

1 **ACCESS AND FEE AMENDMENTS TO**
2 **GOVERNMENT RECORDS ACCESS AND**
3 **MANAGEMENT ACT**

4 2006 GENERAL SESSION

5 STATE OF UTAH

6 **Chief Sponsor: Douglas C. Aagard**

7 Senate Sponsor: _____

8
9 **LONG TITLE**

10 **General Description:**

11 This bill modifies the Government Records Access and Management Act by amending
12 certain provisions related to protected records, manipulation of records, and fees for
13 access of certain records.

14 **Highlighted Provisions:**

15 This bill:

- 16 ▶ provides that an individual's home address, home telephone number, or personal
17 mobile phone number is a protected record, if:
- 18 • the information is required to be provided in order to comply with a law; and
 - 19 • by complying with the law and due to the nature of the law the subject of the
20 record has a reasonable expectation that this information will be protected;
- 21 ▶ allows the disclosure of an individual's home address or phone numbers that are
22 otherwise protected if:
- 23 • the head of the governmental entity determines that the disclosure is mutually
24 beneficial to the subject of the record, the governmental entity, and to the public
25 by serving a public purpose related to public safety or consumer protection; and
 - 26 • the person who receives the record from the governmental entity agrees not to
27 use or allow its use for advertising or solicitation purposes;



- 28 ▶ provides that in response to a request, a governmental entity is not required to:
- 29 • compile, format, manipulate, package, summarize, or tailor information;
- 30 • provide a record in a particular format, medium, or program; or
- 31 • fulfill a person's records request if the information requested is included in a
- 32 publication or product of a governmental entity;
- 33 ▶ allows rather than requires a governmental entity to provide a record in a particular
- 34 form if the governmental entity determines it is able to do so without unreasonably
- 35 interfering with its duties;
- 36 ▶ ~~H~~→ [allows] prohibits ←~~H~~ a governmental entity to charge additional fees
- 36a above the actual costs as
- 37 determined by the governmental entity's executive officer, for requests from
- 38 nongovernmental entities for a series of records if the records are provided in an
- 39 electronic spreadsheet format, in an electronic database format, or for the purpose of
- 40 resale of the records;
- 41 ▶ requires additional fees to be reasonable and prohibits additional fees to be designed
- 42 to compete with a private business that provides substantially similar services;
- 43 ▶ allows contractors and private providers to receive private, controlled, or protected
- 44 records under certain circumstances;
- 45 ▶ provides that improper use of a record is a class B misdemeanor; and
- 46 ▶ makes technical changes.

47 **Monies Appropriated in this Bill:**

48 None

49 **Other Special Clauses:**

50 None

51 **Utah Code Sections Affected:**

52 AMENDS:

53 **63-2-201**, as last amended by Chapter 40, Laws of Utah 2005

54 **63-2-203**, as last amended by Chapter 40, Laws of Utah 2005

55 **63-2-206**, as last amended by Chapter 63, Laws of Utah 2002

56 **63-2-304**, as last amended by Chapters 2, 131, 201, 214, 256 and 297, Laws of Utah

57 2005

58 **63-2-801**, as last amended by Chapter 280, Laws of Utah 1992

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

Section 1. 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) A record is public unless otherwise expressly provided by statute.

(3) The following records are not public:

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

(b) a record 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 a record 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), Subsection (5)(c), Section 63-2-202, 63-2-206, or 63-2-302.5.

(b) A governmental entity may disclose a record that is 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:

(i) there is no interest in restricting access to the record; or

(ii) the interests favoring access outweighs the interest favoring restriction of access.

(c) In addition to the disclosure under Subsection (5)(b), a governmental entity may disclose a record that is protected under Subsection 63-2-304(51) if:

(i) the head of the governmental entity, or a designee, determines that the disclosure:

(A) is mutually beneficial to:

(I) the subject of the record;

90 (II) the governmental entity; and

91 (III) the public; and

92 (B) serves a public purpose related to:

93 (I) public safety; or

94 (II) consumer protection; and

95 (ii) the person who receives the record from the governmental entity agrees not to use
96 or allow the use of the record for advertising or solicitation purposes.

