

**PRIVATE RECORDS AMENDMENTS UNDER
GOVERNMENT RECORDS ACCESS AND
MANAGEMENT ACT**

2002 GENERAL SESSION

STATE OF UTAH

Sponsor: Michael G. Waddoups

This act modifies the Government Records Access and Management Act by modifying provisions relating to employee records. This act repeals conflicting provisions enacted in 2001. The substantive provisions of this act take effect July 1, 2003, while the repealers take effect July 1, 2002.

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

AMENDS:

17-21-17, as last amended by Chapter 241, Laws of Utah 2001

17-21-19, as last amended by Chapter 241, Laws of Utah 2001

63-2-201, as last amended by Chapter 194, Laws of Utah 1994

63-2-301 (Superseded 07/01/02), as last amended by Chapter 48, Laws of Utah 1999

63-2-302 (Superseded 07/01/02), as last amended by Chapter 48, Laws of Utah 1999

63-2-803 (Superseded 07/01/02), as last amended by Chapter 280, Laws of Utah 1992

ENACTS:

63-2-302.5, Utah Code Annotated 1953

REPEALS:

Changes to Utah Law made by:

Chapter 74, Laws of Utah 2001

Chapter 8, Laws of Utah 2001, First Special Session

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

Section 1. Section **17-21-17** is amended to read:

17-21-17. Prohibited acts.

(1) Upon acceptance of an instrument entitled to be recorded, the recorder may not:

~~[(+)]~~ (a) record the instrument in any manner other than the manner required by this

chapter; or

~~[(2)]~~ (b) alter, change, obliterate, or insert any new matter in any instrument of record.

(2) It is not a prohibited act under this section when a recorder denies access to:

(a) an instrument of record that has been classified as private under Section 63-2-302; or

(b) a portion of an instrument of record that has been classified as private under Section 63-2-302.

Section 2. Section **17-21-19** is amended to read:

17-21-19. Records open to inspection -- Copies.

(1) ~~[AH]~~ Unless otherwise classified as private under Section 63-2-302, all instruments of record and all indexes required by this chapter are open to public inspection during office hours.

(2) Upon payment of the applicable fee, a person may obtain copies of ~~[the]~~ a public record.

Section 3. Section **63-2-201** is amended to read:

63-2-201. Right to inspect records and receive copies of records.

(1) Every person has the right to inspect a public record free of charge, and the right to take a copy of a public record during normal working hours, subject to Sections 63-2-203 and 63-2-204.

(2) All records are public unless otherwise expressly provided by statute.

(3) The following records are not public:

(a) records that are private, controlled, or protected under Sections 63-2-302, 63-2-302.5, 63-2-303, and 63-2-304; and

(b) records to which access is restricted pursuant to court rule, another state statute, federal statute, or federal regulation, including records for which access is governed or restricted as a condition of participation in a state or federal program or for receiving state or federal funds.

(4) Only those records specified in Section 63-2-302, 63-2-302.5, 63-2-303, or 63-2-304 may be classified private, controlled, or protected.

(5) (a) A governmental entity may not disclose a record that is private, controlled, or protected to any person except as provided in Subsection (5)(b), Section 63-2-202, ~~[or Section]~~ 63-2-206, or 63-2-302.5.

(b) A governmental entity may disclose records that are private under Subsection

63-2-302(2) or protected under Section 63-2-304 to persons other than those specified in Section 63-2-202 or 63-2-206 if the head of a governmental entity, or a designee, determines that there is no interest in restricting access to the record, or that the interests favoring access outweighs the interest favoring restriction of access.

(6) (a) The disclosure of records to which access is governed or limited pursuant to court rule, another state statute, federal statute, or federal regulation, including records for which access is governed or limited as a condition of participation in a state or federal program or for receiving state or federal funds, is governed by the specific provisions of that statute, rule, or regulation.

(b) This chapter applies to records described in Subsection (6)(a) insofar as this chapter is not inconsistent with the statute, rule, or regulation.

(7) A governmental entity shall provide a person with a certified copy of a record if:

- (a) the person requesting the record has a right to inspect it;
- (b) the person identifies the record with reasonable specificity; and
- (c) the person pays the lawful fees.

(8) (a) A governmental entity is not required to create a record in response to a request.

