

Senator Curtis S. Bramble proposes the following substitute bill:

1 **GOVERNMENT RECORDS ACCESS AND MANAGEMENT ACT**

2 **AMENDMENTS**

3 2012 GENERAL SESSION

4 STATE OF UTAH

5 **Chief Sponsor: Curtis S. Bramble**

6 House Sponsor: John Dougall

7 Cosponsor: John L. Valentine

8
9 **LONG TITLE**

10 **General Description:**

11 This bill amends provisions of the Public Records Management Act and the
12 Government Records Access and Management Act by providing for the training of
13 records officers, creating the position of a government records ombudsman, and
14 amending provisions relating to the disclosure or protection of records.

15 **Highlighted Provisions:**

16 This bill:

- 17 ▶ defines terms;
- 18 ▶ requires the Division of Archives and Records Service (division) to provide an
19 online training course that is required to be successfully completed by records
20 officers on an annual basis;
- 21 ▶ grants rulemaking authority to the division;
- 22 ▶ creates the position, and describes the duties of, the government records
23 ombudsman;
- 24 ▶ provides that a record shall be disclosed when the public interest in disclosure is



25 equal to or greater than the interests in nondisclosure;

26 ▶ amends protected records provisions relating to the attorney client privilege,
27 attorney work product, and records prepared for or in anticipation of litigation or
28 other proceedings;

29 ▶ requires a person who files an appeal with the records committee to serve a copy of
30 the appeal on the government entity to which the appeal relates;

31 ▶ extends, to seven days, the deadline for the records committee to issue an order on a
32 petition;

33 ▶ establishes evidentiary standards for release of certain enforcement and litigation
34 records;

35 ▶ creates a good faith defense to criminal provisions relating to the release or use of
36 government records; and

37 ▶ makes technical changes.

38 **Money Appropriated in this Bill:**

39 None

40 **Other Special Clauses:**

41 None

42 **Utah Code Sections Affected:**

43 AMENDS:

44 **63C-4-102**, as last amended by Laws of Utah 2011, Chapter 252

45 **63G-2-103**, as last amended by Laws of Utah 2011, Chapter 46

46 **63G-2-201**, as last amended by Laws of Utah 2010, Chapter 380

47 **63G-2-202**, as last amended by Laws of Utah 2011, Chapter 343

48 **63G-2-206**, as last amended by Laws of Utah 2011, Chapter 18

49 **63G-2-301**, as last amended by Laws of Utah 2011, Chapters 45 and 46

50 **63G-2-305**, as last amended by Laws of Utah 2011, Chapters 18, 46, 55, 80, 151, and

51 161

52 **63G-2-309**, as renumbered and amended by Laws of Utah 2008, Chapter 382

53 **63G-2-401**, as renumbered and amended by Laws of Utah 2008, Chapter 382

54 **63G-2-403**, as renumbered and amended by Laws of Utah 2008, Chapter 382

55 **63G-2-404**, as renumbered and amended by Laws of Utah 2008, Chapter 382

56 **63G-2-405**, as renumbered and amended by Laws of Utah 2008, Chapter 382
57 **63G-2-801**, as renumbered and amended by Laws of Utah 2008, Chapter 382
58 **78A-4-106**, as renumbered and amended by Laws of Utah 2008, Chapter 3

59 ENACTS:

60 **63A-12-110**, Utah Code Annotated 1953
61 **63A-12-111**, Utah Code Annotated 1953
62 **63G-2-108**, Utah Code Annotated 1953
63 **63G-2-406**, Utah Code Annotated 1953



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

66 Section 1. Section **63A-12-110** is enacted to read:

67 **63A-12-110. Online training course.**

68 (1) As used in this section, "records officer" is as defined in Section 63G-2-103.

69 (2) The division shall:

70 (a) develop an online training course for records officers of all governmental entities

71 and political subdivisions;

72 (b) make the online training course available on or before January 1, 2013;

73 (c) on an annual basis, provide certification to a records officer after the records officer

74 successfully completes the online training course; and

75 (d) post a list on its website of all records officers, including for each:

76 (i) the name of the records officer;

77 (ii) the name of the governmental entity or political subdivision to which the records

78 officer provides services as a records officer;

79 (iii) contact information for the records officer;

80 (iv) the most recent date on which the records officer completed the online training

81 course; and

82 (v) the date on which the records officer's certification expires.

83 (3) The online training course described in this section shall train a records officer

84 regarding the provisions of:

85 (a) Title 63G, Chapter 2, Government Records Access and Management Act;

86 (b) rules made under Title 63G, Chapter 2, Government Records Access and

87 Management Act; and

88 (c) other legal and policy matters relating to responding to a public records request.

89 (4) The division:

90 (a) shall develop the online training course in consultation with the attorney general's
91 office; and

92 (b) may make rules, in accordance with Title 63G, Chapter 3, Utah Administrative
93 Rulemaking Act.

94 Section 2. Section **63A-12-111** is enacted to read:

95 **63A-12-111. Government records ombudsman.**

96 (1) (a) The director of the division shall appoint a government records ombudsman.

97 (b) The government records ombudsman may not be a member of the records
98 committee.

99 (2) The government records ombudsman shall:

100 (a) be familiar with the provisions of Title 63G, Chapter 2, Government Records

101 Access and Management Act;

102 (b) serve as a resource for a person who is making or responding to a records request or
103 filing an appeal relating to a records request;

104 (c) upon request, attempt to mediate disputes between requestors and responders; and

105 (d) on an annual basis, report to the Government Operations and Political Subdivisions

106 Interim Committee on the work performed by the government records ombudsman during the
107 previous year.

108 (3) The government records ombudsman may not testify, or be compelled to testify,
109 before the records committee, another administrative body, or a court regarding a matter that
110 the government records ombudsman provided services in relation to under this section.

111 Section 3. Section **63C-4-102** is amended to read:

112 **63C-4-102. Duties.**

113 (1) The Constitutional Defense Council is a council to assist the governor and the
114 Legislature on the following types of issues:

115 (a) the constitutionality of federal mandates;

116 (b) when making recommendations to challenge the federal mandates and regulations
117 described in Subsections (1)(e)(i) through (v), the rationale for and effectiveness of those

118 federal mandates or regulations;
119 (c) legal and policy issues surrounding state and local government rights under R.S.
120 2477;
121 (d) legal issues relating to the rights of the School and Institutional Trust Lands
122 Administration and its beneficiaries; and
123 (e) the advisability, feasibility, estimated cost, and likelihood of success of challenging:
124 (i) federal court rulings that:
125 (A) hinder the management of the state's prison system and place undue financial
126 hardship on the state's taxpayers;
127 (B) impact a power or a right reserved to the state or its citizens by the United States
128 Constitution, Amendment IX or X; or
129 (C) expand or grant a power to the United States government beyond the limited,
130 enumerated powers granted by the United States Constitution;
131 (ii) federal laws or regulations that reduce or negate water rights or the rights of owners
132 of private property, or the rights and interest of state and local governments, including
133 sovereignty interests and the power to provide for the health, safety, and welfare, and promote
134 the prosperity of their inhabitants;
135 (iii) conflicting federal regulations or policies in land management on federal land;
136 (iv) federal intervention that would damage the state's mining, timber, and ranching
137 industries;
138 (v) the authority of the Environmental Protection Agency and Congress to mandate
139 local air quality standards and penalties; and
140 (vi) other issues that are relevant to this Subsection (1).
141 (2) The council shall:
142 (a) provide advice to the governor, state planning coordinator, and the public lands
143 policy coordinator concerning coordination of:
144 (i) state and local government rights under R.S. 2477; and
145 (ii) other public lands issues;
146 (b) approve a plan for R.S. 2477 rights developed in accordance with Section
147 63C-4-104; and
148 (c) review, at least quarterly:

149 (i) financial statements concerning implementation of the plan for R.S. 2477 rights;
150 and

151 (ii) financial and other reports from the Public Lands Policy Coordinating Office
152 concerning its activities.

153 (3) The council chair may require the attorney general or a designee to provide
154 testimony on potential legal actions that would enhance the state's sovereignty or authority on
155 issues affecting Utah and the well-being of its citizens.

156 (4) The council chair may direct the attorney general to initiate and prosecute any
157 action that the council determines will further its purposes, including an action described in
158 Section 67-5-29.

159 (5) (a) Subject to the provisions of this section, the council may select and employ
160 attorneys to implement the purposes and duties of the council.

161 (b) The council chair may, in consultation with the council, direct any council attorney
162 in any manner considered appropriate by the attorney general to best serve the purposes of the
163 council.

164 (c) The attorney general shall negotiate a contract for services with any attorney
165 selected and approved for employment under this section.

166 (6) The council chair may, only with the concurrence of the council, review and
167 approve all claims for payments for:

168 (a) legal services that are submitted to the council;

169 (b) an action filed in accordance with Section 67-5-29; and

170 (c) costs related to a constitutional defense plan approved in accordance with Section
171 63C-4-104 that are submitted by:

172 (i) the Public Lands Policy Coordinating Office;

173 (ii) the School and Institutional Trust Lands Administration; or

174 (iii) the Office of the Attorney General.

175 (7) Within five business days' notice, the council chair may, with the concurrence of
176 the council, order the attorney general or an attorney employed by the council to cease work to
177 be charged to the fund.

178 (8) (a) At least 20 calendar days before the state submits comments on the draft
179 environmental impact statement or environmental assessment for a proposed land management

180 plan of any federal land management agency, the governor shall make those documents
181 available to:

182 (i) members of the council; and

183 (ii) any county executive, county council member, or county commissioner of a county
184 that is covered by the management plan and that has established formal cooperating agency
185 status with the relevant federal land management agency regarding the proposed plan.

186 (b) (i) Council members or local government officials receiving the documents may
187 make recommendations to the governor or the governor's designee concerning changes to the
188 documents before they are submitted to the federal land management agency.

189 (ii) Council members or local government officials shall submit recommendations to
190 the governor or the governor's designee no later than 10 calendar days after receiving the
191 documents under Subsection (8)(a).

192 (c) Documents transmitted or received under this Subsection (8) are drafts and are
193 protected records pursuant to Subsection 63G-2-305[~~(22)~~](21).