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

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

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

105 (a) the person requesting the record has a right to inspect it;

106 (b) the person identifies the record with reasonable specificity; and

107 (c) the person pays the lawful fees.

108 (8) (a) ~~[A]~~ In response to a request, a governmental entity is not required to:

109 (i) create a record [in response to a request.];

110 (ii) compile, format, manipulate, package, summarize, or tailor information;

111 (iii) provide a record in a particular format, medium, or program; or

112 (iv) fulfill a person's records request if:

113 (A) the request unreasonably duplicates prior records requests from that person; or

114 (B) the information requested is included in a public publication or product produced
115 by a governmental entity.

116 (b) Upon request, a governmental entity ~~[shall]~~ may provide a record in a particular
117 [format] form under Subsection (8)(a)(ii) or (iii) if:

118 (i) the governmental entity determines it is able to do so without unreasonably
119 interfering with the governmental entity's duties and responsibilities; and

120 (ii) the requester agrees to pay the governmental entity for ~~[its costs incurred in]~~

121 providing the record in the requested [~~format~~] form in accordance with Section 63-2-203.

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

124 (9) (a) A governmental entity may allow a person requesting more than 50 pages of
125 records to copy the records if:

126 (i) the records are contained in files that do not contain records that are exempt from
127 disclosure, or the records may be segregated to remove private, protected, or controlled
128 information from disclosure; and

129 (ii) the governmental entity provides reasonable safeguards to protect the public from
130 the potential for loss of a public record.

131 (b) When the requirements of Subsection (9)(a) are met, the governmental entity may:

132 (i) provide the requester with the facilities for copying the requested records and
133 require that the requester make the copies; or

134 (ii) allow the requester to provide the requester's own copying facilities and personnel
135 to make the copies at the governmental entity's offices and waive the fees for copying the
136 records.

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

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

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

147 (12) A governmental entity may provide access to an electronic copy of a record in lieu
148 of providing access to its paper equivalent.

149 Section 2. Section **63-2-203** is amended to read:

150 **63-2-203. Fees.**

151 (1) A governmental entity may charge a reasonable fee to cover the governmental

152 entity's actual cost of [~~duplicate~~] providing a record. This fee shall be approved by the
153 governmental entity's executive officer.

154 (2) (a) When a governmental entity compiles a record in a form other than that
155 normally maintained by the governmental entity, the actual costs under this section may include
156 the following:

157 (i) the cost of staff time for [~~summarizing,~~] compiling, formatting, manipulating,
158 packaging, summarizing, or tailoring the record either into an organization or media to meet
159 the person's request;

160 (ii) the cost of staff time for search, retrieval, and other direct administrative costs for
161 complying with a request; and

162 (iii) in the case of fees for a record that is the result of computer output other than word
163 processing, the actual incremental cost of providing the electronic services and products
164 together with a reasonable portion of the costs associated with formatting or interfacing the
165 information for particular users, and the administrative costs as set forth in Subsections
166 (2)(a)(i) and (ii).

167 (b) An hourly charge under Subsection (2)(a) may not exceed the salary of the lowest
168 paid employee who, in the discretion of the custodian of records, has the necessary skill and
169 training to perform the request.

170 (c) Notwithstanding Subsections (2)(a) and (b), no charge may be made for the first
171 quarter hour of staff time.

172 (d) (i) In addition to the charges made under Subsection (2)(a), a governmental entity
173 that provides to a requestor a series of records may charge additional fees determined by the
174 governmental entity's executive officer if the records are provided:

175 (A) in an electronic spreadsheet format;

176 (B) in an electronic database format; or

177 (C) for the purpose of resale of the records.

178 (ii) The additional fees under this section:

179 (A) shall be reasonable;

180 (B) may ~~not~~ include charges above the actual costs to fill the request;

181 (C) are exempt from the limitations provided under Subsections (2)(b) and (c); and

182 (D) may not be designed to compete with private business that provides substantially

183 similar information.

184 (iii) This Subsection (2)(d) does not apply if:

185 (A) ~~H→~~ (I) ~~←H~~ the requestor of records is a governmental entity; and

186 ~~H→~~ [(B)] (II) ~~←H~~ the records are used for the benefit of the public ~~H→~~ ; or

186a (B) the requestor of records demonstrates that release of the records primarily benefits
 186b the public rather than the person requesting the records ~~←H~~ .

