

- 59 ▶ provides that the Legislature may adopt policies regarding the receipt, processing,
- 60 and response to record requests;
- 61 ▶ rewrites and reorganizes the section addressing the act's application to the
- 62 Legislature;
- 63 ▶ addresses legislative compliance requirements with Title 63G, Chapter 2, Part 9,
- 64 Public Associations; and
- 65 ▶ makes technical changes.

66 **Money Appropriated in this Bill:**

67 None

68 **Other Special Clauses:**

69 **This bill ~~§~~→ [provides an immediate effective date.] takes effect on July 1, 2011. ←§**

70 **Utah Code Sections Affected:**

71 AMENDS:

- 72 **20A-2-104**, as last amended by Laws of Utah 2010, Chapter 197
- 73 **58-1-301**, as last amended by Laws of Utah 2008, Chapter 382
- 74 **61-1-4**, as last amended by Laws of Utah 2009, Chapter 351
- 75 **61-2f-203**, as renumbered and amended by Laws of Utah 2010, Chapter 379
- 76 **63G-2-103**, as last amended by Laws of Utah 2010, Chapter 366
- 77 **63G-2-203**, as last amended by Laws of Utah 2009, Chapter 183
- 78 **63G-2-204**, as last amended by Laws of Utah 2010, Chapter 380
- 79 **63G-2-206**, as last amended by Laws of Utah 2009, Chapter 344
- 80 **63G-2-301**, as last amended by Laws of Utah 2009, Chapter 344
- 81 **63G-2-302**, as last amended by Laws of Utah 2010, Chapters 36 and 379
- 82 **63G-2-303**, as renumbered and amended by Laws of Utah 2008, Chapter 382
- 83 **63G-2-305**, as last amended by Laws of Utah 2010, Chapters 6, 113, and 247
- 84 **63G-2-401**, as renumbered and amended by Laws of Utah 2008, Chapter 382
- 85 **63G-2-403**, as renumbered and amended by Laws of Utah 2008, Chapter 382
- 86 **63G-2-404**, as renumbered and amended by Laws of Utah 2008, Chapter 382
- 87 **63G-2-703**, as renumbered and amended by Laws of Utah 2008, Chapter 382
- 88 **63G-2-803**, as last amended by Laws of Utah 2009, Chapter 44

89 ENACTS:

647 (b) ~~[An hourly charge]~~ In calculating the actual cost of labor charged under Subsection
 648 (2)(a) [may not exceed the salary of the lowest paid employee who, in the discretion of the
 649 custodian of records, has the necessary skill and training to perform the request.], a
 650 governmental entity:

651 (i) shall, for a service performed by an employee of the governmental entity, charge the
 652 actual hourly pay rate of each employee performing a service in response to the request ~~H→~~, or the
 652a actual hourly pay rate of the lowest paid employee available to perform the service who, in the
 652b discretion of the custodian of records, has the job classification and training necessary to
 652c perform the service, whichever is lower ~~H~~ ;

653 (ii) shall, for a service performed by a person who is not an employee of the
 654 governmental entity, charge the actual rate charged to the governmental entity for each service
 655 performed in response to the request ~~H→~~, provided that the service provider certifies that the
 655a rates charged are not higher than the actual hourly pay rate of the lowest paid person having
 655b the job classification and training necessary to perform the service ~~H~~ ; and

656 (iii) may not include the first quarter hour of time required to perform the service.

657 (c) When assessing an additional cost under Subsection (2)(a), a governmental entity
 658 shall:

659 (i) document the actual cost of labor in a manner that clearly identifies the hours and
 660 rate applied to each service and the actual cost of third party services charged to the
 661 governmental entity; and

662 (ii) provide the documentation to each requestor that is being assessed an additional
 663 cost for services in support of the additional cost assessed.

