

**Senator Curtis S. Bramble** proposes the following substitute bill:

**GOVERNMENT RECORDS ACCESS AND MANAGEMENT ACT**

**AMENDMENTS**

2024 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Curtis S. Bramble**

House Sponsor: \_\_\_\_\_

**LONG TITLE**

**General Description:**

This bill modifies provisions of the Government Records Access and Management Act.

**Highlighted Provisions:**

This bill:

- ▶ modifies the definition of "record";
- ▶ modifies a provision relating to records that may be classified as protected;
- ▶ authorizes a court to award an attorney fee and costs against a person, other than a

governmental entity or political subdivision, that actively advocates in opposition to disclosure of a record, if the requester substantially prevails; and

- ▶ modifies a provision limiting an award of an attorney fee and costs to those incurred after a specified period.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

**Ⓢ→ [None] This bill provides a special effective date. ←Ⓢ**

**Utah Code Sections Affected:**

AMENDS:



- 181 (iii) material that is legally owned by an individual in the individual's private capacity;
- 182 (iv) material to which access is limited by the laws of copyright or patent unless the
- 183 copyright or patent is owned by a governmental entity or political subdivision;
- 184 (v) proprietary software;
- 185 (vi) junk mail or a commercial publication received by a governmental entity or an
- 186 official or employee of a governmental entity;
- 187 (vii) a book that is cataloged, indexed, or inventoried and contained in the collections
- 188 of a library open to the public;
- 189 (viii) material that is cataloged, indexed, or inventoried and contained in the collections
- 190 of a library open to the public, regardless of physical form or characteristics of the material;
- 191 (ix) a daily calendar;
- 192 ~~(x) [or other personal]~~ (x) a note prepared by the originator for the originator's ~~[personal]~~
- 193 own use or for the ~~[personal]~~ ~~Œ→~~ sole ~~←Œ~~ use of an individual for whom the originator is working;
- 194 ~~(x)~~ (xi) a computer program that is developed or purchased by or for any
- 195 governmental entity for its own use;
- 196 ~~(xi)~~ (xii) a note or internal memorandum prepared as part of the deliberative process
- 197 by:
- 198 (A) a member of the judiciary;
- 199 (B) an administrative law judge;
- 200 (C) a member of the Board of Pardons and Parole; or
- 201 (D) a member of any other body, other than an association or appeals panel as defined
- 202 in Section 53G-7-1101, charged by law with performing a quasi-judicial function;
- 203 ~~(xii)~~ (xiii) a telephone number or similar code used to access a mobile
- 204 communication device that is used by an employee or officer of a governmental entity,
- 205 provided that the employee or officer of the governmental entity has designated at least one
- 206 business telephone number that is a public record as provided in Section 63G-2-301;
- 207 ~~(xiii)~~ (xiv) information provided by the Public Employees' Benefit and Insurance
- 208 Program, created in Section 49-20-103, to a county to enable the county to calculate the
- 209 amount to be paid to a health care provider under Subsection 17-50-319(2)(e)(ii);
- 210 ~~(xiv)~~ (xv) information that an owner of unimproved property provides to a local
- 211 entity as provided in Section 11-42-205;

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

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

246 (30) "State archives" means the Division of Archives and Records Service created in  
247 Section 63A-12-101.

248 (31) "State archivist" means the director of the state archives.

249 (32) "State Records Committee" means the State Records Committee created in  
250 Section 63G-2-501.

251 (33) "Summary data" means statistical records and compilations that contain data  
252 derived from private, controlled, or protected information but that do not disclose private,  
253 controlled, or protected information.

254 Section 2. Section **63G-2-107** is amended to read:

255 **63G-2-107. Disclosure of records subject to federal law or other provisions of**  
256 **state law.**

257 (1) (a) The disclosure of a record to which access is governed or limited pursuant to  
258 court rule, another state statute, federal statute, or federal regulation, including a record for  
259 which access is governed or limited as a condition of participation in a state or federal program  
260 or for receiving state or federal funds, is governed by the specific provisions of that statute,  
261 rule, or regulation.

262 (b) Except as provided in ~~§~~ → [Subsection (2)] Subsections (2) and (3) ← ~~§~~ , this chapter  
262a applies to records described in  
263 Subsection (1)(a) to the extent that this chapter is not inconsistent with the statute, rule, or  
264 regulation.

265 (2) Except as provided in Subsection ~~§~~ → [(3)] (4) ← ~~§~~ , this chapter does not apply to a  
265a record  
266 containing protected health information as defined in 45 C.F.R., Part 164, Standards for  
267 Privacy of Individually Identifiable Health Information, if the record is:

268 (a) controlled or maintained by a governmental entity; and

269 (b) governed by 45 C.F.R., Parts 160 and 164, Standards for Privacy of Individually  
270 Identifiable Health Information.