187 (3) (a) Fees shall be established as provided in this Subsection (3).

188 (b) A governmental entity with fees established by the Legislature:

189 (i) shall establish the fees defined in Subsection (2), or other actual costs associated
 190 with this section through the budget process; and

191 (ii) may use the procedures of Section 63-38-3.2 to set fees until the Legislature
 192 establishes fees through the budget process.

193 (c) Political subdivisions shall establish fees by ordinance or written formal policy
 194 adopted by the governing body.

195 (d) The judiciary shall establish fees by rules of the judicial council.

196 (4) A governmental entity may fulfill a record request without charge and is
 197 encouraged to do so when it determines that:

198 (a) releasing the record primarily benefits the public rather than a person;

199 (b) the individual requesting the record is the subject of the record, or an individual
 200 specified in Subsection 63-2-202(1) or (2); or

201 (c) the requester's legal rights are directly implicated by the information in the record,
 202 and the requester is impecunious.

203 (5) A governmental entity may not charge a fee for:

204 (a) reviewing a record to determine whether it is subject to disclosure, except as
 205 permitted by Subsection (2)(a)(ii); or

206 (b) inspecting a record.

207 (6) (a) A person who believes that there has been an unreasonable denial of a fee
 208 waiver under Subsection (4) may appeal the denial in the same manner as a person appeals
 209 when inspection of a public record is denied under Section 63-2-205.

210 (b) The adjudicative body hearing the appeal has the same authority when a fee waiver
 211 or reduction is denied as it has when the inspection of a public record is denied.

212 (7) (a) All fees received under this section by a governmental entity subject to
 213 Subsection (3)(b) shall be retained by the governmental entity as a dedicated credit.

214 (b) Those funds shall be used to recover the actual cost and expenses incurred by the
215 governmental entity in providing the requested record or record series.

216 (8) (a) A governmental entity may require payment of past fees and future estimated
217 fees before beginning to process a request if:

218 (i) fees are expected to exceed \$50; or

219 (ii) the requester has not paid fees from previous requests.

220 (b) Any prepaid amount in excess of fees due shall be returned to the requester.

221 (9) This section does not alter, repeal, or reduce fees established by other statutes or
222 legislative acts.

223 (10) (a) Notwithstanding Subsection (3)(c), fees for voter registration records shall be
224 set as provided in this Subsection (10).

225 (b) The lieutenant governor shall:

226 (i) after consultation with county clerks, establish uniform fees for voter registration
227 and voter history records that meet the requirements of this section; and

228 (ii) obtain legislative approval of those fees by following the procedures and
229 requirements of Section 63-38-3.2.

230 Section 3. Section **63-2-206** is amended to read:

231 **63-2-206. Sharing records.**

232 (1) A governmental entity may provide a record that is private, controlled, or protected
233 to another governmental entity, a government-managed corporation, a political subdivision, the
234 federal government, or another state if the requesting entity:

235 (a) serves as a repository or archives for purposes of historical preservation,
236 administrative maintenance, or destruction;

237 (b) enforces, litigates, or investigates civil, criminal, or administrative law, and the
238 record is necessary to a proceeding or investigation;

239 (c) is authorized by state statute to conduct an audit and the record is needed for that
240 purpose; or

241 (d) is one that collects information for presentence, probationary, or parole purposes.

242 (2) (a) A governmental entity may provide a private ~~[or]~~, controlled, or protected

243 record or record series to another governmental entity, a political subdivision, a

244 government-managed corporation, the federal government, or another state if the requesting

245 entity provides written assurance:

246 ~~[(a)]~~ (i) that the record or record series is necessary to the performance of the
247 governmental entity's duties and functions;

248 ~~[(b)]~~ (ii) that the record or record series will be used for a purpose similar to the
249 purpose for which the information in the record or record series was collected or obtained; and

250 ~~[(c)]~~ (iii) that the use of the record or record series produces a public benefit that
251 outweighs the individual privacy right that protects the record or record series.

