

Senator Beverly Ann Evans proposes the following substitute bill:

**GOVERNMENT RECORDS ACCESS AND
MANAGEMENT ACT - PUBLIC RECORDS**

2006 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Ben C. Ferry

Senate Sponsor: Beverly Ann Evans

LONG TITLE

General Description:

This bill modifies the Government Records Access and Management Act by amending provisions related to access to certain information for government employees or officers.

Highlighted Provisions:

This bill:

- ▶ provides definitions;
- ▶ provides that certain telephone numbers or similar codes are not classified as records;
- ▶ defines business address, business email address, and business telephone number at which the public may contact an employer or officer of the governmental entity for purposes of what constitutes a public record; and
- ▶ makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

This bill provides an immediate effective date.



26 **Utah Code Sections Affected:**

27 AMENDS:

28 **63-2-103**, as last amended by Chapters 40 and 201, Laws of Utah 2005

29 **63-2-301**, as last amended by Chapter 90, Laws of Utah 2004

30 **63-2-302**, as last amended by Chapters 90 and 173, Laws of Utah 2004

31

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

33 Section 1. Section **63-2-103** is amended to read:

34 **63-2-103. Definitions.**

35 As used in this chapter:

36 (1) "Audit" means:

37 (a) a systematic examination of financial, management, program, and related records
38 for the purpose of determining the fair presentation of financial statements, adequacy of
39 internal controls, or compliance with laws and regulations; or

40 (b) a systematic examination of program procedures and operations for the purpose of
41 determining their effectiveness, economy, efficiency, and compliance with statutes and
42 regulations.

43 (2) "Chronological logs" mean the regular and customary summary records of law
44 enforcement agencies and other public safety agencies that show:

45 (a) the time and general nature of police, fire, and paramedic calls made to the agency;

46 (b) and any arrests or jail bookings made by the agency.

47 (3) "Classification," "classify," and their derivative forms mean determining whether a
48 record series, record, or information within a record is public, private, controlled, protected, or
49 exempt from disclosure under Subsection 63-2-201(3)(b).

50 (4) (a) "Computer program" means:

51 (i) a series of instructions or statements that permit the functioning of a computer
52 system in a manner designed to provide storage, retrieval, and manipulation of data from the
53 computer system; and

54 (ii) any associated documentation and source material that explain how to operate the
55 computer program.

56 (b) "Computer program" does not mean:

- 57 (i) the original data, including numbers, text, voice, graphics, and images;
- 58 (ii) analysis, compilation, and other manipulated forms of the original data produced by
59 use of the program; or
- 60 (iii) the mathematical or statistical formulas, excluding the underlying mathematical
61 algorithms contained in the program, that would be used if the manipulated forms of the
62 original data were to be produced manually.
- 63 (5) (a) "Contractor" means:
- 64 (i) any person who contracts with a governmental entity to provide goods or services
65 directly to a governmental entity; or
- 66 (ii) any private, nonprofit organization that receives funds from a governmental entity.
- 67 (b) "Contractor" does not mean a private provider.
- 68 (6) "Controlled record" means a record containing data on individuals that is controlled
69 as provided by Section 63-2-303.
- 70 (7) "Designation," "designate," and their derivative forms mean indicating, based on a
71 governmental entity's familiarity with a record series or based on a governmental entity's
72 review of a reasonable sample of a record series, the primary classification that a majority of
73 records in a record series would be given if classified and the classification that other records
74 typically present in the record series would be given if classified.
- 75 (8) "Explosive" means a chemical compound, device, or mixture:
- 76 (a) commonly used or intended for the purpose of producing an explosion; and
- 77 (b) that contains oxidizing or combustive units or other ingredients in proportions,
78 quantities, or packing so that:
- 79 (i) an ignition by fire, friction, concussion, percussion, or detonator of any part of the
80 compound or mixture may cause a sudden generation of highly heated gases; and
- 81 (ii) the resultant gaseous pressures are capable of:
- 82 (A) producing destructive effects on contiguous objects; or
- 83 (B) causing death or serious bodily injury.
- 84 (9) "Government audit agency" means any governmental entity that conducts an audit.
- 85 (10) (a) "Governmental entity" means:
- 86 (i) executive department agencies of the state, the offices of the governor, lieutenant
87 governor, state auditor, attorney general, and state treasurer, the Board of Pardons and Parole,

88 the Board of Examiners, the National Guard, the Career Service Review Board, the State Board
89 of Education, the State Board of Regents, and the State Archives;

90 (ii) the Office of the Legislative Auditor General, Office of the Legislative Fiscal
91 Analyst, Office of Legislative Research and General Counsel, the Legislature, and legislative
92 committees, except any political party, group, caucus, or rules or sifting committee of the
93 Legislature;

94 (iii) courts, the Judicial Council, the Office of the Court Administrator, and similar
95 administrative units in the judicial branch;

96 (iv) any state-funded institution of higher education or public education; or

97 (v) any political subdivision of the state, but, if a political subdivision has adopted an
98 ordinance or a policy relating to information practices pursuant to Section 63-2-701, this
99 chapter shall apply to the political subdivision to the extent specified in Section 63-2-701 or as
100 specified in any other section of this chapter that specifically refers to political subdivisions.

