

1                                   **CLASSIFICATION AND INSPECTION OF**  
2                                   **RECORDS UNDER GRAMA**

3                                   2006 GENERAL SESSION

4                                   STATE OF UTAH

5                                   **Chief Sponsor: Mark B. Madsen**

6                                   House Sponsor: \_\_\_\_\_

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8   **LONG TITLE**

9   **General Description:**

10           This bill modifies the Government Records Access and Management Act to amend  
11   certain protected records provisions.

12   **Highlighted Provisions:**

13           This bill:

14           ▶ specifies that creating a danger of depriving a person of due process is a basis for  
15   determining whether certain records are protected;

16           ▶ provides that certain records disclosing information relating to a finding of certain  
17   inspections are protected records, unless the finding resulted in a fine or other type  
18   of sanction or disciplinary action; and

19           ▶ makes technical changes.

20   **Monies Appropriated in this Bill:**

21           None

22   **Other Special Clauses:**

23           None

24   **Utah Code Sections Affected:**

25   AMENDS:

26           **63-2-304**, as last amended by Chapters 2, 131, 201, 214, 256 and 297, Laws of Utah  
27   2005



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

Section 1. Section **63-2-304** is amended to read:

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

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

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

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

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

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

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

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

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

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

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

(7) records that would identify real property or the appraisal or estimated value of real or personal property, including intellectual property, under consideration for public acquisition

59 before any rights to the property are acquired unless:

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

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

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

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

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

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

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

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

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

84 (a) reasonably could be expected to interfere with investigations undertaken for  
85 enforcement, discipline, licensing, certification, or registration purposes;

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

88 (c) would create a danger of depriving a person of due process or a right to a fair trial  
89 or impartial hearing;

90 (d) reasonably could be expected to disclose the identity of a source who is not  
91 generally known outside of government and, in the case of a record compiled in the course of  
92 an investigation, disclose information furnished by a source not generally known outside of  
93 government if disclosure would compromise the source; [or]

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

97 (f) records that would disclose information relating to a finding of an inspection of a  
98 business, sole proprietor, or individual, unless the finding resulted in a fine, revocation of a  
99 license, suspension of business operation, or other sanction or disciplinary action;

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

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

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

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

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

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

118 (16) records prepared by or on behalf of a governmental entity solely in anticipation of  
119 litigation that are not available under the rules of discovery;

120 (17) records disclosing an attorney's work product, including the mental impressions or

121 legal theories of an attorney or other representative of a governmental entity concerning  
122 litigation;

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

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

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

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

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

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

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

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

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

149 (26) records that reveal the location of historic, prehistoric, paleontological, or  
150 biological resources that if known would jeopardize the security of those resources or of  
151 valuable historic, scientific, educational, or cultural information;

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

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

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

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

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

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

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

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

179 (35) records that would reveal negotiations regarding assistance or incentives offered  
180 by or requested from a governmental entity for the purpose of encouraging a person to expand  
181 or locate a business in Utah, but only if disclosure would result in actual economic harm to the  
182 person or place the governmental entity at a competitive disadvantage, but this section may not

183 be used to restrict access to a record evidencing a final contract;

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

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

191 (a) the donor requests anonymity in writing;

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

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

199 (38) accident reports, except as provided in Sections 41-6a-404, 41-12a-202, and  
200 73-18-13;

201 (39) a notification of workers' compensation insurance coverage described in Section  
202 34A-2-205;

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

206 (i) unpublished lecture notes;

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

208 (A) relating to research; and

209 (B) of:

210 (I) the institution within the state system of higher education defined in Section  
211 53B-1-102; or

212 (II) a sponsor of sponsored research;

213 (iii) unpublished manuscripts;

214 (iv) creative works in process;  
215 (v) scholarly correspondence; and  
216 (vi) confidential information contained in research proposals;  
217 (b) Subsection (40)(a) may not be construed to prohibit disclosure of public  
218 information required pursuant to Subsection 53B-16-302(2)(a) or (b); and  
219 (c) Subsection (40)(a) may not be construed to affect the ownership of a record;  
220 (41) (a) records in the custody or control of the Office of Legislative Auditor General  
221 that would reveal the name of a particular legislator who requests a legislative audit prior to the  
222 date that audit is completed and made public; and  
223 (b) notwithstanding Subsection (41)(a), a request for a legislative audit submitted to the  
224 Office of the Legislative Auditor General is a public document unless the legislator asks that  
225 the records in the custody or control of the Office of Legislative Auditor General that would  
226 reveal the name of a particular legislator who requests a legislative audit be maintained as  
227 protected records until the audit is completed and made public;  
228 (42) records that provide detail as to the location of an explosive, including a map or  
229 other document that indicates the location of:  
230 (a) a production facility; or  
231 (b) a magazine;  
232 (43) information contained in the database described in Section 62A-3-311.1;  
233 (44) information contained in the Management Information System and Licensing  
234 Information System described in Title 62A, Chapter 4a, Child and Family Services;  
235 (45) information regarding National Guard operations or activities in support of the  
236 National Guard's federal mission;  
237 (46) records provided by any pawnbroker or pawnshop to a law enforcement agency or  
238 to the central database in compliance with Title 13, Chapter 32a, Pawnshop Transaction  
239 Information Act;  
240 (47) information regarding food security, risk, and vulnerability assessments performed  
241 by the Department of Agriculture and Food;  
242 (48) except to the extent that the record is exempt from this chapter pursuant to Section  
243 63-2-106, records related to an emergency plan or program prepared or maintained by the  
244 Division of Emergency Services and Homeland Security the disclosure of which would

245 jeopardize:

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

247 (b) the security of:

248 (i) governmental property;

249 (ii) governmental programs; or

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

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

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

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

261 (b) information or records related to a complaint received by the Department of Health  
262 from an anonymous complainant regarding a child care program or residential child care.

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**Legislative Review Note**  
**as of 1-25-06 6:38 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**

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**Fiscal Note**  
**Bill Number SB0077**

**Classification and Inspection of Records Under Grama**

*31-Jan-06*

*4:06 PM*

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**State Impact**

No fiscal impact.

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**Individual and Business Impact**

No fiscal impact.

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**Office of the Legislative Fiscal Analyst**