194 (9) The council shall submit a report on December 1 of each year by electronic mail
195 that summarizes the council's activities to each legislator.

196 Section 4. Section **63G-2-103** is amended to read:

197 **63G-2-103. Definitions.**

198 As used in this chapter:

199 (1) "Audit" means:

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

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

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

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

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

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

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

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

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

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

221 (i) the original data, including numbers, text, voice, graphics, and images;

222 (ii) analysis, compilation, and other manipulated forms of the original data produced by
223 use of the program; or

224 (iii) the mathematical or statistical formulas, excluding the underlying mathematical
225 algorithms contained in the program, that would be used if the manipulated forms of the
226 original data were to be produced manually.

227 (5) (a) "Contractor" means:

228 (i) any person who contracts with a governmental entity to provide goods or services
229 directly to a governmental entity; or

230 (ii) any private, nonprofit organization that receives funds from a governmental entity.

231 (b) "Contractor" does not mean a private provider.

232 (6) "Controlled record" means a record containing data on individuals that is controlled
233 as provided by Section 63G-2-304.

234 (7) "Designation," "designate," and their derivative forms mean indicating, based on a
235 governmental entity's familiarity with a record series or based on a governmental entity's
236 review of a reasonable sample of a record series, the primary classification that a majority of
237 records in a record series would be given if classified and the classification that other records
238 typically present in the record series would be given if classified.

239 (8) "Elected official" means each person elected to a state office, county office,
240 municipal office, school board or school district office, local district office, or special service
241 district office, but does not include judges.

- 242 (9) "Explosive" means a chemical compound, device, or mixture:
243 (a) commonly used or intended for the purpose of producing an explosion; and
244 (b) that contains oxidizing or combustive units or other ingredients in proportions,
245 quantities, or packing so that:
246 (i) an ignition by fire, friction, concussion, percussion, or detonator of any part of the
247 compound or mixture may cause a sudden generation of highly heated gases; and
248 (ii) the resultant gaseous pressures are capable of:
249 (A) producing destructive effects on contiguous objects; or
250 (B) causing death or serious bodily injury.
- 251 (10) "Government audit agency" means any governmental entity that conducts an audit.
- 252 (11) (a) "Governmental entity" means:
253 (i) executive department agencies of the state, the offices of the governor, lieutenant
254 governor, state auditor, attorney general, and state treasurer, the Board of Pardons and Parole,
255 the Board of Examiners, the National Guard, the Career Service Review Board, the State Board
256 of Education, the State Board of Regents, and the State Archives;
257 (ii) the Office of the Legislative Auditor General, Office of the Legislative Fiscal
258 Analyst, Office of Legislative Research and General Counsel, the Legislature, and legislative
259 committees, except any political party, group, caucus, or rules or sifting committee of the
260 Legislature;
261 (iii) courts, the Judicial Council, the Office of the Court Administrator, and similar
262 administrative units in the judicial branch;
263 (iv) any state-funded institution of higher education or public education; or
264 (v) any political subdivision of the state, but, if a political subdivision has adopted an
265 ordinance or a policy relating to information practices pursuant to Section 63G-2-701, this
266 chapter shall apply to the political subdivision to the extent specified in Section 63G-2-701 or
267 as specified in any other section of this chapter that specifically refers to political subdivisions.
- 268 (b) "Governmental entity" also means every office, agency, board, bureau, committee,
269 department, advisory board, or commission of an entity listed in Subsection (11)(a) that is
270 funded or established by the government to carry out the public's business.
- 271 (c) "Governmental entity" does not include the Utah Educational Savings Plan created
272 in Section 53B-8a-103.

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

277 (13) "Individual" means a human being.

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

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

283 (ii) names of victims;

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

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

287 (v) the name, address, and other identifying information about any person arrested or
288 charged in connection with the incident; or

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

291 (b) Initial contact reports do not include follow-up or investigative reports prepared
292 after the initial contact report. However, if the information specified in Subsection (14)(a)
293 appears in follow-up or investigative reports, it may only be treated confidentially if it is
294 private, controlled, protected, or exempt from disclosure under Subsection 63G-2-201(3)(b).

295 (15) "Legislative body" means the Legislature.

296 (16) "Notice of compliance" means a statement confirming that a governmental entity
297 has complied with a records committee order.

298 (17) "Person" means:

299 (a) an individual;

300 (b) a nonprofit or profit corporation;

301 (c) a partnership;

302 (d) a sole proprietorship;

303 (e) other type of business organization; or

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

305 (18) "Private provider" means any person who contracts with a governmental entity to
306 provide services directly to the public.

307 (19) "Private record" means a record containing data on individuals that is private as
308 provided by Section 63G-2-302.

309 (20) "Protected record" means a record that is classified protected as provided by
310 Section 63G-2-305.

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

313 (22) (a) "Record" means a book, letter, document, paper, map, plan, photograph, film,
314 card, tape, recording, electronic data, or other documentary material regardless of physical form
315 or characteristics:

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

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

320 (b) "Record" does not mean:

321 (i) a personal note or personal communication prepared or received by an employee or
322 officer of a governmental entity [~~in the employee's or officer's private capacity;~~];

323 (A) in a capacity other than the employee's or officer's governmental capacity; or

324 (B) that is unrelated to the conduct of the public's business;

325 (ii) a temporary draft or similar material prepared for the originator's personal use or
326 prepared by the originator for the personal use of an individual for whom the originator is
327 working;

328 (iii) material that is legally owned by an individual in the individual's private capacity;

329 (iv) material to which access is limited by the laws of copyright or patent unless the
330 copyright or patent is owned by a governmental entity or political subdivision;

331 (v) proprietary software;

332 (vi) junk mail or a commercial publication received by a governmental entity or an
333 official or employee of a governmental entity;

334 (vii) a book that is cataloged, indexed, or inventoried and contained in the collections

335 of a library open to the public;

336 (viii) material that is cataloged, indexed, or inventoried and contained in the collections
337 of a library open to the public, regardless of physical form or characteristics of the material;

338 (ix) a daily calendar or other personal note prepared by the originator for the
339 originator's personal use or for the personal use of an individual for whom the originator is
340 working;

341 (x) a computer program that is developed or purchased by or for any governmental
342 entity for its own use;

343 (xi) a note or internal memorandum prepared as part of the deliberative process by:

344 (A) a member of the judiciary;

345 (B) an administrative law judge;

346 (C) a member of the Board of Pardons and Parole; or

347 (D) a member of any other body charged by law with performing a quasi-judicial
348 function;

349 (xii) a telephone number or similar code used to access a mobile communication
350 device that is used by an employee or officer of a governmental entity, provided that the
351 employee or officer of the governmental entity has designated at least one business telephone
352 number that is a public record as provided in Section 63G-2-301;

353 (xiii) information provided by the Public Employees' Benefit and Insurance Program,
354 created in Section 49-20-103, to a county to enable the county to calculate the amount to be
355 paid to a health care provider under Subsection 17-50-319(2)(e)(ii); or

356 (xiv) information that an owner of unimproved property provides to a local entity as
357 provided in Section 11-42-205.

358 (23) "Record series" means a group of records that may be treated as a unit for
359 purposes of designation, description, management, or disposition.

360 (24) "Records committee" means the State Records Committee created in Section
361 63G-2-501.

362 (25) "Records officer" means the individual appointed by the chief administrative
363 officer of each governmental entity, or the political subdivision to work with state archives in
364 the care, maintenance, scheduling, designation, classification, disposal, and preservation of
365 records.

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

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

372 (a) conducted:

373 (i) by an institution within the state system of higher education defined in Section
374 53B-1-102; and

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

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

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

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

380 (28) "State archives" means the Division of Archives and Records Service created in
381 Section 63A-12-101.

382 (29) "State archivist" means the director of the state archives.

383 (30) "Summary data" means statistical records and compilations that contain data
384 derived from private, controlled, or protected information but that do not disclose private,
385 controlled, or protected information.

386 Section 5. Section **63G-2-108** is enacted to read:

387 **63G-2-108. Certification of records officer.**

388 Each records officer of a governmental entity or political subdivision shall, on an
389 annual basis, successfully complete online training and obtain certification from state archives
390 in accordance with Section 63A-12-110.

391 Section 6. Section **63G-2-201** is amended to read:

392 **63G-2-201. Right to inspect records and receive copies of records.**

393 (1) Every person has the right to inspect a public record free of charge, and the right to
394 take a copy of a public record during normal working hours, subject to Sections 63G-2-203 and
395 63G-2-204.

396 (2) A record is public unless otherwise expressly provided by statute.

397 (3) The following records are not public:

398 (a) a record that is private, controlled, or protected under Sections 63G-2-302,
399 63G-2-303, 63G-2-304, and 63G-2-305; and

400 (b) a record to which access is restricted pursuant to court rule, another state statute,
401 federal statute, or federal regulation, including records for which access is governed or
402 restricted as a condition of participation in a state or federal program or for receiving state or
403 federal funds.

404 (4) Only a record specified in Section 63G-2-302, 63G-2-303, 63G-2-304, or
405 63G-2-305 may be classified private, controlled, or protected.

406 (5) (a) A governmental entity may not disclose a record that is private, controlled, or
407 protected to any person except as provided in Subsection (5)(b), Subsection (5)(c), Section
408 63G-2-202, 63G-2-206, or 63G-2-303.

409 (b) A governmental entity may disclose a record that is private under Subsection
410 63G-2-302(2) or protected under Section 63G-2-305 to persons other than those specified in
411 Section 63G-2-202 or 63G-2-206 if the head of a governmental entity, or a designee,
412 determines that:

413 (i) there is no interest in restricting access to the record; or

414 (ii) the interests favoring access [~~outweighs~~] are greater than or equal to the interest
415 favoring restriction of access.

416 (c) In addition to the disclosure under Subsection (5)(b), a governmental entity may
417 disclose a record that is protected under Subsection 63G-2-305[~~(51)~~](50) if:

418 (i) the head of the governmental entity, or a designee, determines that the disclosure:

419 (A) is mutually beneficial to:

420 (I) the subject of the record;

421 (II) the governmental entity; and

422 (III) the public; and

423 (B) serves a public purpose related to:

424 (I) public safety; or

425 (II) consumer protection; and

426 (ii) the person who receives the record from the governmental entity agrees not to use
427 or allow the use of the record for advertising or solicitation purposes.

