

1                   **GOVERNMENT RECORDS ACCESS AND MANAGEMENT ACT**

2                                   **AMENDMENTS**

3   2015 GENERAL SESSION

4   STATE OF UTAH

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

6                                   House Sponsor: Bradley M. Daw

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**LONG TITLE**

8 **General Description:**

9                   This bill modifies the Government Records Access and Management Act.

10 **Highlighted Provisions:**

11                   This bill:

- 12                   ▶ modifies the process of appealing the denial of a record request;
- 13                   ▶ eliminates the right of direct appeal to district court of a chief administrative officer
- 14                   decision affirming a denial of a record request; and
- 15                   ▶ eliminates appeals to political subdivision appeals boards for appeals of record
- 16                   request denials.

17 **Money Appropriated in this Bill:**

18                   None

19 **Other Special Clauses:**

20                   None

21 **Utah Code Sections Affected:**

22 AMENDS:

23                   **53B-16-303**, as last amended by Laws of Utah 2008, Chapter 382

24                   **63G-2-202**, as last amended by Laws of Utah 2014, Chapter 373

25                   **63G-2-401**, as last amended by Laws of Utah 2012, Chapter 377

26                   **63G-2-402**, as renumbered and amended by Laws of Utah 2008, Chapter 382



- 28           **63G-2-404**, as last amended by Laws of Utah 2012, Chapter 377
- 29           **63G-2-406**, as last amended by Laws of Utah 2013, Chapter 445
- 30           **63G-2-701**, as last amended by Laws of Utah 2009, Chapter 131
- 31           **63G-2-802**, as renumbered and amended by Laws of Utah 2008, Chapter 382

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

34           Section 1. Section **53B-16-303** is amended to read:

35           **53B-16-303. Access to restricted records.**

36           Notwithstanding any other provision of Title 63G, Chapter 2, Government Records  
37 Access and Management Act, access to records restricted by this part shall only be permitted  
38 upon:

39           (1) written consent of the public institution of higher education originating, receiving,  
40 or maintaining such records; or

41           (2) a finding by the State Records Committee or a court that the record has not been  
42 properly classified as restricted under Section **63G-2-302**, provided that the review of a  
43 restricted classification of a record shall not include considerations of weighing public and  
44 private interests regarding access to a properly classified record as contained in Subsection  
45 **63G-2-403**(11)(b) or **63G-2-404**~~(8)~~(7) or Section **63G-2-309**. Nothing in this Subsection (2)  
46 shall be construed to limit the authority of the State Board of Regents to reclassify and disclose  
47 a record of a public institution of higher education.

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

49           **63G-2-202. Access to private, controlled, and protected documents.**

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

52           (a) the subject of the record;

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

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

57           (d) any other individual who:

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

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

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

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

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

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

67 Powers.

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

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

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

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

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

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

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

78 Powers.

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

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

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

87 (a) the person who submitted the record;

88 (b) any other individual who:

89 (i) has a power of attorney from all persons, governmental entities, or political