101 (b) "Governmental entity" also means every office, agency, board, bureau, committee,
102 department, advisory board, or commission of an entity listed in Subsection (10)(a) that is
103 funded or established by the government to carry out the public's business.

104 (11) "Gross compensation" means every form of remuneration payable for a given
105 period to an individual for services provided including salaries, commissions, vacation pay,
106 severance pay, bonuses, and any board, rent, housing, lodging, payments in kind, and any
107 similar benefit received from the individual's employer.

108 (12) "Individual" means a human being.

109 (13) (a) "Initial contact report" means an initial written or recorded report, however
110 titled, prepared by peace officers engaged in public patrol or response duties describing official
111 actions initially taken in response to either a public complaint about or the discovery of an
112 apparent violation of law, which report may describe:

113 (i) the date, time, location, and nature of the complaint, the incident, or offense;

114 (ii) names of victims;

115 (iii) the nature or general scope of the agency's initial actions taken in response to the
116 incident;

117 (iv) the general nature of any injuries or estimate of damages sustained in the incident;

118 (v) the name, address, and other identifying information about any person arrested or

119 charged in connection with the incident; or

120 (vi) the identity of the public safety personnel, except undercover personnel, or
121 prosecuting attorney involved in responding to the initial incident.

122 (b) Initial contact reports do not include follow-up or investigative reports prepared
123 after the initial contact report. However, if the information specified in Subsection (13)(a)
124 appears in follow-up or investigative reports, it may only be treated confidentially if it is
125 private, controlled, protected, or exempt from disclosure under Subsection 63-2-201(3)(b).

126 (14) "Notice of compliance" means a statement confirming that a governmental entity
127 has complied with a records committee order.

128 (15) "Person" means:

129 (a) an individual;

130 (b) a nonprofit or profit corporation;

131 (c) a partnership;

132 (d) a sole proprietorship;

133 (e) other type of business organization; or

134 (f) any combination acting in concert with one another.

135 (16) "Private provider" means any person who contracts with a governmental entity to
136 provide services directly to the public.

137 (17) "Private record" means a record containing data on individuals that is private as
138 provided by Section 63-2-302.

139 (18) "Protected record" means a record that is classified protected as provided by
140 Section 63-2-304.

141 (19) "Public record" means a record that is not private, controlled, or protected and that
142 is not exempt from disclosure as provided in Subsection 63-2-201(3)(b).

143 (20) (a) "Record" means a book, letter, document, paper, map, plan, photograph, film,
144 card, tape, recording, electronic data, or other documentary material regardless of physical form
145 or characteristics:

146 (i) that is prepared, owned, received, or retained by a governmental entity or political
147 subdivision; and

148 (ii) where all of the information in the original is reproducible by photocopy or other
149 mechanical or electronic means.

- 150 (b) "Record" does not mean:
- 151 (i) a temporary draft or similar material prepared for the originator's personal use or
152 prepared by the originator for the personal use of an individual for whom the originator is
153 working;
- 154 (ii) material that is legally owned by an individual in the individual's private capacity;
- 155 (iii) material to which access is limited by the laws of copyright or patent unless the
156 copyright or patent is owned by a governmental entity or political subdivision;
- 157 (iv) proprietary software;
- 158 (v) junk mail or a commercial publication received by a governmental entity or an
159 official or employee of a governmental entity;
- 160 (vi) a book that is cataloged, indexed, or inventoried and contained in the collections of
161 a library open to the public;
- 162 (vii) material that is cataloged, indexed, or inventoried and contained in the collections
163 of a library open to the public, regardless of physical form or characteristics of the material;
- 164 (viii) a daily calendar or other personal note prepared by the originator for the
165 originator's personal use or for the personal use of an individual for whom the originator is
166 working;
- 167 (ix) a computer program that is developed or purchased by or for any governmental
168 entity for its own use; [or]
- 169 (x) a note or internal memorandum prepared as part of the deliberative process by:
- 170 (A) a member of the judiciary;
- 171 (B) an administrative law judge;
- 172 (C) a member of the Board of Pardons and Parole; or
- 173 (D) a member of any other body charged by law with performing a quasi-judicial
174 function[-]; or
- 175 (xi) a telephone number or similar code used to access a communication device that is
176 used by an employee or officer of a governmental entity, provided that the employee or officer
177 of the governmental entity has designated at least one business telephone number that is a
178 public record as provided in Section 63-2-301.
- 179 (21) "Record series" means a group of records that may be treated as a unit for
180 purposes of designation, description, management, or disposition.