252 (b) A governmental entity may provide a private, controlled, or protected record or
253 record series to a contractor or a private provider according to the requirements of Subsection
254 (6)(b).

255 ~~[(3) A governmental entity may provide a record or record series that is protected under~~
256 ~~Subsection 63-2-304(1) or (2) to another governmental entity, a political subdivision, a~~
257 ~~government-managed corporation, the federal government, or another state if:]~~

258 ~~[(a) the record is necessary to the performance of the requesting entity's duties and~~
259 ~~functions; or]~~

260 ~~[(b) the record will be used for a purpose similar to the purpose for which the~~
261 ~~information in the record or record series was collected or obtained.]~~

262 ~~[(4)]~~ (3) (a) A governmental entity shall provide a private, controlled, or protected
263 record to another governmental entity, a political subdivision, a government-managed
264 corporation, the federal government, or another state if the requesting entity:

265 (i) is entitled by law to inspect the record;

266 (ii) is required to inspect the record as a condition of participating in a state or federal
267 program or for receiving state or federal funds; or

268 (iii) is an entity described in Subsection (1)(a), (b), (c), or (d).

269 (b) Subsection ~~[(4)]~~ (3)(a)(iii) applies only if the record is a record described in
270 Subsection 63-2-304(4).

271 ~~[(5)]~~ (4) Before disclosing a record or record series under this section to another
272 governmental entity, another state, the United States, ~~[or]~~ a foreign government, or to a
273 contractor or private provider, the originating governmental entity shall:

274 (a) inform the recipient of the record's classification and the accompanying restrictions
275 on access; and

276 (b) if the recipient is not a governmental entity to which this chapter applies, obtain the
277 recipient's written agreement which may be by mechanical or electronic transmission that it
278 will abide by those restrictions on access unless a statute, federal regulation, or interstate
279 agreement otherwise governs the sharing of the record or record series.

280 ~~[(6)]~~ (5) A governmental entity may disclose a record to another state, the United
281 States, or a foreign government for the reasons listed in Subsections (1)[;] and (2)[; and (3)]
282 without complying with the procedures of Subsection (2) or ~~[(5)]~~ (4) if disclosure is authorized
283 by executive agreement, treaty, federal statute, compact, federal regulation, or state statute.

284 ~~[(7)]~~ (6) (a) Subject to ~~[Subsection (7)]~~ Subsections (6)(b) and (c), ~~[a governmental]~~ an
285 entity receiving a record under this section is subject to the same restrictions on disclosure of
286 the record as the originating entity.

287 (b) A contractor or a private provider may receive information under this section only
288 if:

289 (i) the contractor or private provider's use of the record or record series produces a
290 public benefit that outweighs the individual privacy right that protects the record or record
291 series;

292 (ii) the record or record series it requests:

293 (A) is necessary for the performance of a contract with a governmental entity;

294 (B) will only be used for the performance of the contract with the governmental entity;

295 (C) will not be disclosed to any other person; and

296 (D) will not be used for advertising or solicitation purposes; and

297 (iii) the contractor or private provider gives written assurance to the governmental
298 entity that is providing the record or record series that it will adhere to the restrictions of this
299 Subsection (6)(b).

300 ~~[(b)]~~ (c) The classification of a record already held by a governmental entity and the
301 applicable restrictions on disclosure of that record are not affected by the governmental entity's
302 receipt under this section of a record with a different classification that contains information
303 that is also included in the previously held record.

304 ~~[(8)]~~ (7) Notwithstanding any other provision of this section, if a more specific court
305 rule or order, state statute, federal statute, or federal regulation prohibits or requires sharing
306 information, that rule, order, statute, or federal regulation controls.

307 [~~(9)~~] (8) The following records may not be shared under this section:

308 (a) records held by the Division of Oil, Gas and Mining that pertain to any person and
309 that are gathered under authority of Title 40, Chapter 6, Board and Division of Oil, Gas and
310 Mining; and

311 (b) records of publicly funded libraries as described in Subsection 63-2-302(1)(c).

312 [~~(10)~~] (9) Records that may evidence or relate to a violation of law may be disclosed to
313 a government prosecutor, peace officer, or auditor.