90 subdivisions whose interests were sought to be protected by the protected classification; or  
91 (ii) submits a notarized release from all persons, governmental entities, or political  
92 subdivisions whose interests were sought to be protected by the protected classification or from  
93 their legal representatives dated no more than 90 days prior to the date the request is made;  
94 (c) any person to whom the record must be provided pursuant to:  
95 (i) a court order as provided in Subsection (7); or  
96 (ii) a legislative subpoena as provided in Title 36, Chapter 14, Legislative Subpoena  
97 Powers; or  
98 (d) the owner of a mobile home park, subject to the conditions of Subsection  
99 41-1a-116(5).  
100 (5) A governmental entity may disclose a private, controlled, or protected record to  
101 another governmental entity, political subdivision, another state, the United States, or a foreign  
102 government only as provided by Section 63G-2-206.  
103 (6) Before releasing a private, controlled, or protected record, the governmental entity  
104 shall obtain evidence of the requester's identity.  
105 (7) A governmental entity shall disclose a record pursuant to the terms of a court order  
106 signed by a judge from a court of competent jurisdiction, provided that:  
107 (a) the record deals with a matter in controversy over which the court has jurisdiction;  
108 (b) the court has considered the merits of the request for access to the record;  
109 (c) the court has considered and, where appropriate, limited the requester's use and  
110 further disclosure of the record in order to protect:  
111 (i) privacy interests in the case of private or controlled records;  
112 (ii) business confidentiality interests in the case of records protected under Subsection  
113 63G-2-305(1), (2), (40)(a)(ii), or (40)(a)(vi); and  
114 (iii) privacy interests or the public interest in the case of other protected records;  
115 (d) to the extent the record is properly classified private, controlled, or protected, the  
116 interests favoring access, considering limitations thereon, are greater than or equal to the  
117 interests favoring restriction of access; and  
118 (e) where access is restricted by a rule, statute, or regulation referred to in Subsection  
119 63G-2-201(3)(b), the court has authority independent of this chapter to order disclosure.  
120 (8) (a) Except as provided in Subsection (8)(d), a governmental entity may disclose or

121 authorize disclosure of private or controlled records for research purposes if the governmental  
122 entity:

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

125 (ii) determines that:

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

127 (B) the value of the research is greater than or equal to the infringement upon personal  
128 privacy;

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

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

133 (iv) prohibits the researcher from:

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

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

138 (v) secures from the researcher a written statement of the researcher's understanding of  
139 and agreement to the conditions of this Subsection (8) and the researcher's understanding that  
140 violation of the terms of this Subsection (8) may subject the researcher to criminal prosecution  
141 under Section [63G-2-801](#).

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

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

148 (d) A governmental entity may not disclose or authorize disclosure of a private record  
149 for research purposes as described in this Subsection (8) if the private record is a record  
150 described in Subsection [63G-2-302\(1\)\(u\)](#).

151 (9) (a) Under Subsections [63G-2-201\(5\)\(b\)](#) and [63G-2-401\(6\)](#), a governmental entity

152 may disclose to persons other than those specified in this section records that are:

- 153 (i) private under Section 63G-2-302; or
- 154 (ii) protected under Section 63G-2-305 subject to Section 63G-2-309 if a claim for
- 155 business confidentiality has been made under Section 63G-2-309.

156 (b) Under Subsection 63G-2-403(11)(b), the records committee may require the

157 disclosure to persons other than those specified in this section of records that are:

- 158 (i) private under Section 63G-2-302;
- 159 (ii) controlled under Section 63G-2-304; or
- 160 (iii) protected under Section 63G-2-305 subject to Section 63G-2-309 if a claim for
- 161 business confidentiality has been made under Section 63G-2-309.

162 (c) Under Subsection 63G-2-404~~(8)~~(7), the court may require the disclosure of

163 records that are private under Section 63G-2-302, controlled under Section 63G-2-304, or

164 protected under Section 63G-2-305 to persons other than those specified in this section.

165 (10) A record contained in the Management Information System, created in Section

166 62A-4a-1003, that is found to be unsubstantiated, unsupported, or without merit may not be

167 disclosed to any person except the person who is alleged in the report to be a perpetrator of

168 abuse, neglect, or dependency.

169 (11) (a) A private record described in Subsection 63G-2-302(2)(g) may only be

170 disclosed as provided in Subsection (1)(e).

171 (b) A protected record described in Subsection 63G-2-305(43) may only be disclosed

172 as provided in Subsection (4)(c) or Section 62A-3-312.

173 (12) (a) A private, protected, or controlled record described in Section 62A-16-301

174 shall be disclosed as required under:

- 175 (i) Subsections 62A-16-301(1)(b), (2), and (4)(c); and
- 176 (ii) Subsections 62A-16-302(1) and (6).

177 (b) A record disclosed under Subsection (12)(a) shall retain its character as private,

178 protected, or controlled.