271 [~~(c)~~] (3) The disclosure of an education record, as defined in the Family Educational  
272 Rights and Privacy Act, 34 C.F.R. Part 99, that is controlled or maintained by a governmental  
273 entity [~~shall be~~] is governed by the Family Educational Rights and Privacy Act, 34 C.F.R. Part

708 governmental entity as part of the governmental entity's personnel or administrative  
 709 investigation into potential misconduct involving the employee if the governmental entity:

710 (a) requires the statement under threat of employment disciplinary action, including  
 711 possible termination of employment, for the employee's refusal to provide the statement; and

712 (b) provides the employee assurance that the statement cannot be used against the  
 713 employee in any criminal proceeding;

714 (86) any part of an application for a Utah Fits All Scholarship account described in  
 715 Section 53F-6-402 or other information identifying a scholarship student as defined in Section  
 716 53F-6-401; and

717 (87) a record:

718 (a) concerning a claim to the use of waters in the Great Salt Lake;

719 (b) relating to a judicial proceeding, administrative proceeding, or negotiation with a  
 720 person concerning the claim, including a representative from another state or the federal  
 721 government; and

722 (c) the disclosure of which would:

723 (i) reveal a legal strategy relating to the state's claim to the use of the water in the Great  
 724 Salt Lake;

725 (ii) harm the ability of the Great Salt Lake commissioner to negotiate the best terms  
 726 and conditions regarding the use of water in the Great Salt Lake; or

727 (iii) give an advantage to another person including another state or to the federal  
 728 government in negotiations regarding the use of water in the Great Salt Lake.

729 Section 4. Section **63G-2-802** is amended to read:

730 **63G-2-802. Injunction -- Attorney fees and costs.**

731 (1) As used in this section, "defending party" means:

732 (a) a governmental entity or political subdivision:

733 (i) whose access denial is the subject of a petition for judicial review under Section  
 734 63G-2-404; and

735 (ii) that defends the access denial in an action for judicial review under Section  
 736 63G-2-404; or

737 (b) a person, other than the governmental entity or political subdivision described in

738 Subsection (1)(a), that ~~§~~ → [actively advocates in] is a party to ← ~~§~~ the action for judicial review in  
 738a opposition to

739 disclosure of the record that is the subject of judicial review.

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

742 ~~[(2)]~~ (3) (a) A district court may assess against ~~[any governmental entity or political~~  
743 ~~subdivision]~~ a defending party reasonable attorney fees and costs reasonably incurred in  
744 connection with a judicial appeal to determine whether a requester is entitled to access to  
745 records under a records request, if the requester substantially prevails.

746 (b) In determining whether to award attorney fees or costs under this section, the court  
747 shall consider:

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

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

750 (iii) whether the ~~[governmental entity's or political subdivision's]~~ defending party's  
751 actions had a reasonable basis.

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

754 ~~[(3)]~~ (4) Neither attorney fees nor costs may be awarded for fees or costs incurred  
755 during administrative proceedings.

756 ~~[(4)]~~ (5) Notwithstanding Subsection ~~[(2)]~~ (3), a court may ~~[only]~~ award attorney fees  
757 and costs incurred in connection with appeals to district courts under Subsection 63G-2-404(2)  
758 only if the attorney fees and costs were incurred 20 or more days after the requester provided  
759 ~~[to the governmental entity or political subdivision a statement of position that adequately~~  
760 ~~explains the basis for the requester's position]:~~

761 (a) an adequate explanation ~~§→~~ **in writing** ~~←§~~ of the basis for the requester's position,  
761a regardless of ~~§→~~ **how**  
762 ~~the explanation is communicated or~~ ~~←§~~ whether the explanation is a part of or outside an  
763 administrative or court proceeding; and

764 (b) to the governmental entity, political subdivision, or other person against which the  
765 requester seeks an award of attorney fees and costs.

766 ~~[(5)]~~ (6) Except for the waiver of immunity in Subsection 63G-7-301(2)(e), a claim for  
767 attorney fees or costs as provided in this section is not subject to Chapter 7, Governmental  
768 Immunity Act of Utah.

769 Section 5. **Effective date.**

770            **§→ [This] (1) Except as provided in Subsection (2), this ←§** bill takes effect on May 1,  
770a 2024.  
770b **§→ (2) If approved by two-thirds of all the members elected to each house, this bill takes effect**  
770c **upon approval by the governor, or the day following the constitutional time limit of Utah**  
770d **Constitution, Article VII, Section 8, without the governor's signature, or if the case of a veto,**  
770e **the date of veto override. ←§**