428 (6) (a) The disclosure of a record to which access is governed or limited pursuant to
429 court rule, another state statute, federal statute, or federal regulation, including a record for
430 which access is governed or limited as a condition of participation in a state or federal program
431 or for receiving state or federal funds, is governed by the specific provisions of that statute,
432 rule, or regulation.

433 (b) This chapter applies to records described in Subsection (6)(a) insofar as this chapter
434 is not inconsistent with the statute, rule, or regulation.

435 (7) A governmental entity shall provide a person with a certified copy of a record if:

436 (a) the person requesting the record has a right to inspect it;

437 (b) the person identifies the record with reasonable specificity; and

438 (c) the person pays the lawful fees.

439 (8) (a) In response to a request, a governmental entity is not required to:

440 (i) create a record;

441 (ii) compile, format, manipulate, package, summarize, or tailor information;

442 (iii) provide a record in a particular format, medium, or program not currently
443 maintained by the governmental entity;

444 (iv) fulfill a person's records request if the request unreasonably duplicates prior
445 records requests from that person; or

446 (v) fill a person's records request if:

447 (A) the record requested is accessible in the identical physical form and content in a
448 public publication or product produced by the governmental entity receiving the request;

449 (B) the governmental entity provides the person requesting the record with the public
450 publication or product; and

451 (C) the governmental entity specifies where the record can be found in the public
452 publication or product.

453 (b) Upon request, a governmental entity may provide a record in a particular form
454 under Subsection (8)(a)(ii) or (iii) if:

455 (i) the governmental entity determines it is able to do so without unreasonably
456 interfering with the governmental entity's duties and responsibilities; and

457 (ii) the requester agrees to pay the governmental entity for providing the record in the
458 requested form in accordance with Section 63G-2-203.

459 (9) (a) A governmental entity may allow a person requesting more than 50 pages of
460 records to copy the records if:

461 (i) the records are contained in files that do not contain records that are exempt from
462 disclosure, or the records may be segregated to remove private, protected, or controlled
463 information from disclosure; and

464 (ii) the governmental entity provides reasonable safeguards to protect the public from
465 the potential for loss of a public record.

466 (b) When the requirements of Subsection (9)(a) are met, the governmental entity may:

467 (i) provide the requester with the facilities for copying the requested records and
468 require that the requester make the copies; or

469 (ii) allow the requester to provide the requester's own copying facilities and personnel
470 to make the copies at the governmental entity's offices and waive the fees for copying the
471 records.

472 (10) (a) A governmental entity that owns an intellectual property right and that offers
473 the intellectual property right for sale or license may control by ordinance or policy the
474 duplication and distribution of the material based on terms the governmental entity considers to
475 be in the public interest.

476 (b) Nothing in this chapter shall be construed to limit or impair the rights or protections
477 granted to the governmental entity under federal copyright or patent law as a result of its
478 ownership of the intellectual property right.

479 (11) A governmental entity may not use the physical form, electronic or otherwise, in
480 which a record is stored to deny, or unreasonably hinder the rights of a person to inspect and
481 receive a copy of a record under this chapter.

482 (12) Subject to the requirements of Subsection (8), a governmental entity shall provide
483 access to an electronic copy of a record in lieu of providing access to its paper equivalent if:

484 (a) the person making the request requests or states a preference for an electronic copy;

485 (b) the governmental entity currently maintains the record in an electronic format that
486 is reproducible and may be provided without reformatting or conversion; and

487 (c) the electronic copy of the record:

488 (i) does not disclose other records that are exempt from disclosure; or

489 (ii) may be segregated to protect private, protected, or controlled information from

490 disclosure without the undue expenditure of public resources or funds.

491 Section 7. Section **63G-2-202** is amended to read:

492 **63G-2-202. Access to private, controlled, and protected documents.**

493 (1) Upon request, and except as provided in Subsection (11)(a), a governmental entity
494 shall disclose a private record to:

495 (a) the subject of the record;

496 (b) the parent or legal guardian of an unemancipated minor who is the subject of the
497 record;

498 (c) the legal guardian of a legally incapacitated individual who is the subject of the
499 record;

500 (d) any other individual who:

501 (i) has a power of attorney from the subject of the record;

502 (ii) submits a notarized release from the subject of the record or the individual's legal
503 representative dated no more than 90 days before the date the request is made; or

504 (iii) if the record is a medical record described in Subsection 63G-2-302(1)(b), is a
505 health care provider, as defined in Section 26-33a-102, if releasing the record or information in
506 the record is consistent with normal professional practice and medical ethics; or

507 (e) any person to whom the record must be provided pursuant to:

508 (i) court order as provided in Subsection (7); or

509 (ii) a legislative subpoena as provided in Title 36, Chapter 14, Legislative Subpoena
510 Powers.

511 (2) (a) Upon request, a governmental entity shall disclose a controlled record to:

512 (i) a physician, psychologist, certified social worker, insurance provider or producer, or
513 a government public health agency upon submission of:

514 (A) a release from the subject of the record that is dated no more than 90 days prior to
515 the date the request is made; and

516 (B) a signed acknowledgment of the terms of disclosure of controlled information as
517 provided by Subsection (2)(b); and

518 (ii) any person to whom the record must be disclosed pursuant to:

519 (A) a court order as provided in Subsection (7); or

520 (B) a legislative subpoena as provided in Title 36, Chapter 14, Legislative Subpoena

521 Powers.

522 (b) A person who receives a record from a governmental entity in accordance with
523 Subsection (2)(a)(i) may not disclose controlled information from that record to any person,
524 including the subject of the record.

525 (3) If there is more than one subject of a private or controlled record, the portion of the
526 record that pertains to another subject shall be segregated from the portion that the requester is
527 entitled to inspect.

528 (4) Upon request, and except as provided in Subsection (10) or (11)(b), a governmental
529 entity shall disclose a protected record to:

530 (a) the person who submitted the record;

531 (b) any other individual who:

532 (i) has a power of attorney from all persons, governmental entities, or political
533 subdivisions whose interests were sought to be protected by the protected classification; or

534 (ii) submits a notarized release from all persons, governmental entities, or political
535 subdivisions whose interests were sought to be protected by the protected classification or from
536 their legal representatives dated no more than 90 days prior to the date the request is made;

537 (c) any person to whom the record must be provided pursuant to:

538 (i) a court order as provided in Subsection (7); or

539 (ii) a legislative subpoena as provided in Title 36, Chapter 14, Legislative Subpoena

540 Powers; or

541 (d) the owner of a mobile home park, subject to the conditions of Subsection
542 41-1a-116(5).

543 (5) A governmental entity may disclose a private, controlled, or protected record to
544 another governmental entity, political subdivision, another state, the United States, or a foreign
545 government only as provided by Section 63G-2-206.

546 (6) Before releasing a private, controlled, or protected record, the governmental entity
547 shall obtain evidence of the requester's identity.

548 (7) A governmental entity shall disclose a record pursuant to the terms of a court order
549 signed by a judge from a court of competent jurisdiction, provided that:

550 (a) the record deals with a matter in controversy over which the court has jurisdiction;

551 (b) the court has considered the merits of the request for access to the record;

552 (c) the court has considered and, where appropriate, limited the requester's use and
553 further disclosure of the record in order to protect:

554 (i) privacy interests in the case of private or controlled records;

555 (ii) business confidentiality interests in the case of records protected under Subsection
556 63G-2-305(1), (2), [~~(40)~~] (39)(a)(ii), or [~~(40)~~] (39)(a)(vi); and

557 (iii) privacy interests or the public interest in the case of other protected records;

558 (d) to the extent the record is properly classified private, controlled, or protected, the
559 interests favoring access, considering limitations thereon, [~~outweigh~~] are greater than or equal
560 to the interests favoring restriction of access; and

561 (e) where access is restricted by a rule, statute, or regulation referred to in Subsection
562 63G-2-201(3)(b), the court has authority independent of this chapter to order disclosure.

563 (8) (a) A governmental entity may disclose or authorize disclosure of private or
564 controlled records for research purposes if the governmental entity:

565 (i) determines that the research purpose cannot reasonably be accomplished without
566 use or disclosure of the information to the researcher in individually identifiable form;

567 (ii) determines that:

568 (A) the proposed research is bona fide; and

569 (B) the value of the research [~~outweighs~~] is greater than or equal to the infringement
570 upon personal privacy;

571 (iii) (A) requires the researcher to assure the integrity, confidentiality, and security of
572 the records; and

573 (B) requires the removal or destruction of the individual identifiers associated with the
574 records as soon as the purpose of the research project has been accomplished;

575 (iv) prohibits the researcher from:

576 (A) disclosing the record in individually identifiable form, except as provided in
577 Subsection (8)(b); or

578 (B) using the record for purposes other than the research approved by the governmental
579 entity; and

580 (v) secures from the researcher a written statement of the researcher's understanding of
581 and agreement to the conditions of this Subsection (8) and the researcher's understanding that
582 violation of the terms of this Subsection (8) may subject the researcher to criminal prosecution

583 under Section 63G-2-801.

584 (b) A researcher may disclose a record in individually identifiable form if the record is
585 disclosed for the purpose of auditing or evaluating the research program and no subsequent use
586 or disclosure of the record in individually identifiable form will be made by the auditor or
587 evaluator except as provided by this section.

588 (c) A governmental entity may require indemnification as a condition of permitting
589 research under this Subsection (8).

590 (9) (a) Under Subsections 63G-2-201(5)(b) and 63G-2-401(6), a governmental entity
591 may disclose to persons other than those specified in this section records that are:

592 (i) private under Section 63G-2-302; or

593 (ii) protected under Section 63G-2-305 subject to Section 63G-2-309 if a claim for
594 business confidentiality has been made under Section 63G-2-309.