179 Section 3. Section 63G-2-401 is amended to read:

180 **63G-2-401. Appeal to head of governmental entity.**

181 (1) (a) Any person aggrieved by a governmental entity's access determination under

182 this chapter, including a person not a party to the governmental entity's proceeding, may appeal

183 the determination within 30 days to the chief administrative officer of the governmental entity  
184 by filing a notice of appeal.

185 (b) If a governmental entity claims extraordinary circumstances and specifies the date  
186 when the records will be available under Subsection 63G-2-204(3), and, if the requester  
187 believes the extraordinary circumstances do not exist or that the time specified is unreasonable,  
188 the requester may appeal the governmental entity's claim of extraordinary circumstances or date  
189 for compliance within 30 days after notification of a claim of extraordinary circumstances by  
190 the governmental entity, despite the lack of a "determination" or its equivalent under  
191 Subsection 63G-2-204[(7)](8).

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

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

194 (b) the relief sought.

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

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

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

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

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

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

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

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

213 (b) If the chief administrative officer fails to make a determination within the time

214 specified in Subsection (5)(a), the failure shall be considered the equivalent of an order denying  
215 the appeal.

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

218 (6) Except as provided in Section [63G-2-406](#), the chief administrative officer may,  
219 upon consideration and weighing of the various interests and public policies pertinent to the  
220 classification and disclosure or nondisclosure, order the disclosure of information properly  
221 classified as private under Subsection [63G-2-302\(2\)](#) or protected under Section [63G-2-305](#) if  
222 the interests favoring access are greater than or equal to the interests favoring restriction of  
223 access.

224 (7) The governmental entity shall send written notice of the determination of the chief  
225 administrative officer to all participants. If the chief administrative officer affirms the denial in  
226 whole or in part, the denial shall include a statement that the requester has the right to appeal  
227 the denial to ~~[either]~~ the records committee ~~[or district court]~~ as provided in Section  
228 [63G-2-402](#), the time limits for filing an appeal, and the name and business address of the  
229 executive secretary of the records committee.

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

235 (9) The duties of the chief administrative officer under this section may be delegated.

236 Section 4. Section [63G-2-402](#) is amended to read:

237 **[63G-2-402. Option for appealing a denial.](#)**

238 (1) If the chief administrative officer of a governmental entity denies a records request  
239 under Section [63G-2-401](#), the requester may~~[(a)]~~ appeal the denial to the records committee  
240 as provided in Section [63G-2-403](#)~~[(a)]~~.

241 ~~[(b) petition for judicial review in district court as provided in Section [63G-2-404](#).]~~

242 (2) Any person aggrieved by a determination of the chief administrative officer of a  
243 governmental entity under this chapter, including persons who did not participate in the  
244 governmental entity's proceeding, may appeal the determination to the records committee as

245 provided in Section [63G-2-403](#).

246 Section 5. Section [63G-2-404](#) is amended to read:

247 **[63G-2-404. Judicial review.](#)**

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

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

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

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

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

257 ~~[(b) The requester shall file a petition no later than:]~~

258 ~~[(i) 30 days after the governmental entity has responded to the records request by either  
259 providing the requested records or denying the request in whole or in part;]~~

260 ~~[(ii) 35 days after the original request if the governmental entity failed to respond to the  
261 request; or]~~

262 ~~[(iii) 45 days after the original request for records if:]~~

263 ~~[(A) the circumstances described in Subsection [63G-2-401](#)(1)(b) occur; and]~~

264 ~~[(B) the chief administrative officer failed to make a determination under Section  
265 [63G-2-401](#).]~~

266 ~~[(3)]~~ (2) The petition for judicial review shall be a complaint governed by the Utah  
267 Rules of Civil Procedure and shall contain:

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

269 (b) a copy of the records committee order from which the appeal is taken~~[-if the  
270 petitioner brought a prior appeal to the records committee];~~

271 (c) the name and mailing address of the governmental entity that issued the initial  
272 determination with a copy of that determination;

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

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

275 ~~[(4)]~~ (3) If the appeal is based on the denial of access to a protected record, the court

276 shall allow the claimant of business confidentiality to provide to the court the reasons for the  
277 claim of business confidentiality.