(b) Upon request, a governmental entity shall provide a record in a particular format if:

- (i) the governmental entity is able to do so without unreasonably interfering with the governmental entity's duties and responsibilities; and
- (ii) the requester agrees to pay the governmental entity for its costs incurred in providing the record in the requested format in accordance with Section 63-2-203.

(c) Nothing in this section requires a governmental entity to fulfill a person's records request if the request unreasonably duplicates prior records requests from that person.

(9) If a person requests copies of more than 50 pages of records from a governmental entity, and, if the records are contained in files that do not contain records that are exempt from disclosure, the governmental entity may:

- (a) provide the requester with the facilities for copying the requested records and require that the requester make the copies himself; or
- (b) allow the requester to provide his own copying facilities and personnel to make the

copies at the governmental entity's offices and waive the fees for copying the records.

(10) (a) A governmental entity that owns an intellectual property right and that offers the intellectual property right for sale or license may control by ordinance or policy the duplication and distribution of the material based on terms the governmental entity considers to be in the public interest.

(b) Nothing in this chapter shall be construed to limit or impair the rights or protections granted to the governmental entity under federal copyright or patent law as a result of its ownership of the intellectual property right.

(11) A governmental entity may not use the physical form, electronic or otherwise, in which a record is stored to deny, or unreasonably hinder the rights of persons to inspect and receive copies of a record under this chapter.

Section 4. Section **63-2-301 (Superseded 07/01/02)** is amended to read:

63-2-301 (Superseded 07/01/02). Records that must be disclosed.

(1) The following records are public except to the extent they contain information expressly permitted to be treated confidentially under the provisions of Subsections 63-2-201(3)(b) and (6)(a):

(a) laws;

(b) names, gender, gross compensation, job titles, job descriptions, business addresses, business telephone numbers, number of hours worked per pay period, dates of employment, and relevant education, previous employment, and similar job qualifications of the governmental entity's former and present employees and officers excluding:

(i) undercover law enforcement personnel; and

(ii) investigative personnel if disclosure could reasonably be expected to impair the effectiveness of investigations or endanger any individual's safety;

(c) final opinions, including concurring and dissenting opinions, and orders that are made by a governmental entity in an administrative, adjudicative, or judicial proceeding except that if the proceedings were properly closed to the public, the opinion and order may be withheld to the extent that they contain information that is private, controlled, or protected;

(d) final interpretations of statutes or rules by a governmental entity unless classified as

protected as provided in Subsections 63-2-304(15), (16), and (17);

(e) information contained in or compiled from a transcript, minutes, or report of the open portions of a meeting of a governmental entity as provided by Title 52, Chapter 4, Open and Public Meetings, including the records of all votes of each member of the governmental entity;

(f) judicial records unless a court orders the records to be restricted under the rules of civil or criminal procedure or unless the records are private under this chapter;

(g) unless otherwise classified as private under Section 63-2-302.5, records or parts of records filed with or maintained by county recorders, clerks, treasurers, surveyors, zoning commissions, the Division of Forestry, Fire and State Lands, the School and Institutional Trust Lands

Administration, the Division of Oil, Gas and Mining, the Division of Water Rights, or other governmental entities that give public notice of:

(i) titles or encumbrances to real property;

(ii) restrictions on the use of real property;

(iii) the capacity of persons to take or convey title to real property; or

(iv) tax status for real and personal property;

(h) records of the Department of Commerce that evidence incorporations, mergers, name changes, and uniform commercial code filings;

(i) data on individuals that would otherwise be private under this chapter if the individual who is the subject of the record has given the governmental entity written permission to make the records available to the public;

(j) documentation of the compensation that a governmental entity pays to a contractor or private provider;

(k) summary data; and

(l) voter registration records, including an individual's voting history, except for those parts of the record that are classified as private in Subsection 63-2-302(1)(h).