595 (b) Under Subsection 63G-2-403(11)(b), the records committee may require the
596 disclosure to persons other than those specified in this section of records that are:

597 (i) private under Section 63G-2-302;

598 (ii) controlled under Section 63G-2-304; or

599 (iii) protected under Section 63G-2-305 subject to Section 63G-2-309 if a claim for
600 business confidentiality has been made under Section 63G-2-309.

601 (c) Under Subsection 63G-2-404(8), the court may require the disclosure of records
602 that are private under Section 63G-2-302, controlled under Section 63G-2-304, or protected
603 under Section 63G-2-305 to persons other than those specified in this section.

604 (10) A record contained in the Management Information System, created in Section
605 62A-4a-1003, that is found to be unsubstantiated, unsupported, or without merit may not be
606 disclosed to any person except the person who is alleged in the report to be a perpetrator of
607 abuse, neglect, or dependency.

608 (11) (a) A private record described in Subsection 63G-2-302(2)(f) may only be
609 disclosed as provided in Subsection (1)(e).

610 (b) A protected record described in Subsection 63G-2-305[~~(43)~~](42) may only be
611 disclosed as provided in Subsection (4)(c) or Section 62A-3-312.

612 (12) (a) A private, protected, or controlled record described in Section 62A-16-301
613 shall be disclosed as required under:

614 (i) Subsections 62A-16-301(1)(b), (2), and (4)(c); and

615 (ii) Subsections 62A-16-302(1) and (6).

616 (b) A record disclosed under Subsection (12)(a) shall retain its character as private,
617 protected, or controlled.

618 Section 8. Section **63G-2-206** is amended to read:

619 **63G-2-206. Sharing records.**

620 (1) A governmental entity may provide a record that is private, controlled, or protected
621 to another governmental entity, a government-managed corporation, a political subdivision, the
622 federal government, or another state if the requesting entity:

623 (a) serves as a repository or archives for purposes of historical preservation,
624 administrative maintenance, or destruction;

625 (b) enforces, litigates, or investigates civil, criminal, or administrative law, and the
626 record is necessary to a proceeding or investigation;

627 (c) is authorized by state statute to conduct an audit and the record is needed for that
628 purpose;

629 (d) is one that collects information for presentence, probationary, or parole purposes; or

630 (e) (i) is:

631 (A) the Legislature;

632 (B) a legislative committee;

633 (C) a member of the Legislature; or

634 (D) a legislative staff member acting at the request of the Legislature, a legislative
635 committee, or a member of the Legislature; and

636 (ii) requests the record in relation to the Legislature's duties including:

637 (A) the preparation or review of a legislative proposal or legislation;

638 (B) appropriations; or

639 (C) an investigation or review conducted by the Legislature or a legislative committee.

640 (2) (a) A governmental entity may provide a private, controlled, or protected record or
641 record series to another governmental entity, a political subdivision, a government-managed
642 corporation, the federal government, or another state if the requesting entity provides written
643 assurance:

644 (i) that the record or record series is necessary to the performance of the governmental

645 entity's duties and functions;

646 (ii) that the record or record series will be used for a purpose similar to the purpose for
647 which the information in the record or record series was collected or obtained; and

648 (iii) that the use of the record or record series produces a public benefit that
649 ~~[outweighs]~~ is greater than or equal to the individual privacy right that protects the record or
650 record series.

651 (b) A governmental entity may provide a private, controlled, or protected record or
652 record series to a contractor or a private provider according to the requirements of Subsection
653 (6)(b).

654 (3) (a) A governmental entity shall provide a private, controlled, or protected record to
655 another governmental entity, a political subdivision, a government-managed corporation, the
656 federal government, or another state if the requesting entity:

657 (i) is entitled by law to inspect the record;

658 (ii) is required to inspect the record as a condition of participating in a state or federal
659 program or for receiving state or federal funds; or

660 (iii) is an entity described in Subsection (1)(a), (b), (c), (d), or (e).

661 (b) Subsection (3)(a)(iii) applies only if the record is a record described in Subsection
662 63G-2-305(4).

663 (4) Before disclosing a record or record series under this section to another
664 governmental entity, another state, the United States, a foreign government, or to a contractor
665 or private provider, the originating governmental entity shall:

666 (a) inform the recipient of the record's classification and the accompanying restrictions
667 on access; and

668 (b) if the recipient is not a governmental entity to which this chapter applies, obtain the
669 recipient's written agreement which may be by mechanical or electronic transmission that it
670 will abide by those restrictions on access unless a statute, federal regulation, or interstate
671 agreement otherwise governs the sharing of the record or record series.

672 (5) A governmental entity may disclose a record to another state, the United States, or a
673 foreign government for the reasons listed in Subsections (1) and (2) without complying with
674 the procedures of Subsection (2) or (4) if disclosure is authorized by executive agreement,
675 treaty, federal statute, compact, federal regulation, or state statute.

676 (6) (a) Subject to Subsections (6)(b) and (c), an entity receiving a record under this
677 section is subject to the same restrictions on disclosure of the record as the originating entity.

678 (b) A contractor or a private provider may receive information under this section only
679 if:

680 (i) the contractor or private provider's use of the record or record series produces a
681 public benefit that [~~outweighs~~] is greater than or equal to the individual privacy right that
682 protects the record or record series;

683 (ii) the record or record series it requests:

684 (A) is necessary for the performance of a contract with a governmental entity;

685 (B) will only be used for the performance of the contract with the governmental entity;

686 (C) will not be disclosed to any other person; and

687 (D) will not be used for advertising or solicitation purposes; and

688 (iii) the contractor or private provider gives written assurance to the governmental
689 entity that is providing the record or record series that it will adhere to the restrictions of this
690 Subsection (6)(b).

691 (c) The classification of a record already held by a governmental entity and the
692 applicable restrictions on disclosure of that record are not affected by the governmental entity's
693 receipt under this section of a record with a different classification that contains information
694 that is also included in the previously held record.

695 (7) Notwithstanding any other provision of this section, if a more specific court rule or
696 order, state statute, federal statute, or federal regulation prohibits or requires sharing
697 information, that rule, order, statute, or federal regulation controls.

698 (8) The following records may not be shared under this section:

699 (a) records held by the Division of Oil, Gas, and Mining that pertain to any person and
700 that are gathered under authority of Title 40, Chapter 6, Board and Division of Oil, Gas, and
701 Mining;

702 (b) records of publicly funded libraries as described in Subsection 63G-2-302(1)(c);
703 and

704 (c) a record described in Section 63G-12-210.

705 (9) Records that may evidence or relate to a violation of law may be disclosed to a
706 government prosecutor, peace officer, or auditor.

707 Section 9. Section **63G-2-301** is amended to read:

708 **63G-2-301. Records that must be disclosed.**

709 (1) As used in this section:

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

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

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

716 (2) The following records are public except to the extent they contain information
717 expressly permitted to be treated confidentially under the provisions of Subsections
718 63G-2-201(3)(b) and (6)(a):

719 (a) laws;

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

724 (i) undercover law enforcement personnel; and

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

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

731 (d) final interpretations of statutes or rules by a governmental entity unless classified as
732 protected as provided in [~~Subsections~~] Subsection 63G-2-305(16)[~~-(17), and (18)] or (17);~~

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

737 (f) judicial records unless a court orders the records to be restricted under the rules of

738 civil or criminal procedure or unless the records are private under this chapter;

739 (g) unless otherwise classified as private under Section 63G-2-303, records or parts of
740 records filed with or maintained by county recorders, clerks, treasurers, surveyors, zoning
741 commissions, the Division of Forestry, Fire, and State Lands, the School and Institutional Trust
742 Lands Administration, the Division of Oil, Gas, and Mining, the Division of Water Rights, or
743 other governmental entities that give public notice of:

744 (i) titles or encumbrances to real property;

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

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

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

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

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

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

755 (k) summary data;

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

758 (m) for an elected official, as defined in Section 11-47-102, a telephone number, if
759 available, and email address, if available, where that elected official may be reached as required
760 in Title 11, Chapter 47, Access to Elected Officials;

761 (n) for a school community council member, a telephone number, if available, and
762 email address, if available, where that elected official may be reached directly as required in
763 Section 53A-1a-108; and

764 (o) annual audited financial statements of the Utah Educational Savings Plan described
765 in Section 53B-8a-111.

766 (3) The following records are normally public, but to the extent that a record is
767 expressly exempt from disclosure, access may be restricted under Subsection 63G-2-201(3)(b),
768 Section 63G-2-302, 63G-2-304, or 63G-2-305:

- 769 (a) administrative staff manuals, instructions to staff, and statements of policy;
- 770 (b) records documenting a contractor's or private provider's compliance with the terms
771 of a contract with a governmental entity;
- 772 (c) records documenting the services provided by a contractor or a private provider to
773 the extent the records would be public if prepared by the governmental entity;
- 774 (d) contracts entered into by a governmental entity;
- 775 (e) any account, voucher, or contract that deals with the receipt or expenditure of funds
776 by a governmental entity;
- 777 (f) records relating to government assistance or incentives publicly disclosed,
778 contracted for, or given by a governmental entity, encouraging a person to expand or relocate a
779 business in Utah, except as provided in Subsection 63G-2-305[~~(35)~~](34);
- 780 (g) chronological logs and initial contact reports;
- 781 (h) correspondence by and with a governmental entity in which the governmental entity
782 determines or states an opinion upon the rights of the state, a political subdivision, the public,
783 or any person;
- 784 (i) empirical data contained in drafts if:
- 785 (i) the empirical data is not reasonably available to the requester elsewhere in similar
786 form; and
- 787 (ii) the governmental entity is given a reasonable opportunity to correct any errors or
788 make nonsubstantive changes before release;
- 789 (j) drafts that are circulated to anyone other than:
- 790 (i) a governmental entity;
- 791 (ii) a political subdivision;
- 792 (iii) a federal agency if the governmental entity and the federal agency are jointly
793 responsible for implementation of a program or project that has been legislatively approved;
- 794 (iv) a government-managed corporation; or
- 795 (v) a contractor or private provider;
- 796 (k) drafts that have never been finalized but were relied upon by the governmental
797 entity in carrying out action or policy;
- 798 (l) original data in a computer program if the governmental entity chooses not to
799 disclose the program;

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

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

804 (o) records that would disclose information relating to formal charges or disciplinary
805 actions against a past or present governmental entity employee if:

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

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

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

812 (q) final audit reports;

813 (r) occupational and professional licenses;

814 (s) business licenses; and

815 (t) a notice of violation, a notice of agency action under Section 63G-4-201, or similar
816 records used to initiate proceedings for discipline or sanctions against persons regulated by a
817 governmental entity, but not including records that initiate employee discipline.