278 ~~[(5)]~~ (4) All additional pleadings and proceedings in the district court are governed by  
279 the Utah Rules of Civil Procedure.

280 ~~[(6)]~~ (5) The district court may review the disputed records. The review shall be in  
281 camera.

282 ~~[(7)]~~ (6) The court shall:

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

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

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

287 ~~[(8)]~~ (7) (a) Except as provided in Section 63G-2-406, the court may, upon  
288 consideration and weighing of the various interests and public policies pertinent to the  
289 classification and disclosure or nondisclosure, order the disclosure of information properly  
290 classified as private, controlled, or protected if the interest favoring access is greater than or  
291 equal to the interest favoring restriction of access.

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

297 Section 6. Section 63G-2-406 is amended to read:

298 **63G-2-406. Evidentiary standards for release of certain enforcement and**  
299 **litigation records.**

300 (1) A record that is classified as protected under Subsection 63G-2-305(10), (17), (18),  
301 (23), (24), or (33) may be ordered to be disclosed under the provisions of Subsection  
302 63G-2-401(6), 63G-2-403(11)(b), or 63G-2-404~~[(8)]~~(7)(a) only if the person or party seeking  
303 disclosure of the record has established, by a preponderance of the evidence, that the public  
304 interest favoring access is equal to or greater than the interest favoring restriction of access.

305 (2) A record that is classified as protected under Subsection 63G-2-305(11) may be  
306 ordered to be disclosed under the provisions of Subsection 63G-2-401(6), 63G-2-403(11)(b), or

307 63G-2-404~~(8)~~(7) only if the person or party seeking disclosure of the record has established,  
308 by clear and convincing evidence, that the public interest favoring access is equal to or greater  
309 than the interest favoring restriction of access.

310 Section 7. Section 63G-2-701 is amended to read:

311 **63G-2-701. Political subdivisions may adopt ordinances in compliance with**  
312 **chapter.**

313 (1) (a) Each political subdivision may adopt an ordinance or a policy applicable  
314 throughout its jurisdiction relating to information practices including classification,  
315 designation, access, denials, segregation, appeals, management, retention, and amendment of  
316 records.

317 (b) The ordinance or policy shall comply with the criteria set forth in this section.

318 (c) If any political subdivision does not adopt and maintain an ordinance or policy, then  
319 that political subdivision is subject to this chapter.

320 (d) Notwithstanding the adoption of an ordinance or policy, each political subdivision  
321 is subject to Parts 1 and 3, and Sections 63A-12-105, 63A-12-107, 63G-2-201, 63G-2-202,  
322 63G-2-205, 63G-2-206, 63G-2-601, and 63G-2-602.

323 (e) Every ordinance, policy, or amendment to the ordinance or policy shall be filed  
324 with the state archives no later than 30 days after its effective date.

325 (f) The political subdivision shall also report to the state archives all retention  
326 schedules, and all designations and classifications applied to record series maintained by the  
327 political subdivision.

328 (g) The report required by Subsection (1)(f) is notification to state archives of the  
329 political subdivision's retention schedules, designations, and classifications. The report is not  
330 subject to approval by state archives. If state archives determines that a different retention  
331 schedule is needed for state purposes, state archives shall notify the political subdivision of the  
332 state's retention schedule for the records and shall maintain the records if requested to do so  
333 under Subsection 63A-12-105(2).