314 Section 4. Section **63-2-304** is amended to read:

315 **63-2-304. Protected records.**

316 The following records are protected if properly classified by a governmental entity:

317 (1) trade secrets as defined in Section 13-24-2 if the person submitting the trade secret
318 has provided the governmental entity with the information specified in Section 63-2-308;

319 (2) commercial information or nonindividual financial information obtained from a
320 person if:

321 (a) disclosure of the information could reasonably be expected to result in unfair
322 competitive injury to the person submitting the information or would impair the ability of the
323 governmental entity to obtain necessary information in the future;

324 (b) the person submitting the information has a greater interest in prohibiting access
325 than the public in obtaining access; and

326 (c) the person submitting the information has provided the governmental entity with
327 the information specified in Section 63-2-308;

328 (3) commercial or financial information acquired or prepared by a governmental entity
329 to the extent that disclosure would lead to financial speculations in currencies, securities, or
330 commodities that will interfere with a planned transaction by the governmental entity or cause
331 substantial financial injury to the governmental entity or state economy;

332 (4) records the disclosure of which could cause commercial injury to, or confer a
333 competitive advantage upon a potential or actual competitor of, a commercial project entity as
334 defined in Subsection 11-13-103(4);

335 (5) test questions and answers to be used in future license, certification, registration,
336 employment, or academic examinations;

337 (6) records the disclosure of which would impair governmental procurement

338 proceedings or give an unfair advantage to any person proposing to enter into a contract or
339 agreement with a governmental entity, except that this Subsection (6) does not restrict the right
340 of a person to see bids submitted to or by a governmental entity after bidding has closed;

341 (7) records that would identify real property or the appraisal or estimated value of real
342 or personal property, including intellectual property, under consideration for public acquisition
343 before any rights to the property are acquired unless:

344 (a) public interest in obtaining access to the information outweighs the governmental
345 entity's need to acquire the property on the best terms possible;

346 (b) the information has already been disclosed to persons not employed by or under a
347 duty of confidentiality to the entity;

348 (c) in the case of records that would identify property, potential sellers of the described
349 property have already learned of the governmental entity's plans to acquire the property;

350 (d) in the case of records that would identify the appraisal or estimated value of
351 property, the potential sellers have already learned of the governmental entity's estimated value
352 of the property; or

353 (e) the property under consideration for public acquisition is a single family residence
354 and the governmental entity seeking to acquire the property has initiated negotiations to acquire
355 the property as required under Section 78-34-4.5;

356 (8) records prepared in contemplation of sale, exchange, lease, rental, or other
357 compensated transaction of real or personal property including intellectual property, which, if
358 disclosed prior to completion of the transaction, would reveal the appraisal or estimated value
359 of the subject property, unless:

360 (a) the public interest in access outweighs the interests in restricting access, including
361 the governmental entity's interest in maximizing the financial benefit of the transaction; or

362 (b) when prepared by or on behalf of a governmental entity, appraisals or estimates of
363 the value of the subject property have already been disclosed to persons not employed by or
364 under a duty of confidentiality to the entity;

365 (9) records created or maintained for civil, criminal, or administrative enforcement
366 purposes or audit purposes, or for discipline, licensing, certification, or registration purposes, if
367 release of the records:

368 (a) reasonably could be expected to interfere with investigations undertaken for

369 enforcement, discipline, licensing, certification, or registration purposes;

370 (b) reasonably could be expected to interfere with audits, disciplinary, or enforcement
371 proceedings;

372 (c) would create a danger of depriving a person of a right to a fair trial or impartial
373 hearing;

374 (d) reasonably could be expected to disclose the identity of a source who is not
375 generally known outside of government and, in the case of a record compiled in the course of
376 an investigation, disclose information furnished by a source not generally known outside of
377 government if disclosure would compromise the source; or

378 (e) reasonably could be expected to disclose investigative or audit techniques,
379 procedures, policies, or orders not generally known outside of government if disclosure would
380 interfere with enforcement or audit efforts;

381 (10) records the disclosure of which would jeopardize the life or safety of an
382 individual;