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

820 Section 10. Section **63G-2-305** is amended to read:

821 **63G-2-305. Protected records.**

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

823 (1) trade secrets as defined in Section 13-24-2 if the person submitting the trade secret
824 has provided the governmental entity with the information specified in Section 63G-2-309;

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

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

830 (b) the person submitting the information has a greater interest in prohibiting access

831 than the public in obtaining access; and

832 (c) the person submitting the information has provided the governmental entity with
833 the information specified in Section 63G-2-309;

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

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

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

843 (6) records the disclosure of which would impair governmental procurement
844 proceedings or give an unfair advantage to any person proposing to enter into a contract or
845 agreement with a governmental entity, except, subject to Subsections (1) and (2), that this
846 Subsection (6) does not restrict the right of a person to have access to, once the contract or
847 grant has been awarded, a bid, proposal, or application submitted to or by a governmental
848 entity in response to:

849 (a) a request for bids;

850 (b) a request for proposals;

851 (c) a grant; or

852 (d) other similar document;

853 (7) records that would identify real property or the appraisal or estimated value of real
854 or personal property, including intellectual property, under consideration for public acquisition
855 before any rights to the property are acquired unless:

856 (a) public interest in obtaining access to the information [~~outweighs~~] is greater than or
857 equal to the governmental entity's need to acquire the property on the best terms possible;

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

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

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

865 (e) the property under consideration for public acquisition is a single family residence
866 and the governmental entity seeking to acquire the property has initiated negotiations to acquire
867 the property as required under Section 78B-6-505;

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

872 (a) the public interest in access [~~outweighs~~] is greater than or equal to the interests in
873 restricting access, including the governmental entity's interest in maximizing the financial
874 benefit of the transaction; or

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

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

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

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

885 (c) would create a danger of depriving a person of a right to a fair trial or impartial
886 hearing;

887 (d) reasonably could be expected to disclose the identity of a source who is not
888 generally known outside of government and, in the case of a record compiled in the course of
889 an investigation, disclose information furnished by a source not generally known outside of
890 government if disclosure would compromise the source; or

891 (e) reasonably could be expected to disclose investigative or audit techniques,
892 procedures, policies, or orders not generally known outside of government if disclosure would

893 interfere with enforcement or audit efforts;

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

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

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

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

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

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

912 ~~[(16) records prepared by or on behalf of a governmental entity solely in anticipation of
913 litigation that are not available under the rules of discovery;]~~

914 ~~[(17) records disclosing an attorney's work product, including the mental impressions
915 or legal theories of an attorney or other representative of a governmental entity concerning
916 litigation;]~~

917 ~~[(18) records of communications between a governmental entity and an attorney
918 representing, retained, or employed by the governmental entity if the communications would be
919 privileged as provided in Section 78B-1-137;]~~

920 (16) records that are subject to the attorney client privilege;

921 (17) records prepared for or by an attorney, consultant, surety, indemnitor, insurer,
922 employee, or agent of a governmental entity for, or in anticipation of, litigation or a judicial,
923 quasi-judicial, or administrative proceeding;

924 [~~(19)~~] (18) (a) (i) personal files of a state legislator, including personal correspondence
925 to or from a member of the Legislature; and

926 (ii) notwithstanding Subsection [~~(19)~~] (18)(a)(i), correspondence that gives notice of
927 legislative action or policy may not be classified as protected under this section; and

928 (b) (i) an internal communication that is part of the deliberative process in connection
929 with the preparation of legislation between:

930 (A) members of a legislative body;

931 (B) a member of a legislative body and a member of the legislative body's staff; or

932 (C) members of a legislative body's staff; and

933 (ii) notwithstanding Subsection [~~(19)~~] (18)(b)(i), a communication that gives notice of
934 legislative action or policy may not be classified as protected under this section;

935 [~~(20)~~] (19) (a) records in the custody or control of the Office of Legislative Research
936 and General Counsel, that, if disclosed, would reveal a particular legislator's contemplated
937 legislation or contemplated course of action before the legislator has elected to support the
938 legislation or course of action, or made the legislation or course of action public; and

939 (b) notwithstanding Subsection [~~(20)~~] (19)(a), the form to request legislation submitted
940 to the Office of Legislative Research and General Counsel is a public document unless a
941 legislator asks that the records requesting the legislation be maintained as protected records
942 until such time as the legislator elects to make the legislation or course of action public;

943 [~~(21)~~] (20) research requests from legislators to the Office of Legislative Research and
944 General Counsel or the Office of the Legislative Fiscal Analyst and research findings prepared
945 in response to these requests;

946 [~~(22)~~] (21) drafts, unless otherwise classified as public;

947 [~~(23)~~] (22) records concerning a governmental entity's strategy about:

948 (a) collective bargaining; or

949 (b) imminent or pending litigation;

950 [~~(24)~~] (23) records of investigations of loss occurrences and analyses of loss
951 occurrences that may be covered by the Risk Management Fund, the Employers' Reinsurance
952 Fund, the Uninsured Employers' Fund, or similar divisions in other governmental entities;

953 [~~(25)~~] (24) records, other than personnel evaluations, that contain a personal
954 recommendation concerning an individual if disclosure would constitute a clearly unwarranted

955 invasion of personal privacy, or disclosure is not in the public interest;

956 [~~(26)~~] (25) records that reveal the location of historic, prehistoric, paleontological, or
957 biological resources that if known would jeopardize the security of those resources or of
958 valuable historic, scientific, educational, or cultural information;

959 [~~(27)~~] (26) records of independent state agencies if the disclosure of the records would
960 conflict with the fiduciary obligations of the agency;

961 [~~(28)~~] (27) records of an institution within the state system of higher education defined
962 in Section 53B-1-102 regarding tenure evaluations, appointments, applications for admissions,
963 retention decisions, and promotions, which could be properly discussed in a meeting closed in
964 accordance with Title 52, Chapter 4, Open and Public Meetings Act, provided that records of
965 the final decisions about tenure, appointments, retention, promotions, or those students
966 admitted, may not be classified as protected under this section;

967 [~~(29)~~] (28) records of the governor's office, including budget recommendations,
968 legislative proposals, and policy statements, that if disclosed would reveal the governor's
969 contemplated policies or contemplated courses of action before the governor has implemented
970 or rejected those policies or courses of action or made them public;

971 [~~(30)~~] (29) records of the Office of the Legislative Fiscal Analyst relating to budget
972 analysis, revenue estimates, and fiscal notes of proposed legislation before issuance of the final
973 recommendations in these areas;

974 [~~(31)~~] (30) records provided by the United States or by a government entity outside the
975 state that are given to the governmental entity with a requirement that they be managed as
976 protected records if the providing entity certifies that the record would not be subject to public
977 disclosure if retained by it;

978 [~~(32)~~] (31) transcripts, minutes, or reports of the closed portion of a meeting of a public
979 body except as provided in Section 52-4-206;

980 [~~(33)~~] (32) records that would reveal the contents of settlement negotiations but not
981 including final settlements or empirical data to the extent that they are not otherwise exempt
982 from disclosure;

983 [~~(34)~~] (33) memoranda prepared by staff and used in the decision-making process by
984 an administrative law judge, a member of the Board of Pardons and Parole, or a member of any
985 other body charged by law with performing a quasi-judicial function;

986 ~~[(35)]~~ (34) records that would reveal negotiations regarding assistance or incentives
987 offered by or requested from a governmental entity for the purpose of encouraging a person to
988 expand or locate a business in Utah, but only if disclosure would result in actual economic
989 harm to the person or place the governmental entity at a competitive disadvantage, but this
990 section may not be used to restrict access to a record evidencing a final contract;

991 ~~[(36)]~~ (35) materials to which access must be limited for purposes of securing or
992 maintaining the governmental entity's proprietary protection of intellectual property rights
993 including patents, copyrights, and trade secrets;

994 ~~[(37)]~~ (36) the name of a donor or a prospective donor to a governmental entity,
995 including an institution within the state system of higher education defined in Section
996 53B-1-102, and other information concerning the donation that could reasonably be expected to
997 reveal the identity of the donor, provided that:

998 (a) the donor requests anonymity in writing;

999 (b) any terms, conditions, restrictions, or privileges relating to the donation may not be
1000 classified protected by the governmental entity under this Subsection ~~[(37)]~~ (36); and

1001 (c) except for an institution within the state system of higher education defined in
1002 Section 53B-1-102, the governmental unit to which the donation is made is primarily engaged
1003 in educational, charitable, or artistic endeavors, and has no regulatory or legislative authority
1004 over the donor, a member of the donor's immediate family, or any entity owned or controlled
1005 by the donor or the donor's immediate family;

1006 ~~[(38)]~~ (37) accident reports, except as provided in Sections 41-6a-404, 41-12a-202, and
1007 73-18-13;

1008 ~~[(39)]~~ (38) a notification of workers' compensation insurance coverage described in
1009 Section 34A-2-205;

1010 ~~[(40)]~~ (39) (a) the following records of an institution within the state system of higher
1011 education defined in Section 53B-1-102, which have been developed, discovered, disclosed to,
1012 or received by or on behalf of faculty, staff, employees, or students of the institution:

1013 (i) unpublished lecture notes;

1014 (ii) unpublished notes, data, and information:

1015 (A) relating to research; and

1016 (B) of:

1017 (I) the institution within the state system of higher education defined in Section
1018 53B-1-102; or
1019 (II) a sponsor of sponsored research;
1020 (iii) unpublished manuscripts;
1021 (iv) creative works in process;
1022 (v) scholarly correspondence; and
1023 (vi) confidential information contained in research proposals;
1024 (b) Subsection [~~(40)~~] (39)(a) may not be construed to prohibit disclosure of public
1025 information required pursuant to Subsection 53B-16-302(2)(a) or (b); and
1026 (c) Subsection [~~(40)~~] (39)(a) may not be construed to affect the ownership of a record;
1027 [~~(41)~~] (40) (a) records in the custody or control of the Office of Legislative Auditor
1028 General that would reveal the name of a particular legislator who requests a legislative audit
1029 prior to the date that audit is completed and made public; and
1030 (b) notwithstanding Subsection [~~(41)~~] (40)(a), a request for a legislative audit
1031 submitted to the Office of the Legislative Auditor General is a public document unless the
1032 legislator asks that the records in the custody or control of the Office of Legislative Auditor
1033 General that would reveal the name of a particular legislator who requests a legislative audit be
1034 maintained as protected records until the audit is completed and made public;
1035 [~~(42)~~] (41) records that provide detail as to the location of an explosive, including a
1036 map or other document that indicates the location of:
1037 (a) a production facility; or
1038 (b) a magazine;
1039 [~~(43)~~] (42) information:
1040 (a) contained in the statewide database of the Division of Aging and Adult Services
1041 created by Section 62A-3-311.1; or
1042 (b) received or maintained in relation to the Identity Theft Reporting Information
1043 System (IRIS) established under Section 67-5-22;
1044 [~~(44)~~] (43) information contained in the Management Information System and
1045 Licensing Information System described in Title 62A, Chapter 4a, Child and Family Services;
1046 [~~(45)~~] (44) information regarding National Guard operations or activities in support of
1047 the National Guard's federal mission;

1048 [~~(46)~~] (45) records provided by any pawn or secondhand business to a law enforcement
1049 agency or to the central database in compliance with Title 13, Chapter 32a, Pawnshop and
1050 Secondhand Merchandise Transaction Information Act;

1051 [~~(47)~~] (46) information regarding food security, risk, and vulnerability assessments
1052 performed by the Department of Agriculture and Food;

1053 [~~(48)~~] (47) except to the extent that the record is exempt from this chapter pursuant to
1054 Section 63G-2-106, records related to an emergency plan or program, a copy of which is
1055 provided to or prepared or maintained by the Division of Emergency Management, and the
1056 disclosure of which would jeopardize:

1057 (a) the safety of the general public; or

1058 (b) the security of:

1059 (i) governmental property;

1060 (ii) governmental programs; or

1061 (iii) the property of a private person who provides the Division of Emergency

1062 Management information;

1063 [~~(49)~~] (48) records of the Department of Agriculture and Food relating to the National
1064 Animal Identification System or any other program that provides for the identification, tracing,
1065 or control of livestock diseases, including any program established under Title 4, Chapter 24,
1066 Utah Livestock Brand and Anti-theft Act or Title 4, Chapter 31, Livestock Inspection and
1067 Quarantine;

1068 [~~(50)~~] (49) as provided in Section 26-39-501:

1069 (a) information or records held by the Department of Health related to a complaint
1070 regarding a child care program or residential child care which the department is unable to
1071 substantiate; and

1072 (b) information or records related to a complaint received by the Department of Health
1073 from an anonymous complainant regarding a child care program or residential child care;

1074 [~~(51)~~] (50) unless otherwise classified as public under Section 63G-2-301 and except
1075 as provided under Section 41-1a-116, an individual's home address, home telephone number,
1076 or personal mobile phone number, if:

1077 (a) the individual is required to provide the information in order to comply with a law,
1078 ordinance, rule, or order of a government entity; and

1079 (b) the subject of the record has a reasonable expectation that this information will be
1080 kept confidential due to:

1081 (i) the nature of the law, ordinance, rule, or order; and

1082 (ii) the individual complying with the law, ordinance, rule, or order;

1083 [~~52~~] (51) the name, home address, work addresses, and telephone numbers of an
1084 individual that is engaged in, or that provides goods or services for, medical or scientific
1085 research that is:

1086 (a) conducted within the state system of higher education, as defined in Section
1087 53B-1-102; and

1088 (b) conducted using animals;

1089 [~~53~~] (52) an initial proposal under Title 63M, Chapter 1, Part 26, Government
1090 Procurement Private Proposal Program, to the extent not made public by rules made under that
1091 chapter;

1092 [~~54~~] (53) in accordance with Section 78A-12-203, any record of the Judicial
1093 Performance Evaluation Commission concerning an individual commissioner's vote on
1094 whether or not to recommend that the voters retain a judge;

1095 [~~55~~] (54) information collected and a report prepared by the Judicial Performance
1096 Evaluation Commission concerning a judge, unless Section 20A-7-702 or Title 78A, Chapter
1097 12, Judicial Performance Evaluation Commission Act, requires disclosure of, or makes public,
1098 the information or report;

1099 [~~56~~] (55) records contained in the Management Information System created in
1100 Section 62A-4a-1003;

1101 [~~57~~] (56) records provided or received by the Public Lands Policy Coordinating
1102 Office in furtherance of any contract or other agreement made in accordance with Section
1103 63J-4-603;

1104 [~~58~~] (57) information requested by and provided to the Utah State 911 Committee
1105 under Section 53-10-602;

1106 [~~59~~] (58) recorded Children's Justice Center investigative interviews, both video and
1107 audio, the release of which are governed by Section 77-37-4;

1108 [~~60~~] (59) in accordance with Section 73-10-33:

1109 (a) a management plan for a water conveyance facility in the possession of the Division

1110 of Water Resources or the Board of Water Resources; or

1111 (b) an outline of an emergency response plan in possession of the state or a county or
1112 municipality;

1113 [~~(61)~~] (60) the following records in the custody or control of the Office of Inspector
1114 General of Medicaid Services, created in Section 63J-4a-201:

1115 (a) records that would disclose information relating to allegations of personal
1116 misconduct, gross mismanagement, or illegal activity of a person if the information or
1117 allegation cannot be corroborated by the Office of Inspector General of Medicaid Services
1118 through other documents or evidence, and the records relating to the allegation are not relied
1119 upon by the Office of Inspector General of Medicaid Services in preparing a final investigation
1120 report or final audit report;

1121 (b) records and audit workpapers to the extent they would disclose the identity of a
1122 person who, during the course of an investigation or audit, communicated the existence of any
1123 Medicaid fraud, waste, or abuse, or a violation or suspected violation of a law, rule, or
1124 regulation adopted under the laws of this state, a political subdivision of the state, or any
1125 recognized entity of the United States, if the information was disclosed on the condition that
1126 the identity of the person be protected;

1127 (c) before the time that an investigation or audit is completed and the final
1128 investigation or final audit report is released, records or drafts circulated to a person who is not
1129 an employee or head of a governmental entity for the person's response or information;

1130 (d) records that would disclose an outline or part of any investigation, audit survey
1131 plan, or audit program; or

1132 (e) requests for an investigation or audit, if disclosure would risk circumvention of an
1133 investigation or audit;

1134 [~~(62)~~] (61) records that reveal methods used by the Office of Inspector General of
1135 Medicaid Services, the fraud unit, or the Department of Health, to discover Medicaid fraud,
1136 waste, or abuse;

1137 [~~(63)~~] (62) information provided to the Department of Health or the Division of
1138 Occupational and Professional Licensing under Subsection 58-68-304(3) or (4); and

1139 [~~(64)~~] (63) a record described in Section 63G-12-210.

1140 Section 11. Section **63G-2-309** is amended to read:

1141 **63G-2-309. Confidentiality claims.**

1142 (1) (a) (i) Any person who provides to a governmental entity a record that the person
1143 believes should be protected under Subsection 63G-2-305(1) or (2) or both Subsections
1144 63G-2-305(1) and (2) shall provide with the record:

1145 (A) a written claim of business confidentiality; and

1146 (B) a concise statement of reasons supporting the claim of business confidentiality.

1147 (ii) Any of the following who provides to an institution within the state system of
1148 higher education defined in Section 53B-1-102 a record that the person or governmental entity
1149 believes should be protected under Subsection 63G-2-305[~~(40)~~](39)(a)(ii) or (vi) or both
1150 Subsections 63G-2-305[~~(40)~~](39)(a)(ii) and (vi) shall provide the institution within the state
1151 system of higher education a written claim of business confidentiality in accordance with
1152 Section 53B-16-304:

1153 (A) a person;

1154 (B) a federal governmental entity;

1155 (C) a state governmental entity; or

1156 (D) a local governmental entity.

1157 (b) A person or governmental entity who complies with this Subsection (1) shall be
1158 notified by the governmental entity to whom the request for a record is made if:

1159 (i) a record claimed to be protected under one of the following is classified public:

1160 (A) Subsection 63G-2-305(1);

1161 (B) Subsection 63G-2-305(2);

1162 (C) Subsection 63G-2-305[~~(40)~~](39)(a)(ii);

1163 (D) Subsection 63G-2-305[~~(40)~~](39)(a)(vi); or

1164 (E) a combination of the provisions described in Subsections (1)(b)(i)(A) through (D);

1165 or

1166 (ii) the governmental entity to whom the request for a record is made determines that
1167 the record claimed to be protected under a provision listed in Subsection (1)(b)(i) should be
1168 released after balancing interests under Subsection 63G-2-201(5)(b) or 63G-2-401(6).

1169 (2) Except as provided by court order, the governmental entity to whom the request for
1170 a record is made may not disclose a record claimed to be protected under a provision listed in
1171 Subsection (1)(b)(i) but which the governmental entity or records committee determines should

1172 be disclosed until the period in which to bring an appeal expires or the end of the appeals
1173 process, including judicial appeal. This Subsection (2) does not apply where the claimant, after
1174 notice, has waived the claim by not appealing or intervening before the records committee.

1175 (3) Disclosure or acquisition of information under this chapter does not constitute
1176 misappropriation under Subsection 13-24-2(2).

1177 Section 12. Section **63G-2-401** is amended to read:

1178 **63G-2-401. Appeal to head of governmental entity.**

1179 (1) (a) Any person aggrieved by a governmental entity's access determination under
1180 this chapter, including a person not a party to the governmental entity's proceeding, may appeal
1181 the determination within 30 days to the chief administrative officer of the governmental entity
1182 by filing a notice of appeal.