334 (2) Each ordinance or policy relating to information practices shall:

335 (a) provide standards for the classification and designation of the records of the  
336 political subdivision as public, private, controlled, or protected in accordance with Part 3 of  
337 this chapter;

338 (b) require the classification of the records of the political subdivision in accordance  
339 with those standards;

340 (c) provide guidelines for establishment of fees in accordance with Section 63G-2-203;  
341 and

342 (d) provide standards for the management and retention of the records of the political  
343 subdivision comparable to Section 63A-12-103.

344 (3) (a) Each ordinance or policy shall establish access criteria, procedures, and  
345 response times for requests to inspect, obtain, or amend records of the political subdivision,  
346 and time limits for appeals consistent with this chapter.

347 (b) In establishing response times for access requests and time limits for appeals, the  
348 political subdivision may establish reasonable time frames different than those set out in  
349 Section 63G-2-204 and Part 4 of this chapter if it determines that the resources of the political  
350 subdivision are insufficient to meet the requirements of those sections.

351 (4) (a) The political subdivision shall establish an appeals process for persons  
352 aggrieved by classification, designation or access decisions.

353 (b) The policy or ordinance shall provide for~~[(i) (A) an appeals board composed of~~  
354 ~~the governing body of the political subdivision; or (B) a separate appeals board composed of~~  
355 ~~members of the governing body and the public, appointed by the governing body; and (ii)]~~ the  
356 designation of a person as the chief administrative officer for purposes of determining appeals  
357 under Section 63G-2-401 of the governmental entity's determination.

358 ~~[(5) If the requester concurs, the political subdivision may also provide for an~~  
359 ~~additional level of administrative review to the records committee in accordance with Section~~  
360 ~~63G-2-403.]~~

361 ~~[(6) Appeals of the decisions of the appeals boards established by political subdivisions~~  
362 ~~shall be by petition for judicial review to the district court.]~~

363 (5) (a) An appeal of the chief administrative officer shall be to the records committee  
364 as provided in Section 63G-2-402.

365 (b) The contents of the [~~petition for review~~] notice of appeal and the conduct of the  
366 proceeding before the records committee shall be in accordance with [~~Sections 63G-2-402 and~~  
367 ~~63G-2-404~~] Section 63G-2-403.

368 ~~[(7)]~~ (6) Any political subdivision that adopts an ordinance or policy under Subsection

369 (1) shall forward to state archives a copy and summary description of the ordinance or policy.

370 Section 8. Section **63G-2-802** is amended to read:

371 **63G-2-802. Injunction -- Attorney fees.**

372 (1) A district court in this state may enjoin any governmental entity or political  
373 subdivision that violates or proposes to violate the provisions of this chapter.

374 (2) (a) A district court may assess against any governmental entity or political  
375 subdivision reasonable attorney fees and other litigation costs reasonably incurred in  
376 connection with a judicial appeal of a denial of a records request if the requester substantially  
377 prevails.

378 (b) In determining whether to award attorneys' fees under this section, the court shall  
379 consider:

380 (i) the public benefit derived from the case;

381 (ii) the nature of the requester's interest in the records; and

382 (iii) whether the governmental entity's or political subdivision's actions had a  
383 reasonable basis.

384 (c) Attorney fees shall not ordinarily be awarded if the purpose of the litigation is  
385 primarily to benefit the requester's financial or commercial interest.

386 (3) Neither attorney fees nor costs shall be awarded for fees or costs incurred during  
387 administrative proceedings.

388 [~~(4) Notwithstanding Subsection (2), a court may only award fees and costs incurred in~~  
389 ~~connection with appeals to district courts under Subsection [63G-2-404](#)(2) if the fees and costs~~  
390 ~~were incurred 20 or more days after the requester provided to the governmental entity or~~  
391 ~~political subdivision a statement of position that adequately explains the basis for the~~  
392 ~~requester's position.]~~

393 [(5)] (4) Claims for attorney fees as provided in this section or for damages are subject  
394 to Title 63G, Chapter 7, Governmental Immunity Act of Utah.

**Legislative Review Note**

as of 2-4-15 9:04 AM

**Office of Legislative Research and General Counsel**