(2) The following records are normally public, but to the extent that a record is expressly exempt from disclosure, access may be restricted under Subsection 63-2-201(3)(b), Section 63-2-302, 63-2-303, or 63-2-304:

- (a) administrative staff manuals, instructions to staff, and statements of policy;
 - (b) records documenting a contractor's or private provider's compliance with the terms of a contract with a governmental entity;
 - (c) records documenting the services provided by a contractor or a private provider to the extent the records would be public if prepared by the governmental entity;
 - (d) contracts entered into by a governmental entity;
 - (e) any account, voucher, or contract that deals with the receipt or expenditure of funds by a governmental entity;
 - (f) records relating to government assistance or incentives publicly disclosed, contracted for, or given by a governmental entity, encouraging a person to expand or relocate a business in Utah, except as provided in Subsection 63-2-304(34);
 - (g) chronological logs and initial contact reports;
 - (h) correspondence by and with a governmental entity in which the governmental entity determines or states an opinion upon the rights of the state, a political subdivision, the public, or any person;
 - (i) empirical data contained in drafts if:
 - (i) the empirical data is not reasonably available to the requester elsewhere in similar form;
- and
- (ii) the governmental entity is given a reasonable opportunity to correct any errors or make nonsubstantive changes before release;
 - (j) drafts that are circulated to anyone other than:
 - (i) a governmental entity;
 - (ii) a political subdivision;
 - (iii) a federal agency if the governmental entity and the federal agency are jointly responsible for implementation of a program or project that has been legislatively approved;
 - (iv) a government-managed corporation; or
 - (v) a contractor or private provider;
 - (k) drafts that have never been finalized but were relied upon by the governmental entity in

carrying out action or policy;

(l) original data in a computer program if the governmental entity chooses not to disclose the program;

(m) arrest warrants after issuance, except that, for good cause, a court may order restricted access to arrest warrants prior to service;

(n) search warrants after execution and filing of the return, except that a court, for good cause, may order restricted access to search warrants prior to trial;

(o) records that would disclose information relating to formal charges or disciplinary actions against a past or present governmental entity employee if:

(i) the disciplinary action has been completed and all time periods for administrative appeal have expired; and

(ii) the charges on which the disciplinary action was based were sustained;

(p) records maintained by the Division of Forestry, Fire and State Lands, the School and Institutional Trust Lands Administration, or the Division of Oil, Gas and Mining that evidence mineral production on government lands;

(q) final audit reports;

(r) occupational and professional licenses;

(s) business licenses; and

(t) a notice of violation, a notice of agency action under Section 63-46b-3, or similar records used to initiate proceedings for discipline or sanctions against persons regulated by a governmental entity, but not including records that initiate employee discipline.

(3) The list of public records in this section is not exhaustive and should not be used to limit access to records.

Section 5. Section **63-2-302 (Superseded 07/01/02)** is amended to read:

63-2-302 (Superseded 07/01/02). Private records.

(1) The following records are private:

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

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

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

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

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

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

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

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

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

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

(g) records or parts of records under Section 63-2-302.5 that a current or former employee identifies as private according to the requirements of that section;

~~(g)~~ (h) that part of a record indicating a person's Social Security number if provided under Section 31A-23-202, 31A-26-202, 58-1-301, 61-1-4, or 61-2-6; and

~~(h)~~ (i) that part of a voter registration record identifying a voter's driver license or identification card number, Social Security number, or last four digits of the Social Security number.

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

(a) records concerning a current or former employee of, or applicant for employment with a governmental entity, including performance evaluations and personal status information such as race, religion, or disabilities, but not including records that are public under Subsection

63-2-301(1)(b) or 63-2-301(2)(o), or private under Subsection 63-2-302(1)(b);

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

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

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

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

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

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

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

(3) (a) As used in this Subsection (3), "medical records" means medical reports, records, statements, history, diagnosis, condition, treatment, and evaluation.

(b) Medical records in the possession of the University of Utah Hospital, its clinics, doctors, or affiliated entities are not private records or controlled records under Section 63-2-303 when the records are sought:

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

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

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

Section 6. Section **63-2-302.5** is enacted to read:

63-2-302.5. Private information concerning certain government employees.

(1) As used in this section:

(a) "At-risk government employee" means a current or former:

(i) peace officer as specified in Section 53-13-104;

(ii) supreme court justice;

(iii) judge of an appellate, district, or juvenile court;

(iv) justice court judge;

(v) judge authorized by Title 39, Chapter 6, Utah Code of Military Justice;

(vi) federal judge;

(vii) federal magistrate judge;

(viii) judge authorized by Armed Forces, Title 10, United States Code;

(ix) United States Attorney;

(x) Assistant United States Attorney;

(xi) a prosecutor appointed pursuant to Armed Forces, Title 10, United States Code;

(xii) a law enforcement official as defined in Section 53-5-711; or

(xiii) a prosecutor authorized by Title 39, Chapter 6, Utah Code of Military Justice.

