

**REQUEST FOR LEGISLATION AMENDMENTS**

2013 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Kraig Powell**

Senate Sponsor: \_\_\_\_\_

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**LONG TITLE**

**General Description:**

This bill modifies a provision relating to the status of information on a request for legislation form.

**Highlighted Provisions:**

This bill:

- ▶ provides that information on a request for legislation form that identifies the name of the legislator submitting the form, the date the form is submitted, and the short title assigned to the requested legislation is public information, notwithstanding provisions that would otherwise make that information protected from disclosure; and

- ▶ makes technical changes.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

AMENDS:

**63G-2-305**, as last amended by Laws of Utah 2012, Chapters 331 and 377

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



28 Section 1. Section **63G-2-305** is amended to read:

29 **63G-2-305. Protected records.**

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

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

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

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

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

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

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

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

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

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

57 (a) a request for bids;

58 (b) a request for proposals;

- 59 (c) a grant; or
- 60 (d) other similar document;
- 61 (7) records that would identify real property or the appraisal or estimated value of real
- 62 or personal property, including intellectual property, under consideration for public acquisition
- 63 before any rights to the property are acquired unless:
  - 64 (a) public interest in obtaining access to the information is greater than or equal to the
  - 65 governmental entity's need to acquire the property on the best terms possible;
  - 66 (b) the information has already been disclosed to persons not employed by or under a
  - 67 duty of confidentiality to the entity;
  - 68 (c) in the case of records that would identify property, potential sellers of the described
  - 69 property have already learned of the governmental entity's plans to acquire the property;
  - 70 (d) in the case of records that would identify the appraisal or estimated value of
  - 71 property, the potential sellers have already learned of the governmental entity's estimated value
  - 72 of the property; or
  - 73 (e) the property under consideration for public acquisition is a single family residence
  - 74 and the governmental entity seeking to acquire the property has initiated negotiations to acquire
  - 75 the property as required under Section 78B-6-505;
- 76 (8) records prepared in contemplation of sale, exchange, lease, rental, or other
- 77 compensated transaction of real or personal property including intellectual property, which, if
- 78 disclosed prior to completion of the transaction, would reveal the appraisal or estimated value
- 79 of the subject property, unless:
  - 80 (a) the public interest in access is greater than or equal to the interests in restricting
  - 81 access, including the governmental entity's interest in maximizing the financial benefit of the
  - 82 transaction; or
  - 83 (b) when prepared by or on behalf of a governmental entity, appraisals or estimates of
  - 84 the value of the subject property have already been disclosed to persons not employed by or
  - 85 under a duty of confidentiality to the entity;
  - 86 (9) records created or maintained for civil, criminal, or administrative enforcement
  - 87 purposes or audit purposes, or for discipline, licensing, certification, or registration purposes, if
  - 88 release of the records:
    - 89 (a) reasonably could be expected to interfere with investigations undertaken for

90 enforcement, discipline, licensing, certification, or registration purposes;

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

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

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

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

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

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

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

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

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

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

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

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

124 (18) (a) (i) personal files of a state legislator, including personal correspondence to or  
 125 from a member of the Legislature; and

126 (ii) notwithstanding Subsection (18)(a)(i), correspondence that gives notice of  
 127 legislative action or policy may not be classified as protected under this section; and

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

130 (A) members of a legislative body;

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

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

133 (ii) notwithstanding Subsection (18)(b)(i), a communication that gives notice of  
 134 legislative action or policy may not be classified as protected under this section;

135 (19) ~~[(a)]~~ records in the custody or control of the Office of Legislative Research and  
 136 General Counsel, that, if disclosed, would reveal a particular legislator's contemplated  
 137 legislation or contemplated course of action before the legislator has elected to support the  
 138 legislation or course of action, or made the legislation or course of action public~~;~~and, except  
 139 that:

140 ~~[(b) notwithstanding Subsection (19)(a), the]~~

141 (a) a form to request legislation submitted to the Office of Legislative Research and  
 142 General Counsel is a public [document unless a legislator asks that the records requesting the  
 143 legislation] record unless the legislator submitting the request form asks that the request form  
 144 be maintained as a protected [records] record until such time as the legislator elects to make the  
 145 legislation or course of action public; and

