

**Senator D. Chris Buttars** proposes the following substitute bill:

**DISCLOSURE OF PUBLIC EMPLOYEE  
DISCIPLINARY ACTIONS AMENDMENTS**

2008 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: D. Chris Buttars**

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

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**LONG TITLE**

**General Description:**

This bill modifies the Government Records Access and Management Act by amending certain provisions relating to records of disciplinary actions involving a governmental entity employee.

**Highlighted Provisions:**

This bill:

- ▶ repeals a provision that prevents the release of certain disciplinary charges for county sheriff officers without the consent of the officer charged and requires the release of the record in accordance with the Government Records Access and Management Act;
- ▶ provides that sustained and final disciplinary actions that result in demotion, suspension, reduction in pay or termination of a governmental entity employee are public records and deletes references to the release of formal charges;
- ▶ provides that a record related to a disciplinary action that is not classified as a public record shall be classified as a private record; and
- ▶ makes technical changes.

**Monies Appropriated in this Bill:**



26 None

27 **Other Special Clauses:**

28 None

29 **Utah Code Sections Affected:**

30 AMENDS:

31 **17-30-19**, as last amended by Laws of Utah 2000, Chapter 151

32 **63-2-301**, as last amended by Laws of Utah 2006, Chapters 2 and 14

33 **63-2-302**, as last amended by Laws of Utah 2006, Chapter 2



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

36 Section 1. Section **17-30-19** is amended to read:

37 **17-30-19. Disciplinary charges and officer grievances -- Appeal to commission --**

38 **Hearing -- Findings.**

39 (1) Each person who orders the demotion, reduction in pay, suspension, or discharge of  
40 a merit system officer for any cause set forth in Section 17-30-18 shall:

41 (a) file written charges with the commission; and

42 (b) serve the officer with a copy of the written charges.

43 (2) (a) (i) An officer who is the subject of charges under Subsection (1) may, within ten  
44 days after service of the charges, appeal in writing to the commission.

45 [~~(ii) In the absence of an appeal, a copy of the charges under Subsection (1) may not be  
46 made public without the consent of the officer charged.~~]

47 (ii) Access to a copy of the charges shall be granted in accordance with Subsections  
48 63-2-301(3)(o) and 63-2-302(1)(f).

49 (b) If an officer files a grievance, as defined by the commission, and exhausts all  
50 internal grievance procedures, if any, the officer may, within ten days after receiving notice of  
51 the final disposition of the grievance, file an appeal with the commission.

52 (3) (a) The commission shall:

53 (i) fix a time and place for a hearing upon the charges or appeal of the officer  
54 grievance; and

55 (ii) give notice of the hearing to the parties.

56 (b) (i) Except as provided in Subsection (3)(b)(ii), each hearing under this Subsection

57 (3) shall be held not less than ten and not more than 90 days after an appeal or grievance is  
58 filed.

59 (ii) A hearing may be held more than 90 days after an appeal or grievance is filed if:

60 (A) the officer and employer agree; or

61 (B) for good cause the commission so orders.

62 (4) (a) If the aggrieved officer so desires, the hearing shall be public.

63 (b) The parties may be represented by counsel at the hearing.

64 (5) After the hearing the commission shall make its decision in writing, including

65 findings of fact, and shall mail a copy to each party.

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

67 **63-2-301. Records that must be disclosed.**

68 (1) As used in this section:

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

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

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

75 (2) The following records are public except to the extent they contain information  
76 expressly permitted to be treated confidentially under the provisions of Subsections

77 63-2-201(3)(b) and (6)(a):

78 (a) laws;

79 (b) the name, gender, gross compensation, job title, job description, business address,  
80 business email address, business telephone number, number of hours worked per pay period,  
81 dates of employment, and relevant education, previous employment, and similar job  
82 qualifications of a current or former employee or officer of the governmental entity, excluding:

83 (i) undercover law enforcement personnel; and

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

86 (c) final opinions, including concurring and dissenting opinions, and orders that are  
87 made by a governmental entity in an administrative, adjudicative, or judicial proceeding except

88 that if the proceedings were properly closed to the public, the opinion and order may be  
89 withheld to the extent that they contain information that is private, controlled, or protected;

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

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

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

98 (g) unless otherwise classified as private under Section 63-2-302.5, records or parts of  
99 records filed with or maintained by county recorders, clerks, treasurers, surveyors, zoning  
100 commissions, the Division of Forestry, Fire and State Lands, the School and Institutional Trust  
101 Lands Administration, the Division of Oil, Gas and Mining, the Division of Water Rights, or  
102 other governmental entities that give public notice of:

103 (i) titles or encumbrances to real property;

104 (ii) restrictions on the use of real property;

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

106 (iv) tax status for real and personal property;

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

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

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

114 (k) summary data; and

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

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

119 Section 63-2-302, 63-2-303, or 63-2-304:

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

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

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

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

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

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

131 (g) chronological logs and initial contact reports;

132 (h) correspondence by and with a governmental entity in which the governmental entity  
133 determines or states an opinion upon the rights of the state, a political subdivision, the public,  
134 or any person;

135 (i) empirical data contained in drafts if:

136 (i) the empirical data is not reasonably available to the requester elsewhere in similar  
137 form; and

138 (ii) the governmental entity is given a reasonable opportunity to correct any errors or  
139 make nonsubstantive changes before release;

140 (j) drafts that are circulated to anyone other than:

141 (i) a governmental entity;