383 (11) records the disclosure of which would jeopardize the security of governmental
384 property, governmental programs, or governmental recordkeeping systems from damage, theft,
385 or other appropriation or use contrary to law or public policy;

386 (12) records that, if disclosed, would jeopardize the security or safety of a correctional
387 facility, or records relating to incarceration, treatment, probation, or parole, that would interfere
388 with the control and supervision of an offender's incarceration, treatment, probation, or parole;

389 (13) records that, if disclosed, would reveal recommendations made to the Board of
390 Pardons and Parole by an employee of or contractor for the Department of Corrections, the
391 Board of Pardons and Parole, or the Department of Human Services that are based on the
392 employee's or contractor's supervision, diagnosis, or treatment of any person within the board's
393 jurisdiction;

394 (14) records and audit workpapers that identify audit, collection, and operational
395 procedures and methods used by the State Tax Commission, if disclosure would interfere with
396 audits or collections;

397 (15) records of a governmental audit agency relating to an ongoing or planned audit
398 until the final audit is released;

399 (16) records prepared by or on behalf of a governmental entity solely in anticipation of

400 litigation that are not available under the rules of discovery;

401 (17) records disclosing an attorney's work product, including the mental impressions or
402 legal theories of an attorney or other representative of a governmental entity concerning
403 litigation;

404 (18) records of communications between a governmental entity and an attorney
405 representing, retained, or employed by the governmental entity if the communications would be
406 privileged as provided in Section 78-24-8;

407 (19) personal files of a legislator, including personal correspondence to or from a
408 member of the Legislature, provided that correspondence that gives notice of legislative action
409 or policy may not be classified as protected under this section;

410 (20) (a) records in the custody or control of the Office of Legislative Research and
411 General Counsel, that, if disclosed, would reveal a particular legislator's contemplated
412 legislation or contemplated course of action before the legislator has elected to support the
413 legislation or course of action, or made the legislation or course of action public; and

414 (b) notwithstanding Subsection (20)(a), the form to request legislation submitted to the
415 Office of Legislative Research and General Counsel is a public document unless a legislator
416 asks that the records requesting the legislation be maintained as protected records until such
417 time as the legislator elects to make the legislation or course of action public;

418 (21) research requests from legislators to the Office of Legislative Research and
419 General Counsel or the Office of the Legislative Fiscal Analyst and research findings prepared
420 in response to these requests;

421 (22) drafts, unless otherwise classified as public;

422 (23) records concerning a governmental entity's strategy about collective bargaining or
423 pending litigation;

424 (24) records of investigations of loss occurrences and analyses of loss occurrences that
425 may be covered by the Risk Management Fund, the Employers' Reinsurance Fund, the
426 Uninsured Employers' Fund, or similar divisions in other governmental entities;

427 (25) records, other than personnel evaluations, that contain a personal recommendation
428 concerning an individual if disclosure would constitute a clearly unwarranted invasion of
429 personal privacy, or disclosure is not in the public interest;

430 (26) records that reveal the location of historic, prehistoric, paleontological, or

431 biological resources that if known would jeopardize the security of those resources or of
432 valuable historic, scientific, educational, or cultural information;

433 (27) records of independent state agencies if the disclosure of the records would
434 conflict with the fiduciary obligations of the agency;

435 (28) records of an institution within the state system of higher education defined in
436 Section 53B-1-102 regarding tenure evaluations, appointments, applications for admissions,
437 retention decisions, and promotions, which could be properly discussed in a meeting closed in
438 accordance with Title 52, Chapter 4, Open and Public Meetings, provided that records of the
439 final decisions about tenure, appointments, retention, promotions, or those students admitted,
440 may not be classified as protected under this section;

441 (29) records of the governor's office, including budget recommendations, legislative
442 proposals, and policy statements, that if disclosed would reveal the governor's contemplated
443 policies or contemplated courses of action before the governor has implemented or rejected
444 those policies or courses of action or made them public;

445 (30) records of the Office of the Legislative Fiscal Analyst relating to budget analysis,
446 revenue estimates, and fiscal notes of proposed legislation before issuance of the final
447 recommendations in these areas;

