

1 **DISCLOSURE OF PUBLIC EMPLOYEE**
2 **DISCIPLINARY ACTIONS AMENDMENTS**

3 2008 GENERAL SESSION

4 STATE OF UTAH

5 **Chief Sponsor: D. Chris Buttars**

6 House Sponsor: _____

8 **LONG TITLE**

9 **General Description:**

10 This bill modifies the Government Records Access and Management Act by amending
11 certain provisions identifying records that may be classified as private.

12 **Highlighted Provisions:**

13 This bill:

- 14 ▶ amends the Counties title to incorporate record classification provisions into the
- 15 Government Records Access and Management Act;
- 16 ▶ permits a governmental entity to classify a record of formal charges or disciplinary
- 17 actions against a peace officer as a private record, unless the peace officer consents,
- 18 in writing, to make the record public; 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 **17-30-19**, as last amended by Laws of Utah 2000, Chapter 151

27 **63-2-301**, as last amended by Laws of Utah 2006, Chapters 2 and 14



28 **63-2-302**, as last amended by Laws of Utah 2006, Chapter 2



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

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

32 **17-30-19. Disciplinary charges and officer grievances -- Appeal to commission --**
33 **Hearing -- Findings.**

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

- 36 (a) file written charges with the commission; and
- 37 (b) serve the officer with a copy of the written charges.

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

40 (ii) ~~[In the absence of an appeal, a copy of the]~~ The charges under Subsection (1) may
41 ~~[not be made public without the consent of the officer charged]~~ be classified as a private record
42 under Subsection 63-2-302(2)(a)(ii).

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

46 (3) (a) The commission shall:

- 47 (i) fix a time and place for a hearing upon the charges or appeal of the officer
48 grievance; and
- 49 (ii) give notice of the hearing to the parties.

50 (b) (i) Except as provided in Subsection (3)(b)(ii), each hearing under this Subsection
51 (3) shall be held not less than ten and not more than 90 days after an appeal or grievance is
52 filed.

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

- 54 (A) the officer and employer agree; or
- 55 (B) for good cause the commission so orders.

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

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

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

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

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

61 **63-2-301. Records that must be disclosed.**

62 (1) As used in this section:

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

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

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

69 (2) The following records are public except to the extent they contain information
70 expressly permitted to be treated confidentially under the provisions of Subsections
71 63-2-201(3)(b) and (6)(a):

72 (a) laws;

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

77 (i) undercover law enforcement personnel; and

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

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

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

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

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

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

97 (i) titles or encumbrances to real property;

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

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

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

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

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

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

108 (k) summary data; and

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

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

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

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

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

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

120 (e) any account, voucher, or contract that deals with the receipt or expenditure of funds

121 by a governmental entity;

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

125 (g) chronological logs and initial contact reports;

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

129 (i) empirical data contained in drafts if:

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

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

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

135 (i) a governmental entity;

136 (ii) a political subdivision;

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

139 (iv) a government-managed corporation; or

140 (v) a contractor or private provider;

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

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

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

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

149 (o) except as provided in Subsection 63-2-302(2)(a)(ii), records that would disclose
150 information relating to formal charges or disciplinary actions against a past or present
151 governmental entity employee if:

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

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

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

158 (q) final audit reports;

159 (r) occupational and professional licenses;

160 (s) business licenses; and

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

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

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

167 **63-2-302. Private records.**

168 (1) The following records are private:

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

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

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

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

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

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

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

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

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

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

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

192 (h) that part of a record indicating a person's Social Security number or federal
193 employer identification number if provided under Section 31A-23a-104, 31A-25-202,
194 31A-26-202, 58-1-301, 61-1-4, or 61-2-6;

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

198 (j) a record that:

199 (i) contains information about an individual;

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

201 (iii) goes into an electronic database that:

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

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

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

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

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

209 (l) information obtained through a criminal background check under Title 11, Chapter
210 40, Criminal Background Checks by Political Subdivisions Operating Water Systems.

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

212 (a) (i) records concerning a current or former employee of, or applicant for

213 employment with a governmental entity, including performance evaluations and personal status

214 information such as race, religion, or disabilities, but not including:

215 (A) records that are public under Subsection 63-2-301(2)(b) [~~or 63-2-301(3)(o), or~~
216 private under Subsection (1)(b)];

217 (B) records that are public under Subsection 63-2-301(3)(o); or

218 (C) records that are private under Subsection (1)(b); and

219 (ii) records that disclose information relating to formal charges or disciplinary actions
220 against a peace officer as defined under Section 53-1-102 or a peace officer under Section
221 17-30-19, unless the peace officer gives written consent to classification of the document as a
222 public record;

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

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

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

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

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

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

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

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

238 (b) Medical records in the possession of the University of Utah Hospital, its clinics,
239 doctors, or affiliated entities are not private records or controlled records under Section
240 63-2-303 when the records are sought:

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

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

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

Legislative Review Note
as of 2-6-08 9:59 AM

Office of Legislative Research and General Counsel

S.B. 260 - Disclosure of Public Employee Disciplinary Actions Amendments

Fiscal Note

2008 General Session

State of Utah

State Impact

Enactment of this bill will not require additional appropriations.

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.