1183 (b) If a governmental entity claims extraordinary circumstances and specifies the date
1184 when the records will be available under Subsection 63G-2-204(3), and, if the requester
1185 believes the extraordinary circumstances do not exist or that the time specified is unreasonable,
1186 the requester may appeal the governmental entity's claim of extraordinary circumstances or date
1187 for compliance within 30 days after notification of a claim of extraordinary circumstances by
1188 the governmental entity, despite the lack of a "determination" or its equivalent under
1189 Subsection 63G-2-204(7).

1190 (2) The notice of appeal shall contain the following information:

1191 (a) the petitioner's name, mailing address, and daytime telephone number; and

1192 (b) the relief sought.

1193 (3) The petitioner may file a short statement of facts, reasons, and legal authority in
1194 support of the appeal.

1195 (4) (a) If the appeal involves a record that is the subject of a business confidentiality
1196 claim under Section 63G-2-309, the chief administrative officer shall:

1197 (i) send notice of the requester's appeal to the business confidentiality claimant within
1198 three business days after receiving notice, except that if notice under this section must be given
1199 to more than 35 persons, it shall be given as soon as reasonably possible; and

1200 (ii) send notice of the business confidentiality claim and the schedule for the chief
1201 administrative officer's determination to the requester within three business days after receiving
1202 notice of the requester's appeal.

1203 (b) The claimant shall have seven business days after notice is sent by the
1204 administrative officer to submit further support for the claim of business confidentiality.

1205 (5) (a) The chief administrative officer shall make a determination on the appeal within
1206 the following period of time:

1207 (i) within five business days after the chief administrative officer's receipt of the notice
1208 of appeal; or

1209 (ii) within 12 business days after the governmental entity sends the requester's notice of
1210 appeal to a person who submitted a claim of business confidentiality.

1211 (b) If the chief administrative officer fails to make a determination within the time
1212 specified in Subsection (5)(a), the failure shall be considered the equivalent of an order denying
1213 the appeal.

1214 (c) The provisions of this section notwithstanding, the parties participating in the
1215 proceeding may, by agreement, extend the time periods specified in this section.

1216 (6) ~~[The]~~ Except as provided in Section 63G-2-406, the chief administrative officer
1217 may, upon consideration and weighing of the various interests and public policies pertinent to
1218 the classification and disclosure or nondisclosure, order the disclosure of information properly
1219 classified as private under Subsection 63G-2-302(2) or protected under Section 63G-2-305 if
1220 the interests favoring access ~~[outweigh]~~ are greater than or equal to the interests favoring
1221 restriction of access.

1222 (7) The governmental entity shall send written notice of the determination of the chief
1223 administrative officer to all participants. If the chief administrative officer affirms the denial in
1224 whole or in part, the denial shall include a statement that the requester has the right to appeal
1225 the denial to either the records committee or district court, the time limits for filing an appeal,
1226 and the name and business address of the executive secretary of the records committee.

1227 (8) A person aggrieved by a governmental entity's classification or designation
1228 determination under this chapter, but who is not requesting access to the records, may appeal
1229 that determination using the procedures provided in this section. If a nonrequester is the only
1230 appellant, the procedures provided in this section shall apply, except that the determination on
1231 the appeal shall be made within 30 days after receiving the notice of appeal.

1232 (9) The duties of the chief administrative officer under this section may be delegated.
1233 Section 13. Section **63G-2-403** is amended to read:

1234 **63G-2-403. Appeals to the records committee.**

1235 (1) A petitioner, including an aggrieved person who did not participate in the appeal to
1236 the governmental entity's chief administrative officer, may appeal to the records committee by
1237 filing a notice of appeal with the executive secretary no later than:

1238 (a) 30 days after the day on which the chief administrative officer of the governmental
1239 entity [~~has granted or denied~~] grants or denies the record request in whole or in part, including
1240 a denial under Subsection 63G-2-204[~~(7)~~](8);

1241 (b) 45 days after the day on which the original request for a record is made if:

1242 (i) the circumstances described in Subsection 63G-2-401(1)(b) occur; and

1243 (ii) the chief administrative officer failed to make a determination under Section
1244 63G-2-401.

1245 (2) The notice of appeal shall contain the following information:

1246 (a) the petitioner's name, mailing address, and daytime telephone number;

1247 (b) a copy of any denial of the record request; and

1248 (c) the relief sought.

1249 (3) The petitioner:

1250 (a) shall, on the day on which the petitioner files an appeal to the records committee,
1251 serve a copy of the appeal on the government entity, described in Subsection (1), to which the
1252 appeal relates; and

1253 (b) may file a short statement of facts, reasons, and legal authority in support of the
1254 appeal.

1255 (4) (a) Except as provided in Subsection (4)(b), no later than five business days after
1256 receiving a notice of appeal, the executive secretary of the records committee shall:

1257 (i) schedule a hearing for the records committee to discuss the appeal at the next
1258 regularly scheduled committee meeting falling at least 14 days after the date the notice of
1259 appeal is filed but no longer than 52 calendar days after the date the notice of appeal was filed
1260 except that the records committee may schedule an expedited hearing upon application of the
1261 petitioner and good cause shown;

1262 (ii) send a copy of the notice of hearing to the petitioner; and

1263 (iii) send a copy of the notice of appeal, supporting statement, and a notice of hearing

1264 to:

1265 (A) each member of the records committee;

1266 (B) the records officer and the chief administrative officer of the governmental entity
1267 from which the appeal originated;

1268 (C) any person who made a business confidentiality claim under Section 63G-2-309 for
1269 a record that is the subject of the appeal; and

1270 (D) all persons who participated in the proceedings before the governmental entity's
1271 chief administrative officer.

1272 (b) (i) The executive secretary of the records committee may decline to schedule a
1273 hearing if the record series that is the subject of the appeal has been found by the committee in
1274 a previous hearing involving the same government entity to be appropriately classified as
1275 private, controlled, or protected.

1276 (ii) (A) If the executive secretary of the records committee declines to schedule a
1277 hearing, the executive secretary of the records committee shall send a notice to the petitioner
1278 indicating that the request for hearing has been denied and the reason for the denial.

1279 (B) The committee shall make rules to implement this section as provided by Title
1280 63G, Chapter 3, Utah Administrative Rulemaking Act.

1281 (5) (a) A written statement of facts, reasons, and legal authority in support of the
1282 governmental entity's position must be submitted to the executive secretary of the records
1283 committee not later than five business days before the hearing.

1284 (b) The governmental entity shall send a copy of the written statement to the petitioner
1285 by first class mail, postage prepaid. The executive secretary shall forward a copy of the written
1286 statement to each member of the records committee.

1287 (6) (a) No later than 10 business days after the notice of appeal is sent by the executive
1288 secretary, a person whose legal interests may be substantially affected by the proceeding may
1289 file a request for intervention before the records committee.

1290 (b) Any written statement of facts, reasons, and legal authority in support of the
1291 intervener's position shall be filed with the request for intervention.

1292 (c) The person seeking intervention shall provide copies of the statement described in
1293 Subsection (6)(b) to all parties to the proceedings before the records committee.

1294 (7) The records committee shall hold a hearing within the period of time described in
1295 Subsection (4).

1296 (8) At the hearing, the records committee shall allow the parties to testify, present
1297 evidence, and comment on the issues. The records committee may allow other interested
1298 persons to comment on the issues.

1299 (9) (a) The records committee may review the disputed records. However, if the
1300 committee is weighing the various interests under Subsection (11), the committee must review
1301 the disputed records. The review shall be in camera.

1302 (b) Members of the records committee may not disclose any information or record
1303 reviewed by the committee in camera unless the disclosure is otherwise authorized by this
1304 chapter.

1305 (10) (a) Discovery is prohibited, but the records committee may issue subpoenas or
1306 other orders to compel production of necessary evidence.

1307 (b) When the subject of a records committee subpoena disobeys or fails to comply with
1308 the subpoena, the records committee may file a motion for an order to compel obedience to the
1309 subpoena with the district court.

1310 (c) The records committee's review shall be de novo.

1311 (11) (a) No later than ~~five~~ seven business days after the hearing, the records
1312 committee shall issue a signed order either granting the petition in whole or in part or
1313 upholding the determination of the governmental entity in whole or in part.

1314 (b) ~~The~~ Except as provided in Section 63G-2-406, the records committee may, upon
1315 consideration and weighing of the various interests and public policies pertinent to the
1316 classification and disclosure or nondisclosure, order the disclosure of information properly
1317 classified as private, controlled, or protected if the public interest favoring access ~~[outweighs]~~
1318 is greater than or equal to the interest favoring restriction of access.

1319 (c) In making a determination under Subsection (11)(b), the records committee shall
1320 consider and, where appropriate, limit the requester's use and further disclosure of the record in
1321 order to protect:

1322 (i) privacy interests in the case of a private or controlled record;

1323 (ii) business confidentiality interests in the case of a record protected under Subsection
1324 63G-2-305(1), (2), ~~[(40)]~~ (39)(a)(ii), or ~~[(40)]~~ (39)(a)(vi); and

1325 (iii) privacy interests or the public interest in the case of other protected records.

1326 (12) The order of the records committee shall include:

1327 (a) a statement of reasons for the decision, including citations to this chapter, court rule
1328 or order, another state statute, federal statute, or federal regulation that governs disclosure of
1329 the record, provided that the citations do not disclose private, controlled, or protected
1330 information;

1331 (b) a description of the record or portions of the record to which access was ordered or
1332 denied, provided that the description does not disclose private, controlled, or protected
1333 information or information exempt from disclosure under Subsection 63G-2-201(3)(b);

1334 (c) a statement that any party to the proceeding before the records committee may
1335 appeal the records committee's decision to district court; and

1336 (d) a brief summary of the appeals process, the time limits for filing an appeal, and a
1337 notice that in order to protect its rights on appeal, the party may wish to seek advice from an
1338 attorney.

1339 (13) If the records committee fails to issue a decision within 57 calendar days of the
1340 filing of the notice of appeal, that failure shall be considered the equivalent of an order denying
1341 the appeal. The petitioner shall notify the records committee in writing if the petitioner
1342 considers the appeal denied.

1343 (14) (a) Unless a notice of intent to appeal is filed under Subsection (14)(b), each party
1344 to the proceeding shall comply with the order of the records committee.