181 (22) "Records committee" means the State Records Committee created in Section
182 63-2-501.

183 (23) "Records officer" means the individual appointed by the chief administrative
184 officer of each governmental entity, or the political subdivision to work with state archives in
185 the care, maintenance, scheduling, designation, classification, disposal, and preservation of
186 records.

187 (24) "Schedule," "scheduling," and their derivative forms mean the process of
188 specifying the length of time each record series should be retained by a governmental entity for
189 administrative, legal, fiscal, or historical purposes and when each record series should be
190 transferred to the state archives or destroyed.

191 (25) "Sponsored research" means research, training, and other sponsored activities as
192 defined by the federal Executive Office of the President, Office of Management and Budget:

193 (a) conducted:

194 (i) by an institution within the state system of higher education defined in Section
195 53B-1-102; and

196 (ii) through an office responsible for sponsored projects or programs; and

197 (b) funded or otherwise supported by an external:

198 (i) person that is not created or controlled by the institution within the state system of
199 higher education; or

200 (ii) federal, state, or local governmental entity.

201 (26) "State archives" means the Division of Archives and Records Service created in
202 Section 63-2-901.

203 (27) "State archivist" means the director of the state archives.

204 (28) "Summary data" means statistical records and compilations that contain data
205 derived from private, controlled, or protected information but that do not disclose private,
206 controlled, or protected information.

207 Section 2. Section **63-2-301** is amended to read:

208 **63-2-301. Records that must be disclosed.**

209 (1) As used in this section:

210 (a) "Business address" means a single address of a governmental agency designated for
211 the public to contact an employee or officer of the governmental agency.

212 (b) "Business email address" means a single email address of a governmental agency
213 designated for the public to contact an employee or officer of the governmental agency.

214 (c) "Business telephone number" means a single telephone number of a governmental
215 agency designated for the public to contact an employee or officer of the governmental agency.

216 [(+)] (2) The following records are public except to the extent they contain information
217 expressly permitted to be treated confidentially under the provisions of Subsections
218 63-2-201(3)(b) and (6)(a):

219 (a) laws;

220 (b) [~~names~~] the name, gender, gross compensation, job [~~titles~~] title, job [~~descriptions~~]
221 description, business [~~addresses~~] address, business email address, business telephone
222 [~~numbers~~] number, number of hours worked per pay period, dates of employment, and relevant
223 education, previous employment, and similar job qualifications of [~~the governmental entity's~~
224 ~~former and present employees and officers~~] a current or former employee or officer of the
225 governmental entity, excluding:

226 (i) undercover law enforcement personnel; and

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

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

233 (d) final interpretations of statutes or rules by a governmental entity unless classified as
234 protected as provided in Subsections 63-2-304(16), (17), and (18);

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

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

241 (g) unless otherwise classified as private under Section 63-2-302.5, records or parts of
242 records filed with or maintained by county recorders, clerks, treasurers, surveyors, zoning

243 commissions, the Division of Forestry, Fire and State Lands, the School and Institutional Trust
244 Lands Administration, the Division of Oil, Gas and Mining, the Division of Water Rights, or
245 other governmental entities that give public notice of:

- 246 (i) titles or encumbrances to real property;
- 247 (ii) restrictions on the use of real property;
- 248 (iii) the capacity of persons to take or convey title to real property; or
- 249 (iv) tax status for real and personal property;
- 250 (h) records of the Department of Commerce that evidence incorporations, mergers,

251 name changes, and uniform commercial code filings;

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

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

257 (k) summary data; and

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

260 ~~[(2)]~~ (3) The following records are normally public, but to the extent that a record is
261 expressly exempt from disclosure, access may be restricted under Subsection 63-2-201(3)(b),
262 Section 63-2-302, 63-2-303, or 63-2-304:

263 (a) administrative staff manuals, instructions to staff, and statements of policy;

264 (b) records documenting a contractor's or private provider's compliance with the terms
265 of a contract with a governmental entity;

266 (c) records documenting the services provided by a contractor or a private provider to
267 the extent the records would be public if prepared by the governmental entity;

268 (d) contracts entered into by a governmental entity;

269 (e) any account, voucher, or contract that deals with the receipt or expenditure of funds
270 by a governmental entity;

271 (f) records relating to government assistance or incentives publicly disclosed,
272 contracted for, or given by a governmental entity, encouraging a person to expand or relocate a
273 business in Utah, except as provided in Subsection 63-2-304(35);