142 (ii) a political subdivision;

143 (iii) a federal agency if the governmental entity and the federal agency are jointly  
144 responsible for implementation of a program or project that has been legislatively approved;

145 (iv) a government-managed corporation; or

146 (v) a contractor or private provider;

147 (k) drafts that have never been finalized but were relied upon by the governmental  
148 entity in carrying out action or policy;

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

150 disclose the program;

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

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

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

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

158 (ii) the disciplinary action results in:

159 (A) demotion;

160 (B) suspension or required unpaid leave;

161 (C) reduction in pay or compensation of any kind; or

162 (D) termination; and

163 ~~[(i)]~~ (iii) the disciplinary action [has been completed and] is final because:

164 (A) there is no administrative appeal available; or

165 (B) all time periods for administrative appeal have expired[; and] and there is no  
166 administrative appeal pending;

167 ~~[(ii) the charges on which the disciplinary action was based were sustained;]~~

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

171 (q) final audit reports;

172 (r) occupational and professional licenses;

173 (s) business licenses; and

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

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

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

180 **63-2-302. Private records.**

- 181 (1) The following records are private:
- 182 (a) records concerning an individual's eligibility for unemployment insurance benefits,  
183 social services, welfare benefits, or the determination of benefit levels;
- 184 (b) records containing data on individuals describing medical history, diagnosis,  
185 condition, treatment, evaluation, or similar medical data;
- 186 (c) records of publicly funded libraries that when examined alone or with other records  
187 identify a patron;
- 188 (d) records received or generated for a Senate or House Ethics Committee concerning  
189 any alleged violation of the rules on legislative ethics, prior to the meeting, and after the  
190 meeting, if the ethics committee meeting was closed to the public;
- 191 (e) records received or generated for a Senate confirmation committee concerning  
192 character, professional competence, or physical or mental health of an individual:
- 193 (i) if prior to the meeting, the chair of the committee determines release of the records:
- 194 (A) reasonably could be expected to interfere with the investigation undertaken by the  
195 committee; or
- 196 (B) would create a danger of depriving a person of a right to a fair proceeding or  
197 impartial hearing; and
- 198 (ii) after the meeting, if the meeting was closed to the public;
- 199 (f) employment records concerning a current or former employee of, or applicant for  
200 employment with, a governmental entity that would disclose that individual's home address,  
201 home telephone number, Social Security number, insurance coverage, marital status, ~~or~~  
202 payroll deductions, or disciplinary actions, unless the disciplinary action is public under  
203 Subsection 63-2-301(3)(o);
- 204 (g) records or parts of records under Section 63-2-302.5 that a current or former  
205 employee identifies as private according to the requirements of that section;
- 206 (h) that part of a record indicating a person's Social Security number or federal  
207 employer identification number if provided under Section 31A-23a-104, 31A-25-202,  
208 31A-26-202, 58-1-301, 61-1-4, or 61-2-6;
- 209 (i) that part of a voter registration record identifying a voter's driver license or  
210 identification card number, Social Security number, or last four digits of the Social Security  
211 number;

212 (j) a record that:  
213 (i) contains information about an individual;  
214 (ii) is voluntarily provided by the individual; and  
215 (iii) goes into an electronic database that:  
216 (A) is designated by and administered under the authority of the Chief Information  
217 Officer; and  
218 (B) acts as a repository of information about the individual that can be electronically  
219 retrieved and used to facilitate the individual's online interaction with a state agency;  
220 (k) information provided to the Commissioner of Insurance under:  
221 (i) Subsection 31A-23a-115(2)(a); or  
222 (ii) Subsection 31A-23a-302(3); and  
223 (l) information obtained through a criminal background check under Title 11, Chapter  
224 40, Criminal Background Checks by Political Subdivisions Operating Water Systems.  
225 (2) The following records are private if properly classified by a governmental entity:  
226 (a) records concerning a current or former employee of, or applicant for employment  
227 with a governmental entity, including performance evaluations and personal status information  
228 such as race, religion, or disabilities, but not including records that are public under Subsection  
229 63-2-301(2)(b) or 63-2-301(3)(o), or private under Subsection (1)(b);  
230 (b) records describing an individual's finances, except that the following are public:  
231 (i) records described in Subsection 63-2-301(2);  
232 (ii) information provided to the governmental entity for the purpose of complying with  
233 a financial assurance requirement; or  
234 (iii) records that must be disclosed in accordance with another statute;  
235 (c) records of independent state agencies if the disclosure of those records would  
236 conflict with the fiduciary obligations of the agency;  
237 (d) other records containing data on individuals the disclosure of which constitutes a  
238 clearly unwarranted invasion of personal privacy; and  
239 (e) records provided by the United States or by a government entity outside the state  
240 that are given with the requirement that the records be managed as private records, if the  
241 providing entity states in writing that the record would not be subject to public disclosure if  
242 retained by it.

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

245 (b) Medical records in the possession of the University of Utah Hospital, its clinics,  
246 doctors, or affiliated entities are not private records or controlled records under Section  
247 63-2-303 when the records are sought:

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

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

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

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**Fiscal Note**

**S.B. 260 1st Sub. (Green) - Disclosure of Public Employee Disciplinary  
Actions Amendments**

2008 General Session

State of Utah

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**State Impact**

Enactment of this bill will not require additional appropriations.

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**Individual, Business and/or Local Impact**

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for individuals, businesses, or local governments.

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