664 ~~[(c) Notwithstanding Subsections (2)(a) and (b), no charge may be made for the first~~
 665 ~~quarter hour of staff time.]~~

666 ~~[(3) (a) Fees shall be established as provided in this Subsection (3).]~~

667 ~~[(b) A governmental entity with fees established by the Legislature:]~~

668 ~~[(i) shall establish the fees defined in Subsection (2), or other actual costs associated~~
 669 ~~with this section through the budget process; and]~~

670 ~~[(ii) may use the procedures of Section 63J-1-504 to set fees until the Legislature~~
 671 ~~establishes fees through the budget process.]~~

672 ~~[(c) Political subdivisions shall establish fees by ordinance or written formal policy~~
 673 ~~adopted by the governing body.]~~

674 ~~[(d) The judiciary shall establish fees by rules of the judicial council.]~~

675 ~~[(4)]~~ (3) A governmental entity may choose to fulfill a record request without [charge
 676 and is encouraged to do so when] a fee or cost assessment, or for a reduced fee or cost
 677 assessment if it determines [that]:

1453 (51) unless otherwise classified as public under Section 63G-2-301 and except as
1454 provided under Section 41-1a-116, an individual's home address, home telephone number,
1455 personal email address or other personal electronic or online address, or personal mobile phone
1456 number, if:

1457 (a) the individual is required to provide the information in order to comply with a law,
1458 ordinance, rule, or order of a government entity; and

1459 (b) the subject of the record has a reasonable expectation that this information will be
1460 kept confidential due to:

1461 (i) the nature of the law, ordinance, rule, or order; and

1462 (ii) the individual complying with the law, ordinance, rule, or order;

1463 (52) the name, home address, work [~~addresses, and~~] address, telephone [~~numbers~~]

1463a ~~H~~→ number ←~~H~~ , and

1464 email address or other personal electronic or online address of an individual that is engaged in,
1465 or that provides goods or services for, medical or scientific research that is:

1466 (a) conducted within the state system of higher education, as defined in Section
1467 53B-1-102; and

1468 (b) conducted using animals;

1469 (53) an initial proposal under Title 63M, Chapter 1, Part 26, Government Procurement
1470 Private Proposal Program, to the extent not made public by rules made under that chapter;

1471 (54) information collected and a report prepared by the Judicial Performance
1472 Evaluation Commission concerning a judge, unless Section 20A-7-702 or Title 78A, Chapter
1473 12, Judicial Performance Evaluation Commission Act, requires disclosure of, or makes public,
1474 the information or report;

1475 (55) (a) records of the Utah Educational Savings Plan created under Section
1476 53B-8a-103 if the disclosure of the records would conflict with its fiduciary obligations;

1477 (b) proposals submitted to the Utah Educational Savings Plan; and

1478 (c) contracts entered into by the Utah Educational Savings Plan and the related
1479 payments;

1480 (56) records contained in the Management Information System created in Section
1481 62A-4a-1003;

1482 (57) records provided or received by the Public Lands Policy Coordinating Office in
1483 furtherance of any contract or other agreement made in accordance with Section 63J-4-603;

1670 appeal is filed, or if, as a result of the appeal, the governmental entity is required to produce a
 1671 record, the governmental entity shall:

1672 (i) produce the record; and

1673 (ii) file a notice of compliance with the records committee.

1674 (d) (i) If the governmental entity that is ordered to produce a record fails to file a notice
 1675 of compliance or a notice of intent to appeal, the records committee may do either or both of
 1676 the following:

1677 (A) impose a civil penalty of up to \$500 for each day of continuing noncompliance; or

1678 (B) send written notice of the governmental entity's noncompliance to~~[-(F)]~~ the
 1679 governor, for executive branch entities; ~~[(H)]~~ the Legislative Management Committee for
 1680 legislative branch entities; ~~[and (H)]~~, or the Judicial Council, for judicial branch ~~H~~→[agencies]~~←H~~
 1681 entities.

1682 (ii) In imposing a civil penalty, the records committee shall consider the gravity and
 1683 circumstances of the violation, including whether the failure to comply was due to neglect or
 1684 was willful or intentional.

1685 (15) The records committee shall make rules to implement this section as provided by
 1686 Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

1687 Section 16. Section **63G-2-404** is amended to read:

1688 **63G-2-404. Judicial review.**

1689 (1) (a) Any party to a proceeding before the records committee may petition for judicial
 1690 review by the district court of the records committee's order.

1691 (b) The petition shall be filed no later than 30 days after the date of the records
 1692 committee's order.

1693 (c) The records committee is a necessary party to the petition for judicial review.

1694 (d) The executive secretary of the records committee shall be served with notice of the
 1695 petition in accordance with the Utah Rules of Civil Procedure.