- 274 (g) chronological logs and initial contact reports;
- 275 (h) correspondence by and with a governmental entity in which the governmental entity
276 determines or states an opinion upon the rights of the state, a political subdivision, the public,
277 or any person;
- 278 (i) empirical data contained in drafts if:
- 279 (i) the empirical data is not reasonably available to the requester elsewhere in similar
280 form; and
- 281 (ii) the governmental entity is given a reasonable opportunity to correct any errors or
282 make nonsubstantive changes before release;
- 283 (j) drafts that are circulated to anyone other than:
- 284 (i) a governmental entity;
- 285 (ii) a political subdivision;
- 286 (iii) a federal agency if the governmental entity and the federal agency are jointly
287 responsible for implementation of a program or project that has been legislatively approved;
- 288 (iv) a government-managed corporation; or
- 289 (v) a contractor or private provider;
- 290 (k) drafts that have never been finalized but were relied upon by the governmental
291 entity in carrying out action or policy;
- 292 (l) original data in a computer program if the governmental entity chooses not to
293 disclose the program;
- 294 (m) arrest warrants after issuance, except that, for good cause, a court may order
295 restricted access to arrest warrants prior to service;
- 296 (n) search warrants after execution and filing of the return, except that a court, for good
297 cause, may order restricted access to search warrants prior to trial;
- 298 (o) records that would disclose information relating to formal charges or disciplinary
299 actions against a past or present governmental entity employee if:
- 300 (i) the disciplinary action has been completed and all time periods for administrative
301 appeal have expired; and
- 302 (ii) the charges on which the disciplinary action was based were sustained;
- 303 (p) records maintained by the Division of Forestry, Fire and State Lands, the School
304 and Institutional Trust Lands Administration, or the Division of Oil, Gas and Mining that

305 evidence mineral production on government lands;
306 (q) final audit reports;
307 (r) occupational and professional licenses;
308 (s) business licenses; and
309 (t) a notice of violation, a notice of agency action under Section 63-46b-3, or similar
310 records used to initiate proceedings for discipline or sanctions against persons regulated by a
311 governmental entity, but not including records that initiate employee discipline.

312 [~~(3)~~] (4) The list of public records in this section is not exhaustive and should not be
313 used to limit access to records.

314 Section 3. Section **63-2-302** is amended to read:

315 **63-2-302. Private records.**

316 (1) The following records are private:

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

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

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

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

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

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

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

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

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

334 (f) employment records concerning a current or former employee of, or applicant for
335 employment with, a governmental entity that would disclose that individual's home address,

336 home telephone number, Social Security number, insurance coverage, marital status, or payroll
337 deductions;

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

340 (h) that part of a record indicating a person's Social Security number or federal
341 employer identification number if provided under Section 31A-23a-104, 31A-25-202,
342 31A-26-202, 58-1-301, 61-1-4, or 61-2-6;

343 (i) that part of a voter registration record identifying a voter's driver license or
344 identification card number, Social Security number, or last four digits of the Social Security
345 number;

346 (j) a record that:

347 (i) contains information about an individual;

348 (ii) is voluntarily provided by the individual; and

349 (iii) goes into an electronic database that:

350 (A) is designated by and administered under the authority of the Chief Information
351 Officer; and

352 (B) acts as a repository of information about the individual that can be electronically
353 retrieved and used to facilitate the individual's online interaction with a state agency;

354 (k) information provided to the Commissioner of Insurance under:

355 (i) Subsection 31A-23a-115(2)(a); or

356 (ii) Subsection 31A-23a-302(3); and

357 (l) information obtained through a criminal background check under Title 11, Chapter
358 40, Criminal Background Checks by Political Subdivisions Operating Water Systems.

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

360 (a) records concerning a current or former employee of, or applicant for employment
361 with a governmental entity, including performance evaluations and personal status information
362 such as race, religion, or disabilities, but not including records that are public under Subsection
363 63-2-301[~~(1)(b)~~] (2)(b) or 63-2-301[~~(2)(o)~~] (3)(o), or private under Subsection (1)(b);

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

365 (i) records described in Subsection 63-2-301[~~(1)~~] (2);

366 (ii) information provided to the governmental entity for the purpose of complying with

367 a financial assurance requirement; or

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

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

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

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

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

379 (b) Medical records in the possession of the University of Utah Hospital, its clinics,
380 doctors, or affiliated entities are not private records or controlled records under Section
381 63-2-303 when the records are sought:

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

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

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

389 **Section 4. Effective date.**

390 If approved by two-thirds of all the members elected to each house, this bill takes effect
391 upon approval by the governor, or the day following the constitutional time limit of Utah
392 Constitution Article VII, Section 8, without the governor's signature, or in the case of a veto,
393 the date of veto override.

Fiscal Note
Bill Number HB0258S01

Government Records Access and Management Act - Public Records

06-Feb-06

4:26 PM

State Impact

No fiscal impact.

Individual and Business Impact

No fiscal impact.

Office of the Legislative Fiscal Analyst