146 (b) information on a request form that identifies the legislator submitting the request  
 147 form, the date that the request form is submitted, and the short title by which the requested  
 148 legislation is designated is public information;

149 (20) research requests from legislators to the Office of Legislative Research and  
 150 General Counsel or the Office of the Legislative Fiscal Analyst and research findings prepared  
 151 in response to these requests;

- 152 (21) drafts, unless otherwise classified as public;
- 153 (22) records concerning a governmental entity's strategy about:
  - 154 (a) collective bargaining; or
  - 155 (b) imminent or pending litigation;
- 156 (23) records of investigations of loss occurrences and analyses of loss occurrences that
- 157 may be covered by the Risk Management Fund, the Employers' Reinsurance Fund, the
- 158 Uninsured Employers' Fund, or similar divisions in other governmental entities;
- 159 (24) records, other than personnel evaluations, that contain a personal recommendation
- 160 concerning an individual if disclosure would constitute a clearly unwarranted invasion of
- 161 personal privacy, or disclosure is not in the public interest;
- 162 (25) records that reveal the location of historic, prehistoric, paleontological, or
- 163 biological resources that if known would jeopardize the security of those resources or of
- 164 valuable historic, scientific, educational, or cultural information;
- 165 (26) records of independent state agencies if the disclosure of the records would
- 166 conflict with the fiduciary obligations of the agency;
- 167 (27) records of an institution within the state system of higher education defined in
- 168 Section 53B-1-102 regarding tenure evaluations, appointments, applications for admissions,
- 169 retention decisions, and promotions, which could be properly discussed in a meeting closed in
- 170 accordance with Title 52, Chapter 4, Open and Public Meetings Act, provided that records of
- 171 the final decisions about tenure, appointments, retention, promotions, or those students
- 172 admitted, may not be classified as protected under this section;
- 173 (28) records of the governor's office, including budget recommendations, legislative
- 174 proposals, and policy statements, that if disclosed would reveal the governor's contemplated
- 175 policies or contemplated courses of action before the governor has implemented or rejected
- 176 those policies or courses of action or made them public;
- 177 (29) records of the Office of the Legislative Fiscal Analyst relating to budget analysis,
- 178 revenue estimates, and fiscal notes of proposed legislation before issuance of the final
- 179 recommendations in these areas;
- 180 (30) records provided by the United States or by a government entity outside the state
- 181 that are given to the governmental entity with a requirement that they be managed as protected
- 182 records if the providing entity certifies that the record would not be subject to public disclosure

183 if retained by it;

184 (31) transcripts, minutes, or reports of the closed portion of a meeting of a public body  
185 except as provided in Section 52-4-206;

186 (32) records that would reveal the contents of settlement negotiations but not including  
187 final settlements or empirical data to the extent that they are not otherwise exempt from  
188 disclosure;

189 (33) memoranda prepared by staff and used in the decision-making process by an  
190 administrative law judge, a member of the Board of Pardons and Parole, or a member of any  
191 other body charged by law with performing a quasijudicial function;

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

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

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

204 (a) the donor requests anonymity in writing;

205 (b) any terms, conditions, restrictions, or privileges relating to the donation may not be  
206 classified protected by the governmental entity under this Subsection (36); and

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

212 (37) accident reports, except as provided in Sections 41-6a-404, 41-12a-202, and  
213 73-18-13;

214 (38) a notification of workers' compensation insurance coverage described in Section  
215 34A-2-205;

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

219 (i) unpublished lecture notes;

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

221 (A) relating to research; and

222 (B) of:

223 (I) the institution within the state system of higher education defined in Section  
224 53B-1-102; or

225 (II) a sponsor of sponsored research;

226 (iii) unpublished manuscripts;

227 (iv) creative works in process;

228 (v) scholarly correspondence; and

229 (vi) confidential information contained in research proposals;

230 (b) Subsection (39)(a) may not be construed to prohibit disclosure of public  
231 information required pursuant to Subsection 53B-16-302(2)(a) or (b); and

232 (c) Subsection (39)(a) may not be construed to affect the ownership of a record;

233 (40) (a) records in the custody or control of the Office of Legislative Auditor General

234 that would reveal the name of a particular legislator who requests a legislative audit prior to the  
235 date that audit is completed and made public; and