1696 (2) (a) A requester may petition for judicial review by the district court of a
 1697 governmental entity's determination as specified in Subsection 63G-2-402(1)(b).

1698 (b) The requester shall file a petition no later than:

1699 (i) 30 days after the governmental entity has responded to the records request by either
 1700 providing the requested records or denying the request in whole or in part;

1763 except for this section; and

1764 (v) Part 9, Public Associations, except to the extent that the part may apply to
 1765 legislators or legislative staff employees acting in a private capacity.

1766 ~~[(3)]~~ (2) The Legislature, through the Legislative Management Committee~~[-(a)]~~, shall
 1767 establish policies ~~[to handle requests for classification, designation,]~~ relating to:

1768 (a) receiving, processing, and responding to a record request, including time periods
 1769 and procedures for the record request process;

1770 (b) classifying or designating a record;

1771 (c) fees[;] and costs;

1772 (d) access~~[-, denials,]~~ to a record;

1773 (e) denial of access to a record;

1774 (f) segregation~~[-;]~~ of a record;

1775 (g) appeals~~[-;]~~, including time periods and procedures for the appeals process;

1776 (h) ownership, management, and retention~~[-;]~~ of a record; and

1777 (i) amendment of ~~[records; and]~~ a record.

1778 ~~[(b) may establish an appellate board to hear appeals from denials of access.]~~

1779 ~~[(4) Policies shall include reasonable times for responding to access requests consistent~~
 1780 ~~with the provisions of Part 2, Access to Records, fees, and reasonable time limits for appeals.]~~

1781 ~~[(5)]~~ (3) Upon request, the state archivist shall:

1782 (a) assist with and advise concerning the establishment of a records management
 1783 program in the Legislature; and

1784 (b) as required by the Legislature, provide program services similar to those available
 1785 to the executive branch of government, as provided in this chapter and Title 63A, Chapter 12,
 1786 ~~[Part 1, Archives and Records Service]~~ Public Records Management Act.

1787 (4) The Legislature is not subject to Title 63A, Chapter 12, Public Records
 1788 Management Act, except for compliance with Sections 63A-12-102 and 63A-12-106.

1789 Section 18. Section **63G-2-803** is amended to read:

1790 **63G-2-803. No individual liability for certain decisions of a governmental entity.**

1791 (1) Neither the governmental entity, nor any officer or employee of the governmental
 1792 entity, is liable for damages resulting from the release of a record where the person or

1793 ~~H~~→ [government] governmental ~~←H~~ entity requesting the record presented evidence of authority to
 1793a obtain the record,

1794 even if it is subsequently determined that the requester had no authority.

1795 (2) Neither the governmental entity, nor any officer or employee of the governmental
1796 entity, is liable for damages arising from the negligent disclosure of records classified as
1797 private under [~~Subsection 63G-2-302(1)(f)~~] Section 63G-2-302 unless:

1798 (a) the disclosure was of employment records maintained by the governmental entity;
1799 or

1800 (b) the current or former government employee had previously filed the notice required
1801 by Section 63G-2-303 and[~~(i)~~] the government entity did not take reasonable steps to preclude
1802 access or distribution of the record[~~; or (ii)~~] or the release of the record was otherwise willfully
1803 or grossly negligent.

1804 (3) A mailing from a government agency to an individual who has filed an application
1805 under Section 63G-2-303 is not a wrongful disclosure under this chapter or under Title 63A,
1806 Chapter 12, [~~Archives and Records Service~~] Public Records Management Act.

1807 Section 19. **Repealer.**

1808 This bill repeals:

1809 Section **63G-2-102, Legislative intent.**

1810 Section 20. **Effective date.**

1811 **Ŝ→** [~~If approved by two-thirds of all the members elected to each house, this bill takes effect~~
1812 ~~upon approval by the governor, or the day following the constitutional time limit of Utah~~
1813 ~~Constitution Article VII, Section 8, without the governor's signature, or in the case of a veto,~~
1814 ~~the date of veto override.] **This bill takes effect on July 1, 2011.** ←**Ŝ**~~

Legislative Review Note
as of 3-1-11 3:05 PM

Office of Legislative Research and General Counsel