(b) "Family member" means the spouse, child, sibling, parent, or grandparent of an at-risk government employee who is living with the employee.

(2) (a) Pursuant to Subsection 63-2-302(1)(g), an at-risk government employee may file a written application that:

(i) gives notice of the employee's status to each agency of a government entity holding a record or a part of a record that would disclose the employee's or the employee's family member's home address, home telephone number, Social Security number, insurance coverage, marital status, or payroll deductions; and

(ii) requests that the government agency classify those records or parts of records private.

(b) An at-risk government employee desiring to file an application under this section may request assistance from the government agency to identify the individual records containing the private information specified in Subsection (2)(a)(i).

(c) Each government agency shall develop a form that:

(i) requires the at-risk government employee to provide evidence of qualifying employment;

(ii) requires the at-risk government employee to designate each specific record or part of a record containing the employee's home address, home telephone number, Social Security number, insurance coverage, marital status, or payroll deductions that the applicant desires to be classified as private; and

(iii) affirmatively requests that the government entity holding those records classify them as private.

(3) A county recorder, county treasurer, county auditor, or a county tax assessor may fully satisfy the requirements of this section by:

(a) providing a method for the assessment roll and index and the tax roll and index that will block public access to the home address, home telephone number, situs address, and Social Security number; and

(b) providing the at-risk government employee requesting the classification with a disclaimer informing the employee that the employee may not receive official announcements affecting the employee's property, including notices about proposed annexations, incorporations, or zoning modifications.

(4) A government agency holding records of an at-risk government employee classified as private under this section may release the record or part of the record if:

(a) the employee or former employee gives written consent;

(b) a court orders release of the records; or

(c) the government agency receives a certified death certificate for the employee or former employee.

(5) (a) If the government agency holding the private record receives a subpoena for the records, the government agency shall attempt to notify the at-risk government employee or former employee by mailing a copy of the subpoena to the employee's last-known mailing address together with a request that the employee either:

(i) authorize release of the record; or

(ii) within ten days of the date that the copy and request are mailed, deliver to the government agency holding the private record a copy of a motion to quash filed with the court who

issued the subpoena.

(b) The government agency shall comply with the subpoena if the government agency has:

(i) received permission from the at-risk government employee or former employee to comply with the subpoena;

(ii) has not received a copy of a motion to quash within ten days of the date that the copy of the subpoena was mailed; or

(iii) receives a court order requiring release of the records.

Section 7. Section **63-2-803 (Superseded 07/01/02)** is amended to read:

63-2-803 (Superseded 07/01/02). No liability for certain decisions of a governmental entity or a political subdivision.

(1) Neither the governmental entity or political subdivision, nor any officer or employee of the governmental entity or political subdivision, is liable for damages resulting from the release of a record where the person or government requesting the record presented evidence of authority to obtain the record even if it is subsequently determined that the requester had no authority.

(2) Neither the governmental entity or political subdivision, nor any officer or employee of the governmental entity or political subdivision, is liable for damages arising from the negligent disclosure of records classified as private under Subsection 63-2-302(1)(f) unless:

(a) the disclosure was of employment records maintained by the governmental entity; or

(b) the current or former government employee had previously filed the notice required by Section 63-2-302.5 and:

(i) the government entity did not take reasonable steps to preclude access or distribution of the record; or

(ii) the release of the record was otherwise willfully or grossly negligent.

(3) A mailing from a government agency to an individual who has filed an application under Section 63-2-302.5 is not a wrongful disclosure under this chapter.

Section 8. **Repealer.**

This act repeals changes to Utah Law made by:

Chapter 74, Laws of Utah 2001; and

Chapter 8, Laws of Utah 2001, First Special Session.

Section 9. Effective dates.

(1) The amendments to Sections 17-21-17, 17-21-19, 63-2-201, 63-2-301, 63-2-302, and 63-2-803 and enacted Section 63-2-302.5 take effect on July 1, 2003.

(2) Section 8, Repealer, which repeals changes to Utah Law made by Chapter 74, Laws of Utah 2001 and by Chapter 8, Laws of Utah 2001, First Special Session takes effect on July 1, 2002.