236 (b) notwithstanding Subsection (40)(a), a request for a legislative audit submitted to the  
237 Office of the Legislative Auditor General is a public document unless the legislator asks that  
238 the records in the custody or control of the Office of Legislative Auditor General that would  
239 reveal the name of a particular legislator who requests a legislative audit be maintained as  
240 protected records until the audit is completed and made public;

241 (41) records that provide detail as to the location of an explosive, including a map or  
242 other document that indicates the location of:

243 (a) a production facility; or

244 (b) a magazine;

245 (42) information:  
246 (a) contained in the statewide database of the Division of Aging and Adult Services  
247 created by Section 62A-3-311.1; or  
248 (b) received or maintained in relation to the Identity Theft Reporting Information  
249 System (IRIS) established under Section 67-5-22;  
250 (43) information contained in the Management Information System and Licensing  
251 Information System described in Title 62A, Chapter 4a, Child and Family Services;  
252 (44) information regarding National Guard operations or activities in support of the  
253 National Guard's federal mission;  
254 (45) records provided by any pawn or secondhand business to a law enforcement  
255 agency or to the central database in compliance with Title 13, Chapter 32a, Pawnshop and  
256 Secondhand Merchandise Transaction Information Act;  
257 (46) information regarding food security, risk, and vulnerability assessments performed  
258 by the Department of Agriculture and Food;  
259 (47) except to the extent that the record is exempt from this chapter pursuant to Section  
260 63G-2-106, records related to an emergency plan or program, a copy of which is provided to or  
261 prepared or maintained by the Division of Emergency Management, and the disclosure of  
262 which would jeopardize:  
263 (a) the safety of the general public; or  
264 (b) the security of:  
265 (i) governmental property;  
266 (ii) governmental programs; or  
267 (iii) the property of a private person who provides the Division of Emergency  
268 Management information;  
269 (48) records of the Department of Agriculture and Food that provides for the  
270 identification, tracing, or control of livestock diseases, including any program established under  
271 Title 4, Chapter 24, Utah Livestock Brand and Anti-theft Act or Title 4, Chapter 31, Control of  
272 Animal Disease;  
273 (49) as provided in Section 26-39-501:  
274 (a) information or records held by the Department of Health related to a complaint  
275 regarding a child care program or residential child care which the department is unable to

276 substantiate; and

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

279 (50) unless otherwise classified as public under Section 63G-2-301 and except as  
280 provided under Section 41-1a-116, an individual's home address, home telephone number, or  
281 personal mobile phone number, if:

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

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

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

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

288 (51) the name, home address, work addresses, and telephone numbers of an individual  
289 that is engaged in, or that provides goods or services for, medical or scientific research that is:

290 (a) conducted within the state system of higher education, as defined in Section  
291 53B-1-102; and

292 (b) conducted using animals;

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

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

298 (54) information collected and a report prepared by the Judicial Performance  
299 Evaluation Commission concerning a judge, unless Section 20A-7-702 or Title 78A, Chapter  
300 12, Judicial Performance Evaluation Commission Act, requires disclosure of, or makes public,  
301 the information or report;

302 (55) records contained in the Management Information System created in Section  
303 62A-4a-1003;

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

306 (57) information requested by and provided to the Utah State 911 Committee under

307 Section 53-10-602;

308 (58) recorded Children's Justice Center investigative interviews, both video and audio,  
309 the release of which are governed by Section 77-37-4;

310 (59) in accordance with Section 73-10-33:

311 (a) a management plan for a water conveyance facility in the possession of the Division  
312 of Water Resources or the Board of Water Resources; or

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

315 (60) the following records in the custody or control of the Office of Inspector General  
316 of Medicaid Services, created in Section 63J-4a-201:

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

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

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

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

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

336 (61) records that reveal methods used by the Office of Inspector General of Medicaid  
337 Services, the fraud unit, or the Department of Health, to discover Medicaid fraud, waste, or

338 abuse;  
339 (62) information provided to the Department of Health or the Division of Occupational  
340 and Professional Licensing under Subsection 58-68-304(3) or (4); and  
341 (63) a record described in Section 63G-12-210.

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**Legislative Review Note**  
**as of 1-22-13 9:35 AM**

**Office of Legislative Research and General Counsel**