for employment with,
29 a governmental entity that would disclose that individual's home address, home telephone number,
30 social security number, insurance coverage, marital status, or payroll deductions; and

31 (g) that part of a record indicating a person's social security number if provided under

1 Section 31A-23-202, 31A-26-202, 58-1-301, 61-1-4, or 61-2-6.

2 (2) The following records are private if properly classified by a governmental entity:

3 (a) records concerning a current or former employee of, or applicant for employment with
4 a governmental entity, including performance evaluations and personal status information such as
5 race, religion, or disabilities, but not including records that are public under Subsection
6 63-2-301(1)(b) or 63-2-301(2)(o), or private under Subsection 63-2-302(1)(b);

7 (b) records describing an individual's finances, except that the following are public:

8 (i) records described in Subsection 63-2-301(1);

9 (ii) information provided to the governmental entity for the purpose of complying with a
10 financial assurance requirement; or

11 (iii) records that must be disclosed in accordance with another statute;

12 (c) records of independent state agencies if the disclosure of those records would conflict
13 with the fiduciary obligations of the agency;

14 (d) other records containing data on individuals the disclosure of which constitutes a
15 clearly unwarranted invasion of personal privacy; and

16 (e) records provided by the United States or by a government entity outside the state that
17 are given with the requirement that the records be managed as private records, if the providing
18 entity states in writing that the record would not be subject to public disclosure if retained by it.

19 (3) (a) As used in this Subsection (3), "medical records" means medical reports, records,
20 statements, history, diagnosis, condition, treatment, evaluation, and other medical data arising out
21 of, related to, or acquired during the treatment of a patient.

22 (b) Medical records in the possession of the University of Utah Hospital, its clinics,
23 doctors, or affiliated entities are not private records when the records are sought:

24 (i) in connection with any legal or administrative proceeding in which the patient's
25 physical, mental, or emotional condition is an element of any claim or defense; or

26 (ii) after a patient's death, in any legal or administrative proceeding in which any party
27 relies upon the condition as an element of the claim or defense.

28 (c) Medical records are subject to production in a legal or administrative proceeding
29 according to state or federal statutes or rules of procedure and evidence as if the medical records
30 were in the possession of a nongovernmental medical care provider.

Legislative Review Note

as of 2-4-98 5:33 PM

A limited legal review of this bill raises no obvious constitutional or statutory concerns.

Office of Legislative Research and General Counsel