1345 (b) If a party disagrees with the order of the records committee, that party may file a
1346 notice of intent to appeal the order of the records committee.

1347 (c) If the records committee orders the governmental entity to produce a record and no
1348 appeal is filed, or if, as a result of the appeal, the governmental entity is required to produce a
1349 record, the governmental entity shall:

1350 (i) produce the record; and

1351 (ii) file a notice of compliance with the records committee.

1352 (d) (i) If the governmental entity that is ordered to produce a record fails to file a notice
1353 of compliance or a notice of intent to appeal, the records committee may do either or both of
1354 the following:

1355 (A) impose a civil penalty of up to \$500 for each day of continuing noncompliance; or

1356 (B) send written notice of the governmental entity's noncompliance to:

1357 (I) the governor for executive branch entities;

1358 (II) the Legislative Management Committee for legislative branch entities; and
1359 (III) the Judicial Council for judicial branch agencies entities.

1360 (ii) In imposing a civil penalty, the records committee shall consider the gravity and
1361 circumstances of the violation, including whether the failure to comply was due to neglect or
1362 was willful or intentional.

1363 Section 14. Section **63G-2-404** is amended to read:

1364 **63G-2-404. Judicial review.**

1365 (1) (a) Any party to a proceeding before the records committee may petition for judicial
1366 review by the district court of the records committee's order.

1367 (b) The petition shall be filed no later than 30 days after the date of the records
1368 committee's order.

1369 (c) The records committee is a necessary party to the petition for judicial review.

1370 (d) The executive secretary of the records committee shall be served with notice of the
1371 petition in accordance with the Utah Rules of Civil Procedure.

1372 (2) (a) A requester may petition for judicial review by the district court of a
1373 governmental entity's determination as specified in Subsection 63G-2-402(1)(b).

1374 (b) The requester shall file a petition no later than:

1375 (i) 30 days after the governmental entity has responded to the records request by either
1376 providing the requested records or denying the request in whole or in part;

1377 (ii) 35 days after the original request if the governmental entity failed to respond to the
1378 request; or

1379 (iii) 45 days after the original request for records if:

1380 (A) the circumstances described in Subsection 63G-2-401(1)(b) occur; and

1381 (B) the chief administrative officer failed to make a determination under Section
1382 63G-2-401.

1383 (3) The petition for judicial review shall be a complaint governed by the Utah Rules of
1384 Civil Procedure and shall contain:

1385 (a) the petitioner's name and mailing address;

1386 (b) a copy of the records committee order from which the appeal is taken, if the
1387 petitioner brought a prior appeal to the records committee;

1388 (c) the name and mailing address of the governmental entity that issued the initial

1389 determination with a copy of that determination;

1390 (d) a request for relief specifying the type and extent of relief requested; and

1391 (e) a statement of the reasons why the petitioner is entitled to relief.

1392 (4) If the appeal is based on the denial of access to a protected record, the court shall
1393 allow the claimant of business confidentiality to provide to the court the reasons for the claim
1394 of business confidentiality.

1395 (5) All additional pleadings and proceedings in the district court are governed by the
1396 Utah Rules of Civil Procedure.

1397 (6) The district court may review the disputed records. The review shall be in camera.

1398 (7) The court shall:

1399 (a) make its decision de novo, but allow introduction of evidence presented to the
1400 records committee;

1401 (b) determine all questions of fact and law without a jury; and

1402 (c) decide the issue at the earliest practical opportunity.

1403 (8) (a) ~~[The]~~ Except as provided in Section 63G-2-406, the court may, upon
1404 consideration and weighing of the various interests and public policies pertinent to the
1405 classification and disclosure or nondisclosure, order the disclosure of information properly
1406 classified as private, controlled, or protected if the interest favoring access [outweighs] is
1407 greater than or equal to the interest favoring restriction of access.

1408 (b) The court shall consider and, where appropriate, limit the requester's use and
1409 further disclosure of the record in order to protect privacy interests in the case of private or
1410 controlled records, business confidentiality interests in the case of records protected under
1411 Subsections 63G-2-305(1) and (2), and privacy interests or the public interest in the case of
1412 other protected records.

1413 Section 15. Section **63G-2-405** is amended to read:

1414 **63G-2-405. Confidential treatment of records for which no exemption applies.**

1415 (1) A court may, on appeal or in a declaratory or other action, order the confidential
1416 treatment of records for which no exemption from disclosure applies if:

1417 (a) there are compelling interests favoring restriction of access to the record; and

1418 (b) the interests favoring restriction of access clearly ~~[outweigh]~~ are greater than or
1419 equal to the interests favoring access.

1420 (2) If a governmental entity requests a court to restrict access to a record under this
1421 section, the court shall require the governmental entity to pay the reasonable [attorneys']
1422 attorney fees incurred by the lead party in opposing the governmental entity's request, if:

1423 (a) the court finds that no statutory or constitutional exemption from disclosure could
1424 reasonably apply to the record in question; and

1425 (b) the court denies confidential treatment under this section.

1426 (3) This section does not apply to records that are specifically required to be public
1427 under statutory provisions outside of this chapter or under Section 63G-2-301, except as
1428 provided in Subsection (4).

1429 (4) (a) Access to drafts and empirical data in drafts may be limited under this section,
1430 but the court may consider, in its evaluation of interests favoring restriction of access, only
1431 those interests that relate to the underlying information, and not to the deliberative nature of the
1432 record.

1433 (b) Access to original data in a computer program may be limited under this section,
1434 but the court may consider, in its evaluation of interests favoring restriction of access, only
1435 those interests that relate to the underlying information, and not to the status of that data as part
1436 of a computer program.

1437 Section 16. Section **63G-2-406** is enacted to read:

1438 **63G-2-406. Evidentiary standards for release of certain enforcement and**
1439 **litigation records.**

1440 (1) A record that is classified as protected under Subsection 63G-2-305(9), (16), (17),
1441 (22), (23), or (32) may be ordered to be disclosed under the provisions of Subsection
1442 63G-2-401(6), 63G-2-403(11)(b), or 63G-2-404(8)(a) only if the person or party seeking
1443 disclosure of the record has established, by a preponderance of the evidence, that the public
1444 interest favoring access is equal to or greater than the interest favoring restriction of access.

1445 (2) A record that is classified as protected under Subsection 63G-2-305(10) may be
1446 ordered to be disclosed under the provisions of Subsection 63G-2-401(6), 63G-2-403(11)(b), or
1447 63G-2-404(8) only if the person or party seeking disclosure of the record has established, by
1448 clear and convincing evidence, that the public interest favoring access is equal to or greater
1449 than the interest favoring restriction of access.

1450 Section 17. Section **63G-2-801** is amended to read:

1451 **63G-2-801. Criminal penalties.**

1452 (1) (a) A public employee or other person who has lawful access to any private,
1453 controlled, or protected record under this chapter, and who intentionally discloses, provides a
1454 copy of, or improperly uses a private, controlled, or protected record knowing that the
1455 disclosure or use is prohibited under this chapter, is guilty of a class B misdemeanor.

1456 (b) It is a defense to prosecution under Subsection (1)(a) that the actor used or released
1457 private, controlled, or protected information in the reasonable belief that the use or disclosure
1458 of the information was necessary to expose a violation of law involving government
1459 corruption, abuse of office, or misappropriation of public funds or property.

1460 (c) It is a defense to prosecution under Subsection (1)(a) that the record could have
1461 lawfully been released to the recipient if it had been properly classified.

1462 (d) It is a defense to prosecution under Subsection (1)(a) that the public employee or
1463 other person disclosed, provided, or used the record based on a good faith belief that the
1464 disclosure, provision, or use was in accordance with the law.

1465 (2) (a) A person who by false pretenses, bribery, or theft, gains access to or obtains a
1466 copy of any private, controlled, or protected record to which the person is not legally entitled is
1467 guilty of a class B misdemeanor.

1468 (b) No person shall be guilty under Subsection (2)(a) who receives the record,
1469 information, or copy after the fact and without prior knowledge of or participation in the false
1470 pretenses, bribery, or theft.

1471 (3) (a) A public employee who intentionally refuses to release a record, the disclosure
1472 of which the employee knows is required by law [~~or by final unappealed order from a~~
1473 ~~governmental entity, the records committee, or a court~~], is guilty of a class B misdemeanor.

1474 (b) It is a defense to prosecution under Subsection (3)(a) that the public employee's
1475 failure to release the record was based on a good faith belief that the public employee was
1476 acting in accordance with the requirements of law.

1477 (c) A public employee who intentionally refuses to release a record, the disclosure of
1478 which the employee knows is required by a final unappealed order from a government entity,
1479 the records committee, or a court is guilty of a class B misdemeanor.

1480 Section 18. Section **78A-4-106** is amended to read:

1481 **78A-4-106. Appellate Mediation Office -- Protected records and information --**

1482 **Governmental immunity.**

1483 (1) Unless a more restrictive rule of court is adopted pursuant to Subsection
1484 63G-2-201(3)(b), information and records relating to any matter on appeal received or
1485 generated by the Chief Appellate Mediator or other staff of the Appellate Mediation Office as a
1486 result of any party's participation or lack of participation in the settlement program shall be
1487 maintained as protected records pursuant to Subsections 63G-2-305(16), (17), [~~(18)~~] and
1488 [~~(33)~~] (32).

1489 (2) In addition to the access restrictions on protected records provided in Section
1490 63G-2-202, the information and records may not be disclosed to judges, staff, or employees of
1491 any court of this state.

1492 (3) The Chief Appellate Mediator may disclose statistical and other demographic
1493 information as may be necessary and useful to report on the status and to allow supervision and
1494 oversight of the Appellate Mediation Office.

1495 (4) When acting as mediators, the Chief Appellate Mediator and other professional
1496 staff of the Appellate Mediation Office shall be immune from liability pursuant to Title 63G,
1497 Chapter 7, Governmental Immunity Act of Utah.

1498 (5) Pursuant to Utah Constitution, Article VIII, Section 4, the Supreme Court may
1499 exercise overall supervision of the Appellate Mediation Office as part of the appellate process.