448 (31) records provided by the United States or by a government entity outside the state
449 that are given to the governmental entity with a requirement that they be managed as protected
450 records if the providing entity certifies that the record would not be subject to public disclosure
451 if retained by it;

452 (32) transcripts, minutes, or reports of the closed portion of a meeting of a public body
453 except as provided in Section 52-4-7;

454 (33) records that would reveal the contents of settlement negotiations but not including
455 final settlements or empirical data to the extent that they are not otherwise exempt from
456 disclosure;

457 (34) memoranda prepared by staff and used in the decision-making process by an
458 administrative law judge, a member of the Board of Pardons and Parole, or a member of any
459 other body charged by law with performing a quasi-judicial function;

460 (35) records that would reveal negotiations regarding assistance or incentives offered
461 by or requested from a governmental entity for the purpose of encouraging a person to expand

462 or locate a business in Utah, but only if disclosure would result in actual economic harm to the
463 person or place the governmental entity at a competitive disadvantage, but this section may not
464 be used to restrict access to a record evidencing a final contract;

465 (36) materials to which access must be limited for purposes of securing or maintaining
466 the governmental entity's proprietary protection of intellectual property rights including patents,
467 copyrights, and trade secrets;

468 (37) the name of a donor or a prospective donor to a governmental entity, including an
469 institution within the state system of higher education defined in Section 53B-1-102, and other
470 information concerning the donation that could reasonably be expected to reveal the identity of
471 the donor, provided that:

472 (a) the donor requests anonymity in writing;

473 (b) any terms, conditions, restrictions, or privileges relating to the donation may not be
474 classified protected by the governmental entity under this Subsection (37); and

475 (c) except for an institution within the state system of higher education defined in
476 Section 53B-1-102, the governmental unit to which the donation is made is primarily engaged
477 in educational, charitable, or artistic endeavors, and has no regulatory or legislative authority
478 over the donor, a member of the donor's immediate family, or any entity owned or controlled
479 by the donor or the donor's immediate family;

480 (38) accident reports, except as provided in Sections 41-6a-404, 41-12a-202, and
481 73-18-13;

482 (39) a notification of workers' compensation insurance coverage described in Section
483 34A-2-205;

484 (40) (a) the following records of an institution within the state system of higher
485 education defined in Section 53B-1-102, which have been developed, discovered, disclosed to,
486 or received by or on behalf of faculty, staff, employees, or students of the institution:

487 (i) unpublished lecture notes;

488 (ii) unpublished notes, data, and information:

489 (A) relating to research; and

490 (B) of:

491 (I) the institution within the state system of higher education defined in Section
492 53B-1-102; or

- 493 (II) a sponsor of sponsored research;
- 494 (iii) unpublished manuscripts;
- 495 (iv) creative works in process;
- 496 (v) scholarly correspondence; and
- 497 (vi) confidential information contained in research proposals;
- 498 (b) Subsection (40)(a) may not be construed to prohibit disclosure of public
- 499 information required pursuant to Subsection 53B-16-302(2)(a) or (b); and
- 500 (c) Subsection (40)(a) may not be construed to affect the ownership of a record;
- 501 (41) (a) records in the custody or control of the Office of Legislative Auditor General
- 502 that would reveal the name of a particular legislator who requests a legislative audit prior to the
- 503 date that audit is completed and made public; and
- 504 (b) notwithstanding Subsection (41)(a), a request for a legislative audit submitted to the
- 505 Office of the Legislative Auditor General is a public document unless the legislator asks that
- 506 the records in the custody or control of the Office of Legislative Auditor General that would
- 507 reveal the name of a particular legislator who requests a legislative audit be maintained as
- 508 protected records until the audit is completed and made public;
- 509 (42) records that provide detail as to the location of an explosive, including a map or
- 510 other document that indicates the location of:
- 511 (a) a production facility; or
- 512 (b) a magazine;
- 513 (43) information contained in the database described in Section 62A-3-311.1;
- 514 (44) information contained in the Management Information System and Licensing
- 515 Information System described in Title 62A, Chapter 4a, Child and Family Services;
- 516 (45) information regarding National Guard operations or activities in support of the
- 517 National Guard's federal mission;
- 518 (46) records provided by any pawnbroker or pawnshop to a law enforcement agency or
- 519 to the central database in compliance with Title 13, Chapter 32a, Pawnshop Transaction
- 520 Information Act;
- 521 (47) information regarding food security, risk, and vulnerability assessments performed
- 522 by the Department of Agriculture and Food;
- 523 (48) except to the extent that the record is exempt from this chapter pursuant to Section

524 63-2-106, records related to an emergency plan or program prepared or maintained by the
 525 Division of Emergency Services and Homeland Security the disclosure of which would
 526 jeopardize:

527 (a) the safety of the general public; or

528 (b) the security of:

529 (i) governmental property;

530 (ii) governmental programs; or

531 (iii) the property of a private person who provides the Division of Emergency Services
 532 and Homeland Security information;

533 (49) records of the Department of Agriculture and Food relating to the National
 534 Animal Identification System or any other program that provides for the identification, tracing,
 535 or control of livestock diseases, including any program established under Title 4, Chapter 24,
 536 Utah Livestock Brand and Anti-theft Act or Title 4, Chapter 31, [~~Utah~~] Livestock Inspection
 537 and Quarantine; [~~and~~]

538 (50) as provided in Section 26-39-109:

539 (a) information or records held by the Department of Health related to a complaint
 540 regarding a child care program or residential child care which the department is unable to
 541 substantiate; and

542 (b) information or records related to a complaint received by the Department of Health
 543 from an anonymous complainant regarding a child care program or residential child care[-]; and

544 (51) ~~H~~→ unless otherwise classified as public under Section 63-2-301, ~~←H~~ an
 544a individual's home address, home telephone number, or personal mobile phone
 545 number, if:

546 (a) the individual is required to provide the information in order to comply with a law,
 547 ordinance, rule, or order of a government entity; and

548 (b) the subject of the record has a reasonable expectation that this information will be
 549 kept confidential due to:

550 (i) the nature of the law, ordinance, rule, or order; and

551 (ii) the individual complying with the law, ordinance, rule, or order.

552 Section 5. Section **63-2-801** is amended to read:

553 **63-2-801. Criminal penalties.**

554 (1) (a) A public employee or other person who has lawful access to any private,

555 controlled, or protected record under this chapter, and who intentionally discloses [~~or~~],
556 provides a copy of , or improperly uses a private, controlled, or protected record [~~to any person~~]
557 knowing that [~~such~~] the disclosure or use is prohibited under this chapter, is guilty of a class B
558 misdemeanor.

559 (b) It is a defense to prosecution under Subsection (1)(a) that the actor used or released
560 private, controlled, or protected information in the reasonable belief that the use or disclosure
561 of the information was necessary to expose a violation of law involving government
562 corruption, abuse of office, or misappropriation of public funds or property.

563 (c) It is a defense to prosecution under Subsection (1)(a) that the record could have
564 lawfully been released to the recipient if it had been properly classified.

565 (2) (a) A person who by false pretenses, bribery, or theft, gains access to or obtains a
566 copy of any private, controlled, or protected record to which he is not legally entitled is guilty
567 of a class B misdemeanor.

568 (b) No person shall be guilty under Subsection (2)(a) who receives the record,
569 information, or copy after the fact and without prior knowledge of or participation in the false
570 pretenses, bribery, or theft.

571 (3) A public employee who intentionally refuses to release a record the disclosure of
572 which the employee knows is required by law or by final unappealed order from a
573 governmental entity, the records committee, or a court, is guilty of a class B misdemeanor.

Legislative Review Note
as of 11-9-05 8:55 AM

Based on a limited legal review, this legislation has not been determined to have a high probability of being held unconstitutional.

Office of Legislative Research and General Counsel

Legislative Committee Note
as of 12-21-05 10:48 AM

The Government Records Access and Management Task Force recommended this bill.

Fiscal Note
Bill Number HB0028

**Access and Fee Amendments to Government Records Access and
Management Act**

13-Jan-06
5:03 PM

State Impact

Provisions of this bill can be implemented within existing budgets.

Individual and Business Impact

Local governments may charge additional fees for certain types of records.

Office of the Legislative